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ORIGINAL ARTICLE

Responding to the unacknowledged trauma and disenfranchised grief in infant adoption

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Abstract

Recently, there has been more attention paid to trauma related to adoption. This article addresses the unacknowledged trauma which may exist with children adopted in infancy, before they had any retrievable recollection of their first families. Because this trauma has not been recognized, there has been inadequate attention paid to the adoptee's grief at the loss of the first family. This article suggests that all sealed records laws which prevent adoptees from having access to records otherwise available to non-adoptees be repealed, that all adoptions be presumed to be open, with the possibility for ongoing contact with first family members, and that more trauma-informed and adoption-competent therapeutic resources be made available to adoptees.

KEYWORDS
adoption, adoption trauma, adoption-competent counseling, closed adoption records, disenfranchised grief, infant adoption, open adoption, primal wound, sealed records

Key points for the family court community

- Persons adopted in infancy may suffer trauma related to a "primal wound" or their later understanding of their loss of connection with their families of origin.
- A presumption in favor of open adoption, with adoptees having ongoing access to their first families may mitigate their sense of loss and grief.

- Trauma-informed and adoption-competent counselors should be made available to all adoptees.
- There are legal barriers to adoptees having access to their own history, legal, and medical records which must be eliminated.
- All adoptees should have the same access to their own records as non-adoptees have to theirs.

MY STORY

I usually write as a scholar or practitioner (or both). Here I am also writing as a person with lived experience.[1] I was born in 1951 to an unwed college student who decided, without pressure from her parents or the State, to place me for adoption. I was adopted by good people and raised in a good home free from abuse or neglect. I suffered trauma nonetheless, by virtue of the "primal wound"[2] caused by the separation from my birth mother, compounded by the legal cloak of secrecy about my birth heritage.

TRAUMA IN INFANT ADOPTION

Many adoptees have experienced this trauma without having words for it or a way to explain "the void," because the initial trauma was experienced when we lacked the developmental context, vocabulary, and ability to encode the memory, much less store it for later retrieval. This pre-cognitive trauma has made it largely unacknowledged, and therefore, not adequately responded to. Because the trauma was unacknowledged, the resulting grief was "disenfranchised," not given any recognition or norms for bereavement and comfort. This article explores this circumstance and suggests that it can be ameliorated by repealing all sealed records laws which would prevent adoptees from access to information about themselves, minimizing the use of closed adoptions, and providing adoption and trauma-informed therapeutic resources for adoptees.

In their understanding of attachment theory, the social service, mental health, and legal systems have assumed that if caring adults met the basic physical and emotional needs of the infant, attachment would be transferred seamlessly among receiving or boarding homes and the adoptive parents. The infants did not experience the trauma of being removed from homes they had memories of or from homes where they had been abused, neglected, or had their needs met only intermittently. While these professionals and systems recognized the trauma experienced by older children removed from their homes and placed into foster care prior to a subsequent adoption,[3] the trauma of the primal wound experienced by infant adoptees has largely been unacknowledged, and therefore, unaddressed. This is notwithstanding the widespread recognition that adoptees, including those adopted in infancy, are over

[1]My most recently published book, *Not Nicholson: The Story of a First Daughter* (Wheatmark 2023), is an adoption search and reunion memoir which goes into great detail about my story, what I learned, and what I am continuing to learn. While I knew I had experienced pain and loss and the "primal wound," it wasn't until I was interviewed on a British podcast, "The Thriving Adoptee," that I realized in more depth that I had suffered "trauma" and began to research and think more deeply about that and its implications. *See* "More Than Good Enough With Ann Haralambie" on Thriving Adoptees—Healing, Inspiration & Empowerment For Adoptees https://pod.fo/e/1ee780 (2023).

[2]This term was coined in Nancy Newton Verrier's book, *The Primal Wound: Understanding the Adopted Child* (Gateway Press, 1993).

[3]*See generally* the special issue, *Exploring the relationship between adoption and psychological trauma for children who are adipted from care: A longitudinal case study perspective.*130/2 Child Abuse & Neglect. (Aug. 2022). *Exploring* the Relationship between Adoption and Trauma, 130/2 Child Abuse and Neglect (August 2022).

represented in mental health settings.[4] Trauma, in general, "results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being."[5] Infants placed for adoption experience the physical separation from the person inside whose body they have grown, heard her heartbeat, and experienced their first environment. Nancy Verrier refers to the first mother as "a person to whom [the adoptee] is biologically, genetically, historically and, perhaps, even more importantly, psychologically, emotionally, and spiritually connected, and some people would like him to believe that it is the telling of the experience of the severing of that bond which makes him feel so bad!"[6] The severing of that bond is the infant adoptee's trauma, the primal wound.

Historically, in the United States, adoption records were not sealed until the 1930s to the 1960s. Prior to that time, adoptees were able to know the identity of their birth families. Minnesota, which enacted the first sealed records law in 1917, sealed records only from the public at large, not from the adoptees and their parents.[7] By the end of the twentieth century, sealed records had become the norm, and no members of the adoption "triad" were given access to the original birth-related records and original birth certificates. This was ostensibly done to protect the child from the stigma of illegitimacy (even though the laws applied also to children born in wedlock and removed from their first[8] homes because of abuse or neglect or children adopted by a stepparent while continuing to live with a first parent), and to protect the adoptive parents from interference by first parents. Infants were generally "matched" with adoptive parents in a manner that would allow the child to "pass" as a child born into the family. Palacios, Brodzinsky and Grotevant write:

> Unlike today, with its emphasis on the best interest of the child, earlier adoption policy and practice primarily served the needs of adults – namely, childless couples. For example, little information about the child's history and birth family was shared with adoptive parents, and practice principles emphasized the importance of maintaining secrecy and confidentiality in the adoption process. In fact, adoptive parents were encouraged to raise their children "as if" they were born to them. To support this goal, agencies attempted to match parents and children by skin color and other physical or psychological features (e.g., hair color, intelligence, expected height and physical appearance), following the dictum *Adoptio naturam imitatur* (Adoption imitates nature). In many cases, parents were even discouraged from telling their children about being adopted.[9]

While most children adopted in infancy were not removed from homes they had shared with their birth parents, all of them were removed from their mothers' wombs, where scientific evidence has demonstrated that they had

[4]See, example, Eveliina Holmgren, Hanna Raaska, Marko Elovainio & Helena Lapinleimuet al., "*Behavioral and Emotional Adjustment in Adoptees*," *in* The Routledge Handbook of Adoption, pp. 353–366. (Gretchen Miller Wrobel, Emily Helder & Elisha Marr, eds 2020); Kristin Gärtner Askeland, Mari Hysing, Annette M. La Greca, Leif Edvard Aarø, Grethe S. Tell & Børge Sivertsenet al., "*Mental Health in Internationally Adopted Adolescents: A Meta-analysis*," vol. 56, /3 J. of the Am. Acad. of Child & Adolescent Psych. 203–213 (2017); Margaret A. Keyes, Anu Sharma, Irene J. Elkins, William G. Iacono, & Matt McGueet al., *The Mental Health of US Adolescents Adopted in Infancy*, 162/5. Arch. Pediatr. Adolescent Med. 419–425 (May 2008), doi:10.1001/archpedi.162.5.419.

[5]Substance Abuse and Mental Health Services Administration [SAMHSA], Trauma and Justice Strategic Initiative, p. 2 (2012). (Explaining that this governmental agency definition of trauma better captures the psychological trauma than the definition in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) p. 271 (2013) (trauma in the DSM-5 requires exposure "to actual or threatened death, serious injury, or sexual violence")).

[6]Nancy Newton Verrier, *The Primal Wound: Understanding the Adopted Child*, 10 (Gateway Press, 1993).

[7]*See* U.S. Children's Bureau, Adoption Laws in the United States: A Summary of the Development of Adoption Legislation and Significant Features of Adoption Statutes, With the Text of Selected Laws, ed. Emelyn Foster Peck, Bureau Publication No. 148, pages 27–28 (Washington, DC: Government Printing Office, 1925). (The 1917 Minnesota adoption law provided: "The files and records of the court in adoption proceedings shall not be open to inspection or copy by other persons than the parties in interest and their attorneys and representatives of the State board of control), except upon an order of the court expressly permitting the same."

[8]I use the term "first" as synonymous with "birth" or "biological," or "genetic" out of respect for the emerging vocabulary adoptees use when referring to their families of origin.

[9]Jesús Palacios, David M. Brodzinsky & Harold D. Grotevant, Adoption, ch. 9 *in The Oxford Handbook of Developmental Psychology and the Law*, 169–194 (Allison D. Redlich, and Jodi A. Quas, eds. 2023).

formed a unique attachment to their mothers in utero.[10] Removal from the birth mother is a loss experienced as trauma and creating a grief for that loss which persists, whether or not recognized or verbalized in so many words, in infant adoptees throughout their lives, especially in the absence of a reconnection with the mother which resolves some aspects of the grief. (The loss of shared time together can never be fully resolved.)

That this "primal wound" trauma exists is not universally accepted. For example, Brodzinski, Gunnar, and Palacios have written that:

> we do not hold with the notion that separation of an infant from its mother constitutes a "primal wound" that is somehow encoded in the neural system in a way that predisposes the individual to adoption trauma. Empirical research does not show adjustment differences in infancy between adoptees and nonadoptees. Rather, these differences may appear later, when the adoptee has the cognitive ability and environmental context to give meaning to the circumstances of their birth and adoption. But the anecdotal lived experience of many adoptees, as reflected in adoptee social media groups, and informal communications, suggests that the explanation of a "primal wound" resonates deeply.[11]

As I have written previously[12]:

> children who have no ability to acquire knowledge about their genetic heritage may experience 'genealogical bewilderment' or loss of 'genetic ego.'[13] This goes far beyond 'mere curiosity' and involves the breach of relationship formed in utero and broken at a time when the infant did not have the cognitive or verbal capacity to encode or deal with the separation.

Sealed records and closed adoptions foreclose adoptees' ability to acquire such knowledge. Providing general, "non-identifying information" is insufficient to fill the gap, and in the absence of true facts, many adoptees secretly consider many possibilities and experience substantial emotional reactions to each.[14] This unnecessary wall of secrecy about one's own history can create emotional trauma with behavioral and psychological sequelae.

It is only with the advent of television shows, movies, and books showing adoptees' searches for their first families that non-adoptive society has seen a sliver of how traumatized these searchers have been by lack of knowing. Many adoptees have had friends respond to seeing these searches play out in the media by saying "I had no idea!" Indeed.

LOSS AND DISENFRANCHISED GRIEF

Society in general has failed to see that those adopted in infancy have suffered any real loss. Adoptees are often told to be grateful for the parents they have,[15] that they are probably better off anyway, and admonished not to be disloyal to their adoptive parents, not to stir up trouble for their birth parents, and to let sleeping dogs lie. Nancy Verrier writes: "If the primal experience for the adopted child is abandonment, then the core issues are loss and the fear of further

[10]For a summary *see generally* Barbara L. Atwell, *Nature and Nurture: Revisiting the Infant Adoption Process*, 18 Wm. & Mary J. Women & L. 201 (2012).
[11]*See* David Brodzinsky, Megan Gunnar & Jesus Palacios, *Adoption and Trauma: Risks, Recovery, and the Lived Experience of Adoption*, 130 CHILD ABUSE AND NEGLECT 105309 (2022).
[12]*See* Ann M. Haralambie, 3 Handling Child Custody, Abuse, and Adoption Cases § 14:29 (3 ed., Thomson Reuters West 2009, 2024).
[13]*See*, e.g., H.J. Sants, *Genealogical Bewilderment in Children with Substitute Parents*, 47 Child Adoption 32 (1965), Doi: 10.1111/j.2044-8341.1964.tb01981.x; M. Frisk, *Identity Problems and Confused Conceptions of the Genetic Ego in Adopted Children During Adolescence*, 31 Acta Paedopsychitrica 6 (1964); E. Wellisch, *Children Without Genealogy: A Problem of Adoption*, 13 Mental Health 41 (1952).
[14]In my memoir I talk about my own hypotheses about my first mother dying in childbirth or in a fire or in a car accident and feeling guilty that in the first two instances I had been responsible for my mother's death and my father's resulting grief. As I got older, I thought about the possibility of my mother's unwed pregnancy and felt guilty about being the cause of such pain and shame for her and her family and the responsibility of being the skeleton in the family closet. See Ann M. Haralambie, Not Nicholson: The Story of a First Daughter, chapter 3 (Wheatmark 2023). These kinds of internal experiences are commonly reported by adoptees in Facebook groups and other safe places where adoptees speak to each other.
[15]*See*, for example, Angela Tucker, *You Should Be Grateful: Stories of Race, Identity, and Transracial Adoption* (Beacon Press 2022).

abandonment. Neither is acknowledged in most adoptive families, since the abandonment occurred so early in the child's life. Given no acknowledgment of his loss or tools to help him grieve, the child copes in whatever way he can, ways which manifest in behavior that is often misunderstood."[16] As reported in MD Edge, psychologist David Brodzinsky told the 2010 annual meeting of the American Academy of Child & Adolescent Psychiatry that the unresolved, uncommunicated, and unvalidated grief that some adopted children may feel often goes unrecognized as an overlay that accompanies more typical psychiatric disorders in adopted children.... Some children have what might appear to be depression or anxiety but rather are symptoms that result exclusively from adoption-related grief that has not been appropriately validated... Viewing the loss in a grief model normalizes the child's reactions rather than casting them as pathological.[17]

Psychologist Kenneth J. Doka defines disenfranchised grief as "the grief experienced by those who incur a loss that is not, or cannot be, openly acknowledged, publicly mourned or socially supported. Isolated in bereavement, it can be much more difficult to mourn and reactions are often complicated. It is important to recognize and try to meet the needs of those whose grief is not acknowledged by society, whatever the emotional or financial costs."[18] The losses experienced in all adoptions are often overlooked while rejoicing in the child having found a "forever home." With infant adoption, the loss is not merely overlooked or overshadowed, but is almost always entirely unrecognized or trivialized. The infant adoptee's life begins at placement or adoption, not birth, and many adoptive families now celebrate the adoption date (which some adoptees derisively refer to as their "gotcha date"). The infant adoptee's grief is entirely disenfranchised by society.

SEALED RECORDS AND CLOSED ADOPTION

The legal system greatly contributed to the life-long aftermath of this primal wound and disenfranchised grief beginning in the middle of the twentieth century by the legislative creation of walls of secrecy between adoptees and their own histories. These sealed records significantly increased the trauma of adoptees, uniquely removing their right to knowledge of their own roots. Appellate courts created a high, almost impossible bar, to show "good cause" for an adoptee to have even his or her own birth certificate, containing true information about lineage, medical history, or anything else pre-adoption. The courts often balance the presumed interest of the first mother in keeping her identity secret (something many first mothers do not, in fact, desire), the proprietary interest of the adoptive parents in being seen as the adoptee's exclusive parents, and the interest of the State in protecting the institution of adoption against the adoptees' interest in having access to true information about themselves.[19]

The federal Indian Child Welfare Act created a chink in this wall to allow children falling within its definition of "Indian child" to be given access to sufficient information to secure their tribal membership and benefits.[20] But even this information could be given directly to tribes or an intermediary who reports to the court, not the Indian child directly.[21]

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[16]Nancy Newton Verrier, *The Primal Wound: Understanding the Adopted Child*, page 69 (Gateway Press, 1993).

[17]As reported by Mitchel L. Zoler, *Adopted Children Can Feel Loss and Disenfranchised Grief* (November 26, 2010), available at https://www.mdedge.com/content/adopted-children-can-feel-loss-and-disenfranchised-grief-0.

[18]Kenneth J. Doka, "Disenfranchised Grief," 18/3 *Bereavement Care*, 18(3), 37 (1999), 37–39, (1999) doi: 10.1080/02682629908657467.

[19]*See*, e.g., *Alma Soc'y Inc. v. Mellon*, 601 F.2d 1225, 1227–29, 1233, 1236, 1238 (2d Cir. 1979); *In re Roger B.*, 418 N.E.2d 751, 754, 756–57 (Ill. 1981); *In re Adoption of S.J.D.*, 641 N.W.2d 794, 803 (Iowa 2002); *In re Maples*, 563 S.W.2d 760, 762, 764 (Mo. 1978); *In re Estate of McQuesten*, 578 A.2d 335, 339 (N.H. 1990) ("If all of the parties to the adoption give their consent to unsealing the adoption records. ... the State still has an interest in continued confidentiality. Even in a[n]. ... 'open' adoption. ... court records could contain potentially embarrassing information and be disruptive to the relationship between children and their adoptive parents."). *See generally* Christopher G. A. Loriot, *Good Cause Is Bad News: How the Good Cause Standard for Records Access Impacts Adult Adoptees Seeking Personal Information and A Proposal for Reform*, 11 U. Mass. L. Rev. 100 (2016); Katarina Wegar, *Adoption, Identity, and Kinship: The Debate over Sealed Birth Records*, 30–31 (1997).

[20]*See* 25 U.S.C.A. § 1917; 25 C.F.R. § 23.138 (2016) ("Upon application by an Indian who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree of adoption must inform such individual of the Tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include Tribal membership, resulting from the individual's Tribal relationship.").

[21]*See*, e.g., Matter of Hanson, 188 Mich. App. 392, 470 N.W.2d 669 (1991) (information may be provided to tribe instead of to adoptee); *Matter of Adoption of Mellinger*, 288 N.J. Super. 191, 672 A.2d 197 (App. Div. 1996) (adult adoptee of Indian heritage entitled to information in sealed records, including names of parents, which were needed to determine tribal affiliation; trial court may appoint third party to review records, investigate, and report genetic parents' tribal affiliation).

Kansas[22] never sealed adoptees' access to their original birth certificates. In the U.S. Virgin Islands, since 1961 an adult adoptee (unless "incompetent") may access the original birth record and "all records or files in the custody of any governmental agency or of the court relating to any proceedings under this chapter… except upon the order of the court for good cause shown,"[23] reversing the burden of showing good cause which has been typical. Some state legislatures have slowly begun to allow adult adoptees to obtain their original birth certificates under some circumstances. For example, some states require notice to birth parents (sometimes giving them veto power over the request). Some create date windows for which adoptees can and cannot obtain their "OBCs."[24] However, adoptees are still second-class citizens when it comes to their own records. Somewhere the "best interests of the child" have been overridden by the real or presumed interests of the birth parents, adoptive parents, agencies, and even the State itself. Widespread DNA testing has made these sealed records laws anachronistic, and yet, they still remain as barriers and unnecessarily perpetuate the trauma of adoptees legally pruned from their roots and heritage. Secrecy breeds shame and the feeling of being "less than" and "not good enough," solely based on things over which the adoptee had no control. There are no comparable circumstances under which a people are denied access to true records concerning themselves.[25] Israel,[26] Norway,[27] and Scotland[28] have never sealed adoption records for adult adoptees. Adoption records have been open to adult adoptees in Great Britain since 1975, New Zealand since 1985, and Australia since 1991. There have not been great problems arising in any of these countries from allowing adult adoptees to access their records.

There is no reason why all of the United States should be expected to have widespread problems by providing for open records for its adult adoptees.

MY RECOMMENDED RESPONSE

I start by saying that while there are adoptees and first parents who call for the abolition of adoption in its entirety, I am not among them. However, I share their call for greater social and financial support and resources to allow parents to raise their own children without having to choose between abortion or adoption. We must always realize that infants and children started out as a part of family (genetically related parents and their extended families and their friendship supports), and we should craft policies and programs which seek to empower those built-in supports wherever possible to allow children to be raised in their original families except in extraordinary situations.[29] Insofar

[22]*See* Kan. Stat. Ann. § 65-2423(a) (sealed original birth certificate "may be opened by the state registrar only upon the demand of the adopted person if of legal age or by an order of court").

[23]VI ST tit. 16, § 145(c).

[24]For a list of state statutes current as of 2023, *see* Ann M. Haralambie, *Not Nicholson: The Story of a First Daughter, An Adoption Search and Reunion Memoir*, appendix 3 (Wheatmark 2023). (For websites showing the updated status of state laws, *see*, e.g., https://www.americanadoptioncongress.org/state.php, https://adopteerightslaw.com/faq-adoptee-original-birth-certificates/.).

[25]There may be certain records which are denied based on national security interests or participation in the federal Witness Protection Program, but there is nothing else in American law which creates a class of people whose entire history is legally withheld from them.

[26]For information on adoptee (age 18 or older) access to records in Israel, *see* https://www.gov.il/en/service/request-to-open-an-adoption-file. The adoption file includes identifying information about the adoptee, biological parents details, and documents relating to the circumstances of the adoption. The adoptee meets with a social worker to help the adoptee get ready but "if the social worker believes that opening the adoption file may be significantly harmful, they may decide to deny to provide you with details of your biological family," a paternalistic possibility that disrespects the adult adoptee's autonomy. Many records accessible to non-adoptees may be harmful to view.

[27]"According to Norwegian law children are regarded as party to the case and will have access to adoption papers and such like" See https://www.arkivverket.no/en/personal-documentation/biological-origin.

[28]For information on adoptee (age 16 or older) access to records in Scotland, see https://www.nrscotland.gov.uk/research/research-guides/research-guides-a-z/adoption-records. Scotland recognizes that "the adoption papers themselves can sometimes contain upsetting revelations," and recommends but does not require counseling. Copies of records will be made and provided to the adoptee if the adoptee attends in person. The records generally will include a copy of the original birth certificate, an official report to the court at the time of the adoption, a petition by the adopting parents, the consent of the birth mother (occasionally the consent of the birth father), the name of any adoption agency involved, confirmation from the court that the adoption may go ahead. "Any other information depends on what the birth parents revealed. As they were under no obligation to reveal any information whatsoever, some adoption processes contain minimal information and sometimes nothing. People examining their adoption process should be prepared both for this and for the possibility that the papers may reveal other distressing information."

[29]For a discussion from the first mother's perspective by sociologist Gretchen Sisson, Ph.D., see her book Relinquished: The Politics of Adoption and the Privilege of American Motherhood (St. Martin's Press, 2024), including her recommendations in chapter 6.

as possible, children should have meaningful and ongoing access to their own first families and knowledge of their own history.

The first, most easily accomplished step is immediately to abolish all sealed records laws as they pertain to adoptees not having access to all records of any kind concerning themselves, from original birth certificates[30] to agency records to medical records. Anything a non-adopted person would be able to access should be accessible by adoptees. There is no longer (if there ever were) a legitimate reason to single out adoptees from having access to records that non-adoptees would have access to.

Children are always and only the genetic offspring of one man and one woman. That is true whether conception results from sexual intercourse, artificial insemination, in vitro fertilization, gamete implantation, surrogacy or any other means that may be created short of human cloning (and even with cloning, genetic parentage would be traced back to one man and one woman).[31] That is a biological fact which no legal fiction can erase. That does not mean that genetic parentage is the only type of parentage entitled to legal recognition. But regardless of the genetic parent's legal status or lack thereof, the resulting child is the innocent beneficiary of acts taken or decisions made by other people which fundamentally create and affect the child. Those people's "privacy" rights should not affect the child's right to know who they are, which does not necessarily entail any kind of contact or relationship. Given the widespread availability of and use of genealogical DNA sites, "search angels," and investigative genealogists, the truth will out despite personal and legal barriers attempting to protect the secret.[32] So why put the adoptee to the emotional and financial burden of having to utilize such resources?

Aside from providing the identity of one's parents, unsealing records would provide a context for a child's adoption. As noted above, in the absence of knowing true facts, adoptees often hypothesize and emotionally react to multiple possible scenarios. A child conceived through rape can be helped to process that unfortunate fact. A child conceived through incest can be helped to process that unfortunate fact. Any tragic circumstance can be addressed for the child. But without the truth, the child may well go through all possible horrible circumstances, reacting to each, and in many cases, assuming guilt. (Any child custody lawyer or therapist can attest that most children at some point find a way to blame themselves for their parents' divorce or separation. Therapy with children of divorce almost always includes disabusing the child of that presumed causation, relieving the child of the associated guilt.).

The second step is to start with a legal presumption that all adoptions are open. Currently, closed adoption has been the norm, and courts would order open adoptions only with the agreement of all adult parties, and even with signed open adoption agreements, courts could refuse to enforce the terms.[33] As attorney Sanford Katz wrote: "Adoption is not identical with producing one's own child. It is raising and integrating another's biological child into one's own family. Not to recognize this reality is to romanticize adoption, and adoption literature abounds in such pretense."[34] There may be special circumstances where first parents pose such a demonstrable danger to a child that

[30]It is reasonable that where the child has a post-adoption amended birth certificate, the original birth certificate (OBC) can be marked as having been amended so that there is only one current birth certificate for legal identification purposes.

[31]The Uniform Law Commission recently amended the 2017 Uniform Parentage Act to require the disclosure of a gamete donor's identity on request when a donor-conceived child reaches the age of 18. *See* Unif. Parentage Act 2017 §905. As of February 2023, no state has enacted the amended provision. For a discussion of donor-conceived children's right to know their roots, *see generally* Camille Workman, *The 2017 Uniform Parentage Act: A Response to the Changing Definition of Family?*, 32 J. Am. Acad. Matrim. Law. 233, 243–244 (2019) (noting that "[c]hildren deserve to know their genetic origins and denying them this information in adulthood demonstrates a double standard in the argument that genes are important to parents but should be irrelevant to their children. Due to the vast increase in the number of children born as a result of ART, the importance of the child's access to her genetic background is increasingly apparent."); Naomi Cahn, *The New "Art" of Family: Connecting Assisted Reproductive Technologies & Identity Rights*, 2018 U. Ill. L. Rev. 1443, 1456 (2018) ("As studies have shown, access to identifying information may help offspring socially, emotionally, psychologically, and physically by, for example, offering them a better understanding of their social, cultural, and biographical heritage; satisfying their curiosity; completing their identity; and learning about medical risks. Of course, many offspring will decide not to access their original birth certificates, and they will be under no pressure to do so. What is important is the opportunity to do so–the capacity for 'self-authorship.'").

[32]Indeed, many non-adoptees are learning through DNA sites that the people they thought were their parents were not, and fathers are learning that they did not actually father their children. This may be disappointing, maybe even breaking up marriages, but the "surprise" way of learning this information is itself damaging. As we generally learn in other of life's relationships, honesty up front generally prevents more damaging consequences later. Secrets rarely produce happy endings in literature or life and rarely remain secrets forever.

[33]*See generally* Ann M. Haralambie, 2 *Handling Child Custody, Abuse and Adoption Cases* 3d § 14:23 (Thomson Reuters West 2009, 2024).

[34]Sanford Katz, *Introduction to John P. Triseliotis, In Search of Origins: The Experiences of Adopted People*, xi (Routledge Kegan & Paul 1973).

they should not be permitted to know the name and whereabouts of their child (which does not necessarily mean that the child does not have a right to know the names of the parents). In such rare cases closed adoption might be appropriate. It is not sufficient to say that the adoptive parents should not have to be reminded that there is another set of parents. They can still maintain their legal rights of control as parents, as divorced and never-married parents do when one has been awarded sole custody. But the fact is that they are raising other people's genetic child, and the child's right to knowledge of his or her birth heritage should no longer take a back seat to the desire of the adoptive parents to put the first parents out of sight and out of mind.[35] In fact, in many cases, kinship placements (whether by adoption or guardianship) or fictive kinship[36] placements may serve the child's interests better than severing the legal relationship between parent and child would.

We often talk about adoption as being the gold standard of permanency when return to parent is not feasible. Adoption completely replaces the legal rights and responsibilities of the parents, and the adoptive parents wholly take over the status as legal parents. The parents are generally liable for child support in a guardianship, but not in an adoption. Guardianship, even "permanent guardianship," is seen as less secure and permanent, because there is always the possibility that the guardians could resign or the court might terminate the guardianship, restoring full rights and responsibility to the legal parents. One scenario where this has worked well, even in informal situations, is the case of mothers who give birth when they are very young or substance abusers, and their parents take over the day-to-day responsibility of raising the grandchild. When the parent matures and, in the case of substance abusing parents, becomes and remains clean and sober, the grandparents step back into the role of grandparents, with the actual parents assuming parental responsibilities. Those children know that the people who are rearing them are their grandparents and know who their parents are. Sometimes the parents are never in a position to act as parents, and the grandparents remain the functional parents. In such circumstances, the grandparents should have legal authority to protect and act on behalf of the child. This can be achieved by such devices as temporary guardianship by power of attorney, which adds legal authority to them that does not supplant the parent's authority. (This is the kind of document parents might give a neighbor or friend watching the children while they are on an extended vacation.) A consensual court-approved guardianship can override the parent's authority until it is terminated, but usually the parent needs only to revoke the consent, and the court will terminate the guardianship. A permanent guardianship is more permanent and can only be terminated based on resignation of the guardian or a showing of good cause, either because the guardians have died, become unavailable, or have themselves proven to be unfit, or because the court finds it to be in the child's best interest for the parent to resume parental authority.

But neither adoption nor raising one's own child are "permanent" in the absolute sense of the word. Adoptions can and do disrupt.[37] Parental rights can be terminated. Of course, while a guardian can resign at any time for any reason; an adoptive parent or other legal parent cannot merely resign, so the child has greater security in that regard if he or she is adopted. The biggest "permanency" difference between a permanent guardianship and adoption is that once the child is emancipated by age or other qualification, the guardian no longer has a legal relationship with the child (absent grounds for an adult guardianship), whereas adoptive parents retain their status as legal parents. There are also legal differences involving such things as inheritance rights (in the absence of a will) and priority for appointment to represent the adult "child's" interests. So long as sealed records and closed adoptions remain the norm, permanent guardianship may be one way for children to retain connection with their birth heritage and first family.

[35]Since the latter part of the twentieth century many adoptive parents have been strong allies in their children's effort to find and reconnect with their first families. These parents have realized that their children's desire is natural and does not affect their own relationship with their children, just as all children may form relationships with relatives and friends which do not diminish their relationship with their parents.

[36]Fictive kinship is a "kinship based on social agreements such as friendship instead of adoption, blood (consanguinity), or marriage (affinity) that creates a relationship 'like family.'" Open Education Sociology Dictionary (ed. Kenton Bell 2014), available at https://sociologydictionary.org/fictive-kin/. *See generally* Julia J. Eger, *Legally Recognizing Fictive Kin Relationships: A Call for Action*, Child Law Practice Today (February 4, 2022), available online at https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonli ne/january-december2022/fictivekin/; Margaret K. Nelson, *Like Family: Narratives of Fictive Kinship* (Rutgers University Press 2020).

[37]See, for example, the Uniform Unregulated Child Custody Transfer Act (2021), available at https://www.uniformlaws.org/viewdocument/final-act-11?CommunityKey=473903e2-ea5a-4088-a8beba3f9086d46b&tab=librarydocuments, (Exploring how it was originally drafted to address the "rehoming" of children in disrupted adoptions. It was expanded to include other circumstances of permanent transfers of children outside of the legal process.).

The third step, especially for children in closed adoptions, is to educate mental health, social service, legal, and judicial professionals about the real, heretofore unacknowledged trauma and disenfranchised grief inherent in adoption, even for infants removed in infancy and raised in good homes, so they can better respond to their needs. Adoptees should have mandated access to trauma-informed/adoption-competent therapy and support groups throughout their minority. As Dr. Brodzinky has pointed out:

> adoption is founded on loss, and a child's reaction to being adopted can often be best understood with a grief model. … If a sense of loss occurs among children who were adopted as infants, it usually appears before age 5-7 years. Children can begin to have a feeling of separation from someone about whom they don't know much, which can lead to anxiety, sadness, and anger.[38]

We need to have therapists who understand this dynamic and are able to acknowledge and recognize grief and help children move through their very real and normal feelings about the loss of their first family in the case of a closed adoption. On the Child Welfare Information Gateway, the Children's Bureau provides a fact sheet which emphasizes that "[e]xperienced therapists who have a working understanding of loss, attachment, trauma, brain development, and adoption-related issues are best suited to help address the challenges that adoptive families experience," and provides information on how to find adoption-competent therapists.[39]

In the case of an open adoption or guardianship, an appropriately informed therapist should be able to help the child understand the context of the adoption and navigate through relationships with first family members as adjuncts, not primary caretakers. In some ways, this is not unlike therapy with separated and blended families, even though the legal status of the adults may be different. There is at least one national program by the Center for Adoption Support and Education (C.A.S.E.), Training for Adoption Competency (TAC), which offers an accredited assessment- based certificate program for mental health therapists to become adoption- competent.[40] C.A.S.E. reports that:

> Through classroom and remote instruction, as well as clinical case consultation, TAC students master key clinical skills that support adopted children and their foster, adoptive and kinship families. TAC has 19 training centers across the country, over 1,800 graduates (and growing) and received accreditation from the Institute of Credentialing Excellence (ICE), making it a recognized top-tier program dedicated to public protection and excellence in practice… TAC has been rigorously evaluated by an outside evaluator, PolicyWorks LTD, since its inception in 2009. TAC has been rated by the California Evidence-based Clearinghouse for Child Welfare Programs as a promising practice with high child welfare relevance in the category Child Welfare Workforce Development and Support Programs. An outcomes study funded by the Annie E. Casey Foundation in 2020 comparing families served by TAC trained clinicians with comparably qualified non-TAC trained clinicians showed more positive outcomes for their families on measures of communicative openness, adoption knowledge, relationships, and parenting skills and measures of daily functioning and relationships for their child.[41]

The organization also offers a free, online National Adoption Competency Mental Health Training Initiative (NTI) training.[42] That initiative began in 2014 with a 5-year research program by C.A.S.E. funded by the Children's Bureau.

[38] As reported by Mitchel L. Zoler, *Adopted Children Can Feel Loss and Disenfranchised Grief* (November 26, 2010), available at https://www.mdedge.com/content/adopted-children-can-feel-loss-and-disenfranchised-grief-0.

[39] *See* "Finding and Working with Adoption-Competent Therapists," Factsheets for Families (September 2023), available at https://bit.ly/adoption-comptent_therapists.

[40] *See, example*, Anne J. Atkinson, & Debbie B. Riley, "Training for Adoption Competency: Building a Community of Adoption-Competent Clinicians," 98(3)/3 Families in Society, J. of Contemporary Soc. Serv., (2017), https://doi.org/10.1606/1044-3894.2017.98.23.

[41] *See* The Center for Adoption Support and Education, FAQ. https://adoptionsupport.org/training-for-adoption-competency/.

[42] More information about this training is available at https://adoptionsupport.org/nti/aboutnti/.

Curriculum modules, which include foster care, guardianship, and adoption, are provided for child-welfare workers (20 hours), their supervisors (an additional 3 hours and a coaching and activity guide), and mental health professionals (25 hours).[43] Training can be accessed through the Children's Bureau Capacity Building Collaborative Cap-LEARN website.[44]

More therapists are seeking training to become trauma-informed and adoption-competent to be able to help adoptees deal with their issues with an understanding of the role that their adoption may play. Such resources should be available for all adoptees to utilize.

CONCLUSION

In the child welfare arena, family team meetings were conceived of to allow a child's family and support network to brainstorm solutions for a child's protection, rather than leaving all decision-making to caseworkers with heavy caseloads and the inability to adequately understand each particular family's "village" and the knowledge and resources the village has to offer.[45] The pre-twentieth century "informal adoptions" had the benefit of allowing families and their networks to make arrangements for children without creating walls of secrecy between children and their parents. I am not advocating that we dispense with legal regulation to provide actionable legal authority for children's parents or other caretakers. Children need to have adults with legal authority to make decisions, consent to treatment, and otherwise provide adequate structure for a child's life. But this does not have to come at the expense of functionally obliterating the child's first family and clothing the child's roots in secrecy. Secrecy breeds shame, and what is so wrong or dangerous about a child knowing his or her original name, birthplace, circumstances of the birth and adoption, and identities of relatives? Why can't adoptees have ongoing access to medical and other records relevant to themselves?

As the supply of healthy infants available to be adopted has dwindled, while postponing bearing children has led to more infertility difficulties, and while the stigma of raising a child out of wedlock has all but disappeared, adoption agencies and adoption attorneys have already started to move in the direction of more openness in adoption because many first parents do not want to send their babies into the great unknown. The bargain many first parents require is some kind of ongoing contact. Infant adoption has been about finding children for adults more than finding adults for children. But the children have become more militant and informed. Adoptees have banded together, with DNA testing widely available for around $50. The genie is out of the bottle, and the time has come – indeed is long overdue – to abolish sealed records of every kind to the extent of allowing all adoptees to access all records about themselves that would be available to non-adoptees and to greatly reduce the number of closed adoptions. In the meantime, we must acknowledge the trauma in infant adoption and recognize the grief, allowing for the appropriate treatment of such grief. That is what it means for adoptees to be seen, heard, and equal to non-adoptees.

CONFLICT OF INTEREST STATEMENT

None.

[43] *See* Dawn Wilson, Debbie Riley & Bethany Lee, "Building an Adoption Competent Workforce: A Review of the National Adoption Competency Mental Health Training Initiative" (Rudd Future of Adoption Publication Series, April 2019).

[44] Child Welfare Capacity Building Collaborative, course catalog (2024). https://learn.childwelfare.gov/.

[45] For an overview of types of family team meetings, *see generally*, The Annie E. Casey Foundation, Four Approaches to Family Team Meetings (January 13, 2013), available at https://assets.aecf.org/m/resourcedoc/FourApproachestoFamilyTeamMeetings.pdf.

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