Before the

Legislative Subcommittee on Children, Youth and Families

Adoption Subcommittee

Testimony of: Michael Rasmussen

Saturday, March 20, 2004

Senator Maggie Carlton, Chairwoman:

My name is Michael Rasmussen. I am an adoptive parent of two beautiful children. I was born and raised in Las Vegas and I practice today as an attorney with the law firm of Alverson, Taylor Mortensen, Nelson & Sanders in the Las Vegas office. My purpose in testifying is to educate others on what I have learned about the adoption process, to make the adoption process simpler and to ensure that every child in the adoptive process will have an opportunity to be placed with a loving family who will nurture and love that child.

I work closely with a national organization, Families Supporting Adoption ("FSA"). I am serving currently as the Nevada Chapter Chair of the Legislative Committee. The Nevada Chapter consists of over 125 adoptive families, several adoption professionals and those who seek to promote adoption in our community, either because adoption has been a part of their life or they have some other connection.

Open Records Legislation

My feelings regarding an adoptee's access to files and records concerning proceedings of adoption or birth are outlined below. It is my firm position that the current State of Nevada's laws are adequate to protect both adoptees and birthparents. The opening of adoption records introduces two fundamental flaws in the adoption system which cannot be reconciled with the goal of promoting adoption in the State of Nevada.

First, the opening records or providing the original birth certificate to an adoptee does not take into consideration the rights of birthparents. Each has a fundamental right to privacy. As noted by Jeremiah S. Gutman: "It has been the practice in many, if not most, jurisdictions to promise the birth mother at the time the adoption decision is made that her identity will remain secret; that the adopting agency and its personnel will maintain the confidentiality of her identity, and will protect her privacy in the future from being invaded as a result of revelation of her identity. Forceful arguments in contract theory are made to support the right of the birth mother to insist that her identify be forever maintained a secret.

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"A pregnant woman unable or unwilling to rear a child may find her choice of options limited if she cannot rely upon the promise of confidentiality and secrecy to protect her privacy. She may be inclined to bring the pregnancy to term rather than secure an abortion, but, if she cannot rely upon the adoption agency or attorney and the law to protect her privacy, and to conceal her identity for all time, her choice to go the abortion route may be compelled by that lack of confidence in confidentiality. We are a society which legally and socially endorses the concept of freedom of choice in reproductive matters. Impediments to that freedom of choice have regularly been stricken by our courts; lack of faith in the ability of the system to keep the firth mother's identity absolutely inviolate is an impediment and a limitation to free choice. It is essential that pregnant women be secure in the knowledge and belief that they can safely choose going to term and delivering a child without fear of later revelation of their identity."[1]

Some birthmothers do not wish to be found. Some birthparents, particularly birthmothers, make a choice to place a baby and do not want their identities revealed – Ever! This is a woman's rights issue and the Subcommittee must know that we can not sacrifice those who wish to maintain their privacy while placing a baby for adoption. In fact, I believe it may even preclude some women from making the adoption placement choice when they know that birth records, primarily a birth certificate with the mother's full name written on it, will be opened to the adoptee in 18 years.

Privacy is a consideration that cannot be ignored. Our federal government has also wrestled with this idea. On June 11, 1998 . . . Representative Jim Oberstar (D-MN), the House Democratic Co-Chair of the Congressional Coalition on Adoption, said in a statement . . . that he oppose[s] . . . a bill that he said "...would undermine, rather than promote adoption." Further, he added, "...this legislation would undermine a most fundamental and constitutional right of privacy," and "...[there] is little doubt that should the confidentiality of adoption records become compromised, many women who would be inclined to choose the adoption option will choose abortion...."[2] He then referenced the following: "After Great Britain changed its adoption laws in 1975 to allow adopted individuals to view their unamended birth certificates, a significant decline took place in the number of children placed for adoption."[3]

It has been suggested that a Confidential Intermediary ("CI" or "CI's") might be a compromise position. I was eager to determine for myself whether or not a CI might work. I found the following. First, a CI could intrude on birthparents and adopted persons by requiring the subject of the search to revisit a difficult question that was previously decided: Under a CI policy, it can often be interpreted by the birthmother that the intermediary acts more as a reunion advocate than a simple conduit of information. The very approach of a birthmother, for example, by an intermediary puts pressure on her to take an action that she already decided against, and is, in most cases, well aware she can rescind by notifying the mutual consent registry. Birthparents and adult adopted

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[1] Jeremiah S. Gutman, "Privacy and Adoption", Adoption Factbook III, p. 196-199, at 197.

[2] "Statement of Hon. James L. Oberstar before the Subcommittee on Human Resources, House Ways and Means Committee," June 11, 1998, p.1.

[3] Id., at p.2.

persons are well aware of their options to waive or maintain their privacy. Under Nevada's current mutual consent registry, anyone who desires identifying information and contact very quickly learns of the existence of the mutual consent registry. In fact, it is the practice of every private adoption agency in Nevada that I have spoken to, to provide birthmothers with information on the consent registry. These agencies have also told me that they will assist a birthmother in registering.

Second, a CI can cause emotional trauma and a breach of privacy through accidental interception of CI messages by persons previously unaware of the adoption. In some cases with CI's, family members or friends who know nothing about the adoption inadvertently intercept the contact from the intermediary. Even when the intermediary is careful about the content of the message that is left, suspicion can be aroused and exposure can occur, leading to emotional trauma in those relationships. I do not think it is in the best interests of adoption and adoptees to introduce a system such as CI's that could breach privacy.

Third, unfortunately CI's creates a "lose-lose" option for adopted persons and birthparents who desire privacy. The person who desires privacy, when approached by the intermediary, has the choice of either agreeing to contact he or she does not wish to have or rejecting a special person he or she does not wish to hurt (i.e., the child placed for adoption). The approach by the CI puts the birthmother who desires privacy in a "lose-lose" situation: If she says "yes," she goes along against her best wishes and judgment; if she says "no," she fears sending a message of rejection to a person she loves. Consenting to reunions under pressure or out of guilt results in unsatisfactory and even traumatic reunions.

Fourth, CI's undermine the adoptive family and violates the privacy of adopted persons by allowing birthparents to initiate contact with adopted persons. Some confidential intermediary systems not only allow adult adopted persons to search for birthparents, but also allow searches in the opposite direction. This policy is highly intrusive on both the adopted person and his or her family, especially at the tender age of 18 or 21.

Fifth, CI's can violate the privacy of the subject of the search. The very act of opening the confidential records to the intermediary is a violation of privacy and risks the possibility that the intermediary already knows the subject of the search. Such policies may also violate HIPAA, and other confidentiality laws and professional standards.

Sixth, it increases costs to state government. Additional social workers would need to be hired to provide the intermediary services, as well as the costs of additional overhead and administrative support staff. With strapped budgets, the state should be devising ways to streamline and make adoption-related processes more efficient, not the opposite.[4]

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[4] My research led me to discuss this topic with the President of the National Council For Adoption, Tom Atwood. The National Council For Adoption has several well documented research items on adoption issues. National Council For Adoption, 225 N. Washington Street, Alexandria, VA 22314-2520 Telephone 703-299-6633, Fax 703-299-6004; www.adoptioncouncil.org

For the reasons stated above, I cannot envision Nevada opening adoption birth records. The risks are too great. Introducing the use of CI's, likewise, opens the door to many other potential problems.

Finally, it is my belief that the current consent registry allows children who desire to find birthparents, and birthparents who wish to find children, to mutually consent to a meeting. I acknowledge that the historical track record of the consent registry is scant in Nevada. That can be attributable to two factors: 1) birthmothers do not want to be found; and 2) the use of the registry is limited in time. You need nearly a generation, 18 plus years, to determine whether or not people will use it. It is my experience, however, in the last several years that private agencies provide each and every birthparent with the opportunity to register. The consent registry materials are given to the birthparent(s) and they are even assisted in registering. If the legislature enacts the proposed legislation it will destroy the registry before it has had an opportunity to succeed. Further, it destroys the idea that mutual consent is most beneficial for adoptees and birthparents. If the legislature is looking for a compromise proposal, it could be requiring agencies to provide birthparents with a registry disclosure at the time of relinquishment. This could be reviewed during the already occurring reviews of licensed agencies by the State of Nevada without the need to employ additional social workers.

Post Adoption Contact Agreements

Post adoption contact agreements, while appropriate in open adoptions, among consenting individuals, are not always in the best interests of adoption or adoptees. Foremost, they can undermine adoptive parents' ability to raise their child according to their own values and best judgment. By requiring adoptive parents to go to court to defend their right to end birthparent contacts that have become harmful to their child, court enforcement of "open adoption" agreements relegates adoptive parents to second-class status as parents. Such policies undermine adoptive parents' parental right to protect their children and determine what is best for them.

Allowing these agreements prior to knowing how families and the birthparent will interact can harm the adoptive family and adopted child by forcing a number of unwanted, unilaterally imposed contacts. In addition, it can undermine the adoptive family. No longer is it what mom or dad says goes. It becomes; what does that contract impose? These agreements can destroy parenting. Finally, these agreements can increase costs to state government and clogs our courts with suits over parenting.

At the time my wife and I were first chosen (we now have two adopted children) to be adoptive parents, a request for an enforceable agreement that provides for post-adoptive contact between our child and his natural parent or parents would have been responded to with trepidation, but with full intent to comply with any such "contract" and under any terms. After nearly eight childless years we simply wanted this baby, no matter terms and conditions. However, nearly two and half years later and after interaction with many other adoptive parents, some of whom are now grandparents, I am convinced that

requiring such contracts or even providing for them at law is not in the best interests of, first, the child, second, the birth parent or parents, and finally, the adoptive parents.

Last session, AB 28 created a "rebuttable presumption" that post-adoptive contact is in the best interests of the child. I do not agree. I will acquiesce that a child having access to health or genetic predisposition information may have value to the adopted child. It is my experience that most agencies now provide this information. Thus, I assume the contact described in AB 28, is physical, by phone, letter or in person.

I believe it is overly broad to assume that such post-adoptive contact is in the best interests of the child. For example, if the natural parent is a drug addict, prostitute, mentally or emotionally unstable, exhibits self-destructive behavior, manipulates or is insufficiently mature to provide a loving, caring, structured and uplifting environment; the post-adoptive contact can result in the child having a skewed view of functional family life. The child is also forced to understand the adult notion of "you came out of that person's womb," but "We are your mommy and daddy."

Post-adoptive contact seems to drive home the point that the child is adopted. The child then begins to view themselves as different, simply because they are adopted. In fact, it is my experience that many children, even though they are fully aware that they are adopted, do not want it thrown in their face. They simply want to be normal. Adoption is normal and even common place in the United States. But there is no reason to force feed a child with the fact that he has a "birth mom" and a real mother.

Adoptive parents lose the title "adoptive" that first night when they are awakened every two hours by a pitiful, "I'm hungry cry" of the baby. The "adoptive parent" title disappears as they care for the baby's needs, warm the bottle, soothe the crying and change the diaper. They are, as the decree of adoption states, the child's parent, as if the child had been naturally born to them, receiving all rights, privileges and status as a parent, including the rights of inheritance, and the obligations of rearing, nurturing and supporting the child are at once heaped upon the adoptive parents.

As the adoptive parent takes on the responsibility of parenting the child, it becomes that parent's job to seek out what is in the best interest of the child. I do not believe that a legislature knows what is best for every child. Even assuming that at the time of placement the natural parent can provide a positive influence that may change. The proposed contact agreements allow for the adoptive parent to petition the court to modify the post-adoptive contract, but they have the burden of proving a change in circumstances that warrants a modification. Placing such a burden on the parents of a child is ridiculous. Any parent giving birth to his own child does not have to seek leave of a court to curb contact from influences the parent deems inappropriate. The parents just protect their children and remove the bad influences. The previously proposed legislation takes such natural parenting instincts away from the adoptive parent and makes them appeal to courts of law to exercise their parental rights.

Adoptive parents, unlike parents giving birth to their children, should not be required to adhere to contracts simply because they adopted their children. Singling out adoptive parents is unfair. Requiring adoptive parents to enter contracts when they are susceptible to agreeing to anything just to have a child placed in their home raises significant concerns about the enforceability of that contract. In such a situation, the birth parent and adoptive parent are in sensationally disparate bargaining positions of power. The adoptive parent can either agree and receive a choice child they have been dreaming or even praying for, or they can refuse, and have those dreams dashed in front of them. I think that allowing post adoption contact agreements could have a chilling affect on the number of private placement infant adoptions in the State of Nevada (I do recognize that these agreements may assist the State in placing older, foster-care children by dangling the carrot of such an agreement in front of an uncooperative birthmother who is reluctant to sign relinquishment papers).

There will be a terrible problem enforcing these agreements. What do we do to the adoptive parent who does not honor the agreement? Is it a misdemeanor? A felony? Do we levy fines? Who polices the agreements? The problems this legislation was meant to avoid will only be replaced by many others.

Thank you for your consideration of my testimony.

Michael Rasmussen[5]

cc: Legislative Committee on Children, Youth and Families

[5] A great source of information on adoption is the Adoption Factbook, Connaught Marshner, Editor, 1999.