

# **The Effects of Unsealing Adoption Records in New Jersey**

by

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## The Effects of Unsealing Adoption Records in NJ:

For over twenty-seven years, legislation has been regularly introduced in New Jersey that would make it possible for adults who have been adopted to obtain a copy of their original birth certificate. They would have the same right as anyone who was not adopted, simply by going to the Department of Vital Statistics and requesting it. S1087 that has passed the Senate would authorize access. It has a provision to allow birth parents from the past to have their name deleted from the birth certificate that would be released to the adopted person. It also provides all birth parents, past and future, to indicate their preference regarding contact.

I believe that a similar bill has not been passed in the Assembly because those opposed have prevailed by insisting that the legislation be more complicated and costly than it need be. Twenty-seven years ago, they argued that the negative effects of the legislation would be worse than the good it might do. Some of their hypotheses were reasonable then given that there was little experience with similar bills. Now with eight states<sup>1</sup> having legislation to allow adopted adults access to their original birth records, these hypotheses have been tested. What have we learned? Even with data that contradicts and disproves their contentions, the opposition in New Jersey has not changed its position. Opinion thrives without the nutriment of fact.

Based on my conversations and reading of past testimony, I have concluded that some vital information needed to make an informed decision was not received by legislators, and that they may have also been given misinformation on critical issues.

These are the most serious of the misrepresentations:

- 1. This legislation will affect most of the past, current and future adoptions in New Jersey since they were and are confidential or closed.*
- 2. If records are unsealed, women who once would have chosen confidential adoption might choose abortion instead.*
- 3. Contact from adoptees is unwelcome by birth parents.*

### ***1. How many adoptions can be considered confidential?***

No good statistical information exists nationwide or in New Jersey which would give the exact number of adoptions that would be affected by this legislation.<sup>2</sup> What we do know is that in 1944 estimated adoptions in all of the United States for that year were 50,000. The highest number was 175,000 in 1970. Since the 1970s, the stigma attached to unmarried parenthood reduced dramatically. Unwed mothers were no longer expelled from school, shunned by their friends or considered pariahs or outcasts. Popular culture began to celebrate the single parenthood of celebrities. For some women keeping their children became a real choice that their older sisters never had. Consequently the numbers of babies placed for adoption fell. In 1973,

8.7 percent of never married women placed their children for adoption. By 1995, that number had dropped to only 0.9 percent.<sup>3</sup>

Since 1987, the number of adoptions in the United States has remained constant from 118,000 to 127,000.<sup>4</sup> For the last twenty-seven years, the growth in adoptions within this group has been in placements by public agencies and in inter-country adoptions. Infant domestic adoption rates have been falling since 1970.<sup>5</sup>

However, many in the general public, including legislators, believe that since 1940 when records were sealed, the majority, if not all adoptions nationwide and in New Jersey, have been of infants. Further, they believe they were “closed” or “traditional” unrelated infant adoptions — those where the identity of the birth and adoptive parents are not known to each other and where no contact after the adoption is anticipated. Understanding the scope of the population affected is critical in decision-making.

**From 1951 to 1996, fifty one percent (51%) of all adoptions were not confidential because they consisted mostly of step-parents adopting their spouses’ children or of people adopting their relatives. The proportion of relative adoptions is predicted to remain high.<sup>6</sup> Not only are the parties’ identities known to each other, they are living together.**

**Not all of the remaining unrelated adoptions can be considered confidential.**

Children are placed with adoptive parents by public or private agencies or independent of agencies by private individuals (doctors, lawyers, ministers etc.).

Nationwide, adoptions by public agencies began to increase in the late sixties and early seventies. As infants became less available for adoption, they placed children from foster care who were older or who had special needs. Public agency placements were 18 percent of all adoptions in 1987, and they have risen, in 2001 to 40 percent and to 56 percent in 2006. In New Jersey, they accounted for 43 percent of all adoptions in 2001.<sup>7</sup> The increase from the late sixties on is due to the availability of adoption subsidies, more frequent case reviews and a refocusing of services to children with special needs.<sup>8</sup>

**The majority of adoptions made by public agencies after 1968 should not be considered confidential, because they were of foster parents adopting their foster children or of older children who know their identities.**

In 1998, 65 percent of all public agency adoptions were foster parent adoptions.<sup>9</sup> Foster parents know the children’s last names, and where they were from, and they may have even had a relationship with the birth parents. Older children being prepared for placement with adoptive parents are generally given information on who they were, how they came to be in foster care and why they cannot be with their birth parents.<sup>10</sup>

**The majority of private agency adoptions from 1945 to 1970 can be considered confidential. Since 1970, the total number of infant adoptions began a steady decline.<sup>11</sup> One 2006 estimate places them at only 9 to 10 percent of all U.S. unrelated adoptions.<sup>12</sup> A growing**

**number of them are either “open” adoptions or “mediated” adoptions—where birth parents choose the adoptive parents whom they actually meet and with whom they may continue contact.<sup>13</sup> Thirty-one per cent of current private agency placements in New Jersey are of children from other countries.<sup>14</sup> We can conclude that current and future private agency adoptions will be the smallest segment of all adoptions.**

It is usual in inter-country adoptions for the adoptive parents to know the last name of the child they adopt. Since many have gone to the country of origin, they know the name of the orphanage or agency through which their child was placed. It is possible, but highly improbable, that these adoptees will have contact with their birth parents of origin, if and when, they have access to their original birth records.

### **Not all independent adoptions are closed.**

The number of adoptions done independently of agencies has fluctuated over the years. In 1992 in New Jersey, they accounted for 17 percent (363 of 2,083) total adoptions.<sup>15</sup> In 1993, they were 158 of 1,300 adoptions or 12 percent, and in 1994, they were 195 of 1,138 (17 percent).<sup>16</sup> Before 1993, New Jersey law required that a birth parent in an independent adoption must directly place the child in the hands of the adoptive parents. Intermediaries were not allowed because birth parents were to have made an informed consent to the adoption by having first-hand knowledge of the people with whom they were making the placement. It was also done to stop the possibility that an intermediary could have stolen the child from its birth parents.

Since 1993, New Jersey has made legal the use of non-agency intermediaries. In every case, the adoption had to go to court to be finalized, and an agency was appointed to make an Adoption Complaint Investigation (ACI). Little is known about how “open” or “closed” these placements are because no data is collected. There is some anecdotal information, however. I recently spoke with experienced social workers that have performed these investigations over the years. They indicate that, while most were, not all of these adoptions were confidential. Adoptive parents in many instances have known the last name of the birth parents—some have documents with that information on them. Some adoptive parents have even been present at the child’s birth. The social workers also felt, based on their experience, that there was a trend to more openness in independent adoption overall.

## **2. Have women chosen abortion rather than adoption in those states where adoption records have been unsealed?**

Twenty-seven years ago, several groups testifying against the New Jersey legislation to allow adoptees access to their original birth records expressed the not unreasonable fear that allowing access might lead to more birth mothers choosing abortion rather than adoption. Since that time, this hypothesis has been tested and not supported. *There is no evidence that abortions have increased in those jurisdictions having access. There is contrary evidence that adoptions have increased in these states.<sup>17</sup> I am at a loss to understand why this allegation continues to be offered and accepted as valid objection to the current proposed legislation.*

### **3. What has been the reaction of New Jersey birth parents who have been asked if they would like to have contact with the child they placed for adoption?**

The basic objection to giving adopted adults a copy of their original birth certificate is that they would use it to find their birth parents. The groups opposing the legislation allege that such contact would be unwelcome and damaging. They believe the alleged promise of confidentiality creates a shield against this unwelcome contact and should stay in place. This hypothesis might have been reasonable twenty-seven years ago, but is no longer defensible. Experience in New Jersey shows that they are protecting people who want to be found. For twenty years, the Division of Youth and Family Services has been contacting birth parents whose adopted children are searching for them. They have consistently reported that 95% of all birth parents desire contact.

### **Conclusion**

**Confidential adoptions have always been the smallest segment of all New Jersey adoption. Beginning in 1970, they began to decline nationally until, at the present time, they should be thought of as less than 10 percent of all adoptions. Allowing adopted adults access to their original birth records will effect a much smaller population than is generally believed and that group is expected to be even smaller in the future. Once more, most birth parents will continue to welcome contact. Any legislation to protect the small number of birth parents who wish confidentiality should not be so costly and cumbersome that it deters adopted adults from obtaining their original birth certificates.**

**Finally, I was dismayed to see the list of organizations that oppose this legislation in New Jersey. Some have not changed their position in twenty-seven years, although our experience and research show it is untenable. National standard setting bodies such as the Child Welfare League and the National Association of Social Work are in favor of providing adoptees access to their records. I am puzzled as to why the opposition maintains their stance. Are they unaware of the evidence? Do they continue to hold to beliefs without the nutriment of fact? If either of these positions is true, what compromises can they bring to the table in forming a law that is fair, informed and relevant to those whose lives it effects? It is my hope that New Jersey legislators are not blinded by the list of impressive opposing organizations and look beyond them to what is true and fair. This is what the legislature did when it took on gun control and civil unions. I hope they do for adoptees seeking their roots what they have done on these other issues — the right thing — no matter what organization was offended.**

## FOOTNOTES:

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<sup>1</sup> Alaska and Kansas never sealed records. Alabama, Delaware, Oregon, Tennessee, and New Hampshire allow adopted adults to have their original birth certificates. Maine passed legislation recently, which will take effect on January 1, 2009.

<sup>2</sup> No comprehensive data is or has been regularly collected by the federal government or NJ since 1945. Data are extracted from a number of reports which are analyzed by various statisticians and researchers to detect trends.

<sup>3</sup> Chandra,A., Abama,J., Maza,P.,& Bachrach,C., (1999) “Adoption Seeking and relinquishment for adoption in the United States,” *Advance Data ( No.306)* from Vital and Health Statistics of the Centers for Disease Control and Prevention, National Center for Health Statistics, U.S. Department of Health and Human Services.

<sup>4</sup> Placek, Paul,(1999), National Adoption Data, Table 11, National estimates of related and unrelated adoptions: United States 1951 to 1996, *National Factbook III*, National Council for Adoption, Washington DC p43. See also Maza, Penny Adoption Trends:1944-1975. Child Welfare research Notes #9. Washington DC: Administration for Children Youth and Families, 1984.

<sup>5</sup> Stolley, Kathy. “Statistics on Adoption in the United States”, *The Future of Children: Adoption 3(1993) 26-42*.

<sup>6</sup> Placek, Ibid.

<sup>7</sup> See Exhibit 7, p.11 in “How many children were Adopted in 2000 and 2001?”, Child Welfare information Gateway, Administration for Children and Families Department of Health and Human Services, August 2004. See also Evan B Donaldson Adoption Institute, *Safeguarding the Rights and Wellbeing of Birth Parents*, New York, November 2006.p.15.

<sup>8</sup> Cole, Elizabeth. “Advocating for Adoption Services” in Hardin, Mark ed. *Foster Children in the Courts*, Butterworth: Boston 1983 p 476.

<sup>9</sup> Howard, Jean, “Foster Parent Adoption”, *The Praeger Handbook of Adoption*: Westport Ct, 2006 ,p245.

<sup>10</sup> Cole, Elizabeth& Donley , Kathryn, “History, Values, and Placement Policy Issues” in Brodzinsky, D. M. & Schechter, *The Psychology of Adoption*, Oxford University Press, 1990, p 288.

<sup>11</sup> Maza, P., “Statistics on adoption” in *Praeger Handbook of Adoption*: Westport Ct 2006, p.597.

<sup>12</sup> See Note 7 Evan B Donaldson Institute.

<sup>13</sup> Grodevant, Harold, “Open Adoptions” in *The Praeger Handbook of Adoptions* , Stolley, K. & Bullough, V. eds, Praeger: Westport Ct , 2006 p 441-444 See also Henney, S. M., McRoy, R.G., Grodevant. H.D., (2003). The impact of openness on adoption agency practice: A longitudinal perspective. *Adoption Quarterly*,6(3), 31-51.

<sup>14</sup> Placek, ibid., p37.

<sup>15</sup> Placek ibid., p33.

<sup>16</sup> Placek ibid., p 34.

<sup>17</sup> See Chandra et al at note 3 p 87, also Akerlof, G.A. and Yellen , J.L., “An Analysis of Out-of-Wedlock births in the United States,” *Policy Brief #5*, The Brookings Institute; Washington DC ( August 1996) Flango, V., & Flango, C., “How Many Children were adopted in 1992”, *Child Welfare*, Vol. LXXIV, No 5 ( Sept-Oct 1995) p 1018. See also The Alan Guttmacher Institute at [http:// www.agi-usa.org/pubs/journals/3026398.html](http://www.agi-usa.org/pubs/journals/3026398.html).

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About the author:

Elizabeth S. Cole was born and raised in Trenton, New Jersey, the second of five daughters of Judge Arthur A and Marion Y. Salvatore. She is a graduate of Villa Victoria Academy, holds a Bachelors of Arts degree from Seton Hill University, Greensburg PA, attended Georgetown University Law Center and has a Masters Degree in Social Work from Rutgers University. Her work experience includes 15 years of public service in the New Jersey Division of Youth and Family Services as a caseworker, supervisor, administrator of adoption services and the first chief of the Bureau of Resource Development. She assisted in drafting of New Jersey's subsidized adoption law and also created and oversaw New Jersey's statewide adoption system.

Because of her accomplishments in New Jersey in 1975, she was asked by The Child Welfare League of America and the Edna Mc Connell Clark to design and direct the North American Center on Adoption, a nation-wide project to improve the number and quality of adoptions, especially for children of color and those with special needs. In 1987, she became Senior Policy analyst at the Center for the Study of Social Policy, Senior Fellow at the Child Welfare League of America and President of Elizabeth S. Cole Associates.

She has testified in Congress and served as a consultant to White House and executive staff. A frequent lecturer at major university graduate schools, she has spoken and trained staff across the United States, Canada, Great Britain, Australia, South Africa and Austria.

Her written works include the older child adoption section in Dr Benjamin Spock's , *Baby and Child Care*, and contributions to a number of books and texts including: *The Encyclopedia of Adoption; Foster children and the Courts; The Child Welfare Handbook; The Psychology of Adoption* and many others . Her latest publication in 2006 is an entry in Praegers Handbook on Adoption.

Her most recent awards include 1999 "Advocate of the Year" from the New Jersey Children's Home Society, 2002, "Pioneer in Adoption" from the Child Welfare League of America and 2006, "Outstanding Leader in Adoption" from the National Resource Center on Special Needs Adoption.