

Adoption for the Forensic Genealogist

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I. Adoption Law for the Genealogist

A. Historical:

1) Pre-Adoption Act Law:

- a) Starting in America in the Colonial Era, the "... common Anglo-American custom of "putting out" children as servants and apprentices." [Yasuhide Kawashima, "Adoption in Early America," 20 J. Fam. L. 677, 682 (1981-1982).]
- b) The godparent-godchild relationship. *Ibid.* @ 687.
- c) Informal adoptions and contractual adoptions. *Ibid.* @ 694-695.

- 2) Modern Adoption Acts: The first modern adoption law was the 1851 Massachusetts statute, "An Act to Provide for the Adoption of Children." *Ibid.* @ 677. This type of law was passed to protect the welfare of adopted children and did not involve sealed records (24 other states adopted similar laws by 1876). *Ibid.*

B. Current Adoption Laws: "Starting in the 1920s, on the urging of professional social workers and placement agencies, states began to implement confidentiality provisions concerning adoptions. Before long, confidentiality and complete severance of preadoption ties was the norm." [Lori L. Klockau, "A Primer on Adoption Law," 31 Fam. Advoc. 16, 18 (2008 – 2009).] The relevant laws are state specific. In interstate adoptions where a child may have been born in one state (or country) and adopted in another, the laws of the place of birth and adoption must be researched. The researcher must know what both the adoption laws and vital records (access to birth records) laws were from the time of birth of the adoptee they are researching until the present time.

- 1) Closed Adoptions: "Courts close adoption proceedings to the public and generally seal records, including original birth certificates." *Ibid.* @ 17.

2) Open Adoptions:

- a. "An "open adoption" involves an agreement between birth parents and adoptive parents to maintain some degree of ongoing contact. ... States vary in how strictly they enforce post-adoption-contract agreements." *Ibid.*
- b. A state that has an open adoptions record statute is one that permits adult adoptees to obtain their original birth record that lists their biological parent(s).

II. Some Methods to the Discovery of Pre-Closed Adoptions

- A. **Census.**
- B. **Early Birth Records.**
- C. **Delivery doctors & hospitals:** These may be listed on some amended birth certificates.
- D. **Orphanage Records.**
- E. **Adoption Proceedings Never Sealed.**
- F. **Newspapers:** “Prior to 1920, newspapers routinely published the names of parties to adoptions.” See [*Ibid.* @ 18.] In addition, some states require legal advertisement of adoptions or the proposed termination of parental rights.
- G. **Child Support Proceedings.**
- H. **School Records:** including yearbooks, particularly if you know one or both of your biological parents’ surnames.

III. Some Methods to Discover Sealed Adoptions

- A. **Requests for Non-Identifying Information:** Non-identifying information is health and family information that does not include identifying information, such as names, addresses, birth dates. Send requests to your department of health, adoption agency, and/or attorney who handled the adoption.
- B. **Confidential Intermediary:** A position authorized under the provisions of the adoption laws in most states. They attempt to make contact with other members of the adoption triangle to determine the willingness of that party to agree to a waiver of the confidentiality provisions that apply to the adoption.
- C. **Mutual Consent Registry:** Some states have a registry that lists birthparents and adult adoptees who file waivers of confidentiality; check it periodically for relevant states that have it. Register through your department of health, adoption agency, or attorney who handled the adoption.

- D. **Court Petition**: The need to show “good cause” or the like is difficult (about 20 states & D.C. require good cause). Although closed record states permit disclosure of records upon good cause, there is no consistent test for what determines “good cause.” [*In re Linda F.M.*, 418 N.E.2d 1302, 1304 (N.Y. 1981).]
- 1) **Medical History**: Jessica R. Caterina, “Glorious Bastards: The Legal and Civil Birthright of Adoptees to Access Their Medical Records in Search of Genetic Identity,” 61 *Syracuse L. Rev.* 145 (2010 – 2011).
 - 2) **Actual Adoption File**: “... courts have upheld and applied statutes which deny or restrict access to judicial records of adoption and especially that information which will identify the parties to the adoption.” [Shannon Clark Kief, “Restricting Access to Judicial Records of Concluded Adoption Proceedings,” 103 *ALR5th* 255 (2002).]
 - 3) **Birth Certificate**: Elizabeth J. Samuels, “The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records,” 53 *Rutgers L. Rev.* 367 (2000-2001).
- E. **State FOIA laws**: Not helpful as excepted from disclosure as “personal matters.” [Annotation, “What constitutes personal matters exempt from disclosure by invasion of privacy exemption under state freedom of information act,” 26 *ALR4th* 666 (1983).]
- F. **Good Old Fashioned Genealogy Methodology**: Oral history; marriage licenses; censuses; obituaries; school records; social media Internet sites; Google.com searches; city and telephone directories; Social Security Death Index; etc.
- G. **DNA Testing**: Y-DNA, mtDNA, Autosomal DNA and X-DNA. *FamilyTreeDNA.com* has an adopted surname project in which 30-40 % of those searching find a potential parental candidate. Debbie Kennett, *DNA and Social Networking: A Guide to Genealogy in the Twenty-first Century* (Gloucestershire, UK: The History Press, 2012).
- H. **Social Media**: “Social media will become *the* best source for adoptees to connect with birth parents and vice versa.” David E. Rencher, “Where will the field of genealogy be in 2024,” *NGS Magazine* (April/June 2014): 15, 16.

IV. **Real Life Case Study**

- A. This is where the theory is put into practice.
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Additional Resources:

- 1) Note: Most of the above articles and legal cases may be found via Google.Scholar.com or HeinOnline.org.
- 2) Ellen Herman, *Kinship by Design: A History of Adoption in the Modern United States* (Chicago, Illinois: University of Chicago Press, 2008).
- 3) Barbara Melosh, *Strangers and Kin: The American Way of Adoption* (Cambridge, Massachusetts: Harvard University Press, 2002) [A history of adoption.]
- 4) Claudia Nelson, *Little Strangers: Portrayals of Adoption and Foster Care in America, 1850-1929* (Bloomington, Indiana: Indiana University Press, 2003).
- 5) "Adoption Reunion Registry," (<http://registry.adoption.com> : accessed 1 Feb 2015).
- 6) International Soundex Reunion Registry, Inc., *ISRR.org* (<http://www.isrr.org/> : accessed 1 February 2015). ["ISRR is a mutual consent reunion registry for persons desiring a reunion with next-of-kin."]
- 7) *Bastard Nation*SM ("The Adoptee Rights Organization") (<http://www.bastards.org> : accessed 1 February 2015).
- 8) "Access to Adoption Records," U.S. Department of Health & Human Services, Administration for Children & Families (http://www.childwelfare.gov/systemwide/laws_policies/statutes/infoaccessap.cfm : accessed 1 February 2015).
- 9) Teresa Brown, *Adoption Records Handbook* (Las Vegas, Nevada: Crary Publications, 2008). [Teresa is a paralegal.]
- 10) Janine M. Baer, *Growing in the Dark: Adoption Secrecy and its Consequences* (Bloomington, Indiana: Xlibris.com, 2004).
- 11) Katrina Wegar, *Adoption, Identity, and Kinship: the debate over sealed birth records* (New Haven, Connecticut: Yale University Press, 1997).
- 12) Wayne Deloney, "Unsealing Adoption Records: The Right to Privacy Versus the Right of Adult Adoptees to Find Their Birthparents," 7 *Whittier J. Child and Fam. Advocate* 117 (2007).
- 13) Reg Niles, editor, *Adoption Agencies, Orphanages, and Maternity Homes: A Historical Directory* (Garden City, New York: Phileas Deigh Corp., 1981).
- 14) Rachel L. Swarns, "With DNA Testing, Suddenly They Are Family," *The New York Times*, 23 January 2012, Online archives (http://www.nytimes.com/2012/01/24/us/with-dna-testing-adoptees-find-a-way-to-connect-with-family.html?_r=1&pagewanted=all : accessed 1 February 2015).
- 15) "Finding Family with DNA Testing," *DNA Testing Advisor* (Richard Hill, Ph.D.), (<http://www.dna-testing-adviser.com/> accessed 1 February 2015).
- 16) Michael S. Ramage, "The Importance of Dispassionate Data Collection," *OnBoard 19* (BCG: January 2013): 5. [Article about the author's father's adoption research.]