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ADOPTION LAW IN THE UNITED STATES: A PATHFINDER

*Glen-Peter Ahlers, Sr. **

A pathfinder is a research tool that points the way to information resources on a given topic by exploring research paths to the information.¹ They identify appropriate information resources and search strategies and selectively provide and discuss guideposts along the research path.² Typical guideposts on law-related issues include significant legislation, model statutes, court opinions, regulations, journals, books, web pages, associations, and human experts.

Before beginning our research journey, we must be clear on the parameters and scope of our topic, adoption law. What is adoption law? According to *Black's Law Dictionary*, adoption is the “statutory process of terminating a child’s legal rights and duties toward the natural parents and substituting similar rights and duties toward adoptive parents.”³ While most adoptions involve children, Article five of the Uniform Adoption Act⁴ and many states allow adults to be adopted as well.⁵ According to the U.S. Department of Health and Human Services, approximately half the States and the District of Columbia allow the adoption of any person, regardless of age.⁶ Requirements for adopting adults vary and may include residency requirements, age restrictions,

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¹ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 851 (10th ed. 1999).

² Glen-Peter Ahlers, Sr., *Notaries Public: A Pathfinder*, 32 J. MARSHALL L. REV. 1065, 1067 (1999).

³ BLACK’S LAW DICTIONARY (10th ed. 2014).

⁴ National Conference of Commissioners on Uniform State Laws, Model Adoption Act Article 5, (1994). http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf.

⁵ See FLA. STAT. ANN § 63.042 (West 2015).

⁶ *Who May Adopt, Be Adopted, or Place a Child for Adoption?*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES 3, <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/parties/> (last visited March 25, 2016).

mental or physical disabilities, stepchild or foster child relationships established while the child was a minor, or other limitations.⁷ In this pathfinder, we will focus on child adoption.

There are many types of adoptions.⁸ Adoptions may be opened⁹ or closed,¹⁰ domestic¹¹ or international.¹² State and federal legislation govern adoption of children within the United States; adoption of children from other countries is governed by federal and international law.¹³ Domestic laws of foreign countries which affect adoption in the U.S. are beyond the scope of this pathfinder.

While adoptions may involve many people, child adoptions involve at least three parties: a child, a biological parent or the state, and an adoptive parent. Grandparents are occasionally given a voice,¹⁴ and attorneys often get involved.

A good place to start any research path is with legislation. Adoptions may be governed by international treaties, conventions, and agreements, and by federal and state statutes.

INTERNATIONAL LAW

Intercountry adoptions are governed by three sets of laws: U.S. federal law, U.S. state law, and the laws of the adoptive child's country of origin.¹⁵ The U.S. Citizenship and Immigration Service adjudicates

⁷ *Id.* at 4.

⁸ ADOPTION SERVICES. ORG, http://www.adoption-services.org/domestic_adoption_types/index.htm (last visited Feb. 29, 2016).

⁹ ADOPTION SERVICES. ORG, http://www.adoption-services.org/domestic_adoption_types/adoption_child_closed_open.htm (last visited Feb. 29, 2016) (Open adoptions allow some association among birth parents, adoptive parents and the adopted child. Examples range from picture and letter sharing, to phone calls, to contact through an intermediary, or open contact among the parties themselves).

¹⁰ *Id.* (Closed adoptions share no identifying information between the birth family and the adoptive family, and there is no contact between the families. Records are sealed after the adoption is finalized. Depending upon the jurisdiction, these records may or may not become available to the adopted child when they reach 18).

¹¹ ADOPTION SERVICES. ORG, http://www.adoption-services.org/domestic_adoption_types/adoption_domestic_international.htm (last visited Feb. 29, 2016) (When multiple states involved Interstate Compact Act, Indian Child Welfare Act).

¹² *Id.*

¹³ See Intercountry Adoption Act of 2000, Pub. L. No. 106-279; Children Citizenship Act of 2000, Pub. L. No. 106-395; Indian Child Welfare Act of 1978, Pub. L. No. 95-608.

¹⁴ See, e.g., *Troxel v. Granville*, 530 U.S. 57 (2000) (Court struck Washington State law that allowed third parties, including grandparents, to petition for child visitation over parental objection).

¹⁵ See, e.g., *Intercountry Adoption*, U.S. DEPARTMENT OF STATE, available at <http://travel.state.gov/content/adoptionsabroad/en.html> (last visited Feb. 29, 2016).

immigration petitions filed on behalf of children intending to immigrate to the United States through adoption.¹⁶

The primary international agreement affecting adoptions is the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption [Hague Convention].¹⁷ Concluded on May 29, 1993, the treaty went into force in the United States in 2008.¹⁸

The Hague Convention establishes minimum standards and procedures for adoptions between countries that address proper consent to the adoption, transferring the child to the new country, and establishing the child's status in the new country.¹⁹ The Convention also seeks to prevent the abduction and sale of children.²⁰ A nice summary of the differences between Hague and non-Hague adoptions is provided by the U.S. Department of State Bureau of Consular Affairs.²¹

The Hague Convention is easily located on the Internet via any favorite search engine. While search queries such as "international adoption" will eventually lead you to the text of the statute, it is more efficient to add the term "Hague" to any query. The preferred source for the Convention is the Hague Conference on Private and International Law.²²

U.S. FEDERAL STATUTES

The more important federal statutes include the Intercountry Adoption Act of 2000,²³ the Child Citizenship Act of 2000,²⁴ and the Indian Child Welfare Act of 1978 (ICWA).²⁵

¹⁶ *Who Can Be Adopted*, U.S. DEPARTMENT OF STATE, <https://travel.state.gov/content/adoptionsabroad/en/adoption-process/how-to-adopt/who-can-be-adopted.html> (Oct. 1, 2013).

¹⁷ *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (May 29, 1993), <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

[hereinafter *Convention on Protection of Children*].

¹⁸ *Id.*

¹⁹ *See The 1993 Hague Intercountry Adoption Convention celebrates its 20th anniversary*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (May 31, 2003), <https://www.hcch.net/en/news-archive/details/?varevent=310>.

²⁰ *Id.*

²¹ *Hague vs Non-Hague Adoption Process*, INTERCOUNTRY ADOPTION, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, <http://travel.state.gov/content/adoptionsabroad/en/hague-convention/hague-vs-non-hague-adoption-process.html>.

²² *Convention on Protection of Children*, *supra* note 17.

²³ Intercountry Adoption Act of 2000, PUB. L. NO. 106-279, 114 Stat. 825 (codified at 42 U.S.C. § 14901 (2000)).

The Intercountry Adoption Act of 2000 implements the Hague Convention in the United States.²⁶ Major provisions of the act give the State Department general responsibility for implementation of the Convention and annual reports to Congress;²⁷ allows the State Department to accredit nonprofit agencies and approve profit agencies and individuals who seek to provide adoption services;²⁸ mandates the Department and Immigration Nationalization Service to establish a registry for all intercountry adoptions;²⁹ and establishes procedures and requirements for adopting a child residing in the United States by persons resident in other Convention countries.³⁰

The Child Citizenship Act of 2000 allows certain foreign-born, adopted children of American citizens to acquire American citizenship automatically when they enter the United States as lawful permanent residents.³¹

*Indian Child Welfare Act of 1978 (ICWA)*³²

The ICWA governs jurisdiction over the removal of Native American children from their families to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.”³³ It establishes minimum Federal standards for the removal of Indian children and their placement in foster or adoptive homes which reflect the values of Indian culture, and provides assistance to Indian tribes in the operation of child and family service programs.³⁴

The April 2004 edition of *The Judges’ Page*, the Newsletter of Court Appointed Special Advocates (CASA), is dedicated to “informing judges about the Indian Child Welfare Act.” Topics covered include an overview of the Indian Child Welfare Act (ICWA), effective

²⁴ Child Citizenship Act of 2000, PUB. L. NO. 106-395, 114 Stat. 1631; see also *Public Law 106-395 Child Citizenship Act of 2000*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Oct. 30, 2000), <https://www.uscis.gov/iframe/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-23122.html>.

²⁵ Indian Child Welfare Act of 1978, PUB. L. NO. 95-608, 92 Stat. 3069 (codified at 25 USCS § 1901-1963 (2015)); see *Public Law 95-608*, U.S. GOVERNMENT PUBLISHING OFFICE (Nov. 8, 1978), <http://www.gpo.gov/fdsys/pkg/STATUTE-92/pdf/STATUTE-92-Pg3069.pdf>.

²⁶ PUB. L. NO. 106-279, 114 Stat. at 825-26.

²⁷ *Id.* at 827, 829-30.

²⁸ *Id.* at 833-35.

²⁹ *Id.* at 829.

³⁰ *Id.* at 830.

³¹ Pub. L. No. 106 395, 114 STAT at 1631, 1632.

³² PUB. L. NO. 95-608, 92 Stat. 3069.

³³ 25 U.S.C. § 1902 (2015).

³⁴ *Id.*

implementation of the ICWA, CASA Advocacy in Tribal Courts, Judicial Ethics and ICWA, a Model Court Highlight: Pueblo of Zuni Tribal Court, and Online Resources for ICWA Research and Reference.³⁵ *Adoption Hearing Checklist for ICWA Cases*—checklist for judges and attorneys in an ICWA case compiled by the National Council of Juvenile and Family Court Judges, Office of Juvenile Justice and Delinquency Prevention, the Department of Justice, and forms adapted from Oregon.³⁶

U.S. CODE OF FEDERAL REGULATIONS

Much of law today is generated by state, federal, and local agencies charged with implementing laws enacted by Congress and state legislatures. U.S. regulations appear in the U.S. Code of Federal Regulations (C.F.R.). Today, although the United States Government Printing Office continues to call its own electronic version “unofficial,” the most convenient access to the C.F.R. is on the Government Printing Office website.³⁷ Regulations regarding the ICWA appear at 25 C.F.R. Part 23.³⁸ Part 23 is further broken down into eight subparts, A through H, that deal with: Purpose, Definitions, and Policy; Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel in State Courts; Grants to Indian Tribes for Title II Indian Child and Family Service Programs; Grants to Off-Reservation Indian Organizations for Title II Indian Child and Family Service Programs; General and Uniform Grant Administration Provisions and Requirements; Appeals; Administrative Provisions; and Assistance to State Courts.

STATE ADMINISTRATIVE REGULATIONS

The Law Librarians’ Society of Washington D.C. provides links to state regulations on their website.³⁹

³⁵ Court Appointed Special Advocates, *The Judges’ Page*, (April 2004), <http://nc.casaforchildren.org/files/public/community/judges/0404-ICWA.pdf>.

³⁶ NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, INDIAN CHILD WELFARE ACT CHECKSLISTS FOR JUVENILE AND FAMILY COURT JUDGES, 1,1-2 (2003), available at <http://www.ncjfcj.org/sites/default/files/ICWAChecklistFullDoc.pdf>.

³⁷ U.S. GOVERNMENT PUBLISHING OFFICE, CODE OF FEDERAL REGULATIONS (2015), available at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

³⁸ 25 C.F.R. Part 23 (2014), available at <https://www.gpo.gov/fdsys/pkg/CFR-2014-title25-vol1/pdf/CFR-2014-title25-vol1-part23.pdf>.

³⁹ *State Legislatures, State Laws, and State Regulations*, LLSDC.ORG, <http://www.llsdc.org/state-legislation#AL>.

U.S. FEDERAL CASE LAW

Finding federal and state case law used to require access to a law library or to specialized legal research tools you had to pay for, such as Lexis, Westlaw, and Loislaw. The Internet and search engines, however, have helped level the playing field. Recent federal and state appellate court opinions appear on the web. Websites such as FindLaw⁴⁰ and Cornell's Legal Institute,⁴¹ are valuable allies in the search. Nonetheless, it is important to identify the appropriate search terms and indexing numbers used in the comprehensive indexing system developed by West Publishing Company.

The West system enables researchers to locate every appropriate appellate-level court opinion in the United States. The same terms and "key numbers" are used in all federal and state courts. Not too long ago, law school libraries maintained major collections containing all, or most of West's digests in print. With the many electronic resources available today, law school libraries will maintain less robust print collections, perhaps maintaining local or regional digests. For example, the Barry University Dwayne O. Andreas School of Law Library maintains active print subscriptions for West's Federal Practice,⁴² American Law Reports,⁴³ Supreme Court,⁴⁴ South Eastern,⁴⁵ and Florida⁴⁶ digests.

The most appropriate topic for adoption in all of West Digests is indeed the topic "Adoption." However, as we will see with our sample cases, West uses other topics as well, such as Constitutional Law subtopic 4395 (adoption); and Children Out-Of-Wedlock subtopic 20.2 (rights of father).

The major topic, Adoption, is broken down into an outline of 26 major "key numbers." Several of the key numbers are further subdivided. Below are the topics included. The numbers within brackets indicate how

⁴⁰ FINDLAW (Feb. 15, 2016), www.findlaw.com.

⁴¹ CORNELL UNIVERSITY LAW SCHOOL: LEGAL INFORMATION INSTITUTE (Feb. 15, 2016), <https://www.law.cornell.edu/>.

⁴² West's Federal Practice Digest 5th (St. Paul: Thomson Reuters 2013) (Library of Congress call number KF 127.W48).

⁴³ West's ALR Digest of Decisions And Annotations: With Research References (Eagan: Thomson/West 2004-)(Library of Congress call number KF132.1 .A45 2004).

⁴⁴ United States Supreme Court Digest, 1754 to date: covering every decision of the Supreme Court of the United States from earliest times to date (St. Paul: West Pub. Co., 1943-) (Library of Congress call number KF101.1 .U55).

⁴⁵ West's Southeastern digest, 2d (St. Paul: West Pub. Co. 1981) (Library of Congress call number KF135.S62 S681).

⁴⁶ West's Florida Digest 2d (St. Paul: West Pub. Co. 1984) (Library of Congress call number KFF47.1 .F562).

many times portions of cases are discussed under the topic. It is common for cases to list five or six topics, and even more.

1. Nature of the proceeding [779]
2. Constitutionality of statutes [329]
3. Statutory provisions [983]
4. Persons who may adopt others [776]
5. Persons who may be adopted [195]
 - 5.5 Adoption agencies and facilitators [203]
6. Adoption agreements; brokering fees and effect [854]
7. Consent of parties [9,462]
 - 7.1 In General; who may or must consent [513]
 - 7.2 Natural parents, necessity of consent in general [1,014]
 - (1) In general [429]
 - (2) Effect of divorce [85]
 - (3) Illegitimate children [500]
 - 7.3 Exceptions; relinquishment or forfeiture of parent's rights in general [976]
 - 7.4 Abandonment, desertion, neglect, or nonsupport forfeiting parent's rights [2,939]
 - (1) In general [825]
 - (2) Nature and elements of abandonment [759]
 - (2.1) In general [539]
 - (3) Intent, willfulness, and malice [220]
 - (4) Parent deprived of custody; interference [217]
 - (5) Renewal of interest [44]
 - (6) Nonsupport [1,094]
 - 7.5 Requisites and validity of consent [845]
 - 7.6 Withdrawal or revocation of consent; binding effect [930]
 - (1) In general [367]
 - (2) Grounds for revocation; discretion [346]
 - (3) Time for revocation [217]
 - 7.7 Effect of failure to obtain consent; jurisdictional requirement [9,462]
 - 7.8 Evidence [1,952]
 - 7.8.5 In general [2]
 - (1) Presumptions and burden of proof [340]
 - (2) Admissibility (*Armstrong v. Manzo* discussed below) [103]
 - (3) Weight and sufficiency [1,507]
 - (3.1) In general [393]
 - (4) Necessity of consent in general [559]

(5) Abandonment	[555]
8. Deed or declaration	[139]
9. Judicial proceedings	[8,701]
9.1 In general	[378]
10. Jurisdiction	[696]
11. Petition and parties	[777]
12. Notice	[629]
13. Examination and approval by court	[3,072]
14. Order or decree	[961]
15. Review	[2,188]
16. Setting aside or revoking adoption	[1,286]
17. Evidence of adoption	[343]
18. Status of adopted person in general	[279]
[there is no topic 19]	
20. Rights, duties, and liabilities created in general	[615]
21. Inheritance by adopted children	[1,420]
22. Inheritance from adopted children	[155]
23. Inheritance through adopted children	[94]
24. Effect of adoption on property rights of surviving husband or wife	[20]
25. Foreign adoption	[332]
26. Public stipends and subsidies; adoption assistance Benefits	[150] ⁴⁷

U.S. SUPREME COURT CASES

We will now look at seven United States Supreme Court cases we found using the Digest topics above. The topics identify cases in all jurisdictions, so we can easily use them to identify state appellate cases as well as all federal cases on point. We will sample seven significant U.S. Supreme Court cases. The first case we look at is *Armstrong v. Manzo*,⁴⁸ which dealt with a step-parent adoption without notice to the biological father.

West publishing links the case with six different topics, or headnotes, corresponding to six “key numbers” or subtopics within its giant outline of U.S. law. The six topics are:

Constitutional Law: (“key number” or subtopic) 4395 (adoption).

Constitutional Law: (“key number” or subtopic) 3878, 3879 (due process, notice and hearing).

⁴⁷ West’s Florida Digest 2d, 331-32 (Thomson Reuters 2d ed., 2012).

⁴⁸ *Armstrong v. Manz*, 380 U.S. 545 (1965).

Constitutional Law: (“key number” or subtopic) 3881 (due process in general).

Adoption: (“key number” or subtopic) 8.2 (admissibility)

Constitutional Law : (“key number” or subtopic) 4395 (adoption)

Constitutional Law: (“key number” or subtopic) 3953 (Notice and hearing in general).

Armstrong v. Manzo, 380 U.S. 545 (1965).

This unanimous decision addressed adoption by stepparents and the notice needed to be given birth parents.

Armstrong and his wife were divorced in Texas in 1959.⁴⁹ Custody of their daughter, Molly, was awarded to Mrs. Armstrong.⁵⁰ Mr. Armstrong was granted visitation rights and ordered to pay \$50 per month child support.⁵¹ Mrs. Armstrong married Manzo in 1960, and two years later the Manzos filed a petition for adoption in the County District Court, seeking to make Mr. Manzo the legal father of Molly.⁵²

Texas law required written consent of the child’s natural father, except in certain circumstances, including when the father failed to substantially contribute child support “commensurate with his financial ability” for two years.⁵³ In that event, the written consent of county juvenile court judge could be used in lieu of the father’s consent.⁵⁴

Preliminary to filing the adoption petition, Mrs. Manzo filed an affidavit in the juvenile court, alleging that Armstrong had failed to contribute the requisite child support.⁵⁵ Although the Manzos knew Mr. Armstrong’s precise whereabouts, no notice was given to Armstrong when the affidavit was filed.⁵⁶

On the basis of the affidavit, the juvenile court judge issued his consent to the adoption.⁵⁷ In the adoption petition, filed later the same day, the Manzos alleged that consent of the natural father was unnecessary because he had not contributed the requisite child support

⁴⁹ *Id.* at 546.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Armstrong*, 380 U.S. at 546-47.

⁵⁵ *Id.* at 547.

⁵⁶ *Id.*

⁵⁷ *Id.*

and a Juvenile Court Judge consented to the adoption.⁵⁸ Armstrong was given no notice of the filing or pendency of the adoption petition.⁵⁹

The adoption decree was entered several weeks later.⁶⁰ Under Texas law, it severed all legal relationship, rights, and duties between Molly and her natural father and deemed her to be for every purpose the child of her adopting father.⁶¹

Armstrong was not given, and did not have, the slightest inkling of the pendency of these adoption proceedings.⁶² On the day the decree was entered, Manzo wrote Armstrong's father about the adoption and Armstrong's father immediately relayed the news to his son, who promptly filed a motion in the District Court, asking that the adoption decree be "set aside and annulled and a new trial [be] granted," upon the ground that he had been given no notice of the adoption proceedings.⁶³

The court did not vacate the adoption decree, but set a date for hearing on the motion.⁶⁴ At that hearing Armstrong introduced evidence, through witnesses and by depositions, in an effort to show that he contributed to his daughter's support commensurate with his financial ability.⁶⁵ At the conclusion of the hearing the court entered an order denying Armstrong's motion and confirmed the adoption decree.⁶⁶

Armstrong appealed to the Texas Court of Civil Appeals alleging among other things, that the entry of the decree without notice had deprived Armstrong of his child without due process of law.⁶⁷ The appellate court affirmed the trial court's judgment, and the Supreme Court of Texas refused an application for writ of error and⁶⁸ the U.S. Supreme Court granted certiorari.⁶⁹

The questions before us are whether failure to notify Armstrong of the pendency of the adoption proceedings deprived him of due process of law so as to render the adoption decree constitutionally invalid, and, if so, whether the subsequent hearing on Armstrong's motion to set aside the decree served to cure its constitutional invalidity.

⁵⁸ *Id.*

⁵⁹ *Id.* at 548.

⁶⁰ *Armstrong*, 380 U.S. at 548.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 549.

⁶⁵ *Id.*

⁶⁶ *Armstrong*, 380 U.S. at 549.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

In disposing of the first issue, there is no occasion to linger long. It is clear that failure to give Armstrong notice of the pending adoption proceedings violated the most rudimentary demands of due process of law. 'Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.'... 'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

Questions frequently arise as to the adequacy of a particular form of notice in a particular case.... But as to the basic requirement of notice itself there can be no doubt, where, as here, the result of the judicial proceeding was permanently to deprive a legitimate parent of all that parenthood implies.⁷⁰

The Texas Court of Civil Appeals held that whatever constitutional infirmity may have resulted from the failure to give Armstrong notice had been cured by the subsequent hearing afforded to him upon his motion to set aside the decree,⁷¹ but the U.S. Supreme Court did not agree.⁷² Had Armstrong been given the timely notice, which the Constitution requires, the Manzos would have had the burden to prove their case against whatever defenses Armstrong might have interposed.⁷³ They would have had to show that Mr. Manzo met all the prerequisites of an adoptive parent, and also prove why Armstrong's consent to the adoption was not required.⁷⁴

Instead, the U.S. Supreme Court said:

Armstrong was faced on his first appearance in the courtroom with the task of overcoming an adverse decree entered by one judge, based upon a finding of nonsupport made by another judge. As the record shows, there was placed upon Armstrong the burden of affirmatively showing that he had contributed to the support of his daughter to the limit of his financial ability over the period involved. The burdens thus placed upon Armstrong

⁷⁰ *Id.* at 549-50.

⁷¹ *Id.* at 551.

⁷² *Armstrong*, 380 U.S. at 551.

⁷³ *Id.*

⁷⁴ *Id.*

were real, not purely theoretical.... Yet these burdens would not have been imposed upon him had he been given timely notice in accord with the Constitution.⁷⁵

A fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.⁷⁶ Armstrong would have been afforded that right only if his motion to set aside the decree and consider the case anew was granted.⁷⁷

Stanley v. Illinois, 405 U.S. 645 (1972).⁷⁸

This 7-2 decision addressed the role of unwed fathers. West publishing divided the case into 13 different topics, or headnotes, corresponding to 13 “key numbers” or subtopics in its outline of the law:

1. Topic: Constitutional Law (“key number” or subtopic) 704 (Family law; marriage).
2. Infants: (“key number” or subtopic) 1243 (Resignation, removal, and successorship).
3. Constitutional Law: (“key number” or subtopic) 3999 (Evidence and Witnesses).
4. Constitutional Law: (“key number” or subtopic) 3878 (Notice and Hearing).
5. Children Out–Of–Wedlock: (“key number” or subtopic) 20.2 (Rights of father).
6. Children Out–Of–Wedlock: (“key number” or subtopic) 20.2 (Rights of father) (Again).
7. Child Custody: (“key number” or subtopic) 8 (Interest or role of government).
8. Action: (“key number” or subtopic) 66 (Course of procedure in general).
9. Constitutional Law: (“key number” or subtopic) 3875 (Factors considered; flexibility and balancing).
10. Constitutional Law: (“key number” or subtopic) 4400 (Protection of children; child abuse, neglect, and dependency) 4401 (Protection of children; In general).
11. Child Custody: (“key number” or subtopic) 500 (In general).
12. Constitutional Law: (“key number” or subtopic) 3462 (In general).

⁷⁵ *Id.*

⁷⁶ *Id.* at 552.

⁷⁷ *Id.*

⁷⁸ *Stanley v. Illinois*, 405 U.S. 645 (1972).

13. Federal Courts: (“key number” or subtopic) 3186 (Review of state courts).

Joan and Peter Stanley never married, but lived intermittently together for 18 years, during which time they had three children.⁷⁹ When Joan died, the children were declared state wards and placed in guardianship.⁸⁰ Under then Illinois law, the children of unmarried fathers, upon the death of the mother, were declared dependents without any hearing on parental fitness and without proof of neglect, though such hearing and proof were required before the State assumed custody of children of married or divorced parents and of unmarried mothers.⁸¹

Peter Stanley attacked the Illinois statutory scheme as violating his equal protection rights.⁸² The Illinois Supreme Court rejected his claim, holding that Stanley could properly be separated from his children upon mere proof that he and the dead mother had not been married and that his fitness as a father was irrelevant.⁸³ The State argued that unwed fathers are presumed unfit to raise their children and that it was unnecessary to hold individualized hearings to determine whether particular fathers are in fact unfit parents before being separated from their children.⁸⁴

The United States Supreme Court disagreed, reversed, and remanded.⁸⁵ Specifically, the Court held:

1. Under the Due Process Clause of the Fourteenth Amendment petitioner was entitled to a hearing on his fitness as a parent before his children were taken from him.⁸⁶

(a) The fact that petitioner can apply for adoption or for custody and control of his children does not bar his attack on the dependency proceeding.⁸⁷

(b) The State cannot, consistently with due process requirements, merely presume that unmarried fathers in general and petitioner in particular are unsuitable and neglectful parents. Parental

⁷⁹ *Id.* at 646.

⁸⁰ *Id.*

⁸¹ *Id.* at 645.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Stanley*, 405 U.S. at 647.

⁸⁵ *Id.* at 645.

⁸⁶ *Id.*

⁸⁷ *Id.*

unfitness must be established on the basis of individualized proof.⁸⁸

2. The denial to unwed fathers of the hearing on fitness accorded to all other parents whose custody of their children is challenged by the State constitutes a denial of equal protection of the laws.⁸⁹

Quilloin v. Walcott, 434 U.S. 246 (1978).

Under Georgia law, no adoption of a child born in wedlock is permitted without consent of each living parent, including divorced and separated parents, unless they have voluntarily surrendered rights in the child or been adjudicated as an unfit parent.⁹⁰ Only the mother's consent is required for the adoption of an illegitimate child.⁹¹ The father may acquire veto authority over the adoption if he has legitimated the child pursuant to the Code.⁹²

While these provisions prevented Mr. Quilloin the opportunity to stop the adoption of his illegitimate child, until the adoption petition was filed, Quilloin made no attempt to legitimate the child, who had always been in the mother's custody and was then living with the mother and her husband.⁹³

The trial court granted the adoption on the ground that it was in the "best interests of the child" and that legitimation by appellant was not; and the Georgia Supreme Court affirmed.⁹⁴

The United States Supreme Court agreed that Quilloin's substantive rights under the Due Process Clause were not violated by application of a "best interests of the child" standard.⁹⁵ It might have been different if Quilloin ever had or sought custody, or if the child was going to be adopted by strangers.⁹⁶ Here the Court felt the result of the adoption was to give full recognition to the existing family unit.⁹⁷

The Court further held that the State was not foreclosed from recognizing the difference in the extent of commitment to a child's welfare between that of Quilloin, an unwed father who never shouldered

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Quilloin v. Walcott*, 434 U.S. 246 (1978).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Quilloin*, 434 U.S. at 246.

⁹⁷ *Id.*

any significant responsibility for the child's rearing, and that of a divorced father who had at least borne full responsibility for his child's rearing during the period of marriage.⁹⁸

Caban v. Mohammed, 441 U.S. 380 (1978).

Mr. Caban and Mrs. Mohammed had two children together while living together unmarried for several years.⁹⁹ Caban was identified as the father on the birth certificates and contributed to the children's support.¹⁰⁰ After the couple separated, Maria took the children and married her present husband.¹⁰¹ During the next two years Caban frequently saw and otherwise maintained contact with the children.¹⁰² Ms. Mohammed and her spouse subsequently petitioned for adoption of the children, and Caban filed a cross-petition.¹⁰³

The Surrogate granted appellees' petition under New York Domestic Relations Law, which permits an unwed mother, but not an unwed father, to block the adoption of their child simply by withholding her consent.¹⁰⁴ Rejecting Caban's contention that the law was unconstitutional, the state appellate courts affirmed because the New York Court of Appeals reasoned that people wishing to adopt children born out of wedlock would be discouraged if the natural father could prevent adoption merely by withholding his consent. The Court also "suggested that if the consent of the natural father were required, adoptions would be jeopardized because of his unavailability."¹⁰⁵

The United States Supreme Court disagreed.¹⁰⁶ It held that the law clearly treated unmarried parents differently according to their sex.¹⁰⁷ The consent requirement was no mere formality since the New York courts hold that the question of whether consent is required is entirely separate from the consideration of the best interests of the child.¹⁰⁸ In this case, the Surrogate held that adoption by Caban was impermissible absent Maria's consent, whereas adoption by Maria and her husband

⁹⁸ *Id.* at 246-47.

⁹⁹ *Caban v. Mohammed*, 441 U.S. 380, 382 (1979).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 383.

¹⁰⁴ *Id.* at 380.

¹⁰⁵ *Caban*, 441 U.S. at 380.

¹⁰⁶ *Id.* at 394.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 380.

could be prevented by Caban only if he could show that such adoption would not be in the children's best interests.¹⁰⁹

The Court found that the sex-based distinction between unmarried mothers and unmarried fathers violated the Equal Protection Clause of the Fourteenth Amendment because it bore no substantial relation to any important state interest.¹¹⁰

(a) Maternal and paternal roles are not invariably different in importance. Even if unwed mothers as a class were closer than unwed fathers to their newborn infants, the generalization concerning parent-child relations would become less acceptable to support legislative distinctions as the child's age increased.¹¹¹

(b) Unwed fathers are no more likely to oppose adoption of their children than are unwed mothers.¹¹²

(c) Even if special difficulties in locating and identifying unwed fathers at birth warranted a legislative distinction between mothers and fathers of newborns, such difficulties need not persist past infancy; and in those instances where, unlike the present case, the father has not participated in the rearing of the child, nothing in the Equal Protection Clause precludes the State from withholding from him the privilege of vetoing the adoption of that child.¹¹³

Lehr v. Robertson, 463 U.S. 248 (1983).

Lehr is the father of a child born out of wedlock.¹¹⁴ Mrs. Robertson, the mother of the child, married another man after the child was born.¹¹⁵ Subsequently, when the child was over two years old, The Robertsons filed an adoption petition in the Ulster County, N. Y., Family Court, which entered an order of adoption.¹¹⁶ Lehr never supported the child nor offered to marry the mother.¹¹⁷ Nor did he enter his name in New York's "putative father registry," which would have entitled him to notice of the

¹⁰⁹ *Id.* at 380, 386-87.

¹¹⁰ *Id.* at 391.

¹¹¹ *Caban*, 441 U.S. at 381.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Lehr v. Robertson*, 463 U.S. 248, 248 (1983).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

adoption proceeding, and was not in any class of putative fathers entitled under New York law to receive notice of adoption proceedings.¹¹⁸

After the adoption proceeding had commenced, Lehr filed a paternity petition in Westchester County, and several months later Lehr learned of the pending adoption proceeding.¹¹⁹ Shortly after, his attorney sought a stay of the adoption proceeding pending determination of the paternity action, but by that time the Ulster County Family Court had entered the adoption order.¹²⁰ Lehr filed a petition to vacate the adoption order on the ground that it was obtained in violation of his rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment.¹²¹

The Ulster County Family Court denied the petition, and both the Appellate Division of the New York Supreme Court and the New York Court of Appeals affirmed.¹²²

The United States Supreme Court agreed that Lehr's rights under the Due Process Clause were not violated.¹²³ The Court found:

(a) Where an unwed father demonstrates a full commitment to the responsibilities of parenthood by coming "forward to participate in the rearing of his child," *Caban v. Mohammed*, 441 U. S. 380, 392, his interest in personal contact with his child acquires substantial protection under the Due Process Clause. But the mere existence of a biological link does not merit equivalent protection. If the natural father fails to grasp the opportunity to develop a relationship with his child, the Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie.¹²⁴

(b) Here, New York has adequately protected Lehr's inchoate interest in assuming a responsible role in the future of his child. Under New York's special statutory scheme, the right to receive notice was completely within Lehr's control. By mailing a postcard to the putative father registry, he could have guaranteed that he would receive notice of any adoption proceedings. The State's conclusion that a more open-ended notice requirement would merely complicate the adoption process, threaten the

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Lehr*, 463 U.S. at 248.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

privacy interests of unwed mothers, create the risk of unnecessary controversy, and impair the desired finality of adoption decrees, cannot be characterized as arbitrary. The Constitution does not require either the trial judge or a litigant to give special notice to nonparties who are presumptively capable of asserting and protecting their own rights.¹²⁵

2. Nor were Lehr's rights under the Equal Protection Clause violated. Because he has never established a substantial relationship with his child, the New York statutes at issue did not operate to deny him equal protection. Cf. *Quilloin v. Walcott*, 434 U. S. 246. [The] mother had a continuous custodial responsibility for the child, whereas Lehr never established any custodial, personal, or financial relationship with the child. In such circumstances, the Equal Protection Clause does not prevent a State from according the two parents different legal rights.¹²⁶

Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989).

This 6-3 decision addressed the Indian Child Welfare Act of 1978 (ICWA),¹²⁷ which gives tribal courts exclusive jurisdiction over custody proceedings involving Indian children who reside or are domiciled on a reservation.¹²⁸ This case involves twin illegitimate babies, whose parents were enrolled members of the Choctaw Tribe and lived on its reservation.¹²⁹

The twins were born 200 miles from the reservation, their parents executed consent-to-adoption forms, and they were adopted by the Holyfields, who were non-Indian. That court subsequently overruled Choctaw's motion to vacate the adoption decree, which was based on the assertion that under the ICWA exclusive jurisdiction was vested in appellant's tribal court.

The Supreme Court of Mississippi affirmed, holding, among other things, that the twins were not "domiciled" on the reservation under state law, they had never been physically present there, and they were "voluntarily surrendered" by their parents who went to some efforts to see that they were born outside the reservation and promptly arranged for their adoption. Therefore, the court said, the twins' domicile was in in

¹²⁵ *Id.* at 248-49.

¹²⁶ *Lehr*, 463 U.S. at 249.

¹²⁷ The Indian Child Welfare Act of 1978 (ICWA), Pub. L. 95-608, 92 Stat. 3069 (codified at 25 U.S.C. §§ 1901-1963 (2015)).

¹²⁸ 25 U.S.C. § 1901.

¹²⁹ *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989).

the county they were born, and the Chancery Court properly exercised jurisdiction over the adoption proceedings.

The United States Supreme Court disagreed and held that the twins were domiciled on the Tribe's reservation within the meaning of the ICWA's exclusive tribal jurisdiction provision, and the Chancery Court was without jurisdiction to enter the adoption decree.¹³⁰

The Court explained that Congress clearly intended a uniform federal law of domicile for the ICWA and did not consider the definition of the word to be a matter of state law.¹³¹ After all, its purpose, in part, was to make clear that in certain situations state courts had no jurisdiction over child custody proceedings.¹³² Because congressional findings demonstrated that Congress perceived the States and their courts as partly responsible for the child separation problem it intended to correct, it is "most improbable" that Congress would have intended to make the definition of "domicile" a matter of state law.¹³³ The lack of nationwide uniformity would yield terrible results; different rules could apply from time to time to the same Indian child, simply as a result of his or her being moved across state lines.¹³⁴

The Court recognized that "well settled common-law principles" provide that the domicile of minors, who generally are legally incapable of forming the requisite intent to establish a domicile, is determined by that of their parents, which has traditionally meant the domicile of the mother in the case of illegitimate children.¹³⁵ Thus, since the domicile of the mother and father was been on the reservation, the twins were also domiciled there even though they had never been there.¹³⁶

This result is not altered by the fact that they were "voluntarily surrendered" for adoption. Congress enacted the ICWA because of concerns going beyond the wishes of individual parents, finding that the removal of Indian children from their cultural setting seriously impacts on long-term tribal survival and has a damaging social and psychological impact on many individual Indian children. These concerns demonstrate that Congress could not have intended to enact a rule of domicile that would permit individual Indian parents to defeat the ICWA's

¹³⁰ *Id.* at 42-54.

¹³¹ *Id.* at 48.

¹³² *Id.* at 53.

¹³³ *Id.* at 45.

¹³⁴ *Id.* at 44-46.

¹³⁵ *Holyfield*, 490 U.S. at 48.

¹³⁶ *Id.* at 48-49.

jurisdictional scheme simply by giving birth and placing the child for adoption off the reservation.¹³⁷

Adoptive Couple v. Baby Girl, 133 S. Ct. 2552 (U.S. 2013).

In our final case, *Adoptive Couple v. Baby Girl*,¹³⁸ in a 5-4 decision, the United States Supreme Court held that non-custodial fathers did not have rights under the ICWA.¹³⁹

The ICWA establishes federal standards for state-court child custody proceedings involving Indian children.¹⁴⁰ 25 U.S.C. §1912(f) bars involuntary termination of a parent's rights in the absence of a heightened showing that serious harm to the Indian child is likely to result from the parent's continued custody; §1912(d) conditions involuntary termination of parental rights with respect to an Indian child on a showing that remedial efforts have been made to prevent the "breakup of the Indian family;" and §1915(a) provides placement preferences for the adoption of Indian children to members of the child's extended family, other members of the Indian child's tribe, and other Indian families.¹⁴¹

While the birth mother was pregnant with the biological father's child, their relationship ended and the biological father, a member of the Cherokee Nation, agreed to relinquish his parental rights.¹⁴² Biological mom put Baby Girl up for adoption through a private adoption agency and selected a non-Indian couple living in South Carolina to adopt the child. Biological dad provided no financial assistance to the mother or Baby Girl during the pregnancy or the first four months after birth.¹⁴³ About four months after the birth, the adoptive couple served biological dad with notice of the pending adoption.¹⁴⁴ During the adoption proceedings, biological dad sought custody, and stated that he did not consent to the adoption.¹⁴⁵

Finally, after a trial two years later, the South Carolina Family Court denied the adoptive couple's petition and awarded custody to

¹³⁷ See generally *id.*

¹³⁸ *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (U.S. 2013).

¹³⁹ *Id.* at 2562; see generally The Indian Child Welfare Act of 1978 (ICWA), Pub.L. No. 95-608, 92 Stat. 3069 (1978), (codified at 25 U.S.C. §§ 1901-1963 (2015)).

¹⁴⁰ See generally The Indian Child Welfare Act of 1978 (ICWA), Pub.L. No. 95-608, 92 Stat. 3069 (1978), (codified at 25 U.S.C. §§ 1901-1963 (2015)).

¹⁴¹ 25 U.S.C. § 1912(f) (2015).

¹⁴² *Adoptive Couple*, 133 S. Ct. at 2558.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

biological dad.¹⁴⁶ At the age of 27 months, Baby Girl was handed over to a biological father, whom she had never met.¹⁴⁷

The South Carolina Supreme Court affirmed, concluding that the ICWA applied because the child custody proceeding related to an Indian child; that the biological father was a “parent” under the ICWA; that §1912(d) and (f) barred the termination of his parental rights; and that had his rights been terminated, §1915(a)’s adoption-placement preferences would have applied.¹⁴⁸

The United States Supreme court disagreed.¹⁴⁹ The court explained the even assuming for the sake of argument that the biological father was a “parent” under the ICWA, neither §1912(f) nor §1912(d) bars the termination of his parental rights.¹⁵⁰

The Court felt that Section 1912(f) conditions the involuntary termination of parental rights regarding the merits of the parent’s “continued custody of the child.”¹⁵¹ The adjective “continued” plainly referring to a pre-existing state under ordinary dictionary definitions; a custody that a parent already has or at least had at some point.

As a result, the Court said, §1912(f) does not apply where the Indian parent never had custody of the Indian child.¹⁵² The ICWA’s primary goal is not implicated when an Indian child’s adoption is voluntarily and lawfully initiated by a non-Indian parent with sole custodial rights.¹⁵³

Nonbinding guidelines issued by the Bureau of Indian Affairs (BIA)¹⁵⁴ demonstrate that the BIA envisioned that §1912(f)’s standard would apply only to termination of a custodial parent’s rights.¹⁵⁵ Under this reading, Biological Father should not have been able to invoke §1912(f) in this case because he had never had legal or physical custody of Baby Girl as of the time of the adoption proceedings.¹⁵⁶

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 2559.

¹⁴⁸ *Adoptive Couple*, 133 S. Ct. at 2559.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 2560.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at 2561.

¹⁵⁴ Bureau of Indian Affairs: Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. No. 228 (Nov. 26, 1979), http://www.nicwa.org/administrative_regulations/icwa/ICWA_guidelines.pdf.

¹⁵⁵ *Adoptive Couple*, 133 S. Ct. at 2561.

¹⁵⁶ *Id.* at 2562.

The Court went on to say that §1912(d) conditions an involuntary termination of parental rights with respect to an Indian child on a showing “that active efforts have been made to provide remedial services . . . designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” But when an Indian parent abandons an Indian child prior to birth and that child has never been in the Indian parent’s legal or physical custody, there is no “relationship” to be discontinued. The breakup of the Indian family has long since occurred, and §1912(d) does not apply.¹⁵⁷

Furthermore, said the Court, §1915(a)’s adoption-placement preferences are inapplicable where no one else has formally sought to adopt the child.¹⁵⁸ Only the adoptive couple sought to adopt Baby Girl in the Family Court and South Carolina Supreme Court.¹⁵⁹ The biological father is not covered by §1915(a) because he did not seek to adopt Baby Girl; he merely argued that his parental rights should not be terminated.¹⁶⁰ Custody was never sought, for example, by the child’s Cherokee grandparents, any other member of the Cherokee Nation, or any other Indian family.¹⁶¹

The Supreme Court reversed and remanded.¹⁶²

OTHER USEFUL TOOLS

Another useful finding aid for case law is American Law Reports (A.L.R.), a selective reporter. Not all cases are printed here, but those that are accompanied by a thorough well-researched and well-written annotation to accompany the text. Since West acquired the series, it now uses the same digest and index terms as the rest of West’s publications. A quick look through the A.L.R. Digest under Adoptions provides countless articles on topic. A few noteworthy ones are listed here: *Postadoption Visitation by Natural Parent*.¹⁶³ The table of cases cited throughout the United States alone is worth the price of admission. A quick look at its table of contents shows how valuable an A.L.R. annotation can be:

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Danny R. Veilluex, *Postadoption Visitation By Natural Parent*, 78 A.L.R.4th 218 (1990).

¹⁶² *Id.*

¹⁶³ *Infra* notes 166-72.

I. Preliminary Matters

§ 1[a] Introduction—Scope

§ 1[b] Introduction—Related matters

§ 2[a] Summary and comment—Generally

§ 2[b] Summary and comment—Practice pointers

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§ 4 Enforcement of out-of-state decree

§ 5 View that agreement is invalid or unenforceable

§ 6 Where agreement circumvents prior custody determination

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B. Validity as Determined Under Particular Circumstances

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§ 9 Where scope of visitation is broad

III. Decree Granting Postadoption Visitation Absent Prior Agreement

A. General Views Concerning Validity

§ 10 View that adoption precludes visitation

§ 11 View that visitation may be permitted to promote child's best interests

§ 12 View that visitation may be required to promote child's best interests

B. Validity as Determined Under Particular Circumstances

§ 13[a] Where consent to adoption is unconditional—Visitation required

§ 13[b] Where consent to adoption is unconditional—Visitation denied

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§ 14[b] Where consent to adoption is conditioned on visitation—Visitation denied

§ 15[a] Where adoption is granted without consent—Generally—Visitation permitted

§ 15[b] Where adoption is granted without consent—generally—
Visitation required

§ 15[c] Where adoption is granted without consent—generally—
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§ 16[a] And adoptive parents expressly oppose visitation—
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§ 16[b] And adoptive parents expressly oppose visitation—
Visitation denied—generally

§ 16[c] And adoptive parents expressly oppose visitation—Where
visitation by unwed father opposed by stepfather

§ 17 And adoptive parents agree to allow visitation

§ 18 After visitation granted by prior divorce judgment

*Natural Parent's Parental Rights As Affected By Consent To Child's
Adoption By Other Natural Parent.*¹⁶⁴

*Child Should Not Have To Be Deprived Of Its Relationship With Its
Mother In Order To Be Legitimized By Its Natural Father Through
Adoption Process.*¹⁶⁵

*Mistake Or Want Of Understanding As Ground For Revocation Of
Consent To Adoption Or Of Agreement Releasing Infant To Adoption
Placement Agency.*¹⁶⁶

*What Constitutes "Duress" In Obtaining Parent's Consent To Adoption
Of Child Or Surrender Of Child To Adoption Agency.*¹⁶⁷

*Natural Parent's Indigence As Precluding Finding That Failure To
Support Child Waived Requirement Of Consent To Adoption—Factors
Other Than Employment Status.*¹⁶⁸

¹⁶⁴ Russell G. Donaldson, *Natural Parent's Parental Rights As Affected By Consent To Child's Adoption By Other Natural Parent*, 37 A.L.R.4th 724 (1985).

¹⁶⁵ Gary D. Spivey, *What Constitutes "Duress" In Obtaining Parent's Consent To Adoption Of Child Or Surrender Of Child To Adoption Agency*, 74 A.L.R.3d 527 (1976).

¹⁶⁶ Gary D. Spivey, *Mistake Or Want Of Understanding As Ground For Revocation Of Consent To Adoption Or Of Agreement Releasing Infant To Adoption Placement Agency*, 74 A.L.R.3d 489 (1976).

¹⁶⁷ Gary D. Spivey, *What Constitutes "Duress" In Obtaining Parent's Consent To Adoption Of Child Or Surrender Of Child To Adoption Agency*, 74 A.L.R.3d 527 (1976).

¹⁶⁸ Claudia G. Catalano, *Natural Parent's Indigence as Precluding Finding that Failure to Support Child Waived Requirement of Consent to Adoption—Factors Other Than Employment Status*, 84 A.L.R.5th 191 (2000).

*Natural Parent's Indigence Resulting From Unemployment Or Underemployment As Precluding Finding That Failure To Support Child Waived Requirement Of Consent To Adoption.*¹⁶⁹

*Comment Note: Natural Parent's Indigence As Precluding Finding That Failure To Support Child Waived Requirement Of Consent To Adoption—General Principles.*¹⁷⁰

LEGISLATION

In addition to the international and federal legislation pertaining to adoption we must consider the adoption laws of the individual states and territories. While adoption laws vary from state to state, there is one compact to which all jurisdictions belong and adhere to. The Interstate Compact on the Placement of Children (ICPC) is statutory law in all 50 states, the District of Columbia, and the Virgin Islands. Interstate compacts are both legislation and contracts.¹⁷¹ Each jurisdiction enacts legislation and contracts among one another to adhere to the Compact provisions.¹⁷²

The ICPC mandates that both states must give prior approval before a child may be taken to another state for adoption.¹⁷³ Every state specifies an office¹⁷⁴ to deal with ICPC matters. The ICPC applies in all domestic U.S. adoptions, both private and agency.¹⁷⁵

Adoption agencies and adoption lawyers can complete the necessary forms and submit them to both states.¹⁷⁶ It is important to note

¹⁶⁹ Claudia G. Catalano, *Natural Parent's Indigence Resulting from Unemployment or Underemployment as Precluding Finding that Failure to Support Child Waived Requirement of Consent to Adoption*, 83 A.L.R.5th 375 (2000).

¹⁷⁰ Claudia G. Catalano, *Comment Note: Natural Parent's Indigence As Precluding Finding That Failure To Support Child Waived Requirement of Consent To Adoption—General Principles*, 82 A.L.R.5th 443 (2000).

¹⁷¹ ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, available at <http://www.aphsa.org/content/AAICPC/en/home.html>.

¹⁷² See generally *id.*

¹⁷³ ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, available at <http://www.aphsa.org/content/dam/AAICPC/PDF%20DOC/Home%20page/Regulation-4-2012.pdf>.

¹⁷⁴ ICPC STATE PAGES THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, available at <http://icpcstatepages.org/>.

¹⁷⁵ ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, available at <http://www.aphsa.org/content/AAICPC/en/resources/ICPCFAQ.html>.

¹⁷⁶ Department of Social Services, *Interstate Compact on the Placement of Children (ICPC)*, <http://www.childsworld.ca.gov/pg1316.htm>.

that the baby must remain in the state of her birth until the approval is finalized.¹⁷⁷

The California Department of Social Services describes the purpose of the ICPC this way:

The ICPC is a contract among member states and U.S. territories authorizing them to work together to ensure that children who are placed across state lines for foster care or adoption receive adequate protection and support services. The ICPC establishes procedures for the placement of children and fixes responsibility for agencies and individuals involved in placing children. To participate in the ICPC, a state must enact into law the provisions of the ICPC. In 1975, California adopted the provisions of the ICPC, now found at Family Code Section 7900, et seq. This statute designates the California Department of Social Services (CDSS) as “the appropriate public authority” responsible for administration of ICPC.¹⁷⁸

The purpose of the ICPC is to protect the child and the party states in the interstate placement of children so that:

- The child is placed in a suitable environment;
- The receiving state has the opportunity to assess that the proposed placement is not contrary to the interests of the child and that its applicable laws and policies have been followed before it approves the placement;
- The sending state obtains enough information to evaluate the proposed placement;
- The care of the child is promoted through appropriate jurisdictional arrangements; and
- The sending agency or individual guarantees the child legal and financial protection.¹⁷⁹

While the ICPC has been universally adopted, a model act available for state legislatures to emulate has met with much less success.

The National Conference of Commissioners on Uniform State Laws promulgated the Uniform Adoption Act in 1995 and changed its name to the Model Adoption Act in 2005.¹⁸⁰ It replaces two earlier attempts to

¹⁷⁷ *Guide to the Interstate Compact on the Placement of Children*, AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION, <http://www.childsworld.ca.gov/res/pdf/ICPCGuidebook.pdf> (last visited March 18, 2016).

¹⁷⁸ Department of Social Services, *supra* note 178.

¹⁷⁹ Department of Social Services, *supra* note 178.

¹⁸⁰ National Conference of Commissioners on Uniform State Laws, *Model Adoption Act (1994)*, UNIFORM LAW COMMISSION, http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf.

promote uniformity of adoption law, the original Uniform Adoption Act of 1953, and a 1969 amended version.

There is perhaps, no quicker way to get a sense of the scope of what a model adoption act should cover, than to glance at its table of contents:

Article 1. General Provisions

§ 1-101 Definitions

§ 1-102 Who May Adopt or Be Adopted

§ 1-103 Name of Adoptee After Adoption

§ 1-104 Legal Relationship Between Adoptee and Adoptive Parent After Adoption

§ 1-105 Legal Relationship Between Adoptee and former Parent After Adoption

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§ 1-107 Proceedings Subject to The Indian Child Welfare Act

§ 1-108 Recognition of Adoption Decree in Another Jurisdiction

Article 2. Adoption of Minors

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§ 2-101 Who May Place Minor for Adoption

§ 2-102 Direct Placement for Adoption by Parent or Guardian

§ 2-103 Placement for Adoption by Agency

§ 2-104 Preferences for Placement When Agency Places a Minor

§ 2-105 Recruitment of Adoptive Parents by Agency

§ 2-106 Disclosure of information on Background

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§ 2-108 Intercountry Placement

Part 2. Preplacement Evaluation

§ 2-201 Preplacement Evaluation Required

§ 2-202 Preplacement Evaluator

§ 2-203 Timing and Content of Preplacement Evaluation

§ 2-204 Determining Suitability to Be Adoptive Parent

§ 2-205 Filing and Copies of Preplacement Evaluation

§ 2-206 Review of Evaluation

§ 2-207 Action by Department

Part 3. Transfer of Physical Custody of Minor by Health Care Facility for Purposes of Adoption

§ 2-301 “Health-Care Facility” Defined

- § 2-302 Authorization to Transfer Physical Custody
- § 2-303 Reports to Department
- § 2-304 Action by Department

Part 4. Consent to and Relinquishment for Adoption

- § 2-401 Persons Whose Consent Required
- § 2-402 Persons Whose Consent Not Required
- § 2-403 Individuals Who May Relinquish Minor
- § 2-404 Time and Prerequisites for Execution of Consent or Relinquishment
- § 2-405 Procedure for Execution of Consent or Relinquishment
- § 2-406 Content of Consent or Relinquishment
- § 2-407 Consequences of Consent or Relinquishment
- § 2-408 Revocation of Consent
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Article 3. General Procedure for Adoption of Minors

Part 1. Jurisdiction and Venue

- § 3-101 Jurisdiction
- § 3-102 Venue

Part 2. General Procedural Provisions

- § 3-201 Appointment of Lawyer or Guardian Ad Litem
- § 3-202 No Right to Jury
- § 3-203 Confidentiality of Proceedings
- § 3-204 Custody During Pendency of Proceeding
- § 3-205 Removal of Adoptee From State

Part 3. Petition for Adoption of Minor

- § 3-301 Storing to Petition to Adopt
- § 3-302 Time for Filing Petition
- § 3-303 Caption of Petition
- § 3-304 Content of Petition
- § 3-305 Required Documents

Part 4. Notice of Pendency of Proceeding

- § 3-401 Service of Notice
- § 3-402 Content of Notice
- § 3-403 Manner and Effect of Service
- § 3-404 Investigation and Notice to Unknown Father
- § 3-405 Waiver of Notice

Part 5. Petition to Terminate Relationship Between Parent and Child

- § 3-501 Authorization
- § 3-502 Timing and Content of Petition
- § 3-503 Service of Petition and Notice
- § 3-504 Grounds for Terminating Relationship
- § 3-505 Effect of order Granting Petition
- § 3-506 Effect of order Denying Petition

Part 6. Evaluation of Adoptee and Prospective Adoptive Parent

- § 3-601 Evaluation During Proceeding for Adoption
- § 3-602 Content of Evaluation
- § 3-603 Time and Filing of Evaluation

Part 7. Dispositional Hearing: Decree of Adoption

- § 3-701 Time for Hearing on Petition
- § 3-702 Disclosure of Fees and Charges
- § 3-703 Granting Petition for Adoption
- § 3-704 Denial of Petition for Adoption
- § 3-705 Decree of Adoption
- § 3-706 Finality of Decree
- § 3-707 Challenges to Decree

Part 8. Birth Certificate

- § 3-801 Report of Adoption
- § 3-802 Issuance of New Birth Certificate

Article 4. Adoption of Minor Stepchild by Stepparent

- § 4-101 Other Provisions Applicable to Adoption of Stepchild
- § 4-102 Stoning to Adopt Minor Stepchild
- § 4-103 Legal Consequences of Adoption of Stepchild
- § 4-104 Consent to Adoption
- § 4-105 Content of Consent by Stepparent's Spouse
- § 4-106 Content of Consent by Minor's Other Parent
- § 4-107 Content of Consent by Other Persons
- § 4-108 Petition to Adopt
- § 4-109 Required Documents
- § 4-110 Notice of Pendency of Proceeding
- § 4-111 Evaluation of Stepparent
- § 4-112 Dispositional Hearing; Decree of Adoption
- § 4-113 Visitation Agreement and order

Article 5. Adoption of Adults and Emancipated Minors

§ 5-101 Who May Adopt Adult or Emancipated Minor

§ 5-102 Legal Consequences of Adoption

§ 5-103 Consent to Adoption

§ 5-104 Jurisdiction and Venue

§ 5-105 Petition for Adoption

§ 5-106 Notice and Time of Hearing

§ 5-107 Dispositional Hearing

§ 5-108 Decree of Adoption

Article 6. Records of Adoption Proceeding: Retention, Confidentiality, and Access

§ 6-101 Records Defined

§ 6-102 Records Confidential, Court Records Sealed

§ 6-103 Release of Nonidentifying information

§ 6-104 Disclosure of Identifying information

§ 6-105 Action for Disclosure of information

§ 6-106 Statewide Registry

§ 6-107 Release of original Birth Certificate

§ 6-108 Certificate of Adoption

§ 6-109 Disclosure Authorized in Course of Employment

§ 6-110 Fee for Services

Article 7. Prohibited and Permissible Activities in Connection With Adoption

§ 7-101 Prohibited Activities in Placement

§ 7-102 Unlawful Payments Related to Adoption

§ 7-103 Lawful Payments Related to Adoption

§ 7-104 Charges by Agency

§ 7-105 Failure to Disclose information

§ 7-106 Unauthorized Disclosure of information

§ 7-107 Action by Department

Article 8. Miscellaneous Provisions

§ 8-101 Uniformity of Application and Construction

§ 8-102 Short Title

§ 8-103 Severability Clause

§ 8-104 Effective Date

§ 8-105 Repeals

§ 8-106 Transitional Provisions¹⁸¹

The Commissioners consider the 1994 effort an entirely new act.¹⁸²

They say:

It is a far more comprehensive and complete effort than the earlier acts were. It is the result of five years of intensive drafting work. The first draft was prepared in 1989. Adoption law is essentially procedural law designed to accomplish one thing. An adoption proceeding ends an initial legally-recognized (and enforceable) parent-child relationship and replaces it with an entirely new legal parent-child relationship. In the law, with the exception of step-child adoptions, the new parent-child relationship attaches to the adoptive parents and child as if the child were born of the adoptive parents. The former relationship (in most jurisdictions) is treated as if it had never existed.

That bare description of what happens in an adoption proceeding, however, does not begin to communicate the complexity of the action and the difficult policy decisions that must be made in the course of drafting a comprehensive act. In adoption law, we invade and challenge the core concept of the nuclear family about as deeply as it is possible to do so. Drafters must confront the issues of the rights of both birth parents and adoptive parents, of the best interests of children, and of the needs of society in working on a uniform act pertaining to the subject. These issues are the core substance of “family” as we view it. Drafting decisions are not easy. Opinions on all constituent issues are not uniform. Passions run high on some of them. Balancing rights and interests is, at best, uneasily accomplished.

The Uniform Adoption Act (1994) reflects these facts. It has stretched its drafters’ collective judgment to the absolute limits. It contains many studied compromises in the effort to be as fair as possible to all parties, but there are no illusions about the satisfaction that the Uniform Adoption Act (1994) will provide to many people with committed interest in adoption issues.¹⁸³

The Model Act has been adopted in Vermont.¹⁸⁴ The Honorable Ron Klink, Representative for Pennsylvania’s 4th Congressional District,

¹⁸¹ *Id.*

¹⁸² Uniform Law Commission, *Adoption Act (1994) Summary*, [http://www.uniformlaws.org/ActSummary.aspx?title=Adoption%20Act%20\(1994\)](http://www.uniformlaws.org/ActSummary.aspx?title=Adoption%20Act%20(1994)).

¹⁸³ *Id.*

¹⁸⁴ VT. STAT. ANN. TIT. 15, § 1-101 *et seq.* (2015); *see also* Vermont General Assembly, *The Vermont Statutes Online*, <http://legislature.vermont.gov/statutes/title/15A>.

introduced H.R. 4255 during the 104th Congress on September 27, 1996. In an attempt to adopt most of the Model Act's provisions across the United States, the U.S. House recommended that Congress adopt Titles 1, 7, and 8 in their entirety, parts 1 and for of Article 2, and parts 1, 2, 5, and 7 of Article 3 of the Model Act.¹⁸⁵ The legislation died in committee.

The remaining 49 states have each enacted their own adoption schemes. Many of the acts address most, if not all, the subjects addressed by the model act. The contemporary patchwork potpourri of state adoption laws may explain why Representative Klink may have been interested in getting Congress to adopt much of the model act throughout the country. For example, one commentator addressed the then-current Florida adoptions laws calling them a masterpiece of absurdity; Kafkaesque.¹⁸⁶

THE FLORIDA ADOPTION ACT – A MASTERPIECE OF ABSURDITY

I had always considered Franz Kafka to be the king of absurd fiction. Not anymore. I now nominate the Florida legislature for the top honor. Its masterpiece is the *Florida Adoption Act*, a law purporting to balance the rights of all parties in adoptions.¹⁸⁷

The Act starts by stating that the mother can conceal her pregnancy from the father and defraud the court.¹⁸⁸ Consequently, simply because he had sexual intercourse, the father has a duty to file with the Florida putative father registry.¹⁸⁹ To register, however, he must swear to be the father of an existing child.¹⁹⁰ The registry then tells him he can revoke this sworn paternity claim only before the birth of the child who may not exist.¹⁹¹ If the child turns out to exist, but the man realizes after the birth that the child is not his, he must execute an “irrevocable affidavit of non-paternity” to eliminate the father status he earlier had a duty to claim.¹⁹²

¹⁸⁵ H.R. 4225, 104th Cong. (Vt. 1996) available at <https://www.congress.gov/bill/104th-congress/house-bill/4255/text>.

¹⁸⁶ Erik L. Smith *The Florida Adoption Act: A Masterpiece of Absurdity*, available at http://www.eriksmith.org/content/Article/default.asp?id=11&title=The_Florida_Adoption_Act_A_Masterpiece_of_Absurdity (Republished with permission of author).

¹⁸⁷ *Id.*

¹⁸⁸ FLA. STAT. § 63.063(3) (2015).

¹⁸⁹ FLA. STAT. § 63.054(1) (2015); see also FLA. STAT. § 63.088(1) (2015).

¹⁹⁰ FLORIDA PUTATIVE FATHER REGISTRY CLAIM OF PATERNITY DH 1965, available at http://www.floridahealth.gov/certificates/certificates/birth/Putative_Father/_documents/DH1965_Claim_of_Paternity_revised_07_12.pdf.

¹⁹¹ *Id.* See also FLA. STAT. § 63.054(5) (2015).

¹⁹² FLA. STAT. § 63.062(4) (2015).

To balance rights further, the Act tells the mother that before the child is three (or so) days old, she may, for any reason, keep all names secret when surrendering the child for adoption so the putative father registry cannot be searched.¹⁹³ As long as the child is unharmed, her right to anonymity is “absolute.”¹⁹⁴ The adoption petitioner must then investigate missing person reports, “whether or not the child is missing.”¹⁹⁵ If no report exists, the petitioner need not search for the unknown father.¹⁹⁶ Instead, the registered unknown father must find the anonymous child.¹⁹⁷ Only when the father finds the child, or somehow becomes known, is he entitled to notice of the petition to terminate parental rights,¹⁹⁸ whereupon the absolutely anonymous mother becomes known because the father knows who she is.

Where a father is known and locatable, the adoption agency petitioner may give the father notice of the adoption plan, even before the birth.¹⁹⁹ The notice must tell the father that he needs to file a paternity claim with vital statistics within 30 days and a pledge of commitment with the court.²⁰⁰ But the agency does not need to tell him about the putative father registry per se.²⁰¹ After hearing his arguments, the court will terminate his rights as a matter of law if he did not register before the adoption petition was filed,²⁰² which can be three days after the birth.²⁰³

The legislature calls this “a method for absolute protection of an unmarried father’s rights.”²⁰⁴

To be fair, the Florida legislature has amended the adoption laws numerous times since 1995; the 2014 Statutes provide the legislative intent:

63.022 Legislative intent.—

(1) The Legislature finds that:

(a) The state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive

¹⁹³ FLA. STAT. § 63.0423 (2012) (referring to 383.50).

¹⁹⁴ FLA. STAT. § 383.50(5).

¹⁹⁵ FLA. STAT. § 63.0423(3).

¹⁹⁶ FLA. STAT. § 63.0423(4).

¹⁹⁷ FLA. STAT. § 63.0423(6).

¹⁹⁸ FLA. STAT. § 63.0423(4).

¹⁹⁹ FLA. STAT. § 63.062(3)(a)-(b).

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² FLA. STAT. § 63.062(2)(e).

²⁰³ FLA. STAT. § 63.213(b) (2012).

²⁰⁴ FLA. STAT. § 63.063(3).

placements, and in holding parents accountable for meeting the needs of children.

(b) An unmarried mother faced with the responsibility of making crucial decisions about the future of a newborn child is entitled to privacy, has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding an adoptive placement.

(c) Adoptive children have the right to permanence and stability in adoptive placements.

(d) Adoptive parents have a constitutional privacy interest in retaining custody of a legally adopted child.

(e) An unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during the pregnancy and after the child's birth. The state has a compelling interest in requiring an unmarried biological father to demonstrate that commitment by providing appropriate medical care and financial support and by establishing legal paternity rights in accordance with the requirements of this chapter.

(2) It is the intent of the Legislature that in every adoption, the best interest of the child should govern and be of foremost concern in the court's determination. The court shall make a specific finding as to the best interests of the child in accordance with the provisions of this chapter.

(3) It is the intent of the Legislature to protect and promote the well-being of persons being adopted and their birth and adoptive parents and to provide to all children who can benefit by it a permanent family life, and, whenever appropriate, to maintain sibling groups.

(4) The basic safeguards intended to be provided by this chapter are that:

(a) The minor is legally free for adoption and that all adoptions are handled in accordance with the requirements of law.

(b) The required persons consent to the adoption or the parent-child relationship is terminated by judgment of the court.

- (c) The required social studies are completed and the court considers the reports of these studies prior to judgment on adoption petitions.
 - (d) A sufficient period of time elapses during which the minor has lived within the proposed adoptive home under the guidance of an adoption entity, except stepparent adoptions or adoptions of a relative.
 - (e) All expenditures by adoption entities or adoptive parents relative to the adoption of a minor are reported to the court and become a permanent record in the file of the adoption proceedings, including, but not limited to, all legal fees and costs, all payments to or on behalf of a birth parent, and all payments to or on behalf of the minor.
 - (f) Social and medical information concerning the minor and the parents is furnished by the parent when available and filed with the court before a final hearing on a petition to terminate parental rights pending adoption, unless the petitioner is a stepparent or a relative.
 - (g) A new birth certificate is issued after entry of the adoption judgment.
 - (h) At the time of the hearing, the court may order temporary substitute care when it determines that the minor is in an unsuitable home.
 - (i) The records of all proceedings concerning custody and adoption of a minor are confidential and exempt from s. 119.07(1), except as provided in s. 63.162.
 - (j) The birth parent, the prospective adoptive parent, and the minor receive, at a minimum, the safeguards, guidance, counseling, and supervision required in this chapter.
 - (k) In all matters coming before the court under this chapter, the court shall enter such orders as it deems necessary and suitable to promote and protect the best interests of the person to be adopted.
 - (l) In dependency cases initiated by the department, where termination of parental rights occurs, and siblings are separated despite diligent efforts of the department, continuing post adoption communication or contact among the siblings may be ordered by the court if found to be in the best interests of the children.
- (5) It is the intent of the Legislature to provide for cooperation between private adoption entities and the Department of Children and Families in matters relating to permanent placement options for

children in the care of the department whose birth parents wish to participate in a private adoption plan with a qualified family.²⁰⁵

Every state has its own way of addressing adoptions, and interested parties must access the current statutes of the appropriate states. The U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau's Child Welfare Information Gateway²⁰⁶ is an excellent source to locate state adoption laws.²⁰⁷ Researchers can readily access information on state laws regarding domestic adoption,²⁰⁸ state laws regarding intercountry adoption,²⁰⁹ and state laws regarding postadoption issues.²¹⁰ Adoption Services.org also provides convenient access to all fifty state statutes.²¹¹

The Human Rights Campaign maintains maps²¹² "to provide a snapshot of the status of the laws and policies on issues that affect the [lesbian, gay, bisexual and transgender (LGBT) community]."²¹³ Two maps of interest, both updated June 10, 2014, address joint adoption and second parent adoption.²¹⁴ According to the Human Rights Campaign, same-sex couples can jointly petition to adopt statewide in 23 states and the District of Columbia: Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.²¹⁵

The Human Rights Campaign also shows that state-wide second-parent adoption is available to same-sex couples in 24 states and the District of Columbia: California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine,

²⁰⁵ FLA. STAT. § 63.022(1)-(5) (2003).

²⁰⁶ CHILD WELFARE INFORMATION GATEWAY, available at <https://www.childwelfare.gov/> (last visited Mar. 9, 2016).

²⁰⁷ CHILD WELFARE INFORMATION GATEWAY, *Laws and Policies*, available at <https://www.childwelfare.gov/topics/systemwide/laws-policies/>.

²⁰⁸ CHILD WELFARE INFORMATION GATEWAY, *Laws and Policies*, available at <https://www.childwelfare.gov/topics/systemwide/laws-policies/adoption/>.

²⁰⁹ *Id.*

²¹⁰ CHILD WELFARE INFORMATION GATEWAY, *supra* note 209.

²¹¹ ADOPTION SERVICES, *Child Adoption Laws*, <http://www.childadoptionlaws.com>.

²¹² HUMAN RIGHTS CAMPAIGN, *Maps of State Laws and Policies*, http://www.hrc.org/state_maps.

²¹³ *Id.*

²¹⁴ HUMAN RIGHTS CAMPAIGN, *Parenting Laws: Joint adoption*, http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/joint_adoption_6-10-2014.pdf.

²¹⁵ *Id.*

Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.²¹⁶

LAW REVIEW ARTICLES

Ragany, Meredith & Lindsey Wallace, *Adoption and Foster Care*.²¹⁷

Sanford N. Katz, *The Adoption of Baby Lenore: Problems of Consent and the Role of Lawyers*.²¹⁸

WEB PAGES

United States Department of Interior
Bureau of Indian Affairs
MS-4606-MIB
1849 C Street, N.W.
Washington, D.C. 20240
Telephone: (202) 208-5116
Telefax: (202) 208-6334
Website: <http://www.bia.gov/index.htm>

Among other things, the Bureau of Indian Affairs offers extensive programs covering the entire range of Federal, State, and local government services. Programs administered by either Tribes or Indian Affairs through the Bureau of Indian Education (BIE) include an education system, social services, natural resources management on trust lands, economic development programs law enforcement and detention services, and administration of tribal courts.

http://www.americanbar.org/groups/child_law/what_we_do/projects/rcjji/interstateplacements.html.²¹⁹

American Bar Association, National Child Welfare Resource Center on Legal and Judicial Issues, Center on Children and the Law.²²⁰

²¹⁶ *Id.*

²¹⁷ Meredith Ragany & Lindsey Wallace, *Adoption and Foster Care*, 14 GEO. J. GENDER & L. 281 (2013).

²¹⁸ Sanford N. Katz, *The Adoption of Baby Lenore: Problems of Consent and the Role of Lawyers*, 5 FAM. L.Q. 405 (1971).

²¹⁹ AMERICAN BAR ASSOCIATION, *Interstate Placements*, available at http://www.americanbar.org/groups/child_law/what_we_do/projects/rcjji/interstateplacements.html.

<http://adoption.state.gov/>.²²¹

Adoption.com²²² is a website that provides information on and links to all topics adoption. It is produced by Elavati, L.L.C., which explains itself thusly:

Elevati is focused on social entrepreneurship. We create digital ventures that make a profit and a difference for good in the world. We currently focus on causes such as: adoption, fertility, pregnancy and foster care. Our first website, Adoption.com was founded in Provo, Utah in 1997 and has since grown to be the world's most-used adoption service (source: Alexa.com). Our headquarters are currently in Rexburg, Idaho USA with one additional office in Pune, India.²²³

In addition to the convenient access to all fifty state statutes mentioned above, Adoption Services.org²²⁴ is a not-for-profit adoption agency founded in 1985, licensed in multiple states,²²⁵ which tries to help “a birth mother, birth father, and adopting family living in any state in the U.S. or living in any foreign country.”²²⁶ It offers free financial, medical, and emotional assistance and information to pregnant women and birth parents Whether they are placing a child for adoption or not. Adoption Services claims “there is never any cost or obligation on your part.”²²⁷ And provides information on a variety of topics on adoptions, including: Open or Closed,²²⁸ Agency or Private,²²⁹ Where to Start,²³⁰

²²⁰ AMERICAN BAR ASSOCIATION, *National Child Welfare Resource Center on Legal and Judicial Issues*, available at http://www.americanbar.org/groups/child_law/what_we_do/projects/rcjji.html.

²²¹ U.S. DEPARTMENT OF STATE, *Intercountry Adoption*, <http://adoption.state.gov/> (last visited March 18, 2016).

²²² ADOPTION.COM, <http://adoption.com/> (last visited March 9, 2016).

²²³ ELEVATI, *About*, <http://elevati.com/about/>.

²²⁴ Adoption Services, *supra* note 213.

²²⁵ Adoption Services, *About*, <http://www.chldadoptionlaws.com/about.htm>.

²²⁶ *Id.*

²²⁷ *About Birth Mothers*, ADOPTION SERVICES, http://www.adoption-services.org/birth_mother/about_birth_mothers.htm (last visited Feb. 16, 2016).

²²⁸ *Birth Mother Open Closed Adoption*, ADOPTION SERVICES, http://www.adoption-services.org/birth_mother/birth_mother_open_closed_adoption.htm (last visited Feb. 16, 2016).

²²⁹ *Birth Mother Adoption Privacy Agency*, ADOPTION SERVICES, http://www.adoption-services.org/birth_mother/birth_mother_adoption_private_agency.htm (last visited Feb. 16, 2016).

²³⁰ *Birth Mother Getting Started Adoption*, ADOPTION SERVICES, <http://www.adoption>

Selecting an Agency,²³¹ Birth Fathers Rights,²³² Safe and loving home,²³³ Selecting the Family,²³⁴ Types of Adoptions,²³⁵ Requirements,²³⁶ Waiting Periods,²³⁷ and Costs.²³⁸

Placing children across state lines for foster care and adoption presents unique legal issues due to involvement of multiple states, agencies, and occasionally multiple courts.²³⁹ These placements are primarily governed by the Interstate Compact on the Placement of Children (ICPC), an agreement between the states enacted in state law.²⁴⁰

The Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) promulgates rules and regulations to carry out the Compact.²⁴¹

The Human Rights Campaign²⁴² Works towards Lesbian, Gay, Bisexual, and Transgender Equal Rights.

National Indian Child Welfare Association (NICWA)²⁴³

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services.org/birth_mother/birth_mother_getting_started_adoption.htm (last visited Feb. 16, 2016).

²³¹ *Birth Mother Adoption Agency Selection*, ADOPTION SERVICES, http://www.adoption-services.org/birth_mother/birth_mother_adoption_agency_selection.htm (last visited Feb. 16, 2016).

²³² *Birth Father Rights*, ADOPTION SERVICES, http://www.adoptionservices.org/birth_mother/birth_father_rights.htm (last visited Feb. 16, 2016).

²³³ *Birth Mother Loving Family*, ADOPTION SERVICES, http://www.adoptionservices.org/birth_mother/birth_mother_loving_family.htm (last visited Feb. 16, 2016).

²³⁴ *Birth Mother Family Selection*, ADOPTION SERVICES, http://www.adoptionservices.org/birth_mother/birth_mother_family_selection.htm (“You have every right to choose the adopting family that you feel would be best for your baby and the right to be only as involved as you want in the selection.”) (last visited Feb. 16, 2016).

²³⁵ *Domestic Adoption Types*, ADOPTION SERVICES, http://www.adoptionservices.org/domestic_adoption_types/index.htm (Domestic, International, Agency, Private, Foster Care, Facilitator, Intrastate, Interstate Open, Closed.) (last visited Feb. 16, 2016).

²³⁶ *Adoption Requirements*, ADOPTION SERVICES, http://www.adoptionservices.org/domestic_adoption_types/adoption_requirements.htm (last visited Feb. 16, 2016).

²³⁷ *Adoption Waiting Period*, ADOPTION SERVICES, http://www.adoptionservices.org/adoption/adoption_waiting_period.htm (last visited Feb. 16, 2016).

²³⁸ *Adoption Costs*, ADOPTION SERVICES, http://www.adoptionservices.org/adoption/adoption_costs.htm (last visited Feb. 16, 2016).

²³⁹ *Interstate Placements*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/child_law/what_we_do/projects/rcjji/interstateplacements.html (last visited Feb. 16, 2016).

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² HUMAN RIGHTS CAMPAIGN, www.hrc.org/statelaws (last visited Feb. 16, 2016).

²⁴³ NATIONAL INDIAN CHILD WELFARE ASSOCIATION, <http://www.nicwa.org/staff/> (last visited Feb. 16, 2016).

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Based in Portland, Oregon, The National Indian Child Welfare Association (NICWA) is a private, nonprofit, membership organization which strives to be “a national voice for American Indian children and families,” a “comprehensive source of information on American Indian child welfare, and the only national American Indian organization focused specifically on the tribal capacity to prevent child abuse and neglect.” Members include tribes, Indian and non-Indian individuals, and private organizations.

Tribal Law and Policy Institute²⁴⁴

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The Tribal Law and Policy Institute is a “Native American owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs to promote and enhance justice in Indian country and the health, well-being, and culture of Native people.

The Institute facilitates the sharing of resources to help Indian Nations and tribal justice systems access cost effective resources, which can be adapted to meet the needs of their communities. It also strives to collaborate with law schools, Indian law clinics, tribal colleges, Native American Studies programs, Indian legal organizations and consultants, tribal legal departments, tribal courts, and other judicial/legal institutions to deliver appropriate services to Indian Country.

The Institute publishes The Tribal Law and Policy Institute has developed The Tribal Court Clearing House,²⁴⁵ a rich depository of readily accessible materials on the web.

EXPERTS

The Barry University Dwayne O. Andreas School of Law held an Adoption Law Seminar Friday, October 14, 2013. Featured speakers included Mark Fiddler, founding director of the Indian Child Welfare Law Center. Mr. Fiddler represented the adoptive parents in the 2013

²⁴⁴ TRIBAL LAW AND POLICY INSTITUTE, <http://www.home.tlpi.org/#!contact/c12xx> (last visited Feb. 16, 2016).

²⁴⁵ *Tribal Court Clearinghouse*, TRIBAL LAW AND POLICY INST., <http://www.tribal-institute.org> (last visited Feb. 24, 2016).

Baby Veronica case before the U.S. Supreme Court. The case led to a major interpretation involving the Indian Child Welfare Act (ICWA).

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Also on the panel was Nick DeMartino, Esq. Mr. DeMartino is the adoptive father in the “case that rocked the adoption cradle,”²⁴⁶ one of the nation’s first prominent adoption-rights cases, *People ex rel. Scarpetta v. Spence-Chapin Adoption Service*.²⁴⁷

In 1970, Mr. and Mrs. Demartino adopted Baby Lenore. After the child’s biological mother sued to regain custody, a lengthy court battle ensued, resulting in key changes to New York law and the Uniform Child Custody Jurisdiction Enforcement Act. Countless press and law review articles²⁴⁸ have been written about the saga of Baby Lenore. Mrs. Lenore recounted the tale in *Strangers to the Blood*,²⁴⁹ a title taken from one judge’s reason why the Demartinos shouldn’t be able to keep the baby.

Now a resident of South Florida, Mr. DeMartino remains an active advocate for children’s causes.

Joining Messers Demartino and Fiddler was Michele Nelson, who served as an appellate attorney for the adoptive parents in the landmark Florida Baby Emily²⁵⁰ case in 1995.

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Barristers Building
1615 Forum Place, Suite 500

²⁴⁶ Kathryn Casey, *The Case of Baby Lenore 25 Years Later*, LADIES HOME JOURNAL, Aug. 1, 1995, available at <http://business.highbeam.com/3825/article-1G1-17236900/case-baby-lenore-25-years-later>.

²⁴⁷ *People ex rel. Scarpetta v. Spencer-Chapin Adoption Serv.*, 28 N.Y.2d 185, 186 (1971).

²⁴⁸ See Sanford N. Katz, *The Adoption of Baby Lenore: Problems of Consent and the Role of Lawyers*, 5 FAM. L. Q., 405 (1971), available at http://works.bepress.com/sanford_katz/72/.

²⁴⁹ JEAN DEMARTINO, *STRANGERS TO THE BLOOD* (Henry Greenfield ed., 2nd ed. 2012).

²⁵⁰ *In re the Adoption of Baby E.A.W.*, 658 So. 2d 961 (Fla. 1995).

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On the panel too, was Patricia Strowbridge, former president and current member of the Executive Board of the Florida Adoption Council. Ms. Strowbridge currently serves as the Executive Director of A Chosen Child, Inc., a Florida licensed non-profit child placing agency. Practicing law for over 25 years, she was the primary author of the 2003 Florida Adoption Reform Act and has been involved with more than 800 adoption finalizations.

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Facebook: <https://www.facebook.com/adoptionsurrogacyandfamily>
Twitter: <https://twitter.com/ASFLF2013>

Next on the panel was Linda J. Barnby, an adoption attorney for more than 20 years, created the Adoption Match Book website for young women facing unplanned pregnancies to get information they need to make healthy decisions for themselves and their baby.

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Rounding out the panel was Marsha Freeman, Professor of Law, at Barry University Dwayne O. Andreas School of Law and Coordinator of the Barry Child and Family Law Certificate Program. Professor Freeman teaches in the Family Law area and writes on legal, social, and economic issues facing American families. She is an advocate of Collaborative Law and Therapeutic Jurisprudence.

Professor Marsha B. Freeman
Barry University School of Law
6441 East Colonial Drive
Orlando, Florida 32807
Telephone: 321.206.5364
Email: mfreeman@barry.edu

Other experts and associations that should not be overlooked include the following:

American Bar Association,
Section of Family Law
321 N. Clark Street
Chicago, Illinois 60654
Phone: (312) 988-5145
Fax: (312) 988-6800
E-mail: familylaw@americanbar.org

The Section of Family Law has nearly 10,000 lawyers, associate and law student members worldwide. Our members are dedicated to serving the field of family law in areas such as adoption, divorce, custody, military law, alternative families, and elder law.²⁵¹

National Council For Adoption
225 N. Washington Street
Alexandria, Virginia 22314
Telephone (703) 299-6633
Email: ncfa@adoptioncouncil.org

Passionately committed to the belief that every child deserves to thrive in a nurturing, permanent family, NCFA's mission is to meet the diverse needs of children, birthparents, adopted individuals, adoptive families, and all those touched by adoption through global advocacy, education, research, legislative action, and collaboration. Our vision is a world in which all children everywhere have nurturing, permanent families.²⁵²

²⁵¹ *Section of Family Law*, AM. BAR ASSOC., http://www.americanbar.org/groups/family_law.html (last visited Feb. 25, 2016).

²⁵² *Who We Are*, NAT'L COUNCIL FOR ADOPTION, <http://www.adoptioncouncil.org/who-we-are/mission> (last visited Feb. 25, 2016).

American Academy of Adoption Attorneys (AAAA)
P.O. Box 33053
Washington, DC 20033
Phone: 202.832.2222
Email: president@adoptionattorneys.org
Information Requests: info@adoptionattorneys.org
Website: <http://www.adoptionattorneys.org/aaaa/home>

The American Academy of Adoption Attorneys (AAAA) is an Academy of approximately 340 members throughout the U.S. and Canada who are experts in the complexities of adoption law and the variety of interstate and international regulations surrounding adoption.²⁵³

Membership is invitational. Fellows all have acted as counsel in at least 50 adoption proceedings, including 10 interstate placements, and must maintain their practice according to the highest standards of ethics, competence and professionalism. The AAAA is a not-for-profit organization. It has a number of committees dedicated to the improvement of adoption law and its ethical practice. Among others, the committees include the Adoption Agency Practice, Assisted Reproduction, Ethics, Legislative, International Adoption, Interstate Compact and Internet Communications.²⁵⁴

American Adoption Congress
PO Box 42730
Washington, DC 20015²⁵⁵

The American Adoption Congress believes that growth, responsibility, and respect for self and others develop best in lives that are rooted in truth. The AAC is therefore committed to achieving changes in attitudes, policies, and legislation that will guarantee access to identifying information for all adoptees and their birth and adoptive families.

²⁵³ *Why an Adoption Attorney*, AM. ACAD. OF ADOPTION ATTORNEYS, <http://www.adoptionattorneys.org/aaaa/academy-info/why-an-adoption-attorney> (last visited Feb. 25, 2016).

²⁵⁴ *Id.*

²⁵⁵ *Mission & Goals*, AM. ADOPTION CONG., http://www.americanadoptioncongress.org/mission_goals.php (last visited Feb. 25, 2016).

The AAC believes that all children have the same core of basic needs, and that these needs can be met most easily when children can grow up in the family into which they were born. Every effort should be made to preserve the integrity of this family. When birth families are unable to meet the ongoing needs of children born to them, however, we believe that adoption provides the best alternative—provided the adoptions are humane, honest, and rooted in the understanding that adoption does not erase a child’s connections to the family into which they were born. We believe that those who have lived the adoption experience are in the best position to articulate the importance of these conditions and to bring about an adoption system that is based on them.²⁵⁶

Concerned United Birthparents (CUB)
P.O. Box 5538
Sherman Oaks, California 91413
Phone: (800) 822-2777
Fax: (858) 712-3317
Website: <http://www.cubirthparents.org/>

Concerned United Birthparents (CUB) claims to be the:

only national organization focused on birthparents – their experiences, healing and wisdom. CUB serves all those touched by adoption and all who are concerned about adoption issues. Although our focus is on birthparents, long the forgotten people of the adoption community, we welcome adoptees, adoptive parents, and professionals. We find that we all have much to learn from each other and that sharing our feelings and experiences benefits all of us.

Each year, CUB hosts a healing retreat for all members of the adoption triad, and all who are interested in learning more about the adoption experience. We usually meet by the shore so there is beauty and space for reflection and rest in between our sessions. You won’t find the schedule packed with too many choices. We focus on a core program so we can make the most of our annual time together.²⁵⁷

²⁵⁶ *Id.*

²⁵⁷ *Who We Are*, Concerned United Birthparents, http://www.cubirthparents.org/who_we_are.php (last visited Feb. 25, 2016).

Child Welfare League of America, Inc.
1726 M St. NW, Suite 500
Washington, DC, 20036
Phone: 202-688-4200
Fax: 202-833-1689
Email: cwla@cwla.org

The Child Welfare League of America (CWLA) is a coalition of hundreds of private and public agencies serving children and families. They hope to lend expertise and leadership on policies, programs, and practices to help improve the lives of children across the country. Its mission is to lead and engage its network of public and private agencies and partners to advance policies, best practices and collaborative strategies to determine better outcomes for children, youth, and families.

National Council For Adoption (NCFA)
225 N. Washington St.
Alexandria, Virginia 22314-2561
Phone: 703.299.6633
Facebook: <https://www.facebook.com/AdoptionCouncil>
Twitter: <https://twitter.com/adoptioncouncil>
YouTube: <https://www.youtube.com/user/Adoptioncouncil>
Blog: <http://www.adoptioncouncilblog.org/>
Flickr: <https://www.flickr.com/photos/adoptioncouncil>

Founded in 1980, the National Council For Adoption is a nonprofit organization promoting adoption through education, research, and legislative action. It offers adoption professionals, counselors, and healthcare workers training on how to better serve children and families.

Passionately committed to the belief that every child deserves a loving, permanent family, they focus on infant, out of foster care, and intercountry adoptions as they serve children, birthparents, adoptive families, adoption agencies, U.S. and foreign governments, policymakers, media, and the general public.