

Comment,
OPEN ADOPTION

I. Introduction

Historically, formal adoptions in the United States have been deemed “closed” because the parties do not receive any identifying information about each other.¹ Adoption agencies maintained strict secrecy to protect the reputations of all involved. Social stigma surrounding children born out of wedlock, which for many years was a major factor in single mothers putting children up for adoption, called for protecting the identity and dignity of those who were adopted.² Disclosure of information was perceived as a threat to the unity of the adoptive family.³

Gradually, changes in society’s view of illegitimacy lead to the development of a new concept called “open adoption.” Single mothers, no longer ashamed of their circumstances, began to develop support groups to manage their grief after putting their children up for adoption.⁴ The idea of allowing these mothers to maintain contact or communication with the child and the adopted family after finalization of adoption seemed to ease the pain of separation.⁵ In 1975, the concept of open adoption was presented to the professional community for the first time when Annette Baran spoke on the topic at a meeting of the American Orthopsychiatric Association.⁶ She defined open adoption as “one in which the birth parents meet the adoptive parents, participate in the separation and placement process, relinquish all legal, moral and nurturing rights to the child, but retain the right to continue contact and knowledge of child’s whereabouts and welfare.”⁷ Over the next twenty-five years, open adoption, and

¹ Ellen Waldman, *What Do We Tell the Children?*, 35 CAP. U. L. REV. 517, 520-521 (2006).

² BARBARA MELOSH, STRANGERS AND KIN: THE AMERICAN WAY OF ADOPTION 123 (2002).

³ Waldman, *supra* note 1, at 522.

⁴ E. WAYNE CARP, FAMILY MATTERS: SECRECY AND DISCLOSURE IN THE HISTORY OF ADOPTION 197 (1998).

⁵ *Id.*

⁶ *Id.*, at 198.

⁷ *Id.*

the effects on the parties involved, continued to be a hot topic of discussion, in both the legal community and the adoption world.

This Comment will describe the current status of open adoption in the United States. Part II will look at open adoption today, including general definitions and different level of openness. Part III will address open adoption from a legal standpoint, and focus on the varying positions of state statutes. Part IV explores the possible positive and negative effects open adoption can have on the parties involved, and Part V will examine case studies of birth mothers, adoptive parents and adopted children who have participated in open adoptions.

II. Open Adoption Today

Open adoption is a general term that encompasses a multitude of circumstances. An adoption may be considered open solely based on the fact that the birth mother is involved in the process of selecting the adoptive family, regardless of whether she has any further contact with them or the child.⁸ The birth mother may receive annual updates on the child's well-being, including pictures or phone calls, or even occasionally visit the child.⁹ Essentially, the specific terms of an open adoption will fall somewhere on a spectrum, depending how much contact and involvement the birth family is to have with the child after the adoption has been finalized.¹⁰ The openness may be as limited as selecting the adoptive parents or as extreme as the child having a close, continuing relationship with all members of the birth family.¹¹ The level of openness in an open adoption depends on the needs and interests of the parties involved.¹² "The goals of open adoption are: to minimize the child's loss of relationships, to maintain and celebrate the adopted child's connections with all the important people in his or her own life, and to allow children to resolve losses with truth, rather than fantasy."¹³ Once the par-

⁸ Amy Doherty, *A Look at Open Adoption*, 11 J. CONTEMP. LEGAL ISSUES 591, 592 (1997).

⁹ *Id.*

¹⁰ Gregory Franklin, *Openness in Adoption*, PLI Order No. 8637, WL 207 PLI/Crim 293 (Dec. 2006).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

ties involved decide that open adoption is right for them, it is necessary to evaluate the circumstances and determine what level of openness is most appropriate. Due to the all-encompassing nature of the general term “open adoption,” the parties should be extremely specific when communicating their expectations of where the adoption should fall on the spectrum of openness. It is important that, over time, the parties continue to reevaluate their expectations and needs.¹⁴ As the child matures, and the relationships between the parties develop or change, so will the suitable amount of visitation or communication.¹⁵

As open adoption became more widely known in the adoption community, this prompted the concept of opening closed adoptions. Adoptive parents may opt to open an adoption for a variety of reasons, but the most common is developing an understanding that their child needs to know where they came from.¹⁶ The process of opening a closed adoption must be a mutual decision by the birth mother and the adoptive parents. The adults must remember that this can be a difficult transition for the child and should only make such a decision when everyone involved is prepared.¹⁷ Ideally, this process takes place prior to the child becoming a teenager, to avoid overwhelming struggle with identity.¹⁸ The key to opening an adoption is to very clearly define the roles and expectations of everyone involved, especially the birth mother, allowing the child to more easily comprehend the new dynamic.¹⁹

III. Legal Aspects of Open Adoption

A. Open Adoptions With Informal Agreements

Open adoptions may be achieved through an informal, verbal agreement between the parties.²⁰ The adoptive parents may

¹⁴ Annette Baran & Reuben Pannor, *Perspectives on Open Adoption* 119, 121, available at http://www.futureofchildren.org/usr_doc/vol3no1ART8.PDF.

¹⁵ *Id.*

¹⁶ MICKY DUXBURY, *MAKING ROOM IN OUR HEARTS: KEEPING FAMILY TIES THROUGH OPEN ADOPTION* 83 (2007).

¹⁷ *Id.* at 85.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Child Welfare Information Gateway, *Postadoption Contact Agreements Between Birth and Adoptive Families* 1, available at <http://www.childwelfare.org>.

agree, for example, to send the birth mother a picture every year on the child's birthday. However, in these situations, whether to fulfill the terms of the agreement is left to the discretion of the adoptive parents, since they are the ones with legal rights to the child.²¹ Birth parents involved in the agreement, whose legal rights are terminated as soon as the adoption is finalized, are left to hope that the adoptive parents will keep their word.²² For this reason, some birth parents will look to a written agreement in hopes of legally preserving some right of visitation or contact with the child. These written agreements, generally referred to as post adoption agreements or post adoption contact agreements, set out the parameters of the open adoption desired by the parties.²³

B. *Post Adoption Contact Agreements*

Post adoption contact agreements allow the parties to tailor an open adoption to their specific needs. The agreement may provide a schedule for visitation and communication between the child and the birth parents. In some cases, the agreement may also set guidelines allowing visitation with other birth relatives, including grandparents and siblings.²⁴ The parties may also want to provide for the exchange of medical information, cultural background and customs, or any other information or documentation that may be beneficial to the healthy development of the child.²⁵ While no state has explicit statutory language prohibiting post adoption contact between an adopted child and birth relatives, not every state has openly embraced the concept of birth parents contracting for rights of visitation after parental rights have allegedly been terminated.

In many cases, the adoptive parents and the birth parents enter into post adoption contact agreements and never run into any complications or disagreements. Contact may continue for years after the adoption is finalized, or the parties may agree

gov/systemwide/laws_policies/statutes/cooperative.pdf (last visited May 9, 2008).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ *Id.*

over time to go their separate ways. Problems arise when one party wants to continue with the terms of the agreement, but the other party no longer finds those terms suitable. In the majority of these conflicts, the adoptive parents determine, for a variety of reasons, that contact with the birth parents or family is no longer what is best for the child. There is no clear majority among states as to if, how, and when these post adoption contact agreements should be legally enforceable. Twenty-two states currently have statutes explicitly providing for enforceable post adoption contact agreements.²⁶ However, these statutes greatly vary on what requirements are necessary to make the agreement valid and enforceable. Many of the states only provide for enforceable post adoption contact agreements only under narrow circumstances.

1. *Enforceable*

States that recognize post adoption contact agreements provide various legal reasons and public policy concerns for doing so. In general, the issues addressed by these jurisdictions include whether the court must approve the agreement, when the court will enforce the terms of the agreement, and when the agreement may be modified or terminated. While statutes of states allowing for such agreements vary, the majority of them contain certain basic elements.

There are generally two requirements that must be met for a court to recognize a post adoption agreement. First, the agreement needs to be in writing and signed by each party.²⁷ Second, the court must approve the terms of the agreement.²⁸ Courts

²⁶ ARIZ. REV. STAT. ANN. § 8-116.01(E) (2008); CAL. FAM. CODE § 8616.5 (WEST 2008); CONN. GEN. STAT. ANN. § 45a-715(j) (2008); FLA. STAT. ANN. § 63.0427 (2008); IND. CODE § 31-19-16-4 (2008); LA. CHILD. CODE ANN. art. 1269.5 (2008); MD. CODE ANN., FAM. LAW. § 5-308(f)(1) (2008); MASS. GEN. LAWS ANN. ch. 210, § 6C (2007); MINN. STAT. § 259.58(c) (2008); MONT. CODE ANN. § 42-5-301 (2007); NEB. REV. STAT. § 43-160 (2007); NEV. REV. STAT. ANN. § 127.189 (2008); N.H. REV. STAT. ANN. § 170-B:14 (2008); N.M. STAT. ANN. § 32A-5-35(E) (2008); N.Y. DOM. REL. LAW § 112-b (2008); OKLA. STAT. ANN. tit. 10 § 7505-1.5 (2008); OR. REV. STAT. ANN. § 109.305 (2007); R.I. GEN. LAWS § 15-7-14.1(d) (2008); TEX. FAM. CODE ANN. § 161.2061(c) (2008); VT. STAT. ANN. tit. 15A § 4-112(e) (2008); WASH. REV. CODE ANN. § 26.33.295(4) (2008); W. VA. CODE § 48-22-704(e) (2008).

²⁷ See, e.g., MASS. GEN. LAWS ANN. ch. 210, § 6C(iv) (West 2007).

²⁸ See, e.g., OR. REV. STAT. ANN. § 109.305(2) (West 2007).

vary on when they will approve agreements. Courts may require that the agreement be approved by the court and incorporated into the final adoption decree.²⁹ Some states allow parties to enter into a post adoption agreement outside of the adoption decree, which courts may recognize as an independent contract.³⁰ If the child to be adopted is over the age of twelve, a court may require the child's written consent before approving a post adoption contact agreement.³¹ The ultimate factor in determining whether a court will approve a post adoption agreement is a finding by the court that the terms of the agreement are in the best interests of the child to be adopted.³² When making a best interest determination in cases involving a post adoption contact agreement, the finding should be "based on emotional bonding and other circumstances of the actual personal relationship of the child and not the biological parent, [and not on] the rights of the biological parent nor the legal consequences of their natural relation."³³

The most typical situation where enforcement of a post adoption contact agreement becomes an issue is when the adoptive parents no longer want to comply with the terms, and the birth mother or birth parents turns to the court for help. When an agreement has been incorporated into the final decree, the court will maintain jurisdiction on issues surrounding the terms of that agreement.³⁴ States vary greatly in when and if the terms of a post adoption contact agreement will be enforced. Generally, courts will only enforce the terms of an agreement when doing so would be in the best interests of the child.³⁵ Several states that will enforce post adoption contact agreements statutorily require that the party seeking to enforce make a good faith effort to settle the conflict through mediation before filing anything with the court.³⁶ The opinion of the adoptive parents is often given the greatest weight in enforcement situations. Courts

²⁹ See, e.g., N.M. STAT. ANN. § 32A-5-35(A) (West 2008).

³⁰ See, e.g., MASS. GEN. LAWS ANN. ch. 210, § 6C(d).

³¹ See, e.g., *id.* at § 6C(c)(iv).

³² Laurie Ames, *Open Adoptions: Truth and Consequences*, 16 LAW & PSYCHOL. REV. 137, 141 (1992).

³³ *In re Adoption of Vito*, 728 N.E.2d 292, 302 (Mass. 2000).

³⁴ See, e.g., ARIZ. REV. STAT. ANN. § 8-116.01(G) (2008).

³⁵ See, e.g., MD. CODE ANN., FAM. LAW. § 5-308(f)(1) (West 2008).

³⁶ See, e.g., ARIZ. REV. STAT. ANN. § 8-116.01(G).

tend to defer to the adoptive parents in having the most accurate knowledge as to what will be best for the child. However, the adoptive parents do not always have the final say. In certain circumstances, and after finding enforcement of the post adoption contact agreement is in the best interest of the child, courts will hold the adoptive parents to the terms to which they agreed.³⁷ The Supreme Court of Montana enforced a post adoption contact agreement against the wishes of adoptive parents, pointing out that by entering into a written agreement with the natural mother, the adoptive parents “specifically bargained for the right of visitation and voluntarily signed a written notarized agreement which provided the terms of the visitation arrangement.”³⁸ Enforcement of such agreements prevents adoptive parents from agreeing to terms of visitation as a method of coercing birth parents’ relinquishment of rights, with no intention of fulfilling those terms. However, the majority of statutes permitting enforceable agreements will not allow birth mothers to withdraw a consent to termination of parental rights or adoption, nor invalidate the adoption if adoptive parents choose not to abide by the terms of the post adoption consent agreement.³⁹

Post adoption contact agreements most commonly provide post adoption visitation or communication between the natural mother or parents and an adopted child. Some states will order post adoption visitation or communication with other birth relatives, such as grandparents or siblings, provided that such contact is in the best interest of the child.⁴⁰ Courts will generally only order post adoption visitation or communication with a child and birth relatives when the child has formed some type of bond with the relatives.⁴¹ Separation from those relatives, along with the transition into the new adoptive family, may cause further emotional distress to the child. The ability to maintain contact with birth relatives may help the child ease the transition into the adoptive family.

³⁷ Groves v. Clark, 982 P.2d 446, 448 (Mont. 1999).

³⁸ Groves, 982 P.2d at 448.

³⁹ See, e.g., ARIZ. REV. STAT. ANN. § 8-116.01(F); FLA. STAT. ANN. § 63.0427(1); MD. CODE ANN., FAM. LAW. § 5-308(d); OR. REV. STAT. ANN. § 109.305(7).

⁴⁰ See, e.g., OR. REV. STAT. ANN. § 109.305(3).

⁴¹ *Id.*

Changes in circumstances often lead to one or both parties desiring to modify or even terminate the post adoption contact agreement. In situations where both parties agree to the amendment, the courts need not be involved. If the parties do not agree that some change is necessary, they will often look to the courts. As with enforcement of post adoption contact agreements, courts require a modification or termination to be in the best interests of the child.⁴² States vary on what other additional factors or elements are necessary. Approval to modify or terminate by the adoptive parents often greatly influences the decision of the court. However, generally modification or termination may only occur if a party can show that since the agreement was entered into, circumstances require such a change.⁴³ This provides birth mothers the opportunity to have a voice in modification or termination decisions. States will often require, as with enforcement of agreements, that parties attend mediation and make a good faith effort to settle before filing anything with the court.⁴⁴ Approval of the modification or termination by all involved parties may be required before the court will approve such an alteration to the original agreement.⁴⁵

2. *Unenforceable*

Several states have taken the position that post adoption contact agreements are not legally valid and should not be legally enforced by the courts. This is achieved in a variety of ways. The current statutes of twenty-one states simply remain silent on the issue of post adoption contact agreements.⁴⁶ One state simply provides that post adoption contact is not prohibited.⁴⁷ Three states leave all issues of post adoption visitation and communication between the child and the birth parents solely to the discre-

⁴² See, e.g., IND. CODE § 31-19-16-6 (2008); N.M. STAT. ANN. § 32A-5-35(E) (2008); WASH. REV. CODE ANN. § 26.33.295(4) (2008).

⁴³ See, e.g., ARIZ. REV. STAT. ANN. § 8-116.01(H)(2).

⁴⁴ See, e.g., CAL. FAM. CODE § 8616.5 (2008).

⁴⁵ See, e.g., MINN. STAT. § 259.58(c)(1) (2008).

⁴⁶ Including Alabama, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Michigan, Mississippi, New Jersey, North Dakota, Pennsylvania, Utah, Virginia, Wisconsin, and Wyoming.

⁴⁷ ALASKA STAT. § 25.23.130(c) (2008).

tion of the adoptive parents.⁴⁸ Three states have statutes explicitly stating that agreements for post adoption contact of any form are unenforceable.⁴⁹ In these situations, any party is free to withdraw from the open adoption at any time, with no consequences.⁵⁰

States have provided several different public policy reasons for failing to recognize or enforce post adoption contact agreements. One reason for refusing to enforce these agreements is the belief that they contravene the intent of the adoption laws. For a child to be adopted, the legal rights of the birth parent or parents must legally be terminated. Those legal rights are then transferred to the adoptive parents. Some courts have found it extremely contradictory to then turn around and give the birth parents rights of visitation or contact.⁵¹ Once the child has been adopted, the birth parents do not have any legal rights with regard to that child.⁵² Another reason for not enforcing such agreements is the idea that doing so threatens the security and autonomy of the adoptive family. The goal of adoption, and the laws which create adoption, is to provide and legally create a new family for the child.⁵³ Intervention by the birth parents threatens the unity of this new family.⁵⁴ According to certain states, it is vital to protect the rights of the adoptive parents.⁵⁵

IV. Potential Benefits and Risks of Open Adoption

There is a great debate in the United States today regarding whether open adoption is best for the children and families involved. Professional opinions concerning open adoption shed light on both positive and negative elements. Case studies and

⁴⁸ MO. ANN. STAT. § 453.080.4 (2007); S.D. CODIFIED LAWS § 25-6-17 (2007); TENN. CODE ANN. § 36-1-121(f) (2007).

⁴⁹ N.C. GEN. STAT. § 48-3-610 (2007); OHIO REV. CODE ANN. § 3107.65 (2008); S.C. CODE ANN. § 20-7-1770(D) (2007).

⁵⁰ See, e.g., OHIO REV. CODE ANN. § 3107.65(C).

⁵¹ In the Interest of C.R.H., 620 N.W.2d 175, 179 (N.D. 2000).

⁵² See generally, *Birth Mother v. Adoptive Parents*, 59 P.3d 1233, 1236 (Nev. 2002) (Maupin, J. concurring in part and dissenting in part).

⁵³ *In re the Adoption of Child by W.P.*, 748 A.2d 515, 521 (N.J. 2000).

⁵⁴ *Id.*

⁵⁵ *Id.*

interviews of birth mothers, adoptive parents and adopted children involved in open adoptions have provided a wide range of outcomes and expectations. Each birth mother, child and adoptive mother and father is different, making it extremely hard to predict when open adoption is the right choice. Essentially, parties need to educate themselves on the options available, determine what is best for everyone, but most importantly, determine what is best for the future of the child to be adopted.

A. *Birth Mothers*

Typically, the process of open adoption essentially begins with the birth mother. Once she has made a decision that keeping the child is not an option, she may then turn to the possibility of giving the child up for adoption. She may decide that she wants to help select the adoptive parents and may even look for a family that will continue to let her be a part of the child's family in some way. There are several ways open adoption can benefit the birth mothers. Open adoption may ease the pain and anguish that mothers giving a child up for adoption inevitably experience.⁵⁶ Participating in the selection of the adoptive family provides the birth mother a sense of comfort and relief, knowing the child is being placed in a loving family.⁵⁷ A sense of control may come with playing a part in selecting the adopting family, reinforcing that adoption was the best decision for the child.⁵⁸ Any form of contact or communication, from pictures to visits, will likely provide the birth mother with comfort, knowing the child was placed in a loving family.⁵⁹

However, in some cases, open adoption makes the decision of giving up a child harder on the birth mother and can result in negative feelings about the process. Continued communication and contact with the child may prevent the birth mother from moving forward with her life. The birth mother may have agreed to a schedule of visitation or communication with the child, but over time she may desire more contact with the child.⁶⁰ At the same

⁵⁶ Marianne Berry, *Risks and Benefits of Open Adoption* 125, 127, available at http://www.futureofchildren.org/usr_doc/vol3no1ART9.PDF.

⁵⁷ *Id.*

⁵⁸ LOIS GILMAN, *THE ADOPTION RESOURCE BOOK* 116 (1998).

⁵⁹ *Id.*

⁶⁰ Berry, *supra* note 56, at 131.

time, she likely does not want to aggravate the adoptive parents or interfere with the dynamic of the adoptive family.⁶¹ The reasons that lead to the placement of the child may be lost in the pain of giving up the child and result in a deep questioning, and possibly regret, of the decision.⁶² Mothers may have a hard time understanding where they fit into the child's life after the adoption.⁶³ Failure to realize and accept that she is not the mother figure in the child's life may lead to confusion and emotional turmoil. While the well-being of the child should be the ultimate factor when choosing open adoption, birth mothers should also contemplate how well they will emotionally deal with the arrangement before entering into any type of agreement.

B. *Adoptive Parents*

Open adoption may also provide benefits to the adoptive parents. A sense of approval may come with knowing the birth mother was actively involved in the selection process.⁶⁴ Being personally selected to take as the family that is best for the child may immediately provide a sense of belonging. Friends and family members may not agree with the decision to enter into an open adoption and therefore fail to support the adoptive parents' decision.⁶⁵ Some adoptive parents fear that a birth mother may come to regret her decision of giving her child up for adoption and come back to "reclaim" the child.⁶⁶ Allowing the birth mother to be a part of the child's life, and see how happy the child is with the adoptive parents, may alleviate these fears.⁶⁷ Any relationship with the birth mother or parents will likely facilitate the adoptive parents in explaining adoption to the child.⁶⁸ When the adoptive parents have an understanding of the birth mother's story and why she decided upon adoption, it is often easier to answer questions the child may have.⁶⁹ If the mother

⁶¹ Barbara Yngvesson, *Negotiating Motherhood: Identity and Difference in "Open" Adoptions*, 31 *LAW & SOC'Y REV.* 31, 54 (1997).

⁶² Berry, *supra* note 56, at 131.

⁶³ *Id.*

⁶⁴ GILMAN, *supra* note 58, at 115.

⁶⁵ *Id.* at 117.

⁶⁶ *Id.* at 115.

⁶⁷ *Id.* at 115-116.

⁶⁸ *Id.* at 115.

⁶⁹ *Id.* at 116.

does later come to regret her decision, there is often little recourse in the courts. Even failure of the adoptive parents to comply with any agreement to visitation or communication will not provide a birth mother with grounds to revoke her consent or the adoption.⁷⁰ However, even if the adoptive parents' rights are protected legally, a birth mother yearning to get her child back may disrupt the lives of the adoptive parents and the child. The fear of a birth mother constantly showing up and interrupting the child's life may pose a threat to adoptive parents, and prevent them from forming a bond with the child.⁷¹ If adoptive parents feel they will not have autonomy when raising their adoptive child, the number of parents willing to adopt may ultimately decline.⁷²

C. *Adopted Children*

There are many ways that open adoption can positively affect adopted children. Children who have been adopted may feel a sense of not belonging and wonder about the biological family they left behind. Open adoption prevents children from constantly questioning who they are and how they fit into the world.⁷³ Allowing the children the ability to communicate with the birth parents allows immediate and constant access to any information about which they may be curious.⁷⁴ Open adoption provides children with opportunities to learn about who they are, without guilt or concern that such communication is a betrayal to their adoptive family.⁷⁵ Removing the element of secrecy surrounding the birth parents and birth family allows children a chance to understand and accept their place in the world.⁷⁶ Children may also benefit from hearing directly from the birth mother how she arrived at the decision that adoption was best.⁷⁷ Understanding the circumstances surrounding the adoption may

⁷⁰ See, e.g., ARIZ. REV. STAT. ANN. § 8-116.01(F); FLA. STAT. ANN. § 63.0427(1); MD. CODE ANN., FAM. LAW. § 5-308(d); OR. REV. STAT. ANN. § 109.305(7).

⁷¹ Berry, *supra* note 56, at 128.

⁷² Ames, *supra* note 32, at 150.

⁷³ Berry, *supra* note 56, at 128.

⁷⁴ GILMAN, *supra* note 58, at 114.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 116.

show the child that the decision was made because the birth mother wanted the best for the child, not because she did not care for the child.⁷⁸ Ideally, the child will come to realize that both the birth mother and relatives and the adoptive parents love them, providing an extended support network on which the child may rely.⁷⁹

Older children of adoption can benefit from open adoption in additional ways. These children have likely formed some type of bond with their birth parents and possibly with other relatives such as siblings and grandparents. Suddenly severing the connection with these birth relatives once the adoption is finalized is almost always going to be detrimental to the emotional well-being of the child. Relationships with people from the child's past may minimize feelings of abandonment and strengthen the child's self-esteem as he or she transitions into the adoptive family.

There are potential risks for children in open adoptions. Children may have difficulty connecting with the adoptive parents while the birth mother or parents are still involved in their lives.⁸⁰ Additionally, as the child grows, confusion may develop as the child attempts to fit in with two separate families. Balancing the, possibly very different, value systems of the two families may present difficulty as the child develops.⁸¹ There is always a risk that the birth mother or relatives may choose not to maintain contact with the child as time goes by. In that situation, it is likely the child will feel abandoned and rejected, and struggle to cope with losing those relationships. The child may then, once again, have to adjust his or her sense of belonging, both in the adopted family and the world.

Open adoption is a relatively new concept, and only continued research will illustrate the long-term effects of open adoption. Deborah H. Siegel conducted a study of twenty-one adoptive parents over a seven-year period.⁸² Seven years after entering into an open adoption with their child's natural mother

⁷⁸ Ames, *supra* note 32, at 145.

⁷⁹ Berry, *supra* note 56, at 128.

⁸⁰ *Id.* at 129.

⁸¹ *Id.*

⁸² Deborah H. Siegel, *Open Adoptions of Infants: Adoptive Parents' Feelings Seven Years Later*, 48 *SOCIAL WORK* 409 (July 2003).

or parents, not one of the adoptive parents desired less openness.⁸³ Additionally, none of the adoptive parents reported any of the tribulations opponents associate with open adoption, such as feeling threatened by the child's natural family.⁸⁴ However, researchers have conducted only limited long-term research and the results of such research are extremely diverse.⁸⁵ Comprehending the application of the research that has been done can present difficulties because of the varying levels of openness among families of open adoption.⁸⁶

V. Case Studies

A. *Debbi, Danny and Diane*

In the book *Making Room in Our Hearts: Keeping Family Ties Through Open Adoption*, Mickey Roxbury shares the experiences of more than 150 individuals involved in open adoption.⁸⁷ Roxbury, a marriage and family therapist, collected information from birth parents, birth grandparents, adoptive families and adopted children concerning their experiences and feelings about open adoption.⁸⁸ As an adoptive mother herself, Roxbury hoped her book would help couples considering open adoption, and addresses common concerns associated with the process.⁸⁹ The book advocates focusing on the child and the positive effects open adoption may have on his or her emotional development.⁹⁰ Sharing the experiences of individuals involved in the process allows readers a chance to understand the dynamics of those involved in an open adoption.

Debbi gave her son up for adoption in the early 1980's.⁹¹ She had no information about who the adoptive parents were and was persuaded by the nurses not even to see him after giving birth.⁹² Struggling with her decision, Debbi bottled up her feel-

⁸³ *Id.* at 415.

⁸⁴ *Id.* at 416.

⁸⁵ Baran & Pannor, *supra* note 14, at 122.

⁸⁶ Siegel, *supra* note 82.

⁸⁷ See DUXBURY, *supra* note 16, at xi.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*, at 17.

⁹² *Id.*

ings.⁹³ However, years later when she married and had another child, she began to wonder about the son she had given up.⁹⁴ Debbi contacted the adoption agency with her concerns and later received a letter from the adoptive mother, Diane.⁹⁵ Diane and Debbi began communicating and five years after giving him up for adoption, Debbi met Danny.⁹⁶ Diane, Danny's adoptive mother, felt it was important that Debbi be a part of Danny's life.⁹⁷ She felt that Danny needed to understand where he came from, and with Diane in his life, he would not be left wondering and searching later.⁹⁸ Diane is clear in her feeling that one of the most important factors of open adoption is the understanding that it does not divide parenting.⁹⁹ The birth mother is simply another supportive, loving figure in the child's life, and this must be clear for the relationship to be successful.¹⁰⁰ Debbi, the birth mother, explains that the ability to develop a relationship with Danny, and to know his adoptive family, has affirmed her decision to give him up for adoption.¹⁰¹ While it can be tough to differentiate between being Danny's birth mother as opposed to his mother, Debbi knows that she plays an important role in Danny's life and the person he has become.¹⁰² Danny valued meeting someone who looks like him and the opportunity to gain knowledge about where he came from.¹⁰³ However, Danny's relationship never confuses the fact that Diane is his parent, and nothing would ever change that.¹⁰⁴

B. *Cassie, Steve and Jane*

Barbara Yngvesson examines different aspects of open adoption, including the relationships between birth mothers and

⁹³ *Id.*

⁹⁴ *Id.*, at 18.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*, at 22.

⁹⁸ *Id.*, at 22.

⁹⁹ *Id.*, at 22.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*, at 20.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

adoptive parents.¹⁰⁵ During her research, Yngvesson interviewed several groups of adoptive parents, birth mothers and social workers involved in open adoption.¹⁰⁶ The experiences shared with Yngvesson reveal some of the struggles birth mothers and adoptive parents go through within the open adoption context.

Cassie found out she was pregnant at the age of 18.¹⁰⁷ Coming from a Catholic family, she did not have the option of abortion or keeping the child.¹⁰⁸ Cassie desired to have some sort of communication with the adoptive parents, so she found an adoption agency that would help her enter into an open adoption.¹⁰⁹ However, Cassie was hesitant to set out specific terms of visitation and contact.¹¹⁰ She feared she would change her mind as to how involved she wanted to be in the child's life and also did not want to over step the boundaries of the adoptive family.¹¹¹ As the months went by, Cassie received a few letters and phone calls but was never comfortable with the arrangement.¹¹² She was unsure of her role in the open adoption and was very fearful of jeopardizing the child's relationship with the adoptive family.¹¹³ Cassie expressed the strain of the relationship to a social worker at the adoption agency, who then contacted the adoptive parents, Steve and Jane.¹¹⁴ Steve and Jane also expressed concerns about the situation.¹¹⁵ Jane feared that Cassie would develop a strong bond with the child, come to regret her decision, and attempt to get the child back.¹¹⁶ Steve feared sending a card or picture to Cassie on Mother's Day or Valentine's Day would evoke too much emotion for Cassie to handle, so he opted not to send anything at all.¹¹⁷ The parties involved each desired some sort of

¹⁰⁵ See Yngvesson, *supra* note 61.

¹⁰⁶ Yngvesson, *supra* note 61, at 32.

¹⁰⁷ *Id.*, at 51.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*, at 52.

¹¹⁰ *Id.*, at 53.

¹¹¹ *Id.*

¹¹² *Id.*, at 54.

¹¹³ *Id.*

¹¹⁴ *Id.*, at 58..

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

relationship, but failure to openly communicate these desires led to confusion and strain on everyone.

Case studies provide insight on how open adoption, and the varying levels of openness, will affect the lives of the parties involved. Hearing about the experience of others can be very beneficial to a person contemplating entering into an open adoption. However, it is crucial to remember that each birth mother, adoptive family and child are unique and will respond to the process differently.

VI. Conclusion

The options available to parties to an adoption have evolved tremendously over the last 30 years. Society's norms no longer require secrecy in the process of adoption. Open adoption allows birth parents, adoptive parents and adopted children the freedom to create relationships that meet their individual needs. Post adoption contact agreements provide detailed expectations of each party within the open adoption, and allow for communication and contact after the adoption has been finalized. The legal status of post adoption contact agreements in the United States has yet to be set in stone, as states continue to differ on the issue. Some states, provided certain factors are present, have acknowledged these agreements and consider them legally enforceable by the court. The best interest of the child continues to be the most significant reason for a court to approve or enforce a post adoption contact agreement. Other states have taken the position that these agreements are not legally valid. They remain silent on the issue or leave the decision of post adoption contact between the parties to the discretion of the adoptive parents. These states maintain enforcing such agreements are contrary to the requirement of termination of parental rights in the adoption process and may undermine the authority of the adoptive parents.

Research on open adoptions continues to provide possible benefits and risks for all of the parties involved. The decision to enter into an open adoption should be made by the parties involved after careful consideration of their unique situation. Case studies show that every open adoption is different and affects people in very different ways. Open adoption is not for everyone and will not likely eliminate the occurrence of closed adoptions

516 *Journal of the American Academy of Matrimonial Lawyers*

in the United States. It simply provides parties greater opportunity and options to meet the emotional and developmental needs of the child involved.

Leigh Gaddie