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Considering Birth Fathers: Ensuring Rights and Inclusion for Fathers Before Adoption Placement

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Introduction

When Andrew¹ and his girlfriend Maria chose adoption for their daughter five years ago, Andrew was astounded that he had to sign only one form to terminate his parental rights, while Maria had to sign numerous forms, was offered multiple chances to change her mind, and was provided extensive counseling. Andrew and Maria were still in a relationship, and he believed the emotional impact of the decision for him was similar to Maria's. He was troubled by the lack of support available to him in comparison to what was offered, without even being requested, to Maria.

Andrew is not alone; in 2001, Gary Clapton conducted a qualitative study of 30 birth fathers whose children had been placed for adoption. His research showed that birth fathers experience many of the same intense feelings

¹ All stories shared in this article are from interviews with real adoption families, but many names have been changed to ensure privacy. If a last name has not been provided, the individual preferred to maintain their privacy and a pseudonym has been used.



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birth mothers experience, including grief, distress, and pain. Birth fathers reported similar waves of emotion around birthdays, holidays, major life events, and other triggers, and continued to experience intense feelings as time went on.ⁱ Some men cited that suppressing these feelings led to alienation in other relationshipsⁱⁱ

Angela Tucker of theadoptedlife.com documents her search for her birth mother in the film *Closure*. The film depicts her finding her birth father first. When interviewed, Angela shared that it had not been on her radar to find her birth father. Her father had not known of her birth, and therefore had not known of her adoption. Angela learned that notice of her adoption was posted in a local paper, but she felt that an injustice had been done to her father. Not only did he not have the option to raise her, he did not have the option to find her.

The Rights of Men in Adoption

Historically there has been a societal presumption that women have an inherent interest in parenting greater to that of men; that women bond with a baby pre-birth, and that motherhood is based on this bond. There is also a widespread belief that fathers do not bond with children until they begin parenting, and therefore parenting is a choice fathers make, not something that comes naturally. Unwed fathers have previously been viewed as “troubled fathers” or “fathers who cause trouble.” These attitudes have left many unmarried fathers out of conversations around adoption. Until recently, most laws reflected societal norms and presumptions that children born to an unwed mother had only one parent, and that unwed fathers must be uninterested and/or unconnected to their children.ⁱⁱⁱ

The U.S. Supreme Court first addressed the issue of paternal rights in 1972, in *Stanley v. Illinois*. In this case, Peter lived with his partner Joan and had three children; Peter and Joan never married. When Joan died, the children were removed by the State of Illinois with no assessment made of Peter’s ability to parent. He sued under the Equal Protection Clause of the Fourteenth Amendment, but the Illinois Supreme Court found there was no violation, because there was a presumption that unwed fathers were unfit to parent their children. The U.S. Supreme Court overturned this ruling, determining that Peter indeed had the right to prove his fitness as a parent before losing custody.^{iv} Subsequent cases continued to expand and define the rights of unwed birth fathers. The decision in *Caban v. Mohammed* found that unwed, involved fathers have a right to stop the adoption of their children. *Lehr v. Robertson* demonstrated that a potential father had to be proactive and establish a claim to paternity.

Many unmarried fathers have been left out of conversations around adoption.

Today, the requirements to establish fatherhood vary by state. In approximately 23 states² a person may be presumed to be the father if:

- He and the child's mother are or were married to each other, or attempted to marry, and the child is born within 300 days after the marriage ended
- With his consent, he is listed on the birth certificate
- He has acknowledged his paternity in writing
- He pays child support, either voluntarily or through a court order^v

Kelley's Adoption

Many of the laws relating to men's and fathers' rights were established not to make it difficult for birth fathers to establish a relationship with their child, but to protect birth mothers and children from the extremely rare, potentially dangerous situations (such as limited cases impacted by rape, incest, or domestic violence).

An adoptive parent, Jackie, shared her daughter Kelley's adoption story for this article. While unique, there were recurring themes common to many other families' stories. Kelley's adoption process was interrupted by Kelley's birth father. In retrospect, Jackie admits, there were warning signs all along that the adoption process may not be smooth. She and her husband tried to be diligent. Kelley's birth mother did not know where the birth father listed on the birth certificate was, and had no contact information for him. Notice of the adoption was posted in the paper according to the law of the state, and the adoption proceeded in the state where Jackie and her husband lived. Parental rights of the listed birth parents were terminated. However, prior to the finalization of Kelley's adoption, a different man than the birth father listed on Kelley's birth certificate came forward and stated that he had a relationship with the birth mother, that he was Kelley's father, and that he opposed the adoption. This man was incarcerated at the time (for an assault on the birth mother and a crime against her two other children) and filed an objection to the adoption.

Jackie and her husband wanted what was best for Kelley. They felt that even though the judge had ruled that due diligence had been done and the father's parental rights had been revoked, it was still important to inform the judge of the legal proceeding in the other state. The judge consequently put a hold on finalizing Kelley's adoption until the case was settled. Upon

² Following the example of the Child Welfare Information Gateway, the word "approximately" is used due to the changing nature of State laws. This information is accurate as of January 2014.

appeal, it was finally determined that the birth father was not a fit parent because of his incarceration and 10-year sentence.

This process stretched out for two years before Kelley's adoption was finalized. All that time, Jackie and her family didn't know if Kelley would be staying with them and for how long. Jackie expressed to me that if Kelley's father wanted to parent his daughter, who was she to say that wasn't best for Kelley? With such an attitude of openness to what was best for Kelley, Jackie lived in a state of uncertainty. She found bonding difficult because of the constant fear that they would lose custody. Kelley is 10 years old now and a very loved, well-adjusted child. But those first two years were stressful and not easy for Kelley or for her adoptive family.

Their experience led Jackie to reevaluate the adoption process and consider what would have made their experience, and most importantly Kelley's experience, an easier one. She learned more about the processes of notifying birth fathers, and how birth fathers can assert their parental rights. Jackie firmly believes that birth fathers should be informed of an adoption and have the opportunity to parent or participate in adoption planning; however, she feels that a determination for parental rights should happen in a timely manner, never leaving children's legal rights in unnecessary limbo for two years. Jackie has since become an advocate for state putative father registries and a national responsible fatherhood registry.

Putative father registries seek to ensure that when an adoption takes place, a legal mechanism is in place for fathers to exercise their rights.

Putative Father Registry Laws

Putative father registries began to be established 25 years ago, and are now in place in approximately 34 of U.S. states.^{vi} Their purpose is to allow "putative" (or possible) fathers notice of pending adoptions and an opportunity to determine legal parentage and exercise whatever rights they may have in the relevant state. By registering within a state-specified time frame – ranging from one to 90 days – of his child's birth, a father ensures that he will be able to participate in decisions that impact his child based on the state's laws.

National Council For Adoption believes that registries promote the best interests of children first, while seeking to balance the interests of adults involved when an adoption plan is being considered: biological mothers and fathers, and prospective adoptive parents. Registries seek to stabilize the adoption process to ensure that when an adoption takes place, a legal mechanism is in place for fathers to exercise their rights. This ensures that fathers need not be dependent on birth mothers to properly identify them. Birth mothers can also be protected by registries, for in cases of domestic violence, incest, rape, or other traumatic or difficult circumstances, mothers are not left with the responsibility to reach out to a father who

may not be a safe contact for them. By placing time limits on a putative father's opportunity to assert his rights, these laws ensure that a child's legal status does not remain undetermined for an unreasonable amount of time, helping to promote stability and security for children. If an adoption plan is made, it significantly increases the likelihood that adoptive parents will attach and bond to the adopted child without fear of the adoption being contested.

Some states require the putative father to not only demonstrate that he is, in fact, the biological father, but also demonstrate that he is also committed to the birth mother's and child's best interests.^{vii} Because laws vary widely by state, fathers should see their state's Department of Health and Human Services or Vital Records to find out how to preserve their rights.

Among the limited criticism of putative father registries is the claim that registries put too much burden on the father, who is required to be aware of the potential pregnancy and register with the state where the birth mother gives birth. Some critics argue that registries are ineffective and not well publicized. Approximately 20 states do currently allow online registration, but there is often little to no information regarding where, how, or when to register. There is currently very limited reciprocity between states that do have registries, so a man might register in the state where he believes the birth mother resides, but still not be notified if an adoption takes place across state lines.^{viii}

Many registry advocates agree with some of these points, and recognize that reform is needed for them to function optimally. Mark McDermott, an adoption attorney who has been practicing over 30 years, believes that creating a national registry would go a long way toward ensuring the rights of birth fathers are respected. A national registry would offer greater opportunity for birth fathers to assert their rights and allow notice to be served, but would still ensure that individual state laws control case outcomes after notice is given. A national registry would also help allow fathers who register in one state to have protection in any state where an adoption takes place, and establish a way that fathers residing in states without a registry could register. It would also encourage states without a registry to create one in order to protect all those impacted by the adoption process. States with existing registries could opt in to exchange information across state lines and better protect families while preserving the sovereignty of their own state laws.

For all these reasons, National Council For Adoption is a strong advocate for a national putative father registry. We advocate for and encourage others to join us in making this concept a reality by asking state legislators to support

A national putative father registry would allow fathers who register in one state to protect their rights in any state where an adoption takes place.

HR 2818 (The Protecting Adoption Act) in the U.S. House of Representatives and S. 1637 (The Protecting Adoption and Promoting Responsible Fatherhood Act) in the U.S. Senate.

For more information on a national putative father registry, see *Adoption Advocate* No. 14, “On the Benefits of a National Putative Father Registry”^{ix} or reach out to us at National Council For Adoption to learn how you can help advocate for change.

When Should Fathers Be Involved in Adoption?

Adoption professionals have the complicated job of supporting differing perspectives and interests throughout the adoption process. National Council For Adoption recommends that whenever fathers are known and willing to participate, their right to do so should be protected and honored. Adoption professionals should be proactive in offering services and support to fathers in similar ways as they do to mothers. The only exceptions to this would be in situations where the father is truly unknown or in situations where there is information confirming that his participation might be unsafe for the mother or child (for example, in cases of rape, incest, or domestic violence).

State laws vary on what type of notification is required regarding fathers and whether consent from mothers is required to communicate with fathers. The law in the relevant jurisdictions should always be followed, and consent should be acquired when appropriate. NCFCA advises that outreach to fathers is important, and proactive outreach can lead to positive outcomes for the child and father. Fathers may be the best option to parent their children and should be given the opportunity to do so if they are willing and able, whether or not the mother also chooses to parent.

We know that many birth fathers experience grief and loss and need support just as birth mothers do. Fathers deserve equal access to information and support, and adoption professionals should take the initiative to engage fathers as much as possible and change the mistaken belief that their participation in considering adoption or making adoption plans is not necessary or desired. When adoption is planned for a child, ideally the involved father would have equal involvement in the adoption process and ample opportunity to offer valuable and important insight into planning for his child’s future. Fathers also deserve equal access to the counseling and support birth mothers need when the hard decision to make an adoption plan is made.^x

Recommendations For Fathers

- If you know or think that a woman may be pregnant with your child, ask how you can be involved.
 - If you know the expectant mother is considering adoption, ask her if you can join in those conversations with her.
 - If you know she is working with an adoption agency or other professional, reach out to them and express your interest in being involved.
- Check if your state and the state the mother is living in have putative father registries.
 - Register in one or both, according to the states' guidelines.
 - Although there will be rules and time limits in which you must register, we recommend you register as soon as possible in order to give as much notice as possible to the courts, adoption professionals, and any others involved so it is known you want the opportunity to participate in planning for your child's future.
- Help advocate for a national putative father registry. The goal is to ensure father's rights are preserved – even across state lines or if a registry doesn't exist in their state.

Recommendations For Professionals

- Include birth fathers. Be proactive.
 - Fathers have the right to be involved in planning for their children's future. Whether they choose to parent or want to be involved in making an adoption plan, their role as parent should be honored.
 - As professionals, we should not wait for fathers to come to us. Whenever possible, safe and legal, we should reach out to them.
 - Involve fathers in conversations about adoption as early as possible; fathers who feel acknowledged, included, and respected in the process are more likely to be supportive and involved in making plans for their child's future.
- Offer pre- and post-adoption supports for birth fathers.
 - We know birth fathers experience many of the same emotions as birth mothers regarding adoption. Adoption services need to be inclusive in meeting their needs as well.

- Understand all the requirements for establishing fatherhood in all states in which you work, and the ways in which fathers may register and receive notice.
- Be aware that when adoptions take place across state lines, fathers' rights may change. Consult a legal expert when necessary to ensure you are properly protecting the rights of all involved.
- Err on the side of inclusion. If a father is known, make repeated efforts to keep him informed along the way, even if he isn't always responsive. You have the ability to inform him of his rights and offer him involvement he may not know he is permitted.
- Help advocate for a national putative father registry. The goal is to ensure fathers' rights are preserved – even across state lines or if a registry doesn't exist in their state. This helps protect fathers, give kids the most stable outcomes possible, and limit traumatic and costly adoption disruptions.

Recommendations For Mothers

- If you know who the father of your child is, consider sharing information and opportunities for involvement along the way if it is safe for you to do so.
- A child can benefit from a relationship with their biological father – whether he chooses to parent, helps make an adoption plan, continues to be involved through open adoption, or simply provides medical information to contribute to the child's background information. Any or all of these things can be of long-term value to your child.
- Unplanned pregnancy is often a challenging situation to face, and the relationship with the father may be complicated. If talking directly to the father is too difficult, you can always ask adoption professionals if they can help keep him informed or mediate conversations.
- Help advocate for a national putative father registry. While the registry is for fathers, it benefits mothers as well. It alleviates the burden for mothers who want to make an adoption plan, but are unable to contact the father – whether because of lost contact information, a broken relationship, or a dangerous situation. It also ensures that the adoption plan you make will be more lasting. When a legal mechanism exists regarding fathers' rights, adoptions are less likely to be disrupted and create instability for your child.

Recommendations For Adoptive Parents

- When choosing an adoption agency to support your adoption, ask whether and how fathers are included. Choosing an agency that includes them in the process, as often as possible, can help promote stability in your adoption.
- Ask adoption professionals about the laws in your state regarding fathers and their rights.
- When matched for a potential adoption, ask whether the father is involved and if he has received counseling or claimed his right to participate in the adoption process.
- When thinking about openness in adoption, don't forget to consider if and what type of contact with the birth father might be a good fit for your family.
- Help advocate for a national putative father registry. If a national registry existed, it would help promote stability in adoption, aiding adoptive families in building attachment and a sense of security. It would also help ensure that a child in your care is one who truly needs a parent.

ABOUT THE AUTHOR

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^{ix} Zappala, Marc. On the Benefits of a National Putative Father Registry. *Adoption Advocate* No. 14, June 2009. Available at: www.adoptioncouncil.org/publications/2009/06/adoption-advocate-no-14

^x For more on how to include Fathers in the adoption process see: Morris, Ashley. Fathers, Families, and Friends: Involving and Prioritizing a Pregnant Client's Support System. *Adoption Advocate* No. 37, July 2011. Available at: www.adoptioncouncil.org/files/large/67d91b35329369a



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