Independent Adoptions: Is the Black and White Beginning to Appear in the Controversy over Gray-Market Adoptions

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I. INTRODUCTION

A child is born to parents who will not, may not, or cannot care for their baby; a young couple wants to begin a family, but cannot conceive their own child because nature's delicate and intricate reproductive system is not functioning properly. By uniting the homeless baby with the babiless home, the American adoption system can provide that which happenstance and nature did not.

When a person or a couple desires to adopt a child in the United States, there are several vehicles through which a child can be obtained. The most extensively used is the adoption agency, which can be either a public agency—an arm of the government—or a private agency—a nonprofit entity. Both types of agencies are heavily controlled through various state laws, rules, and regulations. In contrast to placement through controlled agencies is placement through unlicensed groups and individuals. This unlicensed placement activity,
known alternatively as the gray market,\(^7\) private placement,\(^8\) or independent adoption,\(^9\) has been increasingly scrutinized by legislative bodies.\(^{10}\) Prompting this scrutiny is the substantial concern that unlicensed placement permits black-market trafficking in the lives of infants, and consequently, the making of illegal profits at the expense of a child's welfare.\(^{11}\)

To halt the baby black market, state legislatures have suggested varying remedial approaches.\(^{12}\) Most states seek to prevent private placement from operating as a black-market venture by imposing certain control measures including, *inter alia*, limitations on non-agency placements, limitations and criminal sanctions on profit making, and requirements for reporting the facts surrounding the placement.\(^{13}\) A few states and the District of Columbia, however, have taken a more severe stance and have completely outlawed all private adoptions.\(^{14}\)

Unregulated Adoptions, 59 *Yale L.J.* 715, 715 n.2 (1950). See also *Adoptions Without Agencies*, supra note 1, at 1, 52 which states that it is primarily doctors (37%) and lawyers (63%) who place children privately.

7. The term "gray market" was probably coined by proponents of agency adoptions since it suggests that serious problems can exist even though the practice is legal. See Grove, *Independent Adoption: The Case for the Gray Market*, 13 *Vill. L. Rev.* 116, 117-118 (1967) [hereinafter cited as *The Case for the Gray Market*].

8. In a sense, "private placement" is a misnomer since most adoption agencies are also private institutions. This phrase, however, has come to mean that no agency or institution was involved in the placement and is synonymous with the term "independent adoption." *Id.* at 117.

9. The term "independent adoption" signifies the fact that no licensed agency is involved in placing the child. *Id.*

10. As part of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Congress directed the Secretary of the Department of Health, Education, and Welfare to study placements by persons or agencies which are not licensed or regulated by any governmental unit. 42 U.S.C. § 5114 (Supp. II 1978).

11. The basic problem is that greed for a profit replaces considerations for the welfare of the child. *The Case for the Gray Market*, supra note 7, at 118-19.

12. Throughout this comment there will be an underlying theme emphasizing the uniformity of state adoption laws. It is believed that this uniformity is necessary not only to insure that each state has "good" laws, but moreover to insure that there are no states which have significantly weaker adoption laws and thereby become "adoption havens." *Id.* at 126-29. These "adoption havens" would not only facilitate black-market adoptions but would also provide a shortcut around the stricter laws of other jurisdictions, which are designed to protect the best interest of a child in any placement.

13. For a discussion of typical statutory devices see *Black-Market Adoptions*, *supra* note 6, at 56-61.

Since the important interest at stake is the welfare of an infant, each state theoretically attempts to design stringent adoption laws and to provide strict enforcement of those laws; yet, the possibility always exists that a disparity in degrees of stringency imposed by the adoption laws will exist among the states. Testimony before the United States Senate has revealed that most black-market placements involve at least one state with comparatively weak adoption laws and procedures. Regardless, then, of how stringent a state's adoption law may be, without national uniformity, the parties can easily undermine and circumvent it by merely crossing the state line and taking advantage of the more liberal law in a neighboring jurisdiction.13

A possible solution to this dilemma is comprehensive, uniform adoption legislation which particularly addresses the unlicensed placement problem; but, to date, most legislative efforts have not met with acceptance.14 Presently, another attempt at model legislation is well underway,15 and the purpose of this comment is to focus upon one issue that the model act will address: namely, whether the gray market should be permitted to continue.

Initially, this comment will discuss in general the formulation of the new model legislation. Thereafter, the major arguments condemning the legal existence of private placements will be analyzed, and arguments in favor of the gray market will also be examined to illustrate the prevailing interests which should be considered before the decision to outlaw or regulate the gray market is finally determined. The conclusion will summarize the recommendations made throughout

15. S. REP. No. 167, 95th Cong., 2d Sess. 26-27, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 557, 571-72 [hereinafter cited as S. REP. No. 167]; Black-Market Adoptions, supra note 6, at 64-68. In Minnesota, for example, the strict law can be avoided by the adoptive family setting up "residency" in another state, having a child placed with them in accordance with a neighboring state's more liberal placement provisions, and "moving" back to Minnesota. See MINN. STAT. ANN. § 259.22, subd. 2(d) (West Supp. 1979). Although it appears that no state has completely definitive adoption legislation, as will be discussed, many individual states do have one or more statutory sections that are worthy of inclusion in a comprehensive statute. The study Adoptions Without Agencies indicated that almost one-quarter of the children independently adopted were born in other states. Furthermore, the study revealed that more than one-fourth of the attorneys interviewed stated that at least half of the adoptions they facilitated were interstate. Adoptions Without Agencies, supra note 1, at 49, 121-22.


the comment and will include a brief synopsis of the suggested solutions offered by the new model adoption legislation\(^8\) to eliminate problems in gray-market adoptions.

II. FEDERAL MODEL ADOPTION LEGISLATION AND PROCEDURES

To facilitate adoption\(^9\) within the United States, Congress passed Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (Adoption Reform Act).\(^{20}\) Although the emphasis of the act is on special need children,\(^{21}\) the underlying purpose is to propose broad model legislation and procedures\(^{22}\) which would eliminate "jurisdictional and legal" obstacles to adoption.\(^{23}\)

The proposed model legislation is the responsibility of a panel appointed by the Secretary of the Department of Health, Education, and Welfare (HEW).\(^{24}\) Composed of seventeen members, representing public and voluntary organizations, agencies, and interested persons with expertise and experience in the adoption area,\(^{25}\) the panel will specifically address the issue of gray-market adoptions. Accordingly, Title II of the Adoption Reform Act provides for an HEW-sponsored study of independent adoptions.\(^{26}\) The focus of the study is on the nature, scope, and problems of gray-market adoptions.

19. 42 U.S.C. § 5111 (Supp. II 1978). The act reads in pertinent part: "It is, therefore, the purpose of this subchapter to facilitate the elimination of barriers to adoption and to provide permanent and loving home environments for children who would benefit by adoption . . . ." \(\textit{Id.}\)
20. \(\textit{Id.}\) §§ 5111-5115.
21. \(\textit{Id.}\) § 5111. Special need children include older, school-aged children who also may be mentally or physically handicapped. \(\textit{Id.}\) It was estimated that the federal government annually spends $700 million for the foster care of approximately 350,000 children of whom up to one-third are these special need children. S. REP. No. 167, supra note 15, at 17.
22. 42 U.S.C. § 5112(a) (Supp. II 1978). However broad this proposed legislation may appear to be, Congress limited it by requiring that it not conflict with provisions of any interstate compact. \(\textit{Id.}\)
23. See S. REP. No. 167, supra note 15, at 17-18, for a listing of the impediments envisioned by Congress.
24. The panel actually recommended the model legislation to the Secretary of HEW who had the final word on what was published in the Federal Register for public comment. 42 U.S.C. § 5112(a) (Supp. II 1978).
25. The Act allowed between eleven and seventeen members on the panel. \(\textit{Id.}\) § 5112(b)(1). A list and short introduction of the panel members can be obtained from Ms. Diane D. Broadhurst, Executive Director, Model Adoption Legislation and Procedures Advisory Panel, Children's Bureau of HEW.
26. The study was well underway when the legislation was passed and is now published as ADOPTIONS WITHOUT AGENCIES, note 1 supra, Telephone conversation with Ms. Diane D. Broadhurst, Executive Secretary, Model Adoption Legislation and Procedures Advisory Panel, on August 9, 1979.
and effect of child placement by unlicensed or unregulated persons or groups. Although the study includes both interstate and intrastate adoptions, it excludes children placed in the homes of the child’s step-parents or relatives.27

As an adjunct to the proposed model legislation, Title II of the Adoption Reform Act requires the initiation within HEW of a central organization to plan and coordinate all HEW activities affecting adoption. Moreover, this organization will maintain a national adoption and foster care data system, conduct an education and training program on adoption, provide technical assistance in carrying out adoption programs, and consult with other appropriate federal departments.28

By providing for model legislation, an unlicensed adoption study and information services, the Adoption Reform Act not only highlights the existing evils in the adoption process for the states, but also offers viable solutions for overcoming those evils. To motivate the states toward considering these possible statutory solutions, the Adoption Reform Act grants HEW the power to take whatever steps are deemed necessary.29 Yet, what exact form this persuasion will take remains to be seen. The proposed model legislation was published in the Federal Register on February 15, 1980.30

III. ARGUMENTS QUESTIONING THE PROPRIETY OF INDEPENDENT ADOPTIONS

A. Independent Adoption Does Not Insure That the Best Interest of the Child Will Be Met

The argument that the independent adoption does not insure the furtherance of a child’s best interest is usually the first raised, and the one raised most often.31 Essentially, the steps in an independent adoption are as follows: a child is placed in a home by a person or persons other than a regulated agency, the adoptive parents petition for adoption, an investigation to ascertain the child’s adjustment to the new family and the suitability of the family itself is conducted, and finally, the adoption hearing is held and the petition is either denied or granted.32 When an agency places the child, the only significant change in the sequence of events is that the agency will investigate

28. Id. § 5113.
29. Id. § 5112(c).
30. Id. § 5112(a).
31. The Case for the Gray Market, supra note 7, at 121-23. See Black-Market Adoptions, supra note 6, at 52-54.
33. This is at least the most significant change as to the sequence of events leading to the adoption. An alteration in the timing within the scenario occurs if an agency does
the prospective parents *before* they can receive a child. The absence of this preplacement evaluation of the adoptive parents and their home is what the opponents of independent adoption emphasize when they say that the best interest of the child will not be met. If it is true that a placement assessment will separate the "good" parents from the "bad" parents, then the argument against independent adoptions seems quite logical.

There have been statistical studies comparing adoptions arranged by agencies with adoptions arranged by unlicensed intermediaries. The results of a rather small 1949 study, conducted by the Yale Child Development Clinic, indicated that the agency method of preplacement evaluation did serve to promote the best interest of a child and was better than taking no preplacement action whatsoever. This study compared one hundred independent adoptions to one hundred agency adoptions in Connecticut. While seventy-six percent of the agency placements were rated as satisfactory, only forty-six percent of the private placements were given this rating. Moreover, the study revealed that only eight percent of the agency placements were found definitely undesirable as compared with twenty-eight percent for private placements.

The implicit conclusion, however, of a much larger study by Witmer, Herzog, Weinstein, and Sullivan in 1963, comparing Florida private placements with a control group of children living with their natural parents, was that there is no significant difference in the number of unsatisfactory placements in instances where the children are placed either through agencies or private channels. According to this survey, only between twenty and twenty-five percent of the private placements were definitely unsatisfactory. Because other comparable studies in the area had marked the agency failure rate between ten

34. *Adoptions Without Agencies*, supra note 1, at 26-27. For a 1977 summary of state laws in the area of social study provisions see *id.* at 173-82.

35. Yale Child Development Clinic, Report on Current Adoption Practice in Connecticut—Independent & Agency Placement (mimeographed in 1949, a summary of which may be found in *The Case for the Gray Market*, supra note 7, at 122.).

36. *id.* For another unpublished study showing that agency placements are better, see Podolski, *Abolishing Baby Buying: Limiting Independent Adoption Placement*, 9 Fam. L.Q. 547, 548 n.2 (1975) [hereinafter cited as *Abolishing Baby Buying*]. See also *Adoptions Without Agencies*, supra note 1, at 3-4.

and twenty-five percent, the 1963 study concluded that there was little, if any, disparity in the failure rates of private or agency adoptions, and correspondingly, in their success rates. That a failure rate in fact exists was attributed to the imperfection of any system and the appearance of certain factors which cause an unsatisfactory placement only after the finalization of the adoption.38

The most recent analysis of private adoptions, which was sponsored by the Child Welfare League of America and was supported by federal monies,39 spanned the years from 1975 to 1978. It was national in scope and focused upon the actual conditions under which independent adoptions are carried out, as experienced by biological parents, adoptive parents, agencies, intermediaries, and law enforcement agents.40 Since the responding agencies considered a high proportion of independent homes as good or better than agency homes,41 there was a significant lack of data proving the inferiority of independent adoptions. This prompted the study to conclude that it is too early to outlaw completely the independent adoption alternative.42

This empirical data thus reveals that condemnation of independent adoptions on the grounds that the best interest of the child will not be met has not been conclusively proven. Moreover, adequate legislative controls would all but eliminate the argument. To reiterate, the basis of the argument is that one needs a preplacement evaluation to insure that the best interest of the child will be met. The validity of the argument, then, becomes dependent upon the state laws governing independent placement procedures. For example, if state law required that an investigation be done in a private placement before or shortly after the child is placed,43 and if the investigation were comparable to that normally performed in an agency adoption,44 the argument is practical-

38. Id. For another unpublished study showing that private placements are as satisfactory as agency placements, see Abolishing Baby Buying, supra note 36, at 548 n.2.
39. See notes 19-30 and accompanying text supra.
40. Reid, Forward to ADOPTIONS WITHOUT AGENCIES, supra note 1, at iii.
41. ADOPTIONS WITHOUT AGENCIES, supra note 1, at 42.
42. Id. at 3, 232.
43. E.g., Fla. Stat. Ann. § 63.092(1) (West Supp. 1979). The Florida statute in pertinent part reads: "The intermediary [at least 30 days prior to placement] shall report any intended placement of a minor for adoption with any person not related within the third degree or a stepparent if the intermediary has knowledge of, or participates in, such intention to place." Id. (emphasis added). Of course one may attempt to circumvent the statute by arguing that a placement is being made into a foster home with no present intent by the foster parents to adopt. The Florida statute further requires that the study be completed "within 30 days or by the intended placement date, whichever is later." Id. § 63.092(2). See generally Black-Market Adoptions, supra note 6, at 56-59.
44. See Conn. Gen. Stat. Ann. § 45-63 (West Supp. 1979), which requires that the preadoption investigation be done by the commissioner of the department of children and
ly nullified. Interestingly, adoption agencies are often involved in private placements as the court-appointed investigator pursuant to state law. But under most existing statutory schemes, the timing for their involvement is long after placement, and the scope of their investigation is severely limited since a state usually requires a much less extensive report than the agency would require of itself, if it were the actual party responsible for placing the child. But because the agency approach to "finding a good home" can be simulated through comprehensive legislative enactments, any state can assure the effective evaluation of prospective adoptive parents before the child has spent much time in the home.

B. Independent Adoption Insures the Black Market's Continued Existence

That the independent adoption process insures the continued existence of the black market is the other major argument and the one receiving the greatest public attention in the debate over the propriety of independent adoptions. Since independent adoptions are viewed as the major factor encouraging black-market operations, the proponents of this argument would completely eliminate private placement and would require that all adoptions be handled by nonprofit regulated agencies. Nonetheless, it seems a very drastic step to eradicate a system, albeit an informal one, which yearly places about youth services or a child-placing agency. Note, however, that most states are more liberal concerning the status of the investigating party.

45. E.g., Pa. Stat. Ann. tit. 1, § 335 (Purdon Supp. 1978). According to the Pennsylvania statute: "[T]he court shall cause an investigation to be made by one of the following: a local public child care agency, . . . a voluntary child care agency, or an appropriate person designated by the court." Id.

46. The study Adoptions Without Agencies concluded that under most existing laws the independent adoptive home is evaluated on different criteria than homes approved for agency adoptions. The studies of private placements performed by the agencies pursuant to state law are termed by the agencies themselves as "cursory" at best. Adoptions Without Agencies, supra note 1, at 26-27, 93.

47. The concern is that the child may develop psychological ties to the home in which he is placed, only to have them destroyed by a later decision that the home is unsatisfactory. Black-Market Adoptions, supra note 6, at 57 n.44. But, most of the agencies questioned in Adoptions Without Agencies stated that there was a reluctance by the court to remove a child from a home once he is placed. More than half of the agencies responded that even when negative recommendations are made, the adoption is usually approved. Adoptions Without Agencies, supra note 1, at 26-27.

48. See generally Adoptions Without Agencies, supra note 1, at 7-9, 28; The Case for the Gray Market, supra note 7, at 117-21; Black-Market Adoptions, supra note 6, at 48-54; Innocents, Inc., Student Law., December, 1977, at 12.

49. See note 14 supra for those states that have followed this logic.

50. Adoptions Without Agencies, supra note 1, at 10.
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21 percent of the children for adoption in the United States.\(^5\) Moreover, recent studies have proven that the bulk of private placements are not black-market placements.\(^2\) As a parenthetical consideration, it might be noted that eliminating the private placement alternative to halt illegal placement may actually have the opposite practical effect: because the demand for adoptable children would be running even further ahead of the regulated agencies' ability to place children, black-market activity would be heightened. In light of these factors, it appears that a more appropriate attack on the black market could be mounted through effective statutory controls.

Several states have, in fact, enacted statutory restraints directed at halting the black market.\(^5\) The first control measure, which seems as drastic as completely outlawing private placements, is limiting the persons who can privately place. Often, only the natural parents, relatives, or guardians can place, unless the child is being placed with a brother, sister, aunt, uncle, grandparent, natural father or step-parent of such child.\(^6\) Although this control appears simple enough, it is easily circumvented. With a small amount of participation by the mother, for example, physically handing the baby to the lawyer who is truly acting as the intermediary, the otherwise illegal placement is legitimized.\(^5\)

A second control measure is to impose criminal penalties for making

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51. The study *Adoptions Without Agencies* showed that of the 131 adoptions examined in the study only thirteen percent of the cases could be classified as legally questionable. Interestingly, the lawyer intermediary was the intermediary most likely to be involved in a legally questionable adoption. Twenty-two percent of lawyer arranged adoptions were considered legally questionable, compared with only four percent of the adoptions arranged by other professionals. The highest estimate cited in the study was that one-third of the 1971 independent adoptions may have been of the black-market type. *Adoptions Without Agencies*, supra note 1, at 9, 74-77.

52. *Black-Market Adoptions*, supra note 6, at 52, 60-61.

53. See id. at 56-61.

54. *E.g.*, N.J. STAT. ANN. § 9:3-39 (West Supp. 1980), which states that:

a. No person, firm, partnership, corporation, association or agency shall place, offer to place or materially assist in the placement of any child for adoption in New Jersey unless such person shall be the parent or guardian of the child, or such firm, partnership, corporation, association or agency shall be an approved agency; provided, however, that this prohibition shall not apply to the placement for adoption of a child with a brother, sister, aunt, uncle, grandparent, natural father or step-parent of such child. *Id.* (emphasis added). A corporation convicted of the crime, a misdemeanor, could be fined up to $7,500 and an individual first offender could be likewise fined, or imprisoned between three and five years. *Id.* §§ 2C:43-2 to -6.

55. *The Case for the Gray Market*, supra note 7, at 126 (cited in *Black-Market Adoptions*, supra note 6, at 58 n.54.). See *Adoptions Without Agencies*, supra note 1, at 165-66. See also notes 74-76 and accompanying text infra for discussion of a case where the state attempted to enforce these controls.
a profit on child placement. However, when a professional like an attorney or a doctor becomes involved, it is difficult to determine whether the profit is being made from professional services or placement services. One attempt at solving this problem has been to limit the amount of any fee paid to an intermediary to $500, exclusive of documented medical, court, and hospital costs, unless the court approves a higher amount. Usually coupled with limitation of the fee is the requirement to disclose to the court the monies which changed hands before or after placement. Of course, the success of this type of control, like the rest, depends upon strict compliance by the parties, and the subterfuge of a reasonable professional fee paid by check and disclosed, followed by a much larger placement fee in cash and held in confidence, can easily occur. Moreover, it appears that the adopting parents are not only willing to pay heavily for a child but will also perjure themselves as to the amount paid.

56. *E.g.* N.J. STAT. ANN. § 9:3-54 (West Supp. 1980) which states that:
   a. No person, firm, partnership, corporation, association or agency shall make, offer to make or assist or participate in any placement for adoption and in connection therewith (1) Pay, give or agree to give any money or any valuable consideration, or assume or discharge any financial obligation; or (2) Take, receive, accept or agree to accept any money or any valuable consideration.
   b. The prohibition of subsection a. shall not apply to the fees or services of any approved agency in connection with a placement for adoption, nor shall such prohibition apply to the payment or reimbursement of medical, hospital or other similar expenses incurred in connection with the birth or any illness of the child, or to the acceptance of such reimbursement by a parent of the child.
   c. Any person, firm, partnership, corporation, association or agency violating this section shall be guilty of a high misdemeanor.

*Id.* A corporation convicted of this crime could be fined up to $7,500 and an individual first offender could be likewise fined, or imprisoned between three and five years. *Id.* §§ 2C:43-2 to -6. For a New Jersey case upholding the constitutionality of the above words contained in a predecessor section, see State v. Wasserman, 75 N.J. Super. 480, 183 A.2d 467 (App. Div. 1962), *aff’d per curiam*, 39 N.J. 516, 189 A.2d 218 (1963).


58. For example, Florida law provides that "[a]ny fee . . . over $500 paid to an intermediary other than actual, documented medical costs, court costs, and hospital costs must be approved by the court prior to payment to the intermediary." FLA. STAT. ANN. § 63.097 (West Supp. 1979).

59. *E.g.,* PA. STAT. ANN. tit. 1, § 331 (Purdon Supp. 1978). The statute requires that the report of intention to adopt contain "the circumstances surrounding the persons receiving or retaining possession, custody or control of the child; . . . [and] the fee or expenses paid or to be paid to the intermediary . . . ." *Id.* In one recent case the total fee paid by the attorneys was $3,500 for a baby boy born in Arizona and placed in New Jersey. *In re Adoption of Child by I.T. and K.T.*, 164 N.J. Super. 476, 397 A.2d 341 (App. Div. 1978). More specifically, a New Jersey County Court Judge found that $2,000 of the $3,000 paid to a Chilean attorney was actually a broker's or finder's fee. *In re Adoption of Child by N.P. and F.P.*, 153 N.J. Super. 591, 398 A.2d 937 (Union County Ct. 1979).

60. ADOPTIONS WITHOUT AGENCIES, *supra* note 1, at 28, 182-98; Black-Market Adoptions,
The last control measure, which appears to be one of the most effective methods of stopping black-market activity, is to require reports at various stages of the placement and the adoption. These reports not only allow the state to undertake studies of the child and potential adoptive home as previously discussed, but also give the independent adoption visibility. Once the state becomes aware of the private placement, it can then be scrutinized for breach of statutory requirements. There are many variations on the theme of reporting, encompassing both the timing and the substance of the report. Some states merely require notice, which must be given before the child is even placed. Others require a more detailed report which, in most instances, occurs after placement.

The existing statutory scheme has as many variations as there are state capitals. As yet, no single state has developed a sufficiently sophisticated, comprehensive statutory scheme regulating private adoptions which effectively ensures the halting of black-market activities; although several states have one or more good ideas in their statutory provisions, each state still seems incapable of providing the lower threshold of assurance that placement for profit will not occur within its borders. And even if the majority of states did possess stringent laws controlling private placements, the few remaining states with weaker, unsatisfactory controls could function as interstate conduits for the black market. If, however, controls were properly and uniformly adopted across the nation, the perversion of private placements into black-market profiteering would not occur. Therefore, until every state entertains uniform, or at least, a substantially similar modicum of preventative statutory controls, the black market may unfortunately prosper.

But even with strict uniform state controls, the black market can still prosper unless these controls are enforced. The present sanctions are criminal in nature and are independent of the adoption process.

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supra note 6, at 59. Another ingenious way to subvert all the controls as well as the adoption mechanism is to have the natural mother enter the hospital under the name of the adoptive mother and have a fictitious birth certificate prepared or just alter an existing birth certificate. ADOPTIONS WITHOUT AGENCIES, supra note 1, at 164, 233.

61. Black-Market Adoptions, supra note 6, at 57-59.
62. Discussed in notes 31-47 and accompanying text supra.
63. ADOPTIONS WITHOUT AGENCIES, supra note 1, at 169-82. For a 1977 analysis of state adoption statutes including notification requirements see id. at 171-72.
64. Ky. REV. STAT. ANN. § 199.470(4) (Baldwin 1974).
65. E.g., note 59 supra.
66. ADOPTIONS WITHOUT AGENCIES, supra note 1, at 169-73; Black-Market Adoptions, supra note 6, at 57-59.
67. Black-Market Adoptions, supra note 6, at 52, 60-61.
itself. At the outset it should be recognized that if a child is obtained "illegally" it does not mean that the adoptive couple will be prevented from legally adopting the child at a later date. In determining whether the child may remain with the original adoptive couple, the court considers the best interest of the child, regardless of what laws any party to the adoption may have broken.

Commentators and welfare agencies have questioned whether there is much enforcement of the existing restrictions. The answer to this question was perhaps starkly revealed when the Child Welfare League of America almost totally failed to obtain data in a recent survey on the enforcement of adoption laws. Only twenty-five percent of the questionnaires were completed by the attorneys general or district attorneys solicited. Nonetheless, the study did draw a conclusion from this non-response: that there was a "probable lack of interest or knowledge" in the area of black-market adoptions. From the little data received it was further concluded that there are minimal reports of violations and almost no monitoring of adoptive placement practices by law enforcement officials. To preclude enforcement from being the weak link in independent adoption control, Title II of Adoption Reform Act has provided for national data collection, education, and training, which may aid law enforcement officials in acquiring an awareness or sensitivity to child placement abuses.

Even assuming that increased sensitivity to the problems associated with black-market adoptions will result in increased effort on the part of public officials to enforce existing restrictions, there is no guarantee

68. See Adoption Without Agencies, supra note 1, at 185-88. For a state by state listing of penalties as of 1977 see id. at 188-98.

69. In re Adoption of Child by I.T. and K.T., 164 N.J. Super. 476, 397 A.2d 341 (App. Div. 1978). The appellate court reversed the trial court's rejection of the adoption complaint. The sole ground for the trial court's rejection had been the adoptive parents' participation in an illegal placement of the child. The best interest of the child was emphasized by the appellate court as being the correct test for whether the child may be adopted. The appellate court saw "[t]he enforcement of the criminal law [as] a matter separate and apart from the function of an adoption proceeding, and the deterrence of possible criminal sanctions must suffice as the sole remedy chosen by the Legislature." Id. at 486, 397 A.2d at 345. Finally, the appellate court stated that the public policy underlying the adoption system is to "maintain an existing relationship in a stable home." Id. at 488, 397 A.2d at 346. See Black-Market Adoptions, supra note 6, at 59-60.

70. E.g., Black-Market Adoptions, supra note 6, at 59-60 nn.57-59.

71. The responding agencies in a recent survey cited lack of enforcement as one of the reasons for the continued success of black-market operations. Adoption Without Agencies, supra note 1, at 42.

72. This conclusion should not be too surprising since there is really no one directly involved in a black-market transaction who would be likely to complain. Black-Market Adoptions, supra note 6, at 59-60.

73. Adoption Without Agencies, supra note 1, at 211-18.
that the statutory restrictions will be applied by a court once a
criminal proceeding is brought. Some courts have demonstrated a
reluctance to impose criminal penalties when an intermediary is acting
in the best interest of the child, even though the applicable statutory
language would preclude this involvement. For example, in Galison v.
District of Columbia,74 the conviction of one attorney under the
District's Baby Broker Act was affirmed, but the conviction of another
attorney was reversed even though the second attorney's conduct
clearly fell within the prohibitions of the Act, which limited the parties
who could place a child to parents, relatives, or licensed child-placing
agencies.75 The Act was deemed inapplicable to the second attorney's
conduct, for the court found that the District of Columbia had no con-
tact or nexus with the adoptions arranged by that attorney within the
District. The court reasoned that although the attorney practiced in
the District of Columbia and the babies were born to nonresident
mothers in District hospitals, the District had no interest in applying
its law, since the natural mothers involved in this instance were not
coerced into putting their children up for adoption, as was the situa-
tion leading to the conviction of the first attorney. Because the
resulting Virginia and Maryland adoptions of these children born to
Maryland residents were lawful and because the Maryland residents' pres-
ence merely for medical care in the District was fortuitous, the
court believed that the attorney intermediary should not be exposed to
criminal liability under the District's Baby Broker Act.76 Thus, the
court purposefully used the diverse citizenship of the parties involved
to avoid the application of the statute.

The Galison decision exemplifies the competing interests at stake in
connection with the enforcement of statutory restrictions upon private
adoptions. On the one hand, the refusal of the District of Columbia
court to apply the Baby Broker Act would appear to be reasonable in a
case in which there was no coercive element, nor any other factor
which would be offensive to the District's interest in regulating
private adoptions. On the other hand, the rationale employed by the
Galison court for not applying the Act, based upon the residence of the
natural and adoptive parents, is troubling in that it may render the
statute ineffective in situations which clearly fall within the ambit of

75. Id. at 1269, 1271. The Baby Broker Act provides:
No person other than the parent, guardian, or relative within the third degree,
and no firm, corporation, association, or agency, other than a licensed child-placing
agency, may place or arrange or assist in placing or arranging for the placement of
a child under sixteen years of age in a family home or for adoption.
76. Id. at 1271.
legitimate governmental concern over the well-being of the parties involved in a private adoption proceeding. In any event, Galison demonstrates that the enactment of strong regulatory legislation is only a first step in solving the problems associated with black-market adoptions.

C. Independent Adoption Does Not Insure That the Best Interest of the Natural Parents Will Be Met

Historically, when considering whether the independent adoption process insured that the best interests of the natural parents would be met, the main concern had been for the biological mother and her needs. But, since the United States Supreme Court decisions of Stanley v. Illinois, 77 and more recently, Caban v. Mohammed, 78 there has been an increasing focus on the biological father, his parental rights, and corresponding needs when confronted with the question of whether or not he will allow his offspring to be adopted. Basically, the interests of the biological father and biological mother are the same, and for the purposes of this discussion, the best interest of the natural parents will be considered from the perspective of the biological mother.

One major concern is the absence of counseling in an independent adoption for the biological mother. Studies have shown that in one-third of the cases, the needs and rights of the biological mother were subrogated to either the desires of her parents or the desires of the intermediary, who, of course, primarily represents the adoptive couple. Because of the biased and emotional involvement of these two parties, it has been suggested that the biological mother needs an independent party with whom she can discuss her options and problems. 79

Determining the outcome in a situation where the infant is born with physical or developmental problems and the original designated home will not accept the child is another important consideration left unanswered in independent adoptions. In an agency adoption, that same agency usually provides specialized services for these children in need, and thus, the agency will be present to assist the natural mother. But in a private adoption there are no such safeguards, and the mother will be left with an unwanted child and few viable options: she may

77. 405 U.S. 645 (1972) (it is a violation of due process guarantees to presume without a hearing that unmarried fathers are unsuitable parents for custody purposes).
78. 441 U.S. 380 (1979) (it is unconstitutional discrimination to require the biological mother's consent to adoption and not the biological father's consent when the father is known and has manifested a paternal interest).
79. ADOPTIONS WITHOUT AGENCIES, supra note 1, at 105-06, 116-18.
reluctantly keep the child; be forced to find another, perhaps less suitable, home; or eventually turn to a child care agency.80

The economic factors influencing a private adoption are also of great concern. Biological mothers often receive financial assistance from the adoptive parents for medical, housing, legal, and incidental expenses. Usually, this assistance is qualitatively and quantitatively better than that available from the agencies. The natural mother's receipt of this financial benefit can, however, become a detriment should the intermediary use it as leverage to prevent the natural mother from recanting the decision to put her baby up for adoption; realizing the ominous burden that repayment of these monies would present, the natural mother is not as free to consider the revocation of her voluntary relinquishment of parental rights.81

A final risk shared by both the biological mother and the baby is that the person or persons in whose home the child is placed may not legally adopt the child. This incompletion of the adoption process, leaving the child "in a state of limbo," may occur for many reasons: for example, the parents may be afraid of petitioning for the adoption because they suspect that a negative report may have been made by the court-appointed investigator, or the parents may not seek the adoption because they had paid an illegal fee for the child and they are afraid that the court might, upon consideration of the petition, remove the child.82 The adoption agency, by contrast, will follow through in its involvement with the child and his new home to insure that the new adoption is finally completed.83

However, such problems could be cured by statutorily guaranteeing the availability of qualified personnel who would offer both counseling to the biological parents and immediate alternative planning should the prospective adoptive couple find the child unacceptable because of a physical or developmental birth defect. Moreover, to prevent any placed child from living in a state of legal limbo, the legislature could mandate that an adoption petition be filed within one year of the placement date or that the parties file with the court the reasons that an adoption is not being pursued.84

D. Independent Adoption Does Not Insure That the Best Interest of the Adoptive Parents Will Be Met

Although the following issues are categorized as primarily affecting the interests of the adoptive parents, many of them necessarily impact

80. Id. at 103-04, 118.
81. Id. at 102-03, 118-19.
82. Id. at 33.
83. Id. at 32-33, 222-23.
84. Id. at 233-34.
upon the child and his development within the new home. Relinquishment and termination of the rights of the natural parents are major issues that must be confronted by adoptive parents. While relinquishment is a voluntary surrender of parental rights, termination is involuntary and ordinarily requires a court order. Generally, the underlying problems associated with the ending of the natural parents' rights are the same whether the intermediary used for finding a child is an agency or a private party. But the variance in the sequencing of placement in private adoptions poses special concerns.

Regulated adoption agencies typically will not place a child until the natural parents' rights have been completely relinquished or terminated. In the case of relinquishment, an adoption agency often will not place until the biological parents' relinquishment can no longer be revoked. Additionally, under many statutory schemes if an adoption agency placed the child, there may be no revocation period or it may end six months after the relinquishment was signed. By contrast, private placement occurs almost immediately after the child is born. Thus, there can be a substantial period of time, while the child is already in the adoptive home, in which the intermediary could be trying, without success, to obtain relinquishment or termination. Moreover, even if a relinquishment were obtained, there is a period of time in which the relinquishment could still be revoked. The subtlety mentioned above, whereby the statutory revocation period differs depending upon whether the placement was through an agency or a private party, exists because many states believe that the natural mother needs greater protection in a private placement due to the lack of counseling inherent in private placements. However, with mandatory counseling, the revocation periods for both placement mechanisms can be identical.

In light of these relinquishment and revocation problems, a major complaint of the private placement system is the uncertainty that the system promotes, for neither the adoptive parents nor the child, who is adjusting to this new home, can be assured that the natural mother and/or father will not seek to regain the child. Absent an agency to provide foster care for the baby until all or most of the legal battles are fought and won, this problem created by a truncated private

85. For an analysis of the problems with obtaining the relinquishment or termination of parental rights and a 1977 national summary of the laws, see id. at 149-64.
86. See generally Note, The Adoption Dilemma: The Divergence of Theory and Practice, 38 BROOKLYN L. REV. 772, 776 (1972) [hereinafter cited as The Adoption Dilemma].
87. ADOPTIONS WITHOUT AGENCIES, supra note 1, at 155-64.
88. See generally The Adoption Dilemma, supra note 86, at 779-782.
89. ADOPTIONS WITHOUT AGENCIES, supra note 1, at 30-31. However, even in an agen-
placement is a constant risk in the independent adoption process. Although the possibility that the placed child will have to be returned to his natural parents appears to be a negative aspect of private placement, it is more than offset by the psychological and emotional benefits enjoyed by a child who has been placed almost immediately after birth and was not exposed to foster care.90 Placing the child immediately into his future home provides greater continuity and consistency, which is most important to the psychological welfare of an infant.91 In this regard, it should be noted that the agency dogma of waiting until certain legal steps are completed before placement can occur almost always causes a break in the child's continuity and consistency of care; the normal delay experienced is anywhere from a few months to a year. In the private placement scenario, however, continuity and consistency of the child's home life is disrupted only in the relatively rare case92 where legal complications arise. Accordingly, since the focus is on the best interest of the child, the independent adoption technique of immediate placement may be considered superior to the agency plan of providing temporary foster care.

Adoptive parents are also concerned with two informational aspects: first, they desire sufficient background information about the biological parents, and second, they do not want either set of parents involved in the adoption to know the identity of the other. It is important for the adoptive parents to possess information about the biological parents so that the adoptive parents will have full knowledge of the physical and developmental factors that might affect the growth of the child.93 To ensure that this information is gathered and available, the petition for
adoption or an earlier report should require a complete recitation of the facts deemed relevant to these concerns. Where confidentiality is the issue, there is an attempt to control the natural parents' intervention in the life of the child. Experts believe that for an adoption to be successful, contact between the biological parents and the child must be prevented. A recent study showed that almost one-third of the natural mothers in the independent adoptions surveyed knew the identity of the adoptive family; the same survey indicated that problems with the natural parents contacting their biological child had been encountered. The only possible solution is statutorily to require that the adoptive parents' identity be kept confidential when a child is placed through any intermediary and to remove from the statutes any provisions mandating that the identity of the biological and adoptive parents be revealed to each other.

Finally, a concern is raised by those prospective adoptive parents who cannot afford to adopt privately or who do not desire to adopt privately. They fear that allowing independent adoptions to parallel agency adoptions will lead to an unfair apportionment of the very limited number of healthy white babies. Courts and commentators have already noted that those with the proper connections and sufficient money can "jump to the head of the line" by avoiding the agencies and can obtain through independent channels a child who could have been placed with an agency family. To rebut this argument the proponents of independent adoption point out that in any adoption the best interests of the child are the primary concern, while fairness to the adoptive couples is only a secondary matter. Furthermore, because many biological parents would prefer placements through a private intermediary instead of an adoption agency, it would be inequitable to force natural parents to utilize agency placement.

94. For a discussion of the information that should be available to the adoptive parents see id. at 100-01, 132-34.
95. Id. at 7.
96. Id. at 101-02.
97. See generally id. at 234.
98. See, e.g., In re Adoption of Child by N.P. and F.P., 165 N.J. Super. 591, 398 A.2d 937 (Union County Ct. 1979). The prospective adoptive parents were financially able to obtain a child through unapproved intermediaries in violation of the New Jersey statute which proscribed the use of certain intermediaries in adoptions. And although the court recognized that the couple had used "their financial means to jump to the head of the line of those couples waiting for a placement by an approved agency," the court nonetheless permitted the adoption to occur since the adoptive parents were considered fit. The matter, however, was referred to the county prosecutor for the imposition of possible criminal sanctions. Id. at 597, 398 A.2d at 940.
99. See generally Abolishing Baby Buying, supra note 36, at 548-49, 553-54.
IV. CONCLUSION

The major arguments favoring independent adoption have already been raised by way of counterargument in the preceding sections. Specifically, they include: the success rate for independent adoption is as good as the success rate for agency adoption; the independent adoption can be sufficiently controlled by uniform legislation to prevent black-market activities; and the independent adoption, by placing the child almost immediately after birth, guarantees continuity and consistency of care. The few remaining arguments advanced by proponents of independent adoption are practical in nature and will now be considered.

It is contended that the private and public agencies in most states could not administratively handle the increased load if independent adoptions were outlawed. The agencies already have long waiting lists which often close for periods of time, although closing is usually attributed to the shortage of healthy white babies. To some extent, it was this very lack of available capacity which initially prompted private channels to develop. Another consideration, indirectly related to the agencies' existing lack of capacity, is that the independent adoption provides the only opportunity for individuals and couples who do not fit within the narrow agency definition of what constitutes a proper adopting individual or couple. For example, most agencies have minimum and maximum age requirements and will not consider a home that already has two children; a substantial minority of agencies will not place a second child in a home where there already is one child. Therefore, if the agencies cannot or will not place with certain people, the independent adoption mechanism, if properly controlled, should be allowed to function in concert with the agency process.

Although the arguments favoring or faulting the independent adoption process are usually brought under the banner of the child, it appears that interests other than the child's are really being advocated. During the actual private adoption process, the child is the silent partner, or rather, silent victim, because under existing statutory schemes there is truly no one representing his best interests. Later, when the petition for adoption reaches the court, the judiciary becomes the child's representative and assures his best interest. But the fact remains that during the early stages of the independent adoption itself,

100. Black-Market Adoptions, supra note 6, at 56 & n.40.
101. Id. at 49 & n.8. See Adoptions Without Agencies, supra note 1, at 35-36.
102. The Adoption Dilemma, supra note 86, at 774.
103. Adoptions Without Agencies, supra note 1, at 37, 92. The medians for the minimum and maximum age requirements reported were twenty-one and forty, respectively. Id. at 37.
primarily during placement, the child is no more than a silent partner. Nonetheless, if the homeless child could voice his interests, he would probably endorse the allowance of all avenues of placement, including the continuation of private placement through the so-called gray market. The child would urge this position because he would realize that his paramount concern is to acquire a loving home by the most expeditious means possible. The one caveat that the child would make clear, however, is that the gray market be subjected to control measures to insure that his best interest would be guaranteed.

This comment has raised the various concerns of those in the adoption field, and admittedly, the burden of proof, or persuasion, has been placed upon those who oppose independent adoptions. Imposition of the burden was deemed appropriate because the private adoption process has successfully existed for many years and is annually responsible for a significant percentage of the children placed. It seems reasonable, then, to place the burden upon those urging change to prove the faults of the system. But in light of the available evidence, the burden has not been carried; at least analytically, there is no conclusive proof showing that independent adoptions are inferior to agency adoptions. Moreover, many of the problem areas presently associated with the private placement process can be eliminated by effective remedial legislation. Statutory controls, which embody most of the recommendations set forth in this comment, have recently been published for public scrutiny by the Department of Health, Education and Welfare in the form of a Model State Adoption Act (MSAA). Basically, MSAA permits private placements only if they are accomplished by the natural parents. As was discussed earlier in the comment, this limitation imposed upon private placements is a fiction, since even the most insignificant acts performed by the natural parents can validate the actions of the intermediary. Because MSAA recognizes this fiction, most of MSAA's requirements and restrictions are actually aimed at controlling the intermediary rather than the natural parents. It would seem that this fiction should be avoided and that the final version of MSAA should clearly allow private intermediaries to function apart from any fictional relationship with the natural parents, albeit with stringent controls on their actions. Legal fictions usually cause difficulties only for the "innocent" and tend to obscure that which the law is actually trying to control.

104. Approximately twenty percent of all placements are privately arranged. Id. at 10.
105. See notes 35-41 and accompanying text supra.
108. See notes 54-55 and accompanying text supra.
The first major area of control is to require a meaningful investigation of the private placement either before or immediately after placement.\textsuperscript{10} Under MSAA, notice must be given to the court by the child's natural parents within forty-eight hours of the placement. The notice is in the nature of an informational report and is called the Notice of Parental Placement.\textsuperscript{11} Upon receipt of the Notice of Parental Placement, the court must cause an agency to investigate the placement and report to the court within thirty days; additionally, the court must schedule a hearing to consider the proposed placement for adoption within sixty days of the date of the Notice of Parental Placement. The scope of the report required from the agency appears broad enough to be equivalent to the investigation made by an agency when analyzing the potential placement of an agency child.\textsuperscript{12}

\textsuperscript{10} See notes 43-45 and accompanying text supra.

\textsuperscript{11} 45 Fed. Reg. 10,662 (1980). Section 206(b) provides that "[t]he Notice of Parental Placement shall be filed within forty-eight hours of the placement of the child with a person who intends to adopt the child . . . ." Id. A potential problem with the end of this statutory provision — "person who intends to adopt the child" — is that a private placement could be made and no Notice of Parental Placement would be compelled if there is no intention to adopt. This language may allow placements without notice and unless the child is actually being placed for temporary foster care, the child may grow up in legal limbo. See notes 82-84 and accompanying text supra.

\textsuperscript{12} 45 Fed. Reg. 10,662 (1980). Section 206(c)(1) provides for agency action as follows:

(c) Upon receipt of a Notice of Parental Placement, the court shall:

(1) cause an agency to examine the child and conduct interviews with the birth parents and prospective adoptive parents, and report to the court within thirty days, but no sooner than five days after the birth of the child. The report must state:

(A) (i) that, except as provided in subsection (ii) hereof, each of the parents or alleged parents of the child as to whom there do not appear to be grounds for involuntary termination of parental rights:

a. has been counseled and given a written statement regarding the possible alternatives for future care of the child, including adoption; that assistance to explore such alternatives has been offered; and that, in a written statement, each parent or alleged parent has either disclaimed an interest in the child or has acknowledged his or her choice of adoption for the child and the reasons for that choice;

b. knows of the intended placement and intends either to disclaim parenthood of the child, to voluntarily terminate his parental rights with respect to the child with full knowledge of the consequences, or to contest the proposed placement at the hearing on the Notice of Parental Placement; and

c. has given a medical and social history which accompanies the report;

(ii) what efforts have been made to identify or interview any parent who is unknown or cannot be located or who refuses to cooperate with the agency, and any information regarding that parent which has been obtained;

(B) that a health assessment of the child including birth, neonatal, and other medical history has been made; a copy of such assessment shall accompany the report;

(C) that, as a result of the interview with the prospective adoptive parents, the
The second major area of control is to place a system of requirements upon the private placement process to insure that black-market profiteering will not occur.\textsuperscript{113} Although MSAA makes it clear that an intermediary may not accept any consideration for procuring a child on pain of fine and imprisonment, the model provision does allow the adoptive parents to pay the actual medical expenses related to the birth of the child.\textsuperscript{114} This section appears too vague because it does not specify the exact time during pregnancy when reimbursement for medical expenses may begin. Moreover, the proposed statute places no limit upon the amount of permissible reimbursement for medical costs. Perhaps one solution would be for the provisions to state when costs may start to be paid and then tie the maximum amount payable for medical expenses to the fee permitted by a recognized insurer in the state (such as Blue Cross-Blue Shield) for child birth and its attendant potential complications. In any case, under MSAA the costs and fees involved in the placement will have to be submitted by affidavit at the placement hearing and the court may then question the parties to determine whether all of the restrictions on costs and fees have been met.\textsuperscript{115} As far as the problem with regulating fees paid to professionals agency is convinced of the suitability of the prospective adoptive parents for the child; \textit{Id.}  
\textsuperscript{113} See notes 48-76 and accompanying text \textit{supra.}  
\textsuperscript{114} 45 Fed. Reg. 10,656 (1980). Sections 107(f) and (g), which control fees for independent child placements, provide as follows:  
(f) No person, agency, association, or corporation shall offer, give, request, receive, or accept payment of cash or other consideration for the procurement of a child for a prospective adoptive family, except that:  
(1) reasonable fees for professional services may be charged for services provided with respect to the placement of a child pursuant to Section 205 of this Act;  
(2) an agency, or the prospective adoptive parents of a child to be placed for adoption pursuant to Section 206 of this Act, may pay the actual medical expenses associated with the birth of the child to be placed for adoption.  
(g) Any violation of subsection (f) of this Section 107 shall be punished by a fine of no more than $20,000 or imprisonment of no longer than ten years, or both. \textit{Id.} It should be noted that \S 206(e)(3)(B) of the MSAA will allow a placement to continue at the court's discretion even if illegal costs or fees have been involved in the placement. The court's decision is to be based upon the best interest of child. 45 Fed. Reg. 10,663 (1980).  
\textsuperscript{115} 45 Fed. Reg. 10,663 (1980). Section 206(e)(1) provides as follows:  
At the hearing the court shall require that an itemized affidavit of costs and fees regarding the placement be submitted by each parent, each prospective adoptive parent, and each representative, if any, of birth parents or prospective adoptive parents. On the basis of the agency report pursuant to subsection (e)(1) of this Section 206 and the completed affidavits and, if necessary, an examination of the parties, the court shall determine whether all requirements of law in arranging the proposed placement for adoption have been met. \textit{Id.}
other than "actual medical expenses," it appears that none will be permitted in a private placement because impliedly these fees are only allowed when an agency places a child.\textsuperscript{116} Although the MSAA attempts to address black-market activity, many of the black-market problems raised by this comment, such as the veracity of the parties when they are before the court and the enforcement of the criminal provisions, are not addressed by MSAA because these problems are arguably beyond the controls of a legislature. The issues concerning the natural parents, which involve counseling and immediate alternative planning, are also addressed by the MSAA. Under the proposed statute, agency involvement is required from the outset, and the agency must further insure that the natural parents have been counseled and have been given a written statement regarding the possible alternatives for future care of their child.\textsuperscript{117}

As previously discussed, an important objective of adoption legislation should be to protect the interests of the adoptive parents by ensuring that they have sufficient information about the child's biological background; equally important, however, is the need to preserve the confidentiality of both the natural and adoptive parents' identities. As to the first issue, the MSAA, within its provisions governing the scope of the court-directed agency examination, requires that the agency include in its report a medical and social history of the natural parents as well as an assessment and medical history of the child.\textsuperscript{118} As to the second issue, involving the confidentiality of the parties' identity, the MSAA requires that the Notice of Parental Placement include the name and address of each prospective parent, unless the placing parent consents to the omission of the identity of the adoptive parents.\textsuperscript{119} Therefore, MSAA actually compels the parties to know each other unless an intermediary agent is used and the placing parent consents to the anonymity of the adoptive parents. As discussed in the

\textsuperscript{116} See note 114 \textit{supra} for the content of § 107(f)(2). That section apparently restricts the payment of reasonable fees for professional services to only § 205 placements, which are placements through adoption agencies.

\textsuperscript{117} See note 112 \textit{supra} for the text of the statutory provisions which control the scope and timing of agency involvement in private placements.

\textsuperscript{118} \textit{Id.}

\textsuperscript{119} 45 Fed. Reg. 10,662 (1980). Section 206(b) in pertinent part requires that the following information be included in the Notice of Parental Placement:

(1) the name and address of each parent of the child, if known, and if unknown, the reason therefor;

(2) the name and address of each prospective adoptive parent, unless the parent making the placement has consented to omission of such name and address;

(3) the name and address, or expected date and place of birth, of the child; and

(4) the name and address of counsel, guardian \textit{ad litem}, or other representative, if any, for each of the aforementioned parties.

\textit{Id.}
body of this comment, in order to limit the possibility of later interferences from the natural parents, the final version of MSAA should be revised to provide that the identity of the adoptive parents not be disclosed in a document available to the natural parents, unless there is no intermediary agent involved in the placement.

With MSAA now published for comment, each state has the ideal vehicle to reconsider their present gray-market adoption controls. The proposed model has been carefully and thoughtfully constructed by the HEW panel. That the model is the result of careful deliberation is best substantiated by MSAA's provision for the appointment, at the court's discretion, of a guardian ad litem to represent the child at the hearing on the Notice of Parental Placement.

By permitting the independent adoption mechanism to exist legally, the authors of MSAA have listened to the child's plea to legitimize every available adoption vehicle in the United States which would expeditiously place him into a loving home. Moreover, the child's recommendation that gray market activity be effectively constrained to ensure the maintenance of his best interest has been fully accepted by MSAA's authors who have constructed comprehensive controls to be imposed upon the independent adoption process. But until there is almost unanimous acceptance by the states of the proposed code, the gray market will be either incompletely controlled or improvidently outlawed, and the child will continue to be no more than a silent partner in the determination of his future.

George William Myers, Jr.

120. See notes 93-97 and accompanying text supra.
122. 45 Fed. Reg. 10,662 (1980) (§ 206(c)(2)).