

ADOPTION AND ASPIRATION: THE UNIFORM ADOPTION ACT, THE DEBOER-SCHMIDT CASE, AND THE AMERICAN QUEST FOR THE IDEAL FAMILY

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When the state must designate a child's legal parentage, should the goal be to protect the biological parents' "opportunity interests" to raise "their" child or to protect the child's established relationships with the individuals who have actually functioned as her parents? What characteristics render an adult an appropriate parent? These questions, long in the background of disputes over adoption, have been raised with new intensity in the early 1990s in two distinctive settings. The first is the debate about these questions waged in the courts and the media. The second is the effort of the National Conference of Commissioners on Uniform State Laws (NCCUSL) to create a Uniform Adoption Act.

The fate of the child called Jessica by her would-be adopters in Michigan and Anna by her birth parents in Iowa was a matter of agitated public debate before, during, and after it was decided by a legal system slow to resolve the conflicting claims of the adoptive and birth parents and even slower to recognize the young child's interest in a quick decision.¹ Similarly, the law's inability to resolve the competing claims of entitlement with respect to other young children—Richard Doe in Illinois, Emily W. in Florida, Michael S. in California—generates yet more media attention to the questions of "where do children belong?" and "to whom do children belong?"² As

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1. For the better media accounts of the DeBoer-Schmidt struggle, see Judy Daubenmier, *Amid Tears, A Farewell for Jessica*, PHILA. INQUIRER, Aug. 3, 1993, at A5; Madeline S. Diehl & Jennifer Dix, *Tug of Love*, ANN ARBOR OBSERVER, Apr. 1993, at 27; Lucinda Franks, *The War for Baby Clausen*, NEW YORKER, Mar. 22, 1993, at 56; Lois Melina, *Custody Battle for Jessica Raises Questions for Adoption Practice*, ADOPTED CHILD, June 1993, at 1; Don Terry, *Tug-of-War Ends as Child is Moved*, N.Y. TIMES, Aug. 3, 1993, at A13; Sam H. Verhovek, *Michigan Court Says Adopted Girl Must Be Sent to Biological Parents*, N.Y. TIMES, July 3, 1993, at A13; Barbara Vobejda, *The Anguish of Contested Adoption*, WASH. POST, Apr. 13, 1993, at A1; Edward Walsh, *Two Parents Too Many for a Little Girl*, WASH. POST, June 4, 1993, at C1. See also, Nancy Gibbs, *In Whose Best Interest?*, TIME, July 19, 1993, at 44; Bill Hewitt, *Losing Jessi*, PEOPLE MAG., July 19, 1993, at 48; *Whose Child is This? The War for Baby Jessica* (ABC television broadcast, Sept. 26, 1993) (made-for-television movie).

2. As of March 1995, Florida's Baby Emily case was pending before the Florida Supreme Court on an appeal from the birth father from a six to five ruling of the court of appeals

American culture's internal conflicts over the ideal family are projected onto the various individuals, relationships, and households involved in each case, images of the conflicting parties are cast and recast to fit public expectations. Not since the "Baby Lenore" case of the early 1970s have the media so extensively covered contested adoptions.³

reinstating the trial court's order terminating the father's rights on the basis of "pre-birth abandonment" and granting an adoption by the couple who have had custody of Emily since shortly after her birth in 1992. *In re Adoption of Baby E.A.W. (G.W.B. v. J.S.W.)*, 647 So. 2d 918 (Fla. Dist. Ct. App. 1994). While affirming the adoption, the court of appeals also asked the supreme court to consider whether "emotional support" or "emotional abuse" of the father toward the mother may appropriately be considered by a court in evaluating the "conduct of a father towards the child during the mother's pregnancy." *Id.* at 924 (quoting FLA. STAT. ANN. § 63.032(14) (West 1992)). Throughout the nearly three years of court proceedings, the birth mother has remained adamant in her support of the proposed adoption, believing that it would best serve the interests of the child. *Id.* at 926. Although the mother did not claim that he sexually assaulted her, the father was previously convicted for sexual battery. *Id.* at 945.

California's Michael H. case involves a birth father who mistreated the birth mother during her pregnancy and has a history of drug abuse. He is trying to block an adoption by claiming "presumed father status" over the objection of Michael's birth mother and the would-be adoptive parents who have had custody of the boy since 1992 and have been appointed the child's guardian. *Adoption of Michael H. (John S. v. Mark K.)*, 29 Cal. Rptr. 2d 251, 255, review granted, 877 P.2d 712 (1994).

The Illinois Baby Richard case involves a child who has lived since his birth in March 1991 with an adoptive couple whose petition to adopt was approved by the trial court after finding that the birth mother had voluntarily relinquished the child and that the father's consent was unnecessary because he had shown insufficient "parental interest" in the child within 30 days of the child's birth, as required by Illinois law. *In re Doe*, 638 N.E.2d 181, 181-82 (Ill. 1994), *rev'g* 627 N.E.2d 648 (Ill. App. Ct. 1993), *cert. denied*, 115 S. Ct. 499 (1994). Although the birth parents had lived together for nearly eight months of the pregnancy, they had a falling out, and the mother refused to identify the father, falsely accused him of abusing her, and told him that the baby had died. *Id.* at 182. When the birth parents reconciled, the father set out to challenge the adoption on the grounds that his rights had been terminated without cause. Although the adoption was affirmed in 1993 by the Illinois Appellate Court, it was set aside in June 1994 by the Illinois Supreme Court, which since then has further ruled that the "real" father has an absolute right to the custody of the child as against the adoptive parents who are merely "strangers." *Id.* at 190.

The U.S. Supreme Court denied certiorari to both Baby Richard and his prospective adoptive parents. *Baby Richard v. Kirchner*, 115 S. Ct. 499 (1994). The Illinois Supreme Court recently issued a writ of habeas corpus ordering the Does to surrender custody of Baby Richard. *In re Kirchner*, No. 78101, 1995 WL 80012, at *1 (Ill. Feb. 28, 1995) (per curiam).

3. *People ex rel. Scarpetta v. Spence-Chapin Adoption Serv.*, 269 N.E.2d 787 (N.Y. 1971). In what was popularly known as the "Baby Girl Lenore" case, a birth mother relinquished her newborn to a private agency in New York, but under the then applicable state law, legally revoked her relinquishment within 30-45 days and sought the return of her child. *Id.* at 789. By then, the agency had placed the child with a prospective adoptive couple who moved from New York to Florida in order to evade the birth mother. Press accounts generally supported the adoptive couple rather than the birth mother. A recent emigre from Latin America, she was unfamiliar with adoption procedures in this country, but, by all accounts, was fully capable of caring for her child. *Id.* at 789. Although the New York Court of Appeals upheld the mother's habeas petition and ordered the child returned to her, Florida courts refused to enforce the New York order and the child was raised in Florida by the adoptive couple. *Scarpetta v. DeMartino*, 254 So. 2d 813 (Fla. Dist. Ct. App. 1971), *cert. denied*, 262 So. 2d 442 (Fla.), *cert. denied*, 409 U.S. 1011 (1972). Florida's refusal to accord full faith and credit to the New York custody order was seen as encouraging interstate abductions of children by disap-

The same conflicts arose in the National Conference of Commissioner's (NCCUSL's) efforts to develop the Uniform Adoption Act.⁴ At meeting after meeting, the drafting committee's various advisors, who sought to push the Act in one direction or another, recreated the dynamics of the more widely publicized contested cases. NCCUSL's five-year endeavor, although open to public participation and scrutiny, received little media attention until August 1994, when the Conference overwhelmingly agreed upon a lengthy text and recommended its enactment by state legislatures in the fifty states and the District of Columbia.⁵

In its final form, the Adoption Act represents, in some respects, a compromise between the contrasting outlooks on the ideal family voiced during the deliberations of the drafting committee and the annual Conferences attended by nearly 300 Commissioners. It attempts to provide fair mechanisms both within and across state lines for facilitating consensual adoptions and for resolving contested adoptions. In at least one respect, however, the Act is not a compromise. It rejects the view that adoption is a "last resort" to be invoked only after multiple public efforts to preserve or establish a child's ties to biological parents have failed. Instead, the Act is premised on the belief that children's ties to the individuals who actually parent them—or who are committed to parenting them—deserve legal protection even if those ties are psychologically and socially constructed and not biologically rooted:

pointed contestants in custody disputes. The Baby Lenore case helped convince the Commission on Uniform State Laws to draft the Uniform Child Custody Jurisdiction Act (UCCJA), 18 U.S.C.A. § 1204 (West 1994). Bolstered by the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C.A. § 1738A (West 1994), the UCCJA requires state courts to enforce the custody orders of other states, if those orders are issued by courts that have exercised jurisdiction according to the UCCJA and PKPA rules. In other words, The UCCJA and PKPA are intended to prevent exactly what happened in the DeBoer-Schmidt conflict: an effort by a prospective adoptive couple to defy the ruling of one state appellate court by seeking a "friendlier forum" in another state.

4. The National Conference of Commissioners on Uniform State Laws (NCCUSL) is a nonprofit organization of lawyers, state legislators, judges, and law professors who are appointed by the governors of every state to draft proposed legislation on a broad range of topics subject to state legislative authority. Some NCCUSL laws have been enacted by every state—for example, the Uniform Commercial Code, the Child Custody Jurisdiction Act, and the Partnership Act. Other proposed uniform laws—for example, the Parentage Act, the Marriage and Divorce Act, and the Probate Code—have not been uniformly enacted, but have nonetheless precipitated changes in and significantly influenced state laws.

5. NCCUSL approved the Uniform Adoption Act on August 4, 1994 by a vote of forty-nine (forty-eight states plus the District of Columbia) to two. The Family Law Section of the American Bar Association (ABA) unanimously approved the Act in October 1994 and the American Bar Association House of Delegates approved the Act by acclamation in February 1995. The Act will now be introduced to state legislatures for their individual consideration and possible enactment. For other accounts of how the Act was approved by NCCUSL and of the activities of various pro- and anti-adoption advocacy groups in this process, see Mark Hansen, *Fears of the Heart*, A.B.A. J., Nov. 1994, at 58.

NCCUSL makes copies of the Uniform Adoption Act and Comments available to the public for a small xeroxing and postage fee. The office is located at 676 North St. Clair St., Chicago, IL 60611, and the telephone number is 312-915-0195. The Act is also reprinted in 1 ADOPTION LAW AND PRACTICE app. 4-A (Joan H. Hollinger ed., 1988 & Supp. 1994) and is available through several Internet services.

[A]doption offers significant legal, economic, social, and psychological benefits not only for the children who might otherwise be homeless, but also for parents who are unable to care for their children, for adults who want to nurture and support children, and for state governments ultimately responsible for the well-being of children.⁶

What would have happened to "Baby Jessica-Anna" had the Uniform Adoption Act been in effect in Iowa when this, the most notorious of the contested adoptions of the early 1990s, began? How would the interests of this child, her birth parents (the Schmidts), and her would-be adoptive parents (the DeBoers) have been defined and protected? This article answers these questions and analyzes some of the cultural conflicts revealed in the recent debates surrounding adoption. A better understanding of these conflicts and the contrasting aspirations for the American family that render these conflicts so riveting to the public, may promote a more productive discussion of NCCUSL's Adoption Act. As individual states consider enacting it within the near future, this article provides an account of the DeBoer-Schmidt case, explains the results likely under the Adoption Act, and finally, explores the cultural tensions manifest in the discussion surrounding cases like the DeBoer-Schmidt case.

I. RELINQUISHING THE CHILD: PARENTAL RIGHTS AND CONSENT

On February 8, 1991, Cara Clausen, an unmarried woman in her late twenties, gave birth in Cedar Rapids, Iowa, to a daughter whom she planned to place for adoption with Jan and Robby DeBoer, a childless married couple from Ann Arbor, Michigan.⁷ Like most privately-initiated adoptive placements, this one began through an informal, ad hoc network which helps prospective adoptive parents and prospective relinquishing parents learn of each other's existence.⁸ Eager to avoid the social ostracism she believed would befall her as an unwed mother in Blairstown, the semi-rural community where she lived with her parents, Cara had discussed adoption with her doctor who then mentioned Cara's interest to various colleagues and friends, one of whom got in touch with his cousin, Robby DeBoer. Frustrated by the delays they had encountered while seeking to adopt from an agency in Michigan, the DeBoers were thrilled to have an opportunity to adopt an infant in a state like Iowa, where direct private placements are

6. UNIF. ADOPTION ACT prefatory note (1994) [hereinafter UAA]. For an excellent multidisciplinary overview of contemporary adoption laws and practices, see generally Symposium, Adoption, THE FUTURE OF CHILDREN, Spring 1993.

7. My account of the sequence of events in the Baby Jessica-Anna case is based on articles, *supra* note 1, the personal account of the adoptive mother, ROBBY DEBOER, LOSING JESSICA (1994), and the factual summaries in the various court opinions, including *In re B.G.C.*, 496 N.W.2d 239 (Iowa 1992), *In re Clausen* (DeBoer v. Schmidt), 501 N.W.2d 193 (Mich. Ct. App.), *aff'd*, 502 N.W.2d 649 (Mich. 1993).

8. For a discussion of how this networking operates, see Jed Somit, *The Attorney's Role in Independent Adoption: Dual Representation*, in 1 ADOPTION LAW AND PRACTICE, *supra* note 5, ch 5.

permitted. In 1991, Michigan remained one of the handful of states that, except for adoptions by close relatives, required a public or private agency to make all adoptive placements.⁹

After communicating through Cara's doctor, Robby's cousin, and the lawyer hired by the DeBoers upon the cousin's recommendation, Cara and the DeBoers informally agreed—without speaking or meeting each other—that the DeBoers could adopt Cara's soon to be born child. Although an experienced family law practitioner, the DeBoers' lawyer had handled only a few adoptions.¹⁰ Apparently, he did not clarify his relationship to Cara, or to Scott Seefeldt, the man whom she originally named as the birth father. He may have led Cara and Scott to believe that he was representing them rather than the DeBoers, his clients. Alternatively, he may have told Cara and Scott that he could represent and provide legal services to them as well as to the DeBoers. Despite the Iowa law requiring at least seventy-two hours to elapse between a child's birth and the signing of a consent, he allowed Cara to consent to her daughter's adoption in his presence within forty hours of giving birth. Except for a brief telephone conversation with the hospital's social worker, Cara had no supportive counseling. The lawyer may have neglected to explain to Cara or to Scott, who mailed his written consent from another state, that they both had a right to attend the judicial hearing where their parental rights would be formally terminated on the basis of their signed consents.

An even more disturbing aspect of the lawyer's behavior is that he took Cara's consent and accepted physical custody of the infant on behalf of the DeBoers despite a number of classic warnings about the birth mother's ability to "let go." These included Cara's efforts to deny or hide her pregnancy until shortly before she gave birth, her reluctance to discuss her plans with close friends or family members, her insistence on relinquishing the infant despite her own mother's entreaties to the contrary, and her wariness of saying much about the circumstances of the conception or her relationship to the birth father. It is not surprising that several days after leaving the hospital, Cara began to regret her decision.

Unaware that Cara might be having second thoughts, the DeBoers travelled to Iowa and took physical custody of the baby. On February 25, 1991, the lawyer secured a juvenile court order terminating Cara's and Scott's parental rights and permitting the DeBoers to take the baby with them to Michigan pending completion in Iowa of the adoption proceeding begun that same day in the district court. From the DeBoers' perspective, the process was wrinkle-free. Because it appeared that both birth parents had agreed to

9. See 1 ADOPTION LAW AND PRACTICE, *supra* note 5, app. 1-A (listing the states that currently permit direct or independent placements as well as placements by public and private state-licensed agencies). Michigan revised its Adoption Code in 1994, effective January 1995, to include most of the provisions of the Uniform Adoption Act that permit direct placement adoptions. MICH. COMP. LAWS ANN. §§ 710.22-710.68a (West 1994).

10. Among the professional organizations whose missions include educating and training adoption attorneys and ensuring adherence to ethical standards is the American Academy of Adoption Attorneys (AAAA), established in 1990. AAAA now has more than 300 members who are involved in intra- and interstate direct and agency adoptions.

the termination of their parental rights, even the state employees who administer the Iowa and Michigan offices of the Interstate Compact on the Placement of Children (ICPC) were willing to cooperate in the baby's departure from Iowa with her prospective adoptive parents.¹¹ The DeBoers already felt comfortable calling the baby Jessica DeBoer.

Within a week, however, the wrinkles appeared. Claiming irregularities in the procedures surrounding her consent, Cara filed a request with the juvenile court to revoke her consent and to set aside the order terminating her parental rights. Her accompanying affidavit stated that she had lied about the birth father, and that the actual father was Dan Schmidt, an interstate truck driver employed by the company for which she worked as a dispatcher. Dan filed an affidavit of paternity and sought to intervene in the adoption proceeding in the district court, asserting that he had just learned that he was the baby's father, that he opposed the adoption, and that, without his consent, the proceeding would have to be dismissed. It was now highly probable that this particular adoption would never be finalized, because no adoption can be approved in Iowa, or in any other state, without the consent of the birth parents, unless there is a legitimate basis for terminating their parental rights or for determining that they had no rights.¹² Although much of the public discussion of this case has centered on the efforts of the biological father during the next two and a half years to assert his parental rights, the controversy actually began when Cara, the birth mother, decided within a few days of signing the relinquishment papers that she had made a terrible mistake and set out to retrieve her baby.¹³

If NCCUSL's Uniform Adoption Act had been in effect in Iowa, the initial adoptive placement would probably not have occurred. Even if it had, the status of the biological father and his ability or inability to block the adoption would have been established within a much shorter period of time. The DeBoers probably would not have fought to retain custody once the placement was contested, as Robby DeBoer herself acknowledged in a public lecture in Ann Arbor on October 1, 1994.¹⁴ It is important to identify the

11. ICPC administrators in Iowa and Michigan were apparently not involved in the contested custody dispute that later ensued between the Iowa and Michigan couples. In contrast, for example, to cases where birth parents contest an adoptive placement in another state by invoking the ICPC provisions on the continuing responsibilities of "sending agencies," the attorneys for the Iowa birth parents based their claims against the Michigan couple on Iowa's substantive adoption laws and on the jurisdictional provisions of the UCCJA and the federal PKPA. For further discussion of the ICPC, see 1 ADOPTION LAW AND PRACTICE, *supra* note 5, app. 3a, and *In re Zachariah K.*, 8 Cal. Rptr. 2d 423 (1992).

12. HOMER H. CLARK, JR., 2 DOMESTIC RELATIONS 612-13 (2d ed. 1987).

13. In an account of the case in *The New Yorker*, Lucinda Franks suggests that Cara might not have contested the adoption if the local chapter of Concerned United Birthparents (CUB) had not convinced her to do so. Franks, *supra* note 1, at 61. By contrast, Madeline Diehl's account in the *Ann Arbor Observer*, suggests that Cara was determined to revoke her consent before she sought support from CUB, which then helped her obtain her own lawyer. Diehl & Dix, *supra* note 1, at 31.

14. *DeBoer Committee for Children's Rights National Working Conference on Children's Rights*, Ann Arbor, Michigan, Sept. 30-Oct. 2, 1994.

specific ways in which the Act would have made a difference to each of the parties in the opening chapters of their story.

Unlike Iowa's law, the Adoption Act has a number of substantive and procedural provisions intended to protect birth parents against uninformed and hasty decisions to place a child for adoption. In deference to our sociocultural and constitutional traditions that honor parental decisions about what is best for a child, the Act explicitly permits parents as well as public and private agencies to make adoptive placements.¹⁵ Nonetheless, in order to avoid the misunderstandings and risks of harm to a child attendant upon the kind of informal networking that occurred in this case, the Act requires that a birth parent who makes a direct placement—without a third party facilitator or intermediary—select the prospective adoptive parents. The selection is to be made on the basis of the birth parent's personal knowledge about the would-be adopters, as gleaned from the Act's mandatory preplacement evaluation and supplemented by whatever additional information the birth parent requests and the prospective adopter is willing to disclose.¹⁶ The birth parents might decide not to consent to the placement until they had met or learned more about the prospective adoptive parents. Conversely, the prospective parents might decide to forego a particular opportunity to adopt after meeting or talking directly with a birth parent or reviewing the "reasonably available" information about the child's health and social history which the prospective parents are entitled to receive before a placement occurs.¹⁷

Before executing a formal consent to adoption of her child, the birth parent must be advised of the availability and importance of counseling and that the adoptive parents are allowed to pay for her psychological and independent legal counseling.¹⁸ If, as in Cara's case, an infant is released directly from a health care facility, the birth mother's written and witnessed release has to be forwarded to the state department of social services.¹⁹ The department must take steps to protect the infant if the individual to whom the infant was transferred fails to report promptly that a petition for adoption has been filed.²⁰

Under the Act, the consents of Cara and Scott, the "bogus dad," could not have been taken by the lawyer representing the adoptive parents. Only someone who has no actual or potential conflict of interest with the birth parent can preside over the parent's execution of a consent.²¹ Thus, the consent may be executed in the presence of a judge, a court-appointed referee, an employee of an agency that is not handling the adoption, or the parent's own lawyer. This individual must explain to the birth parent the meaning and consequences of consenting to an adoption, and must also attest to the

15. UAA, *supra* note 6, §§ 2-101, 2-102 cmts.

16. *Id.* §§ 2-101 to -108.

17. *Id.* § 2-106.

18. *Id.* §§ 2-404(e) cmt., 7-103(a)(4).

19. *Id.* §§ 2-302, 2-303.

20. *Id.* § 2-304.

21. *Id.* § 2-405 cmt.

apparent validity of the consent.²² By requiring a neutral third-party to pre-empt over the taking of a consent, the Act attempts to accommodate the interests of birth parents, especially birth mothers, who are fully prepared to make an informed decision about their child's adoption shortly after giving birth, as well as those who want more time to decide or whom the neutral third-party believes should not make an irrevocable decision without further reflection.

Although a consent can be executed under the Act at any time after a child's birth, subject to the procedural protections summarized above, the consent is not deemed final until at least eight days after the infant's birth.²³ Within that time, the birth parent has an absolute right to reclaim custody of the child.²⁴

NCCUSL debated the consequences of requiring an unwed birth mother to name the child's father. Torn between the belief that men should take some initiative and act on their own to claim parental rights, or otherwise risk losing them, and the belief that birth mothers should not have the absolute power to control the birth father's ability to exercise his inchoate interest in parenting, NCCUSL compromised.²⁵ The Act requires that the birth mother be warned of the risks to her own decision and to the child's well being if she does not name the father, but does not penalize her if she refuses to name him.²⁶ Nonetheless, a parent who intentionally misidentifies the other parent, as Cara appears to have done, in order to deceive the other parent or the adoptive parents is subject to a civil penalty and may also be liable for common law fraud.²⁷ The petitioners in the adoption proceeding and the court are expected to assume the burden of making a diligent effort to identify and determine the whereabouts of a birth father so he can be notified of the adoption and given an opportunity to assert his parental rights in a timely manner.²⁸ Hence, despite the fact that no statute can prevent a birth mother from lying about, or concealing, the father's identity, the Act would have made this more difficult in Cara's case, and more likely that Dan would have been contacted at an earlier moment. Moreover, in protecting someone injured by a birth mother's deceit, the Adoption Act proposes a remedy other than specific performance. To rectify a wrong to a "thwarted" father, the Act does *not* provide that the child must "automatically" be turned over to him. In at least some circumstances, a damages action for fraud or a civil penalty may be a more appropriate remedy.²⁹

22. *Id.* § 2-405(d).

23. *Id.* § 2-404(a).

24. *Id.* § 2-404 cmt.

25. For a helpful discussion of the differences, in terms of the political and psychological implications, between requiring a father to discover a proposed adoption and requiring a mother to name all possible fathers, see Deborah L. Forman, *Unwed Fathers and Adoption: A Theoretical Analysis in Context*, 72 TEX. L. REV. 967, 1025-34 (1994).

26. UAA, *supra* note 6, § 3-404(e).

27. *Id.* § 7-105(f).

28. *Id.* § 3-404.

29. See, e.g., *In re Baby Boy C.*, 581 A.2d 1141, 1180 (D.C. 1990) (concurring opinion) (suggesting father might have damages action against agency that allegedly violated his constitu-

II. CHALLENGING THE ADOPTION: EXPEDITED HEARINGS AND UNWED FATHERS

We return to the Jessica-Anna story at the point where Cara and Dan decided to challenge their daughter's adoption. Was it possible to have unwound the placement at that time, which was, after all, within a month of the baby's birth? It might have been, if one knew where to act. But there was a jurisdictional ambiguity in Iowa's law. It was not clear which court had the authority to hear Cara's challenge to the termination of her parental rights and Dan's assertion of his parental rights. Did the juvenile court have jurisdiction over her challenge while the district court, where the adoption was pending, had jurisdiction to consider Dan's status? One thing should have been clear, however. The baby's placement with the DeBoers was anything but secure. Even without blood testing to confirm Dan's paternity, it seemed likely that he, not Scott, was the father, and that absent proof under Iowa's statutory and caselaw that he had "abandoned" this child, he would have been able to veto the proposed adoption and claim custody of the child. If Dan and Cara were to reconcile and marry, she would share custody of the baby with him, regardless of whether the termination of her parental rights was upheld or set aside on her appeal.

The legal and emotional, not to mention financial, ramifications of resisting the birth parents' efforts to claim custody were thus formidable; but no one in a position to understand these ramifications appears to have explained them to the DeBoers, who had been caring for the baby for only several weeks. No doubt the DeBoers would have suffered emotionally if they had returned the infant, but few would claim that the baby was at risk of permanent psychological harm if she had been returned to her birth parents in March 1991, when she was only a month old.

Why did the placement continue? The district court treated the case in a routine manner and did not schedule an immediate hearing. Apparently, Iowa did not require expedited procedures for contested adoption and custody cases and appeals. Although a guardian ad litem (GAL) for the child was eventually appointed, the GAL did little to focus the court's attention on the child's needs for prompt determination of her status. The DeBoers' original lawyer had to resign because he would have had to testify about the circumstances of Cara's consent. In the ensuing scramble by the birth parents and the DeBoers to hire their own separate lawyers, no one seems to have devised a way for the DeBoers to return the baby directly to Cara or for Cara to have her parental rights reinstated without prolonged litigation.

In her 1994 book describing the events from her perspective,³⁰ Robby DeBoer implies that she and her husband, Jan, were loathe to return the baby to Cara when she challenged the termination order. Dismayed by Cara's fraudulent behavior, they had doubts about her capacities as a parent. Even when they contemplated returning the baby to Cara, Robby insists that they were warned that if they voluntarily relinquished her, she would not be

tional and statutory rights to notice of an adoption proceeding).

30. DEBOER, *supra* note 7.

placed in Cara's custody because Cara had no legal relationship to her. They feared that the baby would become a ward of the state of Iowa and would be placed in foster care until Dan's status was clarified. Having just learned of Dan's failure to support or care for his two other out-of-wedlock children, the DeBoers were convinced that the baby's welfare was in jeopardy—she could not be with her birth mother and was likely to be placed in the custody of a man they felt was unfit. From that moment, the DeBoers viewed themselves as Baby Jessica's protectors, acting not for their own interests, but for hers. They decided to use all available legal means to prevent Dan from being recognized as Jessica's legal and custodial parent. Whatever the DeBoers' motives, however, there is no doubt that in the absence of the delays caused and permitted by the legal system, the DeBoers would not have had an opportunity to become the baby's psychological parents and her welfare might not have come into such sharp conflict with the "rights" of the adults.³¹

Hindsight suggests a number of alternative approaches that the parties seem not to have considered or understood during these initial stages. Even highly competent lawyers and judges, experienced in the tensions and travails of custody disputes, might have had little success convincing the adults to pay more attention to the baby's needs than to their own interests. Nonetheless, NCCUSL's Adoption Act specifically provides for a situation in which birth parents and adoptive parents agree to set aside a direct adoptive placement.³² Upon mutual agreement, Cara's consent could have been revoked, and the DeBoers could have acted upon their professed willingness to return the baby to Cara when she first expressed doubts about what she had done.

If the DeBoers had balked at this possibility, and had decided, instead, to resist both Cara's and Dan's claims, the Act would require the court to appoint a GAL or attorney to represent the child in the contested proceeding.³³ The hearings would have to be heard expeditiously, and the court would be encouraged to make an interim custody order to protect the child.³⁴ For example, the court might allow the birth parents to visit the child while leaving her in the would-be adopters' custody. Under the Act, the court is expected to "take charge" and would, perhaps, be able to convince the adults to resolve their dispute on their own or through mediation while the child was still only a few weeks or months old.

Once the battle lines were drawn in March 1991, an amicable resolution was no longer on anyone's agenda. Not until December 1991 did the district court rule that blood tests established Dan's paternity and that, because he did not know of the child's existence until after Cara had placed her, abandonment was not proven by clear and convincing evidence.³⁵ The court

31. The above synopsis is drawn from Robby DeBoer's first-hand narrative of the initial phases of the adoption battle in DEBOER, *supra* note 7, at 25-64.

32. UAA, *supra* note 6, § 2-408(a)(2).

33. *Id.* § 3-201(b) cmt.

34. *Id.* §§ 3-201 cmt., 3-204.

35. *In re Clausen (DeBoer v. Schmidt)*, 501 N.W.2d 193, 194 (Mich. Ct. App. 1993).

found that once Dan learned he was almost certain to be the baby's father, he did everything he could legally do to intervene in the adoption proceeding and claim custody of his daughter.³⁶ The district court dismissed the DeBoers' petition to adopt and ordered them to transfer custody of the child no later than January 12, 1992.³⁷ At that time, she would have been less than a year old. Meanwhile, the Iowa Court of Appeals reversed the termination of Cara's parental rights.³⁸

A settlement could have been reached at the end of 1991. But, instead, the DeBoers filed an appeal with the Iowa Supreme Court, which granted a stay of the district court's change of custody order until the appeal was decided. Why did it take another nine months before the Iowa Supreme Court ruled? The court proceeded as if it were unaware that its delay was potentially as harmful to the child as was the hostility between the birth and adoptive parents. In late September 1992, the supreme court, in an eight to one opinion, upheld the district court's conclusion that Dan's paternal rights could not be terminated.³⁹ The court also agreed with the court of appeals that the juvenile court should hear Cara's motion to restore her parental rights.⁴⁰ The court clearly stated, as had the district court nearly a year earlier, that in an adoption case, Iowa law requires that statutory grounds for terminating a parent's rights must be established before a court can rule on whether a proposed adoption will serve the child's best interests.⁴¹ Because the DeBoers had failed to prove any statutory basis for terminating Dan's paternal rights, and because Cara's rights as the legal mother were likely to be reinstated, the Iowa Supreme Court upheld the district court's dismissal of the adoption proceeding.⁴²

The court's refusal to terminate Dan Schmidt's parental rights is based primarily on the court's analysis of Iowa's statutes and case law concerning "abandonment" and not on the scope of a birth father's constitutionally protected opportunity to establish a relationship with his child after the child has been placed for adoption.⁴³ Unlike other "thwarted father" cases, the Iowa decision pays little attention to the United States Supreme Court's decisions on the role of unwed fathers in adoption proceedings, and, therefore, is not a helpful contribution to judicial analyses of whether vindication of the parental rights of an unwed father in Dan Schmidt's circumstances is or is not constitutionally, and not just statutorily, mandated.⁴⁴

36. *In re B.G.C.*, 496 N.W.2d 239, 246 (Iowa 1992).

37. *In re Clausen*, 501 N.W.2d at 193, 194.

38. *Id.* at 195.

39. *In re B.G.C.*, 496 N.W.2d at 246.

40. *Id.* at 246-47.

41. *Id.* at 246.

42. *Id.*

43. *Id.* "Abandonment . . . includes both the intention to abandon and the acts by which the intention is evidenced. IOWA CODE § 600A.2(16)." *Id.* at 246. The court agreed with the district court that as soon as Cara told him that he was probably the actual father, Dan "did everything he could reasonably do to assert his parental rights." *Id.*

44. The Iowa Supreme Court decision relies almost exclusively on Iowa statutory and case law on abandonment and does not even cite any relevant U.S. Supreme Court cases. In a footnote, the Iowa Supreme Court dismisses as "totally unrealistic" any requirement that a

The U.S. Supreme Court has *not* ruled that all biological fathers have a constitutionally protected right to withhold consent to a proposed adoption of their child.⁴⁵ Only those unwed biological fathers who perform parental duties and actively participate in childrearing are entitled to the same rights as the birth mother to consent to, or to veto, an adoption.⁴⁶ It is not unconstitutional to deny notice of an adoption to unwed fathers who have not performed parental duties or taken some formal step to acknowledge their paternity.⁴⁷ While suggesting that states may impose some limitations on the parental claims of fathers who are aware of the out-of-wedlock birth of their children, but fail to establish a parental relationship to them, the Court has persistently declined to address the status of "thwarted" fathers like Dan Schmidt, who are allegedly unaware of their children's existence or whereabouts until after an adoptive placement is made. If the adoption is allowed to go forward, these thwarted fathers are arguably deprived, through no fault of their own, of their constitutionally protected "opportunity interest" in establishing a parental relationship with their children.⁴⁸

Although the U.S. Supreme Court has not addressed the status of birth parents, and of thwarted fathers in particular, in the context of adoptions of newborns, a number of state courts are finding themselves in the uncomfortable position of deciding such cases. Some of these opinions, like the Iowa Supreme Court decision in the DeBoer-Schmidt case, vindicate a wronged father's claims with virtually no attention to the interests or welfare of the other parties. Other appellate opinions are more skeptical of the father's

potential father "become involved in a woman's pregnancy on the mere speculation that he might be the father because he was one of the men having sexual relations with her at the time in question." *In re B.G.C.*, 496 N.W.2d at 241 n.1.

45. See *Quilloin v. Walcott*, 434 U.S. 246, 256 (1978) (holding that federal Equal Protection Clause is not violated by state's rule that an unwed father who has "never shouldered any significant responsibility" for care of his child, despite opportunities to do so, cannot veto the child's adoption by mother's husband). See generally, JOAN H. HOLLINGER, *Consent to Adoption*, in 1 ADOPTION LAW AND PRACTICE, *supra* note 5, §§ 2.01-2.13.

46. *Caban v. Mohammed*, 441 U.S. 380 (1979) (holding that a state law that gives unwed mothers but not unwed fathers who actively support and care for their child a right to block an adoption violates Equal Protection Clause); see also *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (determining that Due Process Clause is offended by denial of parental fitness hearing to unwed father who wanted custody of three children he had "sired and raised").

47. *Lehr v. Robertson*, 463 U.S. 248 (1983). Moreover, the state may even be able to deny some biological fathers an opportunity to establish their paternity. See, e.g., *Michael H. v. Gerald D.*, 491 U.S. 110, 123 (1989) (upholding legitimacy of child's "unitary family" of birth mother and her husband against desire of biological father, not married to mother, to establish paternity and claim visitation rights).

48. For particularly insightful articles about the status of unwed fathers in adoption proceedings, see Elizabeth Buchanan, *The Constitutional Rights of Unwed Fathers Before and After Lehr v. Robertson*, 45 OHIO ST. L.J. 313 (1984); Karen Czapanskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. 1415 (1991); Janet L. Dolgin, *Just a Gene: Judicial Assumptions about Parenthood*, 40 UCLA L. REV. 637 (1993); Forman, *supra* note 25; Barbara B. Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, 14 CARDOZO L. REV. 1747 (1993); John R. Hamilton, Note, *The Unwed Father and the Right to Know of His Child's Existence*, 76 KY. L.J. 949 (1987-1988); Daniel C. Zinman, Note, *Father Knows Best: The Unwed Father's Right to Raise His Infant Surrendered for Adoption*, 60 FORDHAM L. REV. 971 (1992).

evidence of having been thwarted and more sensitive to the interests of the birth mother, the child, and the prospective adoptive parents.⁴⁹

While not unmindful of the importance of protecting the interests of thwarted fathers, the proposed Uniform Adoption Act (UAA) is more protective of the interests of those parents—mothers and fathers—who have actually performed parental duties and not simply claimed parental rights.⁵⁰ With respect to unwed fathers like Dan Schmidt, who do not appear until an adoption proceeding is underway, the Act does not contain standard grounds for proving “abandonment.” It is too easy for men like Dan to show that their “ignorance” of the child’s existence precludes any finding of the requisite “intent” to abandon. Instead, an alleged father may have his rights terminated unless he proves that he had a “compelling reason” for not having acted sooner to assume parental responsibility.⁵¹ Second, even if he justifies his failure to perform parental duties before the infant was placed, his rights may be terminated if the court finds upon clear and convincing evidence that “placing the minor in his custody would pose a risk of substantial harm to the physical or psychological well-being of the minor,” or, alternatively, that “failure to terminate would be detrimental to the mi-

49. See, e.g., *In re Juvenile Severance Action No. S-114487* (Father in Juvenile Severance Action No. S-114487 v. Adam), 876 P.2d 1121, 1136 (Ariz. 1994) (determining that the rights of a father who fails to grasp parental “opportunity quickly, diligently, and persistently” may be terminated if court finds that it is in the child’s best interest, even if the father’s failure is understandable due to the mother’s efforts to thwart him); *In re Baby Boy C.*, 581 A.2d 1141, 1145 (D.C. 1990) (finding that a presumptively fit thwarted father’s right to veto a proposed adoption may nonetheless be overcome by clear and convincing evidence that it is in the best interest of the minor for the adoption to proceed); *Robert O. v. Russell K.*, 604 N.E.2d 99, 103 (N.Y. 1992) (clarifying that “promptness is measured in terms of the baby’s life not by the onset of the father’s awareness”); *In re Raquel Marie X.*, 559 N.E.2d 418, 424 (N.Y. 1990) (finding that an unwed father who is physically unable to develop custodial relationship with newborn child, because mother and child are living with mother’s husband, is entitled to veto his child’s adoption by “strangers” if he acts promptly to establish a legal and emotional bond to his child). But see *In re Kelsey S.* (Steven A. v. Rickie M.), 823 P.2d 1216, 1237 (Cal. 1992) (holding that once unwed father has “sufficiently and timely demonstrated a full commitment to his parental role” he can veto proposed adoption despite absence of a right to custody); *In re Doe*, 638 N.E.2d 181, 182 (Ill), cert. denied, 115 S. Ct. 499 (1994) (determining that unwed father who was prevented from demonstrating parental interest within 30 days of child’s birth because of birth mother’s lies has not lost his “preemptive right” to veto the child’s adoption “wholly apart from any consideration of the so-called best interests of the child”).

50. The UAA Comments specifically state: “In determining for how long and for what purposes the potential interests of a thwarted biological father should be protected, this Act balances: 1) the birth mother’s interest in placing her child for adoption without interference from a man whom she believes has no genuine interest in the child, 2) the minor’s interest in remaining with suitable prospective adopters with whom the minor may already have bonded, 3) the minor’s interest in being raised by biological parents, especially if, in addition to the biological connection, there is also evidence of the father’s parental capacity, 4) the efforts by the birth mother or others to interfere wrongfully with the father’s efforts to grasp his parental opportunities, and 5) society’s interest in protecting minors against ‘legal limbo’ and detrimental disruptions of custodial environments in which they are thriving.” UAA, *supra* note 6, § 3-504 cmt.

51. *Id.* § 3-504(c)(1).

nor."⁵² Thus, the Act focuses more on what the consequences would be for the child from now on if the father is permitted to block the adoption than on what the father did or did not do before he learned of the child's placement.⁵³

In determining whether failure to terminate the father's rights would be detrimental, "the court shall consider any relevant factor," including his efforts to obtain custody, his ability to care for the child, the efforts of others to thwart the father, the age and custodial environment of the child, and "the effect of a change of physical custody on the minor."⁵⁴ The petitioners in the termination action, who are most likely to be, as they were in this case, the prospective adoptive parents, would have the burden of persuasion on the issue of "detriment" to the child.

Had Iowa enacted these provisions, Dan Schmidt would probably have survived the first hurdle by saying that Cara's naming of Scott as the baby's father constituted a compelling reason for Dan's not having acted sooner to assert his own parental rights. But what about the second? If the termination hearing had been held before the child was two to three months old, his claims might have been sustained, unless the court had been convinced that his failures to support or maintain contact with his two other children were sufficient evidence of a present lack of parenting capacities.⁵⁵ What if he had not shown up until several months later, but before a final decree of adoption had been granted? It would have been more difficult for him to pass the "compelling reason" test and to defend against an effort by the prospective adoptive parents to prove that failure to terminate his rights would be detrimental to the child.

Alternatively, what if Cara had not told Dan that he was probably Jessica's father until after the Iowa district court had issued a decree of adoption? The Act makes it difficult to challenge a final order of termination or of adoption. If an allegedly thwarted father does not appear until after a judicial order terminating his rights, or a decree of adoption, is entered, he has only six months to challenge the order or the decree, whichever came first.⁵⁶ Further, the court must sustain the validity of the termination order or adoption decree unless he can prove, upon clear and convincing evidence, that the decree or order is not in the best interest of the child.⁵⁷

The Act is consistent with the constitutional cases on the status of unwed fathers in adoption proceedings because it accords greater protection to individuals who perform parental duties before an adoptive placement occurs than to those who, for whatever reason, have only a biological connec-

52. *Id.* § 3-504(d)(3)-(4).

53. *Id.* § 3-504 cmt.

54. *Id.* § 3-504(e).

55. The UAA also permits a court to terminate parental rights of an individual who "has been convicted of a crime of violence or of violating a restraining or protective order, and the facts of the crime or violation and the respondent's behavior indicate that the respondent is unfit to maintain a relationship of parent and child with the minor." *Id.* § 3-504(c)(3).

56. *Id.* § 3-504(c)(2).

57. *Id.* § 3-707(d).

tion to a child and no functional parental relationship.⁵⁸ The Act is also in accord with recent decisions on the importance of finality in adoption proceedings, assuming good faith efforts have been made to abide by due process requirements before the adoption decree is approved.⁵⁹

III. PLACING THE CHILD: BEST INTERESTS AND JURISDICTIONAL DISPUTES

Review of the Iowa Supreme Court's decision in Dan Schmidt's case reveals that the court essentially ignores the complexity of the "what next" question: who gets custody of the child if an adoption petition has to be dismissed because the rights of one or both of the birth parents cannot be terminated? The conclusion that the DeBoers have no legal basis for requesting an adoption over the objection of a father whose rights cannot be terminated should not have been confused with the question of *whether the child has her own equitable claim to a custody determination based on her welfare*. The dismissal of an adoption proceeding should not result in the virtually automatic transfer of a child to a birth parent without considering the child's circumstances during the appeals process.

Should a state be able to ignore the harms inflicted on children by the state's own delayed procedures? In its handling of this case, the Iowa courts may have neglected to follow their own statutory provisions. As in many states, a "normal" adoption in Iowa involves two stages: first, a judicial termination of birth parents' rights in which "best interests" is arguably not an issue, and, second, the completion of an adoption proceeding, in which "the welfare of the person to be adopted shall be the paramount consideration."⁶⁰ In this case, Dan Schmidt did not attempt to assert his parental rights until after the DeBoers had begun their adoption proceeding. Hence, the effort by the DeBoers to terminate Schmidt's rights occurred in the context of the pending adoption proceeding. Once the district court decided that

58. See cases and articles *supra* notes 47, 48.

59. For at least two reasons, the Uniform Adoption Act, like the Uniform Putative and Unknown Fathers Act (UPUFA) and the Uniform Parentage Act (UPA), provides that any challenge has to be brought within six months of the entry of the decree of adoption or other final order under the Act. The first reason is the desire to minimize the risks of serious harm to minor children and their adoptive families which arise if the finality of adoptions and termination orders is not secure. Second, if the procedures of this Act are followed in good faith, there are likely to be very few cases in which a challenge is warranted. Therefore, six months is a sufficient period of time for bringing a challenge. Many courts have sustained specific or "reasonable" time limitations. See, e.g., *Street v. Hubert*, 491 N.E.2d 29 (Ill. App. Ct. 1986) (finding that one year limitation for challenging an adoption does not violate due process, even if alleged fraud is not discovered until after statute has run, because such limitation period is reasonably related to state and children's interest in finality of adoptions); *D.L.G. v. E.L.S.*, 774 S.W.2d 477, 481 (Mo. 1989) (finding that a one year limitation for challenging adoption is not unconstitutional on the grounds that the failure to serve father was "mere irregularity in proceedings" in light of his failure to accept responsibility for his child within reasonable period of time, and that the rights of adoptive family should not remain in limbo); *Maertz v. Maertz*, 827 P.2d 259, 261-62 (Utah Ct. App. 1992) (holding that a birth mother's effort to vacate adoption three years after it became final was not brought within a reasonable time, especially because child's need for stability creates a "special need" for finality in adoption proceedings).

60. IOWA CODE § 600.1 (1981).

it could not terminate his rights, did it have an obligation under Iowa's adoption statute to consider the infant's welfare? Section 600.13 of the Iowa Code provides: "Upon dismissal, the court shall determine who is to be guardian or custodian of a minor child, including the adoption petitioner if it is in the best interest of the minor. . . ."⁶¹ It is not certain that the district court, and, later, the Iowa Supreme Court, understood that the termination action was occurring "inside" the adoption proceeding. If the Iowa courts had followed their own statute, the DeBoers would have had an opportunity to pursue in Iowa the claim for Baby Jessica's custody they later pursued without success in the Michigan courts. It is not at all certain that the DeBoers would have prevailed in any effort to retain custody of the child, but at least the child's best interests would have been considered.

Another version of the "what next" question has been raised in Illinois by the "Baby Richard" case, which captured public attention during the summer of 1994.⁶² Should a custody hearing follow a judicial determination that an adoption decree—not simply a pending proceeding for adoption—has to be set aside? Unlike the trial court in the DeBoer-Schmidt case, which ruled in favor of the father and never granted an adoption, the trial court in the Baby Richard case found that the father had failed to satisfy Illinois' statutory requirement that he demonstrate "a reasonable degree of interest, concern or responsibility as to the welfare of a newborn child during the first thirty days after his birth."⁶³ The court ruled that the father's consent was therefore unnecessary and granted the adoption on the basis of the mother's valid consent in addition to a finding that the adoption would serve the child's best interest.⁶⁴ The Illinois court of appeals denied the birth father's appeal of this decision, but not until a year after the trial court had granted the adoption.⁶⁵

Upon further appeal to the Illinois Supreme Court, and the passage of another year, the birth father was "rewarded" with a decision vacating the adoption on the grounds that the trial court's finding that the father had failed the statutory test for prompt demonstration of parental interest was "not supported by the evidence."⁶⁶ Unfortunately, the statute's lack of precision about what behavior constitutes evidence of "a reasonable degree of interest" may invite more, rather than fewer, challenges to future Illinois trial court rulings.⁶⁷ Contrary to the Illinois Supreme Court's assertion that it was the adoptive parents' "decision to prolong this litigation through a lengthy, and ultimately fruitless, appeal,"⁶⁸ they were living with what they in good faith believed was a final order of adoption and should not be blamed for pursuing a series of appeals that they did not initiate. If someone

61. *Id.* § 600.13(1)(c).

62. *In re Doe* 627 N.E.2d 648 (Ill. App. Ct. 1993), *rev'd*, 638 N.E.2d 181 (Ill.), *cert. denied*, 115 S. Ct. 499 (1994).

63. *Id.* at 651.

64. *Id.* at 655-56.

65. *Id.* at 656.

66. *In re Doe*, 638 N.E.2d at 182.

67. *Id.*

68. *Id.*

is to blame, it is arguably the birth mother, who originally lied to, and about, the father, then consented the adoption, and who, like Cara Schmidt, now believes she can recapture her parental rights by virtue of her marriage to the father. Absent her determination to marry the father and reclaim the child, it is quite likely that Baby Richard's birth father would not have challenged the adoption.

Justice Heiple's decision for the Illinois Supreme Court is similar to the Iowa ruling in its conclusory rather than analytical references to the constitutional underpinnings of its decision. Nonetheless, it boldly expresses one specific, popular response to the questions that frame this article. In this view, a "natural" parent has "a preemptive"—not simply a presumptive—right to his child "wholly apart from any consideration of the so-called best interests of the child."⁶⁹ Adoptive parents are "strangers" to the child.⁷⁰ The years they spent as the child's de facto parents are described as the "wrongful breakup of a natural family."⁷¹ The trauma to the child inflicted by removing him from his de facto parents is dismissed as being insignificant.⁷²

Beyond Illinois, there are many jurisdictions in which statutes or case law provide that upon dismissing an adoption proceeding, or setting aside an adoption decree for failure to obtain parental consent, the court must determine the child's physical and legal custody according to the child's best interests.⁷³ If, for example, a birth mother is able to revoke her consent upon learning that the father's rights are not terminated, and unlike the Schmidts or the birth parents in the Doe case, the parents have no interest in raising the child together, who should get custody? Surely, the court has to decide whether the child should be placed in the mother's or the father's custody. This scenario is a likely result in Florida's Baby Emily case if the Florida Supreme Court overrules the finding of its closely divided court of appeals that the father's behavior, including his "emotional abuse" of the

69. *Id.* at 188.

70. *Id.* at 188-90.

71. *Id.* at 190.

72. *Id.*

73. See, e.g., *In re Adoption of Kelsey S. (Steven A. v. Rickie M.)*, P.2d 1216, 1238 (Ca. 1992) (finding that even when a court determines that a thwarted unwed father clearly has a right to withhold his consent from his child's adoption, that determination "will bear only on the question of whether the adoption will proceed . . . and there will remain the question of the child's custody"); *Sorentino v. Family and Children's Soc'y of Elizabeth*, 367 A.2d 1168, 1171 (N.J. 1976) (finding that even after birth parents have had their parental rights vindicated circumstances may justify holding a hearing on "whether transferring the custody" to the birth parents "will raise the probability of serious harm to the child"); *Lemley v. Barr*, 343 S.E.2d 101, 105 (W. Va. 1986) (holding that although West Virginia should give full faith and credit to an Ohio court order invalidating West Virginia couple's consent to adoption of their child, trial court has authority to hold a best interests hearing to determine whether the child should be transferred to birth parents). See also *In re Custody of C.C.R.S.*, No. 94SC23, 1995 Colo. LEXIS 15, at *1 (Jan. 30, 1995) (stating that non-parents who have become child's psychological parents in contemplation of an adoption that was not completed because mother's relinquishment was invalid, have standing under Colorado Dissolution of Marriage Act to seek custody of child; in custodial dispute between the psychological parents and the birth mother, the paramount consideration is child's best interests).

mother as well as his failure to meet his financial obligations to her and the child, satisfies the state's statutory definition of abandonment.⁷⁴ Although considered irrelevant to the resolution of the question of whether the father can veto the proposed adoption, his prior conviction for a violent crime and history of mistreating women, including the birth mother, would certainly be relevant in a best interests hearing to determine whether he or the birth mother should have custody.

If the birth parents are reconciled and married, as they are in the DeBoer-Schmidt and Baby Richard cases, should they be able to claim custody even if one of them fraudulently deceived the adoptive parents and clear and convincing evidence indicates that the child would be seriously harmed if removed from the adoptive parents?

The Uniform Adoption Act provides that if a petition to terminate a birth parent's rights is denied, or a birth parent successfully revokes consent, any pending adoption proceeding has to be dismissed and the court shall determine the legal and physical custody of the minor according to the minor's best interests.⁷⁵ If a birth parent who previously had custody of the child has his or her parental rights reinstated, the court shall return custody of the minor to that parent, "unless the court finds that return will be detrimental to the minor" and that a different disposition of custody will serve the best interest of the minor.⁷⁶ If these provisions had been the law in Iowa or Illinois, it is by no means certain that the courts would have allowed the child to remain with the DeBoers after their petition to adopt was dismissed or with the Does after their adoption decree had been vacated. But, at least the courts would have been required to consider the child's welfare in light of the circumstances that arise between a placement for adoption and the dismissal or denial of the adoption.

It is this result that the Illinois Governor and legislature hoped to achieve in the Baby Richard case. Like the Uniform Act, a new Illinois law requires a best interests custody hearing if an adoption is vacated.⁷⁷ But, as this essay is being written, the Illinois Supreme Court is refusing to recognize the validity of the legislation hastily enacted in Illinois after its Supreme Court's June 1994 decision. In granting the birth father's habeas corpus petition, filed after the adoption was set aside, the Illinois Supreme Court, unlike the Act, is apparently concluding that there is only one remedy for the lower courts' failures to vindicate the "real father": take the child from the "strangers" who have kept him "without right" and turn him over to his biological parents.⁷⁸

74. *In re Adoption of Baby E.A.W. (G.W.B. v. J.S.W.)*, 647 So. 2d 918 (Fla. App. Ct. 1994).

75. *See UAA, supra* note 6, §§ 2-408, 2-409, 3-506, 3-704.

76. *Id.* § 2-409(e).

77. Uniform Interstate Family Support Act, P.A. 88-550, art. 9, § 975, 1994 Ill. Legis. Serv. 381, 415-17 (West).

78. *In re Doe*, 638 N.E.2d 181 (Ill.), *cert. denied*, 115 S. Ct. 499 (1994). Justice Heiple's June and July 1994 opinions in *Doe*, as well as his attack on the media and the Illinois Governor and Legislature in his denial of the request for a rehearing, is as clear an assertion of "biological fundamentalism" as can be found in recent contested adoption and custody cases. Rarely has a state appellate court Justice spoken with such disdain for those who disagree

In 1992, when the DeBoers confronted an Iowa Supreme Court order similarly requiring them to deliver Jessica-Anna to Dan Schmidt, they refused to comply. The court authorized Schmidt to use any legal means available to acquire the child from the DeBoers and scheduled a hearing for the DeBoers to show cause why they should not be held in contempt. Dan, rather than Cara, was authorized to seek enforcement of the Iowa orders because Dan's, but not Cara's, parental status had been recognized by the Iowa Supreme Court. Even though Dan and Cara had married and were expecting a second child, she could not formally have her parental rights restored until the juvenile court heard her petition on remand.

Deeply troubled by the prospect of releasing the child to a man whom they honestly believed would mistreat her as he had mistreated his other children, the DeBoers sought a modification of the Iowa order in the circuit court of the Michigan county where they reside.⁷⁹ While acknowledging that the Iowa order dismissing the adoption was entitled to full faith and credit in Michigan, they nonetheless asked the court to do what they insisted the Iowa courts should have done: hold a best interests hearing to determine the child's custody. Schmidt's attorneys argued that the Uniform Child Custody Jurisdiction Act (UCCJA) and the federal Parental Kidnapping Prevention Act (PKPA) barred Michigan courts from relitigating the issues decided in Iowa and that the DeBoers, who were not the legal custodians or guardians of the child, had no standing to seek her custody in Michigan or any other forum.

The Michigan circuit court rebuffed the biological father's efforts to enforce the Iowa order against the DeBoers, and, instead, during January 1993 held a best interests hearing, televised to millions via Court TV. Not surprisingly, the result of the best interests hearing was a finding by the court that there was clear and convincing evidence that it would be in the now two-year-old's best interests to remain with the DeBoers, who by all accounts had been exemplary caregivers.⁸⁰

Meanwhile, Dan, the biological father, appealed the circuit court's denial of his motion to dismiss the best interests hearing to the Michigan court of appeals.⁸¹ In contrast to Iowa, Michigan's statutes require the prompt disposition of contested cases and appeals,⁸² and by the end of March 1993, the Court of Appeals unanimously ruled that Michigan courts lacked subject matter jurisdiction to hear the DeBoer's petition to retain custody and, further, that the DeBoers lacked standing to seek the child's custody in Michigan.⁸³ Noting that the "primary purpose" of the UCCJA is to avoid jurisdictional competition between states, the court of appeals stated that Michigan is precluded from exercising jurisdiction over a custody matter that was still

with him. His callous disregard for the possibility that the child will be harmed as a consequence of the court's decision is especially noteworthy.

79. See *In re Clausen* (DeBoer v. Schmidt), 501 N.W.2d 193, 195 (Mich. Ct. App. 1993).

80. The use and abuse of "expert" testimony at the best interests hearing is worthy of a separate essay.

81. *In re Clausen*, 501 N.W.2d at 193.

82. MICH. COMP. LAWS ANN. § 710.25 (West 1993).

83. *In re Clausen*, 501 N.W.2d at 196-97.

pending in Iowa. Under the UCCJA and the federal Full Faith and Credit Clause, the Michigan circuit court "was obligated to recognize and enforce the Iowa order" restoring full custodial rights to the child's birth parents.⁸⁴ Moreover, because the Iowa orders had "stripped the DeBoers of any legal claim to custody,"⁸⁵ they no longer had any basis for claiming custody, and were not, in UCCJA terminology, "persons acting as parents."⁸⁶ Although the court of appeals did not address the circuit court's substantive best interests finding, it was essentially nullified by the ruling that the court lacked jurisdiction to hold the hearing that produced the finding.⁸⁷

Once again, the DeBoers were ordered to return the child to Iowa. And once again they appealed—this time to the Michigan Supreme Court.⁸⁸ In addition to the appeal by the DeBoers, a separate appeal was filed on behalf of the child by a self-appointed "next friend" who argued that, regardless of how the dispute between the birth and adoptive parents was resolved, the child needed the security of a permanent placement with the DeBoers, the only "parental figures" she had ever known.

On July 2, 1993, the Michigan Supreme Court ruled six to one that the court of appeals was correct in finding that Michigan lacked jurisdiction to hear the DeBoers' custody petition and that the DeBoers lacked standing to initiate a custody action.⁸⁹ The supreme court opinion emphasizes the importance of following the dictates of the federal Parental Kidnapping Prevention Act (PKPA), as well as the UCCJA. To reduce the vulnerability of one state's custody decrees to modification by another state, the PKPA expressly provides that if a custody determination is made consistently with its jurisdictional provisions, "[t]he appropriate authorities of every State shall enforce [it] . . . and shall not modify [it]."⁹⁰ The jurisdiction of the court that makes an original determination continues as long as the child or any contestant remains a resident of the original state and the original court continues to have jurisdiction under its own laws. The Michigan Supreme Court concluded that Iowa had jurisdiction pursuant to the UCCJA when the adoption petition was filed in 1991 and that Iowa's jurisdiction continued uninterrupted since that time for three reasons. First, Iowa's courts heard the various appeals and ultimately decided to dismiss the adoption and grant custody to Schmidt; second, Schmidt continued to reside in Iowa; and third, the Iowa proceedings were still "pending" because Iowa's courts continued to supervise and enforce their custody orders.⁹¹ Thus:

84. *Id.* at 197.

85. *Id.*

86. 28 U.S.C. § 1738A (1988).

87. *In re Clausen*, 501 N.W.2d at 196.

88. *In re Clausen (DeBoer v. Schmidt)*, 502 N.W.2d 649 (Mich. 1993).

89. *See id.* at 670-78 (Levin, J., dissenting) (challenging the majority's interpretation of the PKPA and arguing for recognition of child's independent liberty interest).

90. *Id.* at 658 (quoting language from 28 U.S.C. § 1738A(a) (1988)).

91. *Id.* at 658-59.

Iowa continues to have jurisdiction, it has not declined to exercise that jurisdiction, its jurisdiction is, therefore, exclusive, and Iowa's exclusive continuing jurisdiction precludes the courts of this state from exercising jurisdiction to modify the Iowa order.⁹²

The Court also rejected the DeBoers' claim that Michigan could refuse to enforce the Iowa orders, despite the PKPA's full faith and credit mandate, if the substantive law underlying the orders is repugnant to Michigan public policy. While acknowledging the possibility that under its decisional law, Dan Schmidt's parental rights might have been terminated,⁹³ the court also notes that when, as in this case, a party "has no legally cognizable claim to custody of a child, there is no right to a best interests hearing"⁹⁴ under Michigan statutory law. Similarly, Michigan does not permit a best interests test when determining if parents are entitled to the return of their child from a "limited guardian" after the parents have complied with a placement plan.⁹⁵

As for the effort by the child's next friend to bring an independent action on the child's behalf under the Michigan Child Custody Act, the supreme court dismissed the petition for failure to state a claim on which relief may be granted. Citing a number of Michigan and other state rulings indicating that children have no independent right to seek placement with a nonparent absent a showing that their parents are unfit, the court also re-

92. *Id.* at 659. The majority of the Michigan Supreme Court takes it for granted that Iowa was the child's "home state" for purposes of exercising original jurisdiction under the UCCJA in 1991, and that once the Iowa courts began exercising jurisdiction, they never let go. In fact, because the infant had not lived for very long—and certainly not for six months—with the same caregiver when the adoption petition was filed in Iowa in 1991, there may not have been any "home state." If neither Iowa nor Michigan was the "home state," then the court's insistence that the PKPA requires deference to Iowa's custody orders is questionable; *see id.* at 672-78 (Levin, J., dissenting). The Uniform Adoption Act modifies the UCCJA to permit an adoption proceeding to be commenced in the state where prospective adoptive parents live with the child "from soon after birth" if there is available in the adoptive parents' state "substantial evidence concerning the minor's present or future care." UAA, *supra* note 6, § 3-101(a)(1). If the Act had been in effect in Michigan and Iowa in 1991, the DeBoers could have initiated the adoption proceeding in Michigan after Cara's and "bogus dad" Scott's rights were terminated in Iowa. The Michigan courts would nonetheless have had to confront the same set of questions presented in the actual case concerning the status of Dan Schmidt's parental rights.

93. Under Michigan law, if an alleged father has not established a custodial relationship with a child or provided support or care for the mother or child after the child's birth during the ninety days before receiving notice of the hearing, the "court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the best interests of the child will be served by granting custody to him. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child," MICH. COMP. LAWS ANN. § 710.39(1) (West 1993). If the adoption or termination proceeding were brought in Michigan, Dan Schmidt's parental status might have been subject to a best interests test because he had not had a relationship with either the child or the birth mother during the ninety days immediately preceding his intervention in the proceeding. *See* MICH. COMP. LAWS ANN. § 710.39 (West 1993).

94. *In re Clausen* (DeBoer v. Schmidt), 502 N.W.2d 649, 662 (Mich. 1993).

95. *Id.* at 661; MICH. COMP. LAWS ANN. § 700.424 (West 1993).

ferred to several U.S. Supreme Court decisions that limit any "right" of minors to make independent assertions about their custody.⁹⁶

The court concluded with a plea that the contesting parties "move beyond saying that their only concern is the welfare of the child and put those words into action by assuring that the transfer of custody is accomplished promptly with minimum disruption of the life of the child."⁹⁷ Although the child is "blameless for this protracted litigation and the grief that it has caused," the Court repeats that "the clearly applicable legal principles require that the Iowa judgment be enforced."⁹⁸

A last minute appeal to the U.S. Supreme Court for a stay of the Michigan order was denied.⁹⁹ In early August 1993, the weeping two-and-a-half-year-old Jessica was transported to the Schmidts in Iowa, where, with the assistance of a court-appointed psychiatrist, they have apparently worked hard to help her deal with her traumatic removal from the only family she had ever known. Indeed, a cruel irony of this case is that the exemplary parenting of Jessica, now Anna, by the DeBoers, may have provided her with sufficient emotional strength to survive the sudden and dramatic change in her custodial environment.¹⁰⁰

96. See, e.g., *Michael H. v. Gerald D.*, 491 U.S. 110 (1989) (holding that a minor has no independent right to maintain relationship with biological father who is not married to her mother); *Parham v. J.R.*, 442 U.S. 584 (1979) (holding that parents of minor children are presumed to act in their children's best interests when committing them to mental institutions and that minors do not have right to independent hearing on whether they should be committed). In the Amicus Brief on behalf of Jessica-Anna submitted to the U.S. Supreme Court by the author and Barbara B. Woodhouse on behalf of ourselves and other "concerned academics," we offer a different interpretation of these and other Supreme Court decisions relevant to family law, and especially, to parent-child relationships. We claim that children have their own constitutionally protected substantive and procedural liberty interests in establishing and maintaining familial relationships. We also claim that these relationships are not necessarily based exclusively on biological ties, but may include adoptive, foster, psychological, and de facto parents. Brief of Concerned Academics as *Amici Curiae* at 13-17, *DeBoer v. DeBoer*, 114 S. Ct. 1 (1993) (No. A-64).

97. *In re Clausen*, 502 N.W.2d at 668.

98. *Id.* at 668.

99. *DeBoer v. DeBoer*, 114 S. Ct. 1, 2 (1993) (denying application for stay of Michigan Supreme Court order requiring DeBoers to comply with Iowa order that child be "delivered" to birth parents on the ground that "neither Iowa law, Michigan law, nor federal law authorizes unrelated persons to retain custody of a child whose natural parents have not been found to be unfit simply because they may be better able to provide for her future"). It should be noted that upon reapplication, the full court denied the stay with Justice Blackmun writing the dissenting opinion and Justice O'Connor joining. *DeBoer v. DeBoer*, 114 S. Ct. 11 (1993). The dissenting opinion argues, "I am not willing to wash my hands of this case at this stage, with the personal vulnerability of the child so much at risk, and with the Supreme Court of New Jersey and the Supreme Court of Michigan in fundamental disagreement over the duty and authority of state courts to consider the best interests of a child when rendering a custody decree." *Id.* at 12 (Blackmun, J., dissenting).

100. See, e.g., Melina *supra* note 1, at 1, 4 (reprinting remarks of family therapist, Randolph Severson that the time that Jessica spent with the DeBoers "will have lifeong consequences"). Six months after Jessica-Anna went to live with the Schmidts, the media began spewing forth stories of how happy and "well adjusted" she seemed, contrary to the dire predictions of the experts—especially the psychoanalysts—who had testified at the best interests hearing conducted by the Washtenaw County Circuit Court in Michigan. See Michele Ingrassia & Karen

Did Jessica DeBoer have a constitutional right to continued parenting by the only parents she had ever known? Did Jan and Robby DeBoer have a constitutionally protected right to continue parenting Jessica? The U.S. Supreme Court has recognized that biological ties are not the "exclusive determin[ant] of the existence of a family" and that emotional attachments also play a role.¹⁰¹ But the Court has stopped short of deciding whether foster families have a liberty interest in their continued existence which states cannot disrupt without due process.¹⁰² In contrast to foster parents, who are licensed by the state to provide what is expected to be only temporary care while efforts are made by state agencies to reunify a child with biological parents, prospective adoptive parents like the DeBoers should have an even stronger claim to a constitutionally protected liberty interest in the survival of their adoptive family. The DeBoers and the other would-be adoptive parents referred to in this essay take custody of a child only after they have a reasonable basis for expecting that they will become the child's permanent legal parents. Nonetheless, federal and state courts have declined to find that prospective adoptive parents or the children they are parenting have a constitutionally protected liberty interest in maintaining their relationship before an adoption order becomes final.¹⁰³

Nor have courts found that minor children have "standing" to request the state to terminate the rights of their parents even when the children are the subject of a dependency proceeding alleging parental abuse or neglect. In the highly publicized case of Gregory K., the twelve-year-old boy whom the media portrayed as having successfully "divorced" his birth parents in order to be adopted by his foster parents, the Florida Court of Appeals reversed the trial court finding that Gregory had standing in his own name to commence an action against his parents to terminate their rights.¹⁰⁴ The appeals court suggested that the state's child protective services had been remiss in not acting sooner to resolve his parent's status, but ruled that the termination action had to be initiated or prodded along, not by the child, but by the state or the child's "next friend," an adult or attorney who can pursue the

Springen, *She's Not Baby Jessica Anymore*, NEWSWEEK, Mar. 21, 1994, at 60; *Primetime Live* (ABC television broadcast, Mar. 10, 1994) (Diane Sawyer's interview with Schmidts and showing of videotapes of Anna Schmidt). It is probably much too soon to assess the long range psychological consequences of her transfer from one set of parents to another.

101. *Smith v. Organization of Foster Families for Equality & Reform*, 431 U.S. 816, 843 (1977).

102. *See, e.g., id.* at 846-47 (stating that "[w]hatever liberty interest might otherwise exist in the foster family as an institution, that interest must be substantially attenuated where the proposed removal from the foster family is to return the child to his natural parents"); *Procopio v. Johnson*, 994 F.2d 325 (7th Cir. 1993) (holding that foster parents who cared for cocaine-addicted infant for five years did not acquire a constitutionally protected "expectancy" or "entitlement" to the child under state law, even though they were assured they would be able to adopt her).

103. Once an adoption is "final"—that is, the time for an appeal has run out or an appeal has been denied—any remaining rights of a child's birth parents are fully terminated and the adoptive parents become, in all respects, the child's legal parents, entitled to the same constitutional protection of their family's autonomy as every other legal family has. *See UAA, supra* note 6, § 1-104 and comparable provisions in the existing adoption law of every state.

104. *Kinglsey v. Kingsley*, 623 So. 2d 780 (Fla. Dist. Ct. App. 1993).

action on his behalf.¹⁰⁵ Moreover, the court's decision to affirm the order terminating the rights of Gregory's mother was based on her failures to perform parental duties rather than on any alleged constitutional right for Gregory to remain permanently in the custody of his foster-adoptive parents.¹⁰⁶

In these worst case scenarios, the Uniform Adoption Act would introduce statutory rules for determining the child's custody, even if these rules are not determined to be constitutionally mandated. Courts would have to focus more attention on the welfare and particular circumstances of children in relation to the adults who are actually functioning as their parents. The problem, however, is whether some courts will continue to find that there is only one question and one answer: Is there a biological parent whose rights have been improperly terminated? If so, that parent is "rewarded" by getting custody of the child. Even if the Act is not enacted by all states, its existence should at least prompt a rethinking of the constitutional as well as policy underpinnings of the extreme deference to biology which is manifest in the Jessica-Anna and Baby Richard cases.

Although it may be too late to mitigate the psychological damage that the child in the DeBoer-Schmidt case has experienced or that the child in the Illinois case will endure if he is transferred to his birth parents, careful attention to the legal and emotional pitfalls of these cases may help lawmakers and lawyers avoid such catastrophes in the future. It may also be possible within the next few years to convince state and federal courts that depriving a child of her functional family ties without consideration of the harms she will suffer infringes upon her due process rights, and that, under some circumstances, even a fit parent's claims to custody may be limited because of a child's independent right to remain in the only custodial environment she has known.

IV. CONCLUSION: DESIGNING A MODEL FAMILY

The unfolding of the DeBoer-Schmidt case displays with rare cogency the cultural tensions that affect the path of the law. Hence in conclusion, it is worth noting how this remarkable case has played itself out within the terms of American society's struggle to articulate and affirm a vision of the ideal family.

The family that Jan and Robby DeBoer aspired to complete fits a recognizable model, traditionally appealing to many Americans. A solid, wage-earning husband and a stay-at-home wife in a modest house are ready to add a child to their stable household. It is easy to see why the DeBoers won a great deal of public sympathy. They were an ideal family in the making, frustrated only by the accident of infertility. Adoption was the next step. What could be more wholesome? The DeBoers' efforts to complete their

105. *Id.* at 783-84.

106. *Id.* at 786-87. For more discussion of this case, see George H. Russ, *Through the Eyes of a Child*, "Gregory K.: A Child's Right to be Heard," 27 *FAM. L.Q.* 365 (1993); Editorial, *Gregory Needed the Divorce*, *N.Y. TIMES*, Sept. 29, 1992, at A22.

family through adoption seemed all the more admirable, however, when viewed in relation to what the public learned about the birthparents.

Whatever virtues Cara Clausen may have had, she was indisputably a liar. She deceived the authorities about the paternity of her child, and she had long tried to deceive her own family and friends about the reality of her pregnancy. Given the changing identity of her baby's father, the impression was also left that Cara was promiscuous. Once Dan Schmidt was understood to be the father, the contrast between the irresponsible birthparents and the wholesome adoptive parents was sharpened. Dan had been a father before, and more than once, but in each case had failed to support his children and their mothers. Neither Dan nor Cara, as first presented to the public, exhibited aspirations to build a family of any kind.

Hence the public had an opportunity to view the DeBoer-Schmidt conflict within the terms of one of the standard narratives in the discussion of the modern American family. Undisciplined individuals like Dan and Cara bring into the world children for whom they cannot care, but, fortunately, there are hard-working, mutually committed couples who are ready to live the American family dream if only they are given a fair chance. In this narrative, the adoptive parents are the true "natural" parents, and, by trying to disrupt the placement, the birth parents function as spoilers. The birthparents are the malevolent aliens who threaten the family circle built by people whose love and commitment is the stuff of which families are supposed to be made. The DeBoers are all the more perfect in their role for not being rich. A point of cognitive and moral dissonance within the standard narrative is the suspicion that upper-middle class professionals are taking away babies from the poor.

But this is not the only narrative in which observers of the DeBoer-Schmidt case placed the cast of characters. There is another one, which, as the events of the case unfolded, also commanded substantial space in media accounts. In this second narrative, virtue is embodied in poor and struggling birthparents who are made victims by a system too responsive to powerful people eager for children. It is the fear that there might be something to this story that creates the dissonance so conveniently neutralized for many observers by the fact of the DeBoers' relatively low income and education. Yet, when Dan and Cara married and conceived another child, and fought in the context of their own committed family to regain their biological daughter from the DeBoers, they gave credibility to the second narrative.

This second script forgives youthful transgressions, and looks favorably on men and women who must struggle to make something of themselves. It also sees through the class and cultural biases that infect the legal system. "Experts" are portrayed as favoring certain kinds of people, and, as expected, when a local judge in the DeBoers' home town convened a hearing on the "best interests of the child," the psychiatrists and social workers read their lines perfectly: the child would be damaged irreparably if removed from the DeBoers and consigned to these birth parents, especially the birth father, whose willingness to undergo therapy was not professed with the conviction one psychologist thought necessary. While the first narrative

applauds those who turn to the experts for advice on how to be a good parent, the second praises those who learn to parent on their own, "naturally."

Birthmothers, especially, suffer when they are convinced, often through inappropriate pressure, to give up their babies. Further, many birthfathers would like a chance to bond with their offspring if only the authorities would not create so many obstacles in their way. And "blood" is important: children separated from their "real" parents by artificial social arrangements supported by a class-bound legal and administrative order often suffer worse pains than those who are allowed, even under less than ideal circumstances, to remain with their biological parents. Dan and Cara were ideally suited to make this vision of "family preservation" look appealing. Unlike Carole Anderson of Concerned United Birth Parents, they are not zealots. When asked what she would do if her teenage daughter became pregnant, Anderson claims that she would suggest suicide as an option preferable to giving up a child for adoption.¹⁰⁷ The Schmidts give a warmer, friendlier face to the family preservation movement—ordinary folks who have made some mistakes, but are now settling down to a life of caring for each other and their children.

The reconstruction of the Schmidts' image was especially vivid about eight months after they reclaimed Jessica, now Anna. The little girl was doing fine, proclaimed ABC's Diane Sawyer and a host of other journalists eager to portray the child's new life in Iowa as a happy one. Dan and Cara had now usurped the position of Jan and Robby DeBoer as claimants for the role of ideal American parents. Dan was earning his way, Cara was at home with Anna and her baby sister—the "natural" family was preserved. The aliens were the lawyers and the social workers and the experts—they had been outdone by Americans who had grown up and become as wholesome as the DeBoers.

107. It has been reported that when asked what she would do if her teenage daughter became pregnant, Anderson replied that "she would counsel her daughter first to keep the baby, second to have an abortion, third to commit suicide, and then fourth to give up the baby for adoption." Tom Junod, *Someone Else's Child*, GENTLEMEN'S Q., Dec. 1994, at 261.