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IMPACT OF RELIGIOUS FACTORS IN NEBRASKA ADOPTIONS

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I. INTRODUCTION

A. IN GENERAL

The basic purpose here is to state the degree of significance currently attached to religious factors in Nebraska adoption cases. Nebraska adoption agency practices and the attitudes and practices of the county judges whose duty it is in Nebraska to approve adoptions are surveyed and the findings pitted against a backdrop of relevant statutes and caselaw and such social science literature as exists on the question.

The study has been undertaken for several reasons. One reason is simply the ever-growing importance of adoption as a legal and social institution. According to a recent estimate of the United States Children's Bureau approximately 93,000 children were named in petitions for adoption filed in United States courts in 1955.¹ This compares with about 50,000 such petitions filed in 1944, an increase of 86%. The continuing nature of the trend is illustrated by many factors, chief among them the ever-mounting illegitimacy rate² and the persistently large number of

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¹ Adoptions in the United States and its Territories (1955), Children's Bureau Statistical Series No. 39 at 1 (1957).

² "According to National Office of Vital Statistics figures, there were 129,700 children born out of wedlock in 1948 and 150,300 in 1952. The illegitimacy rate per 1,000 unmarried female population aged fifteen to forty-four years, increased from 12.7 in 1948 to 15.2 in

homes annually broken by divorce, separation and death.³ The increased number of children annually available for adoption, however, has by no means kept pace with the demand. Our standard of living is higher now than ever before; the number of childless couples in our population has steadily increased; and the press have made adoption socially acceptable. The result has been a flood of adoptive applicants and too few children to go around. Many estimates place the number of couples annually seeking to adopt children at one million and the number of children available for adoption at seventy-five thousand, about one child for every twelve couples.⁴ And agency waiting lists—in Nebraska as elsewhere in the nation—grow longer every year.

Again, and as a corollary of the point just made, adoption agencies are today in a position to pick and choose from a vast reservoir of eager-to-please adoptive applicants and to give controlling weight to an ever-expanding number of individual factors. In earlier times agency and/or judicial dissatisfaction with an applicant's "religious background" often had to be overlooked if the child was to be placed. Today such dissatisfaction can easily be made decisive; other applicants, equally well qualified in other respects and with the proper religious qualifications, are readily available as substitutes.

Also important as a basis for the study is the heated campaign currently being waged by social work groups to make independent adoptive placements illegal (save in the case of close relatives of the child) and to require that all placements first be approved either by a state agency or by some agency licensed

1952; the ratio of illegitimate births per 1,000 registered live births increased from 36.7 in 1948 to 39.1 in 1952." 1 Schapiro, *A Study of Adoption Practice* 9 (1956).

The inter-dependence of illegitimacy and adoption is well-established. For example, among the children for whom adoption petitions were filed by unrelated petitioners in 1955, 73 per cent were born out of wedlock. Adoptions in the United States and its Territories, *supra*, note 1 at 2.

³ Of the 27 per cent of the children born in wedlock and placed for adoption with unrelated petitioners in 1955, about 4 per cent were children who had lost one or both parents through death, 12 per cent of the parents were living but divorced, and 6 per cent of the parents were living together. While the parental status of 5 per cent of the children was unknown the data seem to indicate that a majority were children whose parents were divorced or dead. *Ibid.*

⁴ See, e.g., Fishbein, *Children for the Childless* (1954).

and approved by the state.⁵ Justifiable as this campaign may be, it certainly behooves us before abolishing independent placements to take a close look at the requirements, religious and otherwise, presently insisted upon by the agencies. Presumably these requirements would still obtain after introduction of any such reform. Apart from any question of reform, however, it should be noted that 56% of the children annually adopted by unrelated petitioners are currently placed by agencies rather than independently and that the percentage of independent placements in relation to agency placements seems annually to be declining.⁶

Finally, few if any phases of the adoptive process have been the subject of more bitterness and controversy than the matter of religion.⁷ Perhaps the most intense of the battles has been over the enactment and wisdom of the now fairly common "religious protection" statutes which require that children of a given faith, (including those too young meaningfully to possess any faith), must, if practicable, be placed with adoptive parents of the same faith.⁸ The controversy, however, has a wider and more important front. Thoughtful students of the question—among them lawyers, judges, religious leaders and social workers—appear markedly to differ on the degree of legitimacy and relevance of

⁵ See, e.g., the discussion in 1 Schapiro, *op. cit. supra* note 2 at 109 et seq. And see Comment, *Moppets on the Market: The Problem of Unregulated Adoptions*, 59 *Yale L.J.* 715 (1950).

⁶ *Adoptions in the United States and its Territories*, *op. cit. supra* note 1 at 2. The 56 per cent figure is for 1955. Of the 56 per cent of the children so placed by the agencies 3 of every 5 children were placed by voluntary rather than public agencies. Children placed independently, i.e., without social agency help, were almost equally distributed between those placed by parents or relatives (21%) and those placed by others, (23%). *Ibid.*

⁷ See Pfeffer, *Religion in the Upbringing of Children*, 35 *Boston U.L. Rev.* 333 (1955) and in some ways an even more provocative statement of the conflicting positions by the same author in Pfeffer, *Issues that Divide*, 12 *J. of Social Issues* (No. 3) 21 et seq. (1956). And see two articles by Hager, *Religious Conflict*, 12 *J. of Social Issues* (No. 3) 3 (1956) and *Race, Nationality and Religion*, 3 *NPPA J.* 129 (1957).

⁸ In addition to the articles cited in note 7 *supra*, see the following, generally less heated discussions of such statutes: Comment, *Religion as a Factor in Proceedings for Adoption and Custody of Children*, 1957 *U. of Ill. L. Rev.* 114; Note, *Religion as a Factor in Adoption, Guardianship and Custody*, 54 *Col. L. Rev.* 377 (1954); Note, *The Religious Protection Clause in New York's Children's Court Acts*, 28 *St. John's L. Rev.* 276 (1954); Note, *Religious Factors in Adoption*, 28 *Ind. L. J.* 401 (1953). And see Pfeffer, *Church, State and Freedom*, 578 et seq. (1953).

religious factors in adoption⁹ and the question of whether such factors should normally be accorded any weight at all has many times squarely been raised.¹⁰ First Amendment doctrines have been appealed to, along with the historically somewhat questionable "tradition" of separation of church and state. The debate has for the most part been conducted in a vacuum. The typical presentation consists of argument one way or another based on unsystematized experience and/or appeals to authority. As a matter of fact, we know precious little, almost nothing, about the relation of religious training to good citizenship and the good life and our social scientist friends have not yet done much to enlighten us.¹¹ Perhaps they never can; the problem of the relationship may be insoluble. This is not to say that no reliable studies exist; there are some and while for the most part inconclusive, they certainly cannot be ignored.

The paucity of social science studies on the relation of religious training to behavior is paralleled on the legal side by an almost complete lack of statutes and caselaw concerning the importance of religion in adoption. There are, to be sure, the religious protection statutes already mentioned and these have spawned some litigation. *Petition of Goldman*,¹² in which the Massachusetts Court refused to permit the adoption by a Jewish couple of infant twins they had cared for almost from birth solely because the twins' mother, though consenting to the adoption, was nominally a Catholic, is perhaps the most famous recent example. But such statutes and the cases they engender, while doubtless of importance, deal after all with only one religious factor in adoption, the question of crossing religious lines between the child's mother and the adoptive parents. . On many

⁹ E.g., "The (Child Welfare League) adoption workshop was not of one mind regarding the influence of religion in the development of the child." *Adoption Practices and Problems*, Child Welfare League of America 35 (1952). And see the discussion at page 667, *infra*.

¹⁰ See the Pfeiffer articles referred to in note 7 *supra*.

¹¹ "Claims regarding the alleged . . . value of religious training and commitment . . . are the subject of considerable controversy in social work circles. The controversy continues without satisfactory resolution chiefly because too little research and documentary evidence have accompanied the frequent assertions of the value of social control and 'social adjustment.'" Hager, *Race, Nationality and Religion*, *op. cit. supra* note 7 at 133. And see Chein, *Research Needs*, 12 *J. of Social Issues* (No. 3) 57 (1956); Reuss, *Research Findings on the Effects of Modern-Day Religion on Family Living*, 16 *Marr. & Fam. Living* 221 (Aug., 1954); Schnepf and Johnson, *Do Religious Background Factors Have Predictive Value*, 14 *Marr. & Fam. Living* 301 (Nov., 1952).

¹² 331 Mass. 647, 121 N.E.2d 843 (1954), cert. den., 348 U.S. 942 (1955).

important questions—the significance of the religiously mixed marriage, for example, or on the weight to be attached to church membership and church attendance—the adoption cases are virtually silent and the legal rules governing the emphasis which may legitimately be attached to such factors must necessarily be inferred from the way in which they are dealt with in such related areas as custody, guardianship and dependency. In any event, the Nebraska situation is typical. There is not a single reported case dealing with religious factors or even one such factor in an adoption context. A half-dozen custody and guardianship opinions touch on such matters but that is all.

B. EMPIRICAL STUDIES

As noted above, the empirical side of the study has two parts, one focusing on Nebraska's adoption agencies, the second on the county judges whose responsibility it is in the first instance in Nebraska to approve or to deny petitions for adoption. Information concerning the agencies was gathered both through personal interviews with the heads or assistant heads of the agencies and by means of a written questionnaire similar to one sent to the judges. The questionnaire to the agencies was necessary in order to make the judge and agency data comparable and to fill in certain gaps in the interview data. The agencies, while extremely cooperative, nevertheless in many cases found it difficult to give specific answers during the interviews.

1. *Nebraska Adoption Agencies*

While Nebraska has ten licensed adoption agencies three of them, the Family Service Association of Lincoln, the Family and Child Service of Omaha and the Jewish Federation of Omaha together annually handle less than 2% of all adoptions and for this reason are here excluded from study. Of the seven remaining agencies, four, the Lutheran Children's Service, the Immanuel Children's Home and the Catholic agencies of Lincoln and Omaha ordinarily at least only handle applicants for adoption one or both of whom are members of their respective faiths or denominations—Catholic or one or the other of the two branches of the Lutheran church.¹³ The Nebraska Child Welfare Department, on the other hand, considers applicants of all faiths while the Ne-

¹³ Agency restriction of their services to applicants of a given faith is by no means solely a Nebraska phenomenon. A 1954 national survey of adoption agencies revealed that over half of the 270 responding agencies limited their services to persons of specified religions. This, of course, is accounted for by the sectarian nature of many of the agencies. 1 Schapiro, *op. cit.* supra note 2 at 78.

braska Children's Home and the Child Saving Institute consider all except Lutherans, Catholics and Jews all of whom they refer to their own respective agencies. Jewish applicants, it would appear, as a practical matter have no place to go except the State agency since their own agency has not had any children available for adoption for several years. The various agencies, together with the number of their completed adoptions to non-related petitions for 1957 and their respective percentages of the total agency cases are as follows:¹⁴

<u>Name</u>	<u>No. of Cases</u>	<u>Percentage of Cases</u>
Nebraska Children's Home Society	92	28.19
Office of Child Welfare (State)	60	18.34
Child Saving Institute	48	14.67
Catholic Social Service Bureau of Omaha	48	14.67
Catholic Social Service Bureau (Lincoln)	34	10.39
Lutheran Children's Home Society	29	8.86
Immanuel Children's Home	11	3.36
Family Service Ass'n of Lincoln	3	0.91
Family and Child Service of Omaha	2	0.61
Jewish Federation of Omaha	0	0.00
	<hr/> 327	<hr/> 100.00

It should be noted at the outset that all of the agencies ask numerous questions concerning religious connections and either require or at least normally expect supporting references from clergymen.¹⁵ In several cases such references are asked for in connection with the application for adoption. Furthermore, all agencies check on the reliability of the information given, generally through interviews with clergymen and neighbors. Nothing on the religious side seems to be taken for granted. Religion is vitally important for the agencies though, to be sure, all recognize and likewise always search for an "overemphasis" on religion. Getting the agencies to define "overemphasis" however was another matter; nor would they name religious names. Inquiry into such matters was uniformly fruitless. Nearly fruitless

¹⁴ Table is based on agency questionnaire on file at the College of Law.

¹⁵ This practice, too, is not confined to Nebraska agencies though it does appear that ours are more insistent and curious in this regard than most. Thus only 142 out of 270 agencies in the national survey mentioned in note 13 listed religion as an important factor in determining eligibility for adoption. 1 Schapiro, *op. cit. supra* note 2 at 75.

also was our effort to determine how often during the past five years applicants had been turned down on account of religious factors. However, something was learned. Several agencies indicated that they had frequently rejected applications where the applicants were of different religions and all admitted that they sometimes did so. However with two exceptions none had ever to their knowledge been faced with an agnostic or an atheist or even very often with persons whom they considered "not sufficiently religious." Nevertheless, all admitted that they had "sometimes" refused placements because of insufficient religion and two agencies, the State and the Child Saving Institute, candidly indicated that they had frequently done so in part on this ground. The two agencies last mentioned had also to some extent encountered atheists and agnostics and admitted denying placements to them. Unfortunately the two Catholic agencies were not asked about any of the above matters.

2. *Nebraska County Judges*

While the study was initially intended only to cover agencies it soon appeared that a questionnaire survey of the county judges would also be useful. In the first place, at least insofar as religious factors are concerned, the county courts in adoption cases are as a practical matter our courts of last resort. Our Supreme Court has not, except in the most oblique way, yet been afforded an opportunity to speak out and judging from experience elsewhere will probably not soon be afforded any such opportunity. Indeed, there is an unreal quality about all of the cases and literature dealing with the legal relevance of religion in adoption. Agency practice in screening out the "religiously undesirable" generally keeps religious factors out of court adoption cases and most of what little directly relevant caselaw there is stems from agency mistakes.¹⁶ Nor at least in Nebraska is there legislation

¹⁶ E.g., *Petition of Goldman*, 331 Mass. 647, 121 N.E.2d 843 (1954) cert. den., 348 U.S. 942 (1955); *Palmer v. Smith*, 183 Or. 617, 195 P.2d 708 (1948); and cf. *In re McKenzie*, 197 Minn. 234, 266 N.W. 746 (1936).

In connection with the Goldman case it is interesting to note that the Massachusetts Department of Public Welfare has acted to prevent a repetition of the Goldman affair. Massachusetts law provides that except in the case of close relatives no adoption can be allowed which does not have the approval of an agency licensed by the Department of Public Welfare. The Department has promulgated a regulation to the effect that no agency will be authorized to approve adoptions if it allows adoptions across religious lines, (as between the child or the child's natural mother and the adoptive parents). See Pfeffer, *Religion in the Upbringing of Children*, op. cit. supra note 7 at 387-388.

on the subject, only a religious protection statute covering the small number of children found to be neglected, dependent or delinquent under the Juvenile Court Act.¹⁷ Knowing the "law" here then, in the curious way that knowing the law is important in this context, means knowing the attitudes and practices of county judges. What standards are being employed and to what extent do the judges act uniformly? The subsidiary nature of this objective however must again be stressed. It must be recognized that our county courts in adoption cases are often in practice required to act in an almost administrative capacity. As the child has already been placed in the custody of the petitioners for six months¹⁸ and as no one else is usually available to take custody the county judges are not normally in any position to deny a petition, whether on religious grounds or otherwise.¹⁹ This must constantly be borne in mind in interpreting the significance of the data.

Again, there is the matter of independent placements. If adoption statistics for the nation as a whole are any criterion, Nebraska's adoption agencies handle just over 50% of all adoptions to non-related petitioners; the remainder, handled independently, are generally in Nebraska scrutinized solely in the county courts. Finally a survey of county judge attitudes is valuable from the standpoint merely of learning what a significant group of workers in the field of adoption think. Certainly the judges' notions on the degree of significance properly to be attached to religious factors in adoption are entitled to as much weight as the often high-flown pronouncements and assumptions of those persons, experienced and otherwise, who have already chosen to speak. Furthermore, no one has heretofore bothered to ask judges what they think.

The questionnaire was first mailed to the judges in November, 1957, and a second mailing in January, 1958, gained a few

¹⁷ "The court in committing children under the provisions of this act shall place them as far as practicable in the case and custody of some individual holding the same religious belief as the parents of the child, or with some association which is controlled by persons of like religious faith of the parents of the child." Neb. Rev. Stat. § 43-216(Reissue 1952). As indicated in the text, the Juvenile Court Act only covers children found to be delinquent, dependent or neglected.

¹⁸ Neb. Rev. Stat. § 43-109 (Reissue 1952).

¹⁹ The respective number of petitions granted and denied by the county judges cooperating in the study for the period 1955-1957 will be found at page 650, *infra*.

additional responses. The number of responses exceeded all expectation. Questionnaires were returned by 76 of Nebraska's 93 county judges. To be sure, many of the questionnaires were not completed but the number of completions was also surprising. Approximately 60 judges, almost two-thirds of the total, answered every question, a statistic, incidentally, which compares very favorably with the results of a 1956 self-poll of the judges concerning their own retirement system. Volunteered comments by the judges dealt both with the worthwhileness of the undertaking and with the legal and social relevance of religious factors in adoption. Comments of the former type, however, predominated and ran the gamut from enthusiastic endorsement of the study to bitter denunciation. Comments on the importance of religious factors in adoption, while less numerous, likewise covered a broad range and, in general, paralleled in extended personal form the divergence of attitudes so discernable in the answers given to the questions on the questionnaire. Some judges attached great and in a few situations controlling importance to religious matters, others not so much and still others none or almost none at all.

The data of course must be taken with a certain amount of salt. In addition to previous caveats, it must be admitted that questionnaires are at best but a poor vehicle for obtaining information of the type desired and the questionnaire employed is hardly recommended as a model. Some of the questions proved to be absolutely meaningless while others were largely so. Again, some important matters had for practical reasons to be left out or were simply overlooked—the judges' approach to "excessive" religious zeal on the part of the adoptive parents, for example, and what the judges would consider to be an "overemphasis" on religion. Furthermore, the questionnaire took no account of the fact that many of the county judges would be personally acquainted with most of their adoptive petitioners and thus would have no need for asking questions about religious matters. The effect of this, of course, was to distort the meaning of those questions designed to determine what was said about religion during the adoption hearing.

One final point. Implicit in the questionnaire method is the danger that the questionnaire will not be taken seriously, that answers will be given hurriedly and without due reflection. Doubtless this sometimes happened. Two clues however give some assurance that on the whole the judges took us seriously. One is the large number of personal comments appended by the judges to the questionnaires. A second lies in the consistency of the judges' responses. The responses make sense both as a group

and individually. For example, the number of judges placing heavy emphasis on religion remains relatively constant throughout all segments of the questionnaire and an individual judge attaching great importance to religion in one connection likewise does so in related connections.

The questionnaire has four major parts which deal respectively with 1) protecting the religion of the child's natural mother or of the child himself; 2) the religiously mixed marriage; 3) church membership and church attendance; and 4) atheistic and agnostic applicants for adoption. Throughout a distinction is drawn between the case of an infant and that of a child old enough to have received religious training. "Half-adoption" cases, where the petitioner is a step-parent of the child, are expressly excluded from study. Another basic dimension of the questionnaire is that while the judges are given numerous hypothetical cases to decide a check is provided in that they are likewise asked to indicate the extent to which they ask the questions which would elicit the information necessary to apprise them of the existence of possibly unfavorable religious factors. A copy of the questionnaire will be found in Appendix A, page 684.

In addition to the major points an effort was also made to learn something of the number of adoption petitions annually granted and denied and of the general nature of the cases, the percentage involving stepparents and the percentage involving infants as distinguished from children old enough to have received religious training. Inquiry was also directed at the extent to which the judges avail themselves of their discretionary power to order an investigation of the adoptive parents by the Board of Control or by some licensed agency where, but for their action, no such investigation would be made.²⁰ The data obtained, for what they are worth, are as follows. The 64 judges responding to this portion of the questionnaire granted 1458 petitions in the two years prior to the study and denied only 14.²¹ Of the total number of petitions ruled on by these judges during this period approximately 44% involved step-parents, 33% were cases other than step-parent cases involving infants and 22% were non-step-parent cases involving children old enough to have received religious training. The Board of Control or some licensed agency,

²⁰ Neb. Rev. Stat. § 43-107 (Reissue 1952).

²¹ The small number of denials reflects the national pattern. The number of adoption petitions annually denied in the United States is "negligible." See 1 Schapiro, *A Study of Adoption Practice*, op. cit. supra note 2 at 26.

incidentally, was required to consent to the adoption in 66% of the non-step-parent infant cases and in 95% of the non-step-parent cases involving children with previous religious training.²² In infant cases, 31% of the judges always (13%) or generally (18%) employ their discretionary power to require an investigation of the adoptive parents where otherwise no such investigation would be made while 69% of them never (47%) or only occasionally do (22%). The situation is approximately the same where children old enough to have religious training are concerned. Here 30% always (10%) or generally (20%) require an investigation while 70% seldom (20%) or never (50%) do so. Let us now turn to the major findings.

II. CROSSING RELIGIOUS LINES; THE NATURAL MOTHER VS. THE ADOPTIVE PARENTS

A. NON-DEDICATED CHILD; ADOPTIVE PARENTS' RELIGION DIFFERS FROM NATURAL MOTHER

The first case considered is that of an infant *not dedicated* to any faith by a ritual such as baptism who is sought for adoption by persons of a faith different from that of the child's natural mother. Thus far at least, particularly when the child's natural mother has no objection, this type of case has set off more controversy than any other.²³ The context, of course, has been the religious protection statutes mentioned above and such statutes when applied to bar an adoption in such a case have many times vigorously been challenged as unconstitutional. Insistence upon a religious identity between the child's natural mother and the petitioners, it is argued, cannot be justified in the name of the child who has no religion,²⁴ interferes with the religion of the adoptive parents who must change theirs in order to get the child and abridges the religious freedom of the natural mother who, if she wants the child adopted by petitioners, must change hers to theirs. All of this, it is claimed, amounts to state action in furtherance of religion in violation of the First and Fourteenth Amendments. The merits of such arguments will not here be

²² Neb. Rev. Stat. § 43-105 (Reissue 1952).

²³ *Supra*, notes 7, 8.

²⁴ That is, in the sense of understanding it. Doctrinally, the situation may be quite different. The Jewish religion, for example, takes the position that every child born of a Jewish mother automatically becomes a Jew. See Duker, *Jewish Attitudes to Child Adoption*, in 2 Schapiro, *A Study of Adoption Practice* 134 at 143 (1956).

examined. Suffice it to say that they have only occasionally been successful²⁵ and that the United States Supreme Court has not yet spoken. Nor is this likely. Conflict of laws problems aside, family law is one area from which the Court has traditionally stood aloof.²⁶

Nebraska law on the question seems fairly clear. Our religious protection statute by its very terms applies only to children committed under the Juvenile Court Act and the ultimate test for an adoption in Nebraska is the "best interests of the child."²⁷ Considering the fact that it is the mother's and not the infant's religious interest which is at stake here, this test would seem to dictate the granting of the petition, assuming, of course, that the petitioners are in other respects well qualified. On the other hand, *State ex rel. Bize v. Yount*,²⁸ involving a guardianship fight between two sets of non-relatives over a ten year old child, contains language which might impliedly extend the religious protection statute to cover adoptions outside of the Juvenile Court Act.²⁹ This is true, however, only on the most strained construction of the case. On balance, the possibility that Nebraska's law requires a religious identity between the infant's natural mother and the adoptive parent seems very remote indeed.

Be this as it may, three of Nebraska's seven major adoption agencies, representing 34% of all 1957 agency adoptions, automatically refuse an adoption in any case where the infant's natural mother and the adoptive applicants do not possess the same major basic faith. And this is apparently true though the natural mother would not object to or would even favor a placement of her infant across religious lines. A fourth agency, handling 15% of the cases, regards a lack of religious identity as "unfavorable" while a fifth, handling 3% of the cases, though checking "only slightly unfavorable," indicated that it had sometimes refused

²⁵ Cf. *Cooper v. Henricks*, 10 Ill.2d 269, 140 N.E.2d 293 (1957); *State ex rel. Baker v. Bird*, 253 Mo. 569, 162 S.W. 119 (1913); *Jones v. Bowman*, 13 Wyo. 79, 77 Pac. 439 (1904). And see *Fratum v. Dept. of Welfare*, 214 Md. 100, 133 A.2d 408, 412, 413 (1957), cert. den. 355 U.S. 882 (1958); *In Re Adoption of Minor*, 228 F.2d 446, 448 (App. D.C., 1955).

²⁶ See *In re Burrus*, 136 U.S. 586, 593-594 (1890); *Barber v. Barber*, 62 U.S. 582, 584 (1858).

²⁷ Neb. Rev. Stat. § 43-109 (Reissue 1952).

²⁸ 121 Neb. 619, 237 N.W. 677 (1931).

²⁹ *Id.*, at 631, 632.

placement in part on this ground. On the other hand, the State agency and the Nebraska Children's Home, handling 18% and 28% of the cases respectively, attach no importance to the question normally though the latter would do so should a specific request be made by the natural mother. It almost goes without saying that all of the agencies make a point of inquiring about the faith of the natural mother and, a fortiori, of the faith of the applicants for adoption.

On the whole the judges seem to attach considerably less importance to the matter. Thus only 37% of the judges always (21%) or generally (16%) inquire about it as compared with 62% who only occasionally (10%) or never (52%) inquire. No judge would bar an adoption on this ground and 65% indicated that a lack of religious identity between the infant's natural mother and the petitioners would either have no effect (45%) upon them or only a slightly unfavorable effect (20%). On the other hand, 35% of the judges thought that a lack of such identity was either extremely unfavorable (14%) or unfavorable (21%). Such percentages, of course, are considerable and in the light of the agency behavior described above demonstrate that in practice the policy of the religious protection statutes has significant weight in Nebraska.

B. DEDICATED CHILD; ADOPTIVE PARENTS OF DIFFERENT FAITH

Closely allied to the case just considered is that of an infant who *has been dedicated* to some major basic faith by a ritual such as baptism who is sought for adoption by persons of a different basic faith. Except for the baptism feature and for the possibility that the baptism might have been in a faith different from that of the infant's natural mother, the cases are exactly the same and much of the discussion above is likewise applicable here. In states with a broad religious protection statute, of course, baptism normally fixes the child's faith and so far as practicable requires him to be adopted by persons of that faith.³⁰ In Ne-

³⁰ But cf. *In re Vardinakis*, 160 Misc. 13, 289 N.Y.Supp. 355 (1936): "A custom has grown up that where a child is once baptized or entered in any prescribed manner into a church, that the child is to be treated as belonging to that church so long as he is a minor. There is no foundation in law for such a position." *Id.*, at 15, 359.

The baptism problem can be exceedingly complicated under religious protection statutes when an infant is baptized without the knowledge or consent of one or both of the parents. See the frustrated but exceedingly thoughtful remarks of the Court in *In re Glavas*, 203 Misc. 590, 121 N.Y.S.2d 12 (1953).

braska, however, the baptism probably adds nothing and the case is the same as the one first considered. Certainly the mental condition of the infant is no different in the two cases. Concededly, however, there is only one case and that but remotely relevant. *Kaufman v. Kaufman*³¹ mentions the fact that a two year old child had been baptised Catholic together with the testimony of a priest that she was accordingly entitled to be raised as a Catholic as factors to be weighed in determining the issue of custody.

So far as the agencies as a whole are concerned baptism does add something. The dedicated infant is somewhat less likely to be placed across religious lines. The State agency, for example, handling 18% of Nebraska's agency adoptions, while attaching no importance to crossing religious lines in the case of non-dedicated infants, regards it unfavorably in the case of baptised or dedicated infants. Curiously, however, not all of the agencies inquire about baptism while all inquire concerning the faith of the infant's natural mother.

Baptism likewise adds something for the judges. While none would automatically bar the adoption of a baptised infant across religious lines, 57% looked upon the practice with extreme disfavor (17%) or disfavor (40%) as compared with 35% very opposed (14%) or opposed (21%) in the case of the non-dedicated infant. Furthermore, 33% of the judges always (18%) or generally (15%) inquire whether the infant has been dedicated to a particular faith. While this is less than the number inquiring about the faith of the infant's natural mother, the number so inquiring still seems surprisingly high.

C. INSTRUCTED CHILD; ADOPTIVE PARENTS OF DIFFERENT FAITH

The case now to be considered is quite different, that of a child old enough to have received religious instruction who is sought for adoption by persons of a faith different from the one in which the child has been instructed. Adopting a baby across religious lines is one thing; only the natural mother's religion and perhaps sometimes the natural mother's feelings can be hurt here. Uprooting a child previously grounded in the tenets of one faith and exposing him to another, on the other hand, may in some cases create serious psychological conflicts. And this is one point at least where psychologists and social workers con-

³¹ 140 Neb. 299, 301, 308, 310, 299 N.W. 617, 619, 623, 624 (1941).

cur. Nor has the point escaped the courts. The precedents, while few in number, go back many years.³² Indeed, as indicating the depth of judicial concern, it is significant that the question of whether even natural parents have the right repeatedly to change the religious attachments of their children has sometimes been raised.³³ An illustrative modern case is *Boerger v. Boerger*,³⁴ involving a divorce custody fight between a Catholic father and a Lutheran mother. In resolving the custody issue the Court felt obliged to examine the child in chambers to determine whether her "Catholic training . . . (had) progressed so far that definite religious ideas were impressed upon . . . (her) mind . . . to such an extent that any change would unsettle . . . (her) tranquility and disturb . . . (her) mental poise." Concluding that they had not and that the child preferred Protestantism, custody was awarded to the mother with directions to raise the child as a Protestant and not to subject her, as she had previously been compelled to do, to competing instruction in the Catholic religion. However, a Nebraska case, though only remotely relevant, tends somewhat to lean the other way. The custody of a nine year old child in *Lemke v. Gutman*³⁵ was conditioned on the obedience of her Catholic aunt's promise to raise her as a Lutheran notwithstanding that the child prior to the decree had been receiving Catholic training.

Three situations were studied: (1) the common basic faith of the adoptive parents is different from the basic faith in which the child has received training; (2) one adoptive parent has the same basic faith as the child while the other has a different basic faith; and (3) the child has had instruction in one branch of the Protestant faith while the adoptive parents belong to a

³² *Stourton v. Stourton*, 8 De GM & G 760, 44 Eng. Reprint 583 (1857); see also *In re Glavas*, 203 Misc. 590, 121 N.Y.S.2d 12 (1953) and cases therein cited. Consult Friedman, *The Parents' Right to Control the Religious Education of a Child*, 29 Harv. L. Rev. 485, 493 et seq. (1916).

³³ "It is questionable in my mind whether the courts would go the distance in preserving the rights of parents to include therein the right to repeatedly change the religion of a child after it had been baptised or circumscised. If that were so, parents might change the religion of a child periodically and even do so in all sincerity without any regard as to the impact that the changes will have upon the child. *In re Glavas*, 203 Misc. 590, 121 N.Y.S.2d 12, 17 (1953).

³⁴ 26 N.J.Sup. 90, 97 A.2d 419, 426 (1953).

³⁵ 105 Neb. 251, 181 N.W. 132 (1920). See also the cases cited and discussed in notes 58 and 59 *infra* and accompanying text.

different branch. The central finding can be stated very simply: The agencies were on the whole vitally concerned with the first two situations whereas the judges or at least a surprising number of them were not. Neither the agencies nor the judges were particularly concerned with the third.

One index of interest, of course, is what the judges and agencies ask before approving an adoption. So far as the present situations are concerned many of the judges asked very little. Probably the basic question in the present connection is whether and to what extent the child has been instructed in a basic faith. 55% of the judges said that they either never inquired or inquired only occasionally, with 40% never inquiring at all. On the other hand, 23% always inquired with 21% generally inquiring. And, as would be expected, even less attention was paid to the name of the particular religious sect in which the child might have previously been instructed. 55% of the judges said they never asked and another 8% said that they but seldom inquired. At the same time, 13% said that they always inquired. The situation is only slightly different on the side of the names of the adoptive parents' basic faiths and denominations. In cases involving children old enough to have received religious instruction, 45% of the judges always or generally request the names of the adoptive parents' basic faiths whereas 42% never ask and 13% ask only occasionally. Interestingly, the percentages are about the same for cases involving infants.

Judicial interest in the names of the adoptive parents' particular denominations is even less. 50% of the judges never ask while an additional 13% ask but seldom and the percentages are the same whether an infant or a child with religious instruction is involved. In other words, a judge caring in one type of case will care in another and vice versa. So far as the raw data are concerned, there is absolutely no difference. One final point. 58% of the judges said they never inquired concerning the name of the particular denomination in which the child with previous religious training would be instructed, 8% occasionally inquired, with 34% always or generally inquiring. This represents a slight increase over the number of judges making similar inquiries in cases involving infants. The agencies, as contrasted with the judges, uniformly ask all of the above questions except that the Nebraska Children's Home sometimes does not specifically inquire concerning the name of the particular denomination to which the adoptive parents belong and the State agency does not always ask for the name of the particular denomination in which the child with previous religious instruction will be raised.

1. *Common Basic Faith of Adoptive Parents Differs from Child's Instruction*

So much for the nature and extent of judicial and agency inquiry. Let us first take the case of the child with previous religious instruction sought to be adopted by persons with a different basic faith. Five of the six major agencies servicing such children would automatically bar the adoption while the sixth, the smallest, handling only 3% of the cases, thought such a situation to be "unfavorable" and indicated that it had sometimes refused to make a placement in such a case. The judges, on the other hand, were considerably more lenient. 43% said that the situation would either have no effect (30%) upon them or but a slightly unfavorable effect (13%) with 52% regarding it as unfavorable (31%) or extremely unfavorable (21%) and 5% holding it to be an automatic bar. Surprisingly, the judges were as opposed or disposed to cross religious lines in the case of a child with previous religious training as in the case of a baptised infant. 57% were very opposed or opposed in both cases. Apparently the crucial factor for the judges is simply the crossing of religious lines. At least the fact that the child has received religious training makes no difference.

2. *One Adoptive Parent Has Same Faith as Child's Instruction*

What of the case where one adoptive parent has the same basic faith as the child while the other has a different basic faith? The case is complicated for it involves not only a crossing of religious lines between the child and one of the adoptive parents but a religiously mixed marriage as well. While a fair assumption perhaps is that the child will continue to be raised in the religion in which he had previously received training this is not certain and in any event the circumstance that the adoptive parents have different basic faiths might conceivably make the situation more objectionable from the child's standpoint than where he is transplanted from one basic faith to a home where both parties have a different basic faith, but where it is the same.

However, the agencies do not so view it. Indeed, Nebraska's two Catholic agencies, representing 25% of all agency cases, had no objection whatever provided only that one of the adoptive parents is a Catholic in good standing. The Protestant and non-sectarian agencies on the other hand were generally opposed and two of them, handling 37% of the cases, would regard the situation as raising an automatic bar to placement. Of the two remaining agencies servicing children old enough to have had

religious training one views it as extremely unfavorable and the other as unfavorable noting that it has sometimes refused placements on such a ground.

The judicial approach was again more lenient than that of the agencies and more lenient, too, than when the judges were asked what they would do when the adoptive parents were both of the same faith which faith is different from the basic faith of the child. In the "one-common faith" situation 52% of the judges either had no qualms (30%) or only a slight qualm (22%) about granting the petition. On the other hand, 46% of the judges were either opposed (28%) or extremely opposed (18%) while 2% would automatically deny the petition. The diversity of opinion among the judges is again quite marked.

3. *Adoptive Parents and Child of Different Branch of Protestant Faith*

The final case in the series involves a child previously instructed in one branch of the Protestant faith sought for adoption by a couple belonging to a different branch. Here at least there was substantial unanimity. However much some Protestants might think they are divided such divisiveness does not, in the opinion of most agencies and judges, trickle down to their child parishioners such that the switching of a child's allegiance from one branch to another would present any serious problems. Thus of the four major agencies handling Protestant children old enough to have received religious training, two said that the situation would have no effect upon them while a third indicated that it would have only a slightly unfavorable effect. The fourth such agency however, a sectarian one servicing approximately 9% of the cases, looked upon it as one in which they would feel compelled automatically to bar a placement. As previously noted, the two Catholic agencies do not handle Protestant children but refer them to Protestant or non-sectarian agencies.

The judges saw no problem at all. Crossing of religious lines within the Protestant faith would have no effect whatever on 67% of the judges and an additional 28% said that it would have only a slightly unfavorable effect. Only 5% reacted unfavorably and no judge checked either "extremely unfavorable" or "automatic bar."

III. RELIGIOUSLY MIXED MARRIAGES

Perhaps a more interesting dimension of the study involves the religiously mixed marriage. Two situations were examined,

both involving infants as distinguished from children old enough to have received religious training. In the first the adoptive parents have different major basic faiths, Catholic and Protestant, for example, and each regularly attends his own church. The second poses a couple belonging to different branches of the Protestant faith, Baptist and Presbyterian, for example, with each parent again regularly attending his own church.

Religiously mixed marriages of both types, it should be noted, are very numerous. One recent writer, for example, using figures derived from Catholic sources, thinks "it . . . conservative to say that today, each year, at least one-half of all Catholics marrying find their mates outside of the Roman Catholic Church."³⁶ It is relevant to add that approximately one-fifth of our population is Catholic.³⁷ Furthermore, the number of Catholic mixed marriages seems to be increasing. Certainly this has been the trend. Father Thomas of St. Louis University, after an exhaustive study, concludes that there has been a gradual but steady increase in such marriages since 1910.³⁸ Also instructive is a study made of Lutherans who married outside their church. The study covered a 15 year period from 1936 to 1950. Averaged in five year periods, the percentages of Lutherans marrying outside of their church are 46% in 1936-1940, 57% in 1941-1945, and 58% in 1946-1950.³⁹ Data from Iowa, which since 1953 has required all marriage license applicants to state their religions, likewise indicates a high percentage of religiously mixed marriages of all types.⁴⁰

A. SOCIOLOGICAL RESEARCH

What data has sociological research uncovered concerning the nature and consequences of religiously mixed marriages? Probably the most famous study is by Landis at Michigan State.⁴¹ For three years Landis collected information from his students concerning their parents' marriages. In all, he studied 4,108 families including 346 marriages where Catholics had intermarried with 305 Protestants and with 41 persons having no religious

³⁶ Bossard and Boll, *One Marriage Two Faiths*, 55 (1957).

³⁷ *Infra*, note 88.

³⁸ Bossard and Boll, *op. cit. supra* note 36 at 58.

³⁹ *Id.*, at 59.

⁴⁰ *Id.*, at 56.

⁴¹ Landis, *Marriages of Mixed and Non-Mixed Religious Faith*, 14 *Am. Sociol. Rev.* 401 (1949).

faith. There are several findings of interest. First of all the most common tendency was that the children of religiously mixed parentage, especially the daughters, followed the faith of the mother. "Approximately 65 per cent of the boys and 75 per cent of the girls followed the faith of the mother."⁴² Landis' findings in this regard, incidentally, are firmly supported by Bell's famous study of a random sample of 13,258 Maryland youth in 1936.⁴³ Bell found that where the parents of his children had church affiliations "but when there was a difference between the persuasion of the father and mother, there was more than twice as strong a tendency to adopt the faith of the mother."⁴⁴ Parental policy on religious instruction in Landis' Catholic-Protestant families was as follows:⁴⁵

	(per cent) FP-MC	(per cent) FC-MP
Mother took all responsibility for religious training	42.2	33.7
Children told of both faiths; they decided	22.7	33.7
Responsibility equally divided	22.7	19.1
Took turns going to father and mother church	6.8	6.8
Father took all responsibility	1.1	5.6
Some children with father, some with mother	4.5	1.1

Also of interest are Landis' findings based on his students' statements of the degree to which religious differences had handicapped their parents' marriages in mixed and non-mixed religious marriages:⁴⁶

Degree of Handicap	Both P	Both C	FP-MC	FC-MP
Not at all	85.7	87.4	59.2	45.2
Very little	11.4	8.8	21.0	20.5
Somewhat	2.7	2.8	13.2	23.3
Great	.2	1.0	5.3	5.5
Very great	1.3	5.5

⁴² *Id.*, at 405.

⁴³ Bell, *Youth Tell Their Story* (1938).

⁴⁴ *Id.*, at 196.

⁴⁵ Landis, *op. cit.* supra note 41 at 405.

⁴⁶ *Ibid.*

While these figures may seem to indicate that religious differences do not operate significantly to handicap religiously mixed marriages, the "serious handicap" percentages are nevertheless considerable and it is noteworthy that the vast bulk of the parents' disputes over religion centered around the upbringing of the children.⁴⁷ This was likewise true in Baber's study of 325 religiously mixed marriages where, incidentally, far more of the marital conflicts were based on religious rather than on non-religious factors.⁴⁸ The situation with respect to the children was particularly bad in Catholic-Protestant marriages where the mother rather than the father was the Protestant member. Landis' explanation bears quoting:⁴⁹

If the mother is Protestant the marriage seems to have many more serious problems. The Protestant mother has agreed that the children will be baptized Catholic, and yet she can hardly bring up her children in a faith which she herself does not accept. Since the major responsibility for religious training falls upon her, she will probably bring the children up in the only faith she knows and believes in. This means that the agreement made before marriage must be scrapped. The Catholic husband is more apt to be a church member than the Protestant husband who marries a Catholic. It may be quite a blow to him to find that his wife will not have the children baptized into his faith. Conflict results since many Catholic fathers cannot give up without a struggle. The Catholic father not only has his own conscience to live with but he is constantly aware of the attitude of his church and of his family when they see his children being brought up in the Protestant faith.

Furthermore, there is at least some evidence that the amount of conflict over religion in religiously mixed marriages involving children is largely independent of the degree of intensity of conviction on the part of the parents. Baber, for example, found that "there were almost as many conflicts over religion in cases where both husband and wife claimed to be indifferent to religion as where either or both classed themselves as moderately religious or even devout. At marriage, the young husband, honestly believing himself to be 'emancipated' from his early religious training, may readily promise his wife that she may bring up

⁴⁷ "It is the presence of children in the home which makes for marital conflict in the Catholic-Protestant marriage." *Id.*, at 403. "(T)he chief source of friction centers about the religious training of the children. Although the young couple agree before marriage that the children will be baptized in the Catholic faith, they may find they cannot follow through on this agreement in marriage." *Id.*, at 404.

⁴⁸ Baber, *A Study of 325 Mixed Marriages*, 2 *Am. Sociol. Rev.* 705 (1937).

⁴⁹ Landis, *op. cit.* *supra* note 41 at 405-406.

the children in her own faith if she desires, only to discover that he is greatly disturbed when such instruction begins. The extent to which early religious training may affect attitudes later in life is frequently underestimated."⁵⁰ On the other hand, some agencies at least proceed on the assumption that a religiously mixed marriage in which one of the partners has little or no religious interest is preferable to one in which both are actively interested in their respective churches. Mgr. Bowers, for example, speaking for the Catholic Church at the National Conference on Adoption Workshop, noted that "(i)t is an unhappy commentary on the ethos of our age that there is often more disunity when the mixed marriage is between a Catholic and an active member of a Protestant sect, than when the non-Catholic has little or no religious conviction. Some Catholic agencies, through unfortunate experience, have had to recognize this in their adoption requirements."⁵¹

Then there is the matter of comparative divorce and desertion rates in religiously mixed and unmixed marriages. In both the Landis and Bell studies and in a study by Weeks in Washington approximately 5% of the Catholic and Jewish marriages ended in divorce or separation as compared with 8% of the Protestant marriages and 15% of the Catholic-Protestant marriages.⁵² T. E. Sullenger, in a study of Douglas County, Nebraska divorce court records from 1922 to 1926 likewise concluded that the Catholic-Protestant marriage was more fragile than the average.⁵³ The

⁵⁰ Baber, *Religion and the Family*, *Annals of Am. Ac. of Pol. & Soc. Sc.* 92, 94 (March, 1948).

⁵¹ Bowers, *The Child's Heritage from a Catholic Point of View*, in 2 Schapiro, *op. cit. supra* note 24 at 131. Bowers additionally comments that "(t)he practice of Catholic adoption agencies in respect to applicants from a mixed marriage varies . . . In some dioceses Catholic agencies will not entertain 'mixed marriage' applications, except in rare instances; in other dioceses such applications will be considered, particularly if the wife is the Catholic partner." *Id.*, at 130.

⁵² All of these studies are reported in Landis, *op. cit. supra* note 41 at 403. See also, Pike, *If You Marry Outside Your Faith*, 27 *et. seq.* (1954); Fishbein and Kennedy, *Modern Marriage and Family Living*, 65 *et seq.* (1957).

⁵³ Sullenger, *A Study of Divorce and Its Causation in Douglas County, Nebraska* (2nd ed., Omaha, Municipal U. of Omaha) (1932). Sullenger's figures indicate that of all divorces between 1922 and 1926 in which either or both parties were Catholic, 40 per cent were Catholic mixed marriages. Since marriages of Catholics in the archdiocese were only 20 per cent Catholic mixed, it would appear that such mixed marriages were more fragile.

Landis study, however, seems by far the most significant and, to carry the findings a little further, it made a difference whether the mother was Catholic or Protestant in the mixed marriage. The divorce rate was highest of all where the mother was Protestant. 21% of such marriages ended in divorce as compared to 7% of the marriages ending in divorce where a Protestant man was married to a Catholic woman.⁵⁴

However, not all of the sociological research is in accord with the above findings. Monahan and Kephart, for example, after an intensive survey of Philadelphia court records concerning desertion and non-support cases from 1915 through 1950 found that mixed religious marriages "do not appear to any greater degree than expected."⁵⁵ On the contrary, it was found that unmixed Catholic marriages, with reference to their proportion in the population, were overrepresented by nearly 40%, that the Jewish group was under-represented to about the same degree and that the white Protestant class was about 25% underrepresented.⁵⁶ Such findings do not, of course, and are not intended to lead anywhere but only to remind the reader of the dangers involved in jumping from statistical generalizations about mixed marriages to generalizations about what should constitute acceptable practice in the area of adoption.

One final piece of data. There is some sociological evidence that lack of interest in religion is associated with denominationally mixed marriages. Lenski's 1941 survey of 860 randomly selected white families in Indianapolis showed that such marriages exhibited "little" interest in religion in 33.1% of the cases whereas in unmixed marriages only 20.8% expressed "little" interest in religion.⁵⁷ The corresponding percentages for couples exhibiting "much" interest in religion are nearly reversed.

B. JUDICIAL CASELAW

So much for the sociological framework. What about the courts? Unfortunately, not a single case has been uncovered which discusses the religiously mixed marriage in an adoption context. Indeed, we are not even told whether in states with

⁵⁴ Landis, *op. cit.* supra note 41 at 403.

⁵⁵ Monahan and Kephart, *Divorce and Desertion by Religious and Mixed-Religious Groups*, 59 *Am. J. of Sociol.* 454, 461 (1954).

⁵⁶ *Id.*, at 462.

⁵⁷ Lenski, *Social Correlates of Religious Interest*, 18 *Am. Sociol. Rev.* 533, 543 (1953). Lenski's findings are commented upon in Reuss, *op. cit.* supra note 11 at 223.

religious protection statutes the factor of mixed marriage would bar an adoption. Presumably however it would do so for in the typical case there would by definition always be a conflict between the child's religion (or that of his natural mother) and the religion of one of the adoptive applicants. Loosely relevant case-law however is available from custody and guardianship areas where the courts have sometimes been faced with requests either that the child be reared in two different religions or that he be entrusted to persons of one basic faith with directions to rear him in a different basic faith. The cases typically arise out of a divorce court where the parents differ over religion and each wants custody or where one or both of the parents dies and persons of the child's faith and of a differing faith contest guardianship or custody. Granting either type of request, it is apparent, is ordinarily pregnant with psychological danger for the child and potentially carries with it as much and probably far more harm than would be involved in the typical adoption by a couple of mixed religions.

Nevertheless, the courts have sometimes sustained such requests. In *Commonwealth ex rel. Stack v. Stack*,⁵⁸ for example, the Pennsylvania Court approved an arrangement whereby the divorced wife, a Protestant, was required to raise the children in the Catholic faith of her ex-husband, the children's father, though she was permitted to and did in fact also take the children to Protestant Sunday School following Mass every Sunday. And a New York Court, in *In re Lamb's Estate*,⁵⁹ while refusing custody

⁵⁸ 141 Pa. Super. 147, 15 Atl.2d 76 (1940). See also *Martin v. Martin*, 308 N.Y. 136, 123 N.E.2d 813 (1954) where the record shows that the child, while required by court decree to attend Catholic parochial school, likewise attended Christian Science services and instruction.

⁵⁹ 139 N.Y.Supp. 685 (1912). *In re Mancini*, 89 Misc. 83, 151 N.Y.Supp. 387 (1915) also bears mention. This involved a petition by a child of 14 to have a Protestant minister and his wife appointed as her guardians. The child had been living with and supported by the minister for years and had been raised as a Presbyterian. Letters of guardianship were opposed by the child's eldest brother, a Catholic, on the ground that the child's parents were Catholic and that the child had accordingly to be raised Catholic. Though the brother admitted that he was unable to support the child should the letters be denied, the Court nevertheless agreed to the extent that the letters were granted on condition that the child's religion be changed from Presbyterian to Catholic and that she be placed by the minister in a Catholic residential educational institution. See also, *In re Cross' Guardianship*, 92 Misc. 89, 155 N.Y.Supp. 1020 (1915) (custody of child conditioned on raising child in faith basically different from that of custodian); *Commonwealth ex rel. Boschert v. Cook*, 122 Pa.Sup. 397, 186 Atl. 221 (1936) (same).

to a Catholic father because he was unfit, gave the child to a devout Protestant maternal aunt on condition that the child be raised a Catholic to insure which the Court appointed a Catholic "religious co-guardian." The previously-discussed Nebraska case of *Lemke v. Gutman*⁶⁰ is also noteworthy though involving as does *Lamb's Estate* the question of the natural parent's right to dictate the religion of his child. *Lemke*, it will be recalled, was a custody fight over a nine year old child between a Catholic maternal aunt who had been raising the child as a Catholic and a Lutheran father. Custody was awarded to the aunt but only on condition that the child be raised as a Lutheran.

On the other hand, in order to protect the child from confusion, some courts have strongly frowned on such dual or divided religious instruction arrangements. The California Court, for example, in *In re Guardianship of Walsh*,⁶¹ recently ruled that custody of a child should not be divided between Catholic and Protestant grandparents but that the entire religious training should be in one faith or another and the Court for reasons unconnected with preference for either religion chose the Catholic faith. A recent Iowa case, *Lynch v. Uhlenhopp*,⁶² is also entitled to mention. This involved a divorce decree which provided, pursuant to stipulation, that the Protestant wife should have custody of one child on condition that the child be raised "in the Roman Catholic Religion," the religion of her ex-husband, the child's father. When the wife failed to comply and in fact took the child to a Congregationalist Church contempt proceedings were brought and she was found guilty in the District Court. On appeal, however, the judgment was reversed. The provision in the decree, the Court said, was "to indefinite" to enforce. Actually, of course, it was not; the Court was simply against such provisions and strongly felt that the religious training of the child should, in order to avoid upsetting the child, follow the custody award. Significantly also the opinion was in part rested on constitutional grounds: Requiring by judicial decree that a child be raised in a particular faith was state action on behalf of religion in violation of the Fourteenth Amendment.⁶³

⁶⁰ 105 Neb. 251, 181 N.W. 132 (1920).

⁶¹ 114 Cal.App.2d 82, 249 P.2d 578 (1952).

⁶² 248 Iowa 68, 78 N.W.2d 491 (1956), noted 42 Iowa L. Rev. 617 (1957).

⁶³ *Id.*, at 82 and 500.

C. AGENCY AND JUDICIAL CONCERN IN NEBRASKA ADOPTION CASES

It will be recalled that two situations were studied, both involving infants. The first case supposes adoptive parents with different basic faiths with each parent regularly attending his own church. How do Nebraska adoption agencies view such a situation? The finding could hardly be more clear. Unless one of the adoptive parents is a Catholic, couples whose basic faiths are different stand a very poor chance in Nebraska of securing a child through an agency. Three of Nebraska's seven major agencies, representing 52% of all annual agency adoptions, regard the situation as creating an automatic bar to placement. A fourth agency, handling 3% of the cases, views it as extremely unfavorable to placement and has sometimes refused placements on this ground while a fifth agency, the State, handling 18% of the cases, regards it unfavorably but not extremely so. The two Catholic agencies, however, handling 25% of the cases, have no objection whatever to making a placement with a couple whose basic faiths are different provided only that one of the parents is a Catholic in good standing. This, it will be recalled, is consistent with the position of the Catholic agencies when asked about placing a child with previous religious training with parents one of which had the same faith as that in which the child had received training.

The judges, while again proving much less concerned with religious problems than the agencies, were nevertheless sharply divided in their reactions. In interpreting the figures, however, it must be remembered that a large percentage of the judges, in contrast to the agencies, do not make the inquiries which would apprise them that a couple of basically different faiths is even before them. Thus in cases involving infants, for example, 42% of the judges never inquire concerning the names of the adoptive parents' basic faiths and another 13% do so only occasionally. With this in mind, then, the figures are as follows. Two percent of the judges would automatically bar the adoption, 44% regard it as a factor extremely unfavorable (17%) or unfavorable (27%) to the adoption while 17% thought it was only slightly unfavorable. Thirty-seven percent, on the other hand, said that it would have no effect upon them one way or another.

In the second case the adoptive parents are both Protestants but belong to different denominations and regularly attend their own respective churches. So far as the agencies were concerned, this was exactly the same as where the adoptive parents had different basic faiths. Their responses in the two situations were

identical except that the Catholic agencies noted that they do not handle Protestant children and so had to be excluded. Perhaps the identity of the responses is in part explained because both parents in the two cases regularly attend their own churches. The judges, on the other hand, thought that the two cases were quite different. No judge would automatically bar an inter-Protestant type adoption and only 14% thought the situation to be either extremely unfavorable (2%) or unfavorable (12%). Eighty-seven percent of the judges said that it would either have no effect upon them (50%) or only a slightly unfavorable effect (31%).

IV. CHURCH MEMBERSHIP AND ATTENDANCE

A. THE VIEW OF THE CHURCH

This portion of the study asks about the importance attached by Nebraska's adoption agencies and judges to such matters as the adoptive parents' church memberships, the regularity of their attendance at church and whether they intend to see that the child attends Sunday school and church. Such inquiries, and they are of course made, do more than just touch lightly upon the problem of separation of church and state and raise policy questions of the most difficult character. The basic assumption of the inquiries, of course, is that participation in organized religion is essential to a good home and to the good life or at least helps make for them. But the assumption has not gone unchallenged and indeed has been a major point of controversy in adoption practice literature.⁶⁴ The controversy, furthermore, has been intense, sometimes bitter and has involved churchmen and laymen alike. Spokesmen for the three basic faiths in the United States appear markedly to differ on the question. Added perspective is perhaps gained from brief excerpts of the Catholic, Protestant and Jewish positions as stated at the 1955 Conference

⁶⁴ At the 1955 National Conference on Adoption, for example, "(t)here was . . . no agreement on the desirability of formalized religion in the adoptive home. Opinion here probably reflects a cross-section of opinion in the United States. It varied from those who believed that no home could be adequate for the nurture of a child unless parents were devoutly religious, to those who believed that ethical, moral parents, though they observed no formal religion, could provide a desirable home for a child." 1 Schapiro, *op. cit. supra* note 2 at 59. See also, *Adoption Practices and Problems*, Child Welfare League of America 35 (1952).

on Adoption of the Child Welfare League of America. The Catholic position was set forth by Mgr. Bowers:⁶⁵

There are certain minimal religious requirements, and so far as these are concerned there can be no question of their relativity in relation to other factors. They can be stated in terms of what the Church minimally demands in practice of its members, regular attendance at Mass on Sundays and Holydays, reception of the Sacraments during the Easter season, no flagrant and continuing violations of the moral law in grave matters. These are a *conditio sine qua non*; if they are not present the applicants cannot be considered suitable adoptive parents, no matter what other inducements they may offer. More than a religious minimum will usually be required.

The Protestant statement was by Reverend Chakerian:⁶⁶

(The child's) healthy and all-around development depends in no small measure on the religious situation in the home in which he is being raised. This is so because religion is the main source of ideals, of spiritual and ethical values, of belief regarding one's relationship to God, and of attitudes and practices toward one's fellow men

If religion is important in the life of a child, then the religious values and practices of an adoptive home must be assessed. It is not sufficient to find out whether a prospective parent is a Congregationalist, a Methodist, or a Baptist. It is more necessary and of much more value to discover the extent to which the individual's life is guided by his religious beliefs. Church membership, church attendance, observance of religious customs, religious education in the home, the relation of professed religious beliefs to daily practices are some of the items that need to be included in the investigation of prospective adoptive parents.

Rabbi Duker, speaking for the Jewish faith, took a different view:⁶⁷

The proposal has been made that children be given for adoption to families that are affiliated with religious bodies or practice the religious rites and life as prescribed by the individual denominations. I know quite a few highly moral and ethical persons who are not religiously affiliated . . . I am nevertheless convinced that such persons can be good adoptive parents . . . I also ask myself some questions which I would like to place before this gathering: Who are we to decide that persons who cannot become parents by an act of God should be deprived of the joy of adoptive paternity because of religious requirements or should be forced to lie or pretend . . . in order to obtain the child? Should adoptive parents be forced to submit to a continuous

⁶⁵ Bowers, *op. cit.* supra note 51 at 132-133.

⁶⁶ Chakerian, *The Religious Component in Adoption: A Protestant Appraisal*, in 2 Schapiro, *op. cit.* supra note 24 at 128.

⁶⁷ Duker, *Jewish Attitudes to Child Adoption*, in Schapiro, *op. cit.* supra note 24, at 148-149.

process of religious testing to see whether the home is sufficiently religious? . . . How do we assess the religious content of a home? Come to think of it, some of our Founding Fathers who were deists would not have been qualified for adoptive parenthood under such conditions.

Carried to their logical conclusion, religious tests would involve continuous inspection of households by religious functionaries . . . Shall clergymen of the various faiths become officially part of the state adoption apparatus? . . . The implication for social workers of such a wide permissiveness to religious factors is ominous.

B. RELIGION AND BEHAVIOR

What does available sociological evidence disclose concerning the relationship of religion to behavior and the good life? One set of studies seeks to examine the correlation between exposure to religious instruction or actual possession of religious information and good character traits such as honesty and self-control. Doubtless the most significant such study is the Character Education Inquiry instituted by Hartshorne and May at Columbia University Teacher's College in 1924.⁶⁸ After exhaustive tests on hundreds of non-delinquent children the finding was that the children's ability to form correct moral judgments, their self-control, their persistence and their general honesty bore no relation to their religious training or the lack of it and that in some instances religious training was positively associated with dishonesty. A somewhat similar study by Hightower at Iowa State in 1930, based on 435 randomly selected delinquents and non-delinquents likewise showed no correlation between religious training and behavior.⁶⁹ The idea here, as in some of the Hartshorne and May studies, was to test the amount of cheating on tests and it was found that children exposed to religious instruction cheated as much and in some cases more than did those without such training. Similar studies by Franzblau⁷⁰ in 1930, Harlow in 1948⁷¹ and Diaz⁷² in 1954 yielded comparable results. The Diaz study

⁶⁸ Hartshorne and May, *Studies in Deceit* (1930).

⁶⁹ Hightower, *Biblical Information in Relation to Character and Conduct*, in Starbuck, 3 *University of Iowa studies in Character* (no. 2) (1930).

⁷⁰ Franzblau, *Religious Belief and Character Among Jewish Adolescents* (1930).

⁷¹ Harlow, *Biblical Knowledge and Ideals of Verbal Honesty* (1948).

⁷² Diaz, *A Study of the Ability of Eleventh-Grade Girls to Apply the Principles of the Moral Law to Actual and Hypothetical Life Situations* (Ph.D., Fordham, 1952), noted in 49 *Religious Education* 181 (June, 1954). See also, Dominic, *Religion and the Juvenile Delinquent*, 1954 *Am. Cath. Sociol. Rev.* 256.

was based on 915 Catholic girls in the 11th grade, divided into two groups, 500 girls enrolled in the New York diocesan school for girls and 415 girls enrolled in New York and New Jersey Public schools. Religious training within each group, it was found, had no relation to behavior, either hypothetical or actual. Some minor studies,⁷³ including two conducted in Nebraska, to some degree tend to look in the opposite direction but it is conceded by everyone that any significant degree of correlation between religious training and morality has yet to be demonstrated. Indeed, the weight of the evidence, such as it is and so far as studies of this type are concerned, lies the other way.

There is also the question of the relationship if any between delinquent or criminal behavior and lack of religion. Such a relationship, of course, is very commonly assumed or asserted, so much so in fact and so often by one national figure that statements to this effect have become identified as J. Edgar Hooverisms.⁷⁴ Actually however no correlation has ever been shown between delinquency and crime and lack of religion and the few studies sometimes relied upon as evidence of a connection consist merely of a showing that a large percentage of delinquents come from homes in which religious training is absent or nearly so.⁷⁵

The lack of religious training factor, however, has never been held constant and the connection in question is probably explained by other factors. In addition, some studies, similarly inconclusive and lacking in rigor, point in the opposite direction. A study of 761 delinquents referred to the Passaic Children's Bureau during the period 1939-1944,⁷⁶ for example, disclosed that 92.2% of

⁷³ Schnepf and Johnson, *Do Religious Background Factors Have Predictive Value*, 14 *Marr. & Fam. Living* 301 (Nov., 1952); Maehr, *The Relationship of Bible Information to Certain Specific Beliefs and Practices* (Ph.D. Nebraska, 1955); Turner, *Effectiveness of Religious Education in Developing Honesty in a Classroom Situation*, (M.A. Nebraska, 1947). The Maehr dissertation briefly reviews all of the literature in the area.

⁷⁴ See, e.g., Hager, *Race, Nationality and Religion*, op. cit. supra note 7 at 132: "It will require more than the prestige of J. Edgar Hoover and the convictions that flow from popular religious sentiment to transform an assertion into valid theory."

⁷⁵ E.g., Mihanovich, *Principles of Juvenile Delinquency* 19 (1950); *The Delinquent Child*, (White House Conference) 143 (1932); Cooley, *Probation and Delinquency* 71 (1927).

⁷⁶ Kvaraceus, *Delinquent Behavior and Church Attendance*, 28 *Sociology and Soc. Research* 284 (1944).

the delinquents on whom data was available claimed membership in some church as compared to 56.7% church membership for the community as a whole. The percentage of delinquents regularly attending church, 54.2%, was likewise doubtless in excess of average citizen attendance. Again, "there is considerable evidence indicating that known criminals do not differ significantly from the general population with respect to (at least) nominal religious affiliation. In fact, were we to rely upon statistics alone we would have to admit that prison inmates made by far the better showing . . . Dunn found that 19,882 or 77.3 per cent, out of a total of 25,726 inmates of 27 state penitentiaries, claimed affiliation with either the Protestant or Roman Catholic faith. Another survey, by F. Steinder, showed that of 85,000 convicts, some 68,000 or 80 per cent, termed themselves nominal Christians. The number of avowed unbelievers amounted to but a small fraction of 1 per cent . . . (T) here is little or no reason to believe that convicts are peculiarly antagonistic to conventional religion, as compared with the nonprison population."⁷⁷

C. RELIGION AND MARRIAGE

More useful in the present connection perhaps are the marriage satisfaction studies and the divorce and desertion rates of religiously interested as compared with non-religious persons. The monumental study by Burgess of 526 young middle-class married couples in Chicago and suburbs is particularly noteworthy.⁷⁸ Burgess found that in the case of both bride and groom "those reporting no church connections ranked lower than the average in 'good' adjustment, constituting only 33.7 per cent and 39.6 per cent, respectively, of the well adjusted."⁷⁹ Attendance at church and Sunday school was even more closely associated with marital happiness. "Both husbands and wives who never went to Sunday school or who stopped going after 10 years of age show(ed) a markedly lower proportion of highly successful and a higher proportion of unsuccessful marriages as measured by the adjustment score. On the other hand, those who continued going to Sunday school until they were 19 to 25 years old, or even older . . . (had) a distinctly higher chance than other groups for marital success

⁷⁷ Smith, *Organized Religion and Criminal Behavior*, 33 *Sociology and Soc. Research* 362, 364-365 (1949).

⁷⁸ Burgess, *Predicting Success or Failure in Marriage* (1939). See also, Burgess and Wallin, *Engagement and Marriage* (1953); and Burgess, Wallin and Schultz, *Courtship, Engagement and Marriage* (1954).

⁷⁹ Burgess, *op. cit.* supra note 78 at 123.

and a lower chance for failure."⁸⁰ Attendance at church was particularly important in the case of husbands. The husbands who never attended church were the "poorest' matrimonial risks, those who attend(ed) once or less a month 'average,' and those who attend(ed) two, three or four times a month the 'best.'"⁸¹ On the other hand, Terman's study of 792 upper-middle and middle class married couples in California showed that the happiest marriage was one in which the couple had only a medium amount of religious training as compared with little or none or much.⁸² However, neither the Burgess or the Terman findings approached statistical significance though Terman's came very close. Insofar as divorce and separation rates are concerned, all known studies are agreed that persons with little or no religious interest head the list.⁸³

D. PERCENTAGE OF POPULATION RELIGIOUSLY INTERESTED

One final cluster of data. It is relevant to inquire about the general social attitudes of religiously interested persons and their number in relation to our population as a whole. Most studies at least show them to be more conservative than average and less tolerant of non-conformist attitudes and behavior.⁸⁴ Stouffer's

⁸⁰ *Id.*, at 123-124.

⁸¹ *Id.*, at 124.

⁸² Terman, *Psychological Factors in Marital Adjustment* 234-35 (1938). However, because Terman felt that the matter of religious training was perhaps accounted for by other items in his marriage prediction scale and because of the slight correlation between 'considerable' (rather than very much or very little) religion in childhood and marriage success and failure, the item was omitted from his marriage prediction scale.

⁸³ Landis, *e.g.*, *op. cit.* supra note 41 at 403 notes that in all major studies approximately 5 per cent of the Catholic and Jewish marriages, 8 per cent of the Protestant marriages, 15 per cent of the mixed Catholic-Protestant marriages and 18 per cent of the marriages in which there was no religious faith end either in separation or divorce. So far as his own study was concerned, Landis further found that "when a Catholic woman marries a man who has no religious faith the divorce rate is relatively low—.01 per 100—when compared with other types of mixed marriage. However, when the Protestant woman marries a man with no religion, the divorce rate was higher, 10 per 100." *Ibid.*

⁸⁴ The point that religiously-interested persons are less tolerant of non-conformism than the average citizen takes on added significance in the light of such public opinion polls as those showing that in May, 1953, 42 per cent of the nation felt that "In peacetime, newspapers should not be allowed to criticize our form of government," with an

famous study of attitudes towards civil liberties, based on a national sample of 4,933 persons, is illustrative.⁸⁵ Stouffer found that of the "3095 persons attending church in the month prior to interviewing, only 28% were classified as 'more tolerant' whereas 36% of the 1833 persons who did not attend church during that period were so classified. Furthermore, only two of the items used in the tolerance scale directly involve enemies of churches and religion. . . . There would appear to be something about people who go to church regularly that makes fewer of them, as compared with non-churchgoers, willing to accord civil rights to non-conformists who might be Communists, suspected Communists, or merely Socialists.⁸⁶ On the other hand, one or two minor studies find no correlation between conformism and interest in religion.⁸⁷

Now, what degree of interest do we as a population exhibit in religion? Approximately 49% of us belong to a church but doubtless many of our affiliations are little more than nominal.⁸⁸ Using the latest available national sample figures and taking our

additional 4 per cent unable to make up their minds; that in May, 1953, 39 per cent of the general public were against allowing socialists to publish newspapers in peacetime, with another 15 per cent unable to decide; and that in January, 1951, 34 per cent of the population were against allowing newspapers to take sides in editorials around election time with an additional 8 per cent unable to decide. See Hyman and Sheatsley, *Trends in Public Opinion on Civil Liberties*, 9 *J. of Social Issues* (No. 3) 6, 15-16 (1953).

⁸⁵ Stouffer, *Communism Conformity, and Civil Liberties* (1955).

⁸⁶ *Id.*, at 143. See also, Yinger, *Religion in the Struggle for Power*, 155 et seq. (1946); Angel, *Integration of American Society* 164 (1941); Trott and Sanderson, *What Church People Think about Social and Economic Issues* (1938).

⁸⁷ Lantz, *Religious Participation and Social Orientation of 1,000 University Students*, 33 *Sociology and Soc. Research* 285 (1949) (no correlation found between attitudes on social conditions between church and non-church goers among 1,000 Ohio State college students); and see Coleman, *Social Cleavage and Religious Conflict*, 12 *J. of Social Issues* (No. 3) 44, 52-53 (1956); *Social Economic Status and Outlook of Religious Groups in America*, 27 *Information Service of Department of Research and Education, Federal Council of the Churches of Christ in America* 6 et seq. (May 15, 1948).

⁸⁸ According to a recent survey, there are 74,125,462 church members in the United States, including 39,310,840 Protestants, 29,688,058 Roman Catholics and 5,112,024 Jews. Using 1950 census figures as a basis (150,697,361 total population) this means that 49.1% of us belong to a church. The respective percentages of the total population for the three major faiths are Protestants 26.0%, Roman Catholics 19.7% and

own statements in all cases as true, 36 per cent of us, mostly women, went to church last Sunday while 64% of us did not.⁸⁹ Indeed, 42% of us have not attended church in the past month and another 11% attended only once.⁹⁰ Only 19% of us attended each week during the past month and most who attended were Catholics.⁹¹ On the other hand, 61% of us according to ourselves send our children to Sunday school regularly while 39% of us do not.⁹² And we are, it appears, much more likely to insist that our girls attend than our boys.⁹³ The pattern thus revealed has probably always held true. "Never in the religious history of the United States is there much evidence to show that more than about one-third of the population ever went regularly to any place of worship, and sometimes the proportion has been probably much less."⁹⁴

Jews .03%. Churches and Church Membership in the United States, Bureau of Research and Survey, Series A, No. 2, National Council of the Churches of Christ in the U.S.A. (1956).

Church membership in Nebraska is slightly above the 49.1% national average. A 1958 survey gives us 707,954 church members out of a 1950 total population of 1,325,510 or 53.4% of the total. 37.2% of the total population are Protestant church members (493,597), 15.5% belong to the Roman Catholic Church (206,907) and .06% are Jewish affiliated (7,450). Churches and Church Membership in the United States, Bureau of Research and Survey, Series E, No. 2, National Council of the Churches of Christ in the U.S.A. (1958).

⁸⁹ Cantril, *Public Opinion 1935-1946*, at 700 (1951) (based on national sample in November, 1944).

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Thus of a national sample of high school students in February, 1939, 63.5 per cent of the girls said that they attended church weekly or more often as compared with 49.6 per cent of the boys. *Ibid.* Data elsewhere uniformly show that women exhibit a much more marked interest in religion than do men. See, e.g., Bultena, *Church Membership and Church Attendance in Madison, Wisconsin*, 14 *Am. Soc. Rev.* 384 (1949). The Bultena study showed that while there was very little difference in Madison, Wisconsin between the average attendance of the Catholic men (3.47 times per month) and that of the Catholic women (3.54), there was a larger difference between the respective attendance of Protestant men (1.66) and Protestant women (1.99). See also, Stouffer, *op. cit. supra* note 85 at 141.

⁹⁴ Hall, *Religious Background of American Culture*, quoted in Bultena, *op. cit. supra* note 93 at 388. See also, Landis, *The Church and Religious Activity*, *Am. J. of Sociol.* 783 (1935); Anders, *Religious Behavior of Church Families*, 17 *Marr. & Fam. Liv.* 54 (Feb., 1955).

Be this as it may, the bulk of the cases, the vast majority of them involving custody and guardianship questions, indicate that church membership, church attendance and parental insistence on Sunday school or other formalized religious instruction for the child are important if not vital ingredients in determining what is in the "best interest of the child."⁹⁵ Indeed, there are even cases where religion is virtually the only element relied upon to show good character⁹⁶ and some courts have gone to the extent of withholding consent to custody or adoption until an applicant, temporarily in difficulty with his church, is able to regain good standing.⁹⁷ A few courts, to be sure, profess not

⁹⁵ E.g., *In re Waite*, 190 Iowa 182, 180 N.W. 149 (1920) (church members); *Walen v. Boles*, 314 Ky. 817, 326 S.W.2d 885 (1951) (regular church attenders); *Wheeler v. Wheeler*, 249 Ala. 119, 29 So.2d 881 (1947) (home located near church); *Hewitt v. Morgan*, 220 Ark. 123, 246 S.W.2d 423 (1952) (good substantial Christian people); *Bourn v. Hinsey*, 134 Fl.2d 404, 183 So. 614 (1937) (religious home); *Crowe v. Crowe*, 116 Ind. App. 534, 65 N.E.2d 645 (1946) (Christian home); *Vanover v. Hunby*, 309 Ky. 461, 218 S.W.2d 20 (1949) (child regularly sent to Sunday school and sometimes to church); *Commonwealth ex rel. Batturs v. Batturs*, 162 Pa. Sup. 573, 60 A.2d 610 (1948) (same); *Commonwealth ex rel. Kreiling v. Kreiling*, 156 Pa. Super. 526, 40 A.2d 704 (1945) (same); *Wellcome v. Wilk*, 339 Ill. App. 444, 90 N.E.2d 260 (1950) (same).

Only occasionally does one encounter a judicial suggestion that church membership and attendance are not necessarily indicative of good parenthood and then only in cases involving natural parents. One such is *Hewitt v. Long*, 76 Ill. 399 (1875): "All that can be determined about her from the evidence, is . . . that she is a woman who attends church, teaches in a Sabbath school, and plays upon a piano and organ. . . . It is unnecessary to say, that a woman may attend church, may teach in a Sabbath school . . . and yet be wholly unfit to be the mistress over a girl." *Id.*, at 402.

The value of Sunday school training has similarly gone unchallenged though at least two courts have refused to deprive a natural mother of custody because she failed to send her child to Sunday school. In both cases it was said or inferred that moral training at home would do as well. *Rone v. Rone*, 20 S.W.2d 545 (Mo. App., 1929); *Fuller v. Fuller*, 249 Mich. 19, 227 N.W. 541 (1929).

⁹⁶ E.g., *Mayfield v. Braund*, 217 Miss. 514, 64 So.2d 713, suggestion of error overruled, 65 So.2d 235 (1953). The person in question, a father, had a prison record and apparently little else except his religion to commend him.

⁹⁷ *People ex rel. McGrath v. Gimler*, 60 N.Y.S.2d 622, *aff'd*, 270 App. Div. 949, 62 N.Y.S.2d 846 (1946). The Court was here faced with a foreign custody decree awarding custody to the father. Recognizing its own lack of jurisdiction, the court nevertheless refused to order the child placed in petitioner's custody until he had again established himself as a Catholic in good standing. And see *In re Korte*, 78 Misc. 276, 139 N.Y.Supp. 444 (1912).

to be concerned with such matters and insist, generally on constitutional grounds, that tests of comparative devoutness and church going cannot be used.⁹⁸ But such cases are unusual. The general picture is one of intense judicial interest in church membership and regular church attendance and in custody cases of balancing one set of contestant's religiosity against another's.⁹⁹ The Nebraska cases reflect the general pattern. In *In re Guardianship of Herter*,¹⁰⁰ for example, the Court noted "the fine religious home" of the prevailing contestant and the winning contestants in *Kaufman v. Kaufman*¹⁰¹ were such in part because they were "members and regular attendants of a church, and intend(ed) to raise the child as a Christian." *State ex rel. Britton v. Bryant*¹⁰² is similar. This was a habeas corpus action by a mother to regain possession of her infant of grammar school age from persons who had cared for it for a considerable time. In affirming the order of the District Court granting relief the Court pointedly commented on the fact that respondents had "failed to send the child to . . . church and Sunday school" and noted that since the lower court judgment "the child is happy and contented and is regularly attending, school, church and Sunday school."

⁹⁸ Jones v. Bowman, 13 Wyo. 79, 77 Pac. 439 (1904); Describes v. Wilmer, 69 Ala. 25 (1881); Maxey v. Bell, 41 Ga. 184 (1870). The most definitive pronouncement however, is found in Kendall v. Williams, 233 S.W. 196, 197 (Tex. Civ. App., 1921): "The proof discloses that . . . all of the appellants are devout Christians, while Wester Williams is not a member of the church, although his wife belongs. . . It also appears that appellees attend religious services only at infrequent times. . . . On the other hand, the proof . . . (as to appellants) is that they give zealous adherence to all . . . the church activities. . . . From these circumstances appellants argue that the finding of the trial court are contrary to the proof . . . The sentiments embodied in appellants' argument . . . are well calculated to weigh heavily . . . (b)ut whatever religious . . . belief dominates the individual hearts of those who . . . administer the judiciary, their allegiance to judicial functions requires that their judgments conform alone to the rules of law and fundamental justice . . . The test of comparative extent of devoutness cannot be substituted for . . . (legal standards). A Court of law is not a place in which to ascertain and declare religious orthodoxy, and derive from it the rights and welfare of people in the ordinary relations of life."

⁹⁹ See cases cited note 95 supra.

¹⁰⁰ 127 Neb. 88, 254 N.W. 698 (1934); see also, *In re Burdick*, 91 Neb. 639, 136 N.W. 988 (1912).

¹⁰¹ 140 Neb. 299, 299 N.W. 617 (1941).

¹⁰² 95 Neb. 129, 145 N.W. 266 (1914).

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E. AGENCY AND JUDICIAL CONCERN IN NEBRASKA ADOPTION CASES

It has been a lengthy prelude, perhaps too lengthy and the data were not always altogether unequivocal. Let us now turn to agency and county judge practice in Nebraska. Several cases were studied: 1) neither adoptive parent is a church member; 2) the mother belongs but the father does not; 3) the father belongs but the mother does not; 4) both belong but they seldom attend; 5) both belong and one regularly attends while the other seldom attends; and 6) both are deeply religious but neither believes in nor practices an organized religion. The general nature of the findings is readily predictable. The agencies on the whole were rigorously insistent upon church connections while the judges or at least many of them were not. There is also the usual caveat in connection with the judges. Many of them simply do not ask the questions which would apprise them of the existence of the various situations. Here, however, they were more than usually curious though more so about church membership than church attendance. 56% of the judges make it a practice always (31%) or generally (25%) to inquire concerning petitioners' church memberships as compared with 46% always (14%) or generally (32%) inquiring about regularity of church attendance. On the other hand, 43% of the judges only occasionally (10%) or never (33%) ask about church membership, with 54% seldom (12%) or never (42%) inquiring about regularity of attendance at church. The number of judges inquiring about these matters, incidentally, is approximately the same whether infants or children with previous religious training are involved.

One final point about inquiries. In cases involving infants 66% of the judges never (58%) or seldom (8%) specifically inquire whether the infant will receive formal religious training if the petition is granted, with 14% always and 20% generally inquiring. The situation is somewhat different where children old enough to have received religious training are involved. Here 53% never (38%) or seldom (15%) inquire as compared with 48% always (30%) or generally (18%) inquiring. As would be expected, the adoption agencies uniformly make all inquiries necessary to learn of the various situations, either in the application for adoption or through personal interviews and investigations.

Where neither adoptive parent is a church member, five of the State's seven major agencies, representing 52% of all agency adoptions for 1957, would automatically refuse placement and several indicated that they had sometimes done so on account of

this factor. The two major remaining agencies, representing 47% of all adoptions, would doubtless also do so as a practical matter. Both noted their extreme disapproval. Nor was it much different for the agencies when one of the applicants belonged. Furthermore, the agencies did not distinguish between the case where the mother belonged and the father did not and the case where the membership situation was reversed. The cases were uniformly viewed as identical.¹⁰³ When either the father or the mother did not belong, three of the seven agencies, handling 27% of the cases, would still automatically bar the placement, a fourth agency, the State of Nebraska, viewed it as extremely unfavorable while the remaining three agencies check the "unfavorable" category. In view of the large number of applicants for adoption in relation to the number of available children probably every major adoption agency in the State must be regarded as closed to any couple both of whom do not belong to a church. With 47% of the state's population not belonging, this is a considerable exclusion.

The judges as a whole likewise attached considerable importance to church membership though by no means as much as did the agencies. Where neither adoptive parent belongs 2% of the judges would automatically bar the petition, 52% viewed the situation either as extremely unfavorable (19%) or unfavorable (33%) with 47% checking "only slightly unfavorable" (19%) or "no effect" (28%). The percentage of judges in the "no effect" category, it will be noted, is exceeded by only one other percentage, the "unfavorable," and then only slightly. Here again is evidence of a solid nucleus of judges attaching no importance whatever to religious factors. And we likewise encounter once more the approximately 20% of the judges attaching controlling importance to such matters.

The judges, unlike most of the agencies, thought the situation quite different where one of the parents belonged and furthermore, and even more unlike the agencies, drew some distinc-

¹⁰³ If the object of agency insistence on membership of both parents is to ensure greater participation in church activities for the family as a whole their position would seem to be supported by what little available sociological evidence there is. Anders' study of 417 Protestant church families in a small urban community in Florida indicated that "(f)amilies in which one spouse was not a member of a church had a mean participation score . . . considerably lower than the mean score for the church membership . . . (and that) greater over-all family participation seemed to demand that the father husband have some church affiliation." . Anders, *op. cit. supra* note 94 at 56.

tions between the case where the mother belongs and the father does not and where the opposite membership situation prevails. Where the mother belongs and the father does not no judge would automatically bar the adoption, only 25% were extremely unfavorable (7%) or unfavorable (18%) while 76% said "only slightly unfavorable" (37%) or "no effect" (39%). Where however the father belongs but the mother does not 37% were in the extremely unfavorable (9%) or unfavorable (28%) categories with 63% marking "only slightly unfavorable" (28%) or "no effect" (35%).

As previously noted both the agencies and judges were less affected by non-church going than by lack of church membership though the agencies were still very much affected. Where neither parent regularly attends, two Protestant agencies, handling 24% of the cases, would automatically refuse placement though one indicated that the situation would only be unfavorable if it was impossible to regularly attend because of the location of the church in relation to the parent's residence. The other would apparently do so regardless of the circumstances. Three other agencies, representing 53% of the cases, viewed the situation as extremely unfavorable while the two remaining agencies, handling 22% of the cases, regarded it unfavorably. If neither parent regularly attends probably the situation is about the same in terms of securing a child through an agency as where neither even belongs. As a practical matter it is impossible in both cases. With one-third or less of us regularly attending church, it appears that the agencies are excluding the bulk of the population.

Furthermore, it was not too different for the agencies where one parent regularly attends and one seldom attends. Indeed, one agency, though only handling 3% of the cases, thought that this was worse than where neither regularly attends. Moving from "unfavorable" to "extremely unfavorable" the notion perhaps was that one attending with the other not might perhaps create a conflict situation for the child which would be worse for him than where both parents spent their entire Sundays together. Of the remaining six agencies, two, handling 24% of the cases, would automatically bar placement though one stated that it might not do so if it was the husband who seldom attended and his reason for not doing so was employment on Sundays. Three other agencies, representing 53% of the cases, viewed the situation as unfavorable while the sixth and last, handling 18% of the cases, thought it was only slightly unfavorable. Again as a practical matter both parents must probably regularly attend church in order to secure a child from one of the agencies.

So far as most of the judges were concerned regularity of church attendance was not particularly important. Where neither parent regularly attends no judge would automatically refuse his consent and only 3% thought the situation to be extremely unfavorable. 28% on the other hand thought it unfavorable but this is against 68% who thought it only slightly unfavorable (34%) or said that it would have no effect (34%). The judges were even less impressed when one parent regularly attended. 81% of them said that such a circumstance would either have no effect upon them (45%) or only a slightly unfavorable effect (36%). This compares with 19% in the unfavorable (16%) and extremely unfavorable (3%) categories.

The final case, it will be recalled, postulates a deeply religious couple with no interest in organized religion. The picture sought to be created is that of a Bible reading, Sunday observing pair who for one reason or another prefer to practice their religion individually rather than with a group. How do the agencies and judges view this? The agencies were strongly opposed. Five of them, representing 77% of the agency cases, would without more automatically bar such a couple while the remaining two, handling 22% of the cases, noted their extreme disapproval. The judges, on the other hand, thought that the personal religiosity factor improved the situation considerably over what it would have been in the case of a non-church-belonging couple with no interest in religion. 57% of the judges said that the situation would either have no adverse effect upon them (35%) or only a slightly adverse effect (22%) as compared with 44% opposed (33%) or extremely opposed (11%). No judge would automatically bar a petition on this ground. However, several judges noting their opposition to the situation commented that they had sometimes in part refused to grant petitions on account of it. Several of the agencies, it should be noted, likewise so stated.

V. ATHEISTS AND AGNOSTICS

The final segment of the study concerns atheistic and agnostic applicants for adoption. As a practical matter, of course, agency and judicial treatment of such persons in relation to adoption is unimportant. The positive unbeliever and the religious skeptic constitute a very small portion of the population, approximately 4%,¹⁰⁴ and, so far as many persons are concerned, prob-

¹⁰⁴ A national sample in November, 1944 revealed that 96 per cent personally believed in a God, only 1 per cent did not and 3 per cent were undecided. Cantril, *Public Opinion 1935-1946*, at 744 (1951).

ably a much disliked segment. Perhaps atheists and agnostics do not deserve separate treatment or any treatment at all; their small minority and disliked status alone could bar their applications. Indeed, it appears that a large percentage of us are even against permitting atheists the right of freedom of speech.¹⁰⁵ At the same time, church and state are here supposed to be kept separate and a man's right to disbelieve in religion is as protected as his right to believe.

The question, furthermore, is interesting on account of its history. Religious unbelievers and skeptics in the Western World have traditionally had an extremely difficult time and it was not long ago as history is measured that an English court deprived the poet Shelley of the custody of his children because of his avowed atheism.¹⁰⁶ Probably no American Court would follow the precedent of that case today; certainly no English court would.¹⁰⁷ But adopting a child is not like being an atheist and having custody of your own. Under religious protection statutes, of course, atheists and agnostics would normally have no standing to adopt since all or almost all children are treated as possessing a faith and they could not by definition match it.

No case involving an unbeliever or skeptic has yet arisen under such a statute. Few have arisen outside. Illustrative of their tenor, however, is *In re Korte*,¹⁰⁸ a New York case. This involved a "free thinker's" application for the adoption of two foundlings originally surrendered to him and his wife by a Roman Catholic charity. The wife, a Catholic, had since died and the Charity opposed the petitioner's application on the ground of his lack of religion. Noting that "it would be a manifest wrong to permit . . . (the) children to be brought up in a condition of pagan unbelief and atheism," the Court denied the petition though staying his order for six months so that petitioner could rethink his convictions and place the children under Catholic teaching on

¹⁰⁵ Thus in December, 1946 a national sample was asked: "An atheist is a person who doesn't believe in God. In San Francisco, a radio station allowed an atheist to broadcast his views on religion. Would you approve or disapprove of letting atheists broadcast in this area?" 56 per cent disapproved, 8 per cent had no opinion and 36 per cent approved. *Id.*, at 713.

¹⁰⁶ *Shelley v. Westbrook*, Jac. 226, 37 Eng. Rep. 850 (1821).

¹⁰⁷ See *In re Blackburn*, 41 App. 622, 632 (1890).

¹⁰⁸ 73 Misc. 276, 139 N.Y.Supp. 444 (1912). Compare *In re McKenzie*, 197 Minn. 234, 266 N.W. 746 (1936).

a trial basis. And there are other such cases.¹⁰⁹ Also pertinent is the large stream of precedent on the importance of church membership, church attendance and Sunday school.

On the other hand, as noted previously, a few cases look the other way. In *Maxey v. Bell*,¹¹⁰ for example, objection was raised to a deceased father's appointment by will of a non-believer as the guardian of his two children, aged 13 and 11. The objection was summarily overruled on constitutional grounds. "(A) man may think as he pleases upon any subject, religious, philosophical or political, and is not, for that, under any civil or political disability." Likewise pertinent is the Alabama Court's approach to a guardianship question in *Desribes v. Wilmer*:¹¹¹ "(W)e feel it our duty to dis sever the contention from all supposed sectarian bearings." But these are old cases; modern authority leans heavily the other way. Except for the cases previously mentioned there is no Nebraska authority in point.

In the present connection the questionnaire posed two cases each relating to infants and to children old enough to have received religious training: 1) neither adoptive parent believes in God; and 2) one adoptive parent believes in God while the other does not. The questions relating to children old enough to have received religious training assume that the children have in fact received some. While due to oversight the questions as stated on the questionnaire were framed solely in terms of atheists, the answers of the agencies are equally applicable to agnostics. This was determined by personal interviews. Whether the judges would distinguish between atheists and agnostics is unfortunately not known.

All seven of Nebraska's major adoption agencies would automatically refuse placement where both adoptive parents have no belief in God and no distinction is drawn by them between cases involving infants and those involving children old enough to have received religious training. Nor is it much different for the agencies where only one adoptive parent does not believe. In cases

¹⁰⁹ E.g., *Eaton v. Eaton*, N. J. Court of Chancery, January 27, 1936, N. Y. Times, January 30, 1936, p. 1, noted in 49 Harv. L. Rev. 831 (1936); *aff'd* on other grounds, 122 N.J.Eq. 142, 191 Atl. 839 (1937). And see *Ex Parte Agnello*, 76 N.Y.S.2d 186 (1947) (natural father refused custody of his children in material part because he was an atheist and his wife, the children's step-mother, merely an "easy-going Catholic.")

¹¹⁰ 41 Ga. 184 (1870).

¹¹¹ 69 Ala. 25 (1881).

involving infants there were four "automatic bars" and three "extremely unfavorables" with four "automatic bars" and two "extremely unfavorables" for cases involving children with previous religious training. So far as the agencies are concerned, atheists and agnostics are as a practical matter barred from serious consideration.

The judges, while on the whole definitely opposed to allowing atheists to adopt, were again considerably more liberal than the agencies and there was a strong minority having no objection whatever. For infant cases where neither adoptive parent believes 22% would automatically bar the petition and 63% were extremely opposed (51%) or opposed (12%). 15% however said that the situation would either have no effect (12%) or only a slightly unfavorable effect (3%). The respective percentages for cases involving children with previous religious training were virtually identical. So far as the infant cases were concerned the judges viewed the situation where one parent did not believe as about the same as where neither parent believed. There was some movement in favor of granting the petition but not much. 14% would still automatically deny the petition, 68% were either extremely opposed (31%) or opposed (37%) while 19% either had no objection (12%) or only a slight objection (7%). Cases involving children old enough to have had religious training however were treated more liberally. Here only 7% would automatically refuse the adoption with 65% extremely opposed (34%) or opposed (31%) and 29% either having no objection (14%) or only a slight objection (15%).

VI. CONCLUSION

As the central object here has merely been to state what was taking place little remains by way of conclusion. There are of course numerous and fundamental policy questions lurking in the background and not too far back. But these for the most part cannot and will probably never be resolved and it is probably better here not to even try. The research was a cooperative effort and frankly in the end we find ourselves on the basic issues about where we began. Hopefully however agreement is not in this case the final test of merit and something of value can be gained merely from learning something more of the evidence and what we now do. In closing we extend our sincere thanks to the adoption agencies and to the many county judges who made the undertaking possible.

APPENDIX A

County Judge Questionnaire

To the Honorable _____,

County Judge, _____ County, Nebraska

Questionnaire on "Religion in Adoption Cases in Nebraska"

1. During the past two years, about how many adoption petitions have you:

Granted? _____ Denied? _____
2. Out of all the petitions you ruled on under Question 1, about how many were:
 - a) Cases where the petitioner was a step parent (so-called "half-adoption" cases)? _____
 - b) Cases, other than "half-adoption" cases, involving infants too young to have received any religious training? _____
 - 1) In about how many of such cases was the Board of Control or some licensed adoption agency required to consent to the adoption under § 43-105? _____
 - c) Cases, other than "half-adoption" cases, involving children old enough to have received some religious training? _____
 - 1) In about how many of such cases was the Board of Control or some licensed adoption agency required to consent to the adoption under § 43-105? _____
3. How often do you employ your discretionary power under § 43-107 to request an investigation of the adoptive parents and the child by the Board of Control or by some licensed adoption agency where, but for your action, no Board of Control or agency investigation would be made: (Check item which best describes what you do.)
 - a) In cases, other than "half-adoption" cases, involving infants too young to have received any religious training?
 Always _____ Generally _____ Occasionally _____ Never _____
 - b) In cases, other than "half-adoption" cases, involving children old enough to have received some religious training?
 Always _____ Generally _____ Occasionally _____ Never _____

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4. In adoption cases, other than "half-adoption" cases, involving INFANTS TOO YOUNG TO HAVE RECEIVED ANY RELIGIOUS TRAINING,

a) To what extent do you inquire (or request counsel to inquire) as to the following matters (assuming, of course, that you are not already in possession of such information):

1) The major basic faith of the natural mother (Catholic, Protestant, Jewish)?

Always _____ Generally _____ Occasionally _____ Never _____

2) Whether the infant has been dedicated to a major basic faith (Catholic, Protestant, Jewish) by a ritual such as baptism?

Always _____ Generally _____ Occasionally _____ Never _____

3) Whether the adoptive parents are church members?

Always _____ Generally _____ Occasionally _____ Never _____

4) The name(s) of the major basic faith(s) of the adoptive parents (Catholic, Protestant, Jewish)?

Always _____ Generally _____ Occasionally _____ Never _____

5) The name(s) of the particular religious sect(s) or denomination(s) to which the adoptive parents belong (Baptist or Presbyterian, for example, in the case of Protestants)?

Always _____ Generally _____ Occasionally _____ Never _____

6) The regularity of church attendance by the adoptive parents?

Always _____ Generally _____ Occasionally _____ Never _____

7) Whether, though the adoptive parents may both be members of the same sect (Methodist, for example), they both attend the same church of that sect?

Always _____ Generally _____ Occasionally _____ Never _____

8) Whether the infant will receive formal religious training if the petition is granted (Sunday school, church, formal church membership)?

Always _____ Generally _____ Occasionally _____ Never _____

9) The name of the particular sect or sects in whose doctrines the child will be instructed and in whose church or churches he will receive training?

Always _____ Generally _____ Occasionally _____ Never _____

b) In the class of cases under consideration, how would the following situations probably affect your decision?

For each situation, please check that description which best describes your probable reaction. And if the situation mentioned was ever one of the factors in causing you to deny a petition, please also circle the description you have checked.

- 1) The infant has been dedicated to a major basic faith (Catholic, Protestant, Jewish) by a ritual such as baptism and will be raised in a different major basic faith (Catholic instead of Protestant, for example).
Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____
- 2) The infant has not been dedicated to a major basic faith by a ritual such as a baptism but the infant will be raised in a major basic faith different from that of his natural mother (Protestant instead of Catholic, for example).
Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____
- 3) Neither of the adoptive parents is a church member.
Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____
- 4) The adoptive mother is a church member but the adoptive father is not.
Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____
- 5) The adoptive father is a church member but the adoptive mother is not.
Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____
- 6) Though the adoptive parents both belong to the same church, they seldom attend.
Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____
- 7) Though the adoptive parents both belong to the same church, one seldom attends though the other regularly attends.
Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____
- 8) Neither adoptive parent believes in God.
Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____
- 9) One adoptive parent believes in God while the other does not.
Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____
- 10) The adoptive parents belong to different branches of the Protestant faith (Methodist and Baptist, for example), and each regularly attends his own respective church.
Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____

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- 11) The adoptive parents have different major basic faiths (Protestant and Catholic or Jewish and Protestant, for example), and each regularly attends his own respective church.

Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____

- 12) Both adoptive parents are religious but neither believes in nor practices an organized religion.

Automatic bar ____ Extremely unfavorable ____ Unfavorable ____
Only slightly unfavorable ____ No effect ____

5. In adoption cases, other than "half-adoption" cases, involving CHILDREN OLD ENOUGH TO HAVE RECEIVED RELIGIOUS TRAINING,

- a) To what extent do you inquire (or request counsel to inquire) as to the following matters (assuming, of course, that you are not already in possession of such information):

- 1) Whether and to what extent the child has been instructed in the tenets of a major basic faith (Protestant, Catholic, Jewish) and the name of such faith?

Always ____ Generally ____ Occasionally ____ Never ____

- 2) The name of the particular religious sect or denomination in whose doctrines the child may have been instructed (Baptist or Methodist, for example, in the case of a Protestant)?

Always ____ Generally ____ Occasionally ____ Never ____

- 3) Whether the adoptive parents are members of a church?

Always ____ Generally ____ Occasionally ____ Never ____

- 4) The name(s) of the major basic faith(s) of the adoptive parents (Catholic, Protestant, Jewish)?

Always ____ Generally ____ Occasionally ____ Never ____

- 5) The name(s) of the particular religious sect(s) or denomination(s) to which the adoptive parents belong (Baptist or Methodist, for example, in case of Protestants)?

Always ____ Generally ____ Occasionally ____ Never ____

- 6) The regularity of church attendance by the adoptive parents?

Always ____ Generally ____ Occasionally ____ Never ____

- 7) Whether, though the adoptive parents are both members of the same sect (Methodist, for example), they both attend the same church of that sect?

Always ____ Generally ____ Occasionally ____ Never ____

- 8) Whether the child will receive formal religious training if the petition is granted (Sunday school, church, formal church membership)?

Always ____ Generally ____ Occasionally ____ Never ____

9) The name(s) of the particular sect or sects in whose doctrines the child will be instructed and in whose church or churches he will receive training?

Always _____ Generally _____ Occasionally _____ Never _____

b) In the class of cases under consideration, how would the following situations probably affect your decision?

For each situation, please check that description which best describes your probable reaction. And if the situation mentioned was ever one of the factors in causing you to deny a petition, please also circle the description you have checked.

1) While both adoptive parents have the same major basic faith (Catholic, Protestant or Jewish), such major basic faith is different from the major basic faith in which the child has received training (both adoptive parents are Catholic, for example, while the child has had Protestant training).

Automatic bar _____ Extremely unfavorable _____ Unfavorable _____
Only slightly unfavorable _____ No effect _____

2) The child has had instruction in one major basic faith (Catholic, Protestant or Jewish), and one adoptive parent has the same major basic faith while the other has a different major basic faith (the child, for example, has had Protestant training and one of the adoptive parents is Protestant, the other Catholic).

Automatic bar _____ Extremely unfavorable _____ Unfavorable _____
Only slightly unfavorable _____ No effect _____

3) The child has had instruction in one branch of the Protestant faith (Baptist, for example), and the adoptive parents, though Protestants, belong to a different branch (Methodist, for example).

Automatic bar _____ Extremely unfavorable _____ Unfavorable _____
Only slightly unfavorable _____ No effect _____

4) The child has had some religious instruction (Catholic, Protestant or Jewish), and neither adoptive parent believes in God.

Automatic bar _____ Extremely unfavorable _____ Unfavorable _____
Only slightly unfavorable _____ No effect _____

5) The child has had some religious instruction (Catholic, Protestant or Jewish), and one adoptive parent believes in God while the other does not.

Automatic bar _____ Extremely unfavorable _____ Unfavorable _____
Only slightly unfavorable _____ No effect _____

We should, of course, be delighted to receive any comments or suggestions you might like to make either with regard to the questionnaire or on the subject of religion in adoption cases or on any other phase of the adoption process. Space for this purpose is provided below.

APPENDIX B

Agency Interview Schedule

1. Do you ask applicants for adoption questions concerning their religious affiliation?

YES: _____ NO: _____

If "Yes": What questions do you ask them?

Religion? _____ Denomination? _____ Church Attendance? _____

Other Church Activities? _____

For Denominational Agencies:

2. Does your Agency only consider applicants for adoption who are

Catholics? _____

Lutherans? _____

Jews? _____

If "No": Does your Agency consider applicants from all Religious Denominations?

YES: _____ NO: _____

If "No": What lines do you draw in this matter? (E.g., protestants, catholics, agnostics and atheists)

For Non-Sectarian Agencies:

3. Does your Agency consider applicants for adoption from all religious faiths and denominations, or does it exclude some of them?

CONSIDERS ALL: _____ EXCLUDES SOME: _____

If "Excludes Some": Which ones does your agency exclude?

Catholic: _____ Lutheran: _____ Jewish: _____ Other: _____

4. Does your Agency only consider applicants for adoption, both of whom belong to the same religious faith?

YES: _____ NO: _____

If "no": What combinations of religious affiliation do you consider?

Do you take into account the strength of religious conviction in cases where parents have different religions when considering their application?

YES: _____ NO: _____

If so, what factors do you take into account in making your decision?

5. What are the religious denominations of parents from whom your Agency accepts children for placement with adoptive parents?

6. Do you only place children with adoptive parents who have the same religious affiliation as the child?

YES: _____ NO: _____

If "No": What is your policy on this matter?

7. How do you determine the religious affiliation of the child placed for adoption?

MOTHER'S RELIGION:_____ FATHER'S RELIGION:_____ OTHER:_____

If "Both Mother and Father" and these are different: How do you make your decision?

8. Do you endeavor to place children whose natural parents have very deep religious beliefs with adoptive parents who are also deeply religious?

YES: _____ NO: _____

And, suppose, the natural parents are merely nominal members of a religious group, do you endeavor to find similar adoptive parents?

YES: _____ NO: _____

If "Yes" to either of the above: How do you determine the strength of religious conviction?

Of the Natural Parents: _____

Of the Adoptive Parents: _____

9. Does your Agency have any minimum requirements for religious activity on the part of applicants for adoption, which if not met, result in your refusing to accept the application?

YES: _____ NO: _____

If "Yes": What are these requirements?

Official Church Membership: _____

Regular Church Attendance: _____ How Regular? _____

Other Church Activities: _____

Other Religious Observances: _____

Supporting Reference from Minister: _____

Other: _____

If "No" to Question 9: Would your Agency consider an application for adoption from atheists or agnostics?

YES: _____ NO: _____

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10. Apart from these minimum requirements, what standard of religious conviction and/or activity do you prefer in your applicants?

(If different from the minimum requirements, put an "X" against the appropriate items in Question 9.)

11. Would an overemphasis on religion influence your Agency to deny an application for adoption?

YES: _____ NO: _____

If "Yes": What would you consider an "overemphasis" in religion?

12. To what extent does your Agency investigate the reliability of your applicants' statements with respect to their religious beliefs and practices?

13. In the past five years, how frequently have applicants been turned down or not accepted by your agency because they were:

Frequently: Seldom: Never:

Atheists or Agnostics: _____

Not sufficiently religious: _____

Husband and Wife of different religions: _____

14. Do you strictly enforce all of these standards you have mentioned, or do you occasionally, in exceptional circumstances, relax any of them?

YES: _____ NO: _____

If "Yes": Which one(s) do you relax and how frequently?

Agency _____

Name and Title of person interviewed: _____

Date of interview: _____

Name of Interviewer: _____