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INDEPENDENT ADOPTION: THE CASE FOR THE GRAY MARKET

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THROUGHOUT HISTORY mankind has been confronted with the problems presented by children whose natural parents are unable or unwilling to care for them.[1] Different civilizations have utilized various solutions to these problems, some of which seem quite alien to modern day standards of social justice. Even today in some "developing nations" a father is allowed to sell his children into slavery.[2] This practice is quite humane compared to the cynical panacea suggested by Jonathan Swift or the evil machinations of Victor Hugo's "Comprachicos."

Swift advocated that all Irish waifes be sold at the age of one year for use as "a most delicious, nourishing, and wholesome Food; whether *Stewed, Roasted, Baked,* or *Boiled;* and I make no doubt, that it will equally serve in a *Fricasie* or *Ragoust.*"[3] Hugo's "Comprachico's" earned their living marketing orphans they had deformed. "In order that a human toy should succeed, he must be taken early. The dwarf must be fashioned when young. We play with childhood, but a well formed child is not very amusing; a hunchback is better fun."[4]

Even adoption, the present day solution, originated from a selfish concept.[5] The emphasis has now shifted, however, to make the child's interests paramount.[6]

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1. Even the Old Testament mentions them: "And the child grew, and she brought him unto Pharaoh's daughter, and he became her son. And she called his name Moses: and she said, Because I drew him out of the water." *Exodus* 2:10 (King James).

2. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, LEGISLATIVE GUIDES FOR THE TERMINATION OF PARENTAL RIGHTS & RESPONSIBILITIES & THE ADOPTION OF CHILDREN 1 (1961).

3. J. SWIFT, *A Modest Proposal,* in SWIFT ON HIS AGE 211, 213 (Horne ed. 1953).

4. V. HUGO, THE MAN WHO LAUGHS 28 (Welson ed. 1908).

5. Adoption was begun, it seems, for the purpose of continuing family names and in order to insure succession to property within a family. The parent was the intended beneficiary of that adoption. See Wadington, *Adoption of Persons Under Seventeen in Louisiana,* 36 TUL. L. REV. 201 (1962). However, it should be noted that some present day adoptions may also be motivated by avariciousness. *See, e.g., In re* Rockefeller's Trust, 12 N.Y.2d 124, 187 N.E.2d 764, 237 N.Y.S.2d 300 (1962).

6. "The paramount interest is that of the child; the proceedings are designed to place — or to retain — children with parents who can give them good homes and loving care." Baade, *Interstate & Foreign Adoptions in North Carolina,* 40 N.C.L. REV. 691, 699 (1962); see Katz, *Judicial & Statutory Trends in the Law of Adoption,* 51 GEO. L.J. 64, 95 (1962).

I. INTRODUCTION

Independent adoption, frequently referred to as private placement, occurs when no licensed agency is involved in placing the child into the adoptive parents' home. A typical private placement is found in the case of an unmarried, expectant mother who wishes to avoid agency help, but because of the financial burden involved cannot manage unaided. In order to have her child in secrecy, she may seek out a physician and ask for financial assistance and then make plans to offer the child for adoption. The doctor may contact a couple seeking an infant for adoption. After the mother's prenatal and hospital fees are arranged for by the couple, a lawyer is contacted to handle the legal work involved in placing and adopting the child.

Private placement occurs frequently. In 1962 there were at least 22,600 private placements resulting in adoptions.[7] Although the national total increases yearly the actual percentage of independent adoptions, as compared to agency placements, has steadily declined since 1951.[8] The reasons for private placements are varied. It is suggested that rigid standards for parental qualification set by adoption agencies and the dearth of available babies as compared to the great number of requests for them drive prospective parents to this method of obtaining a child.[9] Natural parents, generally unwed mothers, most often seek to place their children privately for the following reasons: (1) in order to remain anonymous; (2) because of the difficulty involved in obtaining agency help;[10] (3) due to ignorance of social service agencies; and (4) in order to choose the baby's family.

Critics of independent adoption have subdivided the practice into two categories — the "gray market" and the "black market."[11] Though

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7. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH, EDUCATION & WELFARE, ADOPTIONS IN THE UNITED STATES (1963). It should be noted that the statistics reported include breakdown totals from only thirty-eight states and the District of Columbia. There were 121,000 adoptions reported in 1962. Of that total, 58,100 children were adopted by relatives. Of the remaining 62,900 child adoptions, 40,300 were credited to social agencies licensed or run by the state.

8. From 48% in 1951 to 36% in 1962. *Id.* These figures do not include private placements in which the adoptive parents are relatives as described in note 7 *supra.*

9. *Hearings on S. 3201 Before a Subcomm. of the Senate Comm. on the Judiciary,* 84th Cong., 2d Sess. 46 (1956).

10. NEV. ATT'Y GEN., ADOPTION PRACTICES IN NEVADA 6-9 (1961). Ernest A. Mitler, former special counsel to the United States Senate Subcommittee to Investigate Interstate Adoption Practices, said: "The state laws about granting financial assistance to unmarried mothers, and with their rigid eligibility requirements, presents a brick wall which the unmarried mothers are unable to buck and are a terrific inducement for these girls to enter into the dangerous field of independent placements." *Hearings on S. 3201 Before a Subcomm. of the Senate Comm. on the Judiciary,* 84th Cong., 1st Sess. 23 (1955).

11. Comment, *Markets on the Market: The Problem of Unregulated Adoptions,* 59 YALE L.J. 715, 715 n.2 (1950).

these titles are by no means words of art, they are useful in distinguishing between two distinct types of private placement.

The purpose of this article is to survey the various types of independent adoption, including the pros and cons of each system, and to suggest reasons why independent adoption should be allowed. Coincident to this premise, specific types of legislation will be proposed that would negate the odious features that can exist in such a system.

Substantial criticism has been leveled at private placement[12] and it is the thesis of this article that "black market" independent adoption has no redeeming features and should be abolished. However, it is felt that critics of the "gray market" have not made out a sufficient case for abolition of the system and that the ills they cite could be corrected by legislative reform.

II. THE BLACK MARKET

Since there are infinitely more applications for adoption than there are adoptable infants, the baby market is a seller's market. As a result, it is possible for a few individuals to realize substantial profits by selling babies — as a merchant would sell goods.[13] Generally the middleman, be he doctor, lawyer, or merely a "baby broker," makes a business of bringing together prospective adoptive parents and mothers who wish to have their children adopted. This middleman has no altruistic reason for being in the baby business. He is in the trade for the profit, and his fees are often exorbitant. The practice has all of the bad features of the "gray market," without any of its redeeming values. The additional aspects of the problem have been stated as follows:

> Whether the amount exacted by a third party individual for the placement of a child is referred to as proceeds of a sale, a profit, or a fee, the practice is equally reprehensible. Aside from the fact that such a transaction is repugnant because it is actually traffic in human lives, the dangers inherent in private placement multiply both in quantity and degree when the profit motive replaces any consideration for the welfare of the child.[14]

Although it is generally conceded that only a small percentage of private placements occur on the "black market," no reliable figures to that effect are in existence. However, studies have revealed that the

12. *See id. See also* CHILDREN'S BUREAU, *supra* note 2, at 21–25, 52–53.
13. Comment, *Moppets on the Market*, *supra* note 11, at 718 n.12.
14. Note, *Survey of New Jersey Adoption Law*, 16 RUTGERS L. REV. 379, 407 (1962).

practice is carried on in many parts of the country.[15] Whatever the magnitude of "black market" adoption, its existence is obnoxious to the social conscience. Moreover, it is a breeding ground for many possible objectionable practices. In some instances racketeers have been linked to the "black market"[16] and, in several cases the middleman and the parasites involved had long police records.[17] It is the profit motive in the "black market" that makes all of the weaknesses inherent in private placement more likely to become realities.

It is difficult for the average American, who is accustomed to the antiseptic quality of modern maternity operating rooms, to picture the debacle that is the operating room of the "black market." It is clear, however, that two significant dangers inhere in the "black market" practice of home delivery. Obviously, a grave danger to the physical health of the child and mother is created. Secondly, both the mother who gives birth and the prospective parents who are present, or arrive shortly thereafter, are subjected to extreme psychological stresses. In order to exemplify these circumstances, an extensive quote from the hearings before the Judiciary Committee of the Senate will be presented. The sordidness of this particular experience is but representative of the problems with which the law must cope.

During the hearings a couple testified to their experiences with a "baby broker" in Canada, Sarah Wyman. After being informed that a child was available they went to a house in Montreal's slums.

> We knocked at the door, and this grotesque woman appeared . . . she was filthy. She had a faraway dreamy look in her eye, and she was about the filthiest person that anyone could conceive of.
>
> She led us up a flight of rickety stairs to a very dark apartment. . . . [W]herever you went there was filth and dirt, and I was quite upset . . . this was the very, very opposite of anything that a maternity home should be.
>
> . . . [O]n a bed there was a small baby, about 2 or 3 months old. [The] eyes were very defective. . . . The breathing was

15. At least nineteen states have positive proof of some "black market" adoptions within their borders. *See Hearings on S. 3201 Before a Subcomm. of the Senate on the Judiciary*, 84th Cong., 1st Sess. 15 (Conn., Ind., Iowa, N.M., Pa. & Wis.), 27 (Ill.), 76 (Okla.), 92 (Tex.), 192 (Tenn.), 204 (Minn.) (1955); NEV. ATT'Y GEN., ADOPTION PRACTICES IN NEVADA (1961) (Nev., Calif., & Utah); Laufer, *Family Law*, 34 N.Y.U.L. REV. 1550, 1551 (1959); Mitchell, *The 1962 Kentucky Adoption Law*, 3 J. FAMILY L. 48 (1963); Morris, *Some Problems Relating to Adoption in West Virginia & Recommended Changes*, 63 W. VA. L. REV. 12, 14 (1960); Murray, *Domestic Relations*, 8 U. MIAMI L. REV. 352, 380 (1954).

16. *Hearings on S. 3201 Before a Subcomm. of the Senate Comm. on the Judiciary*, 84th Cong., 2d Sess. 15–21 (1956).

17. *Hearings on S. 3201 Before a Subcomm. of the Senate Comm. on the Judiciary*, 84th Cong., 1st Sess. 57, 106 (1955).

> labored, the general contour of the body was emaciated. She was suffering from malnutrition. The child had no nursing care, no care. . . . I . . . told her [Sarah Wyman] that this child needed medical care. [B]ut she started in with a great speech, what a wonderful child it is, what a wonderful family it came from, and that we should take this child.
>
> . . . [T]here were absolutely no facilities . . . at all. There were no incubators, no oxygen, no sterilization — there was absolutely nothing in that home but a couple of beds and a couple of chairs.

The couple did not take the child. However, Sarah Wyman had another prospective child the next day.

> . . . .
>
> Now the next morning . . . I got a call that [a] second child was being delivered. [A]s I came into the apartment, in one room was this woman, a young girl, and she was half unconscious screaming in pain. [T]he floor was saturated [with] rags, blood, the residue of childbirth, and the stench was all over the place. There was a sickening odor of ether, but no one was in attendance. There was no nurse, no doctor — nothing. . . .
>
> Well, Sarah took me into this other room and on the bed there was this little child who had just been born. The umbilical cord . . . was ripped and torn and bleeding. The baby was covered with blood, just lying there. . . .
>
> . . . [T]his child needed attention and all I had in front of me was this psychopathic, crazy woman called Sarah Wyman. . . . I took the child and wrapped him up in a blanket, whatever I could find, and virtually kidnapped the child from that apartment and ran back to my hotel. . . .

After relating how a physican was called, and how his hotel suite was turned into a hospital room for the baby, the witness testified to a subsequent visit to see Sarah Wyman.

> Her only concern in this matter was what she was going to get out of it.
>
> She was interested in the money and I was quite provoked to think that all this was just hinging on money when the life of children, the mother, and everyone else was concerned.[18]

The Senate investigation also revealed cases in which the natural mother was induced to sign into the hospital in the name of the prospective adoptive mother and give the latter credit for having the child

18. *Id.* at 1.

by falsifying the birth certificate.[19] Such a practice is not only illegal, but the child actually is not adopted and has no rights of inheritance.[20] Another investigation revealed that a state chartered adoption agency in Tennessee became a "black market" outlet adopting away over 1,000 babies for over one million dollars.[21] This same dealer became so powerful that she influenced judges to break up homes so that she could have the children for adoption purposes.[22]

The record of the hearings is also replete with abuses concerning the child. A Nevada survey uncovered an adoption of a child to a family, the husband of which had been previously charged with sexually molesting children on a school playground.[23] One boarding home for unwed mothers (also an outlet for "black market" babies) was run by a convicted abortionist who peddled the children if the mother was too far along in her pregnancy to be successfully aborted.[24]

It is senseless to recount all of the irregularities that have been uncovered by various studies of "black market" practices. The foregoing illustrates the socially reprehensible practices that exist, and the necessity of putting an end to these practices.

III. THE GRAY MARKET

The great majority of independent placements are those arranged "without profit by well meaning parents, friends, relatives, doctors and lawyers."[25] This is the so-called "gray market." Admittedly this practice seems to have many advantages, at least at first blush, and the attitude that, "if a nice couple can find a child through some source and acquire him, by say, paying the expenses of the mother's care of confinement, nothing should stand in the way,"[26] seems acceptable.

However, critics of the practice are quick to point out that modern day adoption is not premised on the concept of making "nice couples" happy, but rather on the desire to place the right child with the proper family. Our society has grown acutely aware of the sociological implications that are attendant to any statutory scheme for regulating adoption. The task of determining the proper child-parent match is one that requires professional social investigation and psychological

19. *Id.* at 3.
20. *Id.* at 17–18.
21. *Id.* at 193.
22. *Id.* at 195.
23. NEV. ATT'Y GEN., ADOPTION PRACTICES IN NEVADA 19 (1961).
24. *Id.* at 1.
25. Comment, *Moppets on the Market*, *supra* note 11, at 718 n.12.
26. Uhlenhopp, *Adoption in Iowa*, 40 IOWA L. REV. 228, 238 (1955).

analysis[27] in order to accomplish the best possible results. It would seem evident, then, that the expertise of the social worker is not merely advisable but rather almost necessary.[28] Without this trained guidance the possibility of a successful adoption is diminished.[29]

This weakness, the absence of trained personnel, in the current procedures utilized in private adoption is backed up by several very convincing studies on the subject. One such study was conducted in 1945 by Dr. Catherine S. Amatruda of the Yale Child Development Clinic. She matched the results of 100 independent placements with those of 100 agency placements, using relatively simple standards: the child was a good adoption risk unless it was mentally retarded or had a serious personality defect; the family was held to be suitable unless the investigation revealed a highly unstable marriage, serious psychiatric difficulties, alcoholism, prostitution, wife beating, or drug addiction. Only 46 of the 100 independent placements were rated as satisfactory, 26 more were highly doubtful at best and, the remaining 28 were definitely undesirable. The agency placements were satisfactory in 76 cases and questionable in 16, while only 8 were found to be definitely undesirable.[30]

The reason attributed to the great efficiency of agency placement is simply the professional investigation and handling of each case. Typically, before a child is ever placed by an agency, three things occur.[31]

> (1.) *Investigation of the Natural Parent.* Generally the father's name is ascertained and both parents' families are discreetly investigated for epilepsy, feeblemindedness and psychoses, as well as any other pertinent information.
>
> (2.) *Study of the Child.* This examination is usually quite thorough; it covers all aspects of the child's physical, mental and psychological makeup and well-being and is used to arrest whatever defects are detected as well as to advise the prospective parents.
>
> (3.) *Evaluation of the Adoptive Parents.* This is probably the most important aspect of the investigation. The reasons for the adoption, the stability of the marriage, the atmosphere of the home, the parents' financial ability to support the child, and their health, are all investigated and reported upon before any placement is made.

27. Katz, *Community Decision-Makers & the Promotion of Values in Adoption of Children,* 4 J. FAMILY L. 7, 8–9 (1964).

28. *See* Note, *Survey of New Jersey Adoption Law,* 16 RUTGERS L. REV. 379, 401 (1962).

29. Mitchell, *The 1962 Kentucky Adoption Law,* 3 J. FAMILY L. 48 (1963).

30. Yale Child Development Clinic, Report on Current Adoption Practices in Connecticut — Independent & Agency Placement (mimeographed, 1949).

31. This breakdown is taken from 59 YALE L.J. 715, 717–24 (1950).

Obviously, to the extent that an adoption system does not require these or similar procedures, a risk is created that adequate protection will not be afforded the parties involved in a private placement. The potential problems that could result from unguided private adoption might be: (1) the child would have no legal guardian during the period after the natural parents surrender the child and before final decree is granted; (2) the foster child would be secured primarily for the adopting parent and sometimes the child's interests would not be considered; (3) no study would be made of the natural parents or of the adoptive home before placement is made; (4) there would not be funds or personnel to care for the child if the adoption should fail; (5) interference from the natural parents could be a danger, since they know who has the child; (6) the adoption might not be completed and the child would have no legal status; (7) little concern would exist for the natural mother in most cases, since she is considered only as a biological necessity; (8) there would be no planning available for the adoptive parents nor any help available to them when problems arise.[32]

Although some of the foregoing objections may seem picayune, they must be considered, for it is possible in an individual case that any one could become an important factor. Nevertheless, the lack of investigation before placement seems to be the most widely objected to failure of the "gray market."[33]

Balanced against these criticisms of the "gray market" is the most recent and complete study of private adoption.[34] That study analyzed private placements which took place in Florida during 1944, ten years before the study was started. In 1944 Florida had recently enacted new adoption laws requiring investigation of the prospective parents' home after a petition for adoption was filed. At that time the state did not have adequate public or private adoption agency facilities. Florida was also plagued by the lack of professional investigators and a judiciary that was slow to accept the new law.[35] As a result, adverse

32. REPORT OF THE INTERPROFESSIONAL ADOPTION — STUDY COMMITTEE (IOWA), Feb. 2, 1960 (Unpublished), *reprinted in,* Note, *Pre-Adoption Practices in Iowa,* 14 DRAKE L. REV. 46, 52 n.51 (1964).

33. Aside from the materials previously cited see Note, *Improving the Adoption Process: The Pennsylvania Adoption Act,* 102 U. PA. L. REV. 759, 764–65 (1954).

These general criticisms are made painfully realistic by a survey of an individual instance of tragedy in private placement. The case of Shelia Dooling, though atypical, serves this purpose. Shelia, age seven, was discovered dead of malnutrition in the home of her elderly adoptive parents in Buffalo, New York. She had been adopted a few months earlier after a cursory examination of the natural mother and the foster parents by a county judge. The judge was unaware that the Children's Aid Society had twice previously objected in writing to this adoption and had formally charged the foster parents with neglect. For the full report of this tragedy see N.Y. Times, July 9, 1958, at 17, col. 1.

34. H. WITMER, E. HERZOG, E. WEINSTEIN & M. SULLIVAN, INDEPENDENT ADOPTIONS (1963).

35. *Id.* at 357.

reports on the prospective adoptive families were seldom submitted and even more infrequently heeded.[36] These conditions seem ideal for a critical analysis of private placement since many of the safeguards present in better systems of private adoption were missing,[37] hence making original unsuitable placement seem more likely.

The privately adopted children were matched against a control group of children living with their natural parents that was selected as a normal cross section of society.[38] The results were based upon a study of the child and the adoptive parents ten years after placement. Factors such as the development of the child according to his mental potential, the emotional stability of the child and the parents, their relationship, and several other variables were assessed. It was estimated that 70% of the homes were fair to excellent, 25% to 35% were graded poor, and 41% to 50% were rated from good to excellent.[39] Children in homes rated as poor were almost as well off as comparable children in the control group.[40] The final tabulation resulted in an estimate that between 20% and 25% of the placements were definitely unsatisfactory.[41] When these results are compared with studies that have placed the percentage of unsatisfactory placements by agencies between 10% and 25%,[42] and, when allowance is made for improvements in the Florida system since 1944, the comparison between agency and private placement does not present a shocking picture of inequality in result. The survey concluded that both systems have a certain percentage of failure because of the difficulty in establishing a perfect system and the fact that many of the inadequacies later found in the family of the child arose after the final decree was entered.[43]

Moreover, the survey revealed only a small percentage of cases in which the two risks often said to be taken by adoptive parents in private placements were realized. Only 4% of the children had any degree of physical or intellectual defect.[44] Only 7% of the adoptive parents had difficulties with the natural parents, and this generally terminated after the final decree was entered.[45]

With these statistics in mind and a cognizance of certain benefits that result from private placement, it is difficult to conclude that com-

36. *Id.*
37. Such as the safeguards provided when there is proper investigation of the adoptive parents before final decree.
38. H. WITMER, E. HERZOG, E. WEINSTEIN & M. SULLIVAN, *supra* note 34, at 55–72.
39. *Id.* at 338.
40. *Id.* at 339.
41. *Id.* at 341.
42. *Id.* at 358. For a list of studies revealing these statistics see *id.* at 145 n.1.
43. *Id.* at 359.
44. *Id.* at 355.
45. *Id.*

plete prohibition of private placement and adoption is the proper solution to the problems posed by such a system. With the exception of "black market" placements, the retention of a properly regulated system of private placement seems desirable. The survey in Florida concluded that there was not enough nationwide data available to propose that private placement be abolished.[46]

IV. REMEDIAL LEGISLATION AND PRIVATE PLACEMENT

The problems arising from private placement and adoption have been well publicized in the last decade. Accordingly many states have enacted statutes designed to remedy these ills. The content and effect of this legislation have been far from uniform. Basically the states have approached the problem from three directions: criminal sanctions, investigation, and prohibition. Some states have utilized a combination of these approaches while others have tried miscellaneous methods of improving the system. The following survey and analysis of the various state statutory schemes will provide an opportunity to examine the myriad of approaches open to the legislatures.

A. Criminal Sanctions

Nineteen states have statutes making it a crime for unauthorized persons to do certain acts either directly or closely involved with private placement and adoption.[47] Ten jurisdictions prohibit unlicensed persons or associations from advertising or soliciting child placement services under pain of fine and imprisonment.[48] Statutes in three states forbid child placement except by the child's natural parents or licensed agencies.[49] Four states deny the right of private placement unless the

46. *Id.* at 357.

47. Alabama, California, Colorado, Florida, Georgia, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, New York, North Dakota, Ohio, Oklahoma, Rhode Island, Tennessee, Texas and Washington.

48. ALA. CODE tit. 27, §§ 7–8 (1958); CAL. CIV. CODE § 224(q) (West 1954); FLA. STAT. § 72.40(2)(d) (1965); GA. CODE ANN. § 74–421 (1941); KY. REV. STAT. ANN. § 199.590(1) (1963); MASS. GEN. LAWS ANN. ch. 210, § 11A (1958); OHIO REV. CODE ANN. § 5103.17 (Baldwin 1964); OKLA. STAT. ANN. tit. 21, §§ 866(4)–67 (Supp. 1965); ORE. REV. STAT. § 167.645 (1965); WASH. REV. CODE § 26.36.040–.060 (1961).

Advertising in the "gray" and "black" markets takes many forms. See, *e.g.*, *Hearings on S. 3201 Before a Subcomm. of the Senate Comm. on the Judiciary*, 84th Cong., 1st Sess. 24–25 (1955). The Alabama statute is typical of the ten cited *supra*: "It shall be unlawful for any person or persons, organizations, hospitals, or associations which have not been licensed by the state department of public welfare to advertise that they will adopt children or place them in foster homes, or hold out inducements to parents to put their offspring, or in any manner knowingly become a party to the separation of a child from its parents. . . ." ALA. CODE tit. 27, § 7 (1958).

49. CAL. CIV. CODE § 224(q) (West 1954); N.D. CENT. CODE § 50–12–17 (1960); R.I. GEN. LAWS ANN. § 15-7-1 (Supp. 1966). The California statute is a good example. "Any person other than a parent or any other organization, association, or corporation that without holding a valid and unrevoked license or permit to place

placer receives approval from either a court or the state welfare office.[50] Ten states make it a crime for unlicensed persons to receive any consideration for the placement of a child.[51] Several states do not permit the importation or exportation of children without the approval of the state welfare department.[52] However, only a few make a breach of this law a crime.[53] Rhode Island makes failure to notify the state agency of a private placement a crime,[54] while California demands that the adoptive parents submit an itemized account of all expenditures involved in the adoption, under pain of perjury.[55]

The actual effect of these laws analyzed in light of their purpose is difficult to evaluate. Prohibiting advertising alone is certainly not sufficient to stop nefarious practices. Although several states prohibit private placement without a license they make an exception for the natural parent,[56] and this loophole makes it simple for the various markets to continue by merely increasing the mother's role in the placement.[57] The statutes condemning acceptance of consideration for the placement itself are commendable. However, although some prosecution has arisen under them, they have been rather ineffective.[58] It is difficult to establish an objective norm for the determination of whether the fee charged by a professional man is for his professional services or for the placement itself. Although some statutes specifically

children for adoption issued by the State Department of Social Welfare, places any child for adoption is guilty of a misdemeanor." CAL. CIV. CODE § 224(q) (West 1954).

50. KY. REV. STAT. ANN. § 199.470 (1963); MICH. COMP. LAWS § 722.559 (1948); MO. ANN. STAT. § 453.030 (Supp. 1966); OHIO REV. CODE ANN. § 5103.17 (Page 1963).

51. COLO. REV. STAT. ANN. § 4-1-14 (1963); FLA. STAT. § 72.40(2)(a) (1965); ILL. REV. STAT. ch. 4, § 12-2 (1963); KY. REV. STAT. ANN. § 199.590(a) (1963); MASS. GEN. LAWS ANN. ch. 210, § 11A (1958); MICH. COMP. LAWS § 710.13 (1948); N.J. STAT. ANN. § 2A:96-7 (Supp. 1966); N.Y. SOC. WELFARE LAWS § 374(b) (McKinney 1966); N.D. CENT. CODE § 50-12-09 (1960); OKLA. STAT. tit. 21, § 866(1)-(2) (Supp. 1965).

52. *See, e.g.*, MINN. STAT. §§ 257.05-.06 (1961).

53. ALA. CODE tit. 49, §§ 74-75 (1958); KY. REV. STAT. ANN. § 199.990(5) (1963); TENN. CODE ANN. §§ 14-1505 to 1508 (1955); TEX. PEN. CODE art. 606a (1955).

54. R.I. GEN. LAWS ANN. § 15-7-2 (Cum. Supp. 1966).

55. CAL. CIV. CODE § 224(r) (Cum. Supp. 1966). This statute provides that petitioners must file with the courts a full accounting report of all disbursements of anything of value made or agreed to by them in connection with birth of the child, its placement, any medical or hospital care of the natural mother and any other expenses of either or arising from the adoption.

56. *See* note 49 *supra*.

57. *See Hearings on S. 3201 Before a Subcomm. of the Senate Comm. on the Judiciary*, 84th Cong., 1st Sess. 22-24 (1955). This testimony is a narration of a film taken in Chicago depicting a mother bringing her baby out of the hospital, after birth, and handing it over to the lawyer who transfers it to the adoptive parents. Other testimony revealed how one lawyer had the mother in one room and the adoptive parents in another. The mother then handed the baby through the door — not looking at the recipient.

58. *See* Note, *Survey of New Jersey Adoption Law*, 16 RUTGERS L. REV. 379, 402 (1962).

permit legal fees and remuneration for the mother's expenses,[59] it is suggested that once payments are authorized, the danger of the "gray market" developing into the "black market" still exists. In addition to these obvious shortcomings, detection is difficult in the area of overpayment because many adoptive parents refuse to divulge their expenditures.[60] The California requirement of reporting the fees to the court seems to present one workable solution.[61]

The interstate nature of many of these adoptions makes it doubly difficult to detect abuses and to compel witnesses to appear once a violation is discovered.[62] The fact that some states have no deterrent statutes or are lax in enforcing their adoption laws creates the problem of adoption havens,[63] which is encouraged by the relative absence of criminal sanctions for transporting children across borders for placement and adoption.[64] Moreover, only a few states have statutes concerning the legality of adoptions in other states.[65]

Because of this very real weakness in a state by state approach to the problem, federal legislation was proposed as early as 1955.[66] Only two years ago a similar bill received Senate approval but failed to pass the House of Representatives.[67] The purpose of the bill was:

> [T]o eliminate the illicit traffic in children, more commonly known as either the black market or gray market in babies and to impose Federal criminal sanctions on persons engaged in interstate and foreign commerce in the traffic of placing children for adoption or permanent free care. It is not the purpose of this bill to infringe upon State laws or responsibility nor to abolish

59. *See, e.g.,* FLA. STAT. § 72.40(2)(a) (1965). *But see* 1956 OP. MINN. ATT'Y GEN. 840-B, which states that the "payment by prospective adoptive parents of the costs of confinement and medical expenses of a mother under an agreement whereby the mother places her child born out of wedlock, with prospective adoptive parents for adoption in return for such payment constituted a violation of this section."

60. *See In re* Goldman, 331 Mass. 647, 121 N.E.2d 843 (1954), *cert. denied,* 348 U.S. 942 (1955); NEV. ATT'Y GEN., ADOPTION PRACTICES IN NEVADA (1961).

61. See note 55 *supra.* The Colorado law is similar. COLO. REV. STAT. ANN. § 4-1-14 (1963).

62. Statements by Katherine B. Oettinger, Chief of the Children's Bureau, U.S. Department of Health, Education & Welfare and Richard E. Gerstein, in *Hearings on S. 1541 Before a Subcomm. of the Senate Comm. on the Judiciary,* 88th Cong., 2d Sess. (1964).

63. *Id.*

64. *See* note 55 *supra.* North Dakota has recently enacted legislation in the form of an interstate compact by which it seeks to have other states, by reciprocal legislation, bind themselves to setting up certain rules concerning the transfer of children for placement between North Dakota and the agreeing state. The compact requires investigation and approval by the receiving state prior to placement of the child in the receiving state. Breach of the law itself is not a crime. However, one provision suggests that other legislation will make such conduct criminal. Massachusetts and New York have adopted the compact. MASS. GEN. LAWS ANN. ch. 199 App., § 2-1 (1966). N.Y. Soc. WELFARE LAWS § 374(a) (McKinney 1966).

65. DEL. CODE ANN. tit. 13, § 927 (1953).

66. S. 3201, 84th Cong., 1st Sess. (1955).

67. S. 624, 89th Cong., 1st Sess. (1965).

> private or nonagency adoptions. Authorized or licensed State child care or adoption agencies are expressly excepted from the provisions of this bill.[68]

The proposed bill would have added three sections to the Federal Criminal Code. Section 1181 would have prohibited the soliciting or receiving of consideration for placing a child in interstate commerce. However, reasonable fees for professional services and payments to licensed adoption agencies were specifically excepted by this section, and neither the natural or adopting parent would have been criminally liable under the act.[69] Section 1182 would have prohibited inducing and arranging for the travel of the parent of a child, or a prospective adoptive parent including a child in *ventra sa mere,* in interstate commerce to effectuate the adoption. Licensed agencies were again excepted. Violation of either of these sections would have been punishable by a maximum fine of ten thousand dollars, imprisonment up to five years, or both.[70] Section 1183 defined the terms of the preceding two sections. A child was anyone under the age of sixteen. "Permanent free care," the bill's term for placement, meant all free care except that of relatives of the child or its mother or care provided by an agency.[71]

Although the stated purpose of S. 624 was to: "establish criminal penalties for the activities of certain unscrupulous lawyers, doctors, and other assorted baby brokers who now act as organizers and middlemen in the interstate traffic in black-market infants,"[72] it is submitted that the language of the bill was broad enough to include almost any kind of private placement in which a "fee" was paid. Despite the language of section 1181 (b) to the effect that:

> The provisions of this section shall not apply in the case of . . . (2) fees received solely for professional legal services directly in connection with the consultation regarding, and the preparation and execution of documents necessary to accomplish the legal placing or arranging for the placement of a child in a home for permanent free care or adoption; or (3) fees received solely for professional medical services directly in connection with the prenatal care of the natural mother or delivery, examination, or treatment of the child,[73]

and Senator Javits' assurances that the bill was not intended to eliminate "legitimate private adoptions [which] are carried out in a reason-

68. S. REP. No. 126, 89th Cong., 1st Sess. 2 (1965).
69. *Id.* at 6-7. (Letter from Nicholas Katzenbach, then Deputy Attorney General, to Senator J. Dodd, September 6, 1963).
70. *Id.* at 7.
71. *Id.*
72. Address by Senator Dodd, 111 CONG. REC. 906-07 (1965).
73. S. 624, 89th Cong., 1st Sess. (1965).

able and prudent way,"[74] it is unreasonable to hypothecate that only unscrupulous baby brokers would have been impeded by the bill. Instead, it seems clear that the authors of the bill were cognizant of the failings of the "gray market" and possibly anxious to eliminate all such private adoptions except the "reasonable" ones as Senator Javits intimated.[75] "[F]ees . . . solely for professional . . . services"[76] is subject to many interpretations. A broad interpretation would not discourage unscrupulous professional men from becoming involved in private placement. A narrow interpretation of the phrase might well deter scrupulous professional men from becoming involved in an otherwise legitimate private placement for fear that their actions might be misinterpreted. No matter what the interpretation, it seems that the bill would not have corrected the ills of the "gray market" although it is possible, because of the criticism that the "gray market" received during the hearings,[77] that the practical effect of the bill would have been to abolish it on an interstate level. The main reason the bill would have had nothing more than a negative effect on the "gray market" is because it did not require pre-placement or followup investigations, the lack of which causes the greatest difficulty in satisfactory private placement.[78]

B. Investigation

Investigation of both the prospective adoptive parents and the child, is one of the main advantages of agency placement.[79] Although, only one state, Alaska, has no statutory provisions relating to such investigation before the adoption decree is made final, many of the existing statutory provisions relating to investigation are inadequate. Ten states leave the ordering of an investigation to the discretion of either the court or a state agency.[80] At least two other states permit waiver of the investigation under certain circumstances.[81] Of the remaining thirty-seven states with mandatory investigation, seven give

74. S. REP. No. 126, *supra* note 68, at 9.
75. *See* p. 128 *supra.*
76. S. 624, 89th Cong., 1st Sess. (1965).
77. *See Hearings on S. 1541, supra* note 62.
78. *See, e.g.*, Comment, *Moppets on the Market: The Problem of Unregulated Adoptions*, 59 YALE L.J. 715, 717–23 (1950).
79. *Id.*
80. ARK. STAT. ANN. § 56–105 (1965); HAWAII REV. LAWS § 331–8 (1955); IDAHO CODE ANN. § 16–1506 (Cum. Supp. 1965); MD. R.P. D75 (Repl. Vol. 1963); MISS. CODE ANN. § 1269–05 (1956); MONT. REV. CODE ANN. § 61–209 (Repl. Vol. 1962); NEB. REV. STAT. § 43–107 (1952); ORE. REV. STAT. § 109.310(4) (Supp. 1965); W. VA. CODE ANN. § 48–4–3 (Cum. Supp. 1967); WYO. STAT. ANN. § 1–711 (Cum. Supp. 1965).
81. S.C. CODE ANN. § 10.2587.10 (Cum. Supp. 1966) (for good cause); VT. STAT. ANN. tit. 15, § 437 (1959).

the court wide latitude in choosing the investigator,[82] and this discretion has been used to thwart the purpose of the investigation.[83] Thirty states provide for mandatory investigation by designated experts.[84] However, with a few exceptions, even these statutes are often inadequate in that they provide for no investigation until after the child has been placed in the prospective parents' home, often for an appreciable length of time.[85] This is a disadvantage because as a practical matter courts are hesitant to deny these adoption petitions, even if the investigation report reveals an improper matching, because there is a traditional belief that the uprooting of a child from the home at such a late date may create psychological and emotional problems more serious than those anticipated if the adoption is made final.[86] This problem is not encountered where there is an agency placement and adoption, since, in order to meet the agency's standards, the placement is not made until a thorough investigation has been carried out. Several states have

82. ARIZ. REV. STAT. ANN. § 8-106 (1956); ILL. ANN. STAT. ch. 4, § 9.1-.6 (1963); MO. REV. STAT. § 453.070 (1959); N.Y. DOM. REL. LAW § 112(5) (McKinney 1964); S.D. CODE § 14.0406 (Cum. Supp. 1960); TEX. REV. CIV. STAT. ANN. art. 46a, § 2 (1959); WASH. REV. CODE ANN. § 26.32.090 (1961). Although these statutes usually direct that the investigator be competent, this seems to be rather vague for a standard. Some statutes state that the investigation must be made by one of several competent agencies "or by a representative designated by the court. . . ." See, *e.g.*, UNIFORM ADOPTION ACT § 9.

83. This was found to be true in Illinois where the courts were appointing good friends of the parents who really did not know what was expected of them. *See Hearings on S. 3021, supra* note 57.

84. ALA. CODE tit. 27, § 2 (1958); CAL. CIV. CODE § 226 (West 1954); COLO. REV. STAT. ANN. § 4-1-7 (1963); FLA. STAT. § 72.15 (1965); GA. CODE ANN. § 74-410 (1963); IND. ANN. STAT. § 3-117 (1946); IOWA CODE § 600.2 (1962); KAN. GEN. STAT. ANN. § 59-2278 (1964); KY. REV. STAT. ANN. § 199.510 (1963); LA. REV. STAT. § 9:427 (1950); ME. REV. STAT. ANN. tit. 19 § 533 (1964); MASS. GEN. LAWS ANN. ch. 210, § 5A (1958); MICH. COMP. LAWS § 710.5 (1948); MINN. STAT. § 257.04 (1961); NEV. REV. STAT. § 127.120 (1965); N.H. REV. STAT. ANN. § 461:2 (Supp. 1965); N.J. STAT. ANN. § 9:3-23 (1960); N.M. REV. STAT. ANN. § 22-2-7 (1953); N.C. GEN. STAT. § 48-16 (Repl. Vol. 1966); N.D. CENT. CODE § 14-11-09 (1960); OHIO REV. CODE ANN. § 5103.16 (Page Supp. 1966); OKLA. STAT. ANN. tit. 10, § 60.13 (1961); PA. STAT. ANN. tit. 1, § 1(c) (1963); TENN. CODE ANN. § 36-118 (1955); UTAH CODE ANN. § 78-30-14 (Supp. 1965); VA. CODE ANN. § 63-349 (Supp. 1966); WIS. STAT. ANN. § 48.88 (Supp. 1967). Often these mandatory statutes specifically except the necessity of an investigation in two situations: (1) when the adoptive parents are close relatives of the child; (2) when it is an agency placement the agency report will suffice. See, *e.g.*, FLA. STAT. ANN. § 72.15 (1965).

85. Many of the statutes are silent as to when the petition for adoption must be filed. Therefore it is possible to have the child placed in the home a year or more before the petition is filed. Many statutes require that the child be in the home as long as six months before the petition for adoption is filed. Moreover, most of these states require no investigation until said petition is filed. See, *e.g.*, IOWA CODE § 600.2 (1962) (one year).

86. See, *e.g.*, *In re* Davies' Adoption, 353 Pa. 579, 588, 46 A.2d 252, 257 (1946), where the court stated, "The emotional disturbance to a child that would threaten from its being removed summarily and permanently from familiar and agreeable surroundings and associations . . . could have a very harmful effect on the child's whole life. Fortunately, the law's regard for a child's welfare does not admit of any such injury or harm being done it." One such study revealed that only sixteen per cent of these petitions in which the adoptive home was found to be unsuitable were dismissed or denied. BOWLBY, MATERNAL CARE & MENTAL HEALTH 107 (WORLD HEALTH ORGANIZATION MONOGRAPH SERIES 1952).

attempted to remedy this deficiency inherent in private placement by enacting legislation to speed up investigation. One type of statute requires that the adoptive parent file for adoption within thirty days after receiving the child.[87] Four states require approval by either the court or the welfare department before placement is permitted.[88] Although it is probable that the approving official makes some investigation before he approves the placement, only one state specifically provides for pre-placement investigation.[89] Four other states require that persons receiving or placing children in adoptive homes file a report of the placement.[90] However, only two of these states require that an investigation be made thereafter.[91]

The effectiveness of these statutes is probably dependent upon the sanctions involved for failure to comply with their requirements. Four states making prior approval a condition precedent to placement for adoption have criminal sanctions for breach of the requirement.[92] Failure to promptly report the placement in the states requiring disclosure is a crime in New Hampshire[93] but the Pennsylvania statute provides no specific sanction.[94] It has been suggested that a fine or jail sentence coupled with the possibility of removal of the child from the home is the best sanction to compel compliance.[95] Even so, most of these statutes have another loophole. Generally they require the report only when the receivers intend to adopt the child, and it is possible that many persons do not intend a permanent arrangement until after the child has been in their home for some length of time. Moreover, in cases in which a permanent arrangement is contemplated from the

87. See, *e.g.*, COLO. REV. STAT. ANN. § 4-1-7 (1963). The statute states *inter alia*,

> [T]he petition shall be filed not later than thirty days after the date of which the child is first placed in the home of the prospective adoptive parents, unless the court shall find that there was reasonable cause or excusable neglect for not filing the said petition. The court shall then fix a date for hearing not less than thirty days after filing of the petition.

88. KY. REV. STAT. ANN. § 199.470 (1963) (welfare department); MICH. COMP. LAWS § 25.235 (1948); MO. REV. STAT. § 453.110 (1959) (court order); OHIO REV. CODE ANN. § 5103.16 (Page Supp. 1966) (welfare department).

89. OHIO REV. CODE ANN. § 5103.16 (Page Supp. 1966). This became a requirement after a 1961 amendment which provided:

> No child shall be placed or received for adoption or with intent to adopt except through a placement made by [an agency] . . . unless prior to such placement and receiving of the child the parent . . . of the child have personally applied, to and appeared before, the probate court . . . and unless said court, after an independent investigation of the proposed placement has determined that it is in the best interests of the child. . . .

90. MASS. GEN. LAWS ANN. ch. 119, § 4 (Cum. Supp. 1966); N.H. REV. STAT. ANN. § 170.13 (1964); PA. STAT. ANN. tit. 1, § 1(c) (1963); R.I. GEN. LAWS ANN. § 40-14-3 (1956).

91. Pennsylvania and Rhode Island.

92. See statutes cited note 50 *supra*.

93. N.H. REV. STAT. ANN. § 170.13, .18 (1964).

94. PA. STAT. ANN. tit. 1, § 1(c) (1963).

95. *See* Note, *Improving the Adoption Process: The Pennsylvania Adoption Act*, 102 U. PA. L. REV. 759, 767 (1954).

beginning, a plea that such was not the case would be an effective, though false, defense to any sanction for breach of the reporting requirement. Possible solutions would be to place the burden of proof of the lack of prior intent to adopt upon the prospective parent or to require disclosure whenever a child is in a foster home for thirty days.[96]

Another objection to these and other statutes relating to investigation is the general exemption of close relatives of the child from their requirements.[97] Since a great percentage of private placements are with close relatives,[98] and because there is no guarantee that the natural parents are good judges of home selection,[99] it is possible that the same problems found in other private placements exist in intra-family placement. This would seem more probable when there is no requirement for investigation.

C. Prohibition

Some observers are of the opinion that the problems generated by private placement, whether in the "black" or "gray" market, are insuperable as long as the practice is allowed in any form.[100] This has led to agitation for complete prohibition of private placement.[101] Two states, Connecticut and Delaware, have enacted statutes which almost do away with any form of private placement.[102] Although this is a possible approach to the problem, it is far too drastic.

It is a recognized fact that many states do not have the facilities to handle the care and placement of all adoptable children. Moreover,

96. *See* N.H. REV. STAT. ANN. § 170.13 (1964).

97. *See* N.H. REV. STAT. ANN. § 170.13 (1964).

98. In 1962 a total of 58,100 reported adoptions (both agency and private) out of 121,000 were by relatives of the child. *See* note 7 *supra.*

99. It has been suggested that responsible professional people are more qualified than the natural parents. H. WITMER, E. HERZOG, E. WEINSTEIN & M. SULLIVAN, INDEPENDENT ADOPTIONS 357 (1963). For a poignant example of this principle see KIPLING, *Baa Baa, Black Sheep,* in THE BEST SHORT STORIES OF KIPLING 217.

100. "It is satisfying these prerequisites [agency adoption only and pre-adoption parental termination] that . . . [they] best exemplify the meaning of the realms of law and social sciences." Katz, *Judicial & Statutory Trends in the Law of Adoption,* 51 GEO. L.J. 64, 65 (1962).

101. The MODEL ADOPTION ACT, proposed by the Children's Bureau of the U.S. Department of Health, Education & Welfare, at section 6 states:

> Except when a petition is filed by relatives of the child within the second degree either by blood or affinity, no petition for adoption shall be entertained unless prior to the filing of the petition
>
> (1) A decree of termination of the parent-child relationship with respect to each living parent of the child is sought to be adopted has been entered; and
>
> (2) the child sought to be adopted has been placed for adoption with the petitioners by a child placement agency.

Similar legislation has been offered in Iowa, H.F. 273, 60th G.A. § 6.2 (Iowa 1963). *See generally* Note, 14 DRAKE L. REV. 46, 50 (1964).

102. CONN. GEN. STAT. REV. §§ 45-61 to-63 (Cum. Supp. 1966); DEL. CODE ANN. tit. 13, § 940 (1953). Both of these statutes make exceptions for blood relatives and step-parents.

our rather bourgeois social attitude toward unwed mothers dictates the desirability of anonymity, if possible. This, coupled with the fact that many private placements result in fruitful relationships and happy families, makes the balancing of interests required weigh in favor of remedial legislation short of outright prohibition.

V. CONCLUSION

Private placement can be sufficiently improved through proper legislation. Admittedly legislation requires some state involvement, but that, in itself, is not objectionable. However, state involvement should not abolish private placement or become so extensive that all that is permitted is a state managed system. Proper remedial legislation would correct the faulty practices in private placement and would cede some responsibility to the state. It would, however, preserve the socially desirable benefits of the system.

The following is a list of suggested changes which could be beneficially incorporated into the present laws governing adoption. These suggestions are stated in idealistic terms as preliminary goals which, if enacted as a whole, should result in the attainment of an acceptable private placement system, the primary goal.

(1) Abolish all "black market" adoptions.

(2) Define and permit non-"black market" private placements.

(3) Require investigation of both the family and the child before placement occurs in all cases.

(4) Have all investigations and reports done by qualified social workers.

(5) Prohibit residents of the state from evading the law by going out of state to adopt a child.

(6) Enact proper sanctions to insure compliance with the law.

In order to legislate effectively and realize the ideals outlined herein, the purposes and the interrelationship of these goals should be explained. Once these are understood and correlated the law should not be difficult to draft.

Suggestions (1) and (2) are really two sides of the same coin. "Black market" adoptions should be abolished because they are particularly subject to the hazards inherent in private placement and fail to counterbalance this defect by offering some positive social good unattainable in another system. On the other hand "gray market"

adoptions have several socially desirable features which should be preserved if possible. The main problem presented is differentiating between the "black" and the "gray" markets in precise and simple terms which present a standard for demarcation which is easily ascertainable by the courts and laymen. It is suggested that such legislation should be aimed at the "middlemen" in illicit placements. Senate Bill 624 (1965) is an example of this theory. This seems to be the better view because the purpose of such legislation is to discourage people from making adoption a business. There is no reason to punish the mother or the adoptive parents as they are the ones along with the child that the law seeks to protect. It is also suggested that the best way to detect illicit adoptions would be to require an itemized statement of all expenditures incurred by the adoptive parents. This statement would be submitted to the court before the adoption is final. These expenditures would then be checked and the adoptive parents would be subject to prosecution for failing to report the paying of any consideration for arranging the placement. Legitimate professional fees for legal or medical services roughly corresponding to the rate in the locale would not be construed to be illegal consideration. All reasonable expenses such as hospital and convalescent bills would be permitted. Anything else would be illegal. This legislation is not as broad as it might be, but it is felt that the additional safeguards established in the rest of the scheme are sufficient to insure the primary goal of competent placement. Therefore, the purpose of this section is to punish actual sales of children only.

Proposals (3) and (4) are the most important parts of the scheme. They would require that a petition be submitted to the state welfare agency by all prospective adoptive parents, including relatives of a child, requesting permission to have a child placed in their home. The petition would include all pertinent information: the way the child was obtained, the purpose of the placement, the physical, mental, financial and emotional condition of the petitioners, and other pertinent data. Such a petition would be required for any placement over fifteen days in duration. Immediately upon receipt of the petition, an investigation of the suitability of the placement would begin, especially if adoption is contemplated or the expected duration is long. The social worker should then make a report in depth to the agency including a recommendation as to the desirability of the placement. At that point the agency should either approve or deny the petition, but may hold a hearing, with the petitioners present, if more facts are required. At no time shall the child be placed in the petitioners' home until this disposition of approval is made. In cases requiring immediate action lest the child be home-

less, the agency shall grant priority to investigation and disposition and also provide for the keeping of the child, preferably in a private home, until some decision is made. This process is assigned to an administrative agency rather than the courts for several reasons. The agency itself will be staffed by professionals in such matters and therefore better able to dispose of them quickly. It will provide a state-wide central clearing house for information. The agency is never in recess or on vacation, or burdened with other matters as is a court. The proceedings need not be as formal as a court demands. All agency decisions would be judicially reviewable to guarantee the rights of the parties. However, it is felt that most cases will be properly disposed of without judicial review since the agency will be more inclined to rely heavily upon the findings of an expert social worker.

The prohibition, in proposal (5), of evasion of the law by an out of state adoption is necessary so long as state standards are not uniform. It should require a report to the state welfare agency of all adoptions made outside of the state by residents. The statute should specifically state that no such adoptions are permitted without the prior approval of the agency or, in the alternative, will not be recognized unless the safeguards provided by the sister state are substantially in compliance with their own.

Failure to petition the agency before placement would be punishable as a misdemeanor. An added sanction would be that such a failure would be sufficient to raise a presumption of unfitness against the prospective adoptive parents at any later adoption proceeding. This presumption could be rebutted by a showing of good cause for failure to report and proof of a good home for the child. Placements made without contemplation of adoption, if longer than fifteen days in duration, should also be approved by the agency although the investigation would not be as intense. In such cases, the agency would make sure the child was returned after the time stated in the petition.

The analysis of private placement presented here fairly forces the realization that many shortcomings are present in the system. However, several cogent reasons exist for the continuation of private placement. Aside from the desirability of anonymity for the unwed mother and the fact that there are not enough agency facilities to handle the whole mass of adoptions, there are other, more human reasons, for continuing the practice of independent adoption. In many instances married couples who fail to meet stringent agency requirements or who have applied too late in life for consideration have taken the initiative and found a child on their own, adopted it and become model parents. In this age of womb to tomb state paternalism, it is

refreshing to realize that private efforts, motivated by love and kindness, can become a reality without the total involvement of public institutions. Perhaps the answer to this objection to state involvement is more privately supported adoption agencies. Nevertheless, there seems to be little justification for abolishing private placement if that system can be improved upon to make the possibility of unsatisfactory matching as minimal as that found in agency placement.