

Open Adoption: Optimum or Oxymoron?

by Mirah Riben

Editor's Note: The following article challenges us to consider even more closely the ramifications of our own practice of adoption.

In order to keep up-to-date with the current trend of openness and make adoption a more appealing choice for birthmothers, many agencies are offering *open adoption* in which birthmothers take a more active role in the selection of the adoptive parents for their child and are promised letters, photos and/or visits. It is believed that this will help the birthmother maintain some sense of control and relieve, or at least reduce, a great deal of anxiety for the birthmother, who in the past was not allowed to even know if her child she lovingly sacrificed was dead or alive. Additionally, such open arrangements would spare adoptees the inevitable pain of unanswerable curiosity and rejection, just as an amicable divorce with joint custody is preferable to a hostile situation which pits children's loyalties between parents. And finally, by meeting the birthmother face to face, the adoptive parents

would be prepared to face the inevitable questions.

So far so good. . .except that such open adoption arrangements are *unenforceable* according to a May, 1994 New Jersey Supreme Court Ruling which ended an almost four-year-old boy's weekly visits with his biological mother; the mother of his older brother and younger sister.

Open adoption, while a great idea in theory, is, and always has been, a legal oxymoron. Open adoption is still adoption, and, because adoption totally and irrevocably obliterates/terminates any and all rights of the biological parents, a court cannot enforce "rights" to visitation or even to photographs when one has no rights. Open adoption is thus the equivalent of annulling a marriage and then seeking spousal support.

Open adoption is still adoption and therefore starts with the relinquishment, not before. Check the laws in your state regarding at what time *after* the birth of the baby a decision to relinquish can be made. State law should provide minimum guidelines. But

even if allowable, agencies should think very carefully about practices which enmesh adoptive parents with "their birthmother" while she is an expectant mother and not yet a birthmother, including allowing adoptive parents into labor and delivery. Such practices can cause undue pressure and/or coercion of the birthmother, reducing her to a handmaiden or "surrogate" who is carrying someone else's child. Do not allow "openness" to impede the birthmother from being able to make a clear, unpressured decision *after* her child is born without feeling guilty for disappointing people she has come to know and care about. Her feelings of coercion, even if unintended, could cause the adoption to be overturned, hurting everyone involved.

Any person or agency desiring to facilitate open adoptions had best:

(1) Check the laws in the state where the adoption is to take place to see if open adoptions are recognized within that state; do not make or allow your clients to accept "promises" that are unen-

forceable.

(2) Be sure of what the birthmother wants. Open adoption, even at its best, is *not* similar to joint custody in a divorce. She will not have any say as to how her child is raised. Does she have realistic expectations?

(3) Be sure what the adoptive parents understand of open adoption and what they truly want. Some adoptive parents will promise anything if they believe it is the only way to achieve their goal of parenthood but find they are not willing or able to keep those promises once the adoption has been finalized.

(4) Ask what the prospective adoptive parents and birthmother mean by "open". This can mean that the birthmother (a) has a choice in selecting adoptive parents, and/or; (b) will meet the adoptive parents and/or; (c) will receive updates via mail on a monthly or yearly basis, and/or; (d) will receive photos on a yearly basis until the child reaches a certain age; (e) will be allowed to visit yearly until a certain age.

(5) Match those with similar goals.

(6) All parties need to know what are "promises" and what is enforceable and how and by whom.

(7) Be prepared to offer ongoing post adoption support for all of the parties and enforce all pre-adoption arrangements.

The decision in New Jersey was inevitable, the problems that brought the case to court, all too common false expectations. Many open adoption arrangements have been made and broken over the past decade. Sometimes the adoptive parents find themselves unable to keep promises that were made with the best intent. Other times it appears that they intended to deceive the birthmother, who finds the phone she called them on



while she was expecting suddenly disconnected once the adoption is finalized. Sometimes, it is the adoptive parents who are let down by a birthmother who finds it too painful to maintain contact, watching someone else reap the joy she is unable to.

The New Jersey case involves a 20-year-old pregnant single mother of a two-year-old, identified as Jeanne H. In 1989 Jeanne placed her newborn son with a couple she knew through a mutual acquaintance. The couple (identified as Donna and Steve H.)

was married for two years and Donna had two teens from a former marriage. They met Jeanne, discussed adoption plans, Donna took Jeanne to a prenatal clinic, and it was agreed that Jeanne would receive pictures and would be able to visit him. Jeanne testified that she expected to get pictures of her child and to visit him twice a month. She believed she would be "a big part of the baby's life" as a nanny or as "Aunt Jeanne".

Donna told the court, "We agreed that when the baby was a certain age. . . he would get to meet his brother and any other children she had had later on." They kept in touch until the adoption was finalized around the child's first birthday when they quarrelled about Jeanne coming to see him for the first time since he was born, and bringing a birthday present. Jeanne then filed to have the adoption overturned. During the three years of litigation, Jeanne maintained weekly visitation which was court ordered against the wishes of the adoptive parents.

In upholding the rights of the adoptive parents, Supreme Court Justice Alan B. Handler said such open agreements are not supported by state law. Handler said that in putting her son up for adoption Jeanne "intentionally abandoned" her child. And thus, the court ordered the almost four year

