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Testimony of Law Professor Annette Appell
Before the Nevada Senate Judiciary Committee
Regarding Senate Bill 267

March 28, 2003

I am a law professor at the William S. Boyd School of Law, University of Nevada, Las Vegas. One of my primary areas of research is adoption. I am also the editor of the legal column in the *Adoption Quarterly*, a multi-disciplinary scholarly journal regarding adoption. I respectfully provide this testimony in support of SB 267.

SB 267 would permit adult adoptees to obtain records of their *own* birth and adoption. The bill is important because it reflects the current view of adoption: that adoption is a legal event that does not erase the existence, or importance, of birth relations to adoptees. The ideas that adoption is rebirth and adoptive families are indistinguishable from birth families are at best quaint relics of the past.

There is a tremendous amount of literature in the fields of social work, psychology, history, sociology and law regarding the persistence and depth of adoptees' feelings about, and identification with, birth connections. It is difficult for persons reared by their nuclear or extended family of origin to understand the grounding that knowledge of one's origin provides.

For most of its history, Nevada has permitted adoptees to have access to their own adoption and birth records.¹ It is only recently (in 1973) that Nevada began concealing birth records from adoptees. Thus, until 1973, Nevada adoptees still had access to their original birth records. Twenty years earlier, Nevada sealed adoption records from adoptees, but these records remain accessible to adoptees (and others) by order of the adoption court pursuant to a petition setting forth the reasons therefor. Similarly birth certificates, even now, are accessible – to anybody, including adoptees – by order of the court pursuant to a petition setting forth the reasons therefor.

Thus members of the adoption triad have never had a guarantee, or reasonable expectation, of anonymity under Nevada law. As the following two sections illustrate, the resistance to opening adoption records to adult adoptees does not have a basis in law, ethics or science. On the contrary, restoring their birth history to Nevada's adoptees is good policy and practice.

¹Adoption and birth records were open in nearly every state until the 1930s, 1940s, and early 1950s, during which time most states closed adoptive records to members of the adoption triad. Elizabeth Samuels, *The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records*, 53 RUTGERS L. REV. 367 (2001). But it was not until the 1960s, 1970s, and 1980s that states closed birth records, i.e., birth certificates, to adoptees. *Id.* States are now beginning to open their adoption and birth records to adoptees once again. *Id.* at 371-72 (noting that fifteen states have some form of fully, or nearly fully, open adoptee access to birth records).

The "Rights" Implicated by Sealed Records

It is important to recognize that Nevada law does not give anyone in the adoption process a right to anonymity, especially from adoptees. On the contrary, records have always been open on demand of the adoptee or order of the adoption court upon petition. Unlike most other states, Nevada does not even require "good cause" to open sealed adoption and birth records. Instead, Nevada provides no standard to open records and never has. Records may be opened "upon order of the court expressly so permitting pursuant to a petition setting forth the reasons therefor."² The statute provides no reasons for opening these records and there are no annotations (i.e., court decisions) to provide guidance.

What kind of confidentiality then could birth parents expect if "any person" can petition to open the records and a court can order it on, apparently, any grounds? Advising birth parents that the records of their adopted child's birth or adoption are not accessible would be foolish in light of these statutory provisions that permit opening confidential records without providing any express standards.

Birth parents do not appear to have any other right or expectation of confidentiality. Studies have shown that a majority of adoption social workers do not believe that birth and adoption records should be kept from adult adoptees; nor do these social workers believe they have a professional obligation to protect the confidentiality of the process, or the birth parents' identity, from the adoptee.³ Nor do birth parents have a constitutional right to such anonymity or confidentiality.⁴

Indeed, there are not competing interests (let alone rights) in the open adoption records debate. Studies have consistently found that vast, vast majorities of birth parents, adoptive parents and adoptees believe that records should be open.⁵ Moreover, beside the fact that over 88 per cent of birth mothers support open records, there is no evidence that adoptees hound or stalk their birth parents.⁶

The strongest, and least represented, interests in this open records controversy belong to

²NRS 127.140; 440.310.

³Madelyn D. Freundlich, *Adoption, the "Open Records" Debate, and the Politicization of Confidentiality*, 8 J. LAW & SOCIAL WORK 85, 90-91 (1998).

⁴*Doe v. Sundquist*, 106 F.3d 702, 705 (6th Cir.), cert den., 522 U.S. 810 (1977) ("We are powerless to disturb [the Tennessee open records law] unless the Constitution elevates the right to avoid disclosure of adoption records above the right to know the identity of one's parents.").

⁵Freundlich, *supra*, pp. 97-98, 100 (reciting studies and noting that one showed nearly all birth parents were willing to be found by their relinquished children; 95 % of adoptees would like to be found by their birth parents; and 98 % of adoptive parents supported reunions).

⁶*Id.* at 100-01.

the adoptees who, through no choice or action of their own, are deprived of information about their own birth and heritage. Adoptees do have demonstrably strong psychological, medical and legal interests in access to information about their biological origins.⁷ Studies show that adoptees hold their birth connections – or biological identity – dearly.⁸ That is, they often see themselves as members of two families – of adoption (social) and origin (biological). Moreover, our constitutional law recognizes the importance of protecting intimate relationships from unwarranted state interference.⁹ Nevada’s current law limiting adoptees’ access to their own extremely personal birth information may amount to unwarranted state interference.

Brief History of Openness of Adoption & Birth Records in Nevada

As the following outline shows, adoption records were wide open in 1885 under the first adoption statute. The state’s second adoption statute in 1941 closed records to the public, but continued to grant adult adoptees access to their records on demand. The state’s third adoption statute, in 1953, removed this right of access on demand and replaced it with a global right to access upon court order pursuant to a petition stating the reason therefor.

Nevada was slower to seal its birth records from adoptees. In 1941, the vital statistics law, like the adoption law, provided for the sealing of birth certificates upon adoption, but permitted the adult adoptee access upon demand. It was not until 1973 that the vital statistics law removed this right of access and replaced it with a global right to access upon court order pursuant to a petition stating the reason therefor.

1885 First adoption statute (ch. 24 of Statutes of 1885; Civ. Practice §§ 5825-5834)

No requirements of sealing; on the contrary:

“The district judge shall file in the office of the county clerk all papers presented before him, or copies thereof, in the matter of the adoption of any child, and shall cause the order of adoption to be entered in the minutes of the district court of the county where the proceeding is had and a certified copy of such minute entry to be filed and recorded in the office of the county recorder of said county, and **such records shall be notice to the world of such adoption of the child**” (emphasis supplied).

1941 Second adoption statute (ch. 152 of Statutes of 1941; Gen Laws §§ 1065 et seq.)

First time files and records of proceedings closed (§1065.05), except open to:

⁷Naomi Cahn & Jana Singer, *Adoption, Identity, and the Constitution*, 2 U. PA. J. CONST. L. 150, 173-75 (1999).

⁸*Id.*

⁹*Id.*

- 1) "the child when it has attained maturity"
- 2) adopting parents & their representatives;
- 3) representatives of state welfare dept.,
- 4) other persons "upon order of the court, expressly permitting inspection or copy."

The Act also prohibits disclosure of names of adopted parents, absent court order (§1065.05).

Birth Records. State registrar law provides for sealing of original birth certificate (with certificate of adoption attached), but permits adoptee to have access upon demand (General Laws § 5268.15):

"Such sealed documents may be opened by the state registrar only upon the demand of the adopted person, if of legal age, or by order of a court of competent jurisdiction." General Laws § 5268.15(2). (This became NRS 440.310.)

1953 Adoption statute (Third) (Statutes of 1953, ch. 332).

All hearings confidential and closed and records sealed still, but now even to the adoptee; yet records can be inspected upon court order after a request:

"All files and records of the court in adoption proceedings shall not be open to inspection of any person except upon an order of the court expressly so permitting pursuant to a petition setting forth the reasons therefor."

1973 Birth Records. The vital statistics statute is amended to permit access to sealed original birth certificate (and attached adoption decree) only by "an order of the court issuing the adoption decree, expressly so permitting, pursuant to a petition setting forth the reasons therefor." NRS 440.310

Apparently, the change was made to put adoptees at the same disadvantage as adoptive parents, not to protect birth parent anonymity:

"[T]his is a policy decision the legislature would have to make. Presently, when a child reaches the legal age he or she can find out about their family background. Senator Doge commented that if the adoptive parents are deprived of this information, it doesn't make too much sense to allow the child to develop this information." Senate Judiciary Committee, Minutes of March 15th Meeting, p. 5 (re. S.B. 441).

1977 Adoption Act amended: New section added to NRS 127 requiring the court to direct petitioner or his attorney to prepare a report of adoption that will identify the original birth certificate, provide sufficient information for issuance of a new birth certificate; identify

order or decree of adoption; and be certified by clerk of court. The amendment required the petitioner or attorney to forward all reports to vital statistics by certain time. Statutes of 1977, ch. 544.

The amendment was requested by the Clark County Health Department Vital Statistics Office because Vital Statistics was not receiving adoption decrees and, therefore, new birth certificates were not being issued.

According to the assistant deputy registrar, people come in to purchase their child's birth certificate but she has no record of the birth. Then she asks whether the child is adopted. "Then when they tell me the child was adopted, well, then, I just immediately know, because I've been working with this for five years. . . ." Assembly Health and Welfare Committee Minutes of April 6, 1976, page 3 (re. AB 556).

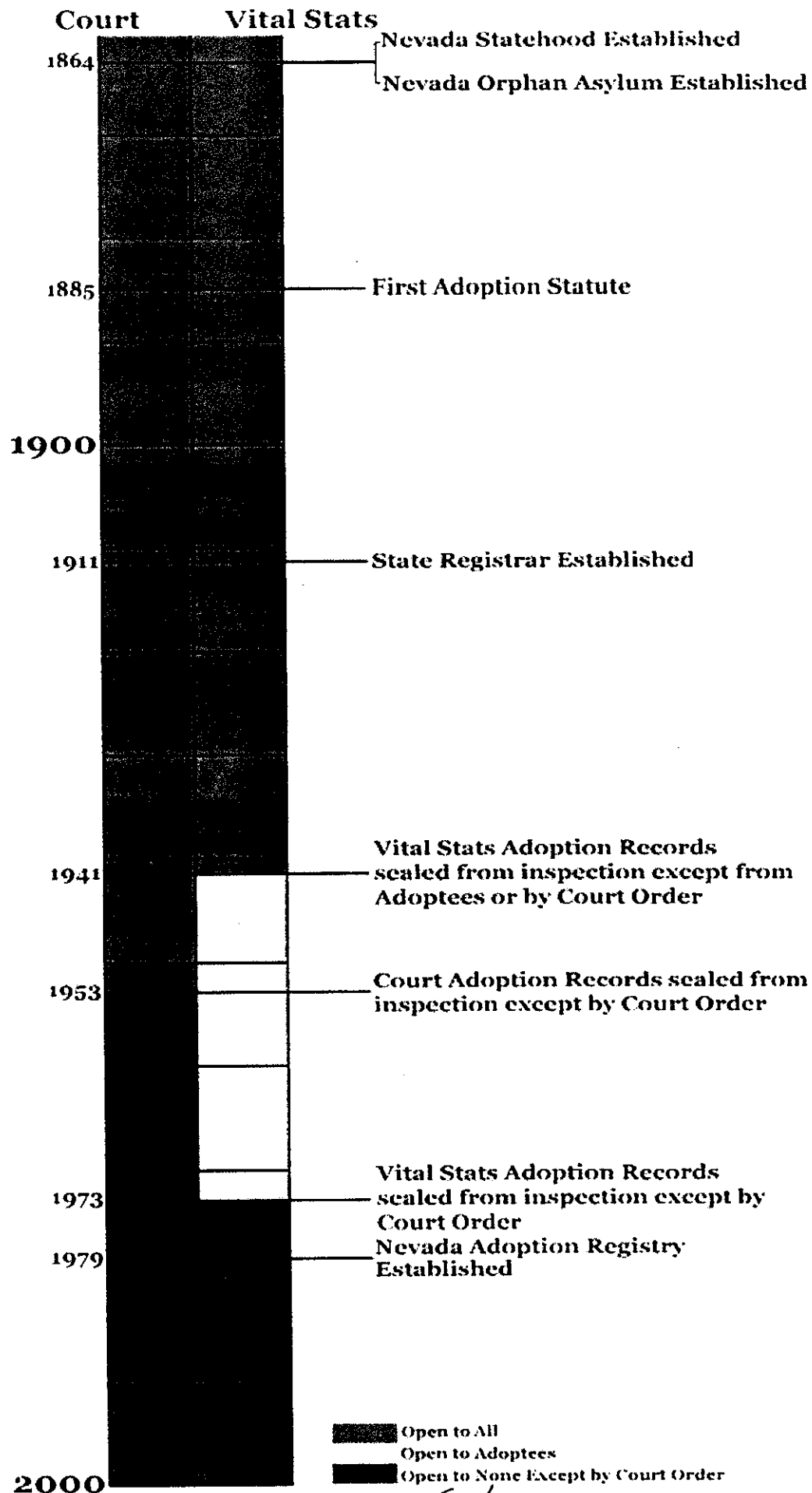
Thus, it appears that original certificates may not have been sealed as a matter of course till 1977 amendments.

Conclusion

In Nevada, there has never been a guarantee of anonymity to members of the adoption process. On the contrary, until 1953 and 1973, respectively, original birth certificates and adoption records were open to the adult adoptee. Ironically, in Nevada, these records have always been open to anybody upon court order. The legislature has provided no standards for granting such orders so courts have been free for over half a century to open those records as the individual judge sees fit.

In light of this questionable history of privacy, the well-documented interests of adoptees in their families of origin and heritage, and our modern understanding of adoption as a life-long process and adoptive families as a distinct, though certainly not inferior, type of family, I respectfully urge this committee to approve Senate Bill 267.

Nevada Sealed Adoption Record Timeline



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