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Father of an Illegitimate Child—
His Right To Be Heard

The right of an out-of-wedlock father to participate in the disposition of his illegitimate child is uncertain under present case law and statutes. This Note examines the effect on the parties involved in the adoption process when the father is allowed to be heard. The author proposes legislative modifications which define and assure the out-of-wedlock father's rights.

INTRODUCTION

The natural father of an illegitimate child has been the forgotten figure in the illegitimacy triangle. Much attention has been directed to the mother and her rights to custody of the child. Maternal consent has long been required for the child's adoption. The illegitimate child has been favored by the courts, legislatures and legal commentators. The natural father, however, commonly called the "putative father" or "out-of-wedlock father," has been subjected to increasing obligations without acquiring corresponding rights.

One of the unsettled problems in the area of illegitimacy is whether an out-of-wedlock father should have a legal interest in the disposition of his child subsequent to relinquishment by the natural mother. He may wish to seek custody himself or to suggest another plan of custody or adoption. Traditionally, the father's influence over the custody of his child has been limited to a habeas corpus proceeding brought after the child has been placed in an adoptive home. Since courts are extremely reluctant

2. See, e.g., In re Shady, 264 Minn. 222, 118 N.W.2d 449 (1962); People ex rel. Gibson v. Starbuck, 42 N.Y.S.2d 820 (Sup. Ct. 1943); Ex parte Combs, 77 Ohio L. Abs. 455, 150 N.E.2d 505 (C.P. 1958).
3. CAL. CIV. CODE § 196(a); MINN. STAT. § 259.23 (1961).
4. BUCK, CHILDREN FOR ADOPTION (1964); Doss, IF YOU ADOPT A CHILD (1957); YOUNG, OUT OF WEDLOCK (1954); 26 ALBANY L. REV. 335 (1962); 26 BROOKLYN L. REV. 45 (1959); Comment, 59 YALE L.J. 715 (1950).
5. Aycock v. Hampton, 84 Miss. 204, 36 So. 245 (1904); Fierro v. Lubicich,
to remove a child from a prospective adoptive home to which the child has become accustomed,\(^6\) the habeas corpus remedy is often undesirable, from the father’s point of view.

This Note will attempt to determine the extent to which the out-of-wedlock father should be heard in the disposition of his child. The examination will focus on the two methods by which the natural mother may relinquish her child for adoption—the parental termination proceeding or the mother’s voluntary surrender.\(^7\) The interests to be considered include those of the child, the natural mother, the adoption agencies and adoptive parents, and the out-of-wedlock father. Finally, proposals which adequately protect all interests will be suggested.

I. EVOLUTION OF THE OUT-OF-WEDLOCK FATHER’S INTERESTS

At common law an illegitimate child was \textit{filius nullius}, the son of no one.\(^8\) Initially, most states adopted the position that the out-of-wedlock father had no connection to his illegitimate child other than a moral obligation toward the child or mother.\(^9\) The common law placed the onus of the parents’ immoral act on the child in


\(^6\) When a child has been with prospective adoptive parents for between one and twelve months, the courts feel it would not be in the best interests of the child to remove him. Consequently when the adoptive parents are petitioning the court for a final adoptive decree, it is generally too late for the father to assert an interest effectively. \textit{E.g.}, Day v. Hatton, 210 Ga. 749, 83 S.E.2d 6 (1954); \textit{In re Zink}, 269 Minn. 535, 132 N.W.2d 795 (1964); \textit{In re Schwartzkopf}, 149 Neb. 460, 31 N.W.2d 294 (1948); \textit{Ex parte Wallace}, 20 N.M. 181, 190 Pac. 1030 (1920).

\(^7\) Some states require judicial or administrative review of all adoptions, including independent placements. \textit{E.g.}, \textit{Mich. Comp. Laws} § 710.1-12 (1948); \textit{Minn. Stat.} §§ 257.0-175 (1961); \textit{Mo. Rev. Stat.} § 453.030 (1959); \textit{Ohio Rev. Code Ann.} § 3107.05, 08 (Page 1960). Independent placements in other states are many times free of any judicial or administrative control. For a discussion of the various state practices see Comment, 59 \textit{Yale L.J.} 715 (1960).

Independent placements not subject to judicial control have been excluded from the scope of this Note.

\(^8\) I \textit{Blackstone, Commentaries} 454-60 (7th ed. 1775); 16 \textit{Colum. L. Rev.} 698 (1916).

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the hope that the possibility of producing stigmatized issue would discourage the act. 10

Eventually, the states retreated from the complete common law separation of the out-of-wedlock father and his child by establishing statutory relationships between them. For example, in Minnesota the father is now required to pay child support, 11 medical expenses of the mother, 12 maintenance expenses of the mother prior to and after confinement, 13 and expenses incurred if the child is stillborn or dies after birth. 14 Several states allow the illegitimate child to inherit to a limited extent from the natural father. 15 Two states allow equal participation in the natural father's estate. 16 The purpose of these statutes is to provide financial security for the child and mother rather than to establish a formal family relationship. 17

The courts have also recognized that the father has some protectible interest in the child. Generally it is said that in habeas corpus proceedings 18 subsequent to the mother's death, the out-of-wedlock father has a strong right to custody of the child. 19 The underlying premise of the courts in granting custody to the father appears to be an expectation that the father taking the child into his home will legitimate him. Thus, the law's strong preference

10. See In re Lund's Estate, 26 Cal. 2d 472, 480, 159 P.2d 643, 648 (1945), where the Court noted that in some jurisdictions the illegitimate child was denied any right of support, recognition, or inheritance from the father. See generally Embick, The Illegitimate Father, 3 J. Fam. L. 321 (1963).

12. Ibid.
13. Id. at § 257.24 (1961).
18. The writ is a judicial decree releasing persons who are being detained from the control of those who are not entitled to their custody. State ex rel. Aucoin v. Aucoin, 174 La. 7, 139 So. 645 (1932); People ex rel. Oprandy v. Ciarcia, 49 App. Div. 90, 63 N.Y.S. 497 (1900).
19. E.g., In re Guardianship of Smith, 42 Cal. 2d 91, 265 P.2d 888 (1954);
for legitimation over bastardy will be served. This preference has also been served in at least one state by a statute which provides that the child is automatically legitimated when placed with the father. Of course, legitimation will not take place if the child remains with the mother or is raised in a foster home. An illegitimate child living with a natural parent will be relieved of possible social embarrassment caused by reluctance or inability to speak of his natural parents. Some recognition has been given to the intangible natural bond between blood relatives as justifying custody in the out-of-wedlock father. The same arguments have been used when the out-of-wedlock father has sought visitation privileges while his child is in the mother's custody. Courts have


Although the out-of-wedlock father generally has the right to custody of his illegitimate child upon the mother's death, the rule is not inflexible. When the contest is with a relative, the out-of-wedlock father usually prevails. See In re Richardet, 280 S.W.2d 466 (Mo. Ct. App. 1955); Fierro v. Ljubicich, 5 Misc. 2d 202, 165 N.Y.S.2d 290 (Supp. Ct. 1957). When the illegitimate child is with a child placement agency, the cases are divided as to whether the out-of-wedlock father or the agency gains custody. In re Shady, 264 Minn. 222, 118 N.W.2d 449 (1962) (welfare department not allowed to take custody after mother placed child with father); People ex rel. Gibson v. Starbuck, 42 N.Y.S.2d 820 (Sup. Ct. 1943) (father deemed too old at 75); French v. Catholic Community League, 69 Ohio App. 442, 44 N.E.2d 113 (1942) (welfare department received custody from mother but father prevailed); Wade v. State, 39 Wash. 2d 744, 238 P.2d 914 (1951) (father had right to custody after mother abandoned child). When the illegitimate child is already in the home of adoptive parents, the out-of-wedlock father generally cannot gain custody of his child. See Day v. Hatton, 210 Ga. 749, 88 S.E.2d 6 (1954); In re Schwartzkopf, 149 Neb. 460, 31 N.W.2d 294 (1948); Ex parte Wallace, 28 N.M. 131, 190 Pac. 1020 (1920).


been willing to grant such privileges\textsuperscript{24} since association with the father may confer unique benefits upon the child.\textsuperscript{25} Of course, every request made by an out-of-wedlock father is evaluated under the particular facts involved. It is clear, however, that present law does not demand that the natural father’s interests be totally disregarded.\textsuperscript{23}

II. OUT-OF-WEDLOCK FATHER’S OPPORTUNITY TO BE HEARD SUBSEQUENT TO RELINQUISHMENT OF CHILD BY MOTHER

When the mother, voluntarily or involuntarily, relinquishes the child for adoption, the father’s opportunity to participate in the child’s subsequent disposition is controlled by the state child welfare statutes.\textsuperscript{27} Several states allow the out-of-wedlock father to be heard in proceedings relating to custody and adoption.\textsuperscript{28} Conversely, a few states specifically exclude the father from such


\textsuperscript{25} One court has said that the father’s presence was “a constant encouragement, his example an ever present model, and a boy, circumstanced as this one is, by becoming a member of his father’s household will meet more nearly on an equality with others the problems of life than did he remain with his mother.” Allison v. Bryan, 21 Okla. 557, 573, 97 Pac. 282, 288 (1908). See People ex rel. Mahoff v. Matsoui, 139 Misc. 21, 247 N.Y.S. 112 (Sup. Ct. 1931).

Visitation privileges have been denied, however, when the presence of out-of-wedlock father would only remind the child of his unfortunate past, Commonwealth ex rel. (sic) v. Spano, 68 Pa. D. & C. 248 (Munic. Ct. Phila. 1949), or where the mother had subsequently married and she and her husband had no intention of telling the child about his past, Commonwealth ex rel. Golimbewski v. Stanley, 205 Pa. Super. 101, 208 A.2d 49 (1965).

\textsuperscript{26} See note 19 supra.

\textsuperscript{27} Any discussion of adoption centers around the adoption statutes since adoption was unknown at common law. See, e.g., Goshkarian v. County Temporary Home, 110 Conn. 468, 148 Atl. 379 (1930); Ekendahl v. Svolos, 388 Ill. 412, 58 N.E.2d 585 (1944); Barwin v. Reidy, 62 N.M. 183, 327 P.2d 175 (1957); State ex rel. Harmon v. Utterback, 144 W.Va. 419, 108 S.E.2d 521 (1959).

\textsuperscript{28} E.g., ALA. CODE, tit. 27, § 3 (1958); ARIZ. REV. STAT. ANN. §§ 8–108A (1)(b) (1958); Ark. STAT. ANN. § 56–106 (c) (1947); CAL. CIV. CODE § 224; D.C. CODE ANN. §§ 16–304 (b)(2)(C) (Supp. V. 1966); N.D. CENT. CODE §§ 14–11–10 (1960); WASH. REV. CODE § 26.32.030 (2) (1951).
proceedings. Most child welfare statutes, however, simply fail to mention the father. It is difficult to determine whether this omission reflects a failure to evaluate society's attitude toward the out-of-wedlock father, or a determination that the father should not be heard. Whatever the reason, it seems appropriate to reexamine the child custody provisions with a view to possible modification if it can be shown that the out-of-wedlock father should have some opportunity to be heard when the mother relinquishes custody of the child.

MINNESOTA ADOPTION PROCEDURES

In order to effectively discuss the problems involved in the subject under discussion, it is necessary to focus upon the adoption laws of a single state. In Minnesota, for example, the natural mother may relinquish the child for adoption either by a hearing to terminate all parental rights in the child, or by surrendering the child to an authorized adoption agency.

A. PARENTAL TERMINATION HEARING

The parental termination hearing can be considered a first step toward adoption, although it actually precedes the adoption process. The hearing may be initiated upon petition by any reputable person, including the natural mother to decide whether parental rights will be terminated. Notice of the hearing need be given only to the mother or guardian of the illegitimate child.

31. Reexamination is relevant since, even though few cases have reached the appellate level concerning a father's right to seek custody of his illegitimate child (Amicus curiae Brief by Professor Robert J. Levy, Professor of Law, University of Minnesota, p.8). In Minnesota, for example, there is a growing number of illegitimate births each year: 1952—1618; 1960—2379; 1964—3427. The projection is for an even greater increase: 1971—5783; 1975—7615. MINNESOTA POPULATION, LABOR FORCE AND EMPLOYMENT TRENDS OF THE 1960's (Nov. 1964).
While it is not possible to predict how many fathers of these prospective illegitimate births will acknowledge their children, based upon present indications a growing number of them probably will.
35. Id. at § 260.135.
The Minnesota provisions make it clear that notice to or consent from the out-of-wedlock father is not required. After the hearing the court may terminate all parental rights and place the child for adoption.

With the illegitimate child thus available for adoption, the out-of-wedlock father who may have a sincere interest in the disposition of his child discovers that his parental rights have been terminated by the court even though he had no notice of the proceedings. The statutes setting forth the procedures for the subsequent adoption also disregard the father since his consent is not required. Moreover, the adoption statute provides that a person whose consent is not required is not entitled to notice of the adoption hearing. The father, by his own motion, might later appear at the adoption hearing which must take place several months after the child has been placed in the adoptive home. He would have little chance of uprooting the child from the adopting parents, however, since courts hesitate to disrupt a family unit once established.

The Minnesota Supreme Court was confronted with a father's request to be heard in In re Zink. The case involved a parental termination hearing to terminate the rights of the mother. The court held that although the adoption laws and parental termination statutes do not require the father's consent or notice to the father, he does have the right to be made a party to the proceedings when he takes the initiative. The court ruled that at the

37. *Id.* at § 260.241.
38. A termination hearing may sever all parental rights in the child. The court then usually orders the child to be placed with a state or private agency for adoption. This two step process is used since most authorities feel that parental rights, litigation, and adoption proceedings should be kept separate. See Note, 102 *U. Pa. L. Rev.* 759 (1954). For a comment on the aspects of parental rights and their termination see 32 *N.Y.U.L. Rev.* 579 (1957).
39. *Minn. Stat. Ann.* § 259.24 (Supp. 1965). After parental rights have been terminated, the only consent required is that of the agency with whom the child was placed by the court. *Id.* at §§ 259.24(c), (f) (Supp. 1965), 25 (1961).
41. The hearing must take place several months after the child has been placed in the adoptive home. *Minn. Stat. Ann.* § 259.27 (Supp. 1965).
42. See note 6 *supra* and accompanying text.
43. 269 Minn. 535, 132 N.W.2d 795 (1964). There are two Zink cases. The first, 264 Minn. 600, 119 N.W.2d 781 (1963), involved a procedural issue which the putative father had appealed. The second noted above, was a decision on the merits in which the father unsuccessfully attempted to gain custody of his illegitimate child.
hearing the father may give evidence, cross-examine witnesses, and present his plan for the future of the illegitimate child. Zink assures the out-of-wedlock father an opportunity to be heard only when he is aware of the hearing and voluntarily comes forward. Notwithstanding this crucial limitation, the decision is significant. The father is no longer limited to the untimely habeas corpus proceedings; the alternative remedy created in Zink is the result of a liberal interpretation of statutes which appear on their face to have a total disregard for his interests.

B. Voluntary Surrender Process

The voluntary surrender process may also be the first step in the illegitimate child's ultimate adoption by new parents. Unlike the parental termination hearing, however, the voluntary surrender procedures are included as part of the adoption statutes themselves. Under these provisions the natural mother may agree in writing that the illegitimate child will be placed for adoption. It is important to realize that under the voluntary surrender procedures a judicial hearing is not required until the new adopting parents petition the court for an adoption decree. In Minnesota that petition may not be granted until the child has lived at least six months in the home of the adopting parents.

The out-of-wedlock father will probably encounter more obstacles in coming forward in the actual adoption hearing than he would have had in an earlier parental termination hearing. The father's first disadvantage is his lack of knowledge of the adoption hearing. It is clear that the out-of-wedlock father is not entitled to notice; not even the natural mother is entitled to notice after she has consented to the adoption. The statutes specify that all

1965). This section was passed in 1959 and was the basis of the Minnesota court's holding in In re Shady, 264 Minn. 222, 118 N.W.2d 449 (1962), which in turn the court relied upon in deciding Zink.

46. Minn. Stat. Ann. §§ 259.24 (Supp. 1965), .25 (1961) are the basic voluntary surrender sections. They are a part of the adoption provisions, Id. at §§ 259.21–28 (Supp. 1965).
47. The natural mother signs a standard consent form or contract with the child placement agency after the agency has explained to the mother all the ramifications of her consent. Minn. Stat. § 259.25(1) (1961).
49. Id. at §§ 259.24(1), .26(1) (Supp. 1965).
50. Id. at §§ 259.24(1)(f) (Supp. 1965), .25(1) (1961), .26 (Supp. 1965). See also In re Adoption of Anderson, 235 Minn. 192, 50 N.W.2d 278 (1951).
adoption hearings shall be held in closed court, generally without admittance of any person not entitled to notice. Moreover the significant time lapse makes it less likely that the court would disturb the custody of the prospective adoptive parents.

A mother wishing to relinquish her child for adoption may avoid the father's parental termination rights established in *In re Zink*. She can merely avoid parental termination proceedings and choose to relinquish the child quietly by voluntary surrender to an adoption agency. The Minnesota Supreme Court, however, held in *In re Brennan* that the father would be permitted to bring a timely habeas corpus action or other appropriate proceeding to assert his interests. In *Brennan* the mother conceded that the father would have been allowed to appear in a parental termination hearing. But she argued that the adoption statutes providing for her voluntary surrender provisions precluded hearing the father unless the court so ordered in the best interests of the child. The court rejected the mother's contention on the ground that making the father wait to assert his interests until proceedings are instituted implies that his rights in the child are without remedies. The court emphasized that the statutory provisions for both parental termination and adoption must be construed together in order to reach a consistent result. The apparent conclusion is that an out-of-wedlock father will be allowed to assert his interests in the child as long as it is reasonably consistent with other interests regardless of the method chosen by the mother to relinquish the child.

**III. UNDERLYING POLICIES AND INTERESTS INVOLVED IN THE OUT-OF-WEDLOCK FATHER'S OPPORTUNITY TO BE HEARD**

In light of *Zink* and *Brennan*, all interests which might be affected by allowing a father to be heard should be examined.

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52. 270 Minn. 455, 134 N.W.2d 126 (1965). After the Minnesota Supreme Court affirmed the lower court's decision that the out-of-wedlock father had a right to be heard, the lower court awarded custody of the child to the father. Sadden v. Brennan, Hennepin Cty. Dist. Ct. (Juv. Div.) Minn., June 23, 1965.
53. *In re Brennan*, supra note 52, at 463-64, 134 N.W.2d at 132.
54. It should be noted that the father in *Brennan* initiated his action after the mother had relinquished the illegitimate child but before the child had been placed with adoptive parents. See notes 6 and 42 supra and accompanying text.
These interests are of (1) the illegitimate child, (2) the natural mother, (3) the adoption agencies and adopting parents, and (4) the out-of-wedlock father. This inquiry should be directed at the possibility of conflicts between competing interests, whether such conflicts may be reconciled, and which interests should prevail if the conflicts cannot be reconciled.

A. The Child

The principle controlling any proceeding involving a child is that a court will be guided by the best interests of the child. Relocating a child is unnatural and could adversely affect the child in uncounted ways. Certainly, the best interests of the child demand that the danger of emotional trauma be minimized. Children, regardless of age, tend to identify quickly with those caring for them; once available for adoption they should be placed as quickly as possible. A young child who remains in a foster home or in other temporary care for an extended length of time may suffer trauma when he is ultimately transferred to permanent surroundings. Closely related to the need for rapid placement is the consideration that a child should be subjected to a minimum number of changes in his physical custody. Adoption agencies make every effort to place infants directly from the hospital to a previously selected adoptive home. For the good of the child, a father asserting his interest should be compelled to do so in a manner which will not cause undue delay in placement or unnecessary relocation.

Another important factor is the possibility that a child may derive substantial benefits from living with even one of his natural parents. If the natural father is not given an opportunity to present his plan, the child will be deprived of whatever advantages he might have received from a natural parent.

Finally, the child has an interest in being placed in the proper type of home. Most experts agree that a two parent home is

55. See notes 2-4 and 21 supra.
56. Doss, If You Adopt a Child 147 (1957).
59. Child placement agencies interviewed in the Twin Cities are in accord with this statement.
60. See note 25 supra.
preferable. The natural mother might refuse to release her child for adoption if she thought the father could gain custody and frustrate her desire to have the child adopted into a two parent home. However, the number of mothers who would refuse to relinquish custody on this ground is probably minimal. Moreover, if it were clearly in the best interests of the child to be placed for adoption, parental termination procedures could be instituted to terminate the mother's interests. The child's interest in proper placement will be protected by the court in the adoption proceedings, even in those cases where an unmarried father is seeking custody.

B. THE NATURAL MOTHER

The natural mother has primary responsibility for the care of the child, and thus her interests are recognized to be superior to those of anyone else. Since the mother probably has the greatest natural love for the child, it is felt that the interests of the child will probably be best served by maternal care. When, however, the natural mother relinquishes the child for adoption, she waives her parental rights. Nevertheless, the mother might retain a strong interest in preventing the father from being heard. Her interest, however, derives from the desire that the father not be granted custody himself or that any other plan of his not be accepted. This interest of the natural mother can be adequately protected by hearing her objections without denying the father the opportunity to present his plan. The courts will undoubtedly be aware that the mother's objection to the father's assumption of responsibility may be based on emotional factors other than the best interests of the child.

64. Arnold v. Arnold, 246 Ala. 96, 18 So. 2d 730 (1944); Gardner v. Hall, 182 N.J. Eq. 64, 26 A.2d 799 (Ch. 1942); see note 23 supra.
65. See note 1 supra.
C. ADOPTION AGENCIES AND ADOPTIVE PARENTS

Any opportunities given to a father to assert his interests will affect to some degree the operation of the adoption agencies and the interests of adopting parents. Agencies seek to coordinate the interests of all parties into an efficient adoption process. Agencies are primarily concerned with avoiding unnecessary delay in placing a child for adoption. Agencies are likewise hopeful that placement with an adoptive family will result promptly in final adoption by that family. One reason for these concerns is that while the child is in the agency's custody, the child's interests can be asserted and protected only through the agency. Consequently, an agency has the same interest in rapid and certain placement as does the child. The agency is also under some moral obligation to the adoptive parents to insure that the child will not later be taken from them without good cause. Moreover, it is important that the agency operate as efficiently as possible on limited funds and avoid wasted efforts. Admittedly, some delay is built into the adoptive process to insure proper placement, but such delay is predictable and expected. The agencies fear unpredictable delay and interference such as experienced in In re Larson where the court permitted the mother of an illegitimate child to reclaim the child after she had been in an adoptive home for seventeen months. Agencies also desire to eliminate the uncertainties created by the results in Zink and Brennan which might allow the out-of-wedlock father to disrupt the adoption process and interfere with otherwise successful placement. It is unlikely, however, that agencies would object to clearly defined provisions which would assure a timely appearance by the father. Moreover, if agencies knew which fathers were actually interested, these


70. The views and positions of the child placement agencies set forth in this Note are based on personal interviews with Mr. James K. Merrill, Division Director of the Child Welfare Division, Lutheran Social Service of Minnesota and Mr. Charles B. Olds, Executive Director, Children's Home Society of Minnesota (November, 1965). The writer of this Note wishes to express his gratitude for their time and assistance.

71. See notes 56–58 supra and accompanying text.

72. If there is a delay in placement and an agency has custody, the agency will have to pay for the care of the child until he is placed.

73. See note 41 supra.

74. 252 Minn. 490, 91 N.W.2d 448 (1958).
fathers could be counseled in a manner similar to the advice presently given natural mothers.75

The interest of the adoptive parents increases with the extent of placement preparations and the amount of time the child lives with them. It would be difficult to determine whether the child or the adopting parents suffer the greatest emotional shock if the child is unexpectedly reclaimed.76 The adoptive parents are told that there must be a minimum six month trial period of custody and that actual adoption must await the final decree. It is doubtful, however, that fear of losing the child during the trial period has made prospective adopting parents unwilling to accept a child from an agency.77 Nevertheless there is merit in making every effort to avoid unnecessary disappointment or delay caused by the untimely appearance of an out-of-wedlock father seeking to assert his interests in his already placed illegitimate child.

D. THE OUT-OF-WEDLOCK FATHER

The prime interest of the father may be described as a psychological and financial equity in the child which develops as soon as the father is known.78 One court has said that "certainly to an illegitimate child, the father is never putative."79 Likewise, to an interested father, no child is ever illegitimate. Although the act may be censured and the relationship disregarded, the fact remains that there may be a natural bond between the father and child.80 Any bond of natural devotion and sense of responsibility which exists should not be carelessly disregarded without some opportunity for its expression.81 Furthermore, the law has imposed on the father the obligation to support the child and mother82 as well as inheritance responsibilities toward the child.83 These obli-

75. See Katz, supra note 63, at 66–67.
76. Doss, IF YOU ADOPT A CHILD 147 (1957).
78. In re Zink, 264 Minn. 500, 119 N.W.2d 731, (1963). MINN. STAT. §§ 257.18–33 (1961), provide that a written acknowledgment renders the father of an illegitimate child liable for confinement expenses of the mother and support of the child.
81. See In re Brennan, 270 Minn. 455, 463, 134 N.W.2d 126, 132 (1965).
82. See notes 11–14 supra and accompanying text.
83. See notes 15 and 16 supra and accompanying text.
gations should somehow be balanced with privileges, such as allowing the father to be heard when the future of his child is being determined.

The plan of the out-of-wedlock father might also provide insights and suggest solutions otherwise unavailable or overlooked. The prevailing standard in a custody hearing is that the disposition must be in the “best interests of the child.” It seems proper for the state to consider all reasonable alternatives and to be eager to hear from all persons interested in the particular child. If the father is allowed to come forward, he might be able to provide the child (and himself) with those benefits of association between natural parent and child which have been said to justify the father’s visitation and custody privileges subsequent to the mother’s death. After the mother relinquishes the child, the only person who can provide a natural parent’s love and affection is the father.\(^84\)

**IV. PROPOSALS**

It appears that the interests of the child, the natural mother, and the agencies and adoptive parents should not totally eliminate the father. Any privilege granted to him for a hearing need not unduly interfere with the existing rights of others in the adoption process. However, a statute giving the father an opportunity to be heard should be clearly defined and incorporated into the current adoption process.\(^85\)

An out-of-wedlock father’s consent for adoption or his presence at legal proceedings should never be required. It should be made clear by statute that a father who does not come forward, or does not initiate appropriate action within a short time after the mother’s relinquishment of the child for placement in an adoptive home should thereafter be denied all opportunity to be heard. Such a provision would terminate the rights of a father who did not know of the mother’s pregnancy or of the birth of the child.\(^86\)

84. *In re Guardianship of Smith*, 42 Cal. 2d 91, 265 P.2d 888, (1954); cf. *Lipsey v. Battle*, 80 Ark. 287, 97 S.W. 49 (1906); *Wall v. Hardee*, 240 N.C. 465, 82 S.E.2d 370 (1954). Both courts referred to a mother’s love and affection as being greater than that of anyone else. Arguably, the mother’s departure would leave only the natural father to take her place.

85. In 1959 England provided the father the opportunity to be heard. **LEGITIMACY ACT**, 1959, 7 & 8 ELIZ. 2, c. 73, s 3. For an analysis of the act, see Note, 25 MOD. L. REV. 736 (1962).

86. In the opinion of the child placement agencies interviewed in the Twin Cities, the situation where the out-of-wedlock father was unknown and
as well as those of the father who failed to act promptly. But it seems that the overall interests of the child, the adoption agencies and adoptive parents would be unfairly prejudiced if fathers were allowed to assert rights in an untimely manner.

A father should be given a statutory right to come forward promptly at either a parental termination hearing, as decided in *In re Zink*, or upon a direct surrender of the child by the natural mother, as decided in *In re Brennan*. If the child is relinquished through a parental termination hearing, the statute should provide that the father has the right to participate in that hearing if he makes an appearance. If the child is surrendered directly to an adoption agency, however, there is no judicial hearing at which the father could appear. To bring conformity to the two methods, it is suggested that the father be given the statutory right to initiate a parental termination hearing in which he may assert his interests. The father should be required to initiate this action within a relatively short time after becoming aware of the child's surrender to eliminate any substantial delay in placing the child in an adoptive home. If, as frequently happens, the mother surrenders her rights in the child before the child is born, the father should be allowed to initiate judicial proceedings immediately. Requiring the father to wait until the child's birth may complicate attempts to place the child directly from the hospital. Such statutory machinery would serve the interests of all concerned by eliminating the present uncertainty as to when and how the father must come forward.

The foregoing discussion has focused on statutory provisions which would allow the father to come forward on his own initiative when he discovers that either a parental termination or would then come forward to be heard would rarely arise. But see note 31 supra and accompanying text.

87. One jurisdiction requires that a child cannot be adopted until the parental rights in that child are terminated by court order. Mich. Comp. Laws § 710.12 (1948).


89. A good example of the delay which can be caused while rights are being litigated is presented by the two Zink cases where the custody of the child was not determined for two years. See note 43 supra; *In re Simaner's Petition*, 16 Ill. App. 2d 48, 147 N.E.2d 419 (1957); *In re Adoption of Morrison*, 260 Wis. 50, 49 N.W.2d 759 (1951).

90. The father would be required to act quickly to minimize adverse effects on the child caused by delay and uncertainty. Kestenberg, *Separation from Parents*, 3 NERVOUS CHILD 20 (1943); Clothier, *Some Aspects of the Problem of Adoption*, 9 AMERICAN J. OF ORTHO-PSYCHIATRY 598, 608 (1939).
voluntary surrender is in progress. The problem of whether a known father should have a right to notice remains. Admittedly, any proposal requiring notice goes far beyond the provisions of most existing statutes. The suggestion can be made that notice of the proceedings should not be given to any out-of-wedlock fathers. Then only those fathers who were sufficiently interested to keep themselves aware of the status of their children would make timely appearances. Of course, a denial of all notice would have the advantage of preventing most disinterested fathers from appearing. But a failure to give notice may unnecessarily exclude fathers who desire to be heard.

When the natural mother never intends to retain custody of her illegitimate child, the father, if interested and aware of the pregnancy, could come forward before or at the time of birth to appear at, or initiate, a parental termination hearing. Difficulties arise in situations where the mother's intentions are either not revealed or where a previous decision to keep the child is changed at some later date. In either of these circumstances there may be substantial reasons for the father not to challenge the mother's right to custody. He may actually prefer that the child be raised by the mother; or he may realize that he would have little chance of overcoming the mother's superior interest in the child. Nevertheless, in either situation, the father could retain a strong desire to present his own plan should the mother relinquish custody at some later date. Although some interested fathers might be able to maintain constant surveillance over the mother's activities, it might be physically impossible or totally impractical for others. A mother who wished to deprive the father of all opportunity to be heard could surrender her child quietly to an adoption agency at a time when the interested father would be unaware of her actions. However, the father could be allowed to announce officially his interest by filing a notice of his intentions. Such a system will allow notification to the father of any pending disposition of the child. This will also relieve the father of the unnecessary and unfair burden to remain constantly aware of the child's status and the mother's intentions. Moreover, adoption agencies would then be put on notice that the father has an interest in the disposition of his child. The appearance of unknown fathers who unexpected-

91. North Dakota requires notice to be sent to the duly acknowledged out-of-wedlock father without requiring his consent. N.D. CENT. CODE § 14-11-10 (1900).
92. See note 1 supra.
ly assert their interests would be eliminated. Failure to file notice of intention or to make a timely appearance would be deemed a waiver of all paternal rights.

It is proposed that an out-of-wedlock father who desires notice should be required to have first registered with the Commissioner of Child Welfare within some reasonable period, prior to either a parental termination hearing or a voluntary surrender by the mother. After the initial notification to the Commissioner, the father would be required to reaffirm his continuing interest annually. This proposal incorporates the belief that it would not be wise to give blanket notice to all fathers who might have registered at any previous time. It is possible that a father who gave notice of his sincere interest when the child was born may have lost it before the mother released the child, and therefore should not be entitled to notice. Conversely, it is equally possible that a father may not have been anxious to be heard when his child was born, but does wish to be heard by the time the child is relinquished. It would be both unfair and unreasonable to deny notice to a father thus awakened to his responsibility. Finally, if the mother surrenders her rights before or at the time of the child’s birth, the father’s prior registration would entitle him to notice and enable him to initiate proceedings at either of those early stages. Thus, the proposed solution has the advantage of giving notice only to fathers who are interested at or very near the time when the child’s custody is being determined.

CONCLUSION

The number of out-of-wedlock fathers who are interested in their children is perhaps so small that it might appear an extravagant waste of time, energy, and money to direct attention to the rights and interests of so few. To those few, however, the problem is of great importance. When sincere concern for the welfare of their illegitimate children is shown, out-of-wedlock fathers deserve the attention of society so that their interests can be expressed freely and fairly.

93. See note 75 supra and accompanying text.
94. Notice to the Commissioner of Child Welfare followed by notice by the Commissioner to the out-of-wedlock father can be accomplished by amending existing statutory provisions without establishing an additional agency for this purpose. See Minn. Stat. §§ 257.175, .32, .33 (1961).