
Steven E. Davis

Follow this and additional works at: http://repository.jmls.edu/lawreview

Part of the Constitutional Law Commons, Family Law Commons, and the Fourteenth Amendment Commons

Recommended Citation

http://repository.jmls.edu/lawreview/vol12/iss2/6

This Comments is brought to you for free and open access by The John Marshall Institutional Repository. It has been accepted for inclusion in The John Marshall Law Review by an authorized administrator of The John Marshall Institutional Repository.
ILLEGITIMACY AND THE RIGHTS OF UNWED FATHERS IN ADOPTION PROCEEDINGS AFTER QUILLOIN V. WALCOTT

In 1968 the Supreme Court began to question the constitutionality of illegitimacy as a legal classification. The Court held void a state statute which denied illegitimate children a wrongful death action for the death of their mother.1 In a companion case the Court held that the state could not deny a mother a wrongful death action for her children merely because they were illegitimate at the time of death.2 In both cases the Court felt that there was no justifiable basis for the statutory classification, but refused to make illegitimacy a "suspect" classification.3

Having addressed illegitimacy in respect to the rights of the child and the mother it was inevitable that the rights of an unwed father, in regard to his illegitimate children, would be ques-

3. E.g., Mathews v. Lucas, 427 U.S. 495 (1976). The Court sustained a Social Security Act which involved classification based on illegitimacy and rejected the argument that illegitimacy was a "suspect classification" deserving "strict scrutiny." However, other decisions of the Court have employed a more demanding test than "mere rationality." Although it is difficult to define a consistent pattern of review, the Court has seemingly dealt most harshly with those statutes which punish illegitimates to discourage illicit adult relationships. The Court has ruled that to penalize a child for the wrongs of the parents is unjust and illogical, and that states cannot attempt to influence the actions of men and women by imposing sanctions on their illegitimate children. Weber v. Aetna Cas. and Sur. Co., 406 U.S. 164, 175-76 (1972).

Prof. Gerald Gunther characterized the more demanding standard of review as "rationality with bite." This standard falls somewhere between strict scrutiny and mere rationality and is used in those situations where dogma prohibits the use of the strict scrutiny standard. The mere rationality standard would not otherwise adequately remedy the inequities resulting from the discrimination alleged. G. GUNTHER, CONSTITUTIONAL LAW 758 (9th ed. 1975). A "strict scrutiny" test would still be applied if the classification infringes a "fundamental interest." The "fundamental interest" strand of fourteenth amendment equal protection and its application to the parental rights of an unwed father will be examined at various stages of this comment. See notes 25, 36, 42, 84 infra. See generally Comment, Constitutional Law—The Father of an Illegitimate Child: No Unconstitutional Rights in the Child, 18 HOW. L.J. 843 (1975) and Comment, The Emerging Constitutional Protection of the Putative Father's Parental Rights, 70 MICH. L. REV. 1581 (1972) [hereinafter cited as Putative Father's Rights].
tioned. The Court first dealt with the rights of an unwed father in *Stanley v. Illinois* and ruled that it was unconstitutional for Illinois to deprive the unwed father custody of his illegitimate children without a parental fitness hearing. It is unclear whether the *Stanley* decision was based on due process, or on equal protection grounds of the fourteenth amendment. This ambiguity was the result of conflicting statements in the holding.

First, relying on the due process clause, the Court struck down the Illinois law as it related to the parental rights of the unwed, because it conclusively presumed parental unfitness from the fact of illegitimacy. Second, relying on the equal protection clause, the Court held that the unwed father was entitled to the same hearing on the parental fitness question as a legitimate's parent.

Because the scope and the grounds of *Stanley* were open to speculation, the states differed in their interpretation of, and compliance with the decision. In particular, it was unclear what lengths a state was required to go to give notice to unwed fathers; what type of hearing the unwed father was entitled to; and whether the unwed father is entitled to a veto over an adoption proceeding. In short, the unresolved question after *Stanley* was whether an unwed father is entitled to the same substantive parental rights as the father or mother of a legitimate child.

Seemingly in response to this need for further clarification, the Supreme Court recently handed down its decision in the case of *Quilloin v. Walcott* wherein the parental rights of the unwed father were discussed in the context of adoption. The Supreme Court looked to the reality of the relationship between the unwed father and his illegitimate child. The major premise of the opinion recognized that any rights the biological parent could assert would necessarily arise out of an existing family relationship. These rights inure because a de facto family exists,

---


5. An "unwed father," as used herein, will refer to one who has not married the mother of his children, nor legitimated the children in an appropriate proceeding. A "parent" will refer to the mother or father of either a legitimate child or a child who has been legitimized in accordance with a statutorily prescribed procedure. See *Ill. Rev. Stat. ch. 37, § 701-14* (1971) (amended 1973).


7. *Id.* at 649.

8. *Id.* at 658.

regardless of the legal definition of "family." Against this background the Court outlined the rights of the unwed father and the correlative constitutional protections of those rights. With *Walcott* at hand, it is now appropriate to reexamine this problem area of constitutional law.

This comment will first define the constitutional rights and protections of an unwed father in an adoption proceeding. Second, a study of exemplary state responses to *Stanley* will be undertaken to determine their suitability after *Walcott*. Finally, there will be a discussion of ways states can comply with the constitutional principles of *Stanley* and *Walcott*.

**STANLEY AND WALCOTT: A COMPARATIVE STUDY**

*The Analytical Framework*

*Stanley* did not create a new fundamental right entitled to protection under the due process clause of the fourteenth amendment.\(^{10}\) Although the ambiguous statements of the holding would seem to contradict this notion, the focus of an analysis of *Stanley* should not be on fundamental rights, but on procedural due process and equal protection. The issue is whether the parental rights of an unwed father can be adequately protected when he is treated differently from parents of legitimates, merely because his child is illegitimate. The resolution of this issue is complicated by the need to look beyond the legal rights of a parent and consider what is best for the child.

To resolve this sensitive family relations problem it was not unreasonable for the Supreme Court to reject the traditional dogmatic approach and require states to extend protection of existing state law to unwed fathers of illegitimate children when a de facto family relationship exists between them.\(^{11}\) This emerging principle can be better understood through a comparative analysis of *Stanley* and *Walcott*.

**Stanley v. Illinois: The First Step**

The plaintiff, an unwed father, had lived with his illegitimate children and their mother intermittently for eighteen years. After the mother died, the state of Illinois sought to make the children state wards in a dependency proceeding.\(^{12}\) The state could take this action by showing that the child had no surviving "parent."\(^{13}\) Similar action could have been taken through a neglect

---

10. *See* note 3 *supra*, and notes 25, 36, 42 & 84 *infra*.
11. *See* note 41 and accompanying text *infra*.
proceeding if the state could show that the "parent" was unfit. 14 "Parent" was defined as the natural parents of a legitimate child, the survivor of them, the natural mother of an illegitimate child, or an adoptive parent. 15 The unwed father was not a "parent." Therefore, as a matter of law, the child had no surviving parent and whether the father was fit was irrelevant. 16 Once the state proved the children illegitimate, Stanley was denied the due process considerations afforded a statutory parent. Stanley raised constitutional objections to this procedure. The Illinois Supreme Court rejected his arguments, 17 but the United States Supreme Court reversed. 18

The Court’s holding in Stanley has been characterized by some commentators as imprecise and confusing. 19 This results, they say, from the ambiguous manner in which the Court articulated the holding: an initial statement stressing the due process violation, then, at the conclusion, a second statement emphasizing equal protection.

The initial statement was set out in terms narrowly limited to the facts of the case and based on a violation of the due process clause. 20 The import of this narrow statement is that the

16. Illinois adoption statutes were structured in a similar way. See notes 61 & 62 and accompanying text infra. The effect of this statutory arrangement was to conclusively presume that an unwed father was an unfit parent. The dependency hearing in Stanley proceeded on this presumption.
18. Stanley v. Illinois, 405 U.S. 645 (1972). Mr. Justice Powell and Mr. Justice Rehnquist took their places on the bench after oral arguments were completed and did not participate in the decision.
20. 405 U.S. at 649. The Court stated:
We conclude that as a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley equal protection of the laws guaranteed by the Fourteenth Amendment.
That the Court meant this to be controlling is buttressed by subsequent language which said that the interest protected here was “that of a man in the children he has sired and raised.” Id. at 651. One commentator noted this quote and suggests the opinion is limited to unwed fathers who have maintained an ongoing relation with their children by either taking custody of them or supporting them. Schwartz, Rights of a Father With Regard to His Illegitimate Child, 36 Ohio St. L.J. 1, 3 (1975). The clearest indication
holding was restricted to Peter Stanley or parties in his fact situation. This result required Illinois to give a de facto parent the same procedural rights as parents of legitimates.

In contrast, the sweeping scope of the conclusion, emphasizing equal protection,21 would give all unwed fathers the same substantive rights as parents without the constraint of proving the existence of a family relationship. This holding implies that parental rights emanate from biological kinship rather than a de facto family relationship. The class of those protected would include disinterested fathers as well as fathers who are unaware of their fatherhood.22

This sweeping interpretation of Stanley gained impetus when the Supreme Court vacated and remanded Rothstein v. Lutheran Social Services23 to be considered in light of Stanley. In Rothstein, the unwed father sought a hearing in the child's adoption proceeding, even though he had not lived with or raised the child. The implication of the remand has been that the Stanley protections must be provided to all unwed fathers, not just de facto parents like Mr. Stanley.24

that the decision was based on procedural due process grounds is in the dissent in which Chief Justice Burger and Mr. Justice Blackman objected to due process being the basis of the decision when it was not raised and decided in the Illinois courts. 405 U.S. at 659-60.

21. 405 U.S. at 658. The Court stated:
We have concluded that all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody. It follows that denying such a hearing to Stanley and those like him while granting it to other Illinois parents is inescapably contrary to the Equal Protection Clause.

22. Barron, Notice to the Unwed Father and Termination of Parental Rights: Implementing Stanley v. Illinois, 9 Fam. L.Q. 527, 528 (1975) [hereinafter cited as Barron]. Additional support for this approach came in a footnote which suggests that notice be given to all unwed fathers. 405 U.S. at 657 n.9. This infers that all unwed fathers are entitled to protections afforded Peter Stanley. See also Comment, Protecting the Putative Father's Rights After Stanley v. Illinois: Problems in Implementation, 13 J. Fam. L. 115, 125-126 (1973-74).

23. 405 U.S. 1051 (1972). The unwed father in Rothstein never lived with the child because the child was adopted at birth. Four months after the adoption, the unwed father petitioned the county court for a hearing in an attempt to assert his biological status as father. He was denied the hearing. 47 Wis. 2d 420, 178 N.W.2d 56 (1970). When the Wisconsin Supreme Court reconsidered the case, after remand by the United States Supreme Court, it held that Rothstein's parental rights could not be terminated without a hearing to determine his fitness. State ex rel Lewis v. Lutheran Social Serv., 59 Wis. 1, 207 N.W.2d 826 (1973). After the unwed father was found unfit in the subsequent hearing, the appeals court affirmed the adoption. Lewis v. Lutheran Social Serv., 68 Wis. 2d 36, 227 N.W.2d 643 (1975).

24. At least one commentator, citing Minnesota v. Nat'l Tea Co., 309 U.S. 551 (1940), has cautioned against making this inference because the Supreme Court may only be taking this action so the state court will have an opportunity to reconsider and clarify the basis on which it ruled. Comment, Constitutional Law—A Dependency Hearing Which Would Deny an
Even after Rothstein, the two interpretations of the holding in Stanley remained and it was still unclear how far the Supreme Court meant to go in prescribing procedural protections for unwed fathers. Also left unresolved was the question of how far a state must go to provide notice of the hearing to the unwed father. The recent case of Quilloin v. Walcott resolves some of these questions.

Quilloin v. Walcott: The Next Step

Leon Quilloin had an illegitimate son, Darrell Williams. The mother never married Mr. Quilloin and never lived with him. Later, the mother married Randall Walcott and Darrell moved in and lived with them until litigation commenced. Mr. Quilloin visited the child on occasion, provided support on an irregular basis and sometimes gave the child presents. He did not make any effort to legitimize the child.

Randall Walcott eventually filed a petition to adopt the child, and obtained the mother's consent. Under Georgia law only the mother's consent was needed for the adoption of an illegitimate child. Quilloin was notified of the petition by the


25. There was language in Stanley which suggested the interest which an unwed father had in his child was "fundamental" and that more than a rational state interest was needed to justify the infringement. The Stanley Court said "absent a powerful counterveiling interest," the interest of a father in his child warranted deference and protection. 405 U.S. at 651. However, in the context of the overall opinion, this language may only indicate that an unwed father's parental interests are to be protected by the requirement of procedural due process and that infringement upon these interests would not invoke the "compelling interest" test. Putative Father's Rights, supra note 3, at 1597. Thus the "fundamental interest" rationale does not lead to resolution of the central conflict of interpretations of the Stanley decision.

26. It must be remembered that notice was not an issue in Stanley and that the Court's remarks on the issue were limited to a footnote. 405 U.S. at 657 n.9. See note 52 infra.


28. A Georgia father may legitimize his child by marrying the mother and acknowledging the child as his own, Ga. Code Ann. § 74-101 (Supp. 1977), or by obtaining a court order declaring the child legitimate and capable of inheriting from the father. Ga. Code Ann. § 74-103 (Supp. 1977). These proceedings are ministerial and do not require proof that the best interest of the child will be served by the result.

29. Ga. Code Ann. § 74-203 (Supp. 1977). This provision states: "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimize him as before provided. Being the only recognized parent, she may exercise all the parental power." Ga. Code Ann. § 74-403(3) (1973) provided: "Illegitimate children.—If the child be illegitimate, the consent of the mother alone shall suffice." Section 74-403 was recently amended to omit subsection 3. Section 74-406, Notice to Putitive
Georgia Department of Human Resources and responded by petitioning to legitimize the child and object to the adoption. If the legitimation petition was successful, Quilloin would have been a “parent” entitled to object to the adoption. Georgia statutes did not provide for simultaneous hearing on the adoption and legitimation petitions. Nonetheless, the trial court, in light of Stanley, consolidated the proceedings and afforded Quilloin an extensive hearing on all issues relevant to the adoption and legitimation petition.

After the hearing the Georgia trial court found that legitimation was not in the “best interest of the child,” denied the legitimation petition and decreed the adoption. The Georgia Supreme

---

30. GA. CODE ANN. § 74-406(a)(b) (Supp. 1977) which deals with notice to unwed fathers, became effective Jan. 1, 1978. Subsection (a) provides that if the identity and location of the unwed father is known and he has not executed a surrender, he is to be notified by registered or certified mail. Subsection (b) provides measures to be taken when the identity or location of an unwed father is unknown. This section states that once a court identifies a father and determines he is entitled to notice, the court “shall enter an appropriate order designed to afford him such notice.” Although not stated, this grant of discretion would probably include the use of notice by publication.

31. Quilloin cited Stanley when asserting that the relevant provisions of the Georgia code were unconstitutional because they denied him parental rights granted married parents. The operative statute, GA. CODE ANN. § 74-403(1) & (2) (1977 Supp.), set forth consent requirements for parents other than unwed fathers. This statute stated “no adoption shall be permitted except with written consent of the living parents” or unless the parental rights have been terminated. An amended version of the statute became effective Jan. 1, 1978.

32. See note 31 supra.

33. See Quilloin v. Walcott, 434 U.S. at 250 n.8, 252 n.12, for a discussion of the procedural considerations involved with concurrent adoption and legitimation petitions and the action which the Georgia legislature took to revise these procedures. As noted earlier, the legitimation proceeding had been strictly ministerial. See note 28 supra.

34. “Best interests of the child” is one of the most important factors in determining the question of child custody. It is a broad and somewhat indefinite term. To determine what is in the “best interests” the court may consider the moral fitness of the parties, the home environment, the child’s emotional ties to the parties, the parties’ emotional ties to the child, the age, sex, or health of the child, the desirability of continuing an existing third-party relationship, and the preference of the child. See Turner v. Pannick, 540 P.2d 1051, 1054 (Alaska, 1975). As Walcott demonstrates, another element often considered is the adult’s right to assert parental ties with their children. Some writers have criticized the consideration of parental rights in determining a child’s best interests, suggesting instead that the total emphasis be the consideration of the child’s situation and developmental needs. See J. Goldstein, A. Freud, A. Solnit, Beyond the Best Interests of the Child 106 (1973).
Court affirmed.\textsuperscript{35} This deviated from the traditional approach which would have considered parental fitness determinative. The court ruled that the substantive rights of the unwed father were not violated by the application of the "best interest of the child" standard, without the fitness of the father being determined.\textsuperscript{36}

This ruling was affirmed by a unanimous United States Supreme Court on appeal.\textsuperscript{37} The Court first ruled that the unwed father's due process rights were not violated by the application of the "best interests of the child" standard. Justice Marshall's opinion\textsuperscript{38} noted that Quillioin did not seek custody of the child and that the adoption would not place the child with a new set of parents; Georgia was recognizing a family, not dissolving one.\textsuperscript{39} Therefore, the state was not required under the United States Constitution to decide anything other than what was best for the child before it decreed the adoption, and thus, terminated the unwed father's parental rights. In reaching this decision, Justice Marshall elaborated on the equal protection

\begin{itemize}
  \item \textsuperscript{35} 238 Ga. 230, 232 S.E.2d 246 (1977).
  \item \textsuperscript{36} See note 34 supra. The Georgia court also ruled that the strong state policy of rearing children in a family setting was a rational and valid basis for the illegitimacy classification in the Georgia statutes. In the event the unwed mother consented to the adoption of her child, the Georgia court did not think that giving an unwed father a veto power which could be used to thwart the child's placement into a healthy family situation was consistent with the declared public policy. 238 Ga. at 232, 232 S.E.2d at 248. In its use of the "rational basis" test, the Georgia court stated that fourteenth amendment equal protection "does not prevent classification if the distinction is based on valid state interests." 238 Ga. at 232, 232 S.E.2d at 248. In adopting "rational basis" as the standard, the Georgia court was implicitly rejecting the contention that Stanley v. Illinois had designated an unwed father's parental interests as "fundamental," the infringement of which could only be sustained by a "compelling state interest." See note 25 supra. The Georgia dissent adopted the broad interpretation of Stanley and argued that the Georgia statutory scheme was unconstitutional because it did not give an unwed father the same rights as parents in adoption proceedings. 238 Ga. at 235, 232 S.E.2d at 249. For an idea of just how differently the Georgia courts treated legitimate and illegitimate fathers, compare Walcott with Wheeler v. Little, 113 Ga. App. 106, 147 S.E.2d 352 (1966). See also Note, Consent of "Unfit" Parents Needed for Adoption—Unless Their Rights are Terminated, 28 Mercer L. Rev. 553 (1977).
  \item \textsuperscript{37} 434 U.S. 246 (1978).
  \item \textsuperscript{38} Note that Justice Marshall had joined the majority opinion in Stanley v. Illinois. Thus, the Walcott opinion probably represents the interpretation of Stanley which its majority intended.
  \item \textsuperscript{39} 434 U.S. at 255. The Court acknowledged that there is little doubt that the due process clause would be violated "[i]f a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." Id. at 255 (quoting Smith v. Organization of Foster Families, 431 U.S. 816, 862-63) (1977) (Stewart, J., concurring).
\end{itemize}
problem that *Stanley* pointed out, since Quilloin relied on it to preserve his rights.

Quilloin argued that under the equal protection clause he should be accorded the same power to veto the adoption that the state granted to parents, regardless of the fact of illegitimacy. The Court rejected this argument because Quilloin “never exercised actual or legal custody over his child.” From this fact, the Court presumed that the unwed father “never shouldered any significant responsibility with respect to the daily supervision, education, protection, or care of the child.” Thus, the Court concluded that the unwed father’s rights were distinguishable from those of parents and Georgia could deny him veto authority after the hearing without violating the equal protection clause.

The essence of the holdings in both *Stanley* and *Walcott* is the requirement that the unwed father be afforded procedural due process. The cases do not mandate exact equal protection of the wed and unwed merely because of the biological relationship between parent and child. However, illegitimacy cannot be used as a label through which parental unfitness is conclusively presumed. The unwed father must be given the opportunity to prove that he is a de facto parent before his legal relationship with the child can be terminated. If the unwed father has not undertaken a de facto parental role, the state can modify and terminate all the legal rights of the unwed father. For an example of the application of this rule one only need compare *Stanley* and *Walcott*.

---

40. 434 U.S. at 256. In particular, the appellant argued that his interests were indistinguishable from those of a divorced or separated father living apart from his children.

41. *Id.* In contrast, the Court said even a divorced father “will have borne full responsibility for the rearing of his children during the period of the marriage.” *Id.* At this point, the Court seemingly forgets that a father may obtain a divorce before his child is born and may never live with his child. Thus, for at least this type of divorced father, the Court’s distinction between wed and unwed fathers, based on child-rearing, fails.

42. *Id.* In summing up its ruling on equal protection, the Court said “[u]nder any standard of review, the State was not foreclosed from recognizing this difference in the extent of commitment to the welfare of the child.” *Id.* (emphasis added). Perhaps to preserve an otherwise unanimous opinion, the Court was avoiding the issue of whether rational basis or compelling state interest should be the test of equal protection. However, the *Walcott* decision lends support for the use of the rational basis test through its affirmation of the Georgia decision which used rational basis in upholding the state statute. *See* note 36 *supra.* Thus, the interest which accrues to an unwed father by way of mere biological relation may not be regarded as fundamental. *See* note 25 *supra.*

43. *See* note 20 and accompanying text *supra.*
Stanley and Walcott: A Comparison

Stanley and Walcott furnish the case law from which an unwed father's parental rights emanate. A comparison of these two cases is, therefore, a necessary step preceding any examination of state procedures involving unwed fathers in adoption proceedings. The unanimous Walcott decision is a sharp departure from what many commentators expected in light of Stanley. However, after taking note of factual and procedural distinctions between the cases and keeping in mind the narrow interpretation of Stanley, it will become apparent that the cases are consistent and complementary.

First, the family settings must be considered. Peter Stanley had maintained a de facto parental relationship with his children, but Leon Quilloin never lived with and never wanted to live with his child. Also, in Walcott, the mother raised the child and consented to the adoption. In contrast, the mother in Stanley died, leaving Peter Stanley to raise the children. Thus, Stanley occupied the role of parent because he was raising his children and, therefore, was in a stronger position to assert his parental rights than Quilloin.

Second, one must consider the judicial proceedings from which these two cases arose. Stanley was a guardianship action, after which the family was dissolved. The central inquiry should have been whether the father was unfit. Instead, the father was conclusively presumed unfit as a matter of law after the state proved that the children were illegitimate. In contrast, Walcott was a consolidated adoption/legitimacy hearing. There the test was whether the adoption was in the best interest of the child. This issue was addressed in a hearing in which the father was permitted to present evidence to support his claims on all "relevant issues." Thus, Stanley and Walcott are distinguishable in regard to the test applied and the manner in which the hearings were conducted.

44. The traditional importance of the unwed mother, as opposed to the father is the basis for disparity of parental rights as set forth in many statutory setups. See e.g. note 29 supra. This point was noted by the Georgia court, 238 Ga. at 253, 232 S.E.2d at 249, where it was a sufficient basis to distinguish this result from Stanley.

45. See note 34 and accompanying text supra.


[We must decide whether, considering the private interest affected and the governmental interest sought to be advanced, a hearing must be provided to one who claims that the application of some general provision of the law aimed at certain abuses will not in fact lower the inci-
Third, one must consider the traditional state policy favoring the raising of children in a family setting. In Stanley, the decision prevented the children from being removed from the custody of their father who helped raise them. This avoided destroying an existing family. The Court reasoned that the state's interest in removing the children from the "de facto family" was de minimis and did not justify the presumption of unfitness drawn only from the fact of illegitimacy. In Walcott, the adoption further solidified a family composed of the illegitimate, his mother and her husband. The unwed father was not a de facto parent. Therefore, the state's interest in confirming the existing family relationship was paramount because it was in the best interest of the child. Since both decisions provided a family setting consistent with the demands of state policy, the decisions are consistent.

Finally, one must consider the element of overriding concern—the best interest of the child. Both cases indicate that if the father is a de facto parent, regardless of the legitimacy of the child, it is in the child's best interest for the father to retain his parental rights. In Stanley, the Court refused to presume the father unfit, and by leaving the children with him the Court was attempting to prevent a potentially disturbing relocation of the children. In Walcott, the father was excluded from the family relationship when the trial court found that it would not be in the best interest of the child to be removed from its mother and her husband. The trial court also terminated the father's visita-

dence of those abuses but will instead needlessly harm him. . . . In short, where the private interests affected are very important and the governmental interest can be promoted without much difficulty by a well-designed hearing procedure, the Due Process Clause requires the Government to act on an individualized basis, with general propositions serving only as rebuttable presumptions or other burden-shifting defices. That, I think, is the import of Stanley v. Illinois.

Id. (citations omitted).

47. See note 36 supra.


50. Even if Leon Quilloin had successfully prevented the adoption, it is unlikely that he would have been granted custody of Darrell. Before Stanley v. Illinois, it was almost universally accepted that an unwed mother had superior rights to the custody of the child. See Annot., 45 A.L.R.3d 216, 223-24 (1972). The post Stanley cases have come to mixed results. Compare In re Brenda H., 37 Ohio Misc. 123, 305 N.E.2d 815 (1973) (giving mother custody preference) with Vanderlaan v. Vanderlaan, 9 Ill. App. 2d 260, 292 N.E.2d 145 (1973) (no custody preference to mother). When one of the parents has maintained custody of the child since birth, it has been urged that changing the abode of the young child is not in his or her best interest. See J. Goldstein, A. Freud, A. Solnit, Beyond the Best Interests of the
tion rights because his prior visits "disturbed the child." Thus, the decision in both cases confirm the family situations the Court felt would be in the child's best interest.

**After Stanley and Walcott**

In the aftermath of *Stanley* and *Walcott*, the nature of the legitimacy hearing may change. The legitimacy petition cannot be considered in the summary proceeding that was formerly utilized. Also, the hearing may be consolidated with the hearing on the adoption proceeding. Most important, the states must provide at least an opportunity for the unwed father to be heard on all issues that affect his legal rights to his illegitimate child. The father can preserve his rights by showing that he is a de facto parent. To prove de facto parent status, the father must show that he has provided daily supervision, education, and protection for the child. In addition, he may have to prove that removing the child from his custody would break up a de facto family. If the father is successful, the state must accord him all the rights accorded parents of legitimates; otherwise, the state may bar the father from interfering with the placement of the child.

While this approach seems reasonable and appropriate after considering state policy favoring preservation of the family, it is a departure from the traditional dogmatic approach to illegitimacy. Traditionally, the label of illegitimacy provided a convenient means for states to summarily preclude any participation of the unwed father in the legal affairs of his illegitimate child. However, once the child was legitimized, all the legal disabilities were removed and the unwed father was placed on a par with parents of legitimate children. The new approach rejects this traditional dogmatic attitude and requires the states to view the problem of illegitimacy through the eye of reality. The unwed father can no longer be conclusively presumed unfit or disregarded by definition. He must at least be afforded the opportunity to prove that he is a de facto parent and therefore, entitled to the same procedural protections afforded parents of legitimate children.

Even though the Supreme Court has required the states to provide procedural protection for unwed fathers, some jurisdictions do not require that all unwed fathers be notified of pending

---

51. Once a child is adopted, it is likely that the natural parent's visitation rights will be terminated. See H. Clark, Domestic Relations § 18.1 (1968).
actions. The Court did not resolve the question of whether all unwed fathers are entitled to notice of pending adoption proceedings, because the issue was not raised by either party in *Walcott* or *Stanley*. However, in a footnote, the *Stanley* Court suggested that all unwed fathers have a right to notice of any proceeding which could result in termination of their rights.\(^5\)

This approach seems logical for without notice the unwed father would be unable to protect his rights in a hearing before his rights were terminated. This logic led commentators to conclude that a decree terminating the rights of an unwed father and effecting an adoption would be voidable if the unwed father was not notified.\(^5\)

Thus, to insure the validity of adoption procedures, some states have undertaken the total obligation to notify the unwed father.\(^5\) In contrast, some argued that the unwed father still had the initial burden of making his interest in the child clear before notice is given.\(^5\) *Walcott* reinforces this by holding that not all unwed parents are entitled to all parental rights; only de facto parents must be afforded full parental rights.\(^5\) This suggests that only de facto parents must be notified. It may also suggest that the unwed father must initiate the hearing to protect his interest. Regardless of which approach is adopted, by upholding the Georgia statutes, the Court implies that administrative convenience and delay avoidance may be a rational basis for notifying only de facto parents since it will fa-

---

\(^{52}\) 405 U.S. 645, 657 n.9 (1972). The Court said:

*Extending opportunity for hearing to unwed fathers who desire and claim competence to care for their children creates no constitutional or procedural obstacle to foreclosing those unwed fathers who are not so inclined. The Illinois law . . . provides for personal service, notice by certified mail, or for notice by publication when personal or certified mail service cannot be had or when notice is directed to unknown respondents under the style of “All whom it may Concern.” Unwed fathers who do not promptly respond cannot complain if their children are declared wards of the state.*

\(^{53}\) See Barron, *supra* note 22, at 529.

\(^{54}\) See, e.g., ILL. REV. STAT. ch. 40, § 1509 (1977).

\(^{55}\) See *Freeman*, *supra* note 19, at 396. The crux of this position is that in all of the early cases, the unwed father himself initiated the proceeding.

\(^{56}\) *Walcott* also gives rise to a contrary argument for giving notice to all unwed fathers. This comes from the *Walcott* Court’s response to an argument by the Walcotts that the unwed father waived his constitutional interests in the child by not legitimizing him before the adoption. The Court responded, saying: “We would hesitate to rest decision on this ground, in light of the evidence in the record that appellant was not aware of the legitimization procedure until after the adoption petition was filed.” 434 U.S. at 254. This indicates that the Court may not have approved of a state procedure whereby notice is not provided on the grounds of lack of parental interest. In the above quote, the Court was dealing with the unwed father’s ignorance of the law. An even more compelling situation for notice under this logic would be ignorance of the existence of the child. Thus, this may be a suggestion by the Court that all unwed fathers must be notified.
cilitate placement of children into permanent homes.  

With the issues of hearing, procedure, and notice more fully defined, we have a better idea of the protections which a state must afford the interests of an unwed father. With these more definitive standards in mind, the next step is an examination of exemplary state reactions to Stanley v. Illinois.

**EXEMPLARY RESPONSES TO Stanley:**

**An Examination After Walcott**

**Illinois: The Sweeping Interpretation of Stanley**

One month after Stanley was decided, the Illinois Supreme Court ruled that provisions of the Illinois Adoption and Paternity Statutes were unconstitutional. The Illinois Court adopted the sweeping equal protection interpretation of Stanley rejecting the distinctions between unwed fathers and all others based on illegitimacy. Now, the court was requiring the consent of both mother and unwed father for the adoption of the illegitimate child unless first declared to be unfit parents. The Illinois Attorney General concurred in this approach.

The Illinois legislature codified this sweeping interpretation by enacting legislation affording broad protections for the rights and interests of the unwed father. First, the statutory definition was amended to include all unwed fathers. Also, the adoption provision which had previously said that consent was unnecessary was amended to require the consent of the unwed father. Now, Illinois must either get the consent of the unwed father or terminate his parental rights through a neglect proceeding. In addition, a notice provision has been added to the Adoption Act. This section requires that the unwed father be notified of the pending adoption and informed of his rights. Such notice is given after an “interested party” requests it in writing. Service may be by person or certified mail. To preserve his rights under the Act the unwed father must file a dec-

57. See note 42 supra.
59. 52 Ill. 2d at 22, 284 N.E.2d at 292.
laration of paternity within thirty days. If the whereabouts of the unwed father is unknown, the Act provides for the mandatory use of notice by publication. This notice does not contain the name of the mother. If an unwed father does not respond within thirty days, his rights in the child are terminated by operation of law.

These measures, criticized by commentators as being "an overreaction" and "flawed and imprecise," nonetheless seemed to be a way to comply with a sweeping interpretation of Stanley. In the wake of Walcott, however, it is now safe to say that Illinois went beyond what the Supreme Court required in Stanley. Walcott demonstrates that the unwed father does not have to be given full parental rights prior to a hearing to determine whether he is a de facto parent. Illinois has given full parental rights to unwed fathers who may have no protectable interests in the child without the constraint of the hearing.

This overbroad approach leads to unnecessary obstacles and potential delays in the adoption process. Now, to vitiate the unwed father's rights, the state must prove by clear and convincing evidence that he is unfit. If the unwed father is not a "de facto" parent, defined by the Supreme Court in Walcott, the time consuming and sometimes unsuccessful termination procedures could be avoided. Thus, Illinois could remove consent and termination obstacles from the adoption process by amending the statutes to protect only de facto parents as defined in Walcott.

The present Illinois procedure cannot be criticized for prescribing notice to all unwed fathers. As noted earlier, the notice

67. Id.
68. Ill. Rev. Stat. ch. 40, § 1515 (1977), provides:

   In the event the putative father does not file a declaration of paternity of the child or request for notice within 30 days of service of the above notice, he need not be made a party to or given notice of any proceeding brought for the adoption of the child. An Order or Decree may be entered in such proceeding terminating all of his rights with respect to said child without further notice to him.

69. See Barron, supra note 22 at 529 n.4.
70. See Freeman, supra note 19 at 398-99.
72. See text accompanying note 41 supra.
question is still open to debate after Walcott.74 Aside from constitutional considerations, however, the Illinois notice by publication provision75 has been criticized as being ineffective.76 The thrust of this criticism is that the unwed father, who is unaware of his paternity, will not know the child in question is his because the mother's name is not in the notice.77 If this criticism is valid, the notification by publication is not always fulfilling its intended purpose. In the absence of a clear constitutional mandate, Illinois would have justification in discontinuing notice by publication in cases where the facts indicate it will be unsuccessful. A discretionary use of this type of notice would reduce the expense and delays resulting from its use in low percentage situations.

New York: Restricted Interpretation of Stanley

When Stanley was decided, New York had statutes similar to Illinois; only the consent of the mother was required in the adoption of an illegitimate child.78 An unwed father was not even entitled to notice of the adoption proceeding.79 After Stanley, the New York courts were forced to re-evaluate their statutes.

The first case dealing with this issue was Doe v. Department of Social Services80 which was decided five months after Stanley. The New York trial court recognized that an unwed father has substantial interests in his child, and therefore, must be given notice of impending actions which may terminate his rights even though a delay may result. The statute in issue was read to mean the mother's consent suffices "only where there has been no formal or unequivocal acknowledgement or recognition of paternity by the father."81 An unwed father was given status to contest an adoption of his child, but was not given a veto power over the adoption.82

The New York Court of Appeals first dealt with a Stanley constitutional challenge in In re Malpica-Orsini.83 The issue

74. See text accompanying notes 52-57 supra.
76. See Freeman, supra note 19, at 397.
77. Id.
78. N.Y. [DOM. REL.] LAW § 111(1)(c)(McKinney Supp. 1978) provides that consent is required "of the mother, whether adult or infant, of a child born out of wedlock."
81. Id. at 671, 337 N.Y.S.2d at 107.
82. Id.
again concerned the unwed father's right to stop the adoption. The unwed father in this case had lived with the mother and his child until the child was eighteen months old. After the mother and father separated, the mother initiated an action for child support. The unwed father admitted paternity, was ordered to make support payments, and received visitation rights.

After the mother married, the new stepfather filed an adoption petition. The unwed father was permitted to contest the adoption in the hearing but was not given a right to veto the adoption, and was not declared an unfit parent. The Westchester family court merely ruled that the adoption was in the child's best interests and decreed the adoption. The unwed father appealed, claiming that this procedure denied him equal protection, as set forth in *Stanley*.

The court of appeals affirmed, and upheld the constitutionality of the statute. The court thought *Stanley* was decided on due process grounds and limited to the facts of the case. In contrast to *Stanley* the unwed father in *Orsini* had been given notice and a hearing to contest the adoption by court direction. Thus, while Peter Stanley had been denied due process in not receiving a hearing on his parental fitness, the court felt that due process was satisfied in this case since a hearing was provided.

The court felt that a classification which denies an unwed father a veto power was supported by a valid state interest, whereas in *Stanley* there was no rational basis for denying the unwed father a hearing. Requiring consent of unwed fathers would delay and sometimes deny a child the blessings of adoption, and giving such a veto power would allow some unwed fathers an opportunity to extort payoffs in return for their consent. With these considerations providing a "rational basis," the court held that the New York adoption statute did not violate the equal protection clause.

It appears that the approach which New York took was partially correct when examined in light of *Walcott*. *Orsini* was correct in its conclusion that *Stanley* did not require legal equality

---

84. The New York majority's use of a rational basis test was criticized by the dissent which argued that *Stanley* had made an unwed father's parental interest "fundamental" and that a compelling state interest was required to uphold the statutory distinction. 36 N.Y.2d at 582, 331 N.E.2d at 498, 370 N.Y.S.2d at 524 (Jones, J., dissenting). However, *Walcott* suggests that the *Orsini* majority was correct. See note 42 supra.

85. 36 N.Y.2d at 572, 331 N.E.2d at 489, 370 N.Y.S. 2d at 516.

86. Id.

87. For commentary critical of the *Orsini* decision, see Note, Constitutional Law—Statute Permitting Adoption of Illegitimate Child Without Father's Consent is not Violation of Equal Protection, 44 Ford. L. Rev. 646 (1975).
of wed and unwed fathers. However, it would seem that New York was incorrect in refusing parental rights to those de facto parents described in Walcott.\textsuperscript{88} If Orsini were decided today, an application of the Walcott standard might dictate a contrary result\textsuperscript{89} since the unwed father had helped raise the child until the child was eighteen months old. This may have been a sufficient shouldering of parental responsibility to entitle the unwed father to the same parental rights as a legitimate father. To correct this deficiency, the New York courts would only have to extend the father's rights which had been first read into the statute in Doe v. Department of Social Services.\textsuperscript{90}

New York has not assumed an obligation to notify all unwed fathers of their child's impending adoption proceeding. Unlike Illinois, New York's statute\textsuperscript{91} does not require notice to all unwed fathers. Instead, the statute sets forth seven classes of unwed fathers who are to receive notice.\textsuperscript{92} Most of these classifications are based on a solid connection with the child, ei-

\textsuperscript{88}. 434 U.S. at 255.
\textsuperscript{89}. The Supreme Court is now considering a case testing the constitutionality of the New York Statute; Caban v. Mohammed, No. 77-6431 (filed Mar. 27, 1978) \textit{forma pauperis} granted and probable jurisdiction noted May 15, 1978. Oral arguments were heard on November 6, 1978. As in Walcott, the unwed father is seeking to block the adoption of his child by the natural mother and her husband. The New York Surrogate Court granted the petition of adoption over the objections of the unwed father; the New York Court of Appeals affirmed. 43 N.Y.2d 708, 401 N.Y.S. 2d 208 (1978). Aside from the question of the illegitimacy classification, the unwed father also argues that the disparate New York treatment of unwed fathers and mothers creates an unconstitutional classification based on sex.
\textsuperscript{90}. 71 Misc. 2d 666, 337 N.Y.S.2d 102 (Sup. Ct. 1972). \textit{See} text accompanying note 81 \textit{supra}.
\textsuperscript{92}. \textit{Id.} § 111-a(2) provides:

\begin{enumerate}
\item Persons entitled to notice, pursuant to subdivision one of this section, shall include:
\begin{enumerate}
\item any person adjudicated by a court in this state to be the father of the child;
\item any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two-c of the social services law;
\item any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of the social services law;
\item any person who is recorded on the child's birth certificate as the child's father;
\item any person who is openly living with the child or the child's mother at the time the proceeding is initiated and who is holding himself out to be the child's father;
\item any person who has been identified as the child's father by the mother in written, sworn statement, and
\item any person who was married to the child's mother subsequent to the birth of the child.
\end{enumerate}
\end{enumerate}
Illegitimacy

whether by law, by actual relationship, or by way of the mother.\textsuperscript{93} The statute provides for service by registered or certified mail, but, unlike Illinois, the statute expressly states that service by publication is not necessary.\textsuperscript{94} Whether this notice procedure satisfies all due process requirements is unclear after \textit{Stanley} and \textit{Walcott}. The limited notice obligation is, however, a consistent outgrowth of the due process interpretation of \textit{Stanley}.\textsuperscript{95}

In light of the recent \textit{Walcott} decision, it would seem that the New York courts were essentially correct in their restricted interpretation of \textit{Stanley}. By judicial incorporation of the \textit{Walcott} standards into already existing statutes, New York can afford necessary constitutional protections to the interests of unwed fathers without amending the statutes. This is a sharp contrast to Illinois where after \textit{Walcott}, the state’s response to \textit{Stanley} can now be seen as an overreaction.

\textit{Uniform Parentage Act: Model Response to Stanley}

In the summer of 1973, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Parentage Act (U.P.A.). The purpose of the U.P.A. was to offer a model legislative response to \textit{Stanley} and its progeny.\textsuperscript{96} Among the problem areas which the U.P.A. deals with are adoption and custody of illegitimate children. These problem areas were characterized by Professor Krause as difficult and uncertain in the wake of \textit{Stanley}.\textsuperscript{97} The suggested legislative response to the adoption and custody problem is embodied in section 24 of the U.P.A., entitled \textit{Custodial Proceedings}.\textsuperscript{98} Professor Krause has stated that

\textsuperscript{93} Note that there is the class of unwed fathers whom the mother fails to identify under § 111-a(2)(f). In many cases, the mother may want to avoid involvement by the father and refuse to identify him for purpose of notice.

\textsuperscript{94} N.Y. [Dom. Rel.] Law § 111-a(4) (McKinney Supp. 1978).

\textsuperscript{95} See text accompanying notes 55-57 supra. The weakest aspect of the New York notice statute may be the absence of any use of notice by publication. Without the use of publication, unwed fathers falling within one of the seven categories of the statute could still very well fail to get notice when their whereabouts are unknown. To justify the failure to use publication in such a case, the state could only cite administrative convenience. In a case where the equities are heavily in favor of the father this might be held to be a violation of due process. The discretionary use of notice by publication in instances where the chances of success are good would strengthen the statute against such an attack.

\textsuperscript{96} Krause, \textit{The Uniform Parentage Act}, 8 Fam. L.Q. 1 (1974) [hereinafter cited as Krause]. Professor Krause served as reporter-draftsman of the Committee on a Uniform Parentage Act of the National Conference of Commissioners on Uniform State Laws.

\textsuperscript{97} \textit{Id.} at 7. Krause characterized the \textit{Stanley} decision as "imprecise."

\textsuperscript{98} \textit{Id.} at 23. The full text of the U.P.A. is included with Professor Krause’s article.
the committee intended to conform to a reasonable interpretation of *Stanley* and at the same time, provide an efficient procedure by which interference and delay in the adoption procedure is kept at a minimum.99

Under the U.P.A., when a child is put up for adoption, a man whose paternity has been determined in a court action, or is a "presumed father," must be afforded notice and full parental rights.100 A man will be presumed a parent if he receives a child into his home and holds the child out as his natural child or if he acknowledges paternity in a writing filed with a court.101 A man who has been identified as the child’s father must be notified.102 If he appears at the hearing, the court must determine his custodial rights.103 If he does not appear, his parental rights in the child are terminated by operation of law.104 If no father is identified the court shall enter an order terminating the unknown father’s parental rights.105 Such an order becomes “incontestible,” but may be appealed within six months.106

The notice section of the U.P.A. provides that the state use its usual rules of service.107 In the event the natural father is not identified, notice by publication may be used when the court determines it is appropriate and likely to lead to identification.108

---

99. *Id.* at 14.
100. **Uniform Parentage Act** § 24(a) provides:
    If a mother relinquishes or proposes to relinquish for adoption a child who has (1) a presumed father under Section 4(a), (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under [the appropriate State statute] [the Revised Uniform Adoption Act], unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

101. **Uniform Parentage Act** § 4(a). Four of the five classifications of presumptive parent are roughly equivalent to the "de facto parent" as defined in *Walcott*. The fifth class of fathers, who have acknowledged their paternity in writing, includes fathers who have not lived with or helped raise their children.

102. **Uniform Parentage Act** § 24(c) provides for measures to identify a child’s father. "[T]he court shall cause inquiry to be made of the mother and any other appropriate person." Under § 10(B) of the act, the court can compel the testimony of any witness. Thus, reading these sections together, the court can compel the mother to identify the father. There is some question as to whether this infringes on the mother's constitutional rights to privacy. See *Barron*, *supra* note 22, at 537-41. See also *Krause*, *supra* note 96, at 8.

103. **Uniform Parentage Act** § 24(d) (1973).
104. *Id.*
106. *Id.*
108. *Id.*
Professor Krause has indicated that embarrassment to the mother is one circumstance for a court to weigh in deciding whether to use notice by publication.\footnote{109. Krause, \textit{supra} note 96, at 15-16.}

After this examination of the rights conferred upon unwed fathers by the U.P.A. and the rights required after \textit{Walcott}, it is evident that the U.P.A. goes further than what is constitutionally necessary. The fully privileged class of fathers who had "received a child into [their] home and openly [held it] out as [theirs]" seems equivalent to the de facto father in \textit{Walcott}—the father who exercises legal custody over his children or "shoulder[s] significant responsibility with respect to daily supervision." However, by allowing parental rights to any identified father who responds to the notice, the U.P.A. gives full parental rights to more unwed fathers than required by \textit{Walcott}. Clearly, not all the fathers who respond to the notice and appear at the hearing will have actually reared the child. Leon Quilloin is one such example. Thus, like Illinois, the U.P.A. went further in equalizing the rights of wed and unwed fathers than is necessary.

Although the U.P.A. overreacted somewhat to \textit{Stanley}, it did not go as far as Illinois. Illinois gives full parental rights to all unwed fathers who request notice of later proceedings.\footnote{110. See note 68 and accompanying text \textit{supra}.} The U.P.A. gives full parental rights to only those fathers who appear at the hearing and demand custody rights. Thus the U.P.A. will be conferring full parental privileges on a more restricted group of interested fathers. This requirement of actual custodial interest in a child may prevent spiteful misuse of parental rights.\footnote{111. Recognizing the difficulty of finding parental unfitness under some of the traditional grounds of unfitness, Illinois enacted \textsc{Ill. Rev. Stat.} ch. 40, § 1501D(l) (1977) which provides that "[f]ailure to demonstrate a reasonable degree of interest, concern, or responsibility as to the welfare of a newborn child during the first 30 days after its birth" is a ground for an adjudication of parental unfitness and termination of parental rights. This clause should be effective at least against those fathers who knew of the illegitimate child's birth. However, it may be of questionable application to those fathers who were unaware of their paternity. See note 56 \textit{supra}.}

While the exact notice requirement remains undefined after \textit{Stanley} and \textit{Walcott}, it would seem safe to assume that the U.P.A. provides an adequate notice procedure. In comparison with the Illinois procedure, the notice by publication as provided by U.P.A. would seem more efficient and effective than that of Illinois. By making the use of notice by publication discretionary with the court, the U.P.A. avoids the use of this procedure in a situation where it is unlikely to succeed. In contrast, Illinois' mandatory use of notice by publication will not avoid
those situations where success is unlikely. Since the fact situation in such cases can be very diverse, leaving the use of publication within the discretion of the court may be an appropriate solution.

**CONCLUSION**

A state can comply with the constitutional standards of due process and equal protection without incurring significant interference and delay with its adoption process. The analysis of the three legislative responses to *Stanley* illustrates some measures which are necessary or expedient and those which seem unnecessary and can cause delays in an adoption procedure.

One measure to avoid is the statutory inclusion of all unwed fathers into the class of parents deserving the right to consent over the adoption. Only those fathers who have actually helped raise the child and who have an actual parental relation must be afforded equal parental rights. The best measure would reject a dogmatic approach and allow courts discretion to apply the *Walcott* standard to the particular facts of each case. The procedure of adjudicating parental rights on an ad hoc basis, utilized in New York and to some extent in the U.P.A., avoids the need to terminate the parental rights of an unwed father who is not a de facto parent.

Still unresolved after *Stanley* and *Walcott* is the problem of notice. One procedure which merits serious consideration is the U.P.A.'s use of discretionary notice by publication. This procedure seems to promise efficiency while being, at the same time, constitutionally sound.

One clearly desirable measure is the U.P.A. procedure for terminating the rights of unknown or disinterested fathers which is both efficient and equitable. If the father is not interested enough in the child's welfare to appear at the hearing and demand custody, his rights are summarily terminated. By having the statute prescribe this termination the burdensome process of proving the father unfit under one of the general unfitness classifications is avoided.

The main determining factor in defining an unwed father's parental rights should be the best interests of the child. "Best interests of the child" seemingly was of overriding importance in *Walcott*. The *Walcott* Court sustained an application of the "best interests of the child" standard as providing due process. "Best interest of the child" was the thrust of Georgia's public policy argument which the Supreme Court found to sustain the illegitimacy classification against the equal protection attacks. It is quite possible that it was an overriding concern for the wel-
fare of the child which brought the Supreme Court to hand down an unanimous decision. Finally, it is the probable difference in the extent of commitment to a child's welfare which distinguishes fathers who have raised their children from those who have not. This is really the underlying consideration derived from an analysis of *Stanley* and *Walcott*.

Therefore, the best interests of the child should be the focal point of analysis in determining the rights of unwed fathers. A statutory procedure which provides for an *ad hoc* determination of the child's best interests throughout the diversified fact situations which inevitably arise, is constitutionally and socially sound.

*Steven E. Davis*