The Parent Trap

Jay and GayLynn Brummett wanted a child; the state of Nebraska gave them one -- until it received an anonymous call that GayLynn has AIDS. Is theirs a story of fear and prejudice or a struggle over the best interests of the child?

May 1, 1996 By Evan Forster

In Indiana, two-year-old Erica was removed from the only home she'd ever known and placed in the custody of the Department of Public Welfare because her foster parents had been diagnosed with HIV. The court said it was in the child's "best interests." In New Mexico, David Irving, a man with HIV, adopted a boy who had spent the first five years of his life shuffled around the foster care system. David did not disclose his HIV status to the Children's Protective Services' Adoptions Unit. Seven years later -- still healthy -- David feels his nondisclosure was "in the best interests of the child." In Pennsylvania, openly HIV positive Lynda Arnold and her HIV negative husband, Tony, adopted David, a six-month-old baby, prenatally exposed to drugs. For fear of any repercussion later on down the line, Lynda informed the adoption agency of her HIV status prior to setting up her first meeting. She felt her openness would be in the "best interests" of her son. In Florida, Charles and Mary Lackey also disclosed their HIV status to Health and Rehabilitative Services (HRS) before bringing Elizabeth, then six months old, into their foster home. They successfully adopted her at age four. Damning articles in local papers, however, motivated the director of HRS to urge reversal of the adoption. In a 26-page ruling, the presiding judge stated that removal was "in the best interests of the child."

"The best interests of the child" -- a phrase I have often used in countless arguments as the defender of children's' rights and ardent foe of child abuse, not to mention de facto fairy Godmother to all of my friends' children, ages one to 21. I never imagined I would be at odds with that phrase or at the very least unsure of its use. What exactly does it mean in this context? Is it in the best interests of children to be in an HIV negative, two-parent home with a white picket fence? Maybe, but every child doesn't have that option. If the child is "hard to place" or has "special needs" due to prenatal exposure to crack cocaine or is over 10, is it in his "best interests" to spend years in the foster care system, moving from home to home or ending up in a state-run institution? Is this preferable to a loving, financially secure environment where a parent has a higher risk of dying before the child reaches maturity? Couldn't that happen in a healthy home? And what of an infant, with or without special needs, who has been placed in the foster care of an HIV positive parent or couple? Is it in his "best interests" to be moved at age one or two during the most critical bonding years of his life? Wouldn't that be traumatic loss -- as traumatic as something as natural as death? I began to wonder if the phrase "in the best interests of the child" isn't being used as a cloak for "in discrimination against people with HIV."

It was when I met the Brummetts that I began to figure it out.

“In all my years of practicing law, I have never dealt with the shenanigans, or in my opinion, the lack of ethics, that I have dealt with in this case.” Charles “Chuck” Bentjen does not wear a Wall Street three-piece. There is no sign of gray in his red hair and no slick manner of speech to suggest that this is the seasoned lawyer who took on the Nebraska Department of Social Services and the attorney general’s office for the return of four-year-old John T. to the care of his foster father and HIV positive foster mother, Jay and GayLynn Brummett. In fact, Bentjen’s tightly bound tie, crisp blue shirt and unjaded belief that he was “still living in a fair country where people were taught to care about one another” might have mislead me to mistake him for a law-office intern were it not for the weariness in his eyes -- a weariness with roots reaching back eight months when he agreed to represent the Brummetts pro bono. In my attempt to nail down the phrase “best interests of the child,” the matter of John T. would be, for me, one of the most perplexing and eye-opening I would encounter.

Chuck Bentjen began spinning the twisted tale of the Brummets over dinner. By the time he finished, I no longer had an appetite.

Bentjen became involved in May 1995; he was in the midst of moving his one-man, in-home practice to new offices. It was there, squeezed between the mom and pop stores of Havelock Street, that the small, red-bearded attorney received a phone call from the American Civil Liberties Union (ACLU). Would he be willing to represent a foster care couple whose three-year-old was being removed from their home because of the wife’s HIV status? Another no-money-maker. Another good deed. Bentjen left the world of legal aid, where the indigent find representation and the attorneys are underpaid, to pay off a few dental bills and the mortgage on his modest two-bedroom house. Still he agreed to review the case and meet with the couple.

On December 28, 1991, a young woman, now committed to Nebraska’s state mental hospital due to severe schizophrenia, gave birth to John T. Three months later the birth mother and father, a convict in the state penitentiary, relinquished all parental rights. Several miles away, in the center of Lincoln’s downtown, foster care case manager Sharon Isaacson had no problem deciding on placement for the infant: The home of Jay and GayLynn Brummett, the young marrieds whose reputation for excellence in parenting sped them to the top of the DSS’s list of foster care and prospective adoptive parents. In fact, John T. would be the eleventh child to be placed in the care of these model foster parents. In six months, according to Nebraska state law and assurances by the DSS, John would be available for adoption by the Brummetts. It was a Disney dream-come-true story for everyone. Then, in mid-September, 1992, an anonymous call came into the Lincoln Resources Unit at DSS: “GayLynn Brummett has AIDS.”

At the time of her foster care licensing, GayLynn’s personal physician, Dr. Robert Ewart, advised her to put “good” on her Licensing Health Information Report because her health was, in fact, good. Three years later, after John T. had been living with the Brummetts for more than 24 of his 27 months of life, the DSS took the three-and-a-half-year-old away from the only parents he’d ever known -- against recommendations by DSS-appointed psychologists and with a case pending

before the Nebraska Court of Appeals. Their reason, supported by the Governor: “The best interests of the child.”

Bentjen took the case.

I had a million questions. I needed Bentjen to fill in some of the blanks. His dinner would go uneaten as well:

After being advised of the DSS’s mistaken belief that the bereft couple had “no further interest in John T.,” Chuck Bentjen wrote the following letter to their case manager, Sandy Thompson:

“Anyone who has been involved in this case is surely aware of how much Mr. and Mrs. Brummett love John For one to claim that the Brummetts are no longer interested in John is absurd, and would probably be done to justify his or her own deplorable acts in tearing apart this family.”

Bentjen was so taken by the Brummets’ dilemma he agreed not only to represent them in a civil law suit, based on discrimination and the Americans with Disabilities Act of 1990 (ADA), but found himself assisting the legal representative for the child, Pat Carraher, guardian ad litem, with the Nebraska Court of Appeals’ case for the return of the child to the Brummetts’ home. And they won.

The attorney general’s office and the DSS, however, would not be deterred. They continued to keep the child out of the Brummett’s home and the case mired in the juvenile and Supreme Court systems.

As the matter became more and more complicated, Bentjen’s commitment to return John to the Brummetts became more steadfast, even as his wallet became more threadbare. As we finally left the Green Gateau restaurant on Tenth Street, I point-blank asked him what it was that kept him so involved. He grinned at me and said, “Wait until you meet the Brummetts.”

The following morning, I parked my rental near the south side of Lincoln’s architectural pride, the State Capitol. It was, as the Cornhusker Hotel’s concierge promised, far easier to find than my map lead me to believe. One required a mere lift of the head from anywhere in the valley and there it stood -- a work of architectural splendor overlooking the rest of Lincoln’s modest Midwestern skyline and the barren Nebraska cornfields to its north and northwest. The whole thing was a monument to the power of government.

The morning’s barrage of phone calls to the DSS, the governor’s office and the attorney general -- all of whose offices reside in the building I was about to enter -- had me running late for my meeting with Marshal Lux, the state ombudsman (the guy who handles all complaints about state agencies, including the DSS). Still, considering my brief conversations with these government entities, I couldn’t help but take a moment to savor the irony of Aristotle’s quote above the south entrance: “Political society exists for the sake of noble living.”

“The discovery that this mother had been diagnosed HIV positive was the reason why this child had been moved and was the trigger for the [DSS’] actions,” said Marshall Lux, whose doubled-

breasted suit, French cuffs, diamond links and friendly nature softened his strapping, athletic frame. “The second reason I think they wanted to remove this child was punitive. They wanted to punish the foster parents for not telling them about GayLynn’s HIV diagnosis.” Having afforded me much more than the minutes promised, he left me alone with Marilyn McNabb, the deputy ombudsman for the DSS and the woman whose guidance had been the catalyst which turned the tide for the Brummetts, leading them to Chuck Bentjen.

At first glance, McNabb is anyone’s good-hearted aunt in her befuddled blouse embroidered with tiny butterflies at each hole. Follow this with her wink and a nod and it becomes no nonsense, down to business. McNabb, who in 1993 had been called in her capacity as the deputy ombudsman to meet with the DSS and the Brummetts at their home, remembered being struck by the bond between the parents and John. Like Bentjen, she too found herself compelled to help keep this family together.

Unable to stand by and watch as the deep-pocketed DSS mounted its strategy, McNabb assisted the Brummetts in their search for legal counsel. She directed the foster parents to the Nebraska Civil Liberties Union, eventually leading them to Bentjen. She continued to support the Brummetts through her efforts to help Bentjen and intervene on their behalf with the DSS. At one point, while sharing her personal chronology of the events surrounding the matter of John T. with me, McNabb suddenly put her papers down. “My observation of the father with this child, when we first got involved in this case, was one of extraordinary attentiveness to John.”

I interrupted her before she could resume her paper-trail chronology and asked if Jay Brummett had been her reason for becoming so involved. Surely, as the deputy ombudsman for the DSS, she didn’t have the time to personally concern herself with every fost-adopt case. Not surprisingly, McNabb said what was fast becoming a familiar response to my standard query.

“Wait until you meet the Brummetts.”

So, I did.

John’s room was bright yellow save for the red, green and blue striped curtains made by Grandma Jeanette and the polka-dot blanket on his tiny bed in the corner. An alphabet border lined the walls just above the shelves filled with Christmas gifts -- unopened Christmas gifts.

“We were hoping to give them to him when he came home, but that was when we thought we’d have him back by Christmas,” GayLynn Brummett said in a shaky, almost monotone voice of one whose seen too much battle and lost too many times.

“Seems like every time we win a case or something good happens, the DSS finds another way to keep us from being with John,” Jay said with even less emotion.

Before we sat down to speak in what was once their son’s room, I felt certain that they had this conversation over and over again, not just with one another, but with themselves.

These were the Brummetts -- nervous to speak with the national press for the first time, not knowing what to expect as I entered their home. Another outsider scrutinizing their lives, their choice in clothes, the charming, hand-painted faux finish on their living room walls that GayLynn dismissed with a wave when I took notice of her skill. After all, I had done the same in my apartment, though with less success. How different were we really? I wanted to tell them that.

They showed me wedding photos: GayLynn was surprisingly plump, with a lavish mane of red curls; Jay seemed almost cocky in his tux, even tough like the “bad boy” he’d been known for as a teenager in Wilbur, Nebraska. I looked up at the Brummetts to compare -- the way you might look back and forth at a friend and laugh at his old hairstyle or his bell-bottom pants. But all I saw were two thin, drained, 30-year-olds trying their best to smile for my benefit. These once unassuming, trusting folk had become frightened and apprehensive people, unconsciously questioning the motives for even the simplest “how are you.” Was that the second part of a simple salutation or the beginnings of an inquisition into GayLynn’s health?

“It was that dream of having little ones when I was a girl. I always liked kids a lot. I babysat a lot and we always wanted kids.” GayLynn looked at her husband. “If you only had an opportunity to see Jay with a kid you’d know he was definitely made out to be a father. They just love him.” As she spoke, it occurred to me that what seemed most different about the Brummetts from their photos was not GayLynn’s short, thinning hair or the dark rings around Jay’s gentle eyes. It wasn’t anything physical. Most different was the emptiness, the blank stare that had crept into both faces. I tried to distance myself from the Brummetts as they told me their version of the story. But how could I. They were, after all, a couple who had even written to Magic Johnson for help -- not as the basketball player, but as the HIV positive father who had successfully adopted his youngest child, Elisa, one year earlier. “Magic never wrote back,” Jay said, almost laughing at himself for having been so naïve, or desperate, or both.

Bentjen was right. There was something winning about their unjaded, nonintellectual, nontextbook way of looking at their dilemma.

“That’s my little boy they took,” GayLynn said. “We watched him stand up on his own for the first time. We went through the chicken pox with him.” It was that simple. As far as they were concerned, John T. was their son. He was placed in their home under the condition that they would be willing to adopt him. “We never once gave it a thought that he wasn’t ours, even when they took him away,” Jay said later as we sat in his car at the empty parking lot of Cushmans, the lawn-turf equipment manufacturer where Jay works as a machinist. “He’s a part of me.” There was nothing tough, nothing cocky about Jay as he turned away to hide his face. “I miss him every day of my life. He’s my son.”

Jay was right. John is his son. John had been with them since he was 3 months old. There it was again, that phrase staring me in the face: “The best interests of the child.”

According to GayLynn Brummett, confirmed by records from the ombudsman’s office, the DSS had known about her HIV positive status since September of 1992. Admittedly my math skills are

lacking, but I was able to calculate that nearly 18 months had passed since DSS learned of GayLynn's HIV status. If they were going to remove him from the home, wouldn't it have been in his best interests to do so before he had already made a "primary bond," described as "the most crucial bond that a child between birth and one-and-a-half years of age develops with the person who makes the world safe for him" by Dr. Anne Coyne, a professor of social work at the University of Nebraska Omaha who conducts trainings nationwide on bonding. "In the Brummetts case, that's GayLynn and Jay."

I began to see a point Bentjen made over dinner.

The state was playing "a waiting game," as he put it, was being played in hopes that GayLynn would become too sick to care for John before the next court date. The scent of discrimination had reached every nook and cranny of this case. To what extent was Pat Squires, supervisor in the DSS's Child Protective Services, deluding herself when she said, "This is not an issue of HIV. This is an issue of John's best interests." And what did Dara Trautman, a spokeperson for Governor Nelson, mean when she said, "The Governor stands by the Department of Social Services' decision" in this matter? Did he feel it was in John's best interests to be taken away from the people who had seen him take his first steps? From the only father who, in the event of GayLynn's death, could later share John's earliest memories? Someone who could laugh with him about the way he mangled his first attempt at "Daddy"? Was all of this preferable to what, in any biological home, would be considered a natural occurrence in the life of a child -- the possible death of a mother?

I searched for an answer in the court records of the October 3, 1995 opinion of the Nebraska Court of Appeals. Apparently, prior to the juvenile court decision in December, 1994 to send the child to a new home, a psychiatric evaluation of the child had been sought and obtained from Dr. Ann Evelyn of Health Lincoln Psychiatric Services by both the DSS and John's legal representative Pat Carraher to determine whether John should stay with the Brummetts. This evaluation involved numerous clinical interviews: There was one with Jay and GayLynn together, followed by one with Jay alone; then one with GayLynn alone, followed by one with GayLynn and John, Jay and John and a bunch of "play sessions" with John and Ann. So many different types of sessions had been noted in the records that it was beginning to look like a menu from a Chinese restaurant. But the DSS was not pleased with Dr. Evelyn's finding that "John remain with [the Brummetts] in permanent foster care or as an adoptive child." When I asked Pat Squires why the DSS went ahead with the juvenile court case despite Evelyn's recommendation, she said that Evelyn's original opinion was in favor of the department's plan to remove John, but, for some mysterious, interplanetary reason the doctor had "changed her position from the time at which she was contracted by the department until the time she wrote [her recommendation] up" for the juvenile court. Is Squires saying outright that the DSS had made its mind up before hiring Evelyn? The only other possibility, considering that they disregarded her opinion, is that they no longer considered her a competent professional. Why? Just because she changed her mind?

Perhaps I'm being a bit too rash. I do believe a second opinion is always prudent. John's legal representative, Pat Carraher, also went for a second opinion and found Dr. George Williams, clinical psychologist for the Lincoln Pediatric Group. Williams ended up agreeing with Evelyn:

“Moving the child to a new family and having them adopt him would be a ’crime.’” The doctor even went so far as to assert that it would be “harder [for John] to endure a change of placement than it would be to endure the death of a family member.” The DSS’s went all the way to Omaha for its second expert, psychiatrist Dr. John Donaldson.

To its good fortune, Donaldson testified in support of the DSS’s foster care plan to remove John. The psychiatrist did what is referred to as a “paper review” of the matter. He never actually saw the child or the Brummetts, except for thirty feet away in a court room, but was able to shed light on two areas of concern: The first addressed the DSS’s concern that John had a 14 percent chance of developing schizophrenia due to his biological mother’s psychological make-up. Donaldson testified, at this time, that GayLynn’s death would not necessarily be the catalyst for this disorder. I verified this with Dr. Coyne who agreed, explaining that schizophrenia was not generally triggered by something such as a death, but instead was a disorder that generally manifests its symptoms during adulthood.

The second area of concern was the status of GayLynn’s health. Dr. Donaldson -- an AIDS expert by virtue of his having “read more than anyone else about AIDS in this case” according, once more, to Pat Squires’ wisdom -- was somehow able to make an assessment of GayLynn’s health based solely on her medical records. He indicated that the likelihood of GayLynn’s death would be around the time when John begins school. (How about that for a crystal ball?) So, in his opinion, it was better to transition the child at 2 or 3 than to wait until age 6 or 8 when surely GayLynn will be in the throes of late-stage AIDS.

But really, how expert was Dr. Donaldson’s opinion? Dr. Richard Morin, infectious disease specialist treating people with HIV since 1985 -- and GayLynn’s personal physician -- had slightly contrary thoughts on Dr. Donaldson’s and DSS’ assertions, saying that “they showed a general lack of knowledge of HIV.” He even went on to say with regard to the psychiatrist’s expertise, “I’m not even aware of the remote possibility of [Donaldson] being an AIDS expert as a psychiatrist or medically speaking.” Apparently, that didn’t matter to the DSS, which believed years of hands-on experience with AIDS didn’t make a difference. As Pat Squires says, “You don’t have to be an AIDS expert to know what AIDS does.” I, however, share Dr. Morin’s opinion about the relevance of Dr. Donaldson’s testimony: “Are we making a diagnosis or are we confirming our own biases?”

These were the juvenile court testimonies examined by the appeals court. While waiting for the appeals court decision, the DSS decided to not wait for the opinion of the appeals court and proceeded with the final transition of John to new his foster home. But the strangest thing happened. The mental health professional hired by the DSS to make this transition was Dr. George Williams.

All kidding aside, the problem is that abandonment is such a huge issue for children who have already lost a family that “setting them up to have it happen again,” says Joe Soll, director of the Council for Equal Rights in Adoption in New York City, “could be a disaster. It would be premeditated second abandonment for the child.”

But then I have to look at David Irving. You could say that because he knew he was HIV positive when he adopted his son that he was setting him up for second abandonment. The problem is, you can't look at this in such a black and white manner. It's too easy. Because then what you really need to assess are the child's alternatives. Forget the parent. Forget issues of discrimination. Forget whether the parent's going to live or die. "Not every kid can have a two-parent home with a white-picket fence waiting for him," says John Davidson of Lambda Legal Defense and Education Fund. If David Irving had not adopted his child, he may have ended up in the foster care system going from home to home or from institution to institution. Irving's son might still have been in foster care well into adolescence, making him harder to place for actual adoption. And while Irving may die before his son reaches adulthood, being with Irving and in his larger family system is certainly preferable to a childhood spent shuttled from foster family to foster family.

In the case of the Brummets, we are talking about something a bit different. I could not see taking a child out of a loving, caring home -- the only only home he's ever known -- as a fixative for "premeditated second abandonment."

I began to think about things like breast cancer. Would the state move in every time a mother is diagnosed and remove her children from the home? I wondered about people who have adopted, having no knowledge of their HIV status, or those whose unpredictable diagnoses of a life-threatening disease had followed the adoption of their child. Would foster care and adoption agencies suggest that these children be taken away? In a case where a mother found out that she had cancer after adopting, Dawn Smith-Pliner, director of Friends in Adoption in Vermont -- an agency that handles traditional and nontraditional adoptions -- said, "I would never, ever consider saying that a child should be removed from this home." In this particular case she could "not think of a better place for the child to be."

Unfortunately for Charles and Mary Lackey, a young couple whom I later met in Clearwater, Florida, Smith-Pliner was not nearby when her opinion might have helped. The Lackeys had adopted Elizabeth, a four-year-old. Both were HIV positive at the time of adoption. Charles, by Centers for Disease Control and Prevention standards, had AIDS. Like GayLynn, Mary always wanted to adopt. Similar to John T., Elizabeth had been with the Lackeys since infancy. Knowing both parents' health status, Health and Rehabilitative Services (HRS) case workers required only a will and a contingency plan for Elizabeth's care following Mary's and Charles' potential deaths. Evidently, the HRS in Clearwater thought that Elizabeth had been with Charles and Mary long enough that it would be more detrimental to remove her than for her to lose them through death. However, after publication of an article critical of the HRS decision to allow the Lackeys to adopt, then HRS director Jim Towey was pressured into removing Elizabeth from the Lackeys home. Towey was pivotal in influencing Judge Horace Andrew's decision that Elizabeth's best interests would be served by reversing the adoption. His "consolation" was placing her in the home of the adoptive grandparents -- the contingency plan for the child in the first place. The big difference is that the Lackeys would now never get to parent the child first-hand. "Tearing a family apart like that is much worse than going through a death," Mary told me as we stood in the middle of what she called the "Pocahontas room" -- a little girl's dream filled with everything from Disney characters to Barbies. "The only thing missing is Elizabeth."

Had GayLynn felt the same way about John?

On October 3, 1995, the Nebraska Court of Appeals seemed to take a similar view to Hall's in the matter of John T. In its opinion the court wrote: "Given the bond that exists between John and his foster parents, we do not believe it is the function of the DSS or the courts to save John from one tragedy, the probable death of [GayLynn Brummett], the only mother he has ever known, by visiting another tragedy on him, a DSS plan which includes not only the loss of his mother, but his father as well." In conclusion the court ruled that John be returned to the home of his former foster parents, Jay and GayLynn Brummett.

"Chuck Bentjen called us early in the morning to tell us that we had won and I just sat on the edge of my bed. I was so nervous and excited that I couldn't move," said GayLynn. Her son was coming home.

But it wouldn't be that easy -- not in the face of what, in retrospect, was clearly willful discrimination. The DSS attorney general's office was by no means through.

On the last permissible day to appeal, at 4:45 pm, the attorney general's office petitioned the state Supreme Court for further review of the matter of John T. Another month would go by without John in the Brummetts' home. During that time, the DSS fired George Williams, the psychologist in charge of transitioning John, and demanded that he terminate all contact with the new foster family. The last thing the DSS wanted on its payroll was a guy whose progress notes said that John was having trouble adjusting to the absence of the Brummetts.

Much to the dismay of the attorney general's office, however, the state Supreme Court refused to hear the case, thereby upholding the appeals court's ruling. Surely, John T. would now come home.

Like Bentjen, I had been brought up to understand that, if after you lost in an appeal to the highest court in the state and you made the choice not to appeal to the U.S. Supreme Court, you were bound to follow the ruling of the original court. At least that's what Mr. Preston had taught me and a thousand students before and after me in his history class. So what was the problem? Why wasn't John T. being returned home? Apparently I had I missed something here.

Her name was Cec (ironically pronounced "cease") Brady.

Cec Brady, special assistant to the attorney general's office and main counsel for the DSS, is bone-thin. Fortyish, with shoulder-length unstyled brown hair. I expected her to be more tailored, more conservative than the purple suit and knee-high boots, and less worn. She did not welcome me with enthusiasm. This is the woman who was running the show, I thought. Marcia Clark.

This is the woman who threatened to send the police to have John T.'s belongings removed from the Brummetts'. The woman who refused to discuss visitation or transition of John T. back to the Brummetts and then upheld in court that they had willfully dropped out of the child's life. The woman who orchestrated the appeal to the State Supreme Court -- the appeal that claimed the Brummetts had obtained the child through "deceit" and intimated that losing GayLynn through

death would provoke the child's biological propensity for schizophrenia. The appeal that touted Dr. Donaldson as an AIDS expert qualified to determine the deterioration of GayLynn's health. Cec Brady was the woman who willfully supported the unfounded notion that John T. had successfully bonded with the new foster family despite hand-written behavioral progress notes from Dr. Williams dating as far back as July '95 stating that "[John] has had some worries about GayLynn and Jay, and has said, '[John] go home' " And there were others by Williams in as late as October 24, 1995 stating that the "child was continuing to show significant signs of distress subsequent to the separation from his original foster parents."

This was the same woman who then used all of these points to ignore the state Supreme Court's mandate to follow the order of the Court of Appeals. The woman who was using these points in her new case before the juvenile court based on a "change of circumstances" to prevent the Brummetts, once and for all, from ever having John back in their home. A woman who -- in her most private thoughts -- had at least once fancied herself to be Marcia Clark.

As I stood before Cec Brady in the waiting area of the Department of Social Services, she said something that suddenly made me wonder if she hadn't secretly been losing sleep over the havoc she had wreaked: "The role that has been cast on me by people in this case really offends me."

While I had Brady's wary ear for what would surely be a limited amount of time, I allowed her to lead the conversation, which invariably came back to her preoccupation -- the Brummetts' nondisclosure of their HIV status, which Brady called part of a "pattern of deception." I asked her to tell me what she meant by that. To my knowledge, a "pattern" requires a repetition. I could only note once in more than a hundred pages of letters and court documents where the Brummets could be construed as deceptive -- on GayLynn's initial Foster Care Licensing Health Information Report. To this, Brady fell silent. Perhaps she could not think of a second or third time either. So I asked her if a state agency could even ask about HIV status, considering the protections of the Americans with Disabilities Act. She refused to comment, saying "I cannot discuss an on-going federal ADA case." (She was referring to the suit that Bentjen filed in federal court against the DSS and Governor.) Still, the question had to be answered. Were the Brummetts legally obligated to disclose GayLynn's HIV status?

I would have to make one of those dreaded "please hold until the next millennium" phone calls to the U.S. Department of Justice. But I would never find out if, under the ADA, an adoption agency can ask about one's HIV status, or whether HIV or AIDS status could be used to prevent a person from adopting. Not from the Department of Justice, from the ACLU or even from an ADA specialist such as Fran Tetunic, an attorney with the Nova Southeastern University Law Center in South Florida, who said, "This is not an easily answered question question because you're balancing. There are legitimate interests and concerns, plus there is no absolute right to adopt. It's kind of like a right to work. There are certain prohibitions in terms of discrimniation, but it is not a constitutional right."

The closest I got to a lucid explanation was from Liz Savage of the civil rights division of the U.S. Department of Justice. (Pay close attention.)

With regard to disclosure, Savage said, “The entity would have to demonstrate that questions about HIV status are necessary for the provisions of the [adoption] program.” Translation: The adoption agency must prove that knowing a person’s HIV status is crucial to determining whether he or she can meet the needs of the child.

With regard to whether HIV alone is a reason to disallow an adoption, Savage said, “The entire issue comes down to whether a [public or private adoption agency] can demonstrate that what they’re doing by excluding people with HIV is setting up an eligibility criteria that basically requires prospective parents to be HIV-free.” Translation: You can’t discriminate on the basis of HIV infection unless you can show that because of the infection, that person will not be able to fulfill the role of a parent in the best interests of the child. For example, will this parent with HIV live until the child is of legal age. Go ahead and find a way to prove that one.

Fran Tetunic sums the whole thing up: “What I think you need to do is look at [people with HIV adopting] on a case-by-case basis founded upon the needs of the child as well as the ability of the individual to be a good parent for a child.” A good example of this balancing act can be found in Lynda Arnold, a Pennsylvania woman with HIV. Arnold and her HIV negative husband, Tony, wanted to adopt. This young couple, up front about Lynda’s status and in good health, had a lovely home and extended family. David, an infant prenatally exposed to drugs, was statistically destined to end up languishing in the foster care system. If Lynda Arnold were prevented by law or policy from adopting David, the child might never have received the benefits at the core of the adoption concept: To repair the loss from abandonment of a child by his or her birth parents.

The threshold of the ADA is vague at best and has yet to be put to the test with regard to adoption. So were the Brummetts obligated to divulge GayLynn’s status? In a perfect world, where disclosure works out, sure, why not put all the cards on the table. But this world is not perfect and AIDS discrimination is real.

So it doesn’t take much to understand why the Brummetts left GayLynn’s status off of their health report. They wanted to parent. They felt they had something to offer an orphaned child. This was not an issue of deception on the part of the Brummetts, but instead one of reasonable fear of discrimination. “If we would have disclosed that GayLynn was HIV positive, we knew we’d never get the chance to have kids,” Jay Brummett told me. Couldn’t Cec Brady see this? They were afraid -- not “lying or deceitful.” And validity of their fear was plainly evidenced by Pat Squires during one of her court testimonies concerning the fitness of the family to whom John T. had been given after being removed from the Brummetts’ home: “The [new foster care parents] at this point in time have been asked by me if they are HIV positive, and they indicated that they are not...So yes, we would go ahead with an adoption for John T.” with the new family.

After reading this transcript, I have to differ with the DSS’ continuous claims, over and over again, that this is not a matter of HIV discrimination. Especially when you consider that Jay Brummett continues to test negative for HIV. Is he not, as mentioned before, the best contingency plan for this child? After all, who better to address all of John’s issues of loss than Jay Brummett? After all, he was the only one of all John’s prospective adoptive parents to know childhood loss first-hand.

He had lost his own father to a car accident at 14.

But Cec Brady obviously couldn't see that. I was beginning to see Bentjen's point when he said, "For Cec, I think this is a case about winning."

That opinion was endorsed when, on January 16, 1996 -- one day prior to the Separate Juvenile Court of Lancaster County hearing to arrange for "transition" of John T. back to the Brummetts -- Bentjen received a phone call alerting him to the news that Brady, on behalf of the DSS, would not be discussing plans for transition the following morning. Apparently Williams had suddenly been hired back and changed his mind, taking Pat Carraher along with him: The DSS had mired the case in court so long by then that John had started bonding with the new foster family. For some, at least, patience is definitely a virtue.

Bentjen was livid at the news: Brady had proved his point about the waiting game strategy. "I filed a motion demanding immediate transfer back to the Brummetts."

The following day, Cec Brady's new DSS plan was heard before Judge Thoreson in the juvenile court. As far as Brady was concerned, there had been a change of circumstances that called for keeping John T. with his new foster parents and keeping the Brummetts in John's life as "aunt and uncle."

The "new circumstances" were as follows: 1) The child had adjusted well to his new home; 2) he had successfully bonded with the new foster parents; 3) the Brummetts had dropped out of John T.'s life and 4) GayLynn's condition had deteriorated. Bentjen wasn't having it. "The new plan entered by the DSS was exactly the same as the one that the Nebraska Court of Appeals had struck down and the same one that the state Supreme Court refused to hear."

The Brummetts were stunned. Once again they had been lied to. They would not be getting their son back. As the court day ended, Jay Brummett approached John's guardian, Pat Carraher, a tall Midwestern boy like Jay.

"Why are you stabbing us in the back?" Jay asked. "We thought you were our friend."

They were the same age. By a twist of fate, Carraher had the power to influence the lives of the Brummetts. Like Jay, he never imagined that he would be embroiled in such a case. He was trying to do the right thing. But he was brought up to believe that if a professional like Dr. Williams changed his mind, it must be for good reason. Carraher didn't know how to respond to Jay.

A week later, Judge Toni Thoreson of The Separate Juvenile Court of Lancaster County upheld the DSS' new plan, transferring placement to the new foster parents. Chuck Bentjen, the "Danish buzz saw" as he so aptly refers to himself, "hit the roof." Chuck demanded the assistance of the state Supreme Court while Judge Thoreson directed all parties to give evidence determining what course of action would be in the best interests of the child.

It was then that Bentjen called Dr. Anne Coyne, the primary bonding expert, to the stand. Coyne

testified to the strong bond between John and the Brummetts and recommended that he be returned to Jay and GayLynn.

The state Supreme Court came through. On February 15, one day before the final hearing, Judge Thoreson was given exactly twenty one days to either send John home or appear before the Supreme Court.

The following day in court, Dr. Williams' once again changed his mind and suggested returning John to the Brummetts. After the break, however, he flip-flopped again and stated flatly that John should not be returned to the Brummetts' home. (Pat Carraher learned then and there you can't always trust a professional.) This, according to one source, was followed by a print-out of an e-mail submitted to the court that "the case [Cec Brady] was prosecuting 'had no legal merit.' " The existence of this e-mail was later indirectly verified by Pat Carraher, who told me "you aren't supposed to know about that" in response to my mention of them. Other allegations were made that Brady had doctored an affidavit by case manager Sandy Thompson wherein Thompson stated that the Brummetts had "dropped out" of the visitation process. Brady also supposedly allowed false affidavits to be submitted to the court regarding whom John referred to as his mother -- GayLynn or the new foster mother.

Essentially, Brady and the DSS were in a shambles -- not to mention potentially in violation of Nebraska law codes. Six days later, John T. was tucked into his own bed by the people who might one day soon become his parents.

Anne Coyne mentioned during a conversation, after John had been returned to the Brummetts' home, that she did not think it was necessarily in the best interests of children to be adopted by parents with HIV. "Choosing placement, however, wasn't the case with the Brummetts. That should've been dealt with four years ago." Coyne went on to say, "There are more families looking to adopt healthy young children than there are healthy young children available to be adopted. If I was a social worker with a choice to make, I would probably choose placement with a family where the parents were both healthy with a life expectancy of more than 18 years." she said.

I thought about that as I phoned to see how Jay, GayLynn and John were doing. For a moment, I had almost agreed with Anne Coyne. But then I realized that when you look at adoption on a case-by-case basis, as the experts said you must, there are variations that I could never even begin to dream of. In New York, a woman with HIV wants to adopt her healthy five-year-old nephew so she can leave him her benefits. That sounds in his best interests. And a friend mentioned that there are HIV positive people looking to adopt undocumented orphans. Federal law says these children must be adopted before the age of 16 or they are denied all the benefits of citizenship. Adopting them sounds in their best interests. I wondered if Coyne would agree.

She said one other thing I knew we agreed on: "There should not be any hard and fast laws or rules denying HIV positive persons the privilege of adoption based on their HIV status." Some people say it's selfish for an HIV positive person to adopt. Then I remember John T. He was laughing in the background as I congratulated GayLynn on the return of her child -- at least into

foster care. “We’re looking for our Tonka trucks,” GayLynn said. You make laws or policies preventing people with HIV from adopting, then kids like John T. or Elizabeth or David might not get homes. And then it’s discrimination against orphaned children.

But people tend to lose sight of the children. Two weeks after John’s return, I was talking about the case with Pat Squires. Like me, she was upset that the whole scenario had to occur, but from a completely different perspective. Fuming about the outcome, she laid it all on the line: “Too many emotions, too many what-ifs and too many people stirring the pot for the sake of one child.”

Isn’t that what it’s all about, Pat?

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http://beta.docker.poz.com/article/The-Parent-Trap-11209-9845