

Syracuse University
SURFACE

College of Law Faculty - Scholarship

College of Law

January 2008

The Anatomy of Grey: A Theory of Interracial Convergence

Kevin Noble Maillard

Syracuse University College of Law, Maillard@law.syr.edu

Janis L. mcDonald

Syracuse University College of Law, jlmcdona@law.syr.edu

Follow this and additional works at: <https://surface.syr.edu/lawpub>



Part of the [Law Commons](#)

Recommended Citation

Maillard, Kevin Noble and mcDonald, Janis L., "The Anatomy of Grey: A Theory of Interracial Convergence" (2008). *College of Law Faculty - Scholarship*. 74.

<https://surface.syr.edu/lawpub/74>

This Article is brought to you for free and open access by the College of Law at SURFACE. It has been accepted for inclusion in College of Law Faculty - Scholarship by an authorized administrator of SURFACE. For more information, please contact surface@syr.edu.

The Anatomy of Grey: A Theory of Interracial Convergence
Kevin Noble Maillard and Janis L. McDonald

ABSTRACT

This article offers a theory of racial identity divorced from biological considerations. Law fails to recognize the complexity of racial performance and identity, thus categorically simplifying a perceived polarity of black and white. Ground-breaking scholarship addressing racial boundaries, as written by Randall Kennedy, Elizabeth Bartholet, and Angela Onwauchi-Willig, generally focuses on the enduring legacy of race discrimination. We approach these boundaries from a different angle—whites who become “less white.” We bring together the challenges of passing and adoption to offer a theory of fluid racial boundaries.

Transracial adoption provides one viable channel to discuss the possibilities of white-to-black racial identity transformation. By confronting the meaning of white identity in relation to their black surroundings, adoptive parents may engage along a continuum of what we term “interracial convergence.” Parents who adopt transracially potentially face some of the pressures of being black in the United States. The Interethnic Placement Act forbids the consideration of race in adoption placements, but white adoptive parents nevertheless receive sharp criticism from black social workers for lacking the ability to teach “survival skills” necessary for the child’s racial identity development. We argue, alternatively, that it creates a grey space where racial convergers—adoptive parents and racial passers—can challenge the stability of racial boundaries.

TABLE OF CONTENTS

I. Introduction	3
II. Invisible Racial Connections	9
A. Racial Defection	10
B. Racial Intentions And Performance	13
C. The Performativity Of Passing	15
III. White Racial Identity Development	16
A. Colorblindness	19
B. Willful Racial Ignorance	22
IV. White Parents: Black Children: Racial Performativity	23
V. Transformative White Identity: Interracial Convergence	39
A. The Pre-Encounter Stage	39
B. Encounter and Disorientation	41
a) Initial Racial Disorientation	42
b) Awareness of Repetitive Racial Incidents	45
c) Reckoning with Privilege	47
C. Augmenting a White Racial Identity	50
VI. Conclusion: Interracial Convergence	53

The Anatomy of Grey: A Theory of Interracial Convergence
Kevin Noble Maillard* and Janis L. McDonald**

I. INTRODUCTION

In 1998, Boston city authorities terminated the eleven-year employment of two firefighters who had falsified their employment applications.¹ Twin brothers, Philip and Paul Malone, transformed themselves from white to black on their applications in order to benefit from a federal diversity program. Although their family had identified as white for three successive generations, the brothers claimed their black ancestry from their maternal great-grandmother. They relied on the traditional, although controversial rule in law and social practice of hypo-descent, or the “one-drop”² rule, to justify their status. A hearing officer held that the twin brothers, who had lived most of their lives as white,

*Assistant Professor of Law, Syracuse College of Law University, Ph.D., University of Michigan (Political Theory), J.D., University of Pennsylvania, M.A., University of Michigan, B.A., Duke University.

**Associate Professor of Law, Syracuse University College of Law. LL.M., Yale Law School, J.D., Hofstra University School of Law, B.A., George Washington University.

This paper was presented at the 2006 Too Pure an Air: Law and the Quest for Freedom, Justice, and Equality Conference in Gloucester, England. Many thanks to Dean Hannah Arterian at Syracuse University College of Law for providing summer research funds to complete the final draft. The authors would like to thank Professors Richard Delgado, Taunya Lovell Banks, Arlene Kanter, Melynda Price, Judy Scales-Trent, Adrienne Davis, Jean Stefancic, Twila Perry, Peggy Cooper Davis, Cynthia Mabry, and Cecil Hunt for their helpful comments and critiques on early stages of this work. Additional thanks to Elizabeth Moeller and Katherine Lawler, SUCOL class of 2008, for their research assistance.

¹ *Malone v. Civil Service Commission.*, 38 Mass. App.Ct. 147, 148 (1995).

² James F. Davis, WHO IS BLACK: ONE NATION'S DEFINITION 5 (1997) ("In the South it became known as the 'one drop rule,' meaning that a single drop of 'Black blood' makes a person a Black. It is also known as the 'one Black ancestor rule,' some courts have called it the traceable amount rule,' and anthropologists call it the 'hypodescent rule' meaning that racially mixed persons are assigned the status of the subordinate group."); Neil Gotanda, *A Critique of "Our Constitution is Color-Blind*, 44 STAN. L. REV. 1, 24 (1991) ("The rule of hypodescent. American racial classifications follow two formal rules: 1) Rule of recognition: Any person whose Black-African ancestry is visible is Black. 2) Rule of descent: (a) Any person with a known trace of African ancestry is Black, notwithstanding that person's visual appearance; or, stated differently, (b) the offspring of a Black and a white is Black.").

“willfully and falsely identified themselves as black in order to receive appointments to the department.”³ The officer based her determination of their racial identity on three criteria: visual observation of facial features, documentary evidence, and social reputation of the families.⁴ Under this test, the Malones failed to qualify as “black.” In a different case, a Pennsylvania social service agency failed to approve a potential adoption placement for Dante, a biracial black/white child, with his white foster parents, Victor and Mary Jane DeWees.⁵ Before the family accepted Dante as a foster child Mrs. DeWees expressed to a social worker that she preferred a white child because she “did not want people to think that [she] or her daughter were sleeping with a black man.”⁶ The social service agency based their denial on the DeWees’ negative racial attitudes, which they believed conflicted with Dante’s best interests. In return, the foster parents argued that their views had changed in the two years that they fostered Dante and they were ready to “accept [him] as any other child.”⁷ Nevertheless they did not view race as important to Dante’s upbringing: they informed the social worker that race had “no impact” on the self-esteem and identity of minority children, and refused “to manufacture black friends.”⁸ Challenging the relevance of the child’s racial identity, Mr. and Mrs. DeWees brought suit against the agency in federal court.⁹

³ *Id.*

⁴ *Id.*

⁵ 779 F. Supp. 25 (E.D. Pa. 1991) *See* further discussion of this case, *infra* at.

⁶ *Id.* at fn. 162-165.

⁷ *Id.*

⁸ *Id.*

⁹ 779 F. Supp. 25 (E.D. Pa. 1991) *See* further discussion of this case, *infra* at.

Both *Malone* and *DeWees* demonstrate the inherent difficulties of rigid racial categorization. The two forms of racial subversion we examine here, passing and transracial adoption, effectively question the rigidity of racial boundaries. While passing facilitates the secret transference of racial membership, adoption across the color line compels an open form of interracial kinship. Both require a journey into unfamiliar racial territory which reorients racial identity from a biological status to a performative measurement based on the choices made by the individuals involved.

But *Malone* and *DeWees* raise questions about the legal parameters of racial identity based solely on biological qualifications. The *Malones* took advantage of newly discovered black ancestry to gain firefighter positions. They never attempted to engage in a process of developing a black racial identity or affinity; their claim to blackness stopped at biological qualification. The *DeWees* couple refused to recognize the impact of racial difference on their child. Instead, Dante's racial needs would be subsumed within the parents' colorblind interests.

Both cases present potential situations where transracial adoption and racial passing intersect in some ways. Passing, for those persons born as white, means confronting unearned racial privilege inherited at birth. This article seeks to expand on traditional discussions of passing by offering a theory of racial identity divorced from biological considerations. Law fails to recognize the complexity of racial performance and identity, thus categorically simplifying a perceived polarity of black and white. While the majority of passing scholarship focuses on the enduring legacy of white supremacy¹⁰,

10 See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, (1993) (Examining the social benefits that have come to those who have claimed ownership of whiteness by passing); Robert Westley, *First Time Encounters: "Passing" Revisited and Demystification as a Critical Practice*, 18

much less work focuses on whites relinquishing the trappings of race privilege—whites who become “less white.” This discourse, as it stands, lacks a rigorous examination of the ways that whites might join this destabilization of racial boundaries.

Transracial adoption provides one viable channel to discuss the possibilities of a form of white-to-black racial identity transformation which directly challenges the law’s colorblind leanings toward the resolution of racial issues. Considering transracial adoption in this way grafts important norms of blackness on the particular white parent who consciously strives to “adopt” an intense awareness of racial issues from the perspective of parenting a child of color. In efforts to love and protect the child, some adoptive parents reflect on privilege, either deliberately or unintentionally, as a result. By confronting the meaning of white identity in relation to their black surroundings, these adoptive parents engage along a continuum of what we term “interracial convergence.” Both black and white racial identity models offer insight for lawmakers in dealing with this problem.¹¹ An interracial convergence should occur between the needs of the child

YALE L. & POL’Y REV. 297, (2000). (showing the “assumptions and ideological investments that underlie ‘passing’ as it has been traditionally been conceptualized support white supremacy.”)

¹¹ We limit our discussion to a racial binary of black and white. We encourage further scholarship in this area that goes beyond our scope to address the unique and equally important issues of other racial groups. *See generally*, William E. Cross, Jr., *SHADES OF BLACK DIVERSITY IN AFRICAN AMERICAN IDENTITY* (1991); *See also* Janet E. Helms, ed., *BLACK AND WHITE RACIAL IDENTITY: THEORY, RESEARCH AND PRACTICE*. (1990). Their work has been adapted by more recent scholars to address the claim that “Asians in general have been ignored by social scientist researchers.” *See e.g.*, Derald Sue, *Asian Americans: Social-Psychological Forces Affecting Their Life Styles*, in Steven Picou and Robert E. Campbell, eds., *CAREER BEHAVIOR OF SPECIAL GROUPS*. (1975); Stanley Sue and James K. Morishima, *THE MENTAL HEALTH OF ASIAN AMERICANS* (1982). A similar model has been adapted for Native Americans, *see e.g.*, Donald Atkinson, George Morten, & Derald Sue, *A Minority Identity Development Model*, in Donald Atkinson, ed., *COUNSELING AMERICAN MINORITIES* 35-53 (1989); for Latino/as, *see e.g.*, Ramon Laval, Ephraim Gomez, Pedro Ruiz, *A Language Minority: Hispanics and Mental Health Care*, *THE AMERICAN JOURNAL OF SOCIAL PSYCHIATRY* 42-40 (1983); and for Puerto Ricans, *see e.g.*, Edward Christensen, *Counseling Puerto Ricans*, 55 *PERSONNEL AND GUIDANCE JOURNAL* 412 (1977).

and the racial identity development of the parent in order to provide the child with a healthy racial identity and upbringing.¹²

Highlighting the complexities of racial passing and transracial parenting places greater emphasis on the parental duties in the discussion of the best interests of the child. While much attention appropriately focuses on the impact of transracial adoption on the black child, the necessary changes in the white parent receive less attention. Parents who adopt transracially potentially face some of the pressures of being black in the United States. Amongst adoption workers, these difficulties traditionally presented insurmountable hurdles. Black social workers¹³ sharply criticized white adoptive parents for lacking the ability to teach “survival skills” necessary for the child’s racial identity development.¹⁴ In this denouncement of transracial adoption, the white parents could never fulfill an emulable role for black children. Similarly, transracial adoption neither physically augments the racial identity of the adoptive parent nor does it categorically qualify them as racially empathetic. We argue, alternatively, that it creates a space where whites can challenge the stability of racial boundaries while expanding the ideas of interracial convergence. By working toward a racial outlook sensitive to what their child

¹² *Id.*

¹³ M. Elizabeth Vonk, *Cultural Competence for Transracial Adoptive Parents*, 46 SOCIAL WORK 246 (Jul. 2001) (“Survival skills refer to the recognition of the need and the ability of parents to prepare their children of color to cope successfully with racism. This skill is as important for transracial adoptees as for children of same-race parents, but may be more difficult to learn from European American parents who have had little experience of racism directed toward them.”) *See also* Jacinda T. Townsend, *Reclaiming Self-Determination: A Call for Intra-racial Adoption*, 2 DUKE J. GENDER L. & POL’Y 173 (1995). (Arguing that black parents are better equipped to teach black children to live in a world of white privilege.) Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U.REV. L. & SOC. CHANGE 33 (1993-1994). (claiming that “color and community consciousness” make black adoptive parents preferable parents for the creation of identity).

¹⁴ *See* Elizabeth Bartholet, FAMILY BONDS: ADOPTION AND THE POLITICS OF PARENTING 97-98 (1993). *See also* Perry, *supra* note 13.

might see and experience, white parents may engage in a transformative dialogue and direct scrutiny of their own white privilege.

As authors, we approach this topic from different perspectives: as the white mother for twenty years of an adopted African-American son, and as a Native/African American male. Through the critical lenses of race, gender, and class, and through the methodology of storytelling, we offer intersected voices in the attempt to interpellate racial identity divorced from biology. We do not assume that white parents automatically gain racial awareness and credibility through the adoption of a black child. Neither do we suggest that adoptive parents categorically possess the same outlook as blacks who pass for white. We bring together the challenges of passing and adoption to offer a theory of fluid racial boundaries.

This Article proceeds in four parts. Section One addresses traditional racial “passing,” where necessary subterfuge and identity performance undermined socially identified and controlled racial divisions. In this cautious challenge to the biological essence of white identity, passers expose the different ways that white identities could be performed. Section Two introduces the continuum of white identity development, beginning with a “pre-encounter,” stage of racial awareness. The section examines the contributing role of colorblindness and racial recklessness in supporting the existence of a pre-encounter stage. Section Three introduces the application of interracial convergence into the transracial adoption debate as it relates to considerations of the child’s need to develop a healthy black racial identity. Recent changes in federal adoption law require a colorblind placement process, which eliminates scrutiny of the racial attitudes of the adoptive parents. The DeWees parents, despite their deliberate ignorance of their foster

child's racial needs, might have been approved under these new interpretations of the law. Section Four identifies the potential stages of a transformative white identity for adoptive parents. Our model identifies stages that progress from a colorblind, pre-encounter stage, followed by a disorienting racial encounter stage, to various stages that recognize the role of white privilege, progressing toward a stage of interracial convergence and, perhaps, a new, transformative white identity.

II. INVISIBLE RACIAL CONNECTIONS

Dear Friend: I am black.

I am sure that you did not realize this when you made/laughed at/agreed with that racist remark. In the past I have attempted to alert white people to my racial identity in advance. Unfortunately, this invariably causes them to react to me as pushy, manipulative, or socially inappropriate. Therefore, my policy is to assume that white people do not make these remarks, even when they believe there are no black people present, and to distribute this card when they do. I regret any discomfort my presence is causing you, just as I am sure you regret the discomfort your racism is causing me.

*Sincerely yours,
Adrian Margaret Smith Piper*

Passing harbors an invisible racial allegiance even as externally imposed on Adrian Piper. To the outside world, looks determine racial allegiance, but for blacks who look white, their internal world represents a different affinity. Their appearance suggests to others a different identity than the one they personally experience while silently destabilizing the automatic correlation of race and phenotype. A person may look "white," but be "black" or have a "black" family. Theories of racial passing abound. Traditionally, scholarship and art have focused on racial passing from black to white, that is, a person of African descent with phenotypically white features deliberately living a

public and/or private life as a white person.¹⁵ The majority of this literature covers the duality of existence in the concealment of racial identity, with an emphasis on tactics of deception and defection.¹⁶ As Randall Kennedy defines it, “passing requires that a person be consciously engaged in concealment.”¹⁷ Racial passers may downplay their birth race, and assume, actively or passively, another. Deception enables the person to enter a white privileged world previously denied to her.

1. Racial Defection

Generally, people pass in order to obtain benefits offered by membership in socially constructed categories. Passing requires that the person capitalize on their appearance to overturn the social and political limitations imposed by racial privilege. Even though the passer cannot meet legally imposed definitions of whiteness, they nevertheless decline to reveal their hidden African ancestry. In this newly accessed racial

¹⁵ For scholarship, *see generally*, Brooke Kroeger, *PASSING: WHEN PEOPLE CANNOT BE WHO THEY REALLY ARE* (2003); Werner Sollors, *NEITHER BLACK NOR WHITE YET BOTH* (1997); Adrian Piper, *Passing for White Passing for Black*, 58 *TRANSITION* 4 (1992); Samira Kawash, *DISLOCATING THE COLOR LINE* (1997); Naomi Zack, *RACE AND MIXED RACE* (1994). For art, *see generally*, films: *QUEEN* (television mini-series, 1993), *SHOW BOAT* (MGM, 1951), *Imitation of Life* (Universal Pictures, 1959), *PINKY* (Twentieth Century Fox, 1949), *Human Stain* (Miramax, 2003); Drama: Bion Boucicault, *THE OCTOROON OR LIFE IN LOUISIANA* (1859); Painting: Archibald Motley, *The Octoroon*. For literature: William Wells Brown, *CLOTEL* (1853), Charles Chestnutt, *HOUSE BEHIND THE CEDARS* (1900), William Faulkner, *ABSALOM! ABSALOM!* (1936), Jessie Fausett, *PLUM BUN*. (1929), Frances Harper, *Iola Leroy* (1892), Nella Larsen, *PASSING* (1929), Sinclair Lewis, *KINGSBLOOD ROYAL*(1947), Mark Twain, *THE TRAGEDY OF PUDD'NHEAD WILSON* (1894).

¹⁶ Robert Westley, *First Time Encounters: "Passing" Revisited and Demystification as a Critical Practice*, 18 *YALE L. & POL'Y. REV.* 297,307 (2000) (“Passing has been defined as crossing the race line and winning acceptance as white in the white world”); Randall Kennedy, *Racial Passing*, 62 *OHIO ST. L.J.* 1145 (“Passing is a deception that enables a person to adopt certain roles or identities from which he would be barred by prevailing social standards in the absence of his misleading conduct”); Sharon Elizabeth Rush, *Equal Protection Analogies - Identity and "Passing": Race and Sexual Orientation*, 13 *HARV. BLACKLETTER J.* 65, 70 (1997) (“Passing reflects the individual's attempt to gain acceptance by hiding his or her identity and conforming to the dominant culture's expectations”).

¹⁷ Randall Kennedy, *INTERRACIAL INTIMACIES* 285 (2004).

community, the black passer not only assumes a new persona, but also achieves privileges and overcomes exclusions garnered by racial identity. Robert Westley defines passing as a “social process whereby the phenotypically qualified accept a racial identity in order to function within a system of racially justified privileges and exclusions.”¹⁸ Disproving the permanency of race, the passer overcomes the socially imposed principle of identity as an immutable characteristic.¹⁹

Passing invokes negotiations of power. Deciding one’s own way of performing race in opposition to legal and social practice empowers the passer in their journey to secure personal and political privileges and rights. Cheryl Harris joins this dialogue by asserting that “becoming white increased the possibility of controlling critical aspects of one's life rather than being the object of others' domination.”²⁰ Race shifting of this sort assumes an air of social protest, where the subversion of impenetrable boundaries resists and mocks the authority of racial absolutism.²¹ Passing allows one to perform his or her own identity outside the context of traditional boundaries.

Passing does not always involve political empowerment, however. Some scholars criticize it as a literal example of racial desertion and abandonment of community pride. In the conscious transition from one race to another, passing engenders complaints of race traitorism. Because the passer may abandon the black community of origin, family

18 Westley, *supra* note 16 at 308.

19 See *supra* note **Error! Bookmark not defined.** Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985) (discussing the parameters of immutability).

20 Harris, *supra* note 13 at 1713.

21 See generally, Westley, *supra* note 16, (examining the importance of judicial authority in affixing racial identity).

and community members may oppose the decision to become white. As one African-American critic writes, “I feel that by passing, they [blacks] have cursed the memory of every dark skinned person on their family tree.”²² Similar sentiments exist from the other end of the American racial binary, where whites accede to the doctrine of hypodescent²³ by viewing passing blacks as trespassers or view whites who join black communities and families as race traitors.²⁴

The literature on passing also unfairly portrays fair-skinned blacks as suffering inner turmoil and confusion. . In overly dramatic stories, the "tragic mulatto" could resolve her racial dissonance only through the inevitable solution of death.²⁵ With no firm grounding in the racial binary, according to these accounts, the doomed figure longs for a space where race does not matter and blood does not hinder. F. James Davis describes the phenotypical and psychological tension of “white on the outside, but black on the inside.”²⁶ Not fully accepted by many whites and shunned by a segment of the black community , as these authors argue, the passer finds no racial respite. For some members of the black community, the decision to pass for white revisits the divisions between the house servant/field hand dialectic²⁷ of class and color that signified that “Black” is “not beautiful.”²⁸

22 Kennedy, *INTERRACIAL INTIMACIES* 330 (2004).

23 Davis, *supra* at.

24 Harris, *supra* note **Error! Bookmark not defined.** at 1711 (distinguishing passing from trespassing).

25 Hawley Fogg Davis, *Symposium on Transracial Adoption: A Race-Conscious Argument for Transracial Adoption*, 6 B.U. PUB. INT. L.J. 385, 406 (characterizing the trope of the tragic mulatto as a “pathological racial identity confusion”).

26 Davis, *supra* at (describing conflict that arises from inter-racial confusion)

27 Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L. J. 1487 (describing how lighter

The phenomenon of passing depends on acquiring an alternative racial perspective. Physical features such as fair skin and straight hair assimilate the passer into the aesthetic norm of the white world. Under this phenotypical cover, her appearance, knowingly or unknowingly, aligns her with white people. If she is deliberately passing, her actions confirm the expectations of the new white community. This physical affinity with whiteness allows her to experience some of her life as a presumed member of another race. She passes for white, leaving others unaware of her intimate connections to the black community. Standing alone, the racial passer proceeds as an “undercover other”²⁹ who bears a complex racial background invisible to the casual observer.

2. Racial Intentions and Performance

In the quote heading this section, Adrian Piper, a woman of mixed racial descent, creatively announces her unrecognizable racial identity to people who mistake her for white. Aware of the fact that most onlookers would not recognize her as black, she arms herself with a printed performativity that corrects the misidentification and asserts her identity. Piper’s action demonstrates the nexus of race and recognition that marks her place on the continuum of racial identity.

The action of passing takes on two distinct forms, each one assuming a different method of performance of racial identity. . In the first , the passer deliberately and actively assumes an alternate character as a member of another race. By casting their lot

skinned slaves received better assignments on plantations than darker-skinned slaves).

28 See generally, Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1705 (2000).

29 Angela Onwuachi Willig, *Undercover Other*, 94 CAL. L. REV. 873 (2006).

with this group, they fashion a new identity for themselves that buries the vestiges of their former identity. Along with the newly acquired identity as white, racial passers have to distance themselves from black issues. The presumption of all white company forces successful passers to endure racial insensitivity without recourse.³⁰ Racial survival demands *thinking* white and sublimating the opportunity to associate and relate to their community of birth.³¹ In the second form passing can occur unintentionally. As non-deliberate passing, the person stands aware that others perceive her as white, but she may either reject or accept the classification. If the accidental passer consents to the mistaken identification, her silence constitutes deception as understood in traditional passing.³² Adrian Piper, in the quote at the beginning of this section, describes her own efforts to reject assumptions of her identity as white and illustrates the way she chooses to actively confront the racist conduct occurring in presumed white-only groupings.

³⁰ In Nella Larsen's *Passing*, the primary character Clare Kendry, a light skinned woman who married a white man without telling him of her racial background, was tortured by such comments. At a risky gathering with other passers in the white world, she endures the vitriolic commentary of an unknowing white husband:

"I don't dislike them. I hate them," he said, "...They give me the creeps. The black slimy devils."

...She had a leaping desire to shout at the man beside her, "And you're sitting here surrounded by three black devils, drinking tea..."

³¹ For political or economic reasons, public knowledge of their black ancestry would preclude their unfettered navigation within the white world. Most recently, actress Carol Channing, long regarded as the platinum blonde star of *Hello, Dolly!*, revealed her African heritage, stating that her father's black ancestry would have tainted her stage and film career. Carol Channing, JUST LUCKY, I GUESS: A MEMOIR OF SORTS 8 (2002). Other historical figures have long been rumored to have "black blood" such as Warren Harding, (J.A. Rogers, *Five Negro Presidents* (1965)) Humphrey Bogart (*The Blurred Racial Lines of Famous Families*: <http://www.pbs.org/wgbh/pages/frontline/shows/secret/famous/vansallees.html>), Jacqueline Kennedy Onassis (*Id.*), and Alexander Hamilton (Mitchell Owens, *Surprises in the Family Tree*, N.Y. TIMES, Jan. 8, 2004).

³² Accidental passing takes on many forms, such as a fair skinned, white-appearing black remaining silent upon hearing a racially offensive joke told by unknowing whites, or renting an apartment from a landlord known to reject black applicants.

3. The Performativity of Passing

Passing depends on the accuracy of the racial defector to live an alternative racial life. Performance of identity, like the art of acting itself, necessitates believability in its representation, and this surfaces as a successful intersection of reputation and appearance.³³ In addition to looking the part, one must fulfill societal expectations of racial behavior in order for the new racial representation to appear authentic. The method of presentation comprises a large part of passing, and the performance does not exist in a vacuum. For racial passers and their friends and family who remain in the black community, the representation as white requires mutual collusion in order to protect the secret.³⁴ Without the cooperation and consent of helpful and knowledgeable others,³⁵ racial passers endanger the matrix of deception.³⁶ This acting not only materializes as a sociological monologue, but as an ensemble performance. Together, all parties themselves become actors in a drama that belies the perceived genetic indicators of racial privilege and exclusion.³⁷

³³ Judith Butler, *GENDER TROUBLE* 140 (1990).

³⁴ In Danzy Senna's novel *Caucasia*, a white mother and her biracial daughter move to New England and pass themselves off as Jews. Their success as white females in their new town directly corresponds to their mutual adherence to racial role-playing. Without each representing and reflecting the other as Jewish, they would not have sustained their escape from blackness. Both the mother and the daughter capitalize upon phenotype to distance themselves from the inherited history and racial traits of the black father. *See generally*, Danzy Senna, *CAUCASIA* (1999).

³⁵ Gunnar Myrdal, in his seminal study of American race relations noted the "conspiracy of silence on the part of the other Negroes who might know about it." Gunnar Myrdal, *AN AMERICAN DILEMMA* 683 (Vol. 1 1969).

³⁶ Blacks who condone passing agree with the deception as an "unpleasant but acceptable adaptation to racist mistreatment." Kennedy, *INTERRACIAL INTIMACIES* at 313.

³⁷ Race as reputation has a long legal history. In 1831, Justice William Harper, with the full knowledge of the appellant's racial background, declared that a white-appearing man of color, received in the

For white individuals who form emotional and/or familial bonds with black individuals, the lessons of traditional black to white passing differ because of the privileged position they occupy as a white person in society. For the most part they have lived their lives with these privileges. Biologically they represent the traditional conception of white but their internal view of their own identity and privileges may be placed somewhere on the transformative continuum of interracial convergence. They may not perform completely as white. As in the case of the white-appearing blacks, some of these whites may choose to challenge the perceptions imposed by others about their expected performance of a white identity.

III. WHITE RACIAL IDENTITY DEVELOPMENT

One morning, when Ryan was two and a half years old, he stared up at my face as I brushed my hair, and then he made his announcement.

“I also need a brown Mommy.”

I froze. I knew I would have to deal with the differences in our race as he emerged from the protective love of his infancy, but so early? I wasn't ready. I was terrified. I scooped him up and hugged him tight. I thought about our experience the night before meeting a wonderful family from Zambia.

“That was a nice family we met last night, wasn't it? There was a brown Mommy, a brown Daddy and two brown little children. They all looked the same didn't they?” I set him down and perched myself on the edge of the bathtub. He nodded his head and touched my hair.

“And your Mommy isn't so brown is she?” He shook his head. “Maybe we should paint my face brown. Hmmm, what could we use?” Ryan laughed as he joined in the game. “Should we use a crayon?” I asked with a puzzled look on my face. He giggled and ran to get his crayons. He pulled out the brown crayon but stopped as he weighed the enormity of the task.³⁸

community as a white man, could be legally classified as white (State v. Davis/State v. Hanna, 1831, 8 S.C. Eq. 559 (Bail. Eq.). Even though the community knew that the appellants descended from a black ancestor, their actions, motivations, and affiliations with white members of the community solidified their reputations as white. *But cf.*, White v. Tax Collector (1846). Carrying out the antebellum performance of race required more than just how people treated the passers, and how they thought of themselves. Persons with visible traces of black ancestry with the solid alliances of white persons could not be deemed legally white because of the disqualifying phenotypical trait.

³⁸ Janis L. McDonald, LOVE CANNOT BE COLORBLIND: A TRANSRACIAL ADOPTION STORY (forthcoming Rowman & Littlefield (2008) at 82-84. A few white adoptive parents as well as biological parents of biracial children describe their struggles meeting the needs of their children and confronting their own racial identity issues. All of the parents locate themselves at different ‘developmental’ stages. Jean Lazarre, BEYOND THE WHITENESS OF WHITE: MEMOIR OF A WHITE MOTHER OF BLACK SONS

White adoptive parents face inordinate challenges in raising a black child. Similar to traditional passing, phenotype leads strangers to draw inaccurate conclusions about the racial affinity of the person who appears white. The interests of white adoptive parents and white-appearing blacks converge in this grey zone. Each enters the space with different complex motivations, different positions of privilege, yet similar phenotypes. Both types of passers share invisible yet personal ties with a black community. Access to the secret revelations of white-only enclaves reveals to each a deeply ingrained resistance by many whites to respectful common ground. These racial voyeurs traverse boundaries and straddle spheres that once categorically excluded or accepted them. Indeed, public exposure of their grey space may label both as race traitors or trespassers and subjects each to the possibility of retributive hostility and isolation, if not actual violence. Further examination of the elements of performativity in this grey racial space highlights key ingredients for combatting the insidious role of whiteness.

Dynamic models of racial development³⁹ demonstrate a process of identity awareness facilitated by different experiences and periods of adjustment. For both

(1996)(white biological mother of bi-racial sons); Becky Thompson, *MOTHERING WITHOUT A COMPASS: A WHITE MOTHER'S LOVE, A BLACK SON'S COURAGE* (2000)(white adoptive mother of a nine-year-old black son); Maureen T. Reddy, *CROSSING THE COLOR LINE: RACE, PARENTING AND CULTURE* (1994) (white biological mother of bi-racial children); Walt Harrington, *CROSSINGS: A WHITE MAN'S JOURNEY INTO BLACK AMERICA* (1992); Jana Wolff, *SECRET THOUGHTS OF AN ADOPTIVE MOTHER*, (2000)(one of the white adoptive parents of a bi-racial son); Frances Wardle, *Tomorrow's Children* (1999); *See also* Joshua Carter Woodfork, *Shifting Whiteness: A Life History Approach to U.S. White Parents of 'Biracial' or 'Black' Children*, (2005) (unpublished Ph.D. dissertation, University of Maryland) (on file with author).

³⁹ William Cross, Jr., *SHADES OF BLACK DIVERSITY IN AFRICAN AMERICAN IDENTITY* (1991). *See also* Janet Helms, ed., *BLACK AND WHITE RACIAL IDENTITY: THEORY, RESEARCH, AND PRACTICE* (1990).

black⁴⁰ and white models,⁴¹ early stages of development reveal periods of low awareness while later stages reflect deeper levels of consciousness.⁴² Both models share a similar view of the initial state of racial development—what scholars describe as the “pre-encounter” stage.⁴³ Various researchers of the white racial identity development model

⁴⁰Psychologist William Cross, with others, developed BRID in response to previous black identity models that depended on a ‘reaction to oppression’ and ‘search for identity models formulated by ‘deprivation-frustration factors.’ Cross, *supra* note 39 at 154. His model recognized the process of development involved, its dynamic nature, and the positive attributes of identity preserved intact, *Id.* at 155-56. He termed these “Nigrescence models: the process of becoming black.” William Cross, *Black Families and Black Identity: A Literature Review*, 2 WESTERN JOURNAL OF BLACK STUDIES 111-124 (1978). This model described the various stages of development as an individual progressed from a pre-encounter status where “attitudes toward race...range from low salience to race neutrality to anti-Black...” to an ‘encounter stage’ where sudden surprising experiences are personalized. The third stage as described by Cross involves various levels of immersion into black culture and community and finally, the fourth and fifth stages of ‘internalization-commitment marks the point of dissonance resolution and a reconstitution of one’s steady-state personality and cognitive style.” *Id.* at 219-221; Adaptations accepted by Cross recognized that this process may be recycled ‘across the life span’ of an individual. *Id.* at 220-221. *But cf.* Camille Gear, *Performing Racial and Ethnic Identity: Discrimination by Proxy and the Future of Title VII*, 79 N.Y.U. L. REV. 1134, 1173 fn. 125 (criticizing of the Cross model and adaptations by other scholars)

⁴¹ Scholars of the formation of white racial identity developed similar dynamic stages of identity formation that partially parallel BRID but adapt it to address the dominant pre-encounter stage of white identity development and address other major differences at all stages. The stages of “White Racial Identity Development,” or “WRID,” are termed by different researchers as “conformity/pre-encounter, contact, disintegration, reintegration, pseudoindependence, and autonomy.” Janet Helms, *Toward a Model of White Racial Identity Development*, *supra* note 39 at 49-66. *See also* O’Donoghue, *supra* note 16 at 71; France Windance Twine, *The White Mother: Blackness, Whiteness, and Interracial Families*, 73 TRANSITION: AN INTERNATIONAL REVIEW 144 (1998). Critics of the WRID model rejected the comparison to black racial identity development and contended that dominant or minority positions in society differently affect the formation of identity. Further critics argue that WRID focuses less on white identity and more about “how Whites develop different levels of sensitivity to and appreciation of other racial/ethnic groups.” W. Rowe & D.R. Atkinson, *Misrepresentation and Interpretation: Critical Evaluation of White Racial Identity Development Models*, 23 THE COUNSELING PSYCHOLOGIST 364-367 (1995); *See also* W. Rowe & D.R. Atkinson, *White Racial Identity Models: A Critique and An Alternative*, 129 THE COUNSELING PSYCHOLOGIST 131 (1994). For these researchers, the more appropriate model would focus on categories of white racial consciousness. *Id.* at 135. Even so, the authors agreed that “racial attitudes change following, and as a result of, experiences that cause dissonance in the person’s cognitive structures or schemas.” *Id.* at 132. Their critique suggests further that the focus on black-white relationships in the formation of a model of white racial identity ignores the other racial groups and their impact on white racial identity formation. *Id.* These various models, however, emphasized the substantial problem of the early identity isolation stage for whites.

⁴² Cross, *supra* note 16 at 189-223. *See also* Helms, *supra* note 16; Michael Omi and Howard Winant, RACIAL FORMATION IN THE UNITED STATES FROM THE 1960S TO THE 1990S (1994).

⁴³ Cross, *supra* note 16, at 190.

("WRID") characterize this stage as “conformity,”⁴⁴ “contact,”⁴⁵ and “avoidant-dependent.”⁴⁶ At this stage, whites remain “minimally aware of the self as a racial being” and, based on their unexamined stereotypes, view the societal subordination of racial minorities as stemming from either laziness, inferiority, or lack of education and wealth.⁴⁷ According to subsequent researchers, a large number of white individuals remain in this stage for their entire lives; thus, “the conformity stage [pre-encounter stage] represents, perhaps, the most damning indictment of white racism....”⁴⁸ Two important elements sustain the “pre-encounter” white identity: overlooking the influence of race and ignoring its effects.

A. Colorblindness

Colorblindness originates in the refusal of white individuals to think of themselves as raced. This supposed absence of a racial identity presents substantial roadblocks in the ability to comprehend the way that racial minorities might interact with the world, and, more ominously, the way the world may interact with minorities. The adoption of a

⁴⁴ Derald Wing Sue & David Sue, *COUNSELING THE CULTURALLY DIFFERENT* at 95- 96 (1990). *See also* Margaret O’Donoghue, *supra* note 16 at 78.

⁴⁵ Helms, *supra* note 16.

⁴⁶ Rowe, *White Racial Identity Models*, *supra* note 42 at 136.

⁴⁷ Sue and Sue, *supra* note 44 at 78. In studies of white women parenting their biological bi-racial children, however, the stage may need a modification, since many of these women have had substantial contact with the black or other minority community and, for the most part, do not usually fit the description of this stage as well as white people who have had virtually no contact with people of different races. While this qualitative study identified one white mother who remained at this stage, denying the relevance of race to her children’s lives, this was not the common experience for the study group. O’Donoghue, *supra* note 16.

⁴⁸ Sue and Sue, *supra* note 44 at 78 at 95- 96.

color-blind approach leads many whites to profess equal treatment while failing to acknowledge the consequences of racial disparities and outcomes. Dr. James Comer, a noted expert on black child development, argued that “the white mind” permits a belief that the experience now of blacks and whites is the same, which “leads to faulty analysis, planning and action in efforts to deal with problems confronting blacks.”⁴⁹ They described the stark differences in the approach of whites and blacks to the same reality,

Observers who have not grown up in America are often perplexed by the ability of the white mind to remain impervious to racial realities....a kind of collective defect in the national ego and superego; a blind spot that permits otherwise intelligent people to see, think and act in a racist way without the expected level of guilt and pain. The syndrome is what I call the ‘white mind’....The white mind operates consciously and unconsciously to deny that white racism gives whites an unbeatable social, psychological and economic advantage over blacks.⁵⁰

The superficial belief in colorblindness misinterprets the Kingian ideology of “not by the color of their skin, but the content of their character.”⁵¹ For pre-encounter whites, the literal utilization of colorblindness obfuscates the reality of racial difference. Noticing but not considering race⁵² represents the pre-encounter approximation of Jeffersonian equality. The lurking existence of this silent white perspective directly controverts the

⁴⁹ James P. Comer, *BEYOND BLACK AND WHITE* 118 (1972).

⁵⁰ *Id.* at 117.

⁵¹ “I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.” “I Have A Dream” speech by Rev. Martin Luther King Jr., August 28, 1963, Washington, D.C.

⁵² Neil Gotanda recognizes three elements of nonrecognition. Gotanda, *supra* at 16-17.

Nonrecognition has three elements. First, there must be something which is cognizable as a racial characteristic or classification. Second, the characteristic must be recognized. Third, the characteristic must not be considered in a decision. For nonrecognition to make sense, it must be possible to recognize something while not including it in making a decision.

This colorblind approach to racial difference reflects the dominant perspective in both legal theory and social practice. *Id.* at 17.

insistence on its innocence. The argument of not seeing color actually underscores not only the colorblind actor's ignorance of their raciality, but also the inability to visualize and validate the "color" of the nonwhite. In this process of othering, racial transparency, a close relative of colorblindness, punctuates rather than eliminates the importance of race.

Common racial politics, even the term "people of color," fail to recognize the distinctive identity of whiteness. Confronting this belief in racelessness, Professor Barbara Flagg describes the "transparency phenomenon."⁵³ In this formulation, whites do not experience or think of themselves as having a racial identity, and they view themselves as racially transparent.⁵⁴ Flagg argues that transparency "ought to impel us to a radical skepticism concerning the possibility of race-neutral decisionmaking."⁵⁵ Under this theory, colorblindness assigns racial issues to minorities rather than the white mainstream. Self-reflecting on a distinct identity does not naturally occur to whites and normative ideas about race, and how it is viewed, assume a perspective cloaked in a perspective garb that ultimately reifies racial supremacy. Colorblindness, then, fails as an ideology of antiracism because it discounts the importance and difference of racial identity and its concomitant effects.⁵⁶ "White people," Flagg insists, "externalize race."⁵⁷

⁵³ Barbara Flagg, 'Was Blind But Now I See: White Race Consciousness and the Requirement of Discriminatory Intent, 91 MICH. L. REV. 953, 957, 977-978 (1993).

⁵⁴ *Id.*, See also Barbara Flagg, *An Essay for Keisha (And a Response to Professor Ford)*, 14 DUKE J. G.L. P. 179, 188 (2007); Stephanie Wildman, *The Persistence of White Privilege*, 18 WASH. U. J. L & P. 245 (2005).

⁵⁵ Flagg, *supra* note 68, at 1017.

⁵⁶ Kincheloe and Steinberg, for example, write

A cardinal aspect of the entire conversation about whiteness is the fact that liberal and pluralist forms of multiculturalism and identity politics have not produced a compelling vision of a reconstructed white

B. Willful racial ignorance

Similar to colorblindness, willful racial ignorance fails to acknowledge the existence of race as a viable indicator of difference. With the supposed irrelevancy of racial boundaries, no furtive lines exist. Furthermore, considering race as a recognizable characteristic opposes the precept of humanism that views race as an immaterial consideration in ethical judgment. In the “I don’t see color” argument, not only do color lines cease to exist, but the identities and prejudices they supposedly engender exist as illegitimate and unnecessary divisions amongst people.⁵⁸

One version of this mode of thought surfaces as the scientific disbelief in racial groups.⁵⁹ In seeing race as a social construct rather than biological reality, supporters argue that race finds no fixed meaning, because conceptions of membership change over time.⁶⁰ The ignorance approach invokes a form of racial recklessness,⁶¹ where individuals

identity. A critical white identity that renounces its whiteness, feels guilty about it, or seeks merely to court favor among non-Whites is ineffective in the struggle for justice, democracy, and self-efficacy. Here a key goal of a critical pedagogy of whiteness emerges: the necessity of creating a positive, proud, attractive, antiracist white identity that is empowered to travel in and out of various racial/ethnic circles with confidence and empathy.”

Joe Kincheloe & Shirley Steinberg, *Addressing the Crisis of Whiteness: Reconfiguring White Identity in a Pedagogy of Whiteness*, in WHITE REIGN, DEPLOYING WHITENESS IN AMERICA, 3-30 (2000).

⁵⁷ Flagg, *supra* note 68, at 970.

⁵⁸ A columnist for the Chicago tribune notes that, “[t]he legacy of Dr. Martin Luther King Jr. has become so twisted that more white Republican conservatives spout ‘I have a dream’ and ‘We must be judged not by the color of our skin but by the content of our character’ than socially conscious African Americans seeking to realize the achievement of King’s ‘Promised Land.’” Anthony Asadulla Samad, *The Twisting of Dr. King’s Dream*, CHICAGO TRIBUNE, Jan 15, 2006 at B3.

⁵⁹ Anthony Appiah has argued for a turn to “culture” instead of “race.” See Ian Haney Lopez, *Race, Ethnicity, Erasure: The Saliency of Race to LatCrit Theory*, 10 LA RAZA L.J. 1143 n 120 (1998).

⁶⁰ Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication and Choice*, 29 HARV. CIV. R. – CIV. L. L. REV. 61 (Winter 1994). See also Kimberle Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, in Kimberle Crenshaw et al. eds., *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE*

overlook or ignore the racial needs and differences of others. Eclipsing mere colorblindness, willful ignorance governs the interactions of whites with others, through a complete neglect or adamant refusal of the racial issues that surround them. By ignoring the impact of race, denizens of the resistant pre-encounter stage view other factors, such as social class, education, or wealth as the logical explanations for political and social disparity. Race becomes nothing more than an indicator of physical appearance, such as the innocuous traits of hair or eye color. This initial stage of racial identity development stunts the possibility of mutual racial understanding.

IV. WHITE PARENTS, BLACK CHILDREN: RACIAL PERFORMATIVITY

The party celebrated the visit of a famous black feminist poet and writer. I was in awe of her work and happy to get a chance to meet her on an informal basis. My friend from Nigeria, Leslie, invited me to the party at her apartment. Both Leslie and I were attending Yale Law School to earn a master's degree in law. She and I talked for hours about our experiences in the past and our dreams of the future. Leslie and Ryan played wonderful singing games whenever they were together. She became one of Ryan's favorite visitors. Ryan and I found ourselves next to the guest of honor. The smile she gave my son was warm and tender. "Who are you, little one?" she asked. Ryan ducked his head on my chest. I smiled and greeted her. "This is Ryan," I volunteered. "I'm Janis. He is my son." "Ah," she said, "well he is adorable. A beautiful child." She turned away to another admirer. Years later I met Leslie again, and we talked. "Thanks so much for including us in that party," I said as we set our cups of tea at a table by the window. "I had a nice time and everyone seemed to like having Ryan there. I didn't get to go to too many parties those days," I smiled as I shook my head at her offer of sugar. Leslie turned her cup thoughtfully. "It was a lovely time. At the end of the day everything worked out fine." She seemed to have something on her mind.

MOVEMENT 357, 375 (1995).

⁶¹ An example of racial recklessness may be found in James Weldon Johnson's *Autobiography of an Ex-Colored Man*, where a man passes for white without regard to consequence.

I finally made up my mind that I would neither disclaim the black race nor claim the white race; but that I would change my name, raise a mustache, and let the world take me for what it would; that it was not necessary for me to go about with a label of inferiority pasted across my forehead.

James Weldon Johnson, AUTOBIOGRAPHY OF AN EX-COLORED MAN,
<http://www.ibiblio.org/eldritch/jwj/auto.htm> (last checked March 26, 2007)

I spoke up. "I was a little disappointed that I didn't get a chance to talk to our special guest that much. She had so many other people who wanted to talk to her and she got distracted soon after I started to talk with her. I've always regretted not being able to get to know her. I love her work so much."

Leslie stopped turning her cup. "Well, I think it was hard for her, you know. She didn't really approve of you having Ryan." Leslie stopped and looked at me with concern. I knew she didn't want to hurt my feelings. I knew what was coming but I asked anyway. It wasn't really a question by that time in my life, but it still had the power to make me feel so alone."
*'Because I'm white, right?'*⁶²

Advocates of race matching for the adoption of African-American children argue that white parents lack the capacity to instill healthy racial values in black children.⁶³ Black children, activists say, belong with black parents in order to develop a strong sense of racial belonging.⁶⁴ Only same-race placements, according to these advocates, equip

⁶² Janis L. McDonald, LOVE CANNOT BE COLORBLIND: A TRANSRACIAL ADOPTION STORY *supra* note 65 at 71-73.

⁶³ For a general summary of the different arguments and the social science concerns see Cynthia Hawkins-Leon & Carla Bradley, *Race and Transracial Adoption: The Answer is Neither Simply Black or White Nor Right or Wrong*, 51 CATH. U. L. REV. 1227, 1233 (2002); Hawley-Fogg Davis, *Old Prejudices and Discrimination Float Under a New Halo*, 6 B.U. PUB. INT. L. J. 409,471(1997) ("Widespread, unregulated occurrences of private placements of infants of African-American descent with alienation from their natural reference group."); See also discussion of Howe's position in Hawley Fogg Davis, THE ETHICS OF TRANSRACIAL ADOPTION (2002) at 57-58 (highlighting Howe's argument that "only black parents can give black children the right bundle of black "traditions and impulses.""); James Bowen, *Cultural Convergences and Divergences: The Nexus Between Putative Afro-American Family Values and the Best Interests of the Child*, 26 JOURNAL OF FAMILY LAW 487,510 (1987-1988)("Thus, if child development (and specifically the socialization process) is as complex as many scholars suggest, it may be that a Black child cannot be reared into a self-actualizing Black adult by non-Black (adoptive or foster) parents."); Jacinda T. Townsend, *Defining Family: Adoption Law and Policy*, 2 DUKE J. GENDER L. & POL'Y 173,178 (1995) ("...a White parent cannot teach a Black child to maneuver according to the different standard to which that child will be held by White culture"); Marlon N. Yarbrough, *Trans-racial Adoption: The Genesis or Genocide of Minority Cultural Existence*, 15 S.U. L. REV. 353, 355-356 (1988) ("Afro-Americans who have nurtured their survival skills through their culture to overcome these negative reinforcements strongly emphasize the paramount importance of placing Afro-American offspring in Afro-American homes."); Tanya Washington, *Loving Grutter: Recognizing Race in Transracial Adoption*, 16 GEO. MASON U. CIV. RTS. L. J. 1, 4 (2005) ("In a society that has embraced colorblindness as the extant or desired state of race relations and the legal ideal, well-meaning and loving adopting parents, who are unaware of or resistant to acknowledging the significance of race as a distinct experience may be unable to effectively prepare their adopted children to adapt to and operate within their racialized environment, to the detriment of adoptees.") *Id.*

⁶⁴ See *supra* note for discussion of position statement of National Association of Black Social Workers.

black children with necessary “survival skills.”⁶⁵ As described by Judge Theodore Newman⁶⁶ in a dissenting opinion in 1982,

Black and other minorities develop survival skills for coping with such racism, which they can pass to their children expressly, or, more importantly, by unconscious example...Parents of interracial families may attempt to learn these lessons and then teach them, but most authorities recognize that this is an inferior substitute for learning directly from minority role models...Few white parents even claim they can teach such skills.”⁶⁷

From this belief flowed a rationale that adopted black children fare better in families that can “pass” as their naturally occurring relatives.⁶⁸

In what has been termed “biologism,”⁶⁹ agencies sought to recreate a “normal” family that corresponded to collective expectations about racial possibilities. This attempt to imitate a “naturally occurring biological family”⁷⁰ reinforced the problematic belief that

⁶⁵ See e.g., Twila Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33, 68 (1993-1994) (Arguing that transracial adoptions should be adoptions of the last resort with preference given for available black families and additional governmental efforts given to increase the number of potential adoptive black families.)

⁶⁶ Judge Theodore A. Newman received his J.D. from Harvard Law School in 1958; he served as a Judge on the Superior Court of the District of Columbia from 1970 until 1976 when he was appointed by President Gerald Ford to the D.C. Court of Appeals. He served as Chief Judge until 1984.

⁶⁷ Petition of R.M.G., 454 A.2d 776, 803 (Chief Judge Theodore A. Newman, dissenting opinion) (D.C. 1982).

⁶⁸ Bartholet, *supra* note 14 at 1172 “the ideas that what is “natural” in the context of the biological family is what is normal and desirable in the context of adoption”; Rachel Moral, INTERRACIAL INTIMACY: THE REGULATION OF RACE AND ROMANCE 126 (“Race is pertinent because agencies try to replicate “naturally occurring” biological families”); Dorothy E. Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 209, 215 (1995) (“The desire to have genetically related children is not entirely natural, but is determined by our political and cultural context. We often perceive a special relationship created by a shared genetic identity.”)

⁶⁹ See generally, Carrie L. Wambaugh, *Biology is Important, But Does Not Necessarily Always Constitute a “Family”: A Brief Survey of the Uniform Adoption Act*, 32 AKRON L. REV. 791 (1999).

⁷⁰ Moran, *supra* note at 127.

strong family attachments required a genetic link between parent and child.⁷¹ Thus, black parents, by the fate of classification alone, were asserted as the optimal, and perhaps the only people who could effectively parent black children.

The issue of racial fitness in parenting escalated in 1972 when the National Association of Black Social Workers (“NABSW”) issued a position paper that vehemently denounced the practice of transracial adoption.⁷² The organization opined:

We affirm the inviolable position of Black children in Black families where they belong physically, psychologically and culturally in order that they receive the total sense of themselves and develop a sound projection of their future... Black children in white homes are cut off from the healthy development of themselves as Black people, which development is the normal expectation and only true humanistic goal.⁷³

⁷¹ Hawley Fogg-Davis, *Racial Randomization: Imagining Nondiscrimination, in* Adoption in Sally Haslanger and Charlotte Witt, eds., ADOPTION MATTERS: PHILOSOPHICAL AND FEMINIST ESSAYS 247.

⁷² POSITION STATEMENT ON TRANSRACIAL ADOPTIONS, National Association of Black Social Workers, Inc., New York Chapter, Sept. 1972.

⁷³ *Id.*

Transracial adoption, they argued, provides inadequate care for black children.⁷⁴ Being raised in a white family deprives black children of a solid connection to a black community, black people, and a black identity.⁷⁵ For some, only within the context of a black family can a black child learn the survival skills⁷⁶ necessary to defend themselves in a majority white country.⁷⁷ Deflecting black children from black homes, according to this view, amounts to “cultural genocide”⁷⁸ and results in children devoid of a strong

⁷⁴ Our position is based on:

1. the necessity of self-determination from birth to death of all Black people.
2. the need of our young ones to begin at birth to identify with all Black people in a Black community.
3. the philosophy that we need our own to build a strong nation

We ... have committed ourselves to go back to our communities and work to end this particular form of genocide.

The socialization process for every child begins at birth. Included in the socialization process is the child's cultural heritage which is an important segment of the total process. This must begin at the earliest moment; otherwise our children will not have the background and knowledge which is necessary to survive in a racist society. This is impossible if the child is placed with white parents in a white environment.

Quoted in Twila Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33, n47 (1994).

⁷⁵ *Id.*

⁷⁶ For a definition of “survival skills” see *In re R.M.G.*, *supra* note 5 at fn. 37: “All black children, whether adopted or not, must be taught “survival skills”—that is, ways to cope with discrimination encountered in the world outside the family. To be capable of teaching survival skills, the family itself must be sturdy enough to stand up to any prejudice it may encounter[cites omitted].”

⁷⁷ For a better understanding of the critique that these children lack survival skills as black children, see Ruth McRoy & Louis Zurcher, *TRANSRACIAL AND INRACIAL ADOPTEES: THE ADOLESCENT YEARS* 138 (1983). In this study the authors attributed the self-identity difficulties of transracial adoptees to the attitudes of the adoptive parents. They reported that “a significant percentage of the transracial adoptees [over ten years of age] are uncertain about their identity and this is determined by how their parents wish to view them. Of concern is the fact that these children are inclined to devalue their black heritage, to ‘act as similar as possible to their white peers and white family members and to renounce any similarities or allegiances to blacks. These children were likely to refer to themselves as white.” *Id.* at .

⁷⁸ Sandra Patton-Imani, *Redefining the The Ethics of Adoption, Race, Gender, and Class* (review of Hawley Fogg Davis, *THE ETHICS OF TRANSRACIAL ADOPTION*) 36 LAW & SOC’Y REV. 813, 835 (2002)

racial identity. White parents, they believe,⁷⁹ simply cannot impart the necessary knowledge. No shared space existed to grant white parents the racial sensitivity and understanding of black people. Interracial convergence, by reason of biology alone, could never occur.

Even without a federal law that prevented white parents from adopting black children, the number of transracial adoptions rapidly dropped as a result of the NABSW's statement.⁸⁰ The sharp drop in the numbers of white parents adopting black children—almost one-half in three years—reflects the strong policy impact of the social workers' statement.⁸¹ While the NABSW position paper held no legal authority, its mandate and mission continues to claim moral and cultural authority in adoption placements.

The NABSW's position paper incensed many prospective transracial parents.⁸² Opponents responded with a legal and political agenda to eliminate race-based placement

(pointing out that NABSW's statement never actually mentions the word genocide—this characterization has demonized the organization for the past 30 years).

⁷⁹ *Id.*

⁸⁰ White-black transracial adoption first occurred in 1948. The numbers peaked in the late 1960s reaching approximately 2500 in 1971. After the first NABSW statement in 1972 the numbers declined to 1569 that year, down to 831 three years later. Hawley Fogg-Davis, *THE ETHICS OF TRANSRACIAL ADOPTION* 3-4 (2002). Yet in the context of the transracial adoption of Native American children, the story is different. This paper does not intend to comment on the Indian Child Welfare Act, 25 U.S.C. ss 1901 (2000) but we mention it here to demonstrate the disparate critiques of transracial adoption, and how the approaches elicit different considerations of the need to maintain a strong culture and community for adoptive children. See e.g., Kevin Noble Maillard, *Parental Ratification: Legal Manifestations of Cultural Authenticity in Cross-Racial Adoption* 28 AM. IND. L. REV. 107 (2003).

⁸¹ *Id.*

⁸² See e.g., Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163-1256 (1991). Bartholet attacked race matching policies as representing "a coming together of powerful and related ideologies -old-fashioned white racism, modern-day black nationalism, and what I will call "biologism" - the idea that what is "natural" in the context of the biological family is what is normal and desirable in the context of adoption." *Id.* at 1172. She admits, however, "it may be that studies are incapable of measuring the value to a black child of being raised by black parents as part of a black community with a sense of its unique black cultural heritage." *Id.* at 1209. She insists that studies of black children adopted by white parents demonstrate

decisions.⁸³ Groups such as the National Committee to End Racism and the National Council for Adoption lobbied for the Multi-Ethnic Placement Act (“MEPA”).⁸⁴ In partial satisfaction of their efforts, MEPA did prohibit race as the sole basis for denying an adoption, but allowed racial considerations to be a factor in placement decisions.

Although MEPA did not resolve the issue of racial fitness of white parents, the Department of Health and Human Services (“HHS”) developed a rubric for placement agencies to assess racial awareness and sensitivity.⁸⁵ These guidelines invoked equal

no negative impact on the children's well-being. *But cf.*, McRoy study, Shireman & Johnson, *A Longitudinal Study of Black Adoptions: Single Parent, Transracial, and Traditional*, 31 SOC. WORK 1, 172-176 (1986).

⁸³ See e.g., description of this political agenda in Fogg-Davis, THE ETHICS OF TRANSRACIAL ADOPTION at 43-51; Bartholet, *supra* note 82. In her more recent book, *Nobody's Children*, Bartholet argues that social workers have been working against the dictates of MEPA-IEP by using “cultural competence” inquiries about the prospective adoptive parents. She argues against all efforts to match children in same-race adoption placements. Bartholet *supra* note 82, Hawley Fogg-Davis, at 47-48.

⁸⁴ HOWARD M. METZANBAUM MULTIETHNIC PLACEMENT ACT OF 1994, 42 U.S.C. § 5115a, repealed August 20, 1996. The Act’s statement purpose focused on “(1) decreasing the length of time that children wait to be adopted; (2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and (3) facilitating the identification and recruitment of foster and adoptive families that can meet these children's needs.” *Id.* at § 552(b)(1)-(3), 108 Stat. at 4056.

The language of the Act stated:

(1) PROHIBITION. An agency, or entity, that receives federal assistance and is involved in adoption or foster care placements may not (A) categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; or (B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, *solely* on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) PERMISSIBLE CONSIDERATION. An agency or entity to which paragraph (1) applies may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interest of a child. *Id.* [emphasis added]

⁸⁵ The *Workers’ Assessment Guide for Families Adopting Cross-Racially and Cross-Culturally* has been modified over time. The categories of consideration include a permissible focus on “the identity needs of children placed cross-racially/culturally” and are utilized “to assess an applicant’s capacity and ability to meet the following unique identity needs of children who live with a family of a race or culture other than his/her own. In addition to the qualities necessary to enhance the normal development of any child in placement, these needs are:

- To live in an environment that provides the child an opportunity to participate in positive experiences with their culture, religion, and language.

-
- For association with same race adult and peer role models and relationships on an ongoing basis
 - For environmental experiences that teach survival, problem solving, and coping skills which give the child a sense of racial and ethnic pride
 - A parent who can understand and relate to the child's life and daily relationship to racial and cultural differences and who can respond to those experiences with acceptance, understanding and empathy.
 - For a parent who accepts and can help the child to accept the child's racial and cultural ancestry and can comfortably share knowledge and information about the child's racial and cultural ancestry with the child.
 - To have a parent that has knowledge of special dietary, skin, hair, and health care needs.

Id. at .

These “desirable” qualities included:

- An understanding of their own sense of personal history and how that helped form their values and attitudes about racial, cultural, and religious similarities and differences.
- An understanding of racism and whose life experiences have given them an understanding of how racism works and how to minimize its effects.
- Life experiences and personal history which have given them the capacity or ability to parent cross-racially/culturally. Commitment to and capability of demonstrating empathy with the child's family of origin regardless of the socio-economic and lifestyle differences between them and the child's family.
- Capacity and commitment to provide the child with positive racial and cultural experiences and information and knowledge of their race and culture.
- Capability of preparing the child for active participation in or return to the child's racial and cultural community.
- Adequate support of those significant to them in their decision to parent cross racially/culturally.
- Residence in a community that provides the child with same race adult and peer role models and relationships on an ongoing basis.
- Tolerance and ability to deal appropriately with the questions, ambiguity, or disapproval which arise when people assume that the child is the applicant's birth child.
- Willingness to incorporate participation in cross-racial/cultural activities into their lifestyle and participate in race/cultural awareness training.

See e.g., Tanya Washington, “Loving Grutter: Recognizing Race in Transracial Adoptions, 16 Geo. Mason U. Civ. Rts. L.J. 1, 31 (Winter 2005); Elizabeth Bartholet, *NOBODY'S CHILDREN* (1999) at 130-140.

protection questions. In *DeWees v. Stevenson*,⁸⁶ the case discussed in the introduction to this Article, the social worker responsible for adoption placement decisions recommended against placement with the foster parents because they failed to demonstrate the necessary sensitivity to the racial identity needs of the biracial child. He relied on the Health and Human Services Guidelines in operation at that time and recommended against the adoption.⁸⁷ Those guidelines permitted consideration of the racial needs of the child while forbidding decisions based solely on the race of either parents or child.⁸⁸

The federal court in *DeWees* permitted the use of racial considerations as an indication of parental fitness.⁸⁹ This approach allowed for an assessment of attitudes to determine the best interest of the child adopted by adults of a different race. To justify this holding, the judge concluded that “state agencies cannot ignore the realities of the society in which children entrusted to them for placement will be raised, or the affect on children of those realities as documented by professional studies.”⁹⁰ Reiterating that racial classifications are “inherently suspect”, the judge nevertheless found a compelling state interest to consider the impact of race on the best interest of the child.⁹¹ The court viewed the agency decision as a judgment on the prospective parents’ attitudes and not on their

⁸⁶ 779 F. Supp. 25 (E.D. Pa. 1991).

⁸⁷ *Id.* at fn. 162-165.

⁸⁸ *Id.*

⁸⁹ *Id.* See also Maillard, *supra* note 80.

⁹⁰ *Id.* at 29.

⁹¹ *Id.* at 28 n.4 citing *McLaughlin v. Pemsley*, 693 F. Supp. 318, 324 (E.D. Pa. 1988), *aff’d*, 876 F.2d 308 (3d Cir. 1989), a case decided before the enactment of the Multiethnic Placement Act.

“race per se.” The action appeared consistent with the demands of the Multiethnic Placement Act, commonly referred to as ‘MEPA’⁹²

DeWees demonstrates the simultaneous pliancy and transparency of MEPA. On one hand, it prohibits the use of race as determinative in adoption placements. At the same time, it allows for critical examinations of the adopted child’s racial needs, and whether the attitudes of the adoptive parents converge with the needs of the black child. Thus, inquiries into the racial attitudes of the prospective parents conform to MEPA’s interests of racial fairness. MEPA served the interest of the child while prohibiting categorical disqualifications on the basis of race alone.

Policies favoring the racial interests of the minority child soon changed to reflect the legal ideal of colorblindness.⁹³ Less than one year after its passage, a successful political campaign resulted in amendments to the law.⁹⁴ Congress passed the Small Business Job Protection Act of 1996 which included amendments, known as the “Interethnic Adoption Act,” repealing critical language in the Multiethnic Placement Act⁹⁵; the changes manifest this colorblind ideal by prohibiting racial considerations in

⁹² Dewees, *supra* note 86 at 26.

⁹³ See generally Bartholet, *supra* note 14 (Arguing that the best interests of the child should outweigh considerations of race-matching). Many of the chief supporters of transracial adoption support the colorblind approach to equality; See also Hawley Fogg-Davis, *The Ethics of Transracial Adoption* at 36-40 (2002) for a critique of the role of colorblind theory in the transracial adoption debates in 1991 and 1995; Tanya Washington, “Loving Grutter”, *supra* note at 85 .

⁹⁴ See Hawley Fogg-Davis for a description of efforts to repeal the Multiethnic Placement Act, *supra* note 36 at . See also Tanya Washington, “Loving Grutter”, *supra* note 85 at .

⁹⁵ SMALL BUSINESS JOB PROTECTION ACT OF 1996, Pub. L. No. 104-188, 110 Stat. 1755 (1997) Section 1808 (“Interethnic Adoption Act”):

Removal of Barriers to Interethnic Adoption:

Neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may deny to any person the opportunity to become an

adoption placements. Unlike the parental scrutiny allowed by MEPA in *DeWees*, IEP disallows decisions based on the racial difference between parent and child.⁹⁶ IEP also regulates placement agencies in their investigations of parental racial awareness or sensitivity.⁹⁷ For most of the children, the assessment assumes a color-blind approach to their best interests.

adoptive or a foster parent on the basis of race, color, or national origin of the person or of the child involved.

⁹⁶ *Id.*

⁹⁷ *Id.* State agencies maintain federal funding by complying with the mandates of IEP. “Internal Evaluation Instrument” at 1. MEPA/Section 1808 is a reference to the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996. The state may lose up to 5% of its Title IV-E funds for a fiscal quarter and Title VI violations can result in suspension or termination or refusal to grant federal financial assistance. *Id.* at 2. The assessment was produced by Health and Human Services’ Administration for Children and Families, Children’s Bureau and Office for Civil Rights. Annual reports require specific statistics on compliance with the Act and federal funds may be withheld if noncompliance occurs.

Section 471(a) (18) of MEPA-IEP warns agencies not to deny or delay placements based on the race of the parents. Throughout a voluntary assessment process, state agencies receive conflicting bureaucratic messages either eliminating racial considerations or permitting their review. *See* Section 1808 of MEPA-IEP. The assessment was produced by Health and Human Services’ Administration for Children and Families, Children’s Bureau and Office for Civil Rights. Annual reports require specific statistics on compliance with the Act and federal funds may be withheld if noncompliance occurs. The MEPA/Section 1808 Internal Evaluation Instrument warns that “completion of the instrument does not guarantee MEPA/Section 1808 compliance....[and agencies that] may still be the subject of OCR complaint investigations and compliance reviews pursuant to Section 1808 and Title VI of the Civil Rights Act of 1964 and ACF Title IV-E reviews.” Both Section 1808 and Title VI impose significant legal penalties for race-based discrimination in adoption and foster care. Federal instructions allow agencies to consider race only in the “rare” individualized assessment of a child’s needs. MEPA/Section 1808 Internal Assessment Evaluation at 10. Specific inquiry examines how the agency “complies with MEPA/Section 1808 that the assessment process only includes questions regarding the capacity of the prospective parent to foster or adopt a child of a different race, color, and/or national origin when supported by an individual assessment of the needs of the child.” *Id.* at 10. The instructions also elicit information on whether agencies require the prospective parent to 1) answer more questions because of the racial difference, 2) enroll in additional training courses, 3) move to a different more diverse community, 4) develop a transracial adoption plan, 5) submit to additional caseworker visits, 6) justify their interest in adopting cross-racially, or 7) satisfy different or higher licensing or approval standards, or submit to any further steps not required of same race applications. *Id.* at 9. For most of the children, the assessment assumes a color-blind approach to their best interests.

The American legal system has favorably endorsed colorblindness.⁹⁸ In the adoption context, this approach eliminates the consideration of the fitness of whites to parent black children. Equal treatment of blacks and whites, under this theory, eliminates any inquiry, no matter how useful, of race.⁹⁹ Regrettably, this assumes that racial categories themselves do not invoke various starting points of privilege. The business of not seeing race gladly presumes equal racial footing, in ignorance of the inequities embedded in institutional structures and legal protections that preclude the realization of truly equal treatment.¹⁰⁰ A compelling state interest in child welfare sometimes overrides this judicial imperative of colorblindness.¹⁰¹

In 2003, the NABSW reaffirmed its conviction in race-matching. The updated position statement reiterates concerns about identity development. According to the

⁹⁸ See *infra* note 99.

⁹⁹ Jim Chen, *Unloving*, 80 IOWA L. REV. 145 (1994) (Arguing that the U.S. is a Creole Republic and that the only way to continue to uphold ideals of equality is to ignore racial classification); Jerome McCristal Culp, Jr., *Colorblind Remedies and the Intersectionality of Oppression: Policy Arguments Masquerading as Moral Claims*, 69 N.Y.U. L. REV. 162 (1994). (Describing the general attitude, towards colorblindness, which he is arguing against, as positing "inattention to race as a moral requirement of all "right" thinking people and all good law"); Morris B. Abram, *Affirmative Action: Fair Shakers and Social Engineers*, 99 HARV. L. REV. 1312 (1986). (Arguing that the Civil Rights movement should "Turn its attention back to first principles-the zealous regard for equal opportunity and the promotion of color-blind law and social policy."); Terry Eastland, *The Case Against Affirmative Action*, 34 WM & MARY L. REV. 33 (1992). (Arguing that straying from the principle of colorblindness in affirmative action programs has harmed the goal of racial justice.)

¹⁰⁰ See Neil Gotanda, *A Critique of 'Our Constitution is Colorblind,'* in Kimberle Crenshaw et al, CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT, 257-275; Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, in Crenshaw et al, CRITICAL RACE THEORY, 63-79. See Richard Delgado, Jean Stefancic (eds.) CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (1997).

¹⁰¹ Dewees, *supra* note . However, the most recent Supreme Court decision in *Grutter v. University of Michigan* has yet to be applied to the Multiethnic Placement-Interethnic Adoption Act's ban on the use of race as a factor in placement decisions. Although strict scrutiny was applied, a compelling state interest existed in the educational institution's interest in achieving diversity in the student body. *Grutter v. University of Michigan*, 539 U.S. 306 (2003). The Court permitted race to be used as one of many factors in the admission decisions at the University of Michigan Law School in the face of an equal protection challenge. *Id.*; see generally, Washington, *Loving Grutter supra* n at 1.

statement, children of African ancestry learn about their identity from within the home and community. Identity is deemed critical to the ability to negotiate the world, understand one's barriers and realities, and feel good about self. Identity forms the basis of character development, pride, self-esteem, and belief in achievement.¹⁰² The emphasis on identity underscores their belief in developing a strong black identity in children of African descent. In 1994, the NABSW criticized the IEP and countered with an emphasis on the cultural needs of transracially adopted children who are “far too often cut off from their culture of origin and their African ancestry[.]”¹⁰³ The child’s racial background,¹⁰⁴ the position argues, necessitates an identification with black culture. Thus, prospective white parents cannot transmit cultural values that foster a healthy racial identity. Descent and identity, according to this syllogism, are equivalent and inclusive. Deviations from the genealogy/awareness nexus fail to meet the minimum standard of fitness for parenting black children. In the original, much publicized, position statement in 1972, the Association does not recognize the possibility of interracial convergence.

Although the NABSW continues to raise these issues, it joins others in the complex conclusions about the formation of racial identity. Familial, social, and spiritual forces can affect the child’s developing views of self both positively and negatively. The stages of cognitive development of self-identity and racial identity in children¹⁰⁵

¹⁰² See e.g., Alan Silverman, *The Future of Children*, 3 ADOPTION 108 (1993).

¹⁰³ *Preserving Families of African Ancestry*, National Association of Black Social Workers (1994) at p. 4.

¹⁰⁴ See Fogg-Davis, *supra* note at p. 53 (2002) (noting that “Racial solidity—the idea that children should acquire a preset racial identity from parents who share their racial ascription—motivates much of the race-conscious opposition to TRA”).

¹⁰⁵ See e.g. B.J. Wadsworth, *Piaget’s theory of cognitive and affective development: Foundations of Constructivism*, 5th ed. (White Plains, New York: Longman, 1996)

have been examined in the particular context of transracially adopted children.¹⁰⁶ During the period between 1970 and 1998, empirical studies tended to show that transracial adoptees seemed as well adjusted as same race adoptees.¹⁰⁷ Further studies, however, highlight the difficulties these children experience in developing healthy racial identities.

During the mid-eighties, researchers Alstein and Simon reported on a study of transracially adopted children based primarily on reports by the parents as to their perceptions of the racial identities of their children. They reported that the children “were more racially color-blind and more indifferent to race as a basis for evaluation than any other group reported in any previous study.”¹⁰⁸ They also reported that “parents tended to believe that race did not and would not be a major issue in how

¹⁰⁶ See e.g., Patricia Ramsey, *TEACHING AND LEARNING IN A DIVERSE WORLD* (2004); Beverly Daniel Tatum, *supra*, note 108. others, Brenner, E.M., “Identity formation in the transracially-adopted adolescent (unpublished Ph.D. dissertation, California School of Professional Psychology at Berkeley/Alameda, 1993), *Dissertation Abstracts International*, 54, 3871. For information on the general formation of personal identity, See Erik Erickson, *IDENTITY YOUTH AND CRISIS* (1968); Janet Helms, ed., *BLACK AND WHITE RACIAL IDENTITY: THEORY, RESEARCH, AND PRACTICE* (1990).

¹⁰⁷ These studies were cited frequently by the proponents of the prohibition of race matching that led to the Multiethnic Placement Act of 1994; the studies were offered to demonstrate that transracial adoptions resulted in well adjusted children. See e.g., C. Bagley, L. Young & A. Scully, *International and Transracial Adoptions* (1993); Penny Johnson, Joan Shireman & Kenneth Watson, *Transracial Adoption and the Development of Black Identity at Age Eight*, 66 *CHILD WELFARE* 45-55 (1987); Ruth McRoy, Louis Zurcher, Michael Lauderdale & Rosalie Anderson, *Self-Esteem and Racial Identity in Transracial Adoptees*, 27 *Social Work* 522-526 (1982); Joan Shireman & Penny Johnson, *A Longitudinal Study of Black Adoptions: Single Parent, Transracial, and Traditional*, 31 *SOCIAL WORK*, 172-176 (1986); Rita Simon & Howard Alstein, *TRANSRACIAL ADOPTEES AND THEIR FAMILIES: A STUDY OF IDENTITY AND COMMITMENT* 107 Most of these studies were based on factors such as “racial group preference,” “objective racial self-identification” by either the parents or the child, and “knowledge or awareness of one’s racial group membership.” Even the earlier studies noted concerns “that transracially adopted children were developing differently from intraracially adopted children” which might “be a precursor to problems in the transracial adoptee’s racial identity.” The study noted that the racial identity of transracial adoptees was “of concern,” even though there were no observational differences in the interviews of the adoptees. *Id.* at 173. Others criticized these conclusions based on lack of a clearly identified methodology.

¹⁰⁸ Rita Simon & Howard Alstein, *TRANSRACIAL ADOPTEES AND THEIR FAMILIES: A STUDY OF IDENTITY AND COMMITMENT* (1987). See also Howard Alstein & Rita Simon, *Transracial Adoption: An Examination of an American Phenomenon*, 4 *JOURNAL OF SOCIAL WELFARE* 63-71 (1977).

people perceived, evaluated, or related to each other.”¹⁰⁹ In a subsequent study, Alstein and Simon reported “that seventy-seven per cent of the families lived in predominantly white neighborhoods, sixty-three per cent of the children reported that most of their friends were white, about one-third had both black and white friends, and only three percent had mostly black friends.”¹¹⁰ As reported by the parents, “although sixty-five percent of the children were actually African American, only forty-five percent of the parents believed that their children would identify themselves as black.” They also believed that although none of the children in the study were white, parents believed that fifteen per cent of them would consider themselves white.¹¹¹

Another study by McRoy, Zurcher, Lauderdale & Anderson reported “no differences in self-esteem... between black children who had been either transracially or intrracially adopted.”¹¹² However, they noted that when parents made efforts to place their children in racially integrated communities, schools, and social networks, positive results occurred. Children of color in integrated communities had stronger positive feelings than children whose parents downplayed their racial identity.¹¹³ A follow up study by McRoy et al supported the importance of positive racial environments on

¹⁰⁹ *Id.* at 7.

¹¹⁰ Alstein and Simon, *TRANSRACIAL ADOPTION: A FOLLOW-UP* (1981) at p. .

¹¹¹ *Id.*

¹¹² Ruth McRoy, Louis Zurcher, *TRANSRACIAL AND INRACIAL ADOPTEES: THE ADOLESCENT YEARS*, (1983).

¹¹³ *Id.* at 525. Ruth McRoy, Louis Zurcher, Michael Lauderdale & Rosalie Anderson, *The Identity of Transracial Adoptees*, 65 *SOCIAL CASEWORK* 34-39 (1984).

transracial adoptees' well-being.¹¹⁴

Studies of black racial identity development, (“BRID”),¹¹⁵ present the needs of the child of color, and this helps the parent to understand how his or her own identity issues will affect the child. According to the BRID model there are four stages in racial identity development. The first stage, termed pre-encounter, describes a low level of racial awareness and a devaluation of one's own group. Encounter, the second stage, describes the confusion precipitated by eye-opening racial incidents. The third stage of immersion-emersion in black issues involves an intense refocus of racial values, such as Afrocentrism, and rejection of the white norm. Further development, indicated by the fourth stage, internalization-commitment, involves a developing racial self-confidence and flexibility of thought that promotes interaction across racial boundaries.¹¹⁶

In addition to questions about the needs and identities of transracially adopted children, attention must also focus on the white racial identity development of adoptive

¹¹⁴ Substantial critiques have surfaced that challenge the methodologies of these studies based on the sample size, the emphasis on parental self-reporting of child adjustment, the lack of information on late-adolescent adoptees, and “inadequate outcome measures. *See e.g.*, Taunya Washington, Loving Grutter, *supra* note ; Cynthia Hawkins-Leon & Carla Bradley, *Race and Transracial Adoption: The Answer is Neither Simply Black or White Nor Right or Wrong*, 51 CATH. U. L. REV. 1227, 1233, 1269-1274 fn 53-55 (2002); Twila Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33, 59 (1994). For social science literature that provided research results supporting opposition of transracial adoptions, *see e.g.* Arnold Silverman & William Feigelman, *Adjustment in Interracial Adoptees: An Overview* in David Brodzinsky & Michael Schechter, eds., *PSYCHOLOGY OF ADOPTION* (1990). For a later assessment of these studies, *See also* R.G. McRoy, *Transracial and International Adoption: The Current State of Research, Practice and Policy*, paper presented at the Annual Conference of the National Council on Family Relations, Minneapolis, Minnesota (1994).

¹¹⁵ Cross, W.E., Jr., *SHADES OF BLACK DIVERSITY IN AFRICAN AMERICAN IDENTITY* (1991); *See also* Janet Helms, ed., *BLACK AND WHITE RACIAL IDENTITY: THEORY, RESEARCH AND PRACTICE* (1990).

¹¹⁶ *Id.*

parents. For both, racial privilege, or the lack thereof, becomes an integral part of the unchallenged norm and a significant factor in the formation of self-identity for the child. Challenge of those privileged norms, for the black child's racial identity, occur in the second or third stage of BRID. If the white parent fails to recognize the significance of these encounters, as discussed in the studies of some transracial families, the child suffers.

The legal relevance of research on white racial identity development merits further attention as it relates to the laws permitting colorblind decisions on transracial adoptions. Parents who remain oblivious to their prospective child's racial needs jeopardize the child's development of a healthy racial identity. Parents who engage on the continuum of white racial identity development may perceive and address their child's identity issues as they develop.

V. TRANSFORMATIVE WHITE IDENTITY: INTERRACIAL CONVERGENCE

I wish I could say that I was aware enough to think about names that might have connected my son with his black heritage and culture. I didn't. My first instinct was to give my son some of my own Celtic culture, to claim him as my own. I wanted to share my heritage and make it part of his.¹¹⁷

A. The Pre-Encounter Stage

Many adoptive parents live in the pre-encounter stage of white racial identity development. White identity does not exist as a salient or perhaps a consciously

¹¹⁷ Janis L. McDonald, *Love Cannot Be Colorblind: A Transracial Adoption Story* (forthcoming Rowman & Littlefield 2008), *supra* note X manuscript at 33; Wolff, *Secretive Thoughts of An Adoptive Mother*, at 171; Joshua Carter Woodfork, *Interview with Sharon Rush*, October 20, 2003, Ph.D. dissertation at 63; Harrington, "A White Man's Journey into Black America" at 14, Frances Wardle, *Tomorrow's Children* at ;Becky Thompson, "Mothering without a Compass" at 5.

recognized characteristic.¹¹⁸ These parents either do or do not believe in racial difference, or they adopt a color-blind approach to the effect of race in society.¹¹⁹ Acknowledgement of racial privilege or subordination goes unnoticed. This pre-encounter stage constitutes a form of racial recklessness,¹²⁰ without regard to the child's racial needs. Parents who remain in this stage fail to comprehend the potential transformations of their own white identity.

For white parents, adopting across the color line is a conscious decision.¹²¹ Despite this deliberate effort to create a hybrid family, for many, racial blindness remains. Adoptive parents have the parental power to make complex choices that influence how their child may develop racial identity and self-esteem. The present laws seem to permit them to choose deliberate blindness to racial difference or deny the recognition of racial identity. They may choose to appropriate the cultural manifestations of one race without directly addressing the full meaning of that racial identity.¹²² Or, they may choose wholesale adoption of a different racial identity for the parent only, the child only, or for both.

¹¹⁸ See Flagg, *supra* note .

¹¹⁹ Elizabeth Bartholet, "Where Do Black Children Belong? The Politics of Race Matching in Adoption," 139 U. Pa. L. Rev. 1163 (1991).

¹²⁰ See discussion of racial recklessness, *supra* note .

¹²¹ See e.g. Bartholet, "Where Do Black Children Belong? The Politics of Race Matching in Adoption," 139 U. Pa. L. Rev. 1163, 1169 (1991): "In choosing which line to join, I had to think about race, and to think on a level that was new to me. I had to try to confront without distortion the reality of parenting someone of another race-since the child and I would have to live that reality. I had to decide whether I wanted a child who was a racial look-alike or not....And then when I finally did adopt I began life as part of a Peruvian-American family, part of a brown-skin/white-skin, indian-caucasian mix of a family." *Id.* at 1169-1170.

¹²² See e.g., A.R. Silverman, *The Future of Children*, 3 Adoption 108 (1993).

As the model of white racial identity demonstrates¹²³, these types of parental choices reflect a pre-encounter state of racial awareness. Most constructions of racial reality depend on whether people can be placed in a pre-encounter stage with respect to racial relationships or somewhere along a post-encounter continuum. The question remains whether white parents possess the potential to progress beyond the pre-encounter stage of colorblindness or racial recklessness in the development of their own white identity.

B. Encounter and Disorientation

I looked forward to that time of camaraderie shared by mothers out with their babies. In the past I often approached mothers with infants and joined in the admiring coos and talk that typically occurs when a baby is present. Even without a baby in tow I received broad smiles from the mothers who loved to hear what they already knew - that their babies were wonderful. Conversations would ensue because of my praise of their child. With Ryan it was different. The first time I approached a group of white mothers, white babies and multi-colored strollers, I began to learn about silence and the emotions it could evoke. Ryan looked adorable. Their children looked adorable. I smiled and said hello. No response. No smiles, no overtures of praise, no manifestation of welcome whatsoever. As I continued my effort by praising the cute babies, the mothers seemed to move physically closer together, closing ranks: lips tightened, eyes narrowed, they looked as if they feared I would snatch their babies in order to get one of my own kind.¹²⁴

The encounter stage for white adoptive parents involves jarring interactions to their own or other whites' pre-encounter norms.¹²⁵ The parents, according to white racial identity development, "WRID", may either refuse to integrate the discordant experiences

¹²³ See *supra* note 55 on white racial identity models.

¹²⁴ Janis L. McDonald, *Love Cannot Be Colorblind: A Transracial Adoption Story* (Forthcoming Rowman & Littlefield (2008) *supra* note at 44-46; In one description by Elizabeth Bartholet, she recounts that "As the months go by I begin to hear troubling comments. 'Oh, he's from Peru. I didn't know they came that dark there....But he really seems to be doing very nicely. I realize that I need to develop responses for the things people will say to him and in his presence." Elizabeth Bartholet, *Where Do Black Children Belong?*, *supra* note , at 1170. Sharon Rush, *Loving Across the Color Line* at p. 74-75 (silence by teachers when child should have been placed in advanced class),(refusal of teacher to see effect of placing the one black child and her exhibit away from all the other children in the classroom and behind a lab desk that blocked her exhibit from the view of the visiting parents.) *Id.* at 66-69. Reddy at 156; Wolff at 144-145.

¹²⁵ See discussion of encounter stage of WRID, *supra* at pp. .

or transition into a more integrative stage of WRID.¹²⁶ This segment of the model describes the progression from initial disruptive encounters to anger and denial, and eventually to a reformation of white identity.¹²⁷ The research studies tend to merge a number of different descriptive phases within this category.

From a legal perspective, the broadness of this stage fails to enunciate the incremental development of parental racial fitness. In order to highlight this second stage the component parts of the process involved needs further explication, at least with respect to transracial adoptions. Further scientific studies providing this breakdown would offer more comprehension of this critical phase. Interracial convergence, which we define as the deliberate occupation of the evolving boundary between black and white, requires a more rigorous sociological and legal examination of the unique challenges posed at the stages of a) initial racial disorientation, b) awareness of repetitive racial incidents, and c) reckoning with privilege. Successive stages in our proposed model of interracial convergence require further sociological studies to build upon these critical initial experiences.

a) Initial Racial Disorientation

The baby-stroller experience described above resembles the encounter stage. Old expectations of camaraderie amongst new mothers quickly disappear. In these disorienting experiences, a new silence jars against the white adoptive mother's

¹²⁶ *Id.*

¹²⁷ The description includes stages of “dissonance, resistance and immersion,” Sue & Sue, *supra* note X at 181, or “disintegration and reintegration.” Helms, *supra* note 55 at . See also O’Donoghue, note at 79.

consciousness. Becoming the parents of a black child activates a steep learning curve about racial dissonance.¹²⁸ Experiences of disorientation resound with other white mothers of black children. In a dizzying array of events, ugly encounters and conversations, the parent begins to realize the reality of racially motivated incidents.

At the start of our first conversation, Sammie recalled an elderly woman calling her white trash in the checkout line at the grocery store as she stood in line with her Biracial son. Carol recollected an encounter when her daughter was a baby and a car pulled up next to her in a parking lot. Once the woman in the other car saw her daughter in the back seat, the stranger yelled, “You bitch, nigger lover,” and aggressively followed Carol in the car. Elaine noted a time that her husband was told that ‘those kind’ like their Black daughter were not allowed toilet privileges on the premises. Karen felt uneasy when her family was seated in the back of an empty restaurant. Leslie continued to dislike the bagger at her local grocery store who insisted on asking, “Is she Black or White, what is she?” when encountering her Biracial daughter. Church members voted about whether to retain one mother and her husband as leaders in the church when they first adopted their Biracial child, eventually deciding in their favor.¹²⁹

Hurtful incidents as lived by these mothers conflict with their prior knowledge and expectations of race. The euphoria of forming a new family may cloud the reality of racial difference until the occurrence of the first disorienting experience.¹³⁰ Realizing the inadequacy of her knowledge, the white adoptive parent should recognize that protecting a black child requires a new parental response. White adoptive parents may gradually perceive the wave of difference that assaults them in daily life as they unconsciously pass

¹²⁸ Margaret Brining, A Minnesota Comparative Family Law Symposium: Moving Toward a First-Best World: Minnesota's Position on Multiethnic Adoptions, 28 Wm. Mitchell L. Rev. 553, n 105 (2001) (quoting Steinberg & Hall).

¹²⁹ Nora Rose Moosnick, *Adopting Maternity, White Women Who Adopt Transracially or Transnationally*, 116,117 (2004).

¹³⁰ *Id.* at 117.

back and forth across racial boundaries. For the story above, once overt racial acts occurred, they "questioned situations and scenarios for racial undertones."¹³¹

From a legal perspective, this response potential justifies inquiry into racial attitudes that foster the best interests of the black child. Legal scholars as well as social science scholars conclude that individuals view their lives based on preconceived, and often unconscious, ways of processing information.¹³² These cognitive processes reflect stereotypes of categorization¹³³ that organize human comprehension of the outside world.¹³⁴ Here, stereotypes persist until a disorienting event challenges the cognitive authority of the categorization. In direct opposition to this standard categorization, consciousness of this pervasive mindset gradually reformulates information held in

¹³¹ *Id.*

¹³² See e.g., Charles Lawrence, *The Id, The Ego and Equal Protection: Reckoning with Unconscious Racism* 39 Stan. L. Rev. 317 (1987). This ground-breaking work on "unconscious racism" challenged the idea that the law should only prohibit racism that is intentional based on an understanding of how unconscious stereotypes work to produce the harm of discrimination. According to Lawrence,

"Much of one's inability to know racial discrimination when one sees it results from a failure to recognize that racism is both a crime and a disease....This failure is compounded by a reluctance to admit that the illness of racism infects almost everyone....Acknowledging and understanding the malignancy are prerequisites to the discovery of an appropriate cure. But the diagnosis is difficult, because our own contamination with the very illness for which a cure is sought impairs our comprehension of the disorder." *Id.* at 320. See Richard Delgado, *Two Ways to Think About Race: Reflections on the Id, the Ego, and Other Reformist Theories of Equal Protection*, 89 Geo. L.J. 2279, 2294 (2001); Linda Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Employment Discrimination Law*, 27 Stan. L. Rev. 1161 (1995); Linda Krieger and Anthony G. Greenwald, *Implicit Bias: Scientific Foundations*, 94 Calif. L. Rev. 945 (2006). Krieger and others utilized interdisciplinary theories in the new field of social cognitive neuroscience to identify the possibilities of cognitive behavior modifications that could lead to dismantling previous subconscious stereotypes. Krieger is interested in this application to employment discrimination theories in law. *Id.*

¹³³ *Id.*, Krieger, 44 Stan. L. Rev. at 1187.

¹³⁴ *Id.*, For Krieger, stereotypes operate to simplify and categorize complex data, and occur throughout the processing of information. This categorizing can, and often is, unconscious and non-intentional. Critics of this work, as it is applied to the area of discrimination theory, note that this could provide an excuse for discrimination and may remove the element of responsibility for racism. See also Olatunde C.A. Johnson, *Disparity Rules*, 107 Colum. L. Rev. 374, 380 (2007); Joan C. Williams, *The Social Psychology of Stereotyping: Using Social Science to Litigate Gender Discrimination Cases and Defang the "Clueless" Defense*, 7 Employee Rts. & Emp. Pol'y J. 401,440 (2003).

previously unconscious stereotypes.¹³⁵ Until the categorization is modified to include the new information, for example, that white mothers may not be as pleased to engage a white mother with a black baby, the white mother is not prepared to develop strategies to protect her child and herself in the event of repeated occurrences of this type of behavior.

Disorientation results from the dissonance of behavioral observations and cognitive expectations. For white adoptive parents, new challenges to expected patterns of behavior may reorient their subject position with successive repetitions of racially charged incidents. The aberration of the first instance leads to confusion, but the white parent may resolve the racial meaning of the second, third, and fourth similar occurrences.

b) Awareness of Repetitive Racial Incidents

"It's so wonderful of you to be doing this."¹³⁶ White parents of black children often hear this remark. The repetition of this statement by other whites raises a red flag. A seemingly innocuous remark assumes new meaning from this additional racial vantage point. White parents of white children often hear, "How lucky you were to be

¹³⁵ *Id.*, Krieger at 964.

¹³⁶ McDonald, J., *Love Cannot Be Colorblind*, *supra* note X at 43. *See also* Rush, *supra* n. X at 24 (She describes the growing awareness of nature of repetitive comments assuring her that the child does not look black); Wolff, *supra* note X at 147, 152. (Wolf writes that "this whole race thing...it's very present on my mind to the point where close friends of family accuse me of being hyper-vigilant. Oh, you're just reading into that. It's not there. Oh, I think it is. I think racism is so engrained. It's in the air. ...if you are a white person who hasn't had to deal with race, you don't have to figure that out." Reddy, *supra* note X at 155-156. Cognitive psychology studies note that attention to repetitive information that jars with preconstructed categories of information processing may change those categories. *See* discussion in Krieger, *supra* note 6 at 1187; Counseling psychologists report that sudden jarring information may push the individual toward change by paying attention to the 'microaggression' previously ignored. *See e.g.*, Franklin, *supra* note X at p. 767; Helms, *supra* note 55 at .

able to adopt a child.” Unlike the white-on-white family, others view the transracial parent's adoptive luck as benevolent charity. Repeated experiences of differential praise force this parent to contemplate and actively address this kind of response.¹³⁷

White parents may grow receptive to changing considerations of racial boundaries, culture, and life. Daily affirmations, or reminders, of their connection to their black child surface in interactions with those who challenge the racial status quo.¹³⁸ The parental instinct to protect the child from harm emboldens the parent with a newly acquired awareness of the impact of these seemingly innocuous encounters. Successive occurrences of incidents, both harmful and uncomfortable may develop "coping strategies"¹³⁹ within the white parent. One researcher who studied white biological

¹³⁷Janet K. Swim, Laurie L. Cohen & Lauri L. Hyers, *Experiencing Everyday Prejudice and Discrimination*, at p. 38-39 in Janet K Swim and Charles Stangor, (eds.) *Prejudice: The Target's Perspective*, (1998). The authors cite studies to demonstrate that people who experience discrimination learn to anticipate and strategize how to deal with the prejudice. They participate in what the authors call “proactive coping” which includes the anticipation of stressful events and preparations to prevent or mute the effects of the stressor...targets can use their knowledge and awareness of when, where, by whom, and in what manner prejudice is most likely to occur in order to assess the likelihood that they will encounter prejudice in particular situations and to structure their interactions and environment to minimize or avoid the hurtful aspects of encountering prejudice and discrimination. *Id.*

According to Swim et al, research studies have shown that

[p]art of the experience of being a frequent target of prejudice is deciding whether particular events are indicative of prejudice or discrimination...[t]he first step in the assessment of events [is] deciding whether an event is acceptable. If the event is not perceived to be acceptable then the person decides whether there are acceptable excuses for the behavior or a specific event and whether the behavior can be attributed to the target's ethnicity.

The authors noted, however, that there are few studies on the frequency of these experiences. *Id.*

¹³⁸ McDonald, *supra* note 10 at p. 42-45; Wolff, *supra* note 10 at p. 144-145,147.

¹³⁹ See Vonk, *supra* note at 246; Ruth-Arlene W. Howe, Redefining the Transracial Adoption Controversy, 2 Duke J. Gender L. & Pol'y 131, 132. Primarily this term refers to the racial adjustment of African-American children, and the inability of white adoptive parents to impart this knowledge. Here, we apply the term to white parents. See also Tanya Washington, *Loving Grutter: Recognizing Race in TransRacial*

mothers of bi-racial children, describes the person in this stage as one who “is forced to deal with inconsistencies or experiences that are at odds with his or her denial of race....and to examine his or her own values.”¹⁴⁰ Stemming from these lessons learned, the parent may choose to avoid such encounters, seek advice or support from allies.¹⁴¹

c) Reckoning with Privilege

My brother Rob got up to answer the doorbell. One of the men who played adult soft ball with [him] offered to repair the dishwasher on his free time. It was a great favor from the “friend”. I stayed in the living room, happily out of the conversation about hoses and dispensers, but gradually the ugly words spoken by the “friend” filtered into my consciousness. He told a “joke” about “slicing up a nigger’s prick like so many polish sausages.” I heard the strain of momentary silence followed by a nervous laugh from my brother. I could feel myself start to tremble.¹⁴²

Some white parents choose to ignore the dissonance and remove their new perceptive lenses as long as possible, perhaps forever. The black child discovers color

Adoptions, 16 Geo. Mason U. Civ. Rts. L.J. 1, 46 (2005) (describing parental responsibility to help black children learn about racial difference).

¹⁴⁰ O’Donoghue *supra* n. at 79.

¹⁴¹ *Id.* at

¹⁴² McDonald, *supra* n. 136 at p. 90-94.

This co-author didn’t get up and challenge him either. I started to sob but I didn’t move from my safe place in the living room. I couldn’t breathe, but I didn’t move to confront a racist. I felt stunned by my brother’s failure to step in and speak up out of love for his little nephew - one he loved dearly. It was my brother’s house, his friend, his responsibility to take care of us in his home. My direct confrontation of my brother’s guest would have caused a messy scene in my brother’s turf. I might have hurt my brother’s feelings; I might have embarrassed him. It wasn’t polite. We talked late into the night. We discussed the failure of all of us to directly confront or take responsibility for this racism in our midst. We all realized what we should have done instead of just sitting there feeling incredibly uncomfortable. Our slowly developed consciousness of the part we play in the overall ugliness of racism took a baby step forward in a much delayed, unforgivable failure to take responsibility to act in the face of direct racism. Polite white civility took on an ugly new meaning, one that evidenced a serious failure to take responsibility.

See also Rush, *supra* n. 136 at p. 89-91,153-155 (describing racist insults by visitors to your home).

differences whether or not the parent chooses colorblindness. In the return to the pre-encounter stage, even silence represents a decision. For others, shame¹⁴³ and discomfort incite increased racial consciousness or, a "progressive white identity that is psychologically centered and capable of acting in opposition to racist activity."¹⁴⁴ At this point, the white parent approaches a level of racial consciousness that brings her in theoretical kinship with traditional racial passers. In this shared space, white appearing but black leaning persons exist upon unsettled racial ground.¹⁴⁵ They have no choice but to reject or integrate.

Interracial convergence in the context of white parents and black children must be a deliberate, color-conscious choice and activity. The responsible parent needs to acknowledge the racial privilege that separates her from her child. When she is with her child, frequently, but not always, she loses some previously assumed privileges of whiteness. When she is not with her child, she receives the old privileges from white strangers. These choices confront the converger every time she crosses the invisible boundary that identifies her as a white woman or a white woman with a black child. The invisible ability to remain silent when viewed as a privileged white separates her from her

¹⁴³ Joe L. Kincheloe and Shirley R. Steinberg, Addressing the Crisis of Whiteness: Reconfiguring White Identity in a Pedagogy of Whiteness 10,11, in Joe Kincheloe et al, *White Reign: Deploying Whiteness in America* (1991) (explaining shame as either a rejection of white identity and elevation of nonwhite cultures or an adoption of a reactionary form of right wing identity).

¹⁴⁴ *Id.* at 11.

¹⁴⁵ See generally, France Winddance Twine, *Racial Logics and (Trans)Racial Identities: A View from Britain*, in David L. Brunson, ed., *Mixed Messages* (2006) (describing the racial identification of white mothers of biracial children).

child of color.¹⁴⁶ At times, the converger finds temptation in the ever present ability to revert to the privileged white world for a moment of guilty rest.

For white adoptive parents of non-white children this may mean rejecting any form of “converging” activity or, more likely, adopting a pseudo non-white identity. Like the traditional passers who rejected their identity as blacks by believing that they had become white, these individuals adopt a psychological identity as non-white. The researchers describe the possibility that at this stage a person may experience a “White liberal syndrome,” which results either in “a paternalistic attitude toward or an over-identification with another group.”¹⁴⁷ Studies have demonstrated that members of the other group reject such over-identifications which leads the person “either back to the protective confines of the White culture or to the next stage.”¹⁴⁸

The decision to identify closely with another racial group exposes the converger to an alternative racial consciousness. Not only for herself and her child she must attempt to imagine the world as it would affect black people beyond her child. By connecting individual experiences with larger patterns of racial hostility, the adoptive parent begins

¹⁴⁶ O’Donoghue *supra* n. , “Interview with Debbie, a white mother of bi-racial children” at 77:

The whole aspect of realizing that Whiteness carries privilege was phenomenal to me. There’s definite privilege to being White, and I only recognized that privilege when I was with my kids and realized I was not getting privileges. I was not afforded certain niceties; I just wasn’t given certain considerations when I was with my children. And then, on the other hand, which never happened before, if I was dealing with an African American service person, I always got little extras, once they saw my kids...so, yes, through the kids, I had to confront my Whiteness...But, when you are by yourself, you still have that little passport, you know, that invisible passport that gets you in everywhere, but you just never think of anything the same again.” See also Reddy, “Crossing the Color Line”, *supra* note , at p. 5; Rush, *supra* note , at p. 5; McDonald, *supra* note , at 408-409.

¹⁴⁷ O’Donoghue *supra* n. at 79.

¹⁴⁸ *Id.*

to comprehend racial incidents beyond her own realm of privilege. Traversing beyond havens of white safety brings her toward political empathy with black people in a way that the majority of whites fail to understand.¹⁴⁹ With growing identification, she may begin to understand the meaning behind the statement of bell hooks: “All black people in the United States, irrespective of their class status or politics, live with the possibility that they will be terrorized by whiteness.”¹⁵⁰

C. Augmenting a White Racial Identity

*This kind of understanding changes everything. Only when I became black by proxy –through my son, through my daughter – could I see the racism I had been willing to tolerate. Becoming black, even for a fraction of an instant, created an urgency for justice that I couldn’t feel as only a white man, no matter how good-hearted.*¹⁵¹

¹⁴⁹ Becky Thompson, *Mothering Without A Compass*, *supra* note , at 54-59 (“So who am I protecting, except myself, by turning off the audiotape of A Lesson Before Dying when Adrian is with me? So much I need to know. I feel wobbly in the knees, wanting so much to be up to the task, looking to those around me for help, overwhelmed when I can’t find it.”); McDonald, *supra* note , at compare 96-97(failure of whites on beach to come to aid of two-year old black child), 101-102 (three year old called “mother-fucking nigger”), 144-149(early experience of police brutality toward house cleaners), 174-75 (Eleven year old following Mom into real estate office seen as potential robber), 176-181, 385-390 (death and dangers for black male teenagers and need to develop strategies to protect them); Rush, *supra* note , at p. 112 (elderly white lady at airport accuses her six year old of stealing her purse); Lazarre at 65 (reports that her son was “frequently stopped by the police and asked to identify himself though he was doing nothing suspicious or wrong. He was frequently ‘mistaken’ for a mugger, a thief, a troublemaker of some kind.”); *See generally*, Twine, *Racial Logics and (Trans)Racial Identities* *supra* note 145.

¹⁵⁰ bell hooks, cited in Rodriguez *supra* note 154 at 49 .

¹⁵¹ Harrington, *supra* note , at 447; Rush, *supra* note 136 at p. 5, 165:

Until a few years ago, I thought I had already crossed the color line many, many years ago. My ‘slowness in getting it’ doesn’t reflect my lack of intelligence or concern for racial equality... It took a long time to understand how denial becomes a part of a White person’s psyche-especially with each generation that is further and further removed from the days of slavery and Jim Crow.

Lazarre, *supra* note 10 at p. 118, 122; Wolff, at 143:

The assumption of my whiteness bothers me, because I can no longer look at the world with the presumption that things are ‘right.’ What I see is the false, white premiss upon which standards of goodness and normalcy are based. For me know the world is forever askew; something is missing. It

The latter stages of the white racial identity development model¹⁵² involve a gradual confidence about racial identity, as well as commitment to integrate and respect the racial identity of others. At this point, “a nonracist white identity begins to emerge,” a stage “where the person no longer denies his or her white identity, and she or he is less defensive and feels less guilt about being white.”¹⁵³ For the active converger, a slow but dynamic transformation occurs daily. As the white adoptive parent becomes self-conscious about racial privilege, the response from some non-whites begins to change. Between previous race strangers, trust and respect begin to flow. In this mutuality of growth, the converger embarks upon a difficult journey which offers a new sense of community. Here, the parent obtains stronger “convergence” skills and incentives, and new opportunities to protect and nourish her child’s sense of belonging and well-being.

always has been missing, but I previously lacked the personal stake that is prerequisite to racial enlightenment.

Reddy at 5, *See also* 63, 242:

I don’t think a white person can really assimilate; the color line doesn’t work that way. I’m still white. I think I stand on the color line itself, not on one side of it. Or maybe I’m like a bridge, stretching across the color line, touching both sides, but mostly in the middle somewhere.

Joshua Woodfork, unpublished phd dissertation, Interview with Becky Thompson, October 21, 2003:

I don’t feel safe when I’m in a big group of white people, even when I’m not with someone of color, I don’t feel safe in it. I don’t want to be in white settings, all –white settings. I find them boring and truncated and there’s so many lies that I feel on a psychic level that it’s not a

good place for me to be. Rush at 112; McDonald at 335-356 (fighting back in junior high as a major turning point toward integrating experience and broader action).;

¹⁵² “introspection-integrative awareness” Sue and Sue, *supra* note ; “pseudoindependence-autonomy”, Helms, *supra* note 55 at ; “integration” Rowe et al, *supra* note 54; O’Donoghue, *supra* note 53, at 78.

¹⁵³ O’Donoghue *supra* n. 53, at 80.

Efforts to shed privilege and live with true dignity for self and others help the converger forge a healthier version of white identity. Adoptive parents working toward this goal attempt to shed the false accoutrements of privilege that have formed whiteness as an identity of power. In a critique of the colorblind ideal, Nelson Rodriguez argues that whites have emptied the contents of whiteness, rendering the concept of white racial identity as nonexistent.¹⁵⁴ Whites must look back “to provide a way, an inroad, to know (name) whiteness itself in relation to one’s own identity politics, as well as to provide a strategy for fighting assimilation and forgetfulness[.]”¹⁵⁵ Whites must address the oppressive existence of whiteness before changing their own identity into something else. Only in this way, according to Rodriguez, can whites inject new meaning that is “antiracist, anti-homophobic, and anti-sexist[.]”¹⁵⁶ Interracial convergence does not adopt a pretend identity that approximates traditional racial passing; rather, it engages the passer in the conscious rehabilitation of whiteness.¹⁵⁷ At this point, if it is not too late, the white adoptive parent may serve the best interests of the black child.

¹⁵⁴ Nelson M. Rodriguez, Emptying the Contents of Whiteness: Toward an Understanding of the Relation between Whiteness & Pedagogy, 31-63 in Joe Kincheloe et al, *White Reign: Deploying Whiteness in America* (1991).

¹⁵⁵ *Id* at 49.

¹⁵⁶ *Id* at 33.

¹⁵⁷ All white parents who adopt black children are at different stages of this process: either remaining in the pre-encounter stage forever, moving to the recognition of repetitive dissonance and loss of privilege, or entering some phase of integrative and committed confidence of their own white identity. No one ever finishes this work. Sharon Rush, *supra* note 136 at 168-172, suggests that those who form intense emotional bonds, like those experienced by some in parenting, “transformative love” goes beyond “empathy” and imposes both the joys and the devastating emotional pain of seeing the effects of racial inequities inflicted on your child. Others view their transformations as increased racial awareness. Wolff, *supra* note at 152, writes,

I’ve had to figure out how I feel about certain issues and if you’re a white person who hasn’t had to deal with race, you don’t have to figure that out. It’s also made me feel I have more of a language to talk to people about race. I’m less afraid of being with people who are unlike myself, not just racially, but it’s

VI. Conclusion: Interracial Convergence

They began dating...but her doubts about a long-term relationship continued. That changed...when she was invited to visit with [his] multicultural family at their home[.] Some of his siblings are Asian, others black or white, and among them are several with serious handicaps.)

At one point, she and [his mother] were speaking about the racial composition of Bridgewater, [she] recalled. "She said to me, 'We're one of only two black families in Bridgewater.' And I looked at this woman with her blond hair and blue eyes and I laughed, and then suddenly she realized what she had said, and she started laughing, too."¹⁵⁸

Current adoption law mandates colorblindness.¹⁵⁹ This legal ideal of downplaying race ignores cultural, societal, and economic allocations of inequities and privileges. It preserves the privileged white perspective exemplified in the “pre-encounter” stage¹⁶⁰ rather than the perspective of those who suffer the harms.¹⁶¹ This benefits the rights of prospective parents seeking to adopt black children. Although MEPA-IEP purportedly addressed the problem of vast numbers of minority children in foster care, it ignored the parental responsibilities of raising a black child. Effectively,

expanded into other kinds of diversity. I feel more engaged with the world and more responsible for what in it, and, in my case, those aren't just platitudes, but sometimes they bum me out because it gives me an extra job and I have enough to do already.

¹⁵⁸ Weddings/Vows: Tea Graves and Matthew Previn, *New York Times*, August 3, 2003 (recounting the engagement of Ms. Graves, an attorney, to Mr. Previn, also an attorney and the son of actress Mia Farrow). *See also* Joshua Woodfork, “Shifting Whiteness: A Life History Approach to U.S. White Parents of ‘Biracial’ or ‘Black’ Children,” (unpublished ph.d. dissertation, University of Maryland, 2005).

¹⁵⁹ IEP-MEPA *supra* n. .

¹⁶⁰ An example of this is affirmative action. *See Gratz v. Bollinger*, 538 U.S. 959 (2003), *cf. Grutter v. Bollinger*, 539 U.S. 306 (2003); *See* Tanya Washington, “Loving Grutter”, *supra* note .

¹⁶¹ Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, in Kimberle Crenshaw et al, *Critical Race Theory: The Key Writings That Formed the Movement* 63 (1996). (recognizing the legal perspective of marginalized groups.) *See generally* Jean Stefancic and Richard Delgado (eds.), *Critical White Studies* (1997).

the colorblind law would permit racially insensitive parents to adopt transracially¹⁶² without scrutiny of their potential to meet the child's best interests. A return to the original principles of the Multi-Ethnic Placement Act would recognize the disconnect between the pre-encounter stage and a more integrative model of understanding difference.

A more inclusive understanding of the development of white racial identity would allow for some, but not all, white parents to adopt transracially. Evidence suggests that the parental approach to transracial adoption affects the child's racial identity. As demonstrated in the model of identity development in white adoptive parents, both parent and child may progress through different stages of racial awareness.¹⁶³ These latter stages of development approach the standards of fitness supported by the NABSW, which categorically assumes the racial competence of all black adoptive parents. Concomitantly, according to this position, white adoptive parents cannot recognize the racial needs of black children. This overinclusive stance fails to account for the overlap between blacks and the whites who occupy a similar racial space.

Convergers and racial passers meet in this grey zone. Both passers simultaneously look and feel white and non-white. In traversing racial boundaries, they live a double life that leads them to reconsider the inviolability of white racial privilege. As critical observers, they constantly adjust their actions and reactions to make sense of the assaults of racial dissonance. Jolted out of the preencounter stage by

¹⁶² Dewees *supra* note at , (upholding the use of race in the assessment of the child's best interests under MEPA).

¹⁶³ In the child's infancy, the parent may exist in the preencounter stage. But as the child becomes more aware and enters the encounter stage of black identity development, the preencounter parent may deny or reinterpret the validity of the child's disquieting experiences with resultant double injury to the child.

the repetitive nature of disorienting experiences, the white adoptive parent may or may not begin to reckon with racial privilege. The critical comprehension of difference propels some into a different understanding of their own racial identity.

Preventing whites from adopting transracially unfairly denies black children lingering in foster care of a loving home. Opponents of race matching denounce the practice not only as a racial restriction on family formation, but also as a schematic disintegration of racially mixed families. However, the colorblind mantra of "Love is Enough" arrogantly dismisses the importance of critical race thinking amongst white adoptive parents. It stubbornly refuses to affirm the responsibility of white parents to address the vulnerable needs of children of color. Raising black children demands recognition, development and protection of their unique social standpoint. In an effort to promote and develop black racial pride in adoptive children, proponents of race matching relentlessly insist on a strict limitation of black children to black homes. This rigid demarcation forces an underinclusive categorization of prospective parents for black children.

Convergers challenge the immutability of racial boundaries. Instead of absurdly positing the non-existence of race, or rejecting its social construction, performativity emerges as the critical indicator of racial affiliation. In this grey zone, interracial convergence offers an alternative conceptualization of the color line that extends beyond traditional roles of blood and biologism. This racial subversion relies on a color-conscious affirmation of difference rather than an empty adherence to colorblindness.