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Law, Life and Literature: Using Literature and Life to Expose Transracial Adoption Laws as Adoption on a One-Way Street

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LAW, LIFE AND LITERATURE: USING LITERATURE AND LIFE TO EXPOSE TRANSRACIAL ADOPTION LAWS AS ADOPTION ON A ONE -WAY STREET

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INTRODUCTION

The law tells a story and fits a reality. But it tells a story only from one point of view and with inherent biases and prejudices, the

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inherent biases and prejudices of the law's storytellers.¹ Transracial adoption has been urged as the law's answer to the number of minority children in foster care and without permanent homes. However, transracial adoption laws have been encouraged recklessly without a real inspection of its potential problems, especially given the racism that still runs rampant in this country.² These laws, therefore, tell a story from only one point of view and fail to deal with the realities as they exist here in this country.

Literature and life stories will help illuminate the inherent problem in transracial adoption, as we call it, for the inherent and major problem with transracial adoption is that it is not truly transracial. Rather, it is adoption on a one-way-street,³ as transracial adoption primarily refers to adoption of minority children by white parents.⁴ What if black people wanted to adopt white babies? Would

¹ See, e.g., Angela Mae Kupenda, *Law, Life and Literature: A Critical Reflection of Life and Literature to Illuminate How Laws of Domestic Violence, Race and Class Bind Black Women*, 42 HOW. L.J. 1 (1998); cf. Samuel A. Marcossou, *The Lesson of the Same-Sex Marriage Trial: The Importance of Pushing Opponents of Lesbian and Gay Rights to Their "Second Line of Defense"*, 35 U. LOUISVILLE J. FAM. L. 721(1997) (looking behind laws prohibiting same sex marriages to see biases and prejudices of lawmakers).

² See, e.g., *Vital Signs: Statistics that Measure the State of Racial Inequality*, 19 J. BLACKS IN HIGHER ED. 1993 (1998) (8,759 hate crimes were reported to the Federal Bureau of Investigation in 1996). Recent episodes of the television show *Nightline* exposed how state police deliberately target black motorists because of the prejudicial beliefs maintained by the police officers. See *Nightline: America in Black and White: Fitting the Profile — Racial Profiling Practiced by Police on Highways* (ABC television broadcast, Mar. 31, 1998) (Transcript available on Westlaw, 1998 WL 5373016); *Nightline: America in Black and White: Fitting the Profile* (ABC television broadcast, Apr. 3, 1998) (Transcript available on Westlaw, 1998 WL 5373019).

³ See Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33, 41 (1993-94). As Perry stresses: "Since colorblind individualism conceptualizes transracial adoption as a *one-way street* where whites adopt Black children, but Blacks do not adopt white children, the emotional discomforts associated with the process of integration are imposed on Black children alone." *Id.* at 41 (emphasis added).

⁴ See, e.g., Jane M. Cohen, *Race-Based Adoption in a Post-Loving Frame*, 6

transracial adoption work that way for them, too? Probably not. Because it would not, it therefore indicates the problem with transracial adoption. Actually, the adoption by a black woman of white children would create a very natural adoptive family, as black women have nursed and raised white children for years.

If truly transracial adoption would not be embraced by the law, i.e., if black people would not be allowed to freely adopt and rear white children, then why are white people being allowed to adopt black children, especially with no inspection being given to their racial attitudes, racial awareness,⁵ or living environments.⁶ The aim of this essay is to use stories from literature and life to illustrate the one-way-stretness of the law of transracial adoption. Our hope is that the suspiciousness of this doctrine will become clearer and we will, then, proceed with these adoptions with far more caution. At the very least, we should proceed with the same caution that would be used if a black person tried to adopt a white child.⁷

B.U. Pub. Int. L.J. 653, 653 n.1 (1997) (transracial adoption has come to stand solely for the adoption of black children into white homes).

⁵ See Derrick BELL, *RACE, RACISM AND AMERICAN LAW* 104 (3d ed. 1992) (discussing that white parents might not prepare black children for our racist society).

⁶ See, e.g., Susan R. Harris, *Race, Search and My Baby-Self: Reflections of a Transracial Adoptee*, 9 *YALE J.L. & FEMINISM* 5, 9 (1997) ("By now I'm sure that most of you think I am completely opposed to transracial adoption. Guess what? You are quite wrong. I loved my parents, and I know they loved me. I would not have traded them in for anyone, although I would have traded the all-white environment [I lived in] for an integrated one. And I know plenty of African American adoptees who feel the same.").

⁷ Consider the position of Ruth-Arlene Howe, a scholar in this area: "[Because transracial adoption experiences can sometimes be beneficial is] why I'm not absolutely opposed. But one should demand assurances that these people will give that child positive interaction with Black people . . . and Blacks . . . [should] demand full consideration [to adopt black children] because the children are there and need them." Lisa Funderburg, *Dialogue: Who Should Adopt Our Children*, *ESSENCE*, Jan. 1998, 64, 130.

I. ENLIGHTENING THE LAW**A. Transracial adoption was one-way, and thus suspicious, even from inception**

Prior to the civil rights movement of the 1960's, transracial adoption was not a real issue in America. The racial lines in the United States were firmly drawn by social attitudes and were usually backed by very strong state and local laws that essentially made it a crime for the races to interact with one another on anything other than a professional level.⁸ During this time, if a child was placed for adoption, most state agency rules indicated a preference that the child be placed in a home with parents that matched that child's ethnic background.⁹

However, as time passed, several factors contributed to an increase in the number of instances in which adoption crossed ethnic lines, at least in which white people adopted minority children. These factors included the large pool of waiting white applicants seeking to adopt a limited number of healthy white infants and the perceived lack of minority families available to adopt minority infants.¹⁰ Another important factor was the change in the federal government's policies toward using race as a determining factor in the placement of children.

As the civil rights movement progressed, courts were allowed to look at a variety of factors in determining which adoption placement was truly in the "best interests of the child," with race being recognized as possibly a relevant factor.¹¹ Then, in 1994,

⁸ For example, under the Mississippi state constitution, marriage between blacks and whites was prohibited. MISS. CONST. art. 14, § 263. This provision was not repealed by the state's legislature until 1987.

⁹ Kristie Ann Rooney, *Racial Matching vs. Transracial Adoption: An Overview of the Transracial Adoption Debate*, 53 J. MO. B. 32, 33 (1997).

¹⁰ Cf. Zanita E. Fenton, *In a World Not Their Own: The Adoption of Black Children*, 10 HARV. BLACKLETTER L.J. 39, 50-52 (1993).

¹¹ See, e.g., *Drummond v. Fulton County Dep't. Of Family & Children's Servs.*, 563 F.2d 1200 (5th Cir. 1977); *In re Petition of D.I.S.*, 494 A.2d 1316

President Clinton signed the Multiethnic Placement Act which prohibits any

agency or entity that received Federal Assistance and is involved in adoption or foster care placements [from] categorically deny[ing] to any person the opportunity to become an adoptive or a foster parent, solely on the basis of race . . . [but] may consider . . . race . . . as one of a number of factors used to determine the best interests of a child.¹²

The act also provided that agencies identify and recruit potential foster and adoptive parents of every race.¹³ This in essence allowed states to consider race and ethnicity in selecting a foster care or adoptive home, but states and agencies could not delay or deny an application based *solely* on the basis of race.

These provisions were repealed by the Small Business Job Protection Act in 1996.¹⁴ This act provides:

that 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 adoptive or a foster parent on the basis of race, color, or national origin of the person or of the child involved.¹⁵

This act also states that an agency may lose up to five percent of its

(D.C. 1985).

¹² 42 U.S.C. § 5115a(a) (1994). See Ruth G. McRoy & Zena Oglesby et. al, *Achieving Same-Race Adoptive Placements for African American Children: Culturally Sensitive Practice Approaches*, 76 CHILD WELFARE 85 (Jan. 1997).

¹³ 42 U.S.C. § 5115a, *Historical and Statutory Notes, Congressional Findings*.

¹⁴ Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755.

¹⁵ 42 U.S.C. § 671 (18)(A) (1996).

federal funding for each quarter it is found to be in violation of section 671 U.S.C. § (a)(18).¹⁶ These acts have effectively removed the legal barriers of transracial adoption, or at least of one-way transracial adoption.

According to the congressional record, the intent of the Small Business Job Protection Act, as it pertains to transracial adoptions, was to prohibit "State and local entities agencies from denying or delaying a child's adoption because of race, color, or national origin . . ."¹⁷ The congressional record further states "as much as 49 percent of America's 500,000 foster children are minorities . . . there is no reason for them not to find a place in the many loving, permanent homes waiting to adopt them."¹⁸ This seemed to be the attitude of members of Congress when each explained their support for the bill. African-American children were mentioned several times in the congressional record. Whenever they were discussed, it seemed that the members of Congress were concerned that African-American children should not have to wait to be adopted simply because their foster parents or the individuals wishing to adopt them were of a different race.

We were able to find no discussion in the congressional record of whether transracial adoption would work both ways under the law, i.e., whether any barriers preventing black parents from adopting white children were also removed. As the intent of the bill was to deal with the number of minority children seeking homes, there is possibly an argument that transracial adoption under the law would not protect a minority parent who wanted to adopt white children.¹⁹ Although, if the law was read in that way it would probably be in violation of the Equal Protection clause.

¹⁶ 42 U.S.C. § 674(d)(1) (1996) (which provides a graduated scale of what percentage of federal funds should be lost for each violation).

¹⁷ See, e.g., 142 CONG. REC. H4819 (daily ed. May 10, 1996).

¹⁸ *Id.*

¹⁹ Cf. Katharine B. Silbaugh, *Symposium on Transracial Adoption*, 6 B.U. PUB. INT. L.J. 381, 382 (1997) (discussing that we can expect to see questions on the interpretation of delay or deny); Sally Kestin, *Couple Contends Race Hindered Adoption*, THE TAMPA TRIBUNE, February 2, 1998, Metro at 1 (suggesting that

B. One-way transracial adoption is not the only way, and probably not the best or easiest way, to place minority children—but the law eliminates better ways

On its surface, the law's removal of racial considerations when placing children with prospective adoptive parents appears fair for all concerned. Black children without a home will now be able to be adopted in the first available, qualified home. White adoptive parents will have an increased pool of infants from which to select, greatly reducing the delay previously experienced by white parents wishing to adopt babies. However, it is possible that black children receive the worst of this arrangement because they are being placed in homes that may not be sensitive to the special survival skills and awareness black children must develop to live in this country.²⁰ An answer to this is to find a way to increase the number of available African-American adoptive parents.

While advocates of transracial adoption consider transracial laws to be a victory, opponents such as Ruth Amerson, founder of Another Choice for Black Children, consider the laws as "Congress trying to make it easier for white people to adopt black children" instead of "mak[ing] it easier for adoption [of these children] by black people."²¹ States and agencies have generally been unresponsive in addressing the problem of placing black children in permanent homes. While they consistently grade black families as "unqualified" to adopt, states and agencies reject the many suggestions as to how the problem can be alleviated by employing

"[a]n adoptive family's race can be considered if two or more families are interested in the child and all are good candidates").

²⁰ Rooney, *supra* note 9, at 32-33. Taking a strong position against transracial adoption, the National Association of Black Social Workers stated that black children belong physically, psychologically and culturally in black families and that transracial adoption is a form of cultural genocide.

²¹ Sheryl Stolberg, *New Law Inflames Struggle Over "Black Adoptions": Children: Congress Has Set Back Efforts to Place African American Youths Exclusively with Parents of The Same Race*, LOS ANGELES TIMES, August 27, 1995, at 1A.

more black professionals in the agencies,²² heavier recruitment of recruiting black families and lowering the adoption fees for these families,²³ providing more subsidized adoptions, etc.

Currently African-American children are disproportionately represented in foster care.²⁴ Many incorrectly assume that this is due to a lack of African-American willingness to open their homes to these children. However, this is simply not true. Prior to the passage of the Small Business Job Protection Act and its predecessor the Multiethnic Placement Act, state as well as private agencies were allowed to actively pursue same race parents to adopt needy children. Through the success of programs like the Institute for Black Parenting and Project Hustle, it was shown that, given the proper opportunity, African-Americans are extremely willing to

²² Ruth-Arlene W. Howe, *Redefining the Transracial Adoption Controversy*, 2 DUKE J. GENDER L. & POL'Y 131, 158 (1995).

²³ BELL, *supra* note 5 at 103; *Black Kids White Parents: Debating What's Best for the Kids*, USA TODAY, Aug. 15, 1991 at 1D; Jacqueline Macaulay & Stewart Macaulay, *Adoption for Black Children: A Case Study of Expert Discretion*, in CHILD, FAMILY AND STATE 793 (Robert H. Mnookin and D. Kelly Weisberg, 1995) ("As the criticism of transracial adoptions grew, many offered alternative solutions to the problem of finding good homes for the many black children who needed them...[Ideas included subsidized and quasi-adoptions, as well as permanent foster care, however, state legislatures have not been generous in appropriating money to support these programs.]").

In addition, the black extended family and informal adoptions also could provide means to increase the number of "qualified" black adoptive parents. See Cynthia G. Hawkins-Leon, *The Indian Child Welfare Act and the African American Tribe: Facing the Adoption Crisis*, 36 BRANDEIS J. FAM. L. 201 (1997) (urging creative approaches and the legislative response to the Native American experience as an example); Angela Mae Kupenda, *Two Parents are Better Than None*, 35 U. LOUISVILLE J. FAM. L. 703 (1997) (proposing coparenting by unmarried and nonromantically involved black adults).

Examining families, other than traditional nuclear families, could also provide insight into the resolution of these problems in ways healthy for all involved. Cf. Elvia R. Arriola, *Law and the Family of Choice and Need*, 35 U. LOUISVILLE J. FAM. L. 691 (1997).

Ignoring all of these suggestions, it is perplexing, but true, that state agencies and Congress are more focused on placing black infants with white parents.

²⁴ Rooney, *supra* note 9, at 32.

open their homes to needy children.²⁵

These programs were successful in greatly increasing the number of African-American adoptions due to their unique approaches to the adoption process. Although traditional recruitment tactics were used, many radical changes, which removed many of the traditional barriers from African-Americans wishing to adopt, were also employed. These changes included: increased, flexible office hours; family education instead of family investigation; allowing a family to change social workers; and cultural competency training for all staff personnel.²⁶ Prospective parents were met within 72 hours of the initial orientation meeting and all attempts were made to clarify the bureaucratic process.²⁷ The idea was for the agency not to be a hindrance for the parents, but rather to aid them in the adoptive process.

Project Hustle, which began in Texas in 1993, successfully placed 84% of African-American children identified for the project with African-American parents.²⁸ This program also used innovative ways to place children in their program. The program used: videotapes about adoption; media publicity to attract minority adoptive parents; and adoption expos in minority communities to afford an opportunity for interaction between children in need of parents and people interested in adopting.²⁹ Because of the success of the first Hustle project, Project Hustle II was started in Dallas the next year. Of the 142 primarily minority children identified, 61% were placed. The success of the programs was attributed to its "mentoring programs, quick and responsive agency feedback, and locating meeting and orientations in targeted area."³⁰

However, with the passage of the two congressional acts favoring one-way transracial adoption over increasing the pool of black adoptive parents, these programs were short lived due to a

²⁵ See McRoy, *supra* note 12.

²⁶ See *Id.*

²⁷ See *Id.*

²⁸ See *Id.*

²⁹ See *Id.*

³⁰ See McRoy, *supra* note 12.

threatened loss of funding. These programs clearly demonstrate that given the proper circumstances African-American families were willing to adopt African-American children. The question becomes then: why are these programs now “unlawful”? The suggestion is that they are unlawful because the placement of black children in white homes has become somehow more preferable to the placement of black children in black homes.

II. LITERATURE—Does a poor black woman have any right raising a light (almost white) black child when there are lonely, well-off, white potential parents out there?

The sound of a jump rope came around in her head, softly, steadily marking time. Steadily slapping ground packed hard by the feet of the girls . . .

The girl in the pinafore hangs back. The girl in the pinafore who is bright-skinned, ladylike, whose veins are visible, as the ladies of the church have stated so many times, hangs back . . .

She and her grandmother have settled in a small town at the end of the line . . . The grandmother’s prized possession sits against the wall in the front room . . . An upright piano . . .

The girl, under the eye of the grandmother, practices the piano each afternoon . . . The grandmother speaks to her of passion, of the right kind. “. . . You have to go deep inside yourself-to the best part.” The black part, she thinks, for if anything can cloud your senses, it’s that white blood . . .

The granddaughter, practicing the piano, remembers them leaving the last place, on the run, begging an old man and his son to transport the precious [piano, the precious] African thing . . .

A flock of white ladies had descended on the grandmother, declaring she had no right to raise a white child and they would take the girl and place her

with a “decent” family. She explained that the girl was her granddaughter-sometimes it’s like that. They did not hear. They took the girl by hand, down the street, across the town, into the home of a [white] man and woman bereft of their only child by diphtheria. They led the girl into a pink room with roses rampant on the wall, a starched canopy hanging above the bed. They left her in the room and told her to remove her clothes, put on the robe they gave her, and take the bath they would draw for her. She did this.

Then under cover of night, she let herself out the back door off the kitchen and made her way back, leaving the bed of a dead girl behind her. The sky pounded and the rain soaked her.

When the grandmother explained to the old man the circumstances of their leaving he agreed to help. To her granddaughter she said little except she hoped the piano would not be damaged in their flight.”³¹

In the story above, the “flock of white ladies” thought the black grandmother unfit to raise the white looking, light-skinned child. It is amazing, but even white parents who have adopted black children admit they would be uncomfortable with that kind of transracial adoptive family. These white parents confess that they would be uncomfortable seeing a black woman, as in the story above, raise a white child. Consider the confession of one such white woman who adopted a black child. She admits that she sometimes tried to put herself in the position of an onlooker who sees a biracial family.

³¹ Michelle Cliff, *Screen Memory*, in *CALLING THE WIND: TWENTIETH-CENTURY AFRICAN-AMERICAN SHORT STORIES* 566, 566-68 (Clarence Major ed., 1993).

When I put myself in that position, I wonder what I would think if I saw a black family of five at the park with a blond kid calling his [black] parents mom and dad. I would feel just slightly uncomfortable with that, and I am not quite sure why.³²

The “flock of white ladies” were likely motivated not by the best interests of the child, but rather by the fact that they knew a lonely white couple who desperately wanted a child. As white babies become scarcer, black children, that would not have even been considered proper adoptive material, are sought out by white parents. Transracial adoption has been presented as a way to help minority children, as white families sacrifice themselves to take them in. But it is more about white parents trying to claim for themselves the right to parent infants than it is about finding healthier ways to place homeless minority children in homes.³³

Most of the statistics presented on the topic of transracial adoption reflect that the number of black children without permanent homes is despairingly greater than the number of similarly situated white children. These statistics are misrepresented in an attempt to lead us to believe that transracial adoption is the only hope for black children and that the prospective adoptive white parents have no other option but to adopt black babies. “It should be noted that 44% of the children available for adoption nationwide are white (mostly school-age and/or have special needs).”³⁴ Why then are the white childless parents not adopting these children? Perhaps the answer lies in the white couple’s preferences for infants. Black babies, then, are a “mere fall back” for white childless couples.³⁵

As the prominent scholar Ruth-Arlene Howe stated:

³² Angie Weaver, *Transracial Adoption Gives Families an Extra Set of Burdens*, THE CAPITAL TIMES, (Madison, Wi.) Dec. 28, 1995, at 1G.

³³ See Howe, *supra* note 22, at 135 (1995); Perry, *supra* note 3, at 107.

³⁴ Leora Neal, *Focal Point: Case Against Transracial Adoption*. (visited May 12, 1998) <<http://www.rtc.pdx.edu/fp/Spring 1996/transrac.htm>>.

³⁵ Cf. Stolberg, *supra* note 21, at 1A; Trish Williams, *Interracial Adoption: Still Difficult*, ST. LOUIS POST-DISPATCH, Jan. 17, 1996, at 4E.

[T]he transracial adoption controversy is not about addressing the needs of the many older Black children who enter the foster care system; rather, it is about giving preferences to certain white adults who seek to adopt infants. Considering the fact that African-American families throughout the country are waiting to adopt infants and that African-American families adopt at a rate of 4.5 times greater than European-American or Hispanic families, this trend could be characterized as an attempt to garner the market in infants.³⁶

The garnering of the infant or child market by white parents resembles strangely the whole slavery motif. Perhaps “the disempowerment of enslaved Blacks has continued in modern-day America. Whites still hold power over the lives of Black children, determining where and with whom Black children will live. Black children are still commodities to be purchased and sold in a white-controlled marketplace.”³⁷ Consider the following story of how, during slavery, white people sometimes “took” white-skinned black children from their black parents because they thought that black slaves had no rights to their children:

. . . Nellie was sold to a mighty bad man. She tried to run away to her old Virginia home, but the white men caught her and brought her back . . . Nellie was almost white, and had pretty, long, straight hair. When they got her back they made her wear men’s pants for one year. They made her work in the fields in that way. She said they put deer-horns on her head to punish her, with bells on them [O]nce . . . a baby was born to Nellie on the road when she was

³⁶ Howe, *supra* note 22, at 149 (internal quotations omitted).

³⁷ Pèrry, *supra* note 3, at 55.

coming in the speculator's drove, and the speculator gave the child away to a white woman near by where they camped at night. The speculator . . . told Nellie it was better to let the white woman have the child . . . The white people thought in slave-time we poor darkies had no soul, and they separated us like dogs. So many poor colored people are dead from grieving at the separation of their children that was sold away from them.³⁸

Contrary to myth, black families are available to care for black children, and are available to adopt black infants and older children.³⁹ They are more than available, they have been caring for these children all along, especially through the extended family tradition. The question becomes: who should get priority and who should receive the focused efforts from social services agencies. The adoption system is stacked against black applicants, as predominantly white social workers employ stereotypes that, therefore, adjudge these black applicants unfit as adoptive parents. The result is the large number of unplaced Black children. As a result, transracial, or one-way street adoption is seen as the only answer. As with slavery, "once again the stage is set for African American children to be rudely separated from their families and communities"⁴⁰ with no efforts being made to determine whether one-way adoption is a good way to meet the needs of the children involved.⁴¹

Not surprisingly, this one way street may be even more problematic than temporary foster care placements if the black child is placed with white parents who are racist, or who are just racially

³⁸ OCTAVIA ROGERS ALBERT, *THE HOUSE OF BONDAGE OR CHARLOTTE BROOKS AND OTHER SLAVES* 20-22 (1988).

³⁹ Ruth-Arlene W. Howe, *Transracial Adoption (TRA): Old Prejudices and Discrimination Float Under a New Halo*, 6 B.U. PUB. INT. L.J. 409, 440-41 (1997) [hereinafter *Howe-TRA*].

⁴⁰ *Howe-TRA*, *supra* note 39, at 413.

⁴¹ *Id.* at 422-23.

ignorant of the struggles of black folks and of their black adoptive children. Interestingly, the “best” white parents are often not adopting these black children. The best white parents, “best” according to adoption standards, are toward the front of the line to receive white babies. The white parents, who do not meet the most stringent criteria, therefore become the ones the black children are given to.

The early selection of parents to participate in transracial adoption was also affected by a common but unlabeled bureaucratic tradition that arose in placing white infants. We will call this C-matching. Some parents were just barely acceptable to the agency; if graded on an A to F scale, they would receive a C. The agency also had children who just barely passes whatever express or tacit standard it applied to decide which infants were adoptable. [I]n the process of matching parents with children, workers tended to match perfect parents with perfect children. A parents got A children and B parents got B children. This left C parents and C children represented by two piles of leftover file folders. It was then natural to match the almost unplaceable child with a couple who had to settle for second best or get nothing at all.

Some black children, then, in these new transracial adoption experiments, were placed with couples who were, at best, only marginally eligible for perfect white infants. Thus the C-matching tradition was enlarged to include transracial adoption.⁴²

⁴² Jacqueline Macaulay & Stewart Macaulay, *Adoption for Black Children: A Case Study of Expert Discretion*, in CHILD, FAMILY AND STATE 791, 791-92 (Robert H. Mnookin and D. Kelly Weisberg, 1995).

I (Angela Kupenda) was attending a scholarship conference where the discussion was focused on racially mixed families and interracial adoption. I recall saying something like, "What I'm about to say is probably not politically correct. However, I'm troubled by interracial adoption and think it needs more monitoring. It seems as if white families are saying that they really want white babies; but if they can't get a white baby, they'll take a mixed baby. And if they just can't get a mixed baby, they'll take a black one. I'm troubled because the message once again is that our black children are leftovers, or black goods only to be taken if the better, whiter, goods are not available."⁴³ Once again, black skin is at the bottom of the preference list."⁴⁴

A white professor who had wandered into the lecture hall took offense at my remarks. He pointed at me and excitedly exclaimed, "I want to respond to what that-that-that- woman in red"⁴⁵ said." He remarked that he was aware of a white couple who adopted many children. They love them all. Of course, he said, they preferred white children who look like them. But when the white babies were unavailable, they then freely welcomed foreign children and then ultimately black children into their home. So, as he said, he was offended by my remarks. I desperately wanted to respond to his

⁴³ Cf. Patricia J. Williams, *Spare Parts, Family Values, Old Children, Cheap*, 28 NEW ENG. L. REV. 913, 914-17 (1994) (comparing adoption system to a market).

⁴⁴ See Tanya K. Hernandez, "Multiracial Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence," 57 MARYLAND L. REV. 97, 118-19 (1998) ("This racial hierarchy, which denigrates all connections to blackness in order to maintain the white ideal, evidences itself perhaps most starkly in the selection of adoptive children. In the adoptions market, white babies are highly prized, followed by mixed-race babies, with Black babies the least preferred.")(footnotes omitted).

⁴⁵ Actually the dress was a lovely fuchsia color, besides it was Valentine's Day. Regardless, perhaps I should have heeded the advice of those who we call "the old folks." The old folks always said that nice black women should not wear red. See, e.g., Karla F. C. Holloway, *Nice Girls in HONEY HUSH!: AN ANTHOLOGY OF AFRICAN AMERICAN WOMEN'S HUMOR* (DARYL CUMBER DANCE, ED. 1998).

remarks. However, my colleagues sitting next to me patted my hand and said there was no need for me to respond. They said, "He just made your point and he doesn't even realize it."

Some even support one-way street transracial adoption on the basis that the black *child* can educate the white parents about black culture. For example, consider the remarks from a white couple who wanted to adopt a black child:

Since we wanted to have a different kind of family, one with all kinds of people in it . . . we were interested in black people and black culture and since we had a feeling that we wanted to know more about black people and what their struggle was, we went about with the adoption.⁴⁶

That black children educate white parents about black culture and racism, especially when one considers that children will need help navigating these areas, is a heavy burden to place on black children. The black child could end up being a token in an otherwise white community.⁴⁷ Actually integration might be better fostered by black parents adopting white children. Then these children may have an opportunity to be raised by black parents in loving relationships, which might ultimately eradicate racism.

That transracial adoption probably would not have been legitimized in the same way if it was indeed two-way is deeply disturbing. It suggests that black women, especially, who have raised and been nannies to white and black children for many years, now somehow would not be as good as mothers as the white

⁴⁶ Hawley Fogg-Davis, *A Race-Conscious Argument for Transracial Adoption*, 6 B.U. PUB. INT. L.J. 385, 400 (1997) (written response of couple from RITA SIMON ET AL. THE CASE FOR TRANSRACIAL ADOPTION 80 (1994)).

⁴⁷ Howe, *supra* note 22, at 138 n.37 ("Desegregation does not create integration, if it is merely a one-way street process in which Blacks seek acceptance by whites, but not vice-versa. In that instance, the result is mere tokenism rather than whites acquiring any increased level of comfort with the diverse, multicultural society that this nation is becoming.").

women who have left their children in the black woman's care for decades. Consider the following remarks by Professor Twila Perry:

An unfortunate subtext of the attack on the parenting skills of the Black family is an attack on the mothering skills of Black women. It is, after all, mothers who still play the dominant role in child rearing

Black women have been entrusted with raising white children for centuries, as domestic servants or nannies. As more and more white women enter the work force as professionals, it is likely that more and more women of color will be raising white children. It is interesting that as the transracial adoption debate intensifies, Black women, who for many years raised white children while simultaneously raising their own, are now perceived as lacking adequate child rearing skills [to raise black or white children].⁴⁸

III. LIFE MUSINGS AND ACCOUNTS—why is it that white people are assumed to be fit to raise black children, but not vice versa?

The grandmother's and granddaughter's story and flight from the "flock of white ladies" above is not just a fictional account. It tells the story that many of us already know as true: the only reason "transracial adoption" was so embraced by Congress is because it was designed to work only on a one-way street. Consider Professor Patricia Williams story of adopting her child:

"What races would you accept?" asked the adoption agency. "And what racial combinations?" There followed a whole menu of evocative options

⁴⁸ Perry, *supra* note 3, at 94-95.

like Afro-Japanese, Sinu-Germanic, and just plain “white” . . .

“Any,” I wrote, knowing that harmony genes abound in my ancestral bloodlines — yet wondering if the agency really meant to address that question to black parents. Would they truly consider placing “any” child with me if this agency happened to have a “surplus” of white babies?

While there are apparently a number of studies that claim to show that black children fare just fine when adopted into white families In any event, I wonder how many social science studies there are about how white children fare in black homes.⁴⁹

But we do not have to rely on our own inner truths that truly “transracial” adoption would not be embraced, black people who have tried to adopt or foster parent white children, who have sought two-way street transracial adoption, have been told “no way.”

A black social worker was awakened from a Sunday afternoon nap by a phone call from a white youth court judge. She was told to immediately (and he really meant immediately) remove a foster child from a licensed foster home. The social worker attempted to engage the judge in some dialogue to determine the urgency of this removal and the problem with the foster placement. The social worker was told that the child just would not be comfortable with the foster family nor with the school she was attending. Again, the social worker attempted to find out why the removal of the child was so urgent. The judge did not answer other than by urging the “uncomfortableness” of the situation. The

⁴⁹ Williams, *supra* note 43, at 916-17.

conversation ended with a severe admonishment from the judge that the social worker should do as she was ordered unless she wanted to be held in violation of a judicial order. After she hung up the telephone, the social worker recalled the specific facts surrounding the placement of the child and realized why the white judge had regarded the situation as urgent.

The child had been placed in the only available home one week prior. The child needed a nurturing foster family and this family was willing to accept *any* child without any advance notice. The placement seemed satisfactory and in the best interest of the child. The social worker believed that she had consciously considered all the relevant issues prior to the placement. The only issue that would have created the judge's "uncomfortableness" was the fact that the child was a little white girl and the foster family was black. The social worker had not considered the race of either, because she is prohibited by law from considering race when placing a foster child. But now she was being told by the judge that race was relevant, that is it was relevant when white children were to be placed with black families. Apparently transracial adoption did not work two-ways, but was on a one-way-street.⁵⁰

Consider also a recent case in Michigan in which Regina Bush, a black woman who "believes racism has stymied her plan" to adopt Stacey, an 8 year old white child. "Ms. Bush said that on September 11, agency adoption worker Nancy Rebar told her that her home was not the best placement for Stacey because of 'cultural

⁵⁰ Interview by LaShonda Dukes with Anonymous Social Worker, Department of Social Services, Jackson, Mississippi (Feb. 18, 1998).

issues.”⁵¹ Bush is already the adoptive mother of Stacey’s younger bi-racial sister and has been the foster mother for Stacey and her other siblings for some time. Additionally, earlier Stacey had been placed with a white prospective adoptive family who “changed their minds because she had problems relating to the father and teenage son.”⁵²

Bush’s and Stacy’s dilemma, is perplexing considering the fact that Michigan has policies aimed at trying to keep siblings together and to avoid repeated unnecessary movements of children. More importantly, the state has also “agreed not to block adoptions on the basis of race.”⁵³ Given all of the above what is the problem here? The only answer is that “transracial adoption” is not truly transracial, i.e., Bush is black so she may not be “qualified” to adopt a “purely” white child. This is not an isolated case. “In Maynard, Mass., black foster parents, the Rev. and Mrs. Walter Myers, say an agency’s race-matching policies have for a year obstructed their adoption of two white girls placed in their care three years ago. The girls’ mother supports the adoption.”⁵⁴

Transracial adoption laws appear only to make transracial adoptions easier for white adoptive parents and not for blacks. In the instances presented above the prospective parents have already been raising the children as foster parents. If the black parents are good enough to foster parent white children, then why are they not good enough to adopt them? Part of the answer can be found in the high barriers to prospective minority adoptive parents set up by the agencies themselves.⁵⁵ Part of the answer is found, too, in the

⁵¹ See Regina Bush; and Stacey Fox v. Oakland Family Services, No. 97-CV-74737 (E.D. Mich., filed Sept. 17, 1997); Jack Kresnak, *When a Young Child Just Wants a Family, Race Still May Matter to Some People*, DETROIT FREE PRESS, September 22, 1997 at A1.

⁵² *Id.*; See Bush v. Oakland Family Servs., No. 97-CV-74737 (E.D. Mich. Filed Sept. 17, 1997).

⁵³ *Id.*

⁵⁴ Ann Scott Tyson, *Removing Race From Adoption*, THE CHRISTIAN SCIENCE MONITOR, May 7, 1996, at 1.

⁵⁵ Leora Neal, co-chairwoman of the National Association of Black Social Workers’ task force on foster care and adoption, says there are enough black

standards that discriminate against lower-income potential parents.⁵⁶ But this, too, is disturbing if black infants will be treated as chattel for sale to the person who can pay the higher price, regardless of the racial sensitivities of the prospective white parents, and that white parents desperate for babies can get black ones more cheaply than white ones.⁵⁷ The answer is found by acknowledging the “great caution” used to place white children, while the same caution and care is not utilized by states, agencies, or Congress in placing black children in homes.

IV. TRANSRACIAL ADOPTION—aren’t there too many risks?

Professor Elizabeth Bartholet and others advocate that racially pure adoption policies are not the answer and that there is no

families to adopt all the black children, but that is not happening, she says, because many agency policies screen out prospective parents of color, even though the laws have changed to make adoption easier. Trish Williams, *Interracial Adoption: Still Difficult*, ST. LOUIS POST DISPATCH, January 17, 1996, at 4E. Ruth Amerson, of Another Choice for Black Children tells the story of child welfare authorities who would rather black children stay with white foster parents than be placed in the home of an interracial adoptive couple. She says that, “Large numbers of black families are not getting through the system, but then you want to create a law to allow white families access to these children?” Stolberg, *supra* note 21.

⁵⁶ The National Association of Black Social Workers also claim that the standards “discriminate against low-income families who want to adopt.” Darlene Addie Kennedy, *Question: Should Congress Facilitate Transracial Adoptions?: Yes: End the Foster-Care Ordeal for Black Children*, THE WASHINGTON TIMES, June 5, 1995 at 18. This sentiment is echoed by Dwight and Denise Rocket, an African American couple, who believe that “Money often determines whether a family’s efforts at adoption are successful.” Shawn Foster, *Adoptions Often Based on Parents’ Race*, THE SALT LAKE TRIBUNE, Sept. 7, 1997, at A1.

⁵⁷ Even more alarming is the fee schedule of some adoption services. The difference in the fee to adopt a black baby is about \$4,000.00 less than the fee for a white baby. Alvin Poussaint, a Harvard professor of psychiatry who works with interracial families says “There’s the implication that you’ve got these kids over here and they’re selling them cheap. But the better-quality babies will cost you more.” Foster, *supra* note 56.

evidence that transracial adoption harms the black adoptees.⁵⁸ There are findings of harm, however. Dr. Alvin Poussaint has “found that black adopted children face the most difficulty in white families . . . [B]ecause of the unique history of racism focused on African Americans, the issues may be more acute for an African American child.”⁵⁹

Many adult transracial adoptees report that, once they leave home, they feel that they do not belong anywhere. On one hand they are not fully accepted in the white community and — even though they are more accepted in the black community — they often do not understand various cultural nuances.⁶⁰

This experience leaves children without any racial self-identity.

Both white parents and the black children they have adopted are ill prepared for the institutionalized racism they will face. Most of the commentaries on this topic revealed that white parents “[H]ope [they’ll] be able to help [the child] deal with it.”⁶¹ Unfortunately “hoping” will not prepare children when facing discrimination. Nor is it likely that these parents will be able to help since “their understanding of racism was limited — until they adopted children of color.”⁶²

Contrary to Professor Bartholet’s research, consider the reflections of two adult transracial adoptees who believe they were negatively impacted by the experience:

I remember thinking that they were Martians,

⁵⁸ *It’s Time to Outlaw Racial Preference in Adoptions*, THE ROCKY MOUNTAIN NEWS, April 23, 1995, at 98A.

⁵⁹ Foster, *supra* note 56.

⁶⁰ Neal, *supra* note 34.

⁶¹ Roni Rabin, *Can Black Children Raised By White Parents Develop A Positive Sense of Self and A Strong Racial Identity?*, NEWSDAY, July 13, 1995, at B4.

⁶² *Id.*

and I was an experiment of theirs. And every day after the day was over they went down and talked about their experiment.

Although his parents took him to a black church and tried to introduce him to black culture, their efforts only served to remind him he was different . . . they never knew how to respond when he told them about racial incidents or slurs at school. He eventually learned not to tell them about racial incidents, not to bring it home to them.⁶³

J. Douglas Bates, a white man, is the adoptive father of two "mixed" girls. In his book, *Gift Children: A Story of Race, Family, and Adoption in a Divided America*, he chronicles the struggles his family has faced with society because of his own transracial adoptions. Though Bates asserts that he loves his girls as his own, he candidly admits that he and his wife were not prepared to deal with the social and racial ramifications of their decision to adopt black children.⁶⁴ Bates realizes that, although he gave his children financial stability and love, they did not have enough black role models in their lives.⁶⁵

Bates oldest adopted daughter, Lynn, faced outright racial discrimination and prejudice as early as first grade, where some of the white girls at her school did not want her to use the same toilets they used and forced her to use the black toilet.⁶⁶ Mr. and Mrs. Bates were not prepared for these kinds of problems. They assumed that their children were in a good school and that everything was okay (the school, community and city were virtually all white).⁶⁷ The Bates had no reason to question the community's racial attitudes, because the school their children attended was made up of friends,

⁶³ *Id.*

⁶⁴ J. DOUGLAS BATES, *GIFT CHILDREN: A STORY OF RACE, FAMILY AND ADOPTION IN A DIVIDED AMERICA* 104 (1993).

⁶⁵ *Id.* at 104-07, 116.

⁶⁶ *Id.* at 119.

⁶⁷ *Id.* at 121.

associates and members of their community. They assumed that because they accepted their “black” children, their community (composed of middle class whites) would too.⁶⁸ They were wrong. More caution in placing the girls, or certainly more deliberateness in working with the white parents on racial issues, could have made the young girls’ upbringing less racially traumatic for them.

The Schroeders, another white family, who adopted a black child, also encountered racial hostility.⁶⁹ Mrs. Schroeder’s father refused to speak to the family for four years after the adoption, although he eventually accepted the child.⁷⁰ Also, the family was forced to break ties with other family members who were avowed racists.⁷¹ Although some adoption agencies screen prospective transracial parents for racist attitudes, many do not inquire how the extended family members might treat the child.

Given the prevalent racism in this country, many adoptive white parents may unknowingly foster some of the racist attitudes of their culture.⁷² For example, when Lynn Bates dated an older “black” male, her parents were very suspicious of him and eventually encouraged Lynn to end the relationship.⁷³ Following the break up, their home was burglarized and several items were thrown on the floor, including Mrs. Bates’ lingerie.⁷⁴ The Bates assumed that one of the girls’ black boyfriends had committed the crime and was some kind of pervert.⁷⁵ As a result, the Bates limited the girls’ contact with black males. When they later learned that a white boy, who they would have never suspected, had committed the crime, the Bates felt very ashamed.⁷⁶ Probably, their daughters did, too.

Much risk is taken when social agencies recklessly place

⁶⁸ *Id.*

⁶⁹ STUDES TERKEL, RACE 379 (1992).

⁷⁰ *Id.*

⁷¹ *Id.* at 376.

⁷² *Id.*

⁷³ *Id.* at 210.

⁷⁴ STUDES TERKEL, RACE 379 (1992).

⁷⁵ *Id.*

⁷⁶ *Id.* at 211.

black children with white parents just because the parents desperately want a child and financially qualify, without taking some precautions to evaluate the white parent's awareness and sensitivity of racial issues. Black transracial adoptees often grow up in predominantly white environments. They receive their information about black people, about themselves, from whites and from the media. This is troubling because a poll in 1990 showed that 56 percent of non-blacks believe that blacks are more violent than other people, and 62 percent believed that blacks are more likely to prefer living on welfare.⁷⁷ Therefore black children, who are forced to assimilate day to day into white culture, face a community that overwhelmingly thinks of them as violent and lazy.

CONCLUSION—can't we just give black children the same precautions that we would give white children?

Some argue that, in spite of the difficulties transracially adopted children face, these difficulties are preferable to the alternatives.⁷⁸ Others argue that the solution will be found in eradicating the restrictions and unfair hurdles that black prospective parents face at the hand of primarily white and middle class social workers.⁷⁹ Regardless, at a minimum, we must ask whether truly transracial adoption would be embraced by states, agencies, and Congress. If it would not be, then one-way transracial adoption is inherently suspect. We also must ask what cautionary steps would be taken toward screening black parents, etc., if they were to be allowed

⁷⁷ *Id.* at 1.

⁷⁸ *See, e.g.,* Funderburg, *supra* note 7, at 64 (see view of Randall Kennedy).

⁷⁹ *Id.* (see view of Ruth-Arlene Howe); *see also* Clarence Page, *Stop Looking for Huxtables and More Black Families will Find They Can Adopt*, SUN SENTINEL, Nov. 30, 1993, at 13. For example, where 2000 black families attempted to qualify for adoption, but only 15 met the requirements. *Id.* Often the agencies stress economic, social and moral values that are common to white mainstream America, but not in black America. Studies show that when economic and social barriers are removed, black families are 39 percent more likely to successfully adopt. *Id.*

to adopt white babies, with truly transracial adoption. Then, those same cautionary steps should be taken with this one-way street transracial adoption that we have. After all, all the children, black and white, are vulnerable, innocent, cute and equal. Aren't they?

