

INTERRACIAL ADOPTION: PERMANENT PLACEMENT AND RACIAL IDENTITY—AN ADOPTEE'S PERSPECTIVE

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I am the product of an interracial adoption. My birth father is Black¹ and my birth mother is white. At the age of eighteen months, I was adopted by a white Jewish family which lived in a predominately white suburb of Buffalo, New York. My adoptive parents believed that the world should be color blind, so they raised me in the same way as they did their three biological children. My family never addressed the fact that my skin was brown or my hair curly. Nor did they discuss with me social and political issues relating to the African-African community. My parents did not see a need to expose me to Black culture, history, or role models.

This indifference to my race appeared to extend to the larger community in which I was raised. In general, my close friends and neighbors made little reference to my race. I spent much of my life in Buffalo attempting to "fit in" with my white peers which, for the most part, I did. In this contrived state of "color blindness" I excelled. In high school I served as class president, was selected as a first clarinetist in the All-County Band, won a gold medal in volleyball at the Empire State Games, graduated with an "A" average, and was selected as a student speaker at my high school graduation.

However, despite my achievements, I was still exposed to racism. Strangers occasionally hurled racial insults at me, and white parents attempted to prevent their daughters from dating me. Thus, although I was outwardly successful, this period in my life was difficult and confusing. I could not understand how I could be popular at school, an excellent student, live in the same neighborhoods as my classmates, and yet be subject to insults and rejection because of my race. "What was wrong with me?" I wondered.

There were other uncomfortable moments as well. Occasionally, someone would make a racial slur or a negative generalization about Blacks only to turn to me and say that they did not really consider me to be Black. Oddly enough, I took pride in not being considered Black. I wanted to be accepted by my friends and community and I realized that

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1. Throughout this Article, I use the terms African-American and Black interchangeably. I also deliberately capitalize "Black" because I believe that "Blacks, like Asians, Latinos, and other 'minorities' constitute a specific cultural group and, as such, require denotation as a proper noun." Kimberle' Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988).

although I did not understand what “being Black” meant, I knew that being Black was perceived as inferior to being white. Without knowing any Blacks from whom I could draw a positive racial identity, I simply denied my African-American heritage. I longed to be fully white—not biracial—and I silently cursed my nose, lips, hair and skin color. Although I had many unanswered questions about my racial identity, I did not want to explore them and risk losing whatever small sense of security I had in feeling that I belonged in the larger white community.

When I enrolled in a small private college in Central New York, I felt even more confused about my racial identity. Fellow students did not know my personal background and I slowly began to realize that I could no longer ignore the color of my skin. When classmates looked at me, they did not simply see a fellow student, they saw a Black student. I had a difficult time adjusting and did not feel that I could “fit in” as easily as I had during high school. Again, I was confused as to why I should be looked upon differently by my white classmates. After all, I felt that I had more life experiences in common with the white students than the Black students, yet I was not fully accepted by the white students.

Growing up I worked diligently to ignore the racial differences between myself and my white friends. In college, however, race took on a significance that I had never previously considered. Racial slurs and negative remarks were more common and the student body was visibly segregated, thus my internal racial tensions were intensified. Although I slowly gained an awareness of the Black community during college, I made every effort to disassociate myself from that community because I did not want to be identified as Black. I accepted the general perception of African-Americans as inferior to whites which I learned in the “color blind” world in which I was raised. Furthermore, I felt that I more readily identified with the white community because until this point, my life experience consisted almost exclusively of interaction with whites, including my adoptive family, neighbors, friends, classmates and teachers. Thus, my college experience led to even more confusion about my racial identity and I developed an intense feeling of not fitting in with either Blacks or whites. People identified me as Black yet I knew nothing about what that identification meant. I had never been exposed to African-American culture or history or to any of the issues facing the Black community.

Although I tried desperately to assimilate into the white community during college, I began to realize that my skin color would prevent me from being fully accepted. I became further confused when people who were supposed to be my friends made racial slurs. Since I had become more aware of racial differences, these comments stung me like never before. I cannot fully describe the feelings of loneliness and shame that I felt while sitting in a room of white students with whom I felt I identified and enduring the silence that follows when someone used the term “nigger” before realizing that I was present. Incidents like these made me realize that I could no longer continue to attempt to be a part of this group, and yet, I felt I had no way of bridging the gap between other Black students and myself.

During these difficult years I gained a greater sense of the separation that exists between Blacks and whites. However, awareness alone was not sufficient to allow me to fully understand my racial identity. Being raised by a family that did not appreciate the significance of racial differences and the importance of developing a positive racial identity in a Black child left me unprepared to face the complexities of being an African-American male in this society.

Because I felt that I did not belong to any group, my confidence eroded. I was ashamed and embarrassed when people discussed race or when they wanted to know about my family. I was confused because I did not understand my biracial background and did not have the support of my natural parents to help me understand my heritage. Instead of believing in myself, my abilities and my intelligence, as I had in high school, I became withdrawn. I did not readily participate in class or take part in extra-curricular activities because of my insecurity and confusion about my racial identity. Although I learned that we simply do not live in a "color blind" world, I felt that I had no one to turn to in order to help me understand what it meant to be an African-American man in our society.

Fortunately, upon graduating from college, I had the opportunity to meet someone who shared my biracial heritage and who helped me begin developing a positive racial identity. For the first time, I developed friendships with other Blacks. I also began to read African-American history and literature—something to which I had never been exposed. I learned that there are many biracial people like myself, and that I should appreciate my racial identity and my distinctive features which identify me as an African-American.

I have learned to appreciate the sense of community that exists among African-Americans and I realize that I am a welcome and needed member of that community. I also stopped questioning what is wrong with me—as I did for many years—and began to ask what is wrong with an individual, a society, and a world filled with racism, prejudice and ignorance. Finally—and most importantly for the purposes of this Article—I have learned that all Black children need to develop a positive racial identity in order to value themselves and their identity rather than succumb to racism and prejudice which may lead them to feel inadequate or inferior regardless of their individual accomplishments.

INTRODUCTION

Adoption is the legal process whereby a child's legal rights and duties toward her natural parents are terminated and similar rights and duties are created toward the child's adoptive parents.² The main purpose of adoption is to provide homes for children who cannot be raised by their biologi-

2. BLACK'S LAW DICTIONARY 70 (4th ed. 1968).

cal parents.³ Adoption also provides families with the opportunity to raise children that are not their own biological children.⁴

“Interracial adoption” generally refers to the adoption of a child of a different race or ethnicity than that of the adoptive parents.⁵ In this Article, interracial adoption refers to the adoption of Black or biracial⁶ children by white families.⁷

As with many issues involving race, interracial adoption has generated a great deal of controversy.⁸ The strongest opposition to interracial adoption has come from the National Association of Black Social Workers (“NABSW”).⁹ The NABSW opposes interracial adoption because it believes that such adoptions are against the best interests of Black people, in general, and Black children, in particular.¹⁰ In 1972, the NABSW passed a resolution against interracial adoption which states in part:

Black children should be placed only with Black families whether in foster care or for adoption. Black children belong physically, psychologically and culturally in Black families in order that they receive the total sense of themselves and develop a sound projection of their future. Human beings are products of their environment and develop their sense of values, attitudes and self concept within their family structures. Black children in white homes are cut off from the healthy development of themselves as Black people.

3. Joan Mahoney, *The Black Baby Doll: Transracial Adoption and Cultural Preservation*, 59 U.M.K.C L. REV. 487, 488 (Spring 1991); see also, Valerie Phillips Hermann, Note, *Transracial Adoption: “Child-Saving” or “Child-Snatching”*, 13 NAT’L BLACK L.J. 147, 148 (1993) (“[O]ne of the most important goals of adoption is to provide a home for displaced children.”).

4. Mahoney, *supra* note 3, at 488.

5. CHRISTINE ADAMEC & WILLIAM L. PIERCE, PH.D., *THE ENCYCLOPEDIA OF ADOPTION* 297 (1991) (noting that interracial adoption generally refers to the adoption of Black or biracial children by white families). Most current literature, however, uses the term “transracial adoption” to describe these adoptions. The use of the term “interracial adoption” in this Article is simply a personal preference—both interracial and transracial adoptions describe adoptions involving families and children of different races.

6. The term “biracial” refers to persons whose biological parents have different racial heritage (a person with one Black parent and one white parent, for example). Many people of mixed Black and white racial heritage identify themselves as Black. Furthermore, where either or both parents are Black, our society considers the child to be Black. Dorcas D. Bowles, *Development of an Ethnic Self-Concept among Blacks in ETHNICITY & RACE: CRITICAL CONCEPTS IN SOCIAL WORK*, 103, 107 (Carolyn Jacobs & Dorcas D. Bowles eds., 1988). Thus, this Article generally refers to biracial people as Black except where it may be important to note their biracial heritage.

7. The adoption of white children by Black families is extremely rare. One researcher states that she has come across only four agency placements of white children with Black families. DAWN DAY, *THE ADOPTION OF BLACK CHILDREN: COUNTERACTING INSTITUTIONAL DISCRIMINATION* 99 (1979).

8. See generally Pamela Reynolds, *Many Families, Both Black and White, are Finding New Policies Block Their Hope for Adopting Black Children*, BOSTON GLOBE, Apr. 26, 1987, at B9; Suzanne P. Kelly, *A Debate: Adoption Across Racial Lines*, STAR TRIB., May 19, 1991, at A1; Charisse Jones, *Role of Race in Adoptions: Old Debate is Being Reborn*, N.Y. TIMES, Oct. 24, 1993, at A1; Lynn Smith, *Salvation or Last Resort*, L.A. TIMES, Nov. 3, 1993, at E1; *Black Children, White Parents*, N.Y. TIMES, (editorial), Nov. 27, 1993 at A10; M.A. McKenna, *Transracial Adoption*, ATL. CONST., Mar. 21, 1995 at E1; Lena Williams, *Transracial Adoption: The Truth Comes in Shades of Gray*, N.Y. TIMES, Mar. 23, 1995, at B1.

9. JOYCE A. LADNER, *MIXED FAMILIES* 76 (1977).

10. National Association of Black Social Workers, *Position Statement on Transracial Adoptions*, (Sep. 1972), quoted in *id.* at 75.

The NABSW argues that Black children need to be raised by Black families or they "will not have the background and knowledge which is necessary to survive in a racist society."¹¹

Another argument advanced by opponents of interracial adoption is that it is another form of discrimination against the Black community.¹² Opponents contend that interracial adoptions deny the Black community the opportunity to determine the destiny of Black children. Furthermore, opponents of interracial adoption believe that such adoptions promote the myth that whites are superior to Blacks by affirming the belief that white families are more capable of raising Black children than are Black families.¹³ Opponents of interracial adoptions also contend that such adoptions create the negative and erroneous perception that Blacks are unable or unwilling to adopt Black children.¹⁴

On the other side of the debate, proponents of interracial adoption argue that such adoptions are in the best interests of the child because children are placed in stable, permanent families as soon as possible.¹⁵ Because a disproportionate number of Black children are in foster care,¹⁶ proponents argue that there simply are not enough Black families available to adopt all the waiting Black children.¹⁷ Thus, proponents contend that white families who are willing to adopt Black children should be encouraged to do so. Proponents of interracial adoption further claim that because of the NABSW's opposition to interracial adoptions and their influence over the adoptions of Black children, interracial adoptions have been severely curtailed.¹⁸ As a result, proponents assert that many Black children either are not adopted or remain in foster care for longer periods of time, even though there are white families that are willing to adopt them.¹⁹ Proponents argue that denying or delaying permanent placement adversely affects Black children both psychologically and developmentally, and thus, interracial adoptions should be encouraged.

11. LADNER, *supra* note 9, at 77.

12. ADAMEC & PIERCE, *supra* note 5, at 299.

13. Twila L. Perry, *Race and Child Placement: The Best Interests Test and the Cost of Discretion*, 29 J. FAM. L. 51, 117 (1990/1991).

14. *Id.*; see also *infra* Part IV.A.

15. "[A] stable family may be the single most important factor in children's healthy emotional development." Margaret Howard, *Transracial Adoption: Analysis of the Best Interests Standard*, 59 NOTRE DAME L. REV. 503, 508 (1984).

16. In 1987, 37.1% of all children in foster care were Black, while, according to the latest Census data from 1990, only 12.3% of the population is Black. Elizabeth Bartholet, *Where Do Black Children Belong: The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163, 1187 (1990). However, no good figures are available on the actual number of children in foster care. *Id.* at 1173 n.10. Furthermore, the numbers are misleading because foster care is often used as a quasi-permanent placement allowing children to remain in contact with their biological family. *Id.* at 1202 n.104. In 1987, for instance, there were 275,000 children in foster care. Of this number, it has been estimated that only 36,000 were free for adoption. James S. Bowen, *Cultural Convergences and Divergences: The Nexus Between Putative Afro-American Family Values and the Best Interests of the Child*, 26 J. FAM. L. 487, 491 (1987-88). Cf. Elizabeth Coady, *Wanted: Parents for Black Children Conference Held to Seek Solutions*, ATL. CONST., Aug. 21, 1992, A3 (estimating the number of Black children awaiting adoption to be only 18,000).

17. Bartholet, *supra* note 16, at 1188.

18. See *id.* at 1180. In 1971, the last year before the NABSW announced their opposition to interracial adoption, 2574 such placements were made. *Id.* By 1975, the last year in which these statistics were generated, the number had fallen to 831 interracial adoptions. *Id.*

19. *Id.* at 1188.

It is important to understand the issues that shape the debate on interracial adoption. Only by understanding the differing views and carefully analyzing the concerns can a reasonable solution to the problem be proposed. While both sides to the debate have some merit, it is most important to work toward an informed solution to the problem, rather than committing oneself to a position that may not be in the best interests of the child.

To that end, this Article continually focuses on the two critical needs of all Black children: permanent placement in a stable and loving family, and an environment which will enable the child to develop a positive racial identity. An absolute ban on interracial adoptions would clearly fail to serve the interests of the child if it forced the child to remain in foster care forever. On the other hand, making interracial placements without any regard for the child's need to develop a positive racial identity and without acknowledging that Black families are more likely to instill the child with a positive racial identity than white families, also fails to serve the interests of the Black child.

Having personally experienced interracial adoption, having analyzed the literature in this area, and having had conversations with other Black adults adopted by white families, I recommend that substantial efforts be made to ensure that a Black child waiting for adoption be placed with a Black family. If, after a reasonable period of time, a Black family is not available to adopt that child, then a white family should be allowed to adopt. However, any white family that does adopt a Black child must be carefully selected to ensure that they will provide an environment that will affirmatively address the child's racial heritage and will make every effort to instill that child with a positive racial identity.

Nowhere does this Article contend that any family, Black or white, is more or less able to love and care for any child. However, love is not enough. Black children have special needs in our race-conscious world, and we must address all of those needs, not just some. Furthermore, any assertion that Black families are unavailable to adopt Black children is false.²⁰ Thus, as long as Black families are available to adopt Black children, they should be given a preference—in the interest of the Black child. Only when Black families are actually unavailable should white families be allowed to adopt Black children.

The purpose of this Article is to explore the current debate over the appropriateness of interracial adoption and to propose a model statute that would serve the best interests of all children, in general, and Black children, in particular: providing permanent, stable homes that ensure the child will be raised in an environment that is most likely to instill that child with a positive racial identity.

Part I presents some of the empirical studies that have attempted to evaluate the outcome of interracial adoptions. These studies have been used by both proponents and opponents of interracial adoption as evidence of the successes and difficulties of such adoptions. While some studies conclude that interracially adopted children and their families suffer few, if

20. See *infra* Part IV.A.

any, problems arising out of the adoption, others caution against interracial adoption except in limited circumstances. I critique these studies and conclude that some of the studies which proponents of interracial adoption rely upon are flawed because they do not properly evaluate whether a Black child has developed a positive racial identity. Thus, I conclude that the studies do not offer broad support for interracial adoption.

Part II discusses why it is critical for all Black children to develop a positive racial identity in order to counter the racism, prejudice and discrimination that all African-Americans inevitably experience. I also analyze factors which contribute to the development of positive racial identity of Black children raised by Black families. In contrast, Part III discusses the various problems that arise in an interracial adoption which may prevent the child from developing a positive racial identity. I also contend that where a white family is able to replicate many of the factors that enable Black children raised by Black families to develop a positive racial identity, then some of the concerns about that child failing to develop a positive racial identity are lessened.

Part IV analyzes some of the problems facing Black families seeking to adopt. In this section, I attempt to expose the myth that Black families are unwilling or unable to adopt Black children and call for concerted efforts by adoption agencies and community-based organizations to encourage the adoption of Black children by Black families. I contend that if these efforts are made, there will be less need for interracial placements.

Finally, in Part V, I critique current "race preference" statutes and propose a model statute that effectively balances the dual interests of Black children needing adoption—permanent placement and an environment that promotes positive racial identity.

I. EMPIRICAL STUDIES

A number of empirical studies have analyzed the effects of interracial adoption. These studies are a focal point in the interracial adoption debate and have been relied upon by proponents of interracial adoption as "proof" that such adoptions are highly successful.²¹ In general, the studies evaluate three factors: (1) the adoptees' racial identification; (2) the various relationships that the adoptee has with her adoptive parents, siblings, extended family, and peers; and (3) the level of acceptance of the interracial adoptee by the larger community.

21. See generally, LUCILLE J. GROW & DEBORAH SHAPIRO, *BLACK CHILDREN - WHITE PARENTS: A STUDY OF TRANSRACIAL ADOPTION* (1974); RITA JAMES SIMON & HOWARD ALTSTEIN, *TRANSRACIAL ADOPTION* (1977) [hereinafter SIMON & ALTSTEIN (1977)]; RUTH G. MCROY & LOUIS A. ZURCHER, JR., *TRANSRACIAL AND INTRACIAL ADOPTEES: THE ADOLESCENT YEARS* (1983); RITA J. SIMON & HOWARD ALTSTEIN, *TRANSRACIAL ADOPTEES AND THEIR FAMILIES: A STUDY OF IDENTITY AND COMMITMENT* (1987) [hereinafter SIMON & ALTSTEIN (1987)]; RITA J. SIMON & HOWARD ALTSTEIN, *ADOPTION, RACE, AND IDENTITY: FROM INFANCY THROUGH ADOLESCENCE* (1992) [hereinafter SIMON & ALTSTEIN (1992)]; see also Bartholet, *supra* note 16, at 1174 n.11, 1207-26 (relying primarily on the three Simon & Altstein studies as evidence of the success of interracial adoptions).

A. *The Simon and Altstein Studies*

Rita Simon and Howard Altstein conducted three studies on interracial adoption over a twelve year period.²² The three studies attempted to collect

information about the adopted children's social and racial identities, the attitudes and awareness about race and racial differences held by the birth and adopted children, and the parents' beliefs about the cohesiveness of their family and the strength of the commitment the children had to them and to each other.²³

In their initial study, Simon and Altstein interviewed over two hundred white families that adopted nonwhite children.²⁴ The main purpose of the initial study was not to assess the successfulness of adoption, but to measure the extent to which the adopted child (either of the same race or interracial) adjusted to her parents and how the parents felt about their new child. Thus, the study purposely focused on children, ranging in age from three to eight, whose opinions, attitudes, and perceptions were still in the formative stage.²⁵ Interviews with the children focused on racial awareness, attitudes and identity. Interviews with the parents focused on their motivation for adopting, the changes that an interracial adoption created in their lives, and their perceptions of their adopted and biological children's adjustment to each other.²⁶

In the second study, Simon and Altstein conducted telephone interviews and mailed questionnaires to 133 families that participated in the first study.²⁷ The questionnaires were directed only at the parents and focused on the relationship between the adoptees and their adoptive parents, any biological siblings, extended families, and the larger community in which they lived.²⁸

In the final study, Simon and Altstein conducted interviews of both parents and children of 96 families that had participated in one of the two prior studies.²⁹ This final study focused on

how the family members related to each other, the racial identities of the adopted children, the adopted children's sense of integration with their families, the parents' and children's expectations concerning their future identity and bonds that the transracial adoptees are likely to have toward the mainly white-oriented world of their parents and siblings, and the ties that the transracial adoptees are likely to develop with the community of their racial and ethnic backgrounds or with some composite world.³⁰

Simon and Altstein reached several conclusions from their three studies. For example, they found that any tension between the adoptive par-

22. The studies were conducted in 1972, 1979, and 1984. SIMON & ALTSTEIN (1992), *supra* note 21, at xi.

23. *Id.*

24. *Id.* at 57. Simon and Altstein interviewed both adoptive parents and their children. The children included Black, white and Native American adoptees, as well as children born to the parents. Of the 366 children interviewed, only 120 were Black adoptees. *Id.* at 57-58.

25. SIMON & ALTSTEIN (1977), *supra* note 21, at 4.

26. *Id.*

27. SIMON & ALTSTEIN (1992), *supra* note 21, at 57.

28. *Id.* at 57-58.

29. *Id.* at 58.

30. *Id.* at 60.

ents and their extended family or neighbors caused by the decision to adopt a nonwhite child ceased to exist over time.³¹ They also found that most parents believed that their interracial adopted children had “some knowledge and appreciation of their racial and ethnic background” gained mostly from books, school, and television.³² The studies also conclude that, in general, the adopted children did well in school and experienced no academic problems.³³

The most significant problem with the Simon and Altstein studies is that they underestimate the importance of the development of a positive racial identity in Black children and confuse “racial identification” with “positive racial identity.” *Positive racial identity* means that a person is conscious of their racial heritage and has positive feelings about it. For a Black child to have a positive or healthy racial identity, she should acknowledge her African-American identity, have pride in her racial heritage, and have an understanding of the role that race has played and continues to play in American society. *Racial identification*, on the other hand, is merely the ability to identify oneself in a racial category. For example, an African-American child understands racial identification if she identifies herself as “Black” as opposed to white.

As the Simon and Altstein studies indicate, many interracial adopted children are able to make appropriate racial identifications.³⁴ However, racial identification is merely one aspect of developing a racial identity. The fact that a Black child correctly identifies herself in a racial category does not offer proof that a child has a positive racial identity. The Simon and Altstein studies fail to address the interracial adopted child’s self-perception about being Black, and their knowledge and appreciation of their racial heritage and cultural history. Furthermore, the Simon and Altstein studies are misguided in equating a positive racial identity with outward happiness, success in school, and the ability to make racial identifications.³⁵ While these characteristics may provide some objective indication of the “success” of an adoption, the fact that a child has the appearance of being outwardly happy simply offers no insight into the child’s self-perception as an African-American.³⁶

31. *Id.* at 76.

32. *Id.* at 79. As one interracial adopted child states:

What you see on TV when you’re a kid . . . there is nothing that affirms who you are. You never learn to think of yourself or black people in a positive light. I didn’t really have any black role models when I was a kid, and for a while I hated myself. . . .

Kelly, *supra* note 8, at A17. See generally Marc Gunther, *Television: Race and Image ‘Color Adjustment’ Examines Blacks and Prime Time*, DET. FREE PRESS, June 14, 1992, at G1 (discussing the historically negative images of African-Americans on television).

33. SIMON & ALSTEIN (1992), *supra* note 21, at 80.

34. *Id.* at 140-41 (claiming that Black children perceived themselves as Black as often as white children perceived themselves to be white).

35. Any family that desires to love and care for a child will likely succeed in developing strong emotional ties between itself and the child, and it is likely that child will appear outwardly happy. Neither white families nor Black families are any different in their capacity to love and care for children. The key is the ability to provide a positive Black identity for the child. The best environment to develop this identity is with a Black family. See *infra* Part II.B.

36. See *infra* note 51 (discussing my outward success and happiness, yet lack of positive racial identity).

Another problem with the Simon and Altstein studies is that they focus on adoptees in the pre-adolescent stage of development.³⁷ Focusing on adoptees who are still children offers little useful information about their self-perception of their racial identity because they may lack a full understanding of racism and the negative value American society associates with those identified as Black. A more useful study would focus on adult adoptees, including those that have had an opportunity to learn more about their racial heritage and develop significant contacts with other African-Americans.³⁸ Similarly, examining the attitudes of adoptive parents, siblings, and the extended family toward the adoptee provides only limited insight into the child's self-perception.³⁹ Having a permanent and loving home is only one interest that Black children have. Black children have an equally important interest in developing a positive racial identity in light of the racism and prejudice that they will inevitably encounter.⁴⁰

Finally, the Simon and Altstein studies are inherently biased because they have limited their research to those families that belong to groups strongly supporting interracial adoption. Simon and Altstein contacted families belonging to the Open Door Society or the Council on Adoptable Children.⁴¹ The primary purpose of these groups is to provide support for white parents that have adopted nonwhite children and to recruit other families to do the same.⁴² Not only do members of these groups strongly support interracial adoption, their participation in the group may make them somewhat more aware of the issues involved in interracial adoption. The families in the Simon and Altstein studies may be the most likely to attempt to instill a positive racial identity in their children.⁴³ Thus, the ob-

37. In the final Simon and Altstein study, the median age of the interracial adopted children interviewed was 14.9 years. SIMON & ALTSTEIN (1992), *supra* note 21, at 59. See also Zanita E. Fenton, *In a World Not Their Own: The Adoption of Black Children*, 10 HARV. BLACKLETTER J. 39, 60 (Spring 1993); *infra* note 51 (discussing the problem with the McRoy & Zurcher study on interracial adoption because of its focus on young adoptees, as opposed to adults).

38. I do not contend that all of the adult adoptees would speak in a unanimous voice about their experience with interracial adoption. However, I do believe that those adult adoptees that have been exposed to their racial heritage and have developed a positive racial identity are more likely to feel that they did not have a positive racial identity while growing up. Furthermore, I believe that the attitudes of many of these adoptees about their racial identity and their adoption experience would have changed significantly between childhood and adulthood. See, e.g., Williams, *supra* note 8, at B5 (two interracial adopted children oppose interracial adoptions); see also *infra* note 51 (discussing my differing attitudes on interracial adoption as an adult).

39. While all of these factors are important in evaluating the success of adoption, in general, they are not particularly illuminating in the interracial adoption context. White parents, as well as Black parents are capable of developing self-esteem within the child and developing strong emotional ties. However, this does not reflect upon the child's self-perception of her racial identity.

40. See generally *infra* Part II.

41. SIMON & ALTSTEIN (1992), *supra* note 21, at 26.

42. MCROY & ZURCHER, *supra* note 21, at 6.

43. Although adoptive parents that belong to such groups may be the *most likely* to attempt to develop positive racial identity in their children, there is little evidence that these families actually make such efforts. See *infra* notes 97-103 and accompanying text.

For example, once or twice a year, my family would spend a day with another white family that had adopted a Black child. While outwardly, this might appear to indicate a willingness to develop my positive racial identity, this effort, by itself, was too insignificant to actually assist me in beginning to develop a positive Black identity. This isolated experience, absent any affirmative steps taken in the home and without any substantial contacts with a significant number of Black peers and adults, made it nearly impossible for me to develop a positive racial identity.

vious bias of the participants in the study undercuts its reliability because of the potential exclusion of those families who may have little interest in developing a positive racial identity in their child and those families that would not encourage others to engage in interracial adoption.

Despite the many flaws with the Simon and Altstein and other studies, proponents of interracial adoption point to these studies as an “overwhelming endorsement” of interracial adoption.⁴⁴ For example, Professor Elizabeth Bartholet claims that the studies show that interracially adopted children do well in terms of achievement, adjustment, and self-esteem and seem fully integrated in their families and communities.⁴⁵ She also claims that the studies show that adoptees have developed a strong sense of racial identity.⁴⁶ Bartholet concedes, however, that the studies provide some evidence that Black children adopted by white families develop a “different” sense of their relationship to both the Black and white communities as compared to Black children raised by Black families.⁴⁷ Professor Bartholet claims that how one reads this evidence depends upon one’s “political perspective.”⁴⁸

Bartholet’s statement reflects a misunderstanding of the importance of the development of racial identity in Black children. We must critically examine why many interracially adopted children develop a different sense of racial identity than other Black children. Only then can we understand the benefits to the child of being raised by a Black family and the many difficulties facing Black children adopted by white families.

B. *The McRoy and Zurcher Study*

Ruth McRoy and Louis Zurcher also conducted a study on interracial adoption.⁴⁹ They conducted interviews of thirty white families and thirty Black families that had adopted Black children. They also interviewed the adopted children.⁵⁰ As a result of their study, McRoy and Zurcher con-

44. Bartholet, *supra* note 16, at 1208.

45. *Id.* at 1209.

46. *Id.*

47. *Id.*

48. *Id.* This simplistic statement ignores the need for *all* Black children to develop a positive racial identity to avoid internalizing the racism, prejudice and negative stereotypes that African-Americans confront daily in our society. Furthermore, interracially adopted children are at a significantly higher risk of developing a negative racial identity because they are often isolated from other African-Americans and live in predominately white communities. Thus, the fact that an interracially adopted Black child states that she feels “different” than other African-Americans is likely a reflection of her acceptance of the negative stereotypes and an effort to distinguish herself from them.

For example, even as a teenager, I felt that I was “different” from other African-Americans. I now realize (having since developed a positive racial identity) that growing up with virtually no exposure to Black peers or role models, I accepted negative characterizations of Blacks and readily disassociated myself from “other” African-Americans.

Another interracially adopted child also internalized the discomfort of being “different” than her adoptive parents. She states, “I didn’t want [my parents] to talk about (race) . . . or bring it up. . . . I guess for my part I was embarrassed about being different. I would be embarrassed when they brought up race because I just didn’t want them to notice—because I didn’t feel good about myself.” Kelly, *supra* note 8, at A17.

49. McROY & ZURCHER, *supra* note 21.

50. The mean age of all of the children interviewed was 13.8 years. *Id.* at 22-23. It is problematic that most of these studies rely on interviews with young children. Although the studies

cluded that many of the white parents had stereotypical perceptions of Blacks and were apprehensive about their child associating with other Blacks.⁵¹ The negative feelings that the white adoptive parents felt towards African-Americans may have led many Black adoptees to dismiss racial differences between themselves and their white peers.⁵² Furthermore, the study concluded that many of the Black children's peers viewed them as "different" from the commonly held negative stereotypes of African-Americans.⁵³

However, the study also showed that where white families lived in integrated neighborhoods, and had frequent contact with Blacks, the adoptee was more likely to develop a positive self-perception as an African-American.⁵⁴ Furthermore, the study concluded that most Black children raised by Black families felt "very proud" of their racial heritage.⁵⁵

McRoy and Zurcher conclude that efforts should be made to place Black children with Black families because Black children need a positive racial identity.⁵⁶ Furthermore, they conclude that white families should be allowed to adopt Black children only when these efforts fail.⁵⁷ McRoy and

generally conclude that the adoptees appear to be happy in their environment, as these children grow older it is likely that they will develop greater anxiety about their racial identity. This is especially true where the Black adoptee has been raised in a predominately white environment and has had limited exposure to other Blacks. Thus, concluding that a 13 year old child is "happy" in her family merely illustrates the benefit of a permanent, stable home, and completely ignores the equally important aspect of developing a positive racial identity in the child.

For example, as I read through the various studies I asked myself how the researchers would have characterized my adoption experience. I have little doubt in concluding that they would have considered me to be happy and successful. After all, I was an Honor Student, High School Class President, Captain of my high school volleyball team and President of the Marching Band. However, I cannot overemphasize the difference between these outward signs of success and the strong sense of avoidance and denial that existed within me regarding my race and any racial issues.

During high school, I simply did not have the experience or the ability to address how I had accepted and come to believe in the negative stereotypes of African-Americans and struggled to disassociate myself from any connection or identification with African-Americans, in general. Instead of attacking racism and prejudice, I merely accepted it as a given and attempted to prove myself "different" than "other" African-Americans.

However, having since developed a positive sense of racial identity through self-education, personal experience, as well as contacts and friendships with Black peers, I now realize that, in part, because I internalized prevalent negative stereotypes and racism directed at Blacks in general, I grew up with a negative self-perception of myself as an African-American. This resulted from being isolated from meaningful contact with other Blacks, not having developed a positive racial identity, and then being faced with the racism and prejudice that African-Americans inevitably encounter.

51. *Id.* at 139.

52. *Id.*

53. *Id.*

54. *Id.* Although interracial adoptees are more likely to develop a positive racial identity with a family that lives in an integrated area, most interracial adoptions occur in predominately white areas. For example, 87% of the white families adopting Black children in the McRoy and Zurcher study lived in areas that were less than 10% Black. *Id.* at 20.

55. *Id.* at 140-41. In addition, both biracial and Black children raised in Black homes categorized their racial orientation as Black. Although these children were aware of the negative value that the dominant society has accorded to Blacks, they were not ambivalent about their identification as Black. *Id.* This was generally true whether the Black family lived in a predominately white or predominately Black neighborhood.

56. *Id.* at 143. These efforts should include hiring minority staff members, recruiting Black families, considering subsidized adoptions, and allowing single Black parents to adopt. *Id.*

57. *Id.*

Zurcher caution, however, that interracial adoptions should be limited to specific instances. While acknowledging that many white families could provide a loving home for a Black child, they contend only some can develop the child's racial identity⁵⁸—those families that currently reside in an integrated area and have Black friends or that are willing to move to an integrated area and undergo counseling to explore racial attitudes and become more sensitized to personal and societal attitudes toward Blacks.⁵⁹

Although the Simon and Altstein studies and the McRoy and Zurcher study have flaws, they are the primary source of information relied upon to analyze the effects of interracial adoption. The studies (especially the McRoy and Zurcher study) are useful in examining how Black children benefit and develop positive racial identity in Black homes. However, upon careful examination of both studies, they do offer strong evidence that Black children adopted by white families will not develop a positive racial identity. Thus, these studies underscore the importance of making same-race placements, and outline the factors to be considered should an interracial placement become necessary.

II. RACIAL IDENTITY

A. *Understanding Why Black Children Need to Possess a Positive Racial Identity*

Racism is the "cultural ideology that espouses the view that one race of people is inherently superior to another race of people. In the United States . . . , the white population has developed and nurtured a cultural ideology that people of color, especially blacks, are inherently inferior."⁶⁰

At an early age, most Black children inevitably encounter racism, prejudice, and negative images or stereotypes of Blacks through the media and personal experiences.⁶¹ The Black child learns that, in our society, being Black is less desirable than being white.⁶² Because "race considerations operate to impinge upon the Black child's self-concept during development," the Black child is likely to develop a negative self-perception as an African-American.⁶³ To counter these negative self-perceptions, the child's family and environment must work together to produce a positive racial

58. *Id.* at 144.

59. *Id.* at 144-145. See *infra* Part II.B. (explaining how exposure to other Blacks may help to affirm a positive racial identity in a Black child).

60. LEON F. WILLIAMS, *Frameworks for Introducing Racial and Ethnic Minority Content into the Curriculum in ETHNICITY & RACE*, *supra* note 6, at 167, 170.

61. At an early age, children become aware of differences in ethnicity between themselves and others. McROY & ZURCHER, *supra* note 21, at 124; see also BOWLES, *supra* note 6, at 105 ("[T]he ability to discriminate physical differences based on race and color develops rapidly during preschool years.").

62. Black children "learn about the historically negative value placed upon being identified as Black." McROY & ZURCHER, *supra* note 21, at 124.

63. Bowen, *supra* note 16, at 488. Consider, for example, the emotional effect upon a young Black child of a white child refusing to play with her because she is Black. In this scenario, it is quite likely that the child will develop negative feelings about being identified as Black, and may actually express a desire to be white. See also, Yvonne Shinoster Lamb, *Children; Race Relations & Preschoolers; It's Never Too Early to Begin Building Self-Esteem*, WASH. POST, Sep. 9, 1991, at B5.

identity in the child. This enables the child to have a positive sense of self as a Black person.

One scholar, Dorcas Bowles, further explains the importance of developing an ethnic identity in Black children.⁶⁴ Bowles states that ethnic self-representation is one's inner ethnic identity.⁶⁵ Inner ethnic identity is an internal perception which is more fundamental than external perceptions.⁶⁶ As the core of one's self-representation, the inner ethnic identity must develop cohesion and solidity which is possible only when "the child has been made to feel special in . . . her early environment."⁶⁷ Furthermore, this sense of specialness must be "externally affirmed and supported . . . from the extended family, peers, church, school and community."⁶⁸

In general, white children do not have a similar need to develop a positive racial identity. A white child, as part of the dominant group in our society, is not often faced with negative stereotypes of whites and thus is not at risk of developing negative self-perceptions of herself based upon the color of her skin. In fact, the opposite is likely to occur and the white child learns early on that in our society, it is desirable and beneficial to be white.⁶⁹

All Black children need to develop a positive racial identity and *all children* awaiting an adoptive placement have a need for a permanent home.⁷⁰ Thus, any discussion about the placement of Black children must give significant consideration to the two needs that promote the best interests of the Black child—a permanent home and the development of a positive racial identity. A Black child that fails to develop a positive racial identity will likely develop negative feelings towards other Blacks, and negative feelings about herself as a Black person. This can significantly damage a child's self-perception and significantly affect how she relates to others as she grows into an adult.⁷¹

B. *Black Families Promote Positive Racial Identity*

Racism is a pervasive problem in our society and its impact upon the Black child's self-image during development can be devastating. Many so-

64. See BOWLES, *supra* note 6.

65. *Id.* at 104.

66. *Id.*

67. *Id.*

68. *Id.* at 104-105.

69. See generally ANDREW HACKER, BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL 31-49 (1992).

70. While all children have an interest in a permanent, loving home, Black children, have an additional interest in developing a positive racial identity. See Howard, *supra* note 15, at 544.

71. This negative self-perception does not necessarily mean that the child has low self-esteem. Interracially adopted children may be as popular, out-going, and successful in school as other children. However, these children are likely to experience significant discomfort about their self-perception as African Americans. They are likely to feel uncomfortable about their Black identity, develop a prejudice towards other Blacks, and may seek to avoid contact with other Blacks so as not to be considered a "stereotypical Black." When a Black person develops these feelings about other Blacks, they do not have a healthy perception of their own Black identity.

Throughout high school I exhibited high self-esteem and personal success, yet I still suffered from a negative self-perception based upon my own negative feelings about being Black in the face of negative stereotypes and prejudice that I encountered. See generally *supra* pp. 201-03.

cial workers and commentators agree that Black children should be reared in Black homes, which are best equipped to combat racism and help the Black child develop a positive racial identity.⁷²

In a Black home the child has at least three opportunities to overcome any negative self-perceptions that develop. First, the child has a positive racial identification with her family. Personal relationships and experiences with her Black family enable the child to develop positive feelings about her racial identity. Second, the child is likely to be exposed to a "social support" group including siblings, friends, and neighbors which helps to affirm the child's racial identity.⁷³ This exposure allows the Black child to enjoy personal experiences with other Blacks, and enables her to develop a positive racial identity despite having negative experiences relating to her Black identity.⁷⁴ Finally, a Black family, having personally experienced racism and prejudice, can help the child to cope with any negative experiences and can positively affirm the child's pride in her racial identity.

Dorcas Bowles states that "the black parent has found ways to keep a child feeling special and has provided ways for the child to respond to subtle racism. In addition, the extended family, the black community, and the black church serve as 'refueling stations' where the black child's sense of self is reaffirmed."⁷⁵ In this environment, a Black child is likely to develop a positive racial identity.

In order to understand how one Black family helped to develop positive racial identity in their child, it may be helpful to consider an example. Louis Baker, a Black child adopted by a Black family, is one case study presented in the McRoy and Zurcher study.⁷⁶

Until the age of ten, Louis and his family lived in an integrated community where he "had dozens of friends of all races."⁷⁷ His family then moved to a predominately Black neighborhood.⁷⁸ There, almost all of his "best friends" were Black, however, he still maintained friendships with a few white friends.⁷⁹ Furthermore, his parents did not care whether he dated white girls, they were only concerned about the attitude that such girls had about Louis.⁸⁰ They also warned him that prejudiced people might make disparaging remarks.⁸¹

Louis reaffirmed his sense of racial identity through contacts with his parents, as well as through personal experiences with other Blacks in both the integrated and predominately Black neighborhoods.

72. See Barholet, *supra* note 16, at 1188; see also Bowen, *supra* note 16, at 488 (Black child welfare professionals believe that Black children should be placed in Black homes).

73. See McROY & ZURCHER, *supra* note 21, at 125.

74. The Black family allows the child to feel special despite racism. This may be reinforced by the larger network of family, friends, and community. BOWLES *supra* note 6, at 106. The social support group allows the child to develop a sense of belonging and acceptance. McROY & ZURCHER, *supra* note 21, at 125.

75. BOWLES *supra* note 6, at 106.

76. McROY & ZURCHER, *supra* note 21, at 74-79.

77. *Id.* at 75.

78. *Id.* at 76.

79. *Id.*

80. *Id.* at 77.

81. *Id.* at 76.

In addition, his experiences were "real," not contrived.⁸² Louis interacted with Black peers in both an integrated and a predominately Black neighborhood. Through personal experience with Blacks, as part of his daily environment, Louis developed a positive racial identity. His interaction with Black peers, and presumably Black role models played a crucial role in forming the social support group necessary to develop a positive racial identity. Finally, his parents provided support for his racial identity by warning him of the prejudice that he would encounter should he date white friends and classmates.

Arguably, a white family that resides in an integrated community and exposes their child to Black peers and role models might be able to develop a positive racial identity in their child. However, a Black family is still the *best* environment to develop the child's racial identity. Most interracial adoptions involve white families living in predominately or exclusively white neighborhoods.⁸³ Furthermore, many of these families are, admittedly, unable or unwilling to attempt to take the affirmative steps necessary to develop a positive racial identity in their child.⁸⁴

III. RACIAL IDENTITY AND WHITE FAMILIES

A. *Difficulties Facing White Parents*

As previously discussed, a Black child in a Black home has at least three opportunities to overcome any negative self-perceptions which may develop.⁸⁵ A white family, however, is at a disadvantage in providing an environment that promotes a child's Black identity. First, the Black child does not have any racial identification with her adoptive parents because they do not share the same racial heritage. Second, because most interracial adoptions occur in predominately white communities,⁸⁶ it is likely that no Black social support group will exist for the child. Third, a white family generally will not have personally experienced racism, especially in its subtle forms, which is crucial to recognizing and countering its negative af-

82. This is to be contrasted with efforts by white adoptive parents to expose their child to other Blacks. Often these scenarios are "contrived" and "nonproductive." "The adoptee may reject these attempts, feeling that association with blacks unnecessarily calls attention to the fact that he or she is also black. [Black parents] do not necessarily have to seek black friends to provide their black adoptees with racially homogeneous peer relationships." *Id.* at 82. *See supra*, note 43 (discussing my nonproductive introduction to another Black child adopted by a white family).

83. In one study, 87% of the white families that adopted Black children lived in areas whose Black residents ranged from 0 to 10 percent of the population. McROY & ZURCHER, *supra* note 21, at 125.

84. *See infra* notes 95-103 and accompanying text.

85. *See supra* notes 74-75 and accompanying text.

86. McROY & ZURCHER, *supra* note 21, at 125. In one study, 87% of the interracial adopted children lived in predominately white neighborhoods, and 73% of these children attended predominately white schools and had never had a Black teacher or administrator. *Id.* at 125-26.

facts.⁸⁷ Thus, many interracially adopted children may experience identity problems.⁸⁸

Any white family seeking to adopt a Black child must have the ability and the desire to take affirmative steps⁸⁹ to ensure that their child develops a positive racial identity.⁹⁰ The parents must nurture the child's racial identity through internal and external supports. These must include access to Black role models and peers within the community and school, as well as attention to racial identity in the home.⁹¹

Although promoting positive racial identity is crucial for Black children, it is unclear whether many white adoptive parents are willing or able to help their child develop her racial identity.⁹² Lucille J. Grow and Deborah Shapiro, conducted a study of interracial adoptions which found that 44% of white adoptive parents stated that they either did not know

87. As a young teenager, I was exposed to racism. One afternoon as I walked down a street in a suburban neighborhood not far from my own home, several white youths slowed their car as they drove past me and shouted, "We're going to kill you nigger!" After that incident, I simply did not feel that I could express my feelings of pain, anguish, and fear to my adoptive parents. Nor did I believe that they were capable of doing or saying anything that could help me to deal with my feelings. Thus, I kept that painful incident to myself, and allowed it to contribute to my negative attitude about my racial identity and being identified as a Black person.

Other instances also demonstrated the inability of my adoptive parents to instill me with a positive racial identity. For instance, during high school white parents either discouraged or completely prohibited their daughters from dating me. My adoptive parents simply admonished me to study hard and get good grades in order to "show them." This response was woefully inadequate to deal with the negative feelings that I developed about my racial identity as a result of such instances.

Thus, having never personally experienced racism in its different forms, my adoptive parents were simply incapable of addressing why these events were happening, what racism meant, and lacked the understanding of how frightening, devastating and destructive such incidents can be to any Black person, much less a young Black male that has not had the opportunity to develop a positive racial identity.

88. This does not mean that white families cannot develop positive self-esteem in a Black child. Bowen, *supra* note 16, at 500. However, positive *self-esteem* is not the concern facing interracially adopted Black children, it is the development of positive *racial identity*. See also *supra* pp. 201-03 (discussing my high achievement and self-esteem, while simultaneously suffering from denial and avoidance of racial differences).

89. Affirmative steps to address the child's Black identity are necessary. It is certainly commendable to work toward a color-blind society where all people are judged, not by the color of their skin, but by the content of their character. However, this idyllic world simply does not exist.

All Black children will encounter prejudice, racism, and negative stereotypes of Blacks that, if not affirmatively addressed, will lead the child to have negative perceptions of herself as a Black person. It is unacceptable for white adoptive parents to tell a Black child that race does not matter. Not only does this ignore the subtle prejudices that most people, including the adoptive parents, have, it is in stark contrast to the message that the child receives from the dominant society: Race *does* matter and being Black is considered inferior to being white.

90. Howard, *supra* note 15, at 538. However, even where white families are willing to develop racial identity in their child, racial identity will be diminished. *Id.* at 554. "Recognizing, understanding, accepting, and learning to cope with racial differences seem critical tasks for the child adopted by racially different parents." Penny R. Johnson, et al., *Transracial Adoption and the Development of Black Identity at Age Eight*, 66 CHILD WELFARE 45, 54 (Jan.-Feb. 1987).

91. *Id.* Presumably, this requires that the family live in an integrated neighborhood.

92. One white parent admitted "[w]e don't think we'll be able to instill in [our Black son] the identity of the black community—we're not going to raise him deliberately as a white person, but I'm sure he will be one just because we are." SIMON & ALTSTEIN (1977), *supra* note 21, at 101.

their child's attitude toward her racial heritage or stated that the child was indifferent towards it.⁹³

Simon and Altstein's 1977 study showed that while most white families stated that they would take positive steps to affirm their child's racial heritage through books, pictures, toys, and music, one in three admitted doing little or nothing to instill positive racial identity.⁹⁴ In fact, 12% openly stated that they intended to act as if the child was not of a different race.⁹⁵ Furthermore, 79% of the white parents in the Simon and Altstein study who adopted white children stated that their children identified themselves as white.⁹⁶ On the other hand, only 32% of white parents that adopted Black children stated that their children identified themselves as Black.⁹⁷ Thus, we can infer that these families failed to instill a sense of any racial identity, much less a positive one.

As discussed, there is generally no need to affirmatively address racial identity for white children.⁹⁸ However, for Black children subject to racism and negative stereotypes from the dominant society, it is crucial to develop positive racial identity. The failure of a white family to affirmatively address their child's Black identity will result in cultural confusion and/or a complete loss of Black identity in the child.⁹⁹ White families that adopt are already at a disadvantage in developing their child's Black identity. Failing to affirmatively address the child's racial identity will lead to cultural confusion and negative self-perceptions of the child as a Black person because the child will inevitably encounter and internalize negative stereotypes and racism. Indifference to racial identity by the parents is against the best interests of the child and is simply unacceptable. When a family fails to accept their child's racial background, "the child will falter miserably—either by feeling overwhelmed by insecure, negative feelings or by needing to deny his or her ethnic self and wishing to become part of the dominant group."¹⁰⁰

1. *Failure to Develop Positive Black Identity*

Even where white adoptive parents attempt to take the affirmative steps necessary to develop their child's racial identity, the child still may have negative perceptions of her Black identity. For example, in the McRoy and Zurcher study,¹⁰¹ an interracial adopted Black girl feels rejected when a white parent refused to allow her son to date the girl:

I cried when I realized that his Mom didn't like me. I couldn't understand it because I'm not all Black. I'm mixed. I told [him] to tell his mother I'm really half white, but that didn't seem to make any differ-

93. GROW & SHAPIRO, *supra* note 21, at 188. Furthermore, "most 'aware' families produce a positive attitude in their children, rather than an attitude of indifference." *Id.* at 193.

94. SIMON & ALTSTEIN (1977), *supra* note 21, at 102.

95. *Id.* at 104.

96. *Id.* at 100.

97. *Id.*

98. See *supra* note 70 and accompanying text. Furthermore, almost 80% of white children adopted by white families accurately identified themselves as white. This supports the notion that white adoptees in white families are not as confused as Black children adopted interracially.

99. But see Howard, *supra* note 15, at 539.

100. BOWLES, *supra* note 6, at 112.

101. McROY & ZURCHER, *supra* note 21.

ence. . . . I asked my Mom to lighten my hair and to make it straighter . . . but I still didn't look like the other white girls. . . . I even asked to have a plastic surgeon make my nose keener so my features wouldn't look so Black.¹⁰²

This is an extremely negative perception of one's racial identity. Here, the adoptee identifies with the dominant group and wants to surgically alter her appearance so that her features do not "look so Black." The adoptee associates her Black features with negative images and points to her being "half white" as a positive attribute. In the adoptee's present environment, white features are favored and desirable and she is made to feel inadequate because she is identified by others as Black. Thus, without positive reinforcement of the child's Black identity by the family, peers, and the larger community, a Black child can develop destructive self-images of herself as a Black person.

B. *When Parents Exhibit Race Bias or Lack Racial Sensitivity*

Given America's racial history—from slavery to segregation, to today's more subtle racism and discrimination—it is difficult not to have some preconceived stereotype of Blacks.¹⁰³ Racism and prejudice are damaging to Black children. However, the impact can be devastating when these societal attitudes come from the family that has adopted a Black child. When this happens, it is inevitable that a child will develop a negative self-image of herself as a Black person.

Parental attitudes may cause the Black child to develop a negative perception of her Black identity in two ways. First, parents may have prejudicial attitudes, and their failure to examine their preconceived stereotypes may result in a subtle "race bias." Such parents may believe negative stereotypes about Blacks and feel that their child is "special" or "different" from other Blacks. Second, white adoptive parents may completely lack racial awareness or sensitivity.¹⁰⁴

A Black child, raised by parents that exhibit a race bias, or by parents that lack any racial awareness will not develop a positive Black identity. In fact, it is likely that the child will have a negative self-perception of her racial identity.

1. *Race Bias*

In the McRoy and Zurcher study discussed above, a white adoptive mother of a biracial child fails to examine her own prejudicial attitudes and exhibits a subtle race bias.¹⁰⁵ In describing her first impressions of her adopted daughter, she describes her as "incredibly beautiful. Her hair was light brown—almost blonde—and her skin tone was a glowing tan. Since her hair was fairly straight, unless you looked at her really closely, you

102. *Id.* at 73.

103. As one white adoptive father stated: "You just don't grow up in America as a white person and not have some prejudices and racism." LADNER, *supra* note 9, at 143.

104. When I state that a person exhibits a lack of racial awareness or sensitivity, I mean that this person lacks a basic understanding that racism exists, and that it often manifests itself by designating Blacks as inferior to whites through various means.

105. McROY & ZURCHER, *supra* note 21, at 69.

wouldn't automatically have thought she was Black. She could have passed for white."¹⁰⁶

In this example, the mother exhibits a subtle race bias. The mother sees the child's beauty in her "almost blonde" and "fairly straight" hair, and her skin, which could pass for white. The "white" attributes are favored by the mother. By praising the child's white features, and downplaying her Black features, the mother damages the child's self-perception as a Black person. The child will not want to identify herself as Black because being Black has negative value in the eyes of society and her mother.

2. *Lack of Racial Sensitivity*

Of course, a Black child may encounter far more direct racism when her parents lack any racial awareness. This is particularly damaging because the child relies upon her parents and immediate family for support when confronted with racism. For example, in one study, Joyce Ladner interviewed a white couple that had a friend who frequently used the term "nigger" in the presence of their two Black children.¹⁰⁷ The couple defended their friend's usage of the term, stating that he "doesn't mean any harm by saying it" and stating that they would rather have their children hear the term from a friend than from someone who might be hostile.¹⁰⁸ Furthermore, this couple stated that their children were great dancers "because all black people can dance real well."¹⁰⁹

Tragically, these two adopted children live in an environment of overt racism and stereotypes. These children face the nearly impossible task of developing positive racial identity. The family cannot provide racial identification with the children. Nor do they have a social support group. Thus, the children need the parents to provide them with a positive Black identity. Obviously, in this case, the parents are incapable of doing so. Thus, the children will not develop a positive Black identity and will have negative self-perceptions of themselves as Black people.¹¹⁰

106. *Id.*

107. LADNER, *supra* note 9, at xxii.

108. *Id.*

109. *Id.*

110. While it might be argued that some Black families may be unsuccessful in instilling a positive racial identity in their children, that argument, even if true, fails in two regards. First, even if a Black family failed to instill a positive racial identity in a Black child, that child is far more likely to be exposed to Black peers, role models, and a Black community than a Black child raised by a white family in a predominately white environment. Thus, the child will have a greater opportunity to develop a positive racial identity through personal experiences with other Blacks.

Second, because some Black families do not instill positive racial identity in their children merely acknowledges the destructive power of racism in this country which has led some African-Americans to develop negative self-images. It would make no sense to contend that white families are better able to develop positive racial identity in Black children by claiming that the racism of the dominant society has caused some African-Americans to develop negative self-images. Ever-present racism and prejudice in America calls for the Black community to continually fight discrimination and negative stereotypes. The solution is not to concede defeat (an inability by some Black families to develop positive racial identity in their children) by calling upon white families to do what Black families allegedly cannot.

C. *Failed Attempts at Providing a Social Support Group*

For Black children, social support groups, including the extended family, peers and the larger community, play a key role in the development of a positive Black identity. Because most interracial adopted children live in predominately white areas,¹¹¹ this social support group is often lacking. Thus, the child is isolated from other Blacks, and is deprived of personal experience with other Blacks which is important in helping to reinforce the child's racial identity.

Even when white adoptive parents attempt to provide a social support group through interaction with Black peers, the adoptee may reject these friendships. For example, in the McRoy and Zurcher study, a white adoptive family attended a Black church and invited the child of a Black co-worker to their home to expose their daughter to other Blacks.¹¹² The adoptee rejected this relationship, telling her parents that she wanted to choose her own friends and that she did not mind not having any Black friends.¹¹³ The authors concluded that this "contrived social situation proved non productive."¹¹⁴ This adoptee also avoided social contact with Blacks at her school.¹¹⁵

In general, interracial adoptees often reject association with other Blacks because it makes them uncomfortable by drawing attention to their own race.¹¹⁶ Black children raised and socialized by whites are exposed to all aspects of the dominant society. This includes prejudice and negative attitudes toward Blacks. Thus, interracial adopted children are likely to develop the same negative views of "other" Blacks that are held by the dominant society.

The adoptee in a predominately white world likely views herself as "different" than other Blacks.¹¹⁷ Thus, in rejecting associations with other Blacks, the Black adoptee confirms her own negative attitudes about being identified as Black by the dominant society. This attitude reflects a highly negative perception of the adoptee's racial identity.

IV. BLACK FAMILIES AND ADOPTION

A. *The Myth That Black Families Do Not Adopt*

Given that racial identity is crucial for the healthy development of Black children, and that the best place to develop racial identity is in a Black home, it is important to understand why more Black children are not being adopted by Black families through adoption agencies.

Supporters of interracial adoption argue that Black families do not adopt as frequently as white families, and therefore, there are insufficient numbers of Black families available to adopt the Black children needing

111. See *supra* note 76 and accompanying text.

112. McROY & ZURCHER, *supra* note 21, at 70.

113. *Id.* at 71.

114. *Id.* at 80.

115. *Id.*

116. *Id.* at 82.

117. This certainly was my personal experience. See also *id.*; SIMON & ALTSTEIN (1992), *supra* note 21, at 60.

homes.¹¹⁸ However, the widely held belief that Blacks do not adopt as frequently as whites has been discredited¹¹⁹ and any disparity that may exist in adoption rates between Black and white adoptive parents disappears when held constant for socioeconomic class.¹²⁰

In general, Black families adopt at more than four times the rate of white families.¹²¹ Blacks have traditionally adopted outside of the confines of formal adoptions.¹²² Of the one million Black children in the United States that do not live with their biological parents, 80% have been informally adopted.¹²³ Informal adoptions occur without social workers, legal papers, or government involvement.¹²⁴ Historically, extended family members, friends, and even strangers have raised Black children in need of homes.¹²⁵ Thus, any claim that Blacks are unwilling or unable to adopt is incorrect.

B. *Problems Facing Blacks Adopting Through Agencies*

Although Black families adopt with greater frequency than white families, a disproportionate number of children in the foster care system are Black.¹²⁶ Institutional racism and culturally biased social workers have contributed to the difficulties facing Black families who seek to adopt through agencies.¹²⁷ Together, these factors combine to preclude many Blacks from ever attempting to adopt through agencies.

118. Bartholet, *supra* note 16, at 1188.

119. "Some people have concluded that blacks are uninterested in formal adoptions or that they adopt at a much lower rate than whites. Census Bureau data reveals *this is not valid*." See ADAMEC & PIERCE, *supra* note 5, at 298-299 (emphasis added).

A 1981 study conducted by the National Center for Neighborhood Enterprise found that 34% of all Black families were interested in adopting—more than enough to adopt all Black children in foster care. Reynolds, *supra* note 8, at B9.

120. Howard, *supra* note 15, at 513; see also Fenton, *supra* note 37, at 45 (controlling for socioeconomic class, Blacks adopt through agencies at higher rates than whites).

121. See SIMON & ALTSTEIN (1987), *supra* note 21, at 8. Black families adopt at the rate of 18 families per 10,000, while white families only adopt at the rate of 4 families per 10,000. *Id.*

122. See generally Lynda Richardson, "Adoptions that Lack Papers, Not Purpose", N.Y. TIMES, Nov. 25, 1993, at B1 (discussing the history and prevalence of informal adoptions in the Black community).

123. *Id.* at B6.

124. *Id.*

125. *Id.*

126. See *supra* note 16.

127. Fenton, *supra* note 37, at 29-79 (citing traditional racism and over-reliance on white, middle-class ideals in selecting "acceptable families as impediments to adoptions by Black families). Adoptions may be done either through public or private agencies. However, both alternatives present hurdles to Black families seeking to adopt.

Private agencies are prohibitively expensive, thus discouraging low and moderate-income Blacks to adopt. See Carol Chastang, *Nonprofit Agency Breaks Myths About Black Adoptions*, L.A. TIMES, Aug. 13, 1993, at B3 (private adoptions can cost up to \$20,000); Reynolds, *supra* note 8, at B9 (private agencies may charge up to 5% of a family's yearly income).

On the other hand, adoptions through public agencies tend to be comparatively inexpensive. Chastang, *supra* at B3. (adoptions through Los Angeles County cost about \$500). However, Black families may be discouraged from adopting through public agencies because they involve too much time and red tape. Hermann, *supra* note 3, at 158.

1. *Institutional Racism*

Institutional racism "involves a system of exclusionary rules, procedures, and regulation[s]." ¹²⁸ These rules are not usually formulated with the specific intention to exclude Blacks and other minorities. However, in a white, male-dominated society, most procedures and rules are designed to benefit the dominant group. ¹²⁹

Adoption agencies have traditionally catered to the needs of the dominant group seeking to adopt: white, middle-class parents. ¹³⁰ For example, adoption agencies label all non-white, older, or physically and emotionally handicapped children as "hard-to-place" because these children are not preferred by white middle-class families. ¹³¹ However, during the late 1960s and early 1970s, as the supply of healthy white babies decreased, ¹³² agencies turned their attention to the so-called hard-to-place children as acceptable substitutes to the otherwise preferred white infant. Thus, agencies placed Black children in white homes to meet the demand of white parents seeking to adopt.

Agencies have focused their energies on encouraging white families to adopt Black children instead of attracting Black families. Agencies often used ads and television shows, produced by whites, to encourage interracial adoption. ¹³³ Some agencies simply concluded that Blacks were not interested in adoption because they had few, if any, Blacks on their waiting lists. ¹³⁴ Other agencies that did try to recruit Black families were often unsuccessful. ¹³⁵

128. WILLIAMS, *supra* note 61, at 171.

129. *Id.*

130. SIMON & ALTSTEIN (1987), *supra* note 21, at 6.

131. *Id.* Not until after World War II did adoption agencies begin to include Black children in their programs. Agencies began to label Black children as "hard to place" because white children were placed faster than Black children. This completely ignored that agencies had long excluded Black children and families from their services and that these agencies were inexperienced in serving them. LADNER, *supra* note 9, at 60.

132. In the late 1960's and early 1970's, societal changes led to a decrease in the supply of healthy white infants. RUTH G. MCROY & MYRON L. MCROY, BLACK HOMES FOR BLACK CHILDREN, 3 (1974). These changes included increased use and availability of birth control, the modification of abortion laws, and increased acceptance of unwed mothers. *Id.* at 3-14. Thus, the increase in interracial adoption resulted from the needs of white families, not the interests of Black children. BOWEN, *supra* note 16, at 492-93.

133. The ads used terms such as "black-white", "mixed parentage," "interracial," "part white," and "biracial" to describe the children to be adopted by white families. SIMON & ALTSTEIN (1987), *supra* note 21, at 6. These terms were given positive connotations to influence whites to consider adopting racially mixed children. *Id.*

134. *Id.* at 7.

135. As early as 1955, adoption agencies made efforts to recruit Black families. However, these efforts were primarily unsuccessful. LADNER, *supra* note 9, at 60-61. The Minority Adoption Recruitment of Children's Homes ended up placing only a small number of Black children in Black homes. *Id.* Similarly, the Parents to Adopt Minority Youngsters were largely unsuccessful in recruiting Black and minority families. *Id.*

One of the reasons that these early efforts were primarily unsuccessful is that white adoption agencies, although attempting to place Black children with Black families, still catered to the needs of white parents. *Id.* at 62 ("Much of the early impetus to make transracial placements did not come from the agencies but from interested white applicants"). As white parents were denied their requests to adopt white children, they then attempted to adopt Black children.

While white adoption agencies have had difficulties in finding Black families for Black children, Black adoption agencies have been extremely successful in recruiting Black families. See *infra* notes 151-56 and accompanying text.

Because the predominately white adoption agencies made little or no effort to attract Black families, few Black families even attempted to adopt through these agencies. Thus, institutional bias, and the screening-out of Black families that did not meet the traditional white, middle-class standards has led to the erroneous perception that Black families are unable or unwilling to adopt Black children.¹³⁶ Thus agencies encouraged interracial adoption instead of actively pursuing Black families to adopt Black children.

2. Culture Gap

In addition to institutional racism, Black families must confront a "culture gap" that exists between predominately white social workers and Black families. The culture gap describes how social workers tend to evaluate a family's ability to adopt by white middle-class standards.¹³⁷ While many social workers are white, much of their caseloads deal with Black children.¹³⁸ Applying white middle-class standards to Black families that may vary from the "traditional" family model directly impacts the number of Black families approved for adoption.¹³⁹ Adoption agencies tend to emphasize external factors such as income and housing in evaluating a family's ability to adopt.¹⁴⁰ The income disparity between Black and white families¹⁴¹ has caused a disproportionate number of Black families from being approved for adoption, despite their ability to provide a permanent, loving home.¹⁴² In one study, for example, less than 1% of African-American families seeking to adopt were actually approved.¹⁴³

In order to solve these problems, several steps must be taken. First, racism and prejudice, whether institutional or on an individual level, must be eliminated from the approval process as much as possible. Increasing

136. See Fenton, *supra*, note 37, at 45-46.

[T]he discretion of individual social workers, judges and others necessary to providing [adoption] services has perpetuated institutional biases and racism. '[W]hite welfare agencies have in many cases developed a stigmatizing view of the character and capacities of the Black family.' Stereotypes depicting the Black family in a pathological tangle of disintegration still prevail and affect services to Black families.

Id.

137. Of course, this does not take into account the bias or prejudice of individual social workers who may lack experience with the Black community and an awareness of the differences that exist in the Black family structure.

138. As of 1984, 83% of all child welfare workers were white while 30 - 40% of their cases dealt with Black children. SIMON & ALTSTEIN (1987), *supra* note 21, at 8.

139. Virtually all procedures and guidelines impacting adoptions are developed from white middle class standards. Coady, *supra* note 16, at A3.

140. When white social workers impose the standards used for whites on Black prospective parents, many Blacks are ineligible by virtue of age, income and other factors. ADAMEC & PIERCE, *supra*, note 5, at 299. Agencies simply do not look favorably upon single parents, parents that are more than 30 years older than the child, or a living arrangement situation where the adoptive child must share a room with another child. All of these factors discriminate against Black families. Reynolds, *supra* note 8, at B9.

141. The Census Bureau reports that in 1992, the median income of all Black families was only 54% of the median income of all white families. When comparing married couples, the median income of Black families was still only 80% of white families. Barbara Vobejda, *Findings: Black-White Income Gap Widens Over Two Decades*, WASH. POST, Sep. 15, 1994, at A14.

142. Fenton, *supra* note 37, at 45.

143. SIMON & ALTSTEIN (1992), *supra* note 21, at 17 (noting that only two (2) Black families of the eight hundred (800) that applied to adopt were approved).

the number of Black social workers involved in placing Black children should alleviate some of the concerns about racism or prejudice in the process of screening acceptable prospective African-American families.

Second, agencies cannot continue to apply white middle-class standards to Black families. It is unrealistic to place these standards upon a community that has been historically excluded from the education and employment opportunities necessary to achieve this standard. Agencies must be flexible in evaluating a Black family's ability to adopt by acknowledging that many Black families may not match the traditional white, middle-class family, and yet may still provide permanent, stable, loving homes.¹⁴⁴

C. *Recruiting Black Families*

More Black families need to be encouraged to adopt through recruiting efforts by both adoption agencies and community-based organizations.¹⁴⁵ Because Blacks have been traditionally excluded from the services of government agencies, many Blacks are suspicious of them and are less likely to seek out their services and more likely to be easily discouraged.¹⁴⁶ Thus, adoption agencies must make legitimate and effective efforts to recruit Black families. This will help to alleviate these suspicions and confirm that the agencies are willing to approve Black families for adoption. However, because white social workers have not been able to effectively recruit Black families, community-based organizations must recruit as well.

Efforts by Black child welfare agencies to recruit Black families have often been successful. Between 1969 and 1976, Homes for Black Children placed over 600 Black children in Black homes throughout Michigan.¹⁴⁷ In Chicago, the Afro-American Family and Community Service Agency placed about 60 Black children in Black homes in their first year alone.¹⁴⁸ Similar programs have been started in many metropolitan areas and they, too, have been instrumental in finding Black families for Black children.¹⁴⁹ Finally, in Los Angeles, the Institute for Black Parenting, operating since 1988, has placed hundreds of Black children with Black single parents and couples.¹⁵⁰

Friends of Black Children is a program that illustrates the keys to successful recruitment of Black families.¹⁵¹ This organization utilizes commu-

144. Hermann, *supra* note 3, at 158.

145. The failure of adoption agencies to make legitimate efforts to recruit Black families directly limits the number of Black families approved to adopt. Fenton, *supra* note 37, at 45.

146. See *id.*; Hermann, *supra*, note 3, at 158; see also Walter Leavy, *Should Whites Adopt Black Children*, EBONY, Sep. 1987, at 76, 82 (noting that because of the many obstacles Blacks face when contacting adoption agencies, many begin the process but often become exasperated and give up).

147. See SIMON & ALTSTEIN (1987), *supra* note 21, at 9.

148. See Hermann, *supra* note 3, at 157.

149. SIMON & ALTSTEIN (1987), *supra* note 21, at 8; see also Fenton, *supra* note 37, at 65 n.174 (listing agencies in cities throughout the United States which recruit Black families). For a discussion of successful recruitment efforts, see Valora Washington, *Community Involvement in Recruiting Adoptive Homes for Black Children*, 66 CHILD WELFARE 57 (1987).

150. Chastang, *supra* note 131, at B3. The organization credits its success to aggressive recruiting and publicity from entertainers and social service groups. *Id.*

151. See Washington, *supra* note 153, at 58.

nity resources to establish relationships between adoption agencies and the community. Black staff members administer and examine policies and practices relating to Black families.¹⁵² Finally, local media may be used to target the Black community.

One commentator states that to successfully recruit Black families, an agency must be involved with the Black community to foster trust between the agency and the community.¹⁵³ The philosophy and commitment of the agency must encourage Blacks to adopt. There must be aggressive recruitment, and finally, the agency must develop policies and practices which are sensitive to and respect the lifestyles of the Black community as legitimate family models.¹⁵⁴ Thus, given the desirability of placing Black children with Black families and the failure of many adoption agencies to effectively make such placements, it is not surprising that several states have enacted legislation which creates preferences for same-race families in adoption placements.

V. RACE PREFERENCE STATUTES

In making child placement decisions, courts are to consider the best interests of the child.¹⁵⁵ To this end, several states have enacted statutes which mandate a "race preference" in adoption placements.¹⁵⁶ These laws attempt to satisfy the best interests of the child by providing a permanent home, as well as providing a home that will develop racial pride and awareness in the child. Generally, these statutes reflect the importance of promoting a positive racial identity in all Black children awaiting adoption.¹⁵⁷ These statutes provide a "race preference" hierarchy to guide decision-makers in making placement decisions.¹⁵⁸

First preference is given to a member of the child's extended family. If no relative is available, priority is then given to a family of the same race or ethnicity of the child. If no such family is available, then consideration is

152. Agencies located in Black neighborhoods, and staffed with Black social workers have been quite successful in placing Black children in Black homes compared to agencies with white social workers in white neighborhoods. Fenton, *supra* note 37, at 48.

153. *Id.* at 45.

154. Hermann, *supra* note 3, at 158.

155. See *Finlay v. Finlay*, 240 N.Y. 429, 433, 148 N.E. 624, 626 (1925) (Cardozo, J.) (announcing that the best interests of the child are to be considered in child placement issues).

156. Typically, a "race preference" merely allows social workers to attempt to arrange adoptions between children and parents of the same racial background before arranging interracial adoptions. See MINN. ST. ANN. § 259.28 subd. 2 (West Supp. 1993); CAL. FAM. CODE § 8708 (West 1994); ARK. CODE ANN. § 9-9-102 (Michie 1988); cf. TX. HUM. RES. CODE § 47.041 (West 1994) (disallowing the denial of adoption placements on the basis of race). See also, Bartholet *supra* note 16, at 1189 n.68 (listing several states that have written policies or regulations favoring same race placements).

For a discussion on the constitutionality of the Minnesota preference statute, see Timothy P. Glynn, *The Role of Race in Adoption Proceedings: A Constitutional Critique of the Minnesota Preference Statute*, 77 MINN. L. REV. 925 (1993).

157. Although these statutes are applicable in any adoption context, they primarily reflect a concern about the placement of Black children in white families. See Bowles, *supra* note 6.

158. This hierarchy is based upon the notion that "all things being equal, the minority child should go to minority parents." Bartholet, *supra* note 16, at 1188; see also, Bowen, *supra* note 16, at 488. Placing Black children in Black homes helps to "avoid the problems of cultural identity and emotional adjustment that inhere in transracial placements, and provide[s] the benefits of . . . a stable family environment." Howard, *supra* note 15, at 535.

given to families of different racial or ethnic heritage who have a knowledge and appreciation of the child's racial or ethnic heritage. California specifies a ninety-day period during which a child may not be placed interracially, while the placement agency conducts a search for a relative of the child or for a family of the same race.¹⁵⁹ California also requires that a diligent search for a same-race family be conducted before making an interracial placement.¹⁶⁰

While serving the best interests of the child through same-race placements, these statutes reflect the belief that white families may be unwilling or unable to promote positive racial identity in Black children. Thus, when interracial adoptions must be made, these statutes require decision-makers to consider racial attitudes, as well as the parents' motivations to adopt.¹⁶¹

A. *Minnesota and California: Two Examples*

Under Minnesota's Heritage Protection Act,¹⁶² the stated policy is to "ensure that the best interests of children are met by requiring due consideration of the child's race or ethnic heritage in adoption placements."¹⁶³ The statute then lists a preference that should be followed (in the absence of good cause to the contrary).¹⁶⁴ Preference should be given to:

- (a) . . . relatives [then] to
- (b) a family with the same racial or ethnic heritage as the child, or if that is not feasible, to
- (c) a family of different racial or ethnic heritage from the child that is knowledgeable and appreciative¹⁶⁵ of the child's racial or ethnic heritage.¹⁶⁶

California also has a same-race placement preference. California's statute gives preference to potential adoptive families with the following priorities:

- (a) In the home of the relative.
- (b) . . . with an adoptive family with the same racial background or ethnic identification as the child. . . .
- (c) If placement cannot be made . . . within 90 days . . . the child is free for adoption with a family of a different racial background or ethnic identification where there is evidence of sensitivity to the child's race, ethnicity, and culture.

159. CAL. FAM. CODE § 8708 (West 1994). Cf. MINN. ST. ANN. § 259.28 subd. 2 (West Supp. 1993) (allowing courts to give preference to placements with relatives or families of the same race, but not specifying a time limit before an interracial placement can be made).

160. California, for example, does not allow interracial placements "unless it can be documented that a diligent search . . . [for a same-race family] has been made." CAL. FAM. CODE § 8708(c) (West 1994). Cf. MINN. ST. ANN. § 259.28 (West Supp. 1993) (no search required).

161. Fenton, *supra* note 37, at 61.

162. MINN. ST. ANN. § 259.28 subd. 2.

163. *Id.*

164. *Id.*

165. Minnesota regulations and guidelines define a family that is "knowledgeable and appreciative" as one that has "personal relationships with persons of the child's . . . heritage, . . . resides in an integrated neighborhood, or demonstrates its ability to meet the cultural needs of [the] child in a multicultural family." TASK FORCE ON TRANSRACIAL ADOPTION, A STUDY OF TRANSRACIAL ADOPTION IN THE STATE OF CONNECTICUT 7, 75 (quoting Minnesota Department of Public Welfare Regulations).

166. MINN. ST. ANN. § 259.28 subd. 2.

. . . Unless it can be documented that a diligent search [for a same-race family] has been made, a child may not be placed for adoption with a family of a different racial background or ethnic identification.

B. *Deficiencies In Current Race Preference Statutes*

Both the Minnesota and the California statutes are flawed because they lack rigid guidelines on recruiting and rigid time limits in delaying placement. Rigid guidelines are necessary to prevent social workers from abusing their discretion. Although courts have the power to grant adoption petitions, they typically defer to the expertise of social workers and adoption agencies. Thus, the social worker and adoption agency exercise very broad power in placement decisions.¹⁶⁷ This broad discretion may allow social workers to indefinitely delay placement of a child.¹⁶⁸

The Minnesota statute offers no guidelines regarding the amount of time the agency should wait before making an interracial placement. Potentially, this could lead to indefinite delays in adoptive placements which are not in the best interests of any child. An agency could delay placement even though a family with sufficient "knowledge and appreciativeness" of the child's racial and ethnic identity was waiting to adopt. Under this scenario, social workers could theoretically impose an almost absolute bar on interracial adoptions.¹⁶⁹

The California statute improves upon the Minnesota statute by imposing a time limit of ninety days. This prevents excessive delays, although this time limit may be too short.¹⁷⁰ However, the California statute prevents any interracial adoption unless a diligent search has been done by social workers. For example, if a diligent search is not done, a child can be held in foster care indefinitely. Agencies should be required to make diligent searches for same-race families, but the search needs to be controlled by a specific time limit to prevent excessive delays.

While the California statute requires a diligent search for a same-race family, the Minnesota statute does not. This is a major flaw in the Minnesota Statute because the purpose of delaying the placement of a child is to recruit a same-race family. Because of the difficulties that agencies have had in making same-race placements, a reasonable amount of time must be allowed for that agency to recruit Black families and to allow community-based organizations to be involved in the recruitment process.¹⁷¹

167. Howard, *supra* note 15, at 529.

168. Bartholet, *supra*, note 16. Given the need to develop positive racial identity in Black children, it is crucial to make affirmative efforts to make a same-race placement. However, unlimited discretion to delay placing a child is also unacceptable in that it ignores the equally important need of placing a child in a permanent, stable home.

169. "Policies amounting to absolute or near-absolute bans on transracial adoption appear common." Bartholet, *supra* note 16, at 1195.

170. It is unclear whether barring interracial adoptions for ninety days is too short a period of time. While it is important to have a time limit to prevent excessive delay, that limit should be monitored to see if it serves as too great a detriment in making same-race placements.

171. See *supra* Part IV.B.

C. *Model Race Preference Statute*

The following proposed model statute attempts to cure the deficiencies of the Minnesota and California statutes. It provides a realistic and practical solution to the various concerns surrounding the placement of Black children in adoptive homes.

MODEL STATUTE:

§ 1 Preference for adopting children shall be given to:

- (a) relatives;
- (b) families of the same race or ethnicity of the child;
- (c) families of different racial and ethnic heritage that demonstrate awareness, understanding, and appreciation of child's racial heritage and a willingness to promote positive racial or ethnic identity in the child;
- (d) families willing to develop such awareness, understanding, and appreciation through counseling including training in how to promote the child's racial or ethnic identity.

§ 2 When a child becomes available for an adoptive placement, the agency has no more than 12 months to place the child with a family under s 1(a) or (b). During this time the agency shall:

- (a) actively recruit relatives or same-race families;
- (b) contact community-based organizations that recruit same-race families, or, if none exist, any other such organizations willing to locate same-race families; and
- (c) screen potential adoptive families under categories s 1(c) or s 1(d) to determine their suitability for adopting a child of a different race or ethnicity.

This Model Statute has several aspects which allow it to strike an appropriate balance between permanent placement of a child and placement in an environment that is best able to promote the child's racial identity. First, there is a same-race preference. This is in the best interests of the child because it encourages placement of the child in an "adoptive family [that] is able to deal with racial issues that may be faced by the adopted child."¹⁷² Second, the statute proposes an absolute time restriction on the amount of time that the child should be held for a same-race family to be available. This should alleviate any concerns that social workers are abusing their discretion by creating excessive delays in the placement of Black children.¹⁷³

Third, the statute requires the agency to recruit same-race families. This requirement is supplemented by having the agency contact community-based organizations to locate same-race families. Involving community-based organizations help to alleviate any concerns that effective

172. Fenton, *supra* note 37, at 61.

173. Some may contend that a twelve month delay is too long. However, it is a reasonable waiting period considering that, generally, children of color are not placed for adoption for *two years* after they become available for adoption. Bartholet, *supra* note 16, at 1201. In comparison, white children, are generally placed within one year. *Id.* Thus, imposing a twelve month time limit would actually speed up the placement process for Black children and would not delay their placement any longer than the average placement for white children.

recruiting efforts have not been made—a critical issue considering the past ineffectiveness of agency-led recruitment efforts. Finally, it allows the agency to screen potential families during the “hold” period to determine their ability to promote positive racial identity in the child. This would allow a child to be placed with an eligible family under § 1(c) or (d) immediately following the conclusion of the twelve month recruitment period. The screening should attempt to determine whether the potential adoptive parents have racist or prejudicial attitudes, live in an integrated neighborhood, and regularly socialize with members of the child’s racial heritage.¹⁷⁴

Professor Elizabeth Bartholet argues that no delay in placement should take place because it causes discontinuity and disruption and risks further delays.¹⁷⁵ However, this argument flatly ignores the critical need to develop positive racial identity in Black children and simply values permanent placement over any other concerns. While the data on the effects of the disruption in bonding of a child are inconclusive at best, the proposed Model Statute contains an absolute time limit, thus eliminating any risk of continual delays in placing the child.

One key aspect of the Model Statute is that it requires agencies to screen potential adoptive parents in an effort to determine the families’ ability to promote positive racial identity. Agencies should examine several factors, including: residence in an integrated community with integrated schooling,¹⁷⁶ the ability to provide a social support group of Black peers and role models,¹⁷⁷ the presence of race bias or lack of racial awareness and sensitivity, and the willingness to promote positive racial identity in the home.

The screening process gives some assurance that white adoptive families understand the importance of developing racial identity in their child. It also serves to prevent families who have racist or prejudicial attitudes, or

174. A family that lacks the ability to promote positive racial identity should not be allowed to adopt. However, during this hold period, families could show their willingness to overcome their inability to develop positive racial identity in a child of a different race. They could participate in counseling to confront their prejudices. They could also educate themselves about Black history and culture. Finally, they could move to an integrated neighborhood and cultivate personal relationships and friendships with Blacks.

175. Bartholet, *supra* note 16, at 1248. It is mere speculation to determine whether a short delay in placement causes any psychological harm to the child. One thing is clear, however: There is a substantial long-term emotional and psychological benefit to a child placed in a Black home that enables the child to develop a positive Black identity.

176. Living in an integrated area is critical in determining whether a family is able to develop positive racial identity in their child. First, it shows that the child will be exposed to Black role models and peers. Second, it shows that the parents are less likely to harbor prejudicial attitudes, or at least are willing to confront them through their own personal experiences with Blacks. A white family, living in a predominately or exclusively white community, isolates their child from social interaction with other Blacks. In such an environment it would be nearly impossible to develop positive Black identity in the child. It would be a confusing message for white parents to tell the child to be proud of her Black heritage when her family does not socialize or live with other Blacks.

177. As discussed, the more opportunities that a child has to engage in personal experiences with members of the same race, the better the chances that the child will develop a positive racial identity. See *supra* notes 73-76 and accompanying text. Furthermore, this social support group could consist of families with one Black parent or families that have adopted other Black children.

who exhibit an unwillingness to confront racial issues, from adopting Black children.¹⁷⁸

Thus, a carefully drafted statute defines the interests of children—placement in a permanent home that enables the child to develop a positive racial identity—and prevents decision-makers from acting outside of those interests.¹⁷⁹ Only by understanding these goals and the underlying reasons for their importance can changes be implemented which truly serve the best interests of the child.

CONCLUSION

All things being equal, Black children should be raised in Black homes. Thus, there must be some preference for same-race families. This does not mean that any child should be deprived of a permanent family. Long-term foster care is not the solution to any child placement problem. However, it is equally callous to prevent a Black child from developing a positive Black identity—something vital to the development of a healthy self-concept in all Black children. Thus, equal weight must be given to these considerations.

Furthermore, any effective solution must address the entire problem, not just one part. It is overly simplistic to encourage interracial adoption without fully examining the causes that have led us to the present situation. In this country, there is a great reluctance to look upon our racial history—it is painful and ugly. However, one cannot analyze interracial adoption or any other racial issue outside of the context of that racial history. It is our past which has shaped our present and will shape our future. In this light, we must work towards moving beyond the rhetoric and attaining a realistic solution to the problem.

178. Because of the shortage of healthy white infants available for adoption, it is conceivable that parents with overtly racist attitudes may adopt a Black or biracial child as a last resort. Fenton, *supra* note 37, at 61.

179. One major criticism of analyzing placement decisions under the catchall phrase “best interests of the child” is that it fails to identify the conflicting interests facing Black children—developing a positive racial identity and being placed in a permanent, stable home. Howard, *supra* note 15, at 545. Thus, this standard fails to provide sufficient guidance to social workers or judges. *Id.*