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SEEKING DIFFERENT TREATMENT, OR SEEKING THE SAME REGARD: REMARKETING THE TRANSRACIAL ADOPTION DEBATE

ANGELA MAE KUPENDA*

Abstract: The transracial adoption discourse mistakenly has been phrased as a request for black children awaiting adoption to be treated different from white children and to be placed with parents of like race only. This paper urges a remarketing of the transracial adoption debate to reflect a request based on sameness, not difference. The request presented here is not a request for different treatment for black children. Rather, it is for black children to be given the *same regard* that is given to white children. This request is illustrated with the story of a black couple seeking to adopt healthy, fat white babies.

Doesn't it seem odd that one of the most prosperous nations in the world will not address the needs of black children and other children of color?¹ As Professor Steven Hobbs illustrates in his article, poverty and other troubling circumstances negatively impact every aspect of life for many black children.² At various points in time, progress was made when the cry went out for more and special consideration to be given to these innocent black children.³ But then other, seemingly more desperate, cries complained that any "special" attention given to blacks was actually discrimination against whites.⁴ These cries joined the chorus of the early twentieth century judges who, shortly after the end of legalized slavery, said that at some point the descendants of

* Professor of Law, Mississippi College School of Law. I want to thank Professor Ruth-Arlene W. Howe for all of her contributions to the needs of black children and to the legal academy. Her wise counsel, encouraging support, and good humor are priceless.

¹ Professor David Hall's remarks document the ongoing suffering of black children. See generally David Hall, *Black Children and the American Dilemma: The Invisible Tears of Invisible Children*, 26 B.C. THIRD WORLD L.J. 9 (2006).

² Steven H. Hobbs & Shenavia Baity, *Tending to the Spirit: A Proposal for Healing the Hearts of Black Children in Poverty*, 26 B.C. THIRD WORLD L.J. 107, 109-14 (2006).

³ See, e.g., *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (holding that in public education, racially separated educational facilities were inherently unequal).

⁴ See, e.g., *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (finding that benign treatment for black adults is reverse discrimination against whites).

former slaves should cease to be the special favored class of the law and should instead stand on their own feet.⁵

The cries, and the counter cries, are relevant to the plight of black children in adoption and foster care placement today.⁶ Congress has responded by insisting that a solution for the plight of black children is to place black babies with white parents who are anxious for children.⁷ Professor Ruth-Arlene W. Howe, who we honor in this symposium issue, has written extensively in this area. Her voice is joined by others who respond that this resolution is shortsighted. Placing black babies with white parents ignores the large number of black adults who want to adopt (but are thwarted by the system) and the reality of being a black child, who will become a black adult in America, and thus needs to develop in a family that addresses the American racial reality.⁸

Perhaps the seemingly insurmountable problem is not that America lacks the resources to meet the needs of the innocent, non-white children. Rather, the problem may lie in the discourse or the actual construction of the problem. If one mistakenly sees a request for more careful attention to the plight of non-white children in adoption and foster care placement as a request by non-whites for different treatment, one may conclude that such treatment is improper. But this

⁵ See, e.g., *The Civil Rights Cases*, 109 U.S. 3 (1883) (holding that private racial discrimination was not a badge or incident of slavery, so Congress lacked authority under the 13th Amendment to protect blacks from such discrimination).

⁶ A disproportionate number of black children await adoption. See, e.g., Cynthia G. Hawkins-León & Carla Bradley, *Race and Transracial Adoption: The Answer Is Neither Simply Black or White nor Right or Wrong*, 51 CATH. U. L. REV. 1227, 1231–32 (2002).

⁷ The federal act, on its face, seeks to facilitate the adoption of children, regardless of their race. See Multiethnic Placement Act of 1994, Pub. L. No. 103–382, §§ 551–554, 108 Stat. 3518 (1994), amended by Small Business Job Protection Act of 1996, Pub. L. No. 104–188, § 1808, 110 Stat. 1755 (1996). The effect of the law seems to be a constant ignoring of the need to recruit more black adoptive families and a disregard for the need to examine the dynamics of black families in order to provide more efficient help to black families seeking children and black children needing racially aware families. See Hawkins-León & Bradley, *supra* note 6, at 1229–30. Black potential parents and black children both seem to miss out because “white families in the U.S. tend to be more affluent than black families and, as a result, may be better positioned to adopt healthy children, including biracial and black infants.” Madelyn Freundlich, *Transracial & Transcultural Adoptions: A Look at the Ethical Issues*, 27 FAM. ADVOC. 40, 40 (2004).

⁸ See Ruth-Arlene W. Howe, *Redefining the Transracial Adoption Controversy*, 2 DUKE J. GENDER L. & POL’Y 131, 131–34 (1995); Cynthia R. Mabry, “Love Alone Is Not Enough!” in *Transracial Adoptions—Scrutinizing Recent Statutes, Agency Policies, and Prospective Adoptive Parents*, 42 WAYNE L. REV. 1347, 1389–93 (1996) (discussing legislators’, scholars’ and experts’ views on transracial adoption); Twila L. Perry, *Power, Possibility and Choice: The Racial Identity of Transracially Adopted Children*, 9 MICH. J. RACE & L. 215, 216 (2003) (book review).

construction is mistaken, and the request must be remarketed to reflect what it actually is: a request not for different treatment, but rather for the *same regard*. The problem is, therefore, better constructed as a request for the futures of non-white children to be regarded as highly as those of white children.

This response aims to illustrate the fallacy in the mindset that blacks are asking for something extra and attempts to remarket the need for change as a need to give black children the same regard as is given, without question, to white children. To illustrate the fallacy, this response will focus specifically on transracial adoption, although the same analysis applies to the educational and health care needs of black children.

In this response, a story will be told about an adoptive couple seeking to adopt babies of a different racial background. This story will be used as a springboard to examine whether white and black children are actually given the same regard in the transracial adoption context and to make three policy recommendations to improve the status of black children in America. The story follows:

Shaquita and J.C. are a childless, happily married, middle income couple. They desperately want to adopt babies and to raise them well. The couple is not concerned that the children look like them; rather, they have other concerns.

For example, Shaquita and J.C. desperately want to adopt children who will have the best opportunities available to them. They want children who will see themselves mirrored in positive ways in society,⁹ who will have good chances of having encouraging teachers,¹⁰ who will see themselves represented in positive ways in the media,¹¹ and who will be able to get a taxi anywhere in America, even in New York City.¹² J.C. also wants the children to have the best opportunities for a high standard of living in their adult lives.¹³

⁹ See, e.g., Jack B. Weinstein, *Brown v. Board of Education After Fifty Years*, 26 CARDOZO L. REV. 289, 292–93 (2004) (summarizing the education, poverty, unemployment and incarceration crises in the black community).

¹⁰ See Pamela J. Smith, *Reliance on the Kindness of Strangers: The Myth of Transracial Affinity Versus the Realities of Transracial Education Pedism*, 52 RUTGERS L. REV. 1, 5–7, 63–66 (1999) (examining the educational barriers black children face).

¹¹ See Leonard M. Baynes, *White Out: The Absence and Stereotyping of People of Color by the Broadcast Networks in Prime Time Entertainment Programming*, 45 ARIZ. L. REV. 293, 299 (2003).

¹² See Mabry, *supra* note 8, at 1401 (stating that “[o]ne prevalent racist practice involves taxicab companies’ written and unwritten policies that drivers may refuse to transport young African American men.”).

¹³ See Leonard M. Baynes, *Racial Justice in the New Millennium: From Brown to Grutter: Methods to Achieve Non-Discrimination and Comparable Racial Equality*, 80 NOTRE DAME L. REV. 243, 245–47 (2004) (discussing racial disparities with regard to standards of living).

*Shaquita and J.C. are beautiful, dark skinned, black Americans. and they want to adopt two or more healthy, fat white babies.*¹⁴ *Shaquita believes that by raising white children, she will learn more about the white culture*¹⁵ *and will have a positive impact on the white community. She wants to raise white children who are truly color blind, but who also have the privileges of being white.*¹⁶

*J.C. wants to raise his white babies to become community activists. He is a member of the N.A.A.C.P. and is a proud southern Democrat. He wants his children to attend political marches with him and to become community activists.*¹⁷ *His parents were student protestors, so he wants his children to enjoy his family heritage.*¹⁸

*J.C. and Shaquita live in a black neighborhood, with low-to-middle income housing.*¹⁹ *The community consists both of nuclear families and of non-traditional families.*²⁰ *The couple believes in living among the people and bettering conditions from the inside out.*

In addition, J.C. and Shaquita have extensive family support, regularly attend a black Baptist church, and have attended many child rearing and

¹⁴ See Arthur Hu, *Infant-Mortality: Index of Diversity*, <http://www.arthurhu.com/index/infmort.htm> (discussing the low birth weight problem in the black community); cf. Kate W. Strully & Dalton Conley, *Reconsidering Risk: Adapting Public Policies to Intergenerational Determinants and Biosocial Interactions in Health-Related Needs*, 29 J. HEALTH POL. POL'Y & L. 1073, 1099 (2004) (discussing why babies with low birth weight face significant problems).

¹⁵ Some whites say they adopt minorities to learn about minority culture. See Hawley Fogg-Davis, *A Race-Conscious Argument for Transracial Adoption*, 6 B.U. PUB. INT. L.J. 385, 400 (1997) (providing a written response to a couple who transracially adopted that is found in RITA SIMON ET AL., *THE CASE FOR TRANSRACIAL ADOPTION* 80 (1994)). Some promote interracial marriage and transracial adoption to achieve cross cultural understanding. See Randall Kennedy, *How Are We Doing with Loving?: Race, Law, and Intermarriage*, 77 B.U. L. REV. 815, 821–22 (1997).

¹⁶ See Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondence Through Work in Women's Studies*, in *CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR* 291–94 (Richard Delgado & Jean Stefancic eds., 1997) (itemizing white privileges).

¹⁷ See MARTIN LUTHER KING, JR., *I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* 35–36 (HarperSanFrancisco 1986) (providing a speech before the youth march).

¹⁸ For one story, see generally ANNE MOODY, *COMING OF AGE IN MISSISSIPPI* (1968).

¹⁹ Similarly, many whites who adopt nonwhite children live in communities that are predominantly white. See DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* 292 (2004).

²⁰ Nontraditional living arrangements have been recognized by the United States Supreme Court as a legitimate alternative. See *Moore v. City of E. Cleveland*, 431 U.S. 494, 504 (1977); see also Angela Mae Kupenda, *Two Parents Are Better Than None: Whether Two Single, African American Adults—Who Are Not in a Traditional Marriage or a Romantic or Sexual Relationship with Each Other—Should Be Allowed to Jointly Adopt and Co-Parent African American Children*, 35 U. LOUISVILLE J. FAM. L. 703, 706–16 (1997) (urging nontraditional adoption arrangements for black children).

family workshops hosted by their church. They believe in loving corporal discipline of children, and that to spare the rod is to spoil the child.²¹ Therefore, the black couple will not hesitate to give their white children a spanking with an open hand or a whipping with a belt or switch as necessary.

They believe it will be a challenge to raise white children, but they are up for the challenge. Generations of women in Shaquita's family have raised white children. Some of her ancestors were house slaves who nursed their masters' children.²² Others worked as maids in white households and raised their bosses' children, and some even gave birth to some of their white bosses' children.²³

Shaquita and J.C. know their white children will require positive exposure to other whites. They have this covered as Shaquita and J.C. socialize at their jobs with whites and live in a white dominated society, although they have never invited whites to their home.²⁴

Would this black couple be allowed to adopt the available healthy, fat, white babies? If the answer is an automatic "no," then something is wrong with the transracial adoption system. If some of the facts above were reversed, the law would allow a white couple to adopt available black babies and, seemingly, with little scrutiny of their environment, motives, or cultural education.²⁵ Why then is there skepticism about allowing similarly situated blacks to adopt white babies? Even some whites who have adopted non-white children admit they would be uncomfortable seeing a white child with black parents.²⁶ Obviously, then, transracial adoption is adoption on a one-way street.²⁷ Transracial adoption is embraced as a way for whites to obtain a baby child, even a black child, but generally is not embraced as a means to place precious white children with black parents. Unfortunately, the failed attempts of black

²¹ See Proverbs 23:13–14; see also Anita L. Allen, 2003 *Daniel J. Meador Lecture: Privacy Isn't Everything: Accountability as a Personal and Social Good*, 54 ALA. L. REV. 1375, 1388–89 (2003) (discussing prevalent use of corporal punishment by blacks).

²² See, e.g., HARRIET JACOBS, INCIDENTS IN THE LIFE OF A SLAVE GIRL 2 (Signet Classic 2000) (telling the story of her grandmother who nursed her master's children).

²³ Now deceased segregationist, Senator Strom Thurmond fathered a child with the family's black maid. See Brent Staples, Editorial, *Senator Strom Thurmond's Not-So-Secret Black Daughter*, N.Y. TIMES, Dec. 18, 2003, at A42.

²⁴ Black transracial adoptees have discussed the isolation they have experienced. See, e.g., John Raible, *An Open Letter to Parents of Mature Transracial Adoptees*, PACT PRESS, Fall 2003. available at <http://www.nysccc.org/T-Rarts/Openletter.htm>.

²⁵ Some, however, have called for more scrutiny in allowing couples to adopt transracially. See Allen C. Platt, III, Note, *Adopting a Compromise in the Transracial Adoption Battle: A Proposed Model Statute*, 29 VAL. U. L. REV. 475, 477–79 (1994).

²⁶ Angela Mae Kupenda et. al., *Law, Life and Literature: Using Literature and Life to Expose Transracial Adoption Laws as Adoption on a One-Way Street*, 17 BUFF. PUB. INT. L.J. 43, 53–54 (1998–1999).

²⁷ *Id.* at 45.

parents who tried to adopt white babies are known primarily by anecdote.²⁸

Therefore, a reasonable request is that, once and for all in American history, the same regard that would be given to the welfare of a white baby if a black couple sought to adopt it, be given to the welfare of a black baby if a white couple sought to adopt it.²⁹ Consequently, three policy recommendations to improve the status of black children as related to transracial adoption and generally will be offered.

I. LEGAL SCHOLARS MUST REMARKET THE DEBATE

The transracial adoption discourse has focused on the assertion that blacks and whites should be given the same consideration in adoption, and that requiring racially sensitive adoptions for black children treats them differently or discriminates against white parents seeking access to children.³⁰ Although the present discourse suggests principles that appear to be facially neutral, the principles may actually have devastating effects.³¹ The discourse needs to be changed to say that the same regard that would be given to a white child should be given to a black child. The “true interests” of black children should be considered, as opposed to the system being established to consider primarily the interests of white adults who desire any and all healthy babies.³² For example, at one point in American history adoption was used to help whites obtain “cheap labor” rather than to secure the best interests of

²⁸ Some scholars view with suspicion that blacks are allowed to become foster parents more readily than to become adoptive parents of white children. See Hawkins-León & Bradley, *supra* note 6, at 1233; see also Kupenda, *supra* note 26, at 60–63.

²⁹ This may be a huge leap in American policy, considering that not too many years ago black babies were regarded as animals or as property. In the more recent past, they were regarded as unworthy to sit next to white children in schools. Now, as Professor Hobbs discusses in his article, their plight continues. Hobbs & Baity, *supra* note 2, at 109–14.

³⁰ See Howe, *supra* note 8, at 131–34; Mabry, *supra* note 8, at 1389–93; Perry, *supra* note 8, at 216.

³¹ See Antoinette Greenaway, *When Neutral Policies Aren't So Neutral: Increasing Incarceration Rates and the Effect of the Adoption and Safe Families Act of 1997 on the Parental Rights of African-American Women*, 17 NAT'L BLACK L.J. 247, 254–60 (2004).

³² See Ruth-Arlene W. Howe, *Adoption Laws and Practices in 2000: Serving Whose Interests?*, 33 FAM. L.Q. 677, 678–79 (1999) (adoption “should not be a private business run by those who seek to satisfy the desires of adults . . . to children of their choice”); Ruth-Arlene W. Howe, *A Review of Family Bonds: Adoption and the Politics of Parenting* by Elizabeth Bartholet, 24 GOLDEN GATE U. L. REV. 299, 304–05 (1994).

orphaned black children.³³ Today, adoption should not be used to help adults achieve their desires, without giving consideration to whether placements are in the best interests, or true interests, of non-white children.

In his article, Professor David Hall refers to “the invisible tears of invisible children.”³⁴ He stresses that black children have been used for the selfish needs of adults, both white and black for generations. Black children have been regarded as visible chattel and tools that served a purpose, then were deemed invisible once the adult need was satisfied.³⁵ They have received lesser regard than white children for generations: lesser security and safety, lesser supplies for basic needs, lesser education, lesser acceptance, and even, perhaps, lesser love.

Using the story told earlier in this article, it is likely that before the black couple, *Shaquita and J.C.*, would be allowed to adopt the healthy, fat white babies they desire, adoption agencies would consider the couple’s racial attitudes, motivations, and community. Such scrutiny of the couple, though, is actually less necessary in this case than if a comparable white couple was seeking black babies.³⁶ Many black women have nursed and raised white babies for centuries. Moreover, blacks regularly interact with whites in our white-dominated society, and though blacks are a minority, they have, perhaps, a greater understanding of white culture (because they must live and work within a predominantly white dominated society) than whites have of black culture. Therefore, in using a criterion of “same regard,” it is likely that many more blacks should be deemed qualified adoptive parents for white babies than white parents deemed qualified adoptive parents for black babies.

The discourse, however, has been slanted another way. The focus has been shifted to whether black parents who desire to adopt should receive *special* consideration in access to babies, where the black parents do not outpace the white potential parents on seemingly neutral standards. Scholars must be careful that the conversations and de-

³³ See Ruth-Arlene W. Howe, *Adoption Practice, Issues, and Laws 1958–1983*, 17 FAM. L.Q. 173, 176 (1983).

³⁴ Hall, *supra* note 1, at 9.

³⁵ *Id.* at 10–11. Professor Howe warned that careless transracial placements are too reminiscent of the white slave traders “attempting to meet a strong consumer demand for babies.” Ruth-Arlene W. Howe, *Transracial Adoption (TRA): Old Prejudices and Discrimination Float Under a New Halo*, 6 B.U. PUB. INT. L.J. 409, 413, 423, 468 (1997).

³⁶ Black children must learn to live well in spite of the regular assaults of others’ racism. See Cynthia R. Mabry, *African Americans “Are Not Carbon Copies” of White Americans—The Role of African American Culture in Mediation of Family Disputes*, 13 OHIO ST. J. ON DISP. RESOL. 405, 423–24 (1998) (discussing the effects of racism).

bates are not shifted in this way, as this slant brings about covert racist results. Many areas of the law have had the dialogue shifted in such a way, and the result is often that blacks suffer from the various laws designed to protect them.³⁷ Here, it is critical to shift the discourse back to a core consideration: black children should be entitled to the same regard that is given to white children. And, if black couples would not be allowed to adopt white babies without great scrutiny, white couples should not be allowed to adopt black babies without the same scrutiny.³⁸

II. BLACKS SHOULD CONSIDER SEEKING ADOPTION OF WHITE BABIES

If more blacks attempt to adopt white babies, perhaps policymakers will reconsider transracial adoption and will also consider safeguards that are essential to protect the well-being of babies who are transracially adopted. In other words, perhaps Congress will reconsider whether race should be relevant in adoption placement and then will take more steps to assist blacks in adopting black children.

This proposal may seem both simplistic and crude, however, because it may appear to use both black and white children as tools for an adult purpose, a tactic warned against by Professor David Hall.³⁹ Furthermore, as Professor Twila Perry urges in her article, in a competition for limited resources blacks tend to lose out to whites.⁴⁰ Professor Michele Goodwin adds that Europeans and Canadians are also competing with Americans for healthy, black babies.⁴¹

³⁷ For example, the United States Supreme Court held that Mississippi was operating two different higher education systems, a historically black one that was under funded and a predominantly white one with greater funding. *United States v. Fordice*, 505 U.S. 717, 743 (1992). But, after years of litigation, one final result is that the historically black schools that never racially discriminated are required to offer race based scholarships to white students, where a similar requirement is not imposed on the predominantly white schools that had once denied access to black students. See Avis Thomas-Lester, *Enrollment Is Shifting at Black Universities*, WASH. POST, Oct. 31, 2004, at C01.

³⁸ A view based on a color-blind society in the face of a color-based society is a closed minded view that leads to further mistreatment of colored Americans. And, as stated by Professor Howe, “[a] closed mind is a wonderful thing to lose.” See Ruth-Arlene W. Howe, *Preface: A Closed Mind Is a Wonderful Thing To Lose*, 9 CARDOZO WOMEN’S L.J. 193, 193 (2003).

³⁹ Hall, *supra* note 1, at 21, 22.

⁴⁰ Twila L. Perry, *Transracial Adoption and Gentrification: An Essay on Race, Power, Family and Community*, 26 B.C. THIRD WORLD L.J. 25, 44-45 (2006).

⁴¹ Michele Goodwin, *The Free Market Approach to Adoption: The Value of a Baby*, 26 B.C. THIRD WORLD L.J. 61, 68 (2006).

A proper use of a child, though, is not the same as a *misuse*, if that use is for the purposes of acquiring a better long-term situation for that child specifically and for all children generally. Perry and Goodwin are probably correct regarding whites' out-resourcing blacks. Nonetheless, a competition for a resource, in and of itself, may be enough to cause the white dominated system to retreat or, at least, reconsider. If blacks seek to adopt healthy, fat, white babies, the tension this competition will generate may be enough to provoke change in the legal system.⁴²

This proposal does not mean that, in the meanwhile, white babies will be sacrificed. As stated earlier, blacks have raised white children for generations. Moreover, as more blacks raise white children with loving connections to the black community, America's racism may actually be diminished,⁴³ creating better lives for all Americans. Nor does this proposal mean that black children who need to be adopted will be sacrificed. Likely as blacks seek white babies, adoption policies will change to encourage more blacks to adopt black children.

III. BLACKS MUST RECONSIDER THE REGARD OF BLACK CHILDREN

If the black community is going to call for black children to be regarded the same as white children by predominantly white policy-makers, then black adults must also reconsider whether the black community is giving the same regard to black children the American society gives to white children.⁴⁴

For example, some black childrearing practices are carried over from the slavery and Jim Crow eras, where black children learned to be totally submissive to adult (especially white adult) authority to pre-

⁴² Sometimes, there is a need to "create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issues." See MARTIN LUTHER KING, JR., *WHY WE CAN'T WAIT* 67 (Signet Classic 2000).

⁴³ See KING, *supra* note 17, at 171 (referring to blacks' false sense of inferiority and whites' false sense of superiority). Actually Shaquita and J.C. would likely be exemplary parents to raise the children, as they want to address the racial dynamics in America. A black child placed in a white home would need to be that fortunate too. As stated by Professor Howe, "[t]he needs of Black children will not be better served until our society honestly and publicly acknowledges race and color as defining influences." Howe, *supra* note 8, at 140.

⁴⁴ Hobbs proposed a pro-work, pro-family agenda to tend to the spirit of and to help black children become more resilient. See Hobbs & Baity, *supra* note 2, at 114-18.

serve their lives.⁴⁵ Many black parents still teach their children to be seen, but not heard, and never to challenge an adult. When these lessons are not learned quickly by a spirited child, some parents have proudly resorted to using a belt or switch to inflict pain and have even used name calling and ridicule to help a child find his or her place.⁴⁶ The black community must study whether these practices are effective, or whether they are based on a system of lesser regard. In his article, Professor Hobbs referred to the need to restore the spirit of the black child. Professor Fenton's article urged the collection of data to demonstrate the ways in which the spirits of black children are relentlessly attacked.⁴⁷

In addition, the black community must consider its obligation in teaching black children about American history, which includes the many contributions of black Americans. The black community is quick to say that these discussions ought to be a part of the upbringing that any white parent must give a transracially adopted black child, still we have not considered whether black parents are doing the same.⁴⁸

CONCLUSION

A perfect summary of the point that has been urged in this response is found in the movie, *A Time to Kill*. In that movie, a black child is brutally assaulted by whites. Her black father exacts revenge on her attackers. At the criminal trial for the father, his defense lawyer, in his closing, slowly summarizes the brutal details of the child's attack. Then he adds, now imagine in your mind that she is a white child. With this added picture, the all white jury can now actually feel the pain of the father and acquits the father. The defense lawyer succeeded because he petitioned the jury to give the black child the same regard that they would give to a white child.

Whether the black couple, *Shaquita and J.C.*, would be able to adopt healthy, fat white babies today is questionable. But by shifting the discourse to focus attention on achieving the same regard for the welfare of black children as is given to white children, we can be as-

⁴⁵Even today, black parents teach their children about "race" and how to survive in a predominantly white society. See CHARISSE JONES & KUMEA SHORTER-GODDEN, *SHIFTING: THE DOUBLE LIVES OF BLACK WOMEN IN AMERICA* 239-56 (2003).

⁴⁶See *id.*

⁴⁷See generally Zanita Fenton, *Colorblind Must Not Mean Blind to the Realities Facing Black Children*, 26 B.C. THIRD WORLD L.J. 81 (2006).

⁴⁸See Mabry, *supra* note 8, at 1419-21 (suggesting steps for white parents).

sured that black children will one day raise children in a more just America.