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# Transracial Adoptions: Does the Law Matter?

Rita J. Simon

Sociologist Rita J. Simon is University Professor in the School of Public Affairs and the Washington College of Law at American University in Washington, D.C. She taught at the University of Illinois, at Hebrew University in Jerusalem, and at the University of Chicago before joining the American University faculty in 1983 as dean of the School of Justice.

Professor Simon, who holds a doctorate from the University of Chicago, is the author of twenty-two books and the editor of thirteen, including *In the Golden Land: A Century of Russian and Soviet Jewish Immigration* (1997), *The Ambivalent Welcome: Media Coverage of American Immigration* (with Susan Alexander, 1993), *New Lives: The Adjustment of Soviet Jewish Immigrants in the United States and Israel* (1985), *Women's Movements in America: Their Achievements, Disappointments, and Aspirations* (with Gloria Danzinger, 1991), *International Migration, The Female Experience* (with Caroline Brettell, 1986), *Rabbis, Lawyers, Immigrants, Thieves: Women's Roles in America* (1993), *The Crimes Women Commit, the Punishments They Receive* (with Jean Landis, 1991), *Adoption, Race and Identity* (with Howard Altstein, 1992), and *The Case for Transracial Adoption* (with Howard Altstein and Marygold Melli, 1994).

While the National Association of Black Social Workers and several councils of Native Americans strongly oppose transracial adoption, Professor Simon, who has been studying the subject for nearly thirty years, concludes that "the bottom line on all of the studies that have been done is that transracial adoption serves the children's best interests."

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- Many white Wisconsin parents who adopted a black child reported that they “stopped seeing the child as a black and came to perceive the child as an individual who is a member of their family” (Charles Zastrow doctoral dissertation, 1977).
  - The child’s age—not transracial adoption—has the most significant impact on development and adjustment (William Feigelman and Arnold Silverman, 1981 mail survey comparing the adjustment of fifty-six black children adopted by white families against ninety-seven white children adopted by white families).
  - “Transracial adoption . . . appears to meet the psychosocial and development needs of the large majority of the children involved” (Christopher Bagley, 1993, comparing twenty-seven transracial adoptees with twenty-five white children adopted by white parents).
  - Black sociologist Joyce Ladner concluded in 1977, after in-depth interviews with 136 parents in Georgia, Missouri, Washington, D.C., Maryland, Virginia, Connecticut, and Minnesota, that “there are whites who are capable of rearing emotionally healthy black children.”

The Multiethnic Placement Act Interethnic Adoption Provisions, signed into law by President Clinton in August 1996, prohibit “a state or other entity that receives federal assistance from denying any person the opportunity to become an adoptive or a foster parent solely on the basis of the race, color, or national origin of the persons or of the child involved.” The provisions also prohibit a state from denying or delaying the placement of a child for adoption or foster care solely on the basis of race, color, or national origin of the adoptive or foster parent of the child involved. The federal statute went into effect January 1, 1997.<sup>1</sup>

Before I describe the statute, let me introduce a bit of history. In October 1994, President Clinton signed into

law the Multiethnic Placement Act of 1994 (MEPA), sponsored by Senator Howard Metzenbaum, then one of the Senate’s strongest supporters of transracial adoption. The bill was intended to prohibit states and public and private adoption agencies from using race or ethnicity as the sole factor in adoption and foster care placement decisions. In other words, it was intended to prohibit the use of racial matching between a waiting child and an available adoptive or foster family. But its initial purpose was weakened by the inclusion of the following stipulation:

An agency . . . may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of the child of this

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background as one of a number of factors used to determine the best interests of the child.

This stipulation diluted MEPA's original intent to hold race "harmless," as it were, in determining the extent to which a goodness of fit existed between a child and a potential adoptive or foster family; thwarted any real attempt to move adoption practice forward to the time when race would not be a consideration in adoption; and allowed states and agencies to do business as usual, continuing to consider a child's racial background in determining placement. This was just what the bill's original supporters sought to eliminate.

Additionally, the onus of proof was shifted to the adoptive parents, who had to demonstrate the "capacity . . . to meet the needs of the child of this background"—alluding to the racial difference between adoptive parents and child.

Many of the original supporters of MEPA, including Senator Metzenbaum, urged adoption of the stronger 1996 provisions.

## Interpreting the Law

Implementation and practice issues were addressed by the Department of Health and Human Services (HHS) Children's Bureau in a May 1998 memorandum meant to help "States, Tribes, private child placement agencies and others" achieve compliance with the act.<sup>2</sup> Using a question and answer format, the memorandum asked and answered the following questions, which represent a portion of the full

memorandum. Note how "culture" is treated in this memorandum.

Q. May public agencies assess the racial, national origin, ethnic and/or cultural needs of all children in foster care, either by assessing those needs directly or as part of another assessment such as an assessment of special needs?

A. Public agencies may not routinely consider race, national origin and ethnicity in making placement decisions. Any consideration of these factors must be done on an individualized basis where special circumstances indicate that their consideration is warranted. A practice of assessing all children for their needs in this area would be inconsistent with an approach of individually considering these factors only when specific circumstances indicate that it is warranted.

. . . Section 1808 of Public Law 104-188 by its terms addresses only race, color, or national origin, and does not address the consideration of culture in placement decisions. There are situations where cultural needs may be important in placement decisions, such as where a child has specific language needs. However, a public agency's consideration of culture would raise Section 1808 issues if the agency used culture as a proxy for race, color or national origin. Thus, while nothing in Section 1808 directly prohibits a public agency from assessing the cultural needs of all children in foster care, Section 1808 would prohibit an agency from using routine cultural assessments in a manner that would circumvent the law's prohibition against the routine consideration of race, color or national origin.

Q. May public agencies assess the

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racial, national origin, ethnic and/or cultural capacity of all foster parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses?

A. No. Race, color and national origin may not routinely be considered in assessing the capacity of particular prospective foster parents to care for specific children. However, assessment by an agency of the capacity of particular adults to serve as foster parents for specific children is at the heart of the placement process, and essential to determining what would be in the best interests of a particular child.

Q. May public agencies honor the request of birth parents to place their child, who was involuntarily removed, with foster parents of a specific racial, national origin, ethnic and/or cultural group?

A. No.

Q. Would the response to [the previous question] be different if the child was voluntarily removed?

A. No.

Q. If an action by a public agency will not delay or deny the placement of a child, may that agency use race to differentiate between otherwise acceptable foster placements?

A. No.

Q. How does HHS define "culture" in the context of MEPA guidance?

A. HHS does not define culture. Section 1808 addresses only race, color, or national origin, and does not directly address the consideration of culture in placement decisions. A public agency is not prohibited from the nondiscriminatory consideration of culture in making placement decisions. However, a public agency's con-

sideration of culture must comply with Section 1808 in that it may not use culture as a replacement for the prohibited consideration of race, color or national origin.

## Has the New Law Made a Difference?

What impact has the statute had on the number of families seeking to adopt across racial lines and the number of transracial adoptions that have been made since the law was enacted?

When my colleagues and I initiated our study, in September 1998, more than twenty months had gone by since the Multiethnic Placement Act had been signed into law, but no systematic data about its effects were available.

We sought to remedy that situation by surveying attorneys specializing in adoption, state officials, and public and private adoption agencies in the fifty states and the District of Columbia.<sup>3</sup> (See Table 1 for the number of each and the response rate.)

In essence, the information we sought was the number of families seeking to adopt across racial lines, the number of transracial placements, the obstacles encountered by parties seeking to adopt across racial lines (foster parents and others seeking to adopt), the number of instances in which parties involved had gone to court, and whether, in the opinion of these experts, the 1996 federal statute had made a difference on all or any of these issues.

We found that more work needs to be done to determine how the states are complying with or failing to comply with the federal statute. We especially

Table 1. Attorneys, State Directors, and Agencies Surveyed

	Number	Undeliverable	Number of responses	Response rate
Attorneys	257	15%	107	49%
State & DC directors	51	none	34	67%
Public agencies	233	8%	100	47%
Private agencies	529	35%	90	26%

need to find out how, and to what extent, the penalty phase of the statute is influencing the actions of the states. The HHS Administration for Children and Families was supposed to start screening states for indications of compliance in 1999. Have any penalties been imposed?

We also found that intercountry adoptions offer tough competition to children available for adoption in the United States. Almost 75 percent of the adoption attorneys who replied to the survey reported fewer than ten transracial adoptions in the twenty months following enactment of the federal statute. Almost two-thirds of the public agencies reported five or fewer expressions of interest for adopting across racial lines, and 40 percent reported no transracial adoptions during the twenty-month period.

Both the attorneys and the public agency representatives commented on the growing interest in intercountry adoptions. They said that in many instances, families found it easier and quicker than trying to adopt in the United States. Over a ten-year period from 1989 to 1998, the number of intercountry adoptions increased from 7,948 to 15,774.<sup>4</sup> More than two-thirds of the children are now being adopted from China and Russia.

## Adoption Attorneys

We asked adoption attorneys this question: Since January 1997, how many cases involving transracial adoptions have you been involved in? Their replies ranged from zero to 150. One attorney gave the latter number. Another answered 100, another 80, another 75, another 60, and a sixth 50. Most of the remaining 101 respondents said 10 or fewer, and 10 had not been involved in any.

How many resulted in transracial adoption? None, answered 14 of the attorneys; 59 attorneys answered between 1 and 9, and seven attorneys answered between 30 and 150. None of them reported that the families they represented had been turned down, though 13 families were still awaiting decisions and 22 attorneys reported that they had to go to court—not for the formal finalization, but because the adoption was contested.

When we asked about the number of cases the attorneys had in the twenty months prior to the passage of the Multiethnic Placement Act, the range and the most frequent response matched the responses to the question about the number of cases since passage of the act.

Since January 1, 1997, have you had more/less/about the same number of families contact you because they were trying to adopt a child across racial lines? A

majority of the attorneys—88 percent—answered “about the same”; 10 percent answered “more,” and 2 percent answered “less.” An attorney from Minnesota wrote, “A racial preference statute was changed to eliminate race as a preference factor in where a child was placed. This resulted directly from the federal requirement that if a state had a racial preference, the state would lose welfare money from the feds.”

### The States and the District of Columbia

We received responses from thirty-three states and the District of Columbia, though eight of the states reported that they do not collect the data we requested. In California, Maryland, New York, North Carolina, and Ohio we had to contact county officials and therefore have only partial information.

Neither our mail survey nor our repeated telephone and fax inquiries elicited responses from seventeen states: Alaska, Arizona, Arkansas, Connecticut, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Nevada, New Jersey, Oklahoma, Rhode Island, South Carolina, Tennessee, Vermont, and Washington.

The eight states—Alabama, Georgia, Illinois, Maine, Nebraska, New Mexico, Utah, and Virginia—that do not collect the data we requested are not in compliance with the 1996 act and therefore presumably are subject to “specific graduated financial penalties.” As of the publication of this report, we have no information concerning the impact of the penalty aspects of the 1996 federal statute.

The twenty-five states that provided information are:

California	New Hampshire
Colorado	New York
Delaware	North Carolina
Florida	North Dakota
Idaho	Ohio
Indiana	Oregon
Louisiana	Pennsylvania
Maryland	South Dakota
Michigan	Texas
Minnesota	West Virginia
Mississippi	Wisconsin
Missouri	Wyoming
Montana	

We asked the state directors this question: How many families have sought to adopt across racial lines? Two states stand out: since the passage of the Multiethnic Placement Act, 1,529 families in Florida and 1,412 families in Missouri sought to adopt across racial lines. The state representative in Florida commented that “Florida has long operated with the premise that adoption should not be delayed or denied based on race, etc.” In response to the question Is this percentage larger or smaller than it was prior to the passage of the federal statute? she checked “Don’t know.” The Missouri representative answered yes to the question In your opinion, has the federal statute affected the number of transracial adoptions? because “it has allowed Missouri to rethink and plan for transracial adoptions.”

How many families adopted a child of a race different from their own? The states with the largest numbers were:

Texas	424
Florida	193

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Michigan	173
Missouri	121
Minnesota	116
North Dakota	46
Delaware	27

The Texas legislature in 1995 adopted a statute that reads almost exactly like the 1996 federal statute. Since 1995, between 43.4 and 45.9 percent of all adoptions in Texas have been transracial.

All of the other states reported 20 or fewer transracial adoptions. Only Maryland and Indiana reported the number of families who tried to adopt across racial lines and were denied: 6 for counties in Maryland, and 10 for Indiana. The other states either had no information or said there were no families who were denied. The District of Columbia, which answered all of the questions in percentages, reported that 20 percent of adopting families adopted a child of a different race.

As of the time you are completing this survey, how many families are in the process of adopting a child of a different race? The states with the largest numbers were:

Texas	370
Missouri	56
Wyoming	46
Delaware	36
North Dakota	24

The other states reported 5 or fewer, or did not have any information. Only Florida and Michigan reported that they have been engaged in a court case

involving a transracial adoption, and in each state the case was still pending at the time of the survey.

In the following states, foster parents make up the majority of the families seeking to adopt across racial lines:

Maryland	100%
Mississippi	98%
Michigan	90%
North Carolina	50%
Montana	50%

Wyoming reported 13 percent and the District of Columbia 10 percent. Only North Carolina said that foster parents comprised a larger portion of the transracial adoptions (25 percent more) since the passage of the federal statute.

By far the majority of the transracial adoptions are a combination of white parents and black children, but it is worth noting that several states (Michigan, Missouri, Montana, North Dakota, Texas, and Wyoming) reported white parents adopting Native American children. The numbers ranged from 1 to 13 since January 1, 1997.

In your opinion, has the federal statute affected the number of transracial adoptions your department has made? Delaware, Missouri, North Carolina, and Oregon answered yes. Louisiana and Montana were not sure. The other states said the federal statute had not affected the number of transracial adoptions because they were operating under state laws that did not allow race to be a factor in delaying or denying adoptions.

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## Public Agencies

The 100 public agencies that responded to our survey reported that the number of families who contacted an agency between January 1997 and August 1998 because they wanted to adopt a child of a race different from their own ranged from 159 in Pittsburgh to none. Nearly half the agencies—43 of them—reported no requests, and 20 reported 5 or fewer. Of the remaining 36, Northern Texas reported 105; Cleveland 56; Dayton, Ohio, 54; Corpus Christi, Texas, 32; Boise, Idaho, 27; and Indianapolis 24; the other 30 agencies reported interest on the part of 6 to 20 families.

The number of transracial adoptions made by the agencies ranged from 115 in Cleveland to zero (40 agencies). Boise reported 46, Beaver, Pennsylvania, 30, Indianapolis 27, and Dayton 21. The other 55 agencies completed between 1 and 20. The large majority of transracial adoptions were white parents adopting black children, followed by white parents adopting mixed-race children.

How many families who wanted to adopt a child of a different race were you not able to accommodate? Almost all of the agencies—82 of them—answered none. The high exception was an agency in North Texas that answered 90 and explained that the majority of the families seeking to adopt were out of state. Buffalo, New York, reported 14 such requests and Indianapolis reported 10; the remaining 15 agencies reported between 1 and 5.

How many families are in the process

of adopting across racial lines? At the time of the survey, 9 agencies reported that between 9 and 18 families were in the process of adopting across racial lines. The big outlier was in Bakersfield, California, which reported 63 families: white parents were in the process of adopting 25 Hispanic children, 35 mixed-race children, and 3 black children. Of the remaining agencies, 33 reported between 1 and 5 families, and 57 reported that no families were in the process of adopting across racial lines.

In your opinion, has the federal statute affected the number of transracial adoptions your agency has made in the past twenty months? Of the 100 agencies, 91 answered no and 9 said yes. Almost all of the agencies that said the statute had little or no impact also said they have always placed children across racial lines, or that given the demographics of their area, by which they almost always meant the area or community was “all white,” there was no demand for transracial adoptions. Agencies in California, Delaware, Idaho, Maryland, Minnesota, Missouri, North Carolina, Ohio, and Texas said that the law has enhanced the adoption of children across racial lines. One agency commented:

The adopting public's perception of social services agencies' willingness to place children transracially has produced more inquiries for infants and younger children. The law has done little to impact or increase families for the number of older African American children in need of adoptive places. Most of the children who are

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waiting for families are African American, who most often are members of sibling groups and above the age of eight. While inquiries did increase, they do not match with the children who desperately need families.

Another agency commented, "We are spending more time to meet federal regulations. This slows us down." A third said, "We have done transracial adoptions since the 1970s."

An agency representative who answered that the law has not affected the number of transracial adoptions commented, "I believe we were in effect following the statutes in practice prior to this time." Another responded, "We have always attempted to find the most appropriate home regardless of race." Almost all of the agencies that answered no made essentially the same observations.

## Private Agencies

We mailed the same questionnaire that went to public agencies to 529 private adoption agencies; 35 percent were undeliverable—the agencies were no longer in business or had moved and left no forwarding address.

Of the 344 questionnaires that presumably reached their destination, only 26 percent were filled out and returned. In spite of the low rate of return, we report the results because they generally agree with the reports of the public agencies. Many of the private agencies, however, engaged only in international adoptions.

The number of families who expressed interest in transracial adoptions ranged from 1,851 to zero. Of the

seven agencies that reported 100 or more families, all were involved only in international adoptions and primarily adoptions from Asia: from China and the Republic of Korea. Twenty-five agencies reported making 10 or more adoptions in the time period specified. An agency that made 1,676 adoptions (Holt International in Eugene, Oregon) was describing intercountry adoptions, as were four that made between 80 and 154 adoptions.

Nine agencies reported that they were unable to accommodate between 10 and 35 families. Of the ten agencies that reported that they had families who were in the process of adopting across racial lines, the three with the largest caseloads—223, 100, and 90 families—were all describing intercountry adoptions, mostly from China and the Republic of Korea.

Finally, when we asked whether the federal statute affected the number of transracial adoptions they had been able to make, three agencies responded in the affirmative. Together, the three agencies received 75 requests and completed 62 adoptions. They reported that 85 families were in the process of adopting. Most of the adoptions involved black or mixed-race children and white parents. One agency commented, "The statute has freed up children of minority race from agencies unwilling to place interracially." Another said that "placing agencies are now open to transracial placements and are not keeping children while they look for same race placements." A third observed that the country has a greater willingness to make transracial placements.

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## Conclusion

Based on our survey, we concluded that much work remains to be done to find out how interested and willing families are to adopt across racial lines, how many have done so, and how many have run into barriers.

Most pertinently, what is happening in the eight states that do not collect the data requested in this survey? They clearly are not in compliance with the Multiethnic Placement statute as amended in 1996. Are they being subjected to the financial penalties outlined by HHS? The Administration for Children and Families is supposed to have started screening for compliance in 1999. Quarterly funds for states that are not in compliance are supposed to be reduced by 2 percent for the first violation, by 3 percent for the second violation, and by 5 percent for the third and subsequent violations.

Have any federal funds been withheld from these eight states?

## Notes

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1. Multiethnic Placement Act, 1997, P.L. 105-89.

2. Administration on Children, Youth and Families, HHS Information Memorandum, May 11, 1998.

3. We conducted surveys between September 1998 and January 1999. Initial contacts were made via mail surveys. We followed up the mail surveys with telephone calls.

We contacted all 257 attorneys listed in the 1997-98 directory of the American Academy of Adoption Attorneys (AAAA). Using the 1997-98 Public Welfare Directory, we contacted the person in charge of adoption in all 50 states and the District of Columbia. For the public and private adoption agencies, we turned to The Adoption Directory (Gale Research Inc., 1995, second edition). We mailed 233 questionnaires to public agencies and 529 questionnaires to private agencies.

4. Sources for these numbers are the Immigration and Naturalization Service and the U.S. State Department. n