IN THE COURT OF APPEALS AT
TENNESSEE WESTERN SECTION AT JACKSON

IN RE: ADOPTION OF
AMH, a minor,

JERRY L. BAKER and wife,
LOUISE K. BAKER,

Petitioners/Appellees,

v.

SHAO-QIANG {JACK} HE and wife,
QIN (CASEY) LUO,

Respondents/Appellants.

W2004-01225-COA-R3-PT
(Trial Ct.#Ch-01-1302-3, Chancery Court Thirtieth Judicial District at Memphis)

BRIEF OF AMICI CURAIE: GREATER SEATTLE CHAPTER OF THE ORGANIZATION OF CHINESE AMERICANS, INC.

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The Greater Seattle Chapter of the Organization of Chinese Americans, Inc. (hereinafter "OCA-GS") respectfully submits the following brief for consideration on behalf of the Appellants of this case as *amici curiae* under Rule 31 of the Tennessee Rules of Appellate Procedure.

INTEREST OF AMICI[1]

OCA-GS is a member chapter of the Organization of Chinese Americans, Inc. (hereinafter "OCA"), which is a national non-profit 501(c)(3), non-partisan, civic organization incorporated in the District of Columbia in 1973.

OCA's primary objectives include:

- Promoting active participation of Asian Americans in both civic and national matters.
- Securing social justice, equal opportunity, and equal treatment of Asian Americans.
- Eliminating prejudices, stereotypes and ignorance of Asian Americans.
- Promoting the cultural heritage of Chinese and other Asian Americans.

Neither OCA nor its member chapters take a collective position on the politics of any foreign country, but instead focuses on the welfare and civil rights of Chinese, Asian, and Pacific Island Americans in America.

ARGUMENT[2]

Amicus curiae presents below social science information that may assist this Court in its review of the present appeal. Such social science information is relevant to a determination of error below. *Amicus curiae* submits that such information and the

[1] Counsel for *amicus curiae* represents and certifies that this brief was not written in whole or in part by counsel for any party.

[2] For purposes of this appeal, the views expressed herein are those of OCA-GS and do not necessarily represent the views of any other chapter or affiliate, or the national office of the Organization of Chinese Americans, Inc.

discussion of the lower court record are not provided to disparage the integrity or character of the lower court, legal officers, or local community, but instead to present a cultural context through which this Court may fully consider the issues on appeal.

I. THE LOWER COURTS AND LOCAL LEGAL COMMUNITY ERRED IN FAILING TO CONSIDER OR ADDRESS SOCIAL SCIENCE EVIDENCE OF CULTURAL AND ETHNIC FACTORS RELEVANT TO A SUCCESSFUL MULTI-ETHNIC CHILD-PARENT SITUATION.

A finder of fact should carefully address cultural factors and the potential for bias whenever people of other racial and ethnic origins are involved. "Reasonable care" is an ethical principle espoused by the legal community. It is an acknowledgement of the potential for bias to influence thought, action and judgment of even the most open-minded individual. Social scientists recognize that whenever there is a possibility of bias and prejudice, there is also a continuing need to take a multi-dimensional approach. In discussing how to achieve understanding in situations involving people from other cultures, Marisue Pickering, a clinical psychologist, says,

> A multi-dimensional approach to interpretation means seeing reality from the cultural and personal perspective of another person rather than *only* or *primarily* from one's own. It means attempting to understand the life and communicative experience from the perspective of the other person not only from one's own. And it means accepting more than one reality at any given time. It means of thinking in categories of 'both/and' rather than 'either/or'. Such a way of interpreting the experience of others as well as our interaction with others becomes highly important as we expand our understanding of culturally sensitive practice. (Pickering, 2002, 2003)[3]

Amicus curiae submits that this principle is reduced to practical action when parental rights are to be taken away, and where an Asian child is considered for placement in a multi-ethnic family setting. Throughout the history of this case, from the

[3] Full citations to social science authorities are found in the Table of Authorities. For brevity, hereafter all citations to social science authorities will be in abbreviated form.

onset of foster care to the rendering of the ruling below, actions by the local legal community demonstrate the need for heightened "reasonable care" to address AMH's and her parents' interests. Throughout the history of this case, from the onset of foster care to the rendering of the ruling now under litigation, there was a failure to exercise "reasonable care." Such widespread failure indicates a silent acceptance by the entire community of cultural and/or ethnic bias. The following examples are offered to the Appellate Court as examples:

The Chancery Court of Memphis and Shelby County failed to take into account Mr. and Ms. He's cultural and ethnic beliefs and dismissed evidence provided by an expert.

The Guardian Ad Litem (GAL), as stated by the Appellant Brief:

1. had no prior experience with Asian or Chinese families;
2. formed an opinion prior to any contact with the birth parents, and based that opinion on the reading of a book on, and discussions with adoptive parents of, abandoned Chinese girls, as well as with a relative who "once visited" China; and
3. did not conduct an investigation when a "no contact" court order was issued on February 8, 2002.

The legal counsel of Mid-South Christian Services, an "agency" within the meaning of *Tennessee Code Annotated* § 37-2-402, did not:

1. fulfill the provisions of *Tennessee Code Annotated* § 37-2-403(a) (2) (A) and 2 (B) (i) when the child entered foster care on February 24, 1999**;**
2. properly notify the parents of the rules of abandonment on or after the meeting of June 2, 1999 (Kevin Weaver, p. 1181);

3. obtain a waiver of legal rights when either Mr. He or Mrs. He were not properly represented by an attorney before and during the decision to award custody on June 4, 1999;
4. advise the Hes of the agency's conflict of interest during the negotiations for custody on June 4, 2000 (the agency was still responsible for representing the Hes' interest because the Hes' were their clients and that relationship was never properly terminated); or
5. explain the terms of "guardianship", or provide an interpreter who could explain them to either Mr. He or Mrs. He on or after the meeting of June 2, 1999.

The Juvenile Court of Memphis and Shelby County did not:

1. advise the Hes of the need to provide financial support or to maintain visitation during the hearing in Juvenile Court of June 4, 1999, or during any of its later interactions with Hes (Sarah Cloud, p. 1218);
2. conduct an open court examination to make sure that the respondents understood what was occurring on June 4, 1999 even though the June 4, 1999 petition contains the following: "Premises considered, petitioner [Mr. He/Ms. Luo] prays that the Court make inquiry into the allegations herein set forth and make such orders as the Court may deem proper and in the best interest of said child(ren)" (T.R. Vol. 8,Exhibit A.) (Sarah Cloud, p. 1218);
3. ensure the interpreter was qualified to discuss the meanings of the terms contained in the custody order or even read the order to Mr. He or Ms. Luo on June 4, 1999 (Pastor Kenny Yau, p. 1995, p. 2017-8);

4. obtain a Waiver of Legal Rights from Ms. He prior to signing the custody agreement on June 4, 1999;
5. follow through on the expressed wish, contained in the custody agreement, that the Court review the agreement where it was written in as a special condition; or
6. intercede for the Hes when complaints were made regarding obstruction of visitation. (Sarah Cloud, pp. 1219-1220)

II. THE LOWER COURT ALLOWED CULTURAL BIAS TO GUIDE ITS DETERMINATIONS RATHER THAN CONSIDER EVIDENCE PRODUCED FROM SOUND SOCIAL SCIENCE REGARDING ASIAN CULTURE AND PRACTICES.

The potential for cultural bias in the placement of an Asian child in a multi-ethnic setting requires a fact finder to carefully consider cultural factors. In evaluating cultural factors, a court is required to eliminate bias and prejudice where it may exist.[4] OCA-GS believes that, in the absence of countervailing social data regarding Asian culture and practices, the lower court may have substituted sublimated biases for cultural evidence in making its decision.

Social scientists recognize that even a courtroom is not immune from bias:

[4] The ABA's Judicial Code directs a court to seek to eliminate such bias or prejudice where it may exist:

> (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. (ABA, 2003)
>
> (6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding. (ABA, 2003)

> Whether it has its wellspring in psychological or socioeconomic causes, or some combination of both, prejudice whether on the part of jury or judge or lawyer is justice's well-recognized and most formidable enemy. (Guinther, 1988)

Further, the entire legal profession is aware of the potential for anti-foreign bias in the courts, Kevin Johnson, in his evaluation of ethnic bias in the courts, says,

> Despite the intuition that judges and juries may be influenced by anti-foreign bias, empirical data demonstrating such bias in the state or federal courts is difficult to come by. . . . Nonetheless, the existence of anti-foreign views in the general public, and the influence of such views on the political process, is difficult to question. One would be surprised if such views did not somehow influence the adjudicatory process. (Kevin Johnson, 1996)

A failure to apply reasonable care throughout the entire history of this case suggests the possibility that there is a community-wide bias. It is reasonable to believe that any individual holding an elected office, including judges, would necessarily adapt to the perceived desires of his or her community, even if those desires are ethnocentrically influenced. Kimberly A. Moore, writing about xenophobia in the American court system, says, "Commentators have often observed that removing a case from state court has some advantages for foreign parties." In a footnote she writes,

> Federal judges with their life appointments are not subject to the same political pressures as elected state court judges and can therefore more closely monitor attorney attempts to stir up local prejudice or bias among juries. *See* Johnson, *supra* note 8, at 47. Moreover, removal to federal court affords an opportunity to transfer a case (if venue and jurisdiction requirements warrant transfer) to other federal district courts anywhere in the country. Finally, the federal court system would likely be preferred by foreign litigants because it may offer greater certainty and uniformity than the multitude of state systems. *Id.* (Moore, 2003)

In the United States, rulings of law and social outcry have led to racism and bigotry being practiced in more subtle forms called ethnocentrism. Ethnocentrism is not

an exclusively American problem by any measure; people of all cultures practice ethnocentrism within the context of their own cultures.

Ethnocentrism is the mindset that assumes one's own culture is the only important one, or the most superior one, or the one by which all other cultures should be judged. Confronting our own ethnocentrism is a never-ending challenge. (Bennett, 1993; Porter, 1997; Pickering, 2003)

Members of a society who share culture often also share some feelings of *ethnocentrism,* the notion that one's culture is more sensible than or superior to that of other societies. Ethnocentrism contributes to the integrity of culture because it affirms people's shared beliefs and values in the face of other, often contradictory, beliefs and values held by people of other cultural backgrounds. (Encarta-culture, 2004)

Ethnocentrism and racism make it difficult to view other people and cultures objectively, according to their own merits. (Encarta-Anthropology, 2004) Roy L. Brooks deferred to Professor Charles Lawrence in his discussion of the permanence of racism in a culture saying, "He says that since racism is so deeply ingrained in our culture and is transmitted by tacit understandings, it is difficult to eradicate." (Brooks, 1994)

The crucial issue is the claim that racial prejudice now has the out-and-out backing of America's most cherished values. Prejudice has come to be seen as the product of the finest and proudest of American values (Sniderman & Piazza, 1993, p.68, 174) Brooks refers to Professor Kimberle Crenshaw who "argues that racism is a central ideological and political pillar upholding existing social conditions." (Brooks, 1994)

Ethnocentrism is commonly practiced and comes from a wide array of causes. Johan M.G. van der Dennen, notes that "an individual will discriminate against a member

of an out-group even when there is no conflict of interest and there is no past history of inter-group hostility. (van der Dennen, 1987)

Implicit prejudice is the foundation for ethnocentrism. Implicit prejudice is the automatic cognitive association between a social group and negative evaluation. (Fazio, Jackson, Dunton, & Williams, 1995)

Stephen M. Smith, Professor of Psychology, North Georgia State University, writing about the potential for certain people to harbor racist and ethnocentric beliefs, says two sorts of individuals stand out. They are those with:

> A. Just-World Attitude: belief that people get what they deserve, and therefore deserve what they get; those high in J[ust] W[orld] A[ttitude] are typically more prejudiced against minorities
>
> B. 'The Authoritarian Personality': belief in strong leaders, discipline, just world
>
> Authoritarians are more prone to *ethnocentrism*; research shows that people strongly prejudiced against a particular group are more likely to have multiple other strong prejudices, suggesting a 'prejudiced personality' (Smith, 2004).

1. Ethnocentrism Manifested Through Asian Stereotypes

In a recent study of implicit and explicit ethnocentrism (Cunningham and Banaji, 2004), it was found that, "simpler implicit associations can affect upstream general processes of conscious thought, measured here as attitude, ideology, and thinking style. The study concluded that in an individual, "…to maintain ideological systems, a rigid thinking style may develop or be maintained as to not question or fracture the ideological system. In this interpretative framework, although implicit ethnocentrism is not directly predictive of ideology or rigidity it remains an integral part of the ethnocentric system

and perhaps plays a role serving to invisibly create attitudes and then leads to a larger system whose goal is to maintain them." (Cunningham & Banaji, 2004)

On of the dominant characteristics of implicit ethnocentric behavior is stereotyping. Stereotyping is normal as it is grounded in the ways that humans perceive, categorize, learn, and remember people of other cultures. (Cunningham & Banaji, 2004) And it is the most common problem encountered by ethnic minorities. Generally people in the United States have little contact with Asian minorities and usually form their opinions from the media. In the last century, the U.S. has fought wars with Japanese, Koreans, Chinese, and Vietnamese and engaged in conflict in the Philippines, Laos and Cambodia. During the twentieth century alone, Americans learned to associate brutality and treachery with an Asian face, especially an impassive one. (Marchetti, 1993)

Further studies have shown that Euro-Americans do not distinguish differences between the Asian groups. In 2001 a study was conducted on the attitudes of Americans toward Chinese Americans and Asian Americans. The methodologically robust study, comprised of focus groups and a national survey, was sponsored by the Committee of 100, conducted in collaboration with the Anti-Defamation League (ADL), and performed by Marttila Communications Group and Yankelovich Partners in February and March 2001. The findings, published in May, 2001, revealed that 73% of the participants found Chinese/Asians "tend to be conceited, think they are better than others"; 73% believed that Chinese/Asians were "more willing than others to use shady practices to get what they want"; and that Chinese/Asians were "two-faced — likely to say one thing, but do another." (Martella & Yankelovich, 2001)

The media, particularly visual media like movies and television, are the primary source of the perceptions America holds of Asians. The media repeatedly casts Asians in a bad light and continues to build on stereotypes created as long ago as the 1800's and into the 1930's. The most common of these Asian stereotypes is Fu Manchu and the Dragon Lady.

> Everyone has heard of Fu Manchu, a descendant of the heathen 'Chinese' of the 19th century, by the 40s a stock figure in popular literature. Sinister, threatening, violent, he also has other avatars: Emperor Ming of Mongo in 'Flash Gordon,' the Dragon Lady in 'Terry and the Pirates.' (Oh, 2004)

Duplicity, deception, treachery, malevolence, untrustworthiness, blind obedience, betrayal, and violence are ascribed to both males and females cast in this stereotype. The men are usually cast in negative sexuality roles. "Negative sexuality includes rape, promiscuity, use of sex as a weapon or a tool, lack of any sexual interest, and sexually deviant acts such as pedophilia." (Oh, 2004) The women are seen as sly, cruel, and continually popular. Asians of both sexes are often assigned the trait of "inscrutability," which usually means they keep their face expressionless.

The OCA-GS asks the Appellate Court to reflect on images of the stereotypes described as it looks at the Chancery Court's ruling. In the ruling published the Court used the following words to describe the Hes and their home: fraud; deceitfulness; without remorse, repentance or conscience; dishonest; unstable; unfit; calculating; theatrical; self-interest; manipulative; hysteric; lie; questionable character; ends-justify-means-philosophy; filthy; foul smell; violate societal rules; irrational and bizarre; irrational and erratic; falsely accusing persons; questionable personality; manipulative publicity; neglect; inattentiveness; unhealthy and unsafe; and emotional instability. The following sections examine the evidence of stereotyping in the ruling.

2. The Court Below Relied on Stereotypes in the absence of evidence to find the Hes Untrustworthy and Treacherous

The Court's ruling suggests stereotyping in misjudging the Hes' credibility, as the following shows:

> He has an aggressive personality and shows no propensity to be deterred or intimidated. He is a thoughtful and deliberate person who exhibits a proclivity to calculate, plan, and carefully predetermine his action and behaviors. (R. Vol. 10 p. 1445-1446 ¶ 35)
>
> Since 1998, Mr. He has repeatedly engaged in a pattern of conduct marked by deceitfulness and dishonesty, without remorse, repentance, or conscience, and has shown a propensity to justify all means, including perjury, for what Mr. He deems to be justifiable ends. (R. Vol. 10 p. 1446 ¶ 36)
>
> Mrs. He is an impetuous person not subject to being intimidated or deterred in achieving whatever she sets as her goal. The evidence shows that she is calculating, almost theatrical, in her actions. The evidence further shows that she is dishonest and manipulative, and has a history of acting in an unstable manner when it serves her own self-interest. (R. Vol. 10 p. 1447 ¶ 42)
>
> From the totality of the credible proof at trial, both Mr. and Mrs. He have shown themselves to be persons who do not consider themselves to be bound by the rule of law. Mr. and Mrs. He have demonstrated that they will do and say anything in order to achieve their desired goals. (R. Vol. 10 p. 1449 ¶ 49)

The Court later tries to demonstrate Mrs. He has disdain for the law. When Mr. and Mrs. He testified that they did not return to the Bakers' home after the January 28, 2001 incident because they were afraid that the police would arrest them, the Court judged their testimony to be "lacking in credibility, since there have been numerous instances when the police were called due to Mrs. He's inappropriate behavior." Yet the Court then proceeds to demonstrate that she always did what the police told them to do. In subparagraphs the Court says: a) "The campus police arrived and got Mrs. He to leave

the conference room and go into an adjoining room"; b) "The police advised Mrs. He to leave the Bakers' home and Mrs. He complied and left"; and c) "Police officers arrived at the Bakers' home and spoke to Mrs. He, and, after that conversation, Mrs. He moved her car, but remained at the Bakers' home with her sign, and the police officers left." (R. Vol. 10 p. 1477- 1478 ¶ 153) The Court seems unable to reconcile its own inconsistency within the ruling.

The Court attempts to establish that Mr. He was guilty of committing a number of crimes. The wording used in these accusations is unusually harsh. Three paragraphs imply that Mr. He is already guilty of repeated perjury. The first one reads,

> **Mr. He admitted that he lied about his income, under oath,** in his December 20, 2001, deposition and that he said things that he knew were not the truth. During his deposition, Mr. He also **knowingly and willfully gave false testimony with respect to material facts concerning his and Mrs. He's assets.** The Court has previously found that Mr. He committed perjury while under oath in Court hearings and pleadings filed in this cause. (Emphasis added, (R. Vol. 10 p. 1446 ¶37)

In his deposition Mr. He indicated that he "could" borrow up to a million dollars if needed. The inference most likely drawn by Chancellor Alissandratos, and continued by Chancellor Childers, was that the Hes therefore had the collateral necessary to obtain such a loan, but this is an ethnocentric conclusion. Mr. He never said he would or could obtain such a loan, but could rely on family as necessary. This same inference was part of the complaint that led to the recusal of Chancellor Alissandratos.

The second paragraph reads,

> The evidence also shows that Mr. He tried to procure an F-2 visa, in 1997, for another Chinese woman, who Mr. He claimed was his wife. Mr. He later admitted that this woman was not his wife and that **he had committed a fraud** on the University of Memphis. (Emphasis added, R. Vol. 10 p. 1446-1447 ¶39)

The rationale behind this is not nearly so explicitly nefarious. Marriages are still arranged in China, and Mr. He had used the services of a person in China to find a suitable wife. When one was found, he took the necessary steps to obtain a visa *prior* to the marriage. After obtaining the forms from the University, it was found that the woman could not qualify for a visa. The intent was not fraudulent. And in fact, as the document was never tendered to the government, the application of the word "fraud" is overtly hostile in this instance. Had the visa been possible, the marriage would have been entered into and the document therefore used. Ultimately, Mr. He did find another individual, Ms. Luo, who did qualify and they did marry.

> The Court reaffirms and incorporates herein by reference the findings made by the Court **relative to the perjury of Mr. He in testimony given before the Court on February 14, 2002,** as memorialized in the February 22, 2002, order entitled "Judgment On Order To Show Cause Pertaining To Passport" and the order entitled "Judgment On Order To Show Cause Pertaining To Documentation Of Marriage In The Republic Of China." (Emphasis added, (R. Vol. 10 p. 1446 ¶ 38)

The marriage laws of the People's Republic of China are not the same as those in the U.S. There was no national marriage law in China prior to 1985. Many "married" couples still simply declare their arrangement and move in together; they are married in the eyes of the village or local committee. Under the national marriage law, a simple statement by one of these committees is accepted as proof of marriage by the Chinese government and a certificate is issued. If any part of a marriage certificate is found to be inaccurate, the only penalty is that the certificate is taken back. (helplinelaw.com, 2004) The individuals involved commonly re-apply, correcting anything that is invalid, and have a new certificate issued to them. This reflects a Chinese cultural norm of doing what is most expedient.

In determining that the marriage was not legal, the Court moved into Chinese law. In this instant, expediency was practiced: a certificate of marriage was issued, but Mr. He was not available to have the necessary photo taken of he and his wife together so one was substituted using a stand-in. In all other respects the certificate of marriage was valid. Mr. He and Ms. Luo represented themselves as man and wife in China to friends and to the U.S. Consulate as is a social norm. Mr. He was physically present in China to assist Mrs. He in obtaining her visa, and they consummated their marriage prior to obtaining the visa. He could not produce a valid certificate of marriage (in the eyes of Tennessee law) from China without returning to China, where a physical is required to obtain a new certificate of marriage. At the time he was still under an assault charge and could not leave the US. He has only remained in the U.S. with the assistance of U.S. Immigration and Naturalization Service (INS) after acquittal.

The Court also seems to have reached into other legal domains when it declared the couple to be illegal immigrants and tax evaders. The Court did not hear from or request the testimony of an immigration attorney. The Court would have found in an inquiry that U.S. immigration law actually recognizes a marriage in which the participants are not required to be present for a ceremony if it has been consummated. Yet the Court called no immigration attorney to learn this. No legal grounds were established for the claims that Mr. He committed perjury, brought Mrs. He into the U.S. illegally, or that the child was born out of wedlock. When the Court also asserted Mr. and Mrs. He committed fraud by not paying taxes, the Court confirms a "Just-World Attitude" and a willingness to rush to judgment since no tax expert testified increasing the probability that the Court was ethnocentrically influenced. (Mr. and Mrs. He

testified that their employers did not provide evidence of employment for use in filing income reports.)

Conjecture was often used by the Court to justify mistrust, and dismiss not only the Hes' testimony, but also the testimony of a witness who vouched for their psychological fitness as parents. Examples of the Court's propensity for relying on assumptions is found in its twice repeated assertions that the Hes only filed actions to obtain custody of their child when approached by the INS threatening to deport them. There was no evidence asked for or offered to support this conjecture. It is a point of fact that Mr. He was under indictment for a felony and not subject to deportation at the time either of the purported calls were to have occurred. Therefore, any call made by INS would not have been cause for action by the Hes.

The Court repeatedly interpreted evidence to the detriment of the Hes where another court might have looked at the same evidence in a more positive way. In the following:

> Mr. He made material false statements on a loan application, dated October 18, 2001, relative to his employment, his income, his status as a student, and his personal references for the purpose of securing a loan for the purchase of a new vehicle. (R. Vol. 10 p. 1447 ¶ 40)

While lies in such a circumstance are not condonable, they are still quite common. The court chose to see this for lies. The Court missed that Mr. He not only obtained the loan, but also demonstrated that He continued to fulfill his contractual obligations, and was able to support the cost of the vehicle as evidence of financial capacity.

3. The Court Below Relied on Stereotypes in the absence of evidence to find the Hes Duplicitous.

The Court rushes to judgment in determining that the only reason the Hes are fighting for their child is to delay deportation. While Mr. He was awaiting trial for the felony assault charge, he was not subject to deportation regardless of the circumstances. And while the Hes acknowledged the conversations with the INS, they were never told that they would be deported and though the INS knew where to find them, they were never sought out. Further, the Court was even unsure of when the calls took place, and did not establish whether the Hes received the calls before or after their motion filings.

The Court intimates duplicity on the part of Mrs. He when the Court outlines Mrs. He's language ability.

> Although Mrs. He does not speak the English language fluently, she appears to speak and understand English better than she professes. For example, Mrs. He spoke English during some of the Hes' visits with AMH at the Bakers' home and when Mrs. He took the Hes' other children for medical treatment. She also spoke English during the incident when she was holding a sign outside of the Bakers' home, and the Bakers' neighbor, Rebecca Smith, asked Mrs. He to move her car, and she spoke English during the December 2003, incident at the Wal-Mart store. During the trial, in response to a question from attorney Linda Holmes, Mrs. He responded to the question by speaking in English, before the interpreter had begun interpreting Ms. Holmes' question to Mrs. He. Mrs. He said, "Mr. Parrish filed legal motion," then she stopped speaking English and began responding to the question in Chinese. (R. Vol. 10 p. 1448 ¶ 44)

The Court suggests that Mrs. He is trying to deceive the Court reasoning that because her English has improved over the years that she is therefore capable of expressing herself fluently when answering all the questions put to her. It is reasonable to expect that a person lacking fluency would have been advised to work through an interpreter to make sure that his or her intended answer was properly communicated.

4. The Court Below Relied on Stereotypes in the absence of evidence to find the Hes Violent.

It was noted in R. Vol. 10 p. 1442 ¶17, ¶18 that Mr. He had been charged and acquitted of sexual assault. In this instance, the Court entertained testimony and documents from a trial in which the defendant was found not guilty and even allowed an attorney to assert a suspicion of guilt.

It was not deemed significant that no other allegations of assault have ever been made against Mr. He, despite nationwide publicity of the custody case that would alert would-be accusers of his location and situation. It is reasonable to believe that Mr. He, in pursuing this publicity, was not concerned that it would surface any complaints.

Further, there are no indications of Mr. He being a physical threat to Mrs. He or the couple's children. The GAL indicated that the Hes other two children showed no signs of child abuse. And the Hes provided witnesses as to their care of their children. It is also significant that Mrs. He must never have showed signs of abuse, as this would have appeared in testimony. In fact, she repeatedly demonstrated her trust in her husband.

5. The Court Below Relied on Stereotypes in the absence of evidence to find the Hes Uncaring

The Court made repeated attempts to demonstrate the Hes are uncaring about the child even inferring that Mr. He doubted his paternity of the child. The Court noted, "**Mr. He questioned whether he was the biological father of AMH** and requested that the GAL arrange blood testing for Mr. He, Mrs. He, and AMH to determine paternity of AMH." (Emphasis added, R. Vol. 10 p. 1442 ¶20) However, the GAL had testified that it was her idea that Mr. He should obtain evidence of paternity. (Kimbrough Mullins, p. 2519) The Court either overlooked this testimony or misinterpreted the circumstances as

described. In the end, Mr. He never indicated he doubted his paternity, and there is no evidence to support this statement.

The Court accepted without question Mrs. Baker's testimony that she "took Andy to the doctor's office because Mr. He was **too busy**," and she "took Andy to other appointments because Mrs. He was **too busy**." (Emphasis added; (R. Vol. 10 p. 1445 ¶33) Mrs. Baker set up a pattern of volunteering her services after the Hes' second child was born, and because the Hes took advantage of this charity, the Court inferred that they were demonstrating neglect. Additionally there is an implied frequency of these charitable acts that was not questioned. Andy He was born in October 28, 2000. All these incidents must have occurred between that date and January 28, 2001, only a three-month window of activity. The fact that the Hes had only one car at the time and were desperately trying to earn enough money to get their daughter back was overlooked or disregarded.

The Court says,

> The Hes used their economic resources to accumulate and purchase non-necessary possessions and to take multiple vacations for pleasure and several trips for other purposes, all consistent with the Hes' agreement with the Bakers that the Bakers would raise AMH until age eighteen, and evincing the Hes' intention to forego all parental obligations and responsibilities for AMH. (R. Vol. 10 p. 1480 ¶167)

The public is led to believe the Hes continually made extravagant purchases, which were, in fact, only a computer (which Mr. He used to make contacts and obtain advice); a gifted used TV; a VCR; and a DVD player. Of the trips cited, one took place *before* the birth of the child. Two of the trips were actually one necessitated by scholastic requirements, and two others were in pursuit of support for their case.

Ultimately, the Bakers sought to demonstrate that the Hes never showed an interest in providing support for the child. The Court provides support to this by indicating that no one expected the Hes to do so, not even the Bakers.

> Because of the agreement with the Hes that the Bakers were to rear AMH to age eighteen, the Bakers did not expect the Hes to make payments to support AMH, and the Bakers never asked the Hes to pay child support for AMH, ... (R. Vol. 10 p. 1481 ¶170)

The court ignored testimony that indicates that the Hes were deterred from making payments. Testimony demonstrates that the Bakers blocked an attempt to make a support payment. (Louise Baker, p. 695)

The Court accepted the Bakers' testimony that the Hes continued to seek adoptive parents for the child:

> On November 14, 1999, Mr. He called Mrs. Baker and told her that the Hes were bringing a friend, Elizabeth Marshall, with them to visit AMH the next day. Mr. He asked the Bakers to pretend that they were foster parents of AMH, not custodial parents, during this visit. Ms. Marshall asked Mrs. Baker how long the Bakers had been foster parents and how she could give AMH up after fostering AMH for so long. Mrs. Baker told Ms. Marshall that the Bakers had no intention of giving up AMH. During the visit, Ms. Marshall kept referring to AMH as "(AMH) Marshall." At a minimum, the implication is that there had been discussions between the Hes and Ms. Marshall about adopting AMH. After the visit, Mrs. Baker asked the Hes why they had brought Ms. Marshall to visit AMH. Mrs. He became agitated, said that Mrs. Baker was rude to Ms. Marshall, and Mrs. He refused to answer the question. (R. Vol. 10 p. 1472 ¶134)

> On May 7, 2000, the Hes brought two people, Barney and Rosemary Binion, with them to the Bakers' home to visit AMH. During the visit, the Hes wanted AMH to call the Binions "mawmaw and pawpaw," or something to that effect. Sometime during the visit, Mrs. Baker was in the kitchen when Mr. He came into the kitchen and told her that "everything is going to be alright." Later, Mr. He patted Mrs. Baker on the back and told her "don't worry, I will talk Casey into letting AMH stay." (R. Vol. 10 p. 1475 ¶143)

The court accepted the Bakers' testimony at face value. It presented these instances as justification for its ruling. Yet Ms. Marshall testified that she went to the Baker home only to meet Mrs. He's child. Mrs. He had been babysitting for her, and they had developed a friendship. (Elizabeth Marshall, p. 1322, L. 10-13). The Bakers failed to mention that the Binions (the correct spelling is Binon) are a couple in their late 70s and are the Hes' financial sponsors. The Binons visited AMH a year after their 50th wedding anniversary (the reason for the Hes' visit to Ohio). The Hes asked AMH to call the Binons *Yea Yea* and *Nai Nai*, terms of respect, which means honored grandmother and grandfather in Chinese. This is a culturally polite way to address older people who are significant to the parents.

The failure of the Court to become aware of Asian culture led to several other errors in judgment along these same lines. In an attempt to establish that the birth parents had no real care for the child, the Court cites Baker testimony:

> On December 22, 1999, the Hes brought gifts for the Bakers and all of their children, but did not bring a gift for AMH. (R. Vol. 10 p. 1473 ¶136)

Gifting on Christmas is not a custom in China, even among Christians; instead, gifting is performed on the Lunar New Year. This demonstrates that the Court allowed culturally biased testimony to be elicited by an attorney and entered into the record.

In terms of gifting, the presentation of a whole fish (R. Vol. 10 p. 1481 ¶172) is the equivalent to a wish for the Baker's continued prosperity and a fish was given on more than one occasion. Such a gift is a long-standing Chinese holiday tradition. *Nian Nian Yo You m*eans you always have some left over every year, and the word for "fish" in Chinese sounds the same as the word for "prosperity"—*You*.

Yet in the eyes of the Court, the Hes betrayed the Bakers, despite all outward appearances of congeniality. The Court references a supposed agreement that Mr. He allegedly arranged with the Bakers, allowing them to keep the child until her eighteenth birthday. The Court failed to demonstrate, however, that Mrs. He had ever entered into any such arrangement, nor did it find any proof that Mr. He actually made such a commitment. Only the testimony of the Bakers, and a rumpled piece of paper that did not meet the definition of an agreement were provided as support. In the above quotes, there are already several references to this alleged agreement. There are others that show the Court assumes such a contract existed:

> … the Hes' visits with AMH were so sporadic, and of such short duration, … in conformity with the Hes' agreement that the Bakers would raise AMH until age eighteen. (R. Vol. 10 p. 1487 ¶205)

> The Hes failure to provide more than token support for AMH from June 4, 1999 through January 28, 2001, evinced Hes' intent to relegate all responsibility for AMH's care and support to the Bakers, consistent with the Hes' agreement that the Bakers would raise AMH to age eighteen (18). (R. Vol. 10 p. 1487 ¶209)

6. The Court Below Relied on Stereotypes in the absence of evidence to determine AMH required protection from her parents.

> She has confidence in Mr. He, prefers Mr. He as her translator, has no desire to part company with Mr. He for any reason and intends to cooperate fully with Mr. He to remain together with him as a family and believes Mr. He has never failed to keep her fully and honestly informed about the legal matters involving AMH. (R. Vol. 10 p. 1449 ¶ 49)

This observation by the Court indicates that the Court may have fallen prey to a third Asian stereotype: the "lotus blossom," an Asian woman who is overly submissive and subservient. It is in consideration of this same stereotype that we might discover a motivation for the Court to "save" the child from her "devious" parents. In movie after movie, the Westerner charges in to the rescue of the slight and helpless damsel. Cho et

al., reference Marchetti (1993, pg. 114, 20) in the following explanation of the white male's role in saving these fragile Asian females:

> They need to be rescued from a wide of variety of things from prostitution, abuse, poverty, and boredom. By saving them, "the white knight's gender and racial superiority and concomitant moral imperative to rule are thus simultaneously affirmed." … The Asian woman is seen as submissive, deferential, and exotic, always willing to please her dominating white male, who is often "saving" her from her backwards and degenerate culture. (Cho et al, 2004)

The Court tries to paint the Hes as uncaring and selfish toward the child because she is only a girl. The most flagrant of these is the misconception that taking the girl back to China would knowingly put the child at peril of death:

> .... The Bakers then agreed to custody, rather than adoption with the Hes still retaining their parental rights, because the Bakers were afraid of what might happen to AMH if they did not agree to take custody of, and raise, AMH. (R. Vol. 10 p. R. Vol. 10 p.1464 ¶102)

The Bakers were aware that the Hes wanted to send AMH to China to live with family members. This is not sufficient cause by itself to stir fear. The reasoning for that fear was later indicated in the finding:

> Mr. He told Mr. Baker that the Hes were going to ship AMH to China, but that he did not want to do that because the death rate for children of AMH's gender was fifty (50%) percent in the Peoples Republic of China. Mr. He stated that he did not want that to happen to AMH, but that he wanted AMH to stay with the Bakers. Mr. Baker got upset and started crying. Mr. Baker told Mr. He that Mr. Baker would do everything physically and financially he could do to prevent the Hes from sending AMH to the Peoples Republic of China. Mr. Baker then agreed to discuss making changes to their original agreement with Mr. He." (R. Vol. 10 p. 1474 ¶141)

The finding was based solely on the testimony of Mr. Baker; Mr. He never corroborated that assertion. This purported "fact" regarding China was taken at face value, though the statement is uninformed and illogical. While China's one-child policy

has led to some preference for boys, the assertion that the death rate of girls is so high would have effectively led to the extinction of China as a nation long ago. The Court made no attempt to validate the accuracy of the figure used. In fact, it would have taken the Court only minutes to access statistics on the Internet where the United Nations Childrens Fund (UNICEF) and the U.S. Central Intelligence Agency (C.I.A.) post estimates.

UNICEF reports that, in 2002, China's infant mortality rate was 82nd highest in the world (out of 194 countries listed) with 32 deaths per 1,000. The probability of a girl child born reaching age 65 is 81.3% in China, 86% in the U.S., 89% in the Republic of Korea, and 93% in Japan. (UNICEF, 2003).

China is rapidly improving its record regarding infant mortality. In 2004, the C.I.A. ranked China at 101 in its estimate of worldwide Infant Under 5 Mortality Rank, at 25.28 deaths per thousand. The sex ratio of boys to girls at birth is 1.09. (US-CIA-2091rank, 2004) According to the C.I.A., the current ratio of boys to girls in the age range of 0–14 is 1.13. While the increase in the difference between males and females is higher, it is hardly indicative of a 50 percent female child mortality rate. (US-CIA-geos/ch, 2004)

Whether Mr. He actually said what was asserted or not, the problem is that it was *believed* by the Court and was used in the ruling to show that the child would be at risk if the birth parents were allowed to take her to China.

> During the June 28, 2000, hearing before Referee Haltom at the Juvenile Court, Mr. He told Referee Haltom that the Hes would send $25.00 per month to China for AMH's support, if the Hes regained custody of AMH. (R. Vol. 10 p. 1475 ¶146 & R. Vol. 10 p. R. Vol. 10 p. 1479 ¶162)

> The Hes paid someone to take their younger son, Andy, to the Peoples Republic of China during the month of May 2001. The Hes began sending $1,000.00 per month to China to support their son, Andy, sometime during May 2001. (R. Vol. 10 p. 1479 ¶163)

This first paragraph was stated twice, indicating how important it was perceived to be by the Court. The Court was informed that the average annual salary in China is $800.00. (Dr. Copper, p. 1427, L. 16-24), however, Dr. Cooper's testimony was stricken because it was "unbelievable." The Chinese People's Daily (Monday, April 24, 2000), reported that the average monthly living cost per capita in the 35 largest cities in China is 560.63 yuan (approximately $60 U.S.). The estimate of $25 per month was made in a deposition taken in May 2000 and was based on then-current income, the cost of living in Chungqing in 1996 (when Mr. He had left China), and the sure and certain knowledge that his parents would have been insulted by a greater contribution of income. In any event, $25 per month is, in fact, more than adequate to support an infant in China.

In the second instance—in a statement made almost a year after the Hes had been turned down on a custody motion (in part because of financial constraints)—the Hes were desperate to demonstrate that they had the means to support AMH. The Court cites this discrepancy to show that they would not provide the same *level* of support to AMH and that they had the means to support AMH, though all attempts to provide support were refused by the Bakers. The contribution of $1,000 toward the support of the son in China was a desperate attempt to demonstrate that they were financially capable of supporting their children.

The court even begins to invent the thinking of Mrs. He:

> After the private conference with Mrs. He, Ms. Cloud talked to both Mr. and Mrs. He …Mrs. He emphasized that she did not intend to place AMH for adoption, but intended to place custody of AMH with the Bakers,

> reserving her right to return to Juvenile Court to petition the court for return of custody to the Hes, **if** she made such a choice in the future. (R. Vol. 10 p. 1469 ¶121)

This is not the same as "***when*** she made a choice in the future." The Court willingly allowed the Bakers to interpret Mrs. He's thoughts and intentions as in when the Court says,

> On February 28, 2000, after the birth of the Bakers' youngest child, Mrs. He told the Bakers that she was pleased that AMH had a new sibling, near AMH's age. (R. Vol. 10 p. 1473 ¶137)

It is highly unlikely that, with her limited knowledge of English she would have used the word "sibling." It is very likely that she would have used the word "sister" as girl children of similar ages that are friends or cousins are called "sisters" in China. Again, a cultural misunderstanding was interpreted as meaning something far more nefarious in Western terms.

7. The Lower Court Appears to Have Exhibited Ethnocentrically-Driven Analysis and Need for Closure

Identifying ethnocentric individuals requires looking into the actions and thoughts of individuals to see if they: 1) view their own group as omnipotent, 2) view other groups from their own perspective to take pride in their own values, symbols, and people, and 3) reject culturally dissimilar ideas to blindly accept culturally similar ideas and people while holding in contempt the objects and values of other groups. (Shimp and Sharma, 1987; Netmeyer, Durvasula, and Lichtenstein, 1991) "It is true that any negative attitude tends somehow, somewhere, to express itself in action. Few people keep their antipathies entirely to themselves. The more intense the attitude, the more likely it is to result in vigorously hostile action" (Allport, 1954). He [Allport] suggests five gradations of

increasingly intense behavioral expressions of prejudice: (1) antilocution, or verbally expressing antipathy; (2) avoidance; (3) discrimination by, for example, excluding members of the group in question from certain social rights or privileges; (4) physical attack; and (5) extermination. (Duckitt, 1994)

Ethnocentric individuals employ more simple, rigid cognitive styles in ordinary everyday thinking. Those high in ethnocentrism are less able to shift problem-solving strategies (Rokeach, 1948) and are likely to reach stable judgments more quickly (Block & Block, 1951) when compared to others. Rigid thinkers have a need for closure or structure that influences social perception, and they are also more susceptible to primacy effects and corresponding bias. (Webster & Kruglanski, 1994) They are more likely to:

- form and use group stereotypes (Neuberg & Newson, 1993; Schaller, Boyd, Yohannes, &O'Brien, 1995),
- derogate deviants (Kruglanski & Webster, 1991),
- make more spontaneous trait inferences (Moskowitz, 1993),
- prefer autocratic leadership (Pierro, Mannetti, De Grada, Livi, & Kruglanski, 2003), and
- prefer ingroup members to outgroup members (Shah, Kruglanski, & Thompson, 1998).

Stereotyping has already been discussed herein. In this case, there are additional examples of spontaneous trait inferences. In the ruling, the Court determined that the Hes were in the U.S. illegally and had defrauded the U.S. government. The Court also second-guesses China's marriage laws instead of reviewing the cultural norms associated with marriage in China. The Court also says, "Although the 'settled purpose doctrine'

was repealed legislatively in 1996 and no longer has any force or effect as law in Tennessee, a review of the evidence in this cause establishes that the actions of the Hes evince a settled purpose to forego all parental rights and responsibilities." Each of these decisions demonstrates that the Court is susceptible to bias in its social perceptions. All are examples of "simple, rigid cognitive styles in ordinary everyday thinking." And still, there is one more instance that is particularly unsettling.

> Dr. John Copper testified for the Hes during the trial as an expert in Chinese culture, to explain the Hes' conduct. Dr. Copper testified that in China telling a falsehood about family matters would be bad, but telling a falsehood to the government would not be as bad. The Court finds Dr. Copper's testimony to be totally lacking in credibility. The Court agrees with the findings of the United States Bankruptcy Court for the Western District of Tennessee, in its October 31, 2003, Memorandum Opinion, which was entered into evidence as Trial Exhibit 26, that Dr. Copper's testimony is unbelievable, and totally lacking in credibility. The Court further finds that Dr. Copper is not an expert in Chinese adoption law, nor is he an expert on termination of parental rights. (R. Vol. 10 p. 1449-1450 ¶ 50)

OCA-GS respectfully suggests to the Appellate Court that the dismissal of Dr. Copper's testimony bears marked evidence of rigid thinking and rejection of culturally dissimilar ideas. Dr. Copper was not offered as an expert on termination of parental rights; his expertise was offered to assist the court in avoiding bias. Unfortunately, his testimony was so outside the ken of the Court's understanding that it elected instead to derogate the testimony and find it "unbelievable, and totally lacking in credibility."

The Court, in its own words, is required to determine if there was first actual abandonment, second it was to determine whether the Hes should be deprived of their family rights. Dr. Cooper was there in part to describe the nature of abandonment in China and why it was not the same in this case. Using the witness' lack of knowledge about Chinese adoption law to discredit the testimony is another example of the rigidity

of social thinking and probable fixation on moving forward to the adoption issue. It is questionable that Chinese adoption law was even relevant.

The rigidity of the Court's thinking allowed no room for any testimony that conflicted with the Court's convictions. Thus, the Court summarily dismissed every other witness who brought up a challenge.

> Dr. Ciocca never personally interviewed or evaluated AMH, so his testimony was limited to that which he observed on the videotaped session with the Bakers, the Hes, and AMH in Dr. Goldstein's office on September 23, 2003, and his experience as a psychologist. (R. Vol. 10 p. 1452 ¶57)

In making this ruling, the Court failed to note that it was Dr. Ciocca who actually created the videotape while the session was in progress. Though Dr. Ciocca was not a participant, he *was* a qualified observer of the event and, in fact, Dr. Goldstein's superior. Dr. Ciocca also reviewed Dr. Goldstein's work, the depositions, the pleadings responses, and the testimony of Dr. Goldstein himself. (Dr. Ciocca, p. 2146, L. 1-5; 2864) Dr. Ciocca's authority, experience, and professional standing were not challenged. But by diminishing his testimony as limited to the videotaped sessions, the Court sidestepped having to recognize Dr. Ciocca's challenge to Dr. Goldstein's testimony, upon which a large part of the Court's ruling was to depend. This same approach was used in dismissing the testimony of Dr. Hutson, who stated that Dr. Goldstein had not even performed a psychological evaluation of the child. (John Hutson, Ph.D., p. 2076, p. 2945).

Ultimately, the Court relied solely on the advice of Dr. Goldstein, although Dr. Goldstein had not done the appropriate assessments of the child or the parents. He had, correctly, refused to perform a clinical assessment of the Hes because of his inability to

understand their primary language. Even with this in mind, the Court favored the limited contributions of this psychologist because he supported its opinion, and wrote with a certain amount of irrelevant pride that Dr. Goldstein "has been practicing in the Memphis, Shelby County, Tennessee, area for many years."

Further, the Court was quick to discard the opinion of a qualified Asian psychologist from California who did, in fact, understand the Hes' language and who had performed the appropriate evaluations. The Court says of this psychologist:

> Dr. Yih-Jia Chang testified as an expert witness on behalf of both Mr. and Mrs. He. The Court has previously ruled that the underlying facts or data relied upon by Dr. Chang in forming her opinion regarding Mrs. He's mental health indicate a lack of trustworthiness, and excluded Dr. Chang's testimony as to Mrs. He. (R. Vol. 10 p. 1450 ¶ 51)
>
> Dr. Chang testified, as to Mr. He, that she based her opinion about Mr. He's mental health on her clinical evaluation, mental status examination, and the MMPI test results. Dr. Chang testified that her clinical evaluation and mental status examination of Mr. He were based on questions she asked of, and responses given by, Mr. He. The Court finds the credibility of Mr. He to be seriously lacking; therefore, the opinions given by Dr. Chang, based on Mr. He's credibility, are entitled to no weight. (R. Vol. 10 p. 1450 ¶ 52)

This reasoning is circular. Because the Court refused to accept as credible any defensive testimony the Hes offered, the Court would, therefore, accept no examination. Yet the Court later uses psychological problems—in other words, the end result of an examination—as reasons to terminate parental rights. The Court did not demand testimony from any another competent psychologist; instead, the Court was satisfied that it could make a psychological determination by reason of its experience with and limited exposure to the Hes and those testifying against them.

As was stated above, the ethnocentric person often finds a need to bring closure in situations where his or her ability to deal with his or her implicit prejudices begin to become manifest as explicit actions.

1. The Court refused to grant a motion to separate the custody motion and the petition to terminate parental rights.
2. In the preamble, the Court moved immediately into a discussion of adoption law when adoption had yet to be ruled upon and the Petition for Adoption remained in abeyance.

In the Court's rush to expedite closure, it was actually unable to state its rulings clearly. For example

> Tennessee Code Annotated § 36-1-113(g)(8)(B)(i) and (ii): The Court concludes that **the evidence fails to establish**, by clear and convincing evidence, **that Mr. He's mental condition is presently so impaired and is likely to remain so** that it is unlikely that Mr. He will be able to assume or resume the care of and responsibility for AMH in the near future. (Emphasis added, R. Vol. 10 p. ? ¶ 274)

If the evidence failed to show that Mr. He's mental condition is impaired, then Mr. He <u>can</u> resume care and responsibility.

8. The Lower Court Appears to Have Exhibited an Ethnocentrically-Driven Preference of Ingroup Members to Outgroup Members.

Unlike the Hes, the Bakers were found to be virtuous and exceedingly credible. In comparison to the Hes, they are relatively wealthy, they are white, they are Christian, and they are American:

> Mr. Baker was born September 29, 1958, in Memphis, Tennessee. (R. Vol. 10 p. 1440 ¶1)
>
> Mrs. Baker was born July 24, 1961, in North Carolina. (R. Vol. 10 p. 1440 ¶2)

> Mr. and Mrs. Baker have been married to each other and living together since July 12, 1982. (R. Vol. 10 p. 1440 ¶3)
>
> **Mr. Baker impressed the Court** as a man who **has a great deal of love, care, and concern for children** in general, but who has an enormous amount of love, care, and concern for his own natural born children and for AMH. He testified in an honest, straightforward, sincere manner. Mr. Baker impressed the Court with his **sincerity and the concern** he expressed for AMH's welfare and safety. Mr. Baker has demonstrated concern for and a willingness to help others who are in need, including the Hes. As one example, **Mr. Baker helped Mr. He** when Mr. Hes' vehicle was in the shop for repairs. (Emphasis added, R. Vol. 10 p. 1444 ¶32)
>
> **Mrs. Baker impressed the Court as a sincere, honest, credible witness.** She too has demonstrated that **she has a great deal of love, care, and concern for children in general**, but she also has an enormous amount of love, care, and concern for her own natural born children and for AMH. Mrs. Baker also impressed the Court with her care and concern for AMH's welfare and safety. Mrs. Baker has demonstrated concern for and a willingness to help others who are in need, including the Hes. For example, **she took Mrs. He to obtain social services and to apply for TennCare insurance coverage** for the Hes' second child, Andy, who was born in October 2000. **She took Mrs. He and Andy home from the hospital** after Andy's birth. She loaned the Hes a baby bed for Andy. She went to the Hes' apartment to **show Mrs. He how to feed, burp, bathe, and change Andy's diapers**. She took Andy to the doctor's office because Mr. He was too busy, and she took Andy to other appointments because Mrs. He was too busy. (R. Vol. 10 p. 1444-1445 ¶33)
>
> Both of **the Bakers demonstrated their concern and care, and lack of any animosity toward the Hes, by foregoing their church and other regular activities** to accommodate the Hes' visits with AMH. The Bakers also served the Hes dinner on several of their visits, and **allowed the Hes to bring friends with them to the Bakers' home for visits, serving the friends dinner as well.** On one occasion, the Bakers **gave Mr. He a birthday card and a gift certificate** to a restaurant for his birthday. (R. Vol. 10 p. 1445 ¶34)

In Generally Significant Facts the Court found it significant that the Bakers had four other children (R. Vol. 10 p. 1440 ¶ 4) going so far as to give their ages. The fact that the Hes have two other infant children was not considered significant or mentionable.

By contrast to its treatment of the Hes, the Court looked the other way when Mrs. Baker was caught in distortions of the truth:

1. Louise Baker first described the $300 payment as "they **threw** a big sum of money on the couch…." (Louise Baker, p. 432; emphasis added). However, when Mrs. Baker was later asked if she could explain how the $300 was "thrown" on her couch, she testified that "It was just here, and we're trying to figure out what it is, you know, what it's for." (Louise Baker, p. 695).
2. Louise Baker admitted that her purpose in keeping a journal was to establish some kind of document or paper trail so that if the Hes suggested "we want her back," Ms. Baker would have a record to use in court. (Louise Baker, p. 448)
3. Louise Baker never told the Hes that she was keeping a journal of their visits with AMH. (Louise Baker, p. 449) Her very first entry was: "gained custody on 6-4-99." (Louise Baker, pp. 448-449; Exhibit 50)
4. When asked whether Diane Chunn had called Louise Baker as a "friend," Mrs. Baker initially denied it. (Louise Baker, p. 464). She later admitted that Ms. Chunn was helping her as a "friend." (Louise Baker, p. 466).
5. Mrs. Baker testified that the police merely told the Hes' not to return "that day." (Louise Baker, p. 477). During cross-examination she conceded that after January 28, 2001, the Bakers did not want the Hes back in their home. (Louise Baker, p. 479).
6. Mrs. Baker admitted that she worked towards reducing visitations. (Louise Baker, p. 454-455).

7. When Mrs. Baker was asked what she meant by the use of the phrase "desire for adoption" in the Bakers' foster care application, she responded, "bad choice of words, maybe." (Louise Baker, 420).
8. The Bakers testified that the Hes brought people to their home who were prospective adoptive parents – Ms. Marshall and the Binons. They misrepresented these visits. Ms. Marshall disputed the testimony and the Bakers knew the Binons were far too old to adopt.
9. When the Bakers stopped the Hes from taking AMH to get a picture taken on her second birthday on the day of January 28, 2001, Mrs. Baker claimed the child needed to see the doctor. Yet the child had been to the doctor eight days earlier on January 20, 2001 (Louise Baker, p. 469), and was given a five-day antibiotic at that time. (Louise Baker, p. 470). Ultimately, the Bakers did not attempt to take the child to the doctor on January 28, 2001. (Louise Baker, p. 469). In fact, Mrs. He visited the child and observed that she was not ill, which provoked the incident leading to the cessation of visitation.
10. Before the trial, Mr. Baker said that during the incident of January 28, 2001, the Hes were instructed not to return to the home of the Bakers. (T.R. Vol. 2, p. 295D) Mr. Baker testified in the trial that the police merely told the Hes' not to return "that day." (Jerry Baker, pp. 879-881). Yet Deputy Blankenship advised the Hes "not to return to the home of petitioners." (T.R. Vol 2, p. 290; Louise Baker, p. 477, L. 7-24). A person not engaged in the instruction of the Hes on that date, Deputy Astor, testified for the Bakers. The Bakers chose not to subpoena Deputy Blankenship, substituting another officer instead.

A casual observer would have doubts about the sincerity and honesty of the Bakers as witnesses. While the Court indicated that the Hes' behavior was deceitful and duplicitous, it failed to see the deceit and duplicity in the Bakers' treatment of the Hes when they were allegedly helping them with their son after his birth.

In summary, the Court takes the Bakers at their word without probing. According to the ruling, most of what the Hes said cannot be trusted—unless the Bakers state that the Hes said it.

9. The Lower Court Appears to Have Exhibited an Ethnocentrically-Driven Wealth Bias.

While there is no reason to substantiate the wealth of a litigant in a Petition to Terminate Parental Rights or an Order to Modify Custody, the Court found it significant that from approximately 1996 to 2001, Mr. Baker earned approximately $435,000 during the last year he was employed by Pinnfund and has earned an annual income ranging from approximately $80,000 to $125,000 since Pinnfund closed. ((R. Vol. 10 p. 1440 ¶6, ¶7) The court even went as far as excusing the difference by saying:

> His earning capacity has been adversely affected by having to locate new employment, since Pinnfund closed; by having to start over and work his way up through the ranks with a new employer; and by his inability to work at an employment that involves travel because of his concerns and involvement with this cause. (R. Vol. 10 p. 1441 ¶7)

The Hes are found to be barely able to maintain a modest standard of living. The GAL reported that during her visit of September 18, 2003, the Hes' apartment furnishings consisted of:

1. One bedroom with a larger combination sitting;
2. Dining room where baby Avita's bed was located;
3. Table and dining chairs;
4. Baby bed;
5. Mattress and box springs;

6. Computer;
7. TV;
8. VCR; and
9. DVD player (Appellant Brief, p. 124, Exhibit 50)

Yet, the Court elected to find fault even with this demonstration of parsimony.

Sometime after sending her son, Andy, to China, Mrs. He purchased a new computer. (R. Vol. 10 p. 1479 ¶164) (Note: In the list above there is only one computer.)

The Hes took vacation trips to New Orleans, Atlanta, Arizona, Ohio, and California, between June 4, 1999 and June 20, 2001. The Hes also took trips for other purposes to Atlanta and Washington, D.C., during the same time period. (R. Vol. 10 p. 1480 ¶165)

As the Appeal filed on behalf of the Hes so ably points out, the Court was aware that,

1. The New Orleans trip was <u>before</u> the birth of AMH. (Mrs. He, p. 91, L. 18-20; Dep. of Mr. He, p. 49, L. 5-11), and, therefore, prior to the time frame indicated by the trial court.

2. Arizona and California was <u>one</u> trip at one time. Its purpose was the defense of Mr. He's master's thesis. (Jack He Deposition, December 20, 2001)

3. The Ohio trip was for their friends' 50th year wedding anniversary. (Mrs. He, p. 92, L. 1-2). (Note: the friends were the aforementioned Binons.)

4. Two trips were directly attributable to regaining custody of their daughter. The Hes went to Atlanta to visit CNN, hoping that would help secure the return of AMH. (Mrs. He, p. 184, L. 7-10). The purpose of the Washington, D.C. trip was to seek help from the Chinese Embassy and a human rights organization in an effort to secure the return of AMH. (Mrs. He, p. 183, 11-15).

   The Hes lived in an apartment and paid monthly rental payments of $625.00 during the period from January 28, 2001, to June 20, 2001. (R. Vol. 10 p. 1480 ¶166) During the Hes' approximate eighty (80) visits with AMH, between June 4, 1999, to January 28, 2001, they occasionally brought items for AMH. The items the Hes brought to AMH were children's books, food items (pears, apricots, watermelon seeds, Jello, baby food, porridge, and a whole, bone-in fish), articles of used clothing, a stuffed animal, a box of diapers, an inexpensive necklace, and a small Sesame Street suitcase. All of these items were of insubstantial economic value and amounted to token support. (R. Vol. 10 p. 1481 ¶172)

During this period the He's income was significantly stressed and most went to living expenses. The Court demonstrates a willingness to set aside investigation of the nature of gift giving among the Chinese community and chooses to denigrate the gifts that the lesser fortunate couple was capable of offering.

When challenged by the Baker's attorney during the trial (a clear violation of the 6th rule of the Judicial Code) about the value of the necklace, Mr. He was unable to respond. Challenging Mr. He on the same topic, OCA-GS found that: (1) the "inexpensive necklace" referred to is a traditional jade amulet owned by most Chinese called a "Hu Sheng Fu" translated as "symbol for protecting the body." The amulet is a jade circle, worn by many women and children in China as ward against bad luck and evil. Mr. He did not possess knowledge of its value because it was a gift from Mrs. He's grandfather. Its original cost was 750 Yuan or about $90 U.S., a very generous gift for an elderly man. One can infer that it is also not something someone would give to a child he or she intended to abandon.

The Bakers failed to mention other culturally significant gifts, which included a jade rabbit in honor of the year of AMH's birth in the Chinese zodiac, a jade bracelet, a "Jing Tai Lan" ("we miss each other") ring bell, and a small Buddha. These gifts are clear indicators of repeated longing for the child's return and serve to undermine the Bakers' claim that they were promised the care of the child until she was eighteen.

III. THE LOWER COURT ERRED BY FAILING TO CONSIDER CULTURAL EVIDENCE REGARDING AMH'S SEPARATION FROM HER PARENTS AND ETHNIC HERITAGE AND HER SPECIAL NEEDS AS A RACIAL MINORITY.

Amicus curiae challenges the assessment of the Court that returning AMH to her parents would not be in her best interests. Successful placement of an Asian child in a multi-ethnic setting requires strong consideration of Asian cultural practices. Social science evidence that was not considered below undermines the lower court's reasoning. *Amicus curiae* identifies examples and offers this Court further data regarding the experiences of Asian children in American and in Euro-American adoptive families.

1. The Lower Court Failed to Adequately Evaluate the Hes' Ability to Care for AMH.

The Court contends that the long gap in visitation suggested that the child could not bind with her birth parents easily and would suffer separation trauma. Two psychologists testified that AMH recognized her parents and felt comfortable even after a two-and-a-half year gap. Parents who have adopted even much older children (including one of this brief's preparers) have wonderful experiences of finding mutual love and respect between them and their children.

The GAL visited the home on two occasions. On both occasions, the home was found to be clean and no mention was made of seeing anything that might pose a risk to children. The only assertion that the home was unhealthy came from Mr. Baker, an interested party in the case. "When Mr. Baker took these items to the Hes' apartment, he saw beer cans everywhere, a filthy kitchen, bones everywhere from food, and there was a foul smell in the apartment." (R. Vol. 10 p.1491 ¶224) The Hes demonstrated that they are non-drinkers. Further, the GAL's report dated September 25, 2003 actually takes a

position opposite to the position put forth by Mr. Baker. Testimony states, "The condition of the He apartment on the Guardian Ad Litem's first home visit was very clean, if not somewhat spare. The new apartment on Enquiree Court, visited on September 18, 2003, was not as tidy, consisting of one bedroom with a larger combination sitting, dining room where baby Avita's bed was located." (Exhibit 50) There was nothing in the report to indicate safety hazards or threats to a child. Nothing caused a suspicion of drug abuse. (Kimbrough Mullins, p. 2519). She found no cause to indicate any alcohol abuse.

Elizabeth Marshall testified that Mrs. He baby-sat her two adopted Chinese children about three or four times a week. (Elizabeth Marshall, pp. 1318-1319). She described Mrs. He's behavior around her children as "wonderful, affectionate." (Elizabeth Marshall, p. 1319). She testified that she never had any problems with Mrs. He when she baby-sat her children. (Elizabeth Marshall, p. 1320). Ms. Marshall described Mrs. He's level of competence and ability with her children as "very high," and she suggested that Mrs. He was probably more skilled than she was. (Elizabeth Marshall, p. 1321).

The Hes have two other children; neither child has ever been found by any witness or state agency to be physically or mentally abused. Testimony by the GAL and others showed the Hes to be loving and caring parents. The Hes' children, Andy and Avita, have also never been declared dependent and neglected. There is no evidence in the record that DCS, or any other investigative body, has had reason to investigate the Hes parenting behaviors.

The emotional behavior of Mrs. He in regard to her four-year-long struggle to get her daughter back and defend the honor of her husband demonstrates that she loves them. Mrs. He's other public behavior has not invoked a call to the police or a challenge in the courts. For Mrs. He to *not* demonstrate emotion under the circumstances would have demonstrated that she did not have an emotional attachment to the child. The Court puts Mrs. He into a classic Catch-22 situation, guilty of emotional misconduct no matter what she did. If she doesn't show emotion she is uncaring; if she shows it, she is irrational.

The Hes intend to relocate the child to Chungqing, Peoples Republic of China. Yet no investigation was made as to the family's resources available or income potential of the parents in the PRC, though in testimony, Mr. He indicated he had access to resources there. In the ruling's Generally Significant Facts, Chancellor Childers says,

> Mr. He received a Masters degree in teaching English as a second language from Hunan University… in 1988. He taught English at Nanjing University … from 1988 until 1995…. He pursued a Masters degree in English as a second language at Arizona State University from 1995 to 1997. He finished his course work ... He enrolled at the University of Memphis in August 1997 to pursue a Doctor of Philosophy degree in economics. … he switched his course of study to obtain a Masters degree in Management Information Systems ... He finished … in 1998… (R. Vol. 10 p. 1440 ¶11)

By the Court's own specification, Mr. He is well qualified to earn a substantial living. He knows how to teach, he knows economics, and he knows computers. He is well prepared for a role as a scholar in China, where educators are given great respect.

Chinese families are well known (and in fact, are often faulted) for their devotion to their children and their enthusiasm for education. The willingness of the family to care for Andy, the gift of the necklace by the great-grandfather, and the four-year-long battle of the birth parents to obtain the return of their child only further indicate the entire

extended family would be dedicated to her welfare. The potential for her to grow and survive into old age is as reasonable as any Euro-American child. Equally significant is the probability that in China, she would be less likely to be a potential victim for a race crime or to suffer health problems brought on by stress caused by prejudice or a racial identity crisis, as is not uncommon among cross-cultural U.S. residents.

2. The Lower Court Failed to Adequately Evaluate the Impact of A Loss of Cultural Identity on AMH.

From a cultural perspective, if the child remains in the U.S. she will undoubtedly be robbed of her ancestry. Her lot will likely be as follows:

> On the other side of the adoption process, another concern that has been raised in regard to such Asian adoptions is that since the vast majority of these orphans are adopted into white families, these children may be socialized into ignoring or even abandoning their Asian culture. Specifically, many critics feel that non-Asian adoptive parents will "whitewash" these Asian children into white society so that they quickly and perhaps permanently lose their Asian identity and sense of ancestry.
>
> As described in many books written by Asian adoptees that have emerged in recent years, their experiences confirm that because they tended to grow up in an almost all-white environment, they never had to think about their ethnic identity—they just assumed they were like everyone else. That is, until they experienced some form of racial prejudice or discrimination from schoolmates, strangers, or even relatives of their adopted family.
>
> Because their adoptive families and parents either could not shield them from this almost inevitable process or could not adequately understand or support their feelings, many of these adopted Asians experienced an "identity crisis." It became clear to them that they were not white but they had little if any connection to their Asian ancestry. To complicate matters, the Asian community often shunned their attempts to connect with their "roots" because they had lost the ability to speak their "native" language and/or had little knowledge of their ancestral culture.
>
> … while many well-meaning parents make sincere efforts at educating their child about his/her Asian roots, observers again point out that these parents frequently forget to educate the child about Asian American issues. That is, many adoptive parents implicitly assume that being Asian is the same as being Asian American**.** To the contrary, critics note that it

> can be just as important for the adopted child to learn about and understand the historical and contemporary issues that Asian Americans face because ultimately, that will be the child's social and cultural environment as long as s/he lives in the U.S. (Le, 2004)

Euro-Americans tend to have little if any regard to their ethnicity, largely because they are a product of inter-marriage between many European immigrant groups. Euro-Americans tend to take on a hyphenated relationship when they celebrate their connections to forebears, such as Irish-American or Polish-American. This is in serious contrast with Asian Americans who tend to honor their Chinese, Korean, Japanese, or other Asian roots more explicitly. Euro-Americans tend to subscribe to an assimilation process called "whitewashing" by its ethnic minority inhabitants.

> [Sociologist Milton Gordon] theorized that there are three possible outcomes of assimilation. The first is **Anglo conformity**, which is when the minority or immigrant is taught that the norms, values, and institutions of the majority group are superior and that they should adopt them in order to be accepted. This is symbolized as A+B+C=A.
>
> The second outcome can be the **melting pot,** a term that almost all Americans have heard about. That's when different racial/ethnic groups come together and out of this interaction comes a new culture that incorporates elements from all groups into one. This can be represented as A+B+C=D.
>
> The third possible outcome is **cultural pluralism**, which others have also called the "salad bowl." This is when the different racial/ethnic groups keep their unique cultural norms, traditions, and behaviors, while still sharing common national values, goals, and institutions -- A+B+C=A+B+C.
>
> Gordon concluded that up to this point in American society, Anglo conformity has best represented the history of assimilation in America. (Emphasis is the author's; Gordon, 1964, Le, 2004)

That the Bakers have subscribed to Anglo conformity was provided in deposition where the Baker's claim they have tried to instill in AMH a sense of her ethnic heritage. Their efforts include taking AMH to Chinese restaurants on several occasions to

experience hearing people speak Chinese and to taste the food. On another occasion they took AMH to a celebration of a Chinese holiday that was put on for about twenty adopted Chinese children. The Bakers have not provided any evidence of a real willingness to find out about Chinese customs or holidays. They have done little more than occasionally dining-out to provide cultural awareness. The one-time visitation with adopted Chinese children in the company of their American guardians is only another demonstration of Anglo conformity.

3. The Lower Court Failed to Adequately Evaluate the Experience of Asian Adoptees.

While assessing what is best for the child the Court neglected to consider what it is like for an Asian to grow up in a Euro-American household where he or she knows she is different. The findings of a study of adopted Asian children was published in "The Results of the Survey of the First Generation Adult Korean Adoptees: Adoptees' Perceptions of International Adoption." This study does not talk specifically about Chinese adoptees because until the 1990s few, if any, were adopted into the U.S. Nonetheless, the following will serve to suggest AMH's potential future in the U.S. far better than any Court can forecast. The following "excerpts" were selected from the study report:

> Respondents provided a range of information about how they viewed themselves ethnically when they were growing up. Of those who described themselves in ethnic terms as children and adolescents, more than one-third (36%) considered themselves Caucasian; over one-quarter (28%) considered themselves Korean-American or Korean-European; just under one-quarter considered themselves American or European (22%); and 14 percent viewed themselves as Asian or Korean.
>
> Some adoptees expressed difficulty in having a clear sense of ethnicity when they were growing up: "I always felt slightly like a 'fraud' since I was not really a Korean, nor did I feel I was accepted as an 'American'

like Caucasians. It is real hard to feel 'American' when strangers constantly asked me 'Where are you from?' and 'How long have been you been here?'" Other adoptees struggled with being Korean or Asian versus being "white," describing themselves as they were growing up as "Amerasian trying to be 'white;'" "Not 'white' enough;" and "Caucasian, except when looking in the mirror [when] I was reminded that I was Korean." Others stated that as they were growing up, they saw themselves as Caucasian or white. These adoptees described themselves as "Caucasian who happened to look different;" "Caucasian with a difference;" "a white person in an Asian body;" and "white middle class, but adopted from Korea." Other adoptees said that as they were growing up, they identified with their adoptive family's or adoptive country's heritage or culture, considering themselves to be… "as [part of an] English, German, Jewish, White family."

When describing themselves in ethnic terms as adults, respondents were far more likely to consider themselves Korean-American or Korean-European (64%) and less likely to describe themselves as Caucasian (11%) or American or European (10%) than they did when growing up. …

The majority of respondents reported that they had experienced some form of discrimination while they were growing up. Race (70%) was cited more often as the basis for discrimination than was adoption (28%). … A few adoptees stated that they did not experience discrimination ["I feel like an oddball who grew up without experiencing any discrimination"]. Others recounted experiences with discrimination that they described as mild ["I didn't feel injured or threatened because it was infrequent or fairly mild;" "The only thing that bothered me was that a lot of people asked me if [or assumed] I was Chinese or Japanese;" "The discrimination was mainly the minor kinds of teasing that many children experience because of their peculiarities. Mine happened to be because I was Asian"]; as persistent ["It wasn't blatant—just the everyday little things (ridicule, stares, comments, assumptions) which accumulated over a lifetime simply wore you down;" "Very sad memories of the constant teasing of my ethnicity, more frequent in elementary school but more intense in high school"]; or as severe ["It was very humiliating, degrading and painful""].

Similarly, with regard to dating, adoptees' comments reflected variations in their experiences with discrimination. Some adoptees felt less attractive as a result of being Korean ["I felt that I wasn't pretty because I didn't meet the Western ideal of beauty;" "I did not consider myself attractive because I was not Caucasian"]—affecting both the extent to which they dated and the extent to which they were accepted by their dates' families. Several women shared their struggles with dating because of Asian female stereotypes of the "passive female" or the "exotic delicate curiosity" that

men perceived them to be. Other women commented that they were stereotyped as "too smart" or "nerdy" to be considered attractive. ….

Discrimination was the key focus of the conversation in all groups and pervaded all aspects of the conversation—from family life, to dating, to community, to school experiences and, ultimately, to the way participants chose to identify themselves. Most of the participants expressed pain, anger, and sadness as a result of the discrimination they experienced, and for many, being at *The Gathering* was the first time they shared these feelings. Many participants were the only Asians in the communities in which they were raised. Their presence generally was handled in one of two ways: either it was considered socially taboo to discriminate against the only Korean child in the community; or there was overt discrimination including racial slurs.

Many adoptees found assumptions about them and their families to be discriminatory. Often, by virtue of their appearance, adoptees were expected to speak Korean or another Asian language and were quizzed about their ability to speak English with no accent. Others were assumed to be from Asian countries other than Korea. One adoptee described being mistaken for a nanny when she was with her own children, and another described being mistaken for the wait-staff in a restaurant. Some female adoptees expressed discomfort when walking with their adoptive fathers as they believed that people may assume they were "the other woman." Although the majority of adoptees experienced discrimination while they were growing up, there were some who reported no discrimination whatsoever and others who reported that they did not experience discrimination until later in life.

Many participants spoke about the painful reality of wanting their adoptive parents to know about and understand their experiences with discrimination, but knowing that their adoptive parents could not fully relate to these experiences. Some participants shared that it was too difficult to tell their parents, or they simply chose not to tell their parents in order to protect them. Some participants painfully reported racism and prejudice within their own families.

Experiences of discrimination and rejection also extended to contacts with other Koreans. Some adoptees described negative reactions when Koreans realized that they did not speak Korean, and some felt that Korean people had difficulty relating to them because they were adopted. Others were hurt by the rejection of other Koreans because they were too Western. They felt that they should have been embraced by the Korean community. Many adoptees also felt quite "foreign" when they visited Korea. The experiences adoptees had with other Koreans led to a discussion of Korean adoptees' own prejudices and biases toward Asians—their tendency to

> examine Koreans through their own Western lens and to make assumptions from that perspective.
>
> Almost half of the respondents (77 respondents) described why they had an interest in searching for their birth families. The major reasons given for their desire to search were: to obtain medical histories (40%); curiosity (30%); to meet others whom they physically resemble (18%); to learn why they were placed for adoption (18%); to learn whether they have relatives, particularly siblings (16%); to fill a void or gain a sense of closure (16%); and to relay a message to their birth parents (10%).
>
> Gratitude was another pervasive theme. Some adoptees felt that their adoptive parents expected them to be grateful for being adopted, and they expressed ambivalence about these expectations. Most of the participants shared that they were grateful for being adopted, but realized that it came at a high price of losing their culture, country, and parts of their identity.
>
> Loss and abandonment were other common themes. In Groups I through III, some participants stated that the losses they experienced at an early age had long term effects on their relationships, with mistrust being a common issue. Groups IV through VI also identified problems with trust, with some participants describing an inability to commit, a tendency to become very controlling, and "pushing away" from relationships. Other participants, however, felt that they "grabbed onto anyone just to feel as if they belonged to someone." Not all participants, however, believed that these patterns were associated with loss, attributing them instead to individual personalities. The majority of the participants expressed more pain regarding the loss of their birth culture and the lack of a connectedness to Korea than the loss of a person or a relative as a result of adoption. (Freundlich & Lieberthal, 2000)

What "The Gathering" demonstrates is that children of Asian ethnicity are subjected to discrimination as they grow up in America. They are apt to feel isolated. They know they are different and willing to seek out the reason for those differences. When they grow up, they are likely to seek out their identity. If AMH stays with the Bakers, her life is likely to be far more stressful than if she was raised by her birth parents.

CONCLUSION AND REQUESTED CONSIDERATION

For the foregoing reasons, a court must engage in a full consideration of social science information regarding the culture and ethnicity of the parties to a multi-ethnic custody matter. Here, the record indicates that the lower court may have failed to engage in an adequate consideration of necessary social science information regarding Asian cultural practices and factors relevant to the issues decided below. As a result, *amicus curiae* respectfully submits that the lower court erred by engaging in an insufficient analysis to provide a full and fair decision in either the best interests of the child or in termination of parental rights.

Respectfully submitted,

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