

Three Generations

by Frank Overton Brown Jr.



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To paraphrase philosopher George Santayana's famous quote: "Those who do not learn, who forget, or choose not to remember the past are condemned to repeat it." Since ancient times, in various religions, cultures, and societies, the people would gather periodically to hear and talk about important history, laws, beliefs, traditions, and events, lest they be forgotten, or in the cases of younger generations, lest they not be learned at all. It is especially important now that we stand at our vantage point and look at where we have been, where we are now, and in what direction we are going. This article is a look back at the women of three generations in Virginia — mother, daughter, and granddaughter — at how they lived, and how they were treated, portrayed, and affected by people of power and influence, by people that they should have been able to trust. It is a picture that starkly portrays distinctions of class, education, financial status, and views about the role of government in people's lives. It is not a pretty picture, but it is one that we, as lawyers and citizens, must look at and remember.

The three generations are those of Emma Harlow Buck, who was born on November 18, 1872; Emma's daughter, Carrie Buck, who was born on July 2, 1906, and; Carrie's daughter, Vivian Buck, who was born on March 28, 1924.

The New York Times, on December 22, 1917, reported that Mrs. E. H. Harriman (who was a railroad fortune heiress) had donated the \$500,000 Eugenic Records establishment at Cold Spring Harbor, Long Island, New York to the Carnegie Institution at Washington (depending upon what indexes are used, the value of \$500,000 in 1917 would be at least \$6 million and probably more today). The gift consisted of eighty acres, a brick office building, a fine large house, and the valuable records already compiled. She also donated a fund yielding \$12,000 a year to assist in the maintenance of the work. According to *The New York Times*, "The conveyance is made, it is said, to insure a permanent continuance of the work. The Eugenic Records was established at Cold Springs Harbor in 1910, and has since that time been conducting a series of investigations, which have attracted the attention of eminent biologists, political economists, and medical men in all parts of the world. . . . A large number of prison inmates have been examined, also the

insane and feeble-minded and other persons under State care. . . ."

There was a growing interest in eugenics in the United States, and its development in the U.S. was closely followed in Germany, where eugenics eventually took a more sinister turn.

From an etymological standpoint, "eugenics" means well-born. The term was coined by Francis Galton, whose interest in heredity was piqued and focused by reading *Origin of Species*, written by his cousin, Charles Darwin. On May 16, 1904, when Galton was 82 years old, he read a paper to the Sociological Society at a meeting in the London School of Economics. The paper was published in *The American Journal of Sociology*, Volume X; July, 1904; Number 1. The subject of the paper was the definition, scope, and aims of eugenics. In discussing the aims of eugenics, he said: ". . . It must be introduced into the national conscience, like a new religion. It has, indeed, strong claims to become an orthodox religious tenet of the future. . . . Overzeal leading to hasty action would do harm, by holding out expectations of a near golden age, which will certainly be falsified and cause the science to be discredited. The first and main point is to secure the general intellectual acceptance of eugenics as a hopeful

and important study. *Then let its principles work into the heart of the nation, which will gradually give practical effect to them in ways that we may not wholly foresee*" (Emphasis added).

In 1914, Harry H. Laughlin, an assistant director of the Eugenic Records Office, prepared and promulgated his Model Sterilization Act to be used by the states in enacting their acts providing for the involuntary sterilization of the feeble-minded and other "defective" persons. The model legislation was crafted to make it more likely to pass Constitutional muster. In 1922, his model law was included in his book, *Eugenical Sterilization in the United States: A Report Of The Psychopathic Laboratory Of The Municipal Court of Chicago*. In the frontispiece of the book there is a picture of a sculpture that appears to show in one tight grouping and in descending order three generations of a family, with the caption, "Keep The Life Stream Pure." The preface to the book recites that it is intended primarily for practical use, being designed for four classes of persons: law-makers, judges, state administrative officers, and citizens.

Using Laughlin's model act, Lynchburg attorney Aubrey E. Strode, a former member of the Virginia General Assembly and counsel to the State Colony for Epileptics and Feeble-minded in Lynchburg, helped to draft Virginia's enabling legislation. Senate Bill 281, approved on March 20, 1924, as Chapter 394, Virginia Acts of the Assembly (1924), was titled "An ACT to provide for the sexual sterilization of inmates of State institutions in certain cases." (As a matter of interest, on the same date, Senate Bill 219, "An ACT to Preserve Racial Integrity," was approved. The Racial Integrity Act provided that "... It shall hereafter be unlawful for any white person in this State to marry any save a white person, or a person with no other admixture of blood than white and American Indian [the latter being the so-called 'Pocahontas exception']"). The Virginia Sterilization Act is referred to in this article as the Act. The preamble to the Act stated:

"Whereas, both the health of the individual patient and the welfare of society may be promoted in certain cases by the sterilization of *mental defectives* (emphasis added) under careful safeguard and by competent and conscientious authority, and

Whereas, such sterilization may be effected in males by the operation of vasectomy and in females by the operation of salpingectomy without serious pain or substantial danger to the life of the patient, and

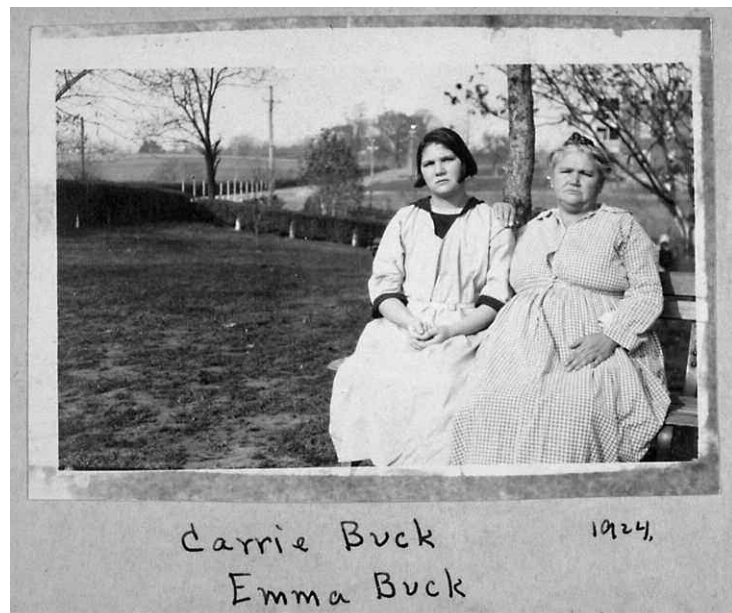


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Photo (above) of Carrie and Emma Buck, 1924. Photo (left) of Vivian Buck and Mrs. John Dobbs was taken on the eve of the initial trial of *Buck v Bell* in Virginia. Mrs. Dobbs appears to be holding a coin believed to be used as a test for alertness or mental acuity. Vivian appears to be looking elsewhere. It may have been on the strength of this test that Arthur Estabrook concluded that she "showed backwardness."

Whereas, the Commonwealth has in custodial care and is supporting in various State institutions many *defective* (emphasis added) persons who if now discharged or paroled would likely become by the propagation of *their kind* (emphasis added) a *menace* (emphasis added) to society but who if incapable of procreating might properly and safely be discharged or paroled and become self-supporting with benefit to themselves and to society, and

Whereas, human experience has demonstrated that heredity plays an important part in

the transmission of insanity, idiocy, imbecility, epilepsy and crime, now therefore . . .”

The Act then provided that the superintendent of the Western State Hospital (then located in Staunton), or of the Eastern State Hospital (then located in Williamsburg), or of the Southwestern State Hospital (then located in Marion), or of the Central State Hospital (then located in Petersburg), or of the State Colony for Epileptics and Feeble-minded (then located in

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Lynchburg), when he was of the opinion that “*it is in the best interests of the patient and of society* (emphasis added) that any inmate of the institution under his care should be sexually sterilized, such superintendent is hereby authorized to perform, or cause to be performed by some capable physician or surgeon, the operation of sterilization on any such patient confined in such institution afflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeble-mindedness or epilepsy; provided that such superintendent shall have first complied with the requirements of this act.” The Act then set out the process and procedures to be followed in the case.

At its August 6, 1924, meeting, the Special Board of Directors of the Virginia State Colony for Epileptics and Feeble-minded decided that “as a matter of precautionary safety to the Board and the Superintendent, a test case of the constitutionality of the Sterilization Law be made before any operation is performed in cases ordered by the Board, tho (sic) it seemed reasonably clear that the law is constitutional...Therefore... it was ordered that the Superintendent take the matter up with Col. A. E. Strode, who drafted the law and employ him to make up the test case and get a decision from the Court of Appeals (as the Supreme Court of Appeals of Virginia, now the Supreme Court of Virginia, was then commonly called).”

The chosen case was that of Carrie Buck. Heredity was to be a major component of the state’s case — the representation that mother, daughter, and granddaughter were all “feeble-minded.” Carrie Buck and her mother, Emma Harlow Buck, were both inmates of the Virginia

State Colony for Epileptics and Feeble-minded; at the colony, Emma and Carrie had been given the Stanford-Binet Intelligence Scales tests (which had been developed in 1916 at Stanford University by Lewis Terman, a prominent eugenicist and psychologist; typically, the tests took between 45 minutes and two hours to administer). Based upon the results of those tests, Superintendent A.S. Priddy testified at trial that Emma had a mental age of about seven years and eleven months and Carrie had a mental age of nine years. Emma Harlow Buck had been confined to the colony since 1920, when she was 48 years old; she was described as lacking “moral sense and responsibility.” When she was a child, Carrie Buck had been placed in foster care with J. T. Dobbs and Alice Dobbs in Charlottesville. Carrie had attended school to the sixth grade (where she was an average student), and after she no longer attended school, she continued to live with Mr. and Mrs. Dobbs and to keep house for them. When Carrie was 17 years old, she became pregnant, allegedly as a result of her having been raped by a member of her foster parents’ family. Mr. and Mrs. Dobbs had successfully petitioned in the court of The Honorable Charles D. Shackelford, Justice of the Peace and Judge of the Juvenile and Domestic Relations District Court of the City of Charlottesville, to have Carrie committed to the State Colony for Epileptics and Feeble Minded, representing to the court that Carrie was an epileptic and feeble-minded person. Later on in the trial of Carrie’s sterilization appeal in the Amherst County Circuit Court discussed below, one of the witnesses for the superintendent of the colony, Caroline E. Wilhelm, who was a social worker for the Red Cross and secretary for the superintendent of public welfare of Albermarle County, testified on direct examination about Carrie Buck:

“I came to Charlottesville about February of this year (1924), and just before that time the case had been reported to Miss Duke, who was in charge temporarily in the office as Secretary, that *Mr. Dobbs, who had charge of the girl, had reported to Miss Duke that the girl was pregnant and that he wanted to have her committed somewhere — to have her sent to some institution, and wanted Miss Duke to have that brought about.* (emphasis added) The matter was not put through until I was in the office, and officially I brought Carrie Buck over to the Colony at Lynchburg.”

On September 10, 1924, Superintendent A.S. Priddy of the Virginia Colony presented a Sterilization Petition regarding Carrie Buck to

the special board of directors of the colony. R. G. Shelton, guardian for Carrie Buck for purposes of the proceeding, had been appointed by the Circuit Court of Amherst County on July 24, 1924, and service of process and notices had been given in accordance with the Sterilization Act. After the hearing, the special board approved the petition and ordered the sterilization of Carrie Buck.

In accordance with the act, R. G. Shelton, as guardian and next friend for Carrie Buck, appealed the sterilization order to the Circuit Court of Amherst County; he was represented by I. P. Whitehead. The superintendent of the colony was represented by A. E. Strode. Strode wrote a letter, dated September 24, 1924, to H. H. Laughlin of the Eugenics Record Office. The letter, although inquiring about obtaining Laughlin's deposition, reveals what appears to be a collusive plan, stating with a bit too much certainty: "The first trial of the case will probably be in the Circuit Court at Amherst, Va., about the middle of October. Whichever way that court may determine the case, it will be taken to the Supreme Court of Appeals of Virginia. If the Act be sustained by this our highest court, it will then be taken to the Supreme Court of the United States as the Hospital Board is unwilling to proceed under the Act until it shall be sustained by the highest court, which, of course is the Supreme Court of the United States, *because of the alleged rights under the Federal Constitution involved*" (emphasis added). In order to obtain Laughlin's eugenics opinion for the trial in the circuit court, A.S. Priddy, the colony superintendent, provided to H. H. Laughlin of the Eugenics Record Office a statement of facts regarding Carrie Buck and her family history. Under "Family History," the Superintendent stated: "These people belong to the shiftless, ignorant and worthless class of anti-social whites of the South. . . . She has a life-long record of moral delinquency and has borne one illegitimate child, considered feeble-minded . . . this girl comes from a shiftless, ignorant and moving class of people, and it is impossible to get intelligent and satisfactory data. . . ." If ever a statement of facts displayed an animus against a person and a class of people, and on its face admitted that it was not based upon "intelligent and satisfactory data," this statement by Superintendent Priddy did, and its transparency belies the beneficent, paternalistic face presented by the eugenics movement at that time.

The trial transcript in the Circuit Court of Amherst County reveals that Aubrey E. Strode,

attorney for A.S. Priddy, superintendent, and I. P. Whitehead, attorney for Robert Shelton, guardian and next friend of Carrie Buck, agreed that six interrogatories would be propounded to H. H. Laughlin at Cold Spring Harbor, Long Island, New York, the answers to be read in evidence in the trial in the Amherst County Circuit Court. Here are the interrogatories:

"First Interrogatory: Please state your name, residence and occupation."

"Second Interrogatory: Please give a brief outline of your service and experience in connection with the science of eugenics."

"Third Interrogatory: Reciting the facts recently supplied to you by Superintendent A.S. Priddy, of the State Colony for Epileptics and Feeble-minded near Lynchburg, Va., please give a short analysis of the hereditary nature of Carrie Buck, the defendant in this case."

"Fourth Interrogatory: Bearing in mind that this is a proceeding in which may be tested the power of the Commonwealth of Virginia through its Hospital Boards acting under 1924 act of its General Assembly providing for the sterilization of inmates of State institutions in certain cases, approved March 20, 1924 (Acts 1924, page 569), please give in brief outline form the results of scientific investigations tending to show that feeble-mindedness is likely to be transmitted to offspring from a feeble-minded parent. . . ."

"Fifth Interrogatory: In view of your experience, observation and study of the subject, please state the conclusions you have reached as to the beneficial results both to the patient and to soci-

Under "Family History," the Superintendent stated: "These people belong to the shiftless, ignorant and worthless class of anti-social whites of the South. . . ."

ety in general that would be likely to follow from the operations of the Virginia statute in question."

"Sixth Interrogatory: Please give any other information or testimony in regard to the general subject that your interest therein may indicate and which you think might be helpful to the Court in passing upon the questions of public policy and other questions involved in this proceeding."

The deposition of H. H. Laughlin was taken in the County of Nassau, Long Island, New York,



on November 6, 1924, to be read as evidence on behalf of A. S. Priddy, superintendent, in the proceeding in the Circuit Court of Amherst County, Virginia. Laughlin's lengthy deposition (Laughlin himself never had any contact with Carrie Buck or anyone in her family, and he accepted as truth the "facts" provided to him by Superintendent A. S. Priddy, many of which were incorrect,) was entered in evidence without the benefit of any direct or cross-examination. Not surprisingly, Laughlin's deposition stated in part: "Because sexually fertile individuals, who are socially inadequate because of feeble-mindedness or other constitutional defect, cannot obey laws in relation to marriage and reproduction, such persons must be guarded by the state against reproduction — that is, it must be made physically impossible for the inadequates to bear offspring. This may be achieved by either of two means: first, segregation in a modern institution in which the inmate is guarded against sexual intercourse, and second, eugenical sterilization of the particular inadequate. . . . Modern eugenical sterilization is a force for the mitigation of race degeneracy which, if properly used, is safe and effective. I have come to this conclusion after a thorough study of the legal, biological and eugenical aspects, and the practical working out, of all the sterilization laws which have been enacted by the several states up to the present time. . . . I believe that the Virginia statute is, in the main, one of the best laws thus far enacted. . . ." I. P. Whitehead, without argument and citing no grounds, moved to strike the deposition. The motion was denied.

At the trial, A. E. Strode called eleven witnesses, three of whom were expert witnesses (Dr. A. S. Priddy, Dr. Joseph DeJarnette, superintendent of Virginia's Western State Hospital, and Dr. A.H. Estabrook, of the Eugenics Record Office), plus he introduced into evidence the deposition of H. H. Laughlin as an expert witness. The case presented by A. E. Strode was not overwhelming, but it was methodical and was conducted with an appeal in mind. The cross-examination of Strode's witnesses by I. P. Whitehead was certainly underwhelming, did not develop points which would have helped Carrie Buck, and indeed seemed to bolster Strode's case. I. P. Whitehead did not introduce any evidence or call any witnesses. The trial took about five hours. The Circuit Court of Amherst County, by its Judgment Order dated April 13, 1925, among other things: upheld the constitutionality of the Sterilization Act; found that Carrie Buck was "feeble-minded" and a duly committed inmate and

patient of the State Colony for Epileptics and Feeble Minded; found that Emma Buck, the mother of Carrie Buck, was also feeble-minded and an inmate in the same institution; found that Carrie Buck was the mother of an apparently feeble-minded infant; found that Carrie Buck was afflicted by a hereditary form of feeble-mindedness; found that Carrie Buck's welfare and that of society would be promoted by her sterilization; and affirmed the Sterilization Order, dated September 10, 1924, entered by the special board of directors of the State Colony for Epileptics and Feeble Minded. Because J. S. Priddy had died after the Circuit Court Trial and J. H. Bell had been appointed as superintendent in his place, the style of the case going forward would be *Buck v. Bell*.

The Supreme Court of Appeals of Virginia, sitting in Staunton, on November 12, 1925, affirmed the judgment of the Circuit Court of Amherst County (*Buck v. Bell*, 143 Va. 310, 51 A.L.R. 855, 130 S.E. 516 (Va., 1925)).

Carrie Buck's appeal was argued before the United States Supreme Court on April 22, 1927, and was decided on May 2, 1927. Justice Oliver Wendell Holmes Jr. wrote and delivered the opinion of the Court, which affirmed the judgment below by a vote of 8 to 1. Voting with the majority was the tenth Chief Justice of the United States Supreme Court, William Howard Taft, who had been the 27th President of the United States. Justice Holmes, had been wounded in battle three times during the Civil War as a member of Twentieth Regiment of Massachusetts Volunteer Infantry, which had a high casualty rate of men killed and mortally wounded (the echoes of how he was shaped by his wartime experiences are heard in his written opinion). He wrote:

"We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength for lesser sacrifices, often not felt as such by those concerned, in order to prevent our being swamped by incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643, 3 Ann. Cas. 765. Three generations of imbeciles are enough." (*Buck v. Bell*, 274 U.S. 200, 47 S. Ct. 584, 71 L. Ed. 1000 (1927)). To Justice Holmes, the Commonwealth of Virginia's inva-

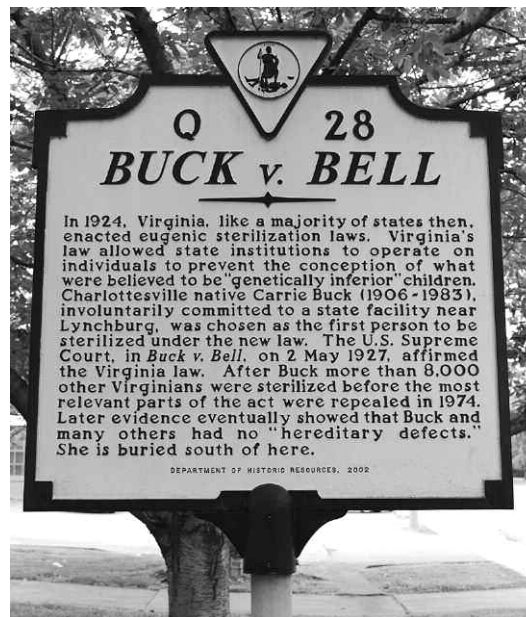
sion of Carrie Buck's body and the cutting of her Fallopian tubes were of little consequence, but to Carrie Buck, a ward of the commonwealth, and to the people of the commonwealth and the United States, they were of major consequence.

A Petition for Rehearing and Argument was filed on behalf of Carrie Buck, and it was denied by the United States Supreme Court by its Order dated October 10, 1927, signed by Chief Justice William Howard Taft.

On October 19, 1927, Carrie Buck was sterilized. John H. Bell, the superintendent of the colony and the surgeon who performed the sterilization on her, wrote in his post-surgical report: "This is the first case operated on under the sterilization law, and the case was carried through the courts of the State and the United States Supreme Court to test the constitutionality of the Virginia law, and an appeal before the Supreme Court for a rehearing was recently denied."

Shortly after her sterilization, Carrie Buck was "furloughed" or "paroled" from the colony and eventually discharged. She married twice, to William Eagle, who predeceased her, and to Charlie Detamore, who survived her. She communicated effectively in her letters to J. H. Bell, the superintendent of the colony about her mother and she was concerned with her mother's well-being. She said that she always wanted to have more children, but she could not. Accounts of her describe her as loving to read and loving to help others.

The late Stephen Jay Gould (1941–2002), noted American paleontologist, evolutionary biologist, and historian of science, wrote an article in the July 1984 issue of *Natural History* magazine. The article was titled "Carrie Buck's Daughter." In it, he described Vivian Alice Elaine Dobbs' (Vivian Buck's) academic performance at the Venable Public Elementary School of Charlottesville, where she was a student for four terms from September 1930 until May 1932. Gould had been provided with Vivian's academic records which showed her to be a normal, well-behaved, average student. Gould wrote: "This offspring of 'lewd and immoral' women excelled in deportment and performed adequately, although not brilliantly, in her academic subjects. In short, we can only agree with the conclusion that Dr. Lombardo* has reached in his research on *Buck v. Bell*—there were no imbeciles, not a one, among the three generations of Bucks. I don't know that such correction of cruel but forgotten errors of history counts for much, but it is at least satisfying to learn that forced eugenic sterilization, a procedure



A historical marker located at 800 Preston Street in front of the Region Ten Community Services Board building in Charlottesville, Virginia, not far from Oakwood Cemetery, which was placed there on May 2, 2002. Photo by Susan V. Brown.

of such dubious morality, earned its official justification (and won its most quoted line of rhetoric) on a patent falsehood."

Emma Buck, mother of Carrie, died at age 71 on April 15, 1944, at the colony, where she had been for 24 years, and where she is buried. Vivian Alice Elaine Dobbs (Vivian Buck), daughter of Carrie Buck and granddaughter of Emma Buck, died of complications from measles on July 3, 1932, at age 8. Shortly before Carrie's death at age 77 on January 28, 1983, Carrie Buck said, "They done me wrong. They done us all wrong." Carrie and Vivian are both buried in Oakwood Cemetery in Charlottesville. Ironically, the website for Oakwood Cemetery says: "Walk slowly through Oakwood, and as you read the gravestones, you can imagine lives long past but well-lived and loved." There is no one of a fourth or later family generation to place flowers on Carrie's and Vivian's graves—because there is no fourth or later family generation. Symbolically, perhaps the closest thing to flowers on their graves is a historical marker located at 800 Preston Street in front of the Region Ten Community Services Board building in Charlottesville, Virginia, not far from Oakwood Cemetery (see photo by Susan V. Brown), which was placed there on May 2, 2002. On that day, Governor Mark Warner issued a statement in which he stated: "Last year, the General Assembly passed a resolution expressing profound regret for the Commonwealth's role in

the eugenics movement. Today, I offer the Commonwealth's sincere apology for Virginia's participation in eugenics. As I have previously noted, the eugenics movement was a shameful effort in which state government should never have been involved." According to the Commonwealth of Virginia's records, 8,300 institutionalized patients were sterilized under the Sterilization Act between 1927 and 1974, when the involuntary sterilization statute was repealed by House Bill 648, 1974 Acts of Assembly, Ch. 296, approved April 2, 1974.

2013 is the 86th anniversary year of the United States Supreme Court's decision in *Buck v. Bell*. The United States Supreme Court's decision in the case has never been overturned. It has been more than a decade since much attention has been paid to *Buck v. Bell*, and it is important for those of us in older generations to remember and for those of us in younger generations to learn and remember its lessons — and there are many lessons to be learned from *Buck v. Bell*. Those who do not learn, who forget, or choose not to remember the past are condemned to repeat it.

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Acknowledgments:

Dr. Paul A. Lombardo, who is currently the Bobby Lee Cook Professor of Law at the Georgia State University College of Law, probably knows more about Carrie Buck, her family, and her case than any person alive today. His scholarly and thoroughly researched book, *Three Generations, No Imbeciles: Eugenics, the Supreme Court and Buck v. Bell*, was published in 2008 by the Johns Hopkins University Press. He interviewed Carrie Buck shortly before her death in 1983 and was one of only a handful of people who were present at her burial. For someone who wishes to understand the case thoroughly, including its international implications, and, in the process to test and to hone one's personal conscience and to weigh in the balance the development of our past, present and future governmental, social, legal, medical, and ethical values, Dr. Lombardo's book is a must-read.

I thank my wife, Susan V. Brown, and my son, Matthew R. O. Brown for their encouragement in my writing of this article. Their patient review, proofreading and suggestions were of immense help to me.