

Declaration of Paul A. Lombardo

I, Paul A. Lombardo, declare under penalty of perjury that the following is true:

1. I am Regents Professor and Bobby Lee Cook Professor of Law at Georgia State University. Among my other work, I have researched and written extensively in the fields of medico-legal history and the history of the American eugenics movement. I have served as historical consultant for several films concerning the eugenics movement, and been featured in several documentaries exploring that subject. My *curriculum vitae*, attached hereto as Exhibit 1, sets forth my professional background, research and publications.

2. In 1988, I published an article in the University of California at Davis Law Review regarding the historical backdrop against which, in 1967, the Supreme Court decided *Loving v. Virginia*, striking down Virginia's prohibition on marriage between whites and non-whites. The article, based largely on correspondence between John Powell, founder of the Anglo-Saxon Clubs of America, and Walter Plecker, Virginia's first director of the Virginia Bureau of Vital Statistics, discusses the origins of Virginia's Racial Integrity Act of 1924. In this article I discuss the role played by Plecker in effectuating the act's purposes with reference to racial identification and the prohibition of inter-racial marriage. A copy of my article, *Miscegenation, Eugenics and Racism: Historical Footnotes to Loving v. Virginia*, 21 U.C. Davis L. Rev. 421 (1988), is attached hereto as Exhibit 2.

3. My 1988 article is cited repeatedly in what may be the foremost book-length study of American miscegenation laws, written by the late Peggy Pascoe: *What Comes Naturally*:

Miscegenation Law and the Making of Race in America (2010). Pascoe's book is recognized as reliable authority in its field. Pages 140-50 (with the attendant footnotes) address Virginia's Racial Integrity Act of 1924. I understand that counsel is making the book available as needed in pending litigation regarding the requirement that applicants for a marriage license in Virginia state their race.


Paul A. Lombardo

Dated: August 3, 2019

July 2019

CURRICULUM VITAE

PAUL A. LOMBARDO

Center for Law, Health and Society
College of Law
Georgia State University
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Atlanta, GA 30302-4037
404 413 9187
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- 2016: ***Regents Professor, Georgia State University***
- 2010: ***Bobby Lee Cook Professor of Law, Georgia State University College of Law***
- 2006-2010 ***Professor of Law, Georgia State University College of Law***
- 2009- ***Associate Faculty, Centre for Bioethics and Culture, Sind Institute of Urology and Transplantation, Karachi, Pakistan***
- 2000-2006 ***Director, Program in Law & Medicine***
Center for Biomedical Ethics, University of Virginia
Associate Professor of Medical Education,
Adjunct Associate Professor, Health Evaluation Sciences & Public Health
Lecturer, School of Law
- 1990-1999 ***Director, Center for Mental Health Law***
Institute for Law, Psychiatry, and Public Policy, University of Virginia
Associate Professor, General Faculty of the School of Law

EDUCATION

University of Virginia, *J.D.*
University of Virginia, *Ph.D.*
Loyola University of Chicago, *M.A.*
Rockhurst College, Kansas City, Missouri, *A.B.*

HONORS AND AWARDS

- 2019 *Three Generations, No Imbeciles: Eugenics, the Supreme Court and Buck v. Bell*
Cited in U.S. Supreme Court opinion:
Kristina Box, Commissioner, Indiana Department of Health, et al. v. Planned Parenthood of Indiana and Kentucky, Inc., et al
(587 U. S. ____ (2019) No. 18–483. May 28, 2019) Justice Thomas, concurring, at 7.
- 2016 Named Regents' Professor by Georgia Board of Regents,
Highest academic honor in the University System of Georgia
- 2011 Elected Member, *American Law Institute*
- 2009 Library of Virginia, Literary Awards, Honorable Mention, Nonfiction
- 2009 Georgia Author of the Year, Creative Nonfiction: History
(For: *Three Generations, No Imbeciles: Eugenics, the Supreme Court and Buck v. Bell*)
- 2009 Georgia State College of Law, Patricia Morgan Outstanding Faculty Scholarship Award

Offices/Consultancies/Significant Activities

- 2019 RadioLab (NPR Podcast)
“G: Eugenic Sterilization”
Featured Interview, released July 17, 2019
- 2018 PBS *The American Experience: “The Eugenics Crusade”*
Featured Commentator, Historical Consultant
October 16, 2018
- 2018-2020 American Association for the History of Medicine
Chair, Nominating Committee
- 2018 Hidden Brain (NPR Podcast)
“Emma, Carrie, Vivian: How A Family Became A Test Case For Forced Sterilizations”
Featured Interview, released April 23, 2018; repeated February 22, 2019
- 2017 New York Academy of Medicine,
Selection Committee:
Helfand Fellowship in the History of Medicine and Public Health
Klemperer Fellowship in the History of Medicine
- 2016-2018 American Association for Bioethics and the Humanities
Chair, Nominating Committee

- 2016-2018 The Eugenic Rubicon
University of Michigan NEH Grant: "Digital Histories of Eugenic Sterilization: Developing a Multi-Modal Prototype and Best Practices for Sensitive Health Data."
Advisory Board Member
- 2016-2019 The Hastings Center
Grant: National Human Genome Research Institute (NIH)
"Goals and Practices for Next Generation Prenatal Testing"
Working Group Member
- 2015-2018 American Association for the History Medicine
Council (Board of Directors)
- 2015 Lowe v. Atlas, Expert Testimony (2015 WL 2083822, landmark federal genetic discrimination case)
- 2014 Law & Justice
A Three Part Documentary made for Korean Educational Broadcasting System, Seoul, South Korea
Historical Consultant and Interview Subject for Part 1:
"Whose Side is the Law On?" First Broadcast: May 2014
- 2012 Hygiene Raciale: [Racial Hygiene]
A Documentary on International Eugenics made for French National TV
Historical Consultant and Interview Subject
First Broadcast: November 30, 2012
- 2012-15 American Association for Bioethics and the Humanities
Member, Board of Directors & Chair, Governance Committee
- 2010-2016 Presidential Commission for the Study of Bioethical Issues
Washington, DC
Senior Advisor
- 2010-2015 Living Archives on Eugenics in Western Canada, funded by Social Sciences and Humanities Research Council of Canada. Team member (legal/historical consultant) University of Alberta, Edmonton
- 2010-2011 National Institutes of Health, National Library of Medicine Peer Review Committee
- 2009 National Institutes of Health, *ad hoc* member, Study Section on the Ethical, Legal and Social Implications of Genetic Research

- 2009-11 American Association of Law Schools
Executive Board, Section on Law, Medicine and Health Care

- 2009-12 American Society of Bioethics and Humanities
Nominating Committee, Elected Member and Chair (2009-2010),

- 2008-2015 Emory University, Rollins School of Public Health
Centers for Disease Control, Preparedness and Emergency Response Research
Advisory Committee

- 2008-2012 Georgia Institute of Technology
“Ethically Contentious Research and Innovation”
Advisory Council, National Science Foundation Grant

- 2005-6 *The Golden Door/ Il Nuovo Mondo* (feature film, Scorsese/Miramax, 2007)
Italy/US Historical Consultant

- 2006-8 National Institutes of Health, Grant: Ethical Legal and Social Implications of
Genetic Research: History of State and Local Eugenic Practices in the United
States, Indiana University Center for Bioethics, Co-Principle Investigator

- 2006-7 United States Memorial Holocaust Museum
Traveling Exhibit *Deadly Medicine: Creating the Master Race*
Advisory Panel

- 2005-7 National Institute of Environmental Health Sciences
National Twin Registry Feasibility Study, Member, Expert Advisory Panel; Chair,
Ethical, Legal, Social Issues Committee; Ethics/Law Consultant

- 2005 National Heart, Lung and Blood Institute, Working Group on Refinement of
Hemoglobin Gene Transfer Vectors and Approaches for Clinical Application to
Sickle Cell Disease and Cooley’s Anemia

- 2004 National Institute of Mental Health, Special Emphasis Panel, Brain Imaging and
Neuroethics

- 2004-7 United States Memorial Holocaust Museum, Washington, DC
Contributor and Consultant
Exhibit, “Deadly Medicine: Creating the Master Race”

- 2004-9 Shanghai Health Study, Ethics Review Panel [Fudan University, Shanghai
Republic of China & University of Colorado]

- 2003 Public Broadcasting System Historical Consultant for
Race: The Power of an Illusion Part I, “The Difference between Us”

- 2002-7 National Library of Medicine Review Panel for Grants for Scholarly Works
- 2002-3 Institute of Medicine
Member, Committee to Study the Need for Clinical Trials of Testosterone Replacement Therapy
- 2002-6 National Institute of Dental and Craniofacial Research,
Clinical Trial Special Emphasis Panel
- 2002 National Human Research Protection Advisory Committee,
Workgroup on Informed Consent and the Decisionally Impaired
- 2001-6 U.S. Department of Energy, Central Beryllium Institutional Review Board,
Oak Ridge, Tennessee
- 2001 National Institute for Drug Abuse Special Emphasis Panel
- 1999-
2003 DNA Learning Center, Cold Spring Harbor (NY) Laboratory
Digital Archive of the History of Eugenics
Historians Work Group, Editorial Advisory Panel
- 1998 National Institutes of Health/Centers for Disease Control
Special Emphasis Panel—Research Ethics
- 1994-6 National Institutes of Health, National Human Genome Research Institute
Grant # R25 HG009111 "Preparing for the New Genetics: Education of Professionals" Co-Principal Investigator
- 1993-4 Consultant and featured commentator, *The Lynchburg Story* (Worldwide Broadcast, Discovery Network)

Selected Invited Lectures and Conference Presentations

AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS

Health Law Professors Conference

Presentation: "The Politics of Eugenics: The Lawmakers Who Wrote Sterilization Laws"

Chicago, Illinois

June 8, 2019

NATIONAL CONSTITUTION CENTER,

America's Town Hall

Screening & Commentary "A Dangerous Idea: The History of Eugenics in America"

Philadelphia, Pennsylvania

May 2, 2019

WAKE FOREST UNIVERSITY
Center for Bioethics, Health & Society
Beyond our Beginnings: 50 Years of Bioethics
“On Eugenics, Old and New”
Winston Salem, North Carolina
April 5, 2019

UNIVERSITY OF GEORGIA/AUGUSTA UNIVERSITY MEDICAL PARTNERSHIP
Dr. & Mrs. Lonnie Herzog Endowed Lecture
"The Well Born Science: Assessing the Legacy of Eugenics in America."
Athens, Georgia
March 20, 2019

UNIVERSITY OF PENNSYLVANIA
Department of Medical Ethics and Health Policy
Film Panel: *No Mas Bebes*
Philadelphia, Pennsylvania
March 11, 2019

AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES
“The Politics of Eugenics: The Lawmakers Who Wrote Sterilization Laws”
“Legal Developments in Bioethics”
Los Angeles, California
October 19 & 20, 2018

UNIVERSITY OF BRISTOL/WELLCOME TRUST
Alcoholism, Stigma, and Disability Symposium
“Soaking the Germ Plasm in Alcohol”: Racial Poisons, Eugenics, and the Campaign for Prohibition”
Bristol, England
September 14, 2018

AMERICAN SOCIETY OF LAW MEDICINE & ETHICS
Health Law Professors Conference
“How the Women’s Christian Temperance Union Joined Eugenic Reformers to Pass Prohibition”
Cleveland, Ohio
June 7, 2018

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE
“ ‘The Great Experiment in Eugenics’: Caleb Saleeby, Racial Poisons, and the American Campaign for Prohibition”
Los Angeles, California
May 12, 2018

GEORGIA STATE UNIVERSITY

The Post-Obama Ethos International Interdisciplinary Symposium

“Racialized Immigration Restriction”

March 23, 2018

WAKE FOREST UNIVERSITY SCHOOL OF LAW

Guest Lecture-WebX, *Disability and Discrimination* (course)

“Three Generations, No Imbeciles: Exploring the Eugenics Movement in America”

February 27, 2018

SINDH INSTITUTE FOR MEDICAL SCIENCES, KARACHI, PAKISTAN

Center for Bioethics and Culture

Visiting Professor, Masters Program in Bioethics (MBE)

Seminar in Law, Medicine and Contemporary Bioethics

January 26-31, 2018

HOFSTRA UNIVERSITY

“Buck v. Bell: Discussing a History of Injustice”

Hempstead, Long Island

October 26, 2017

AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES

“Advertising Eugenics: Selling America on Health, Heredity and Happy Babies”

“Legal Developments in Bioethics”

Kansas City, Missouri

October 20 & 21, 2017

ST. PETER’S UNIVERSITY

1st Annual Michael Filosa Memorial Bioethics Lecture

Looking Back at Eugenics: Buck v. Bell & the Sterilization Movement

Jersey City, New Jersey

October 12, 2017

UNIVERSITY OF VIRGINIA

Center for Biomedical Ethics

Symposium: John Arras, *Methods in Bioethics: The Way we Reason Now*

“John Arras: Teacher, Colleague, Contributor to Public Policy”

Charlottesville, Virginia

September 23, 2017

HASTINGS CENTER

NIH Grant Working Group: “Goals and Practices for Next Generation Prenatal Testing”

Garrison New York

May 16, 2017

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE

“Advertising Eugenics: Selling America on Health, Heredity and Happy Babies”

Nashville, Tennessee

May 6, 2017

UNIVERSITY OF CALIFORNIA, IRVINE

Bill and Sue Gross Stem Cell Research Center Spring Seminar

UC Irvine Medical Humanities Initiative

“A Troubling Legacy: Eugenic Boundaries on Reproduction”

Irvine, California

April 21, 2017

UNIVERSITY OF VIRGINIA HEALTH SCIENCES CENTER

Joan Echtenkamp Klein Memorial Lecture in the History of the Health Sciences

“The Continuing Relevance of America’s Eugenic Legacy”

Charlottesville, Virginia

March 29, 2017

STATE UNIVERSITY OF NEW YORK, DOWNSTATE MEDICAL CENTER

Program in Bioethics

Grand Rounds: ““From Pycographs to FMRI: Historical Context for the Claims of Neuroscience”

Brooklyn, New York

February 7, 2017

HAVERFORD COLLEGE

Symposium on Scientific Ethics

“The Ethics of Genomic Medicine”

Haverford, Pennsylvania

October 22, 2016

AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES

“Eugenics at the Movies: Abortion and Birth Control in *Where Are My Children?*”

Legal Update Panel

Washington, DC

October 6 & 7, 2016

THIS WEEK IN HEALTH LAW (PODCAST)

twihl.com

September 28, 2016

UNIVERSITY OF MICHIGAN

Center for Bioethics and Social Sciences in Medicine

"From Pycographs to FMRI: Historical Context for the Claims of Neuroscience"

Ann Arbor, Michigan

September 22, 2016

GEORGIA ARCHIVES

Symposium: Public Health in Georgia

“From Better Babies to the Bunglers: Georgia Eugenics on Tobacco Road”

Morrow, Georgia

September 16, 2016

HASTINGS CENTER

NIH Grant Working Group: “Goals and Practices for Next Generation Prenatal Testing”

“Confronting Reproductive Technologies: History, Rhetoric and the Spectre of Eugenics”

Garrison, New York

June 9, 2016

AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS

Health Law Professors Conference

Panel: “State of the Data: Assessing the Appropriate Legal and Ethical Divide between Biospecimens and Derived Data”

Presentation: “Eugenics at the Movies: Abortion and Birth Control in *Where Are My Children?*”

Boston, Massachusetts

June 4, 2016

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE

“Eugenics at the Movies: Abortion and Birth Control in *Where Are My Children?* (1916)”

Minneapolis, Minnesota

April 30, 2016

SINDH INSTITUTE FOR MEDICAL SCIENCES, KARACHI, PAKISTAN

Center for Bioethics and Culture

Visiting Professor, Masters Program in Bioethics (MBE)

Seminar in Law, Medicine and Contemporary Bioethics

January 15-22, 2016

AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES, HOUSTON, TX.

Panel: Presidential Commission on the Study of Bioethical Issues--Update: “Ethics and Ebola”

Panel: “Legal Developments in Bioethics”

October 22 & 24, 2015

LETHBRIDGE UNIVERSITY, ALBERTA, CANADA

Global Conference: Controlling Sexuality and Reproduction, Past and Present

Keynote Address: “ ‘The Knife Remedy,’ Eugenic Boundaries on Reproduction”

August 12, 2015

INTERNATIONAL ACADEMY OF LAW AND MENTAL HEALTH

“From Pycographs to FMRI: Historical Context for the Claims of Neuroscience”

Vienna, Austria

July 15, 2015

AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS
Health Law Professors Conference
“Bioethics Update”
St. Louis, Missouri
June 6, 2015

HARVARD UNIVERSITY, CAMBRIDGE, MA
School of Law: Baby Markets: Legal Issues concerning Artificial Reproductive Technologies
Invited Respondent: “Social Infertility and the Quest for Parenthood”
May 1, 2015

NEW YORK UNIVERSITY, NEW YORK CITY
Asian/Pacific/American Institute
“A Eugenic (Un)Haunting”
November 20, 2014

COLUMBIA UNIVERSITY, NEW YORK CITY
University Seminar on Disability Studies
“Eugenics and Disability: A Troublesome History”
October 23, 2014

STATE UNIVERSITY OF NEW YORK, DOWNSTATE MEDICAL CENTER, BROOKLYN
Department of Psychiatry
Grand Rounds: “Law, Mental Health and Eugenics: The Legacy of *Buck v. Bell*”
October 22, 2014

AMERICAN SOCIETY FOR BIOETHICS AND THE HUMANITIES
“Crime, Eugenics and the Hillbilly Homicide of 1936”
San Diego, California
October 18, 2014

AMERICAN SOCIETY FOR BIOETHICS AND THE HUMANITIES
History of Medical Ethics Affinity Group
“*Schloendorff* at 100: An Anniversary, but Not a Celebration”
San Diego, California
October 17, 2014

NORTH CAROLINA STATE UNIVERSITY, RALEIGH, NC
Symposium: Intersections of Genetics and Society”
Keynote: “Eugenics: Past and Future”
September 19, 2014

MEDICAL COLLEGE OF WISCONSIN, MILWAUKEE
Symposium: *The Schloendorff Century*
Keynote Address: “Schloendorff at 100: An Anniversary, but not a Celebration”
June 10, 2014

AMERICAN SOCIETY OF LAW MEDICINE & ETHICS
Health Law Professors Conference
“Bioethics Update”
San Francisco, California
June 7, 2014

YALE UNIVERSITY, NEW HAVEN, CT
School of Law Workshop: *Intersections in Reproduction*
“The Doctors’ Dilemma: Legal and Medical Paternalism in Historical Context”
April 17, 2014

CORNELL UNIVERSITY, NEW YORK CITY
Weill Medical College Heberden Society Lecture
“‘The Craze for Legal Proceedings’: *Schloendorff v. New York Hospital*, 1914”
April 10, 2014

STATE UNIVERSITY OF NEW YORK, DOWNSTATE MEDICAL CENTER, BROOKLYN
Division of Humanities in Medicine
“Looking Back at Eugenics: *Buck v. Bell* & the Sterilization Movement”
April 9, 2014

UNIVERSITY OF UTAH, SALT LAKE
College of Law Symposium: The Untold Story of Ethics and Modern Eugenics
“Sex, Money and Moral Imagination: From *Smith v. Williams* to *Stump v. Sparkman*”
February 28, 2014

UNIVERSITY OF ALABAMA, BIRMINGHAM
35th Annual Reynolds Historical Lecture
“America’s Eugenic Legacy: “A Peculiar and Lasting Appeal”
February 14, 2014

SINDH INSTITUTE FOR UROLOGY AND TRANSPLANTATION, KARACHI, PAKISTAN
Visiting Professor, Center for Bioethics and Culture
Seminar in Law, Medicine and Contemporary Bioethics
January 27-31, 2014

PRESIDENTIAL COMMISSION FOR THE STUDY OF BIOETHICAL ISSUES
Staff Seminar: Biweekly Bioethics
“Neuroscience: Uses and Abuses in Historical Context”
Washington, DC
January 17, 2014

FLORIDA ATLANTIC UNIVERSITY, BOCA RATON
Center for Holocaust and Human Rights Education
“From the Supreme Court to Nuremberg: The Legacy of American Eugenics”
December 11, 2013

GRADY MEMORIAL HOSPITAL, ATLANTA
Grand Rounds
“Legal Update on Bioethics”
December 5, 2013

GEORGIA STATE UNIVERSITY, ATLANTA
School of Public Health, Grand Rounds
“The Historical Legacy of Public Health and Eugenics”
November 12, 2013

INTERNATIONAL ACADEMY OF LAW AND MENTAL HEALTH
“Mental Degeneracy, Eugenics and the Honeymoon Homicide of 1936”
Amsterdam, Netherlands
July 16, 2013

AMERICAN SOCIETY OF LAW MEDICINE & ETHICS
Health Law Professors Conference: “Bioethics Update”
Newark, New Jersey
June 7, 2013

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE
“Crime, Eugenics and the Honeymoon Homicide of 1936”
Atlanta, Georgia
May 18, 2013

UNIVERSITY OF PENNSYLVANIA, PHILADELPHIA
Department of the History and Sociology of Science
Ruth Cowan Festschrift Symposium
“Crime, Eugenics and the Honeymoon Homicide of 1936”
May 3, 2013

UNIVERSITY OF WASHINGTON, SEATTLE
School of Medicine, Department of Bioethics and Humanities
“Return of the Jukes: Eugenic Mythologies and Internet Evangelism”
February 28, 2013

UNIVERSITY OF WASHINGTON, SEATTLE
School of Law Faculty Colloquium: “Deny and Defend: *Schloendorff* as a Model for 20th
Century Medical Malpractice Strategy”
February 28, 2013

UNIVERSITY OF WASHINGTON, SEATTLE
School of Public Health, Institute for Public Health Genomics
“Genetics, Eugenics and Public Health”
February 27, 2013

PUBLIC RESPONSIBILITY IN MEDICINE AND RESEARCH, ANNUAL MEETING
“Creating Educational Materials for Ethics Education”
San Diego, California
December 5, 2012

SCIENCE IN SOCIETY-- FOURTH INTERNATIONAL CONFERENCE
Keynote Address: “Ethically Impossible: The Public Health Service/Guatemala STD Studies in Context”
Berkeley, California
November 16, 2012

AMERICAN SOCIETY FOR BIOETHICS AND THE HUMANITIES
“How to Keep Well: W.A. Evans and the Invention of Medical Journalism”
Washington, DC
October 20, 2012

AMERICAN SOCIETY FOR BIOETHICS AND THE HUMANITIES
“Responsible Stewardship: The Role of National Commissions in Shaping the Public Discourse of Bioethics”
Washington, DC
October 19, 2012

SOCIETY OF AMERICAN ARCHIVISTS
Plenary: *From Hidden Collection to International Incident: The John Cutler Papers and the Guatemala Syphilis Experiment*: “What Did Doctor Cutler Know and When Did He Know it?”
San Diego, California
August 8, 2012

AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS
Health Law Professors Conference
“Ethically Impossible” The Public Health Service/Guatemala STD Studies in Context”
Phoenix, Arizona
June 9, 2012

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE
“Public Health in a Time of War: Contagion, Quarantine, and the Peril of “Dago Yellow Fever”
Baltimore, Maryland
April 28, 2012

AMERICAN STD ASSOCIATION
“In Historical Context: The PHS/Guatemala Studies, 1946-1948”
Minneapolis, Minnesota
March 15, 2012

CENTERS FOR DISEASE CONTROL AND PREVENTION, ATLANTA, GA
Office of the Associate Director for Science/ CDC Public Health Ethics Committee
“From Ethically Impossible to Moral Science: Avoiding Disaster in Research Ethics”
March 2, 2012

UNIVERSITY OF MICHIGAN, ANN ARBOR
Health Sciences Library Exhibit: Deadly Medicine: Creating the Master Race
Victor Vaughn Society Seminar, and Keynote Address
“The Legacy of American Eugenics: *Buck v. Bell* in the Supreme Court”
February 9, 2012

SINDH INSTITUTE FOR MEDICAL SCIENCES, KARACHI, PAKISTAN
Center for Bioethics and Culture
Visiting Professor, Masters Program in Bioethics (MBE)
Seminar in Law, Medicine and Contemporary Bioethics
January 16-21, 2012

STATE UNIVERSITY OF NEW YORK, DOWNSTATE MEDICAL CENTER, BROOKLYN
Medical Grand Rounds
“Understanding the PHS/Guatemala STD Study: What Did Doctor Cutler Know and When Did He Know it?”
Division of Infectious Disease Seminar
“Tuskegee and Guatemala: Lessons for Working with Vulnerable Populations”
December 1, 2011

AMERICAN PUBLIC HEALTH ASSOCIATION
“The PHS/Guatemala STD Study (1946-1948): Five Lingering Questions”
“Thirty Years after *Bad Blood*: Evaluating the Legacy”
Washington, DC
October 29, 2011

TEXAS TECH UNIVERSITY MUSEUM, LUBBOCK
“The Legacy of American Eugenics: *Buck v. Bell* in the Supreme Court”
June 23, 2011

AMERICAN SOCIETY OF LAW, MEDICINE AND ETHICS
Health Law Professors Conference
“Contagion, Quarantine, and the Peril of “Dago Yellow Fever””
Austin, Texas
June 10, 2011

UNIVERSITY OF CALIFORNIA, DAVIS, SACRAMENTO
Mind Institute
“Disability, Discrimination and America’s Eugenic Legacy”
May 20, 2011

UNIVERSITY OF CALIFORNIA, DAVIS, SACRAMENTO

Medical Center

Distinguished Lecturer in Bioethics

"Three Generations, No Imbeciles: Eugenics, the Supreme Court and *Buck v. Bell*"

May 19, 2011

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE

"How to Keep Well: W. A. Evans and the Invention of Medical Journalism"

Philadelphia, Pennsylvania

April 30, 2011

HARVARD UNIVERSITY, BOSTON, MA

Countway Library, *Ackerman Symposium on Medicine & Culture*

Genetic Determinism Then and Now: Confronting the Legacy of Eugenics

"The One Sure Cure: Eugenics, the Supreme Court and Buck v. Bell"

April 27, 2011

SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW & MEDICINE, CARBONDALE/SPRINGFIELD

John and Marsha Ryan Bioethicist in Residence

Public Lecture (Carbondale) & Medical Grand Rounds (Springfield):

"Blood Libel and Generational Curses: The Legacy of American Eugenics"

Joint Hospital Ethics Committee (Carbondale) & Memorial Medical Center Ethics Committee (Springfield): *"Genetic Challenges and Ethical Puzzles: Playing the Eugenics Card"*

April 6, 7, 8, 2011

MERCER UNIVERSITY SCHOOL OF MEDICINE/HOSPICE SAVANNAH

Visiting Professor/Scholar in Residence

"Law at the End of Life: What we have learned from Quinlan to Schiavo"

"Eugenical Sterilization in the United States: From the Supreme Court to Tobacco Road"

January 27- 28, 2011

AMERICAN SOCIETY FOR BIOETHICS AND HUMANITIES

"Saying No to Abortion in India: Autonomous Choice for the Developmentally Disabled or the Shadow World of Reproductive Tourism?"

"Thomas Jefferson's DNA: Evolving Standards of Consent for Genetic Research"

San Diego, California

October 24, 2010

PUBLIC HEALTH LAW ASSOCIATION NATIONAL CONFERENCE

"Genetic Screening and the Mission of Public Health:

Understanding the History of Eugenics"

Atlanta, Ga.

September 14, 2010

AMERICAN SOCIETY OF LAW, MEDICINE AND ETHICS, HEALTH LAW PROFESSORS CONFERENCE
“Saying No to Abortion in India: Autonomous Choice for the Developmentally Disabled or the Shadow World of Reproductive Tourism?”

Austin, Texas

June 5, 2010

UNIVERSITY OF ALBERTA, EDMONTON

Medical Grand Rounds

“Looking Back at a Century of Eugenics: Social Problems, Scientific Solutions”

March 26, 2010

Department of Genetics Grand Rounds

“Thomas Jefferson’s DNA: Evolving Standards of Consent for Genetic Research”

March 26, 2010

Keynote Address, Medical History Day:

“Three Generations, No Imbeciles: American Eugenics and the Carrie Buck Case”

March 27, 2010

SINDH INSTITUTE FOR MEDICAL SCIENCES, KARACHI, PAKISTAN

Center for Bioethics and Culture

Visiting Professor, Masters Program in Bioethics (MBE)

Seminar in Law, Medicine and Contemporary Bioethics

November 9-13, 2009

NORTH CAROLINA STATE UNIVERSITY, RALEIGH, NC

Graduate School, Responsible Conduct of Research Series

“Looking at Science with the Mirror of History: From Eugenics to the Human Genome”

October 27, 2009

UNIVERSITY OF SASKATCHEWAN, SASKATOON

Department of History Symposium:

Situating Science: Human Experimentation, 1715-1972

“The Other Tuskegee Study: Eugenic Anthropometry at the Institute, 1932-1944”

October 23, 2009

EMORY UNIVERSITY, ATLANTA, GA

Future of Russia Project

“Conflict Resolution: Some U.S. Examples”

October 21, 2009

WASHINGTON AND LEE UNIVERSITY, LEXINGTON, VA

School of Law

“Buck v. Bell and Virginia Eugenics”

September 2, 2009

INTERNATIONAL ACADEMY OF LAW AND MENTAL HEALTH
“The Rise of the Preventive State: Historical Foundations”
New York, N.Y.
June 28, 2009

AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS
Health Law Professors Conference
“Taking the Footnotes Online”
Cleveland, OH
June 6, 2009

I.M. SECHENOV MOSCOW (RUSSIA) MEDICAL ACADEMY
Bioethics Symposium
“Reproductive Ethics” “Ethics of Scientific Research”
May 11-12, 2009

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE
“When Harvard Said No to Eugenics: the J. Ewing Mears Bequest”
Cleveland, Ohio
April 24, 2009

UNIVERSITY OF MINNESOTA, MINNEAPOLIS
School of Law Symposium
Contested Contours in Assisted Reproduction: Interrogating Law, Race, Class & Sex
“Confronting ART: History, Rhetoric, and the Spectre of Eugenics”
April 10, 2009

UNIVERSITY OF MINNESOTA, MINNEAPOLIS
Center for Bioethics
"Three Generations, No Imbeciles: The Uses and Abuses of Eugenic History"
April 10, 2009

WILLIAM MITCHELL COLLEGE OF LAW, MINNEAPOLIS
"Three Generations, No Imbeciles: the Case of *Buck v. Bell*"
April 9, 2009

HAMLIN UNIVERSITY LAW SCHOOL, ST. PAUL, MN
“Three Generations, No Imbeciles: The Uses and Abuses of Eugenic History”
March 4, 2009

UNIVERSITY OF MARYLAND, COLLEGE PARK
Center for Educational Policy and Leadership
"Gender, Science, and the Legalization of Forced Human Sterilization: The Case of *Buck v. Bell*"
March 26, 2009

PONTIFICIA ACADEMIA PRO VITA INTERNATIONAL CONGRESS

The New Frontiers of Genetics and the Risk of Eugenics

"The Concept and the Practice of Eugenics: Historical Development up to Modern Times"

Vatican City, Italy

February 20, 2009

CENTERS FOR DISEASE CONTROL, ATLANTA

Center for Global Health

"*Buck v. Bell* and American Eugenics"

January 16, 2009

AMERICAN SOCIETY FOR BIOETHICS AND HUMANITIES

"When Harvard Said No to Eugenics"

Cleveland, OH

October 25, 2008

CASE WESTERN UNIVERSITY, CLEVELAND, OH

Center for Genetics Research, Ethics and Law

Conference: Translating ELSI: Ethical Legal and Social Implications of Genomics

"Thomas Jefferson's DNA: Evolving Standards of Consent for Genetic Research"

May 1, 2008

THE CLEVELAND CLINIC, CLEVELAND, OH

Symposium: Ethical Issues surrounding Innovative Surgery

"Outside the OR-Economic, Regulatory and Legal Challenges"

May 8, 2008

ST. LOUIS UNIVERSITY, ST. LOUIS, MO

School of Law Health Law Symposium: Disability, Reproduction & Parenting

"Eugenics, History and the Culture Wars: Sterilization and Reproductive Rights"

April 4, 2008

AMERICAN ASSOCIATION OF THE HISTORY OF MEDICINE

"The Aiken Leper Case, 1908"

Rochester, NY

April 11, 2008

AMERICAN PUBLIC HEALTH ASSOCIATION

"Policing Reproduction: Looking Back at *Buck v. Bell*"

Washington, DC

November 5, 2007

AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES

"100 Years of Eugenics: From the 'Indiana Experiment to the Human Genome Project'"

Washington, DC

October 19, 2007

AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS
“Eugenic Centennial: Reproductive Rights and the Legacy of Sterilization”
Boston, MA
June 2, 2007

HOWARD UNIVERSITY, WASHINGTON, DC
School of Law Guest Lecture
“No Lifeguards at the Gene Pool? Genomes, Eugenics and the Mirror of History”
March 27, 2007

INDIANA SUPREME COURT, INDIANAPOLIS
Centennial Commemoration of Eugenics in Indiana
“Three Generations of Imbeciles Are Enough: Reflections on 100 Years of Eugenics in Indiana”
April 11, 2007

NORTHWESTERN UNIVERSITY, CHICAGO, IL
School of Law, American Constitution Society
“Eugenic Centennial: *Buck v. Bell* and the Future of Reproductive Freedom”
April 5, 2007

AMERICAN BAR ASSOCIATION
Section on Health Law
“Historical Reflections on the Uses and Abuses of Genetics”
Orlando, FL
February 23, 2007

GEORGIA INSTITUTE OF TECHNOLOGY, ATLANTA
Biotechnology Policy Forum
“The Genome, Eugenics and the Mirror of History”
February 13, 2007

CENTER FOR BIOTECHNOLOGY AND THE HUMAN FUTURE
National Press Club Conference: *Doing Bioethics in the Shadow of Auschwitz*
Keynote Address: “The History of Eugenics”
Washington, DC
December 10, 2006

PUBLIC HEALTH LAW ASSOCIATION
“A Troubling History: Apologizing for Eugenic Legislation”
Atlanta, Ga.
June 14, 2006

MASSACHUSETTS INSTITUTE OF TECHNOLOGY, CAMBRIDGE, MA.
Conference: *Race, Pharmaceuticals and Medical Technology*
“Mongrel Nation: Race, Genetics and the Law”
April 8, 2006

UNIVERSITY OF PENNSYLVANIA, PHILADELPHIA
Center for Bioethics, *The Emanuel and Robert Hart Lecture Series*
“Mongrel Nation: Race, Genetics and the Law”
March 22, 2006

HAVERFORD COLLEGE, HAVERFORD, PA
Distinguished Visitor Lecture
“Mongrel Nation: Race, Genetics and the Law”
March 21, 2006

SOUTHERN MEDICAL ASSOCIATION
“Ethical Issues Concerning End of Life Care” “Ethical Issues Surrounding Stem Cell Research”
Washington, DC
March 13, 2006

UNIVERSITY OF INDIANA, BLOOMINGTON
Center for the History of Medicine
“Eugenical Experts in Absentia: Evidence Gone Missing in *Buck v. Bell*”
February 24, 2006

AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES
““Measuring the Negroes” Eugenic Anthropometry at the Tuskegee Institute, 1932-1944”
Washington DC
October 23, 2005.

CALIFORNIA STATE UNIVERSITY, SACRAMENTO
Library Exhibit: *Human Plants, Human Harvest: The Hidden History of California Eugenics*
Keynote Address: “Pruning Human Weeds: The Legacy of California Eugenics”
October 4, 2005

AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS
Health Law Teachers Conference
“Talking in Pictures: Finding the Medium to Deliver the Message”
Houston, Texas
June 3, 2005

WASHINGTON AND LEE UNIVERSITY, LEXINGTON, VA.
28th Annual Medical Ethics Institute
Keynote Address “The One Sure Cure: Eugenics, the Supreme Court, and *Buck v. Bell*”
May 13, 2005

NORTHWESTERN UNIVERSITY, CHICAGO IL.
Silverstein Lectures, Center for Genetic Medicine
“Mongrel Nation: Race, Genetics & the Law”
May 9 & 10, 2005

CONVERSE COLLEGE, SPARTANBURG, SC

Ideas and Culture Series

“Sins of the Mothers: *Buck v. Bell* & Eugenic Sterilization”

May 4, 2005

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE

““Measuring the Negroes” Eugenic Anthropometry at the Tuskegee Institute, 1932-1944”

Birmingham, AL.

April 8, 2005

QUEENS UNIVERSITY, KINGSTON, ONTARIO

School of Law, *Willis Cunningham Memorial Lecture*

“Sins of the Mothers: *Buck v. Bell* & Eugenic Sterilization”

March 10, 2005

AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES

“Tracking the ‘Mongoloid’ Chromosome: Theophilus Painter & Eugenic Research”

Philadelphia, PA

October 31, 2004

SINDH INSTITUTE FOR UROLOGY AND TRANSPLANT, KARACHI, PAKISTAN

Centre for Biomedical Ethics and Culture

Inaugural Lecture

“Origin and Evolution of Eugenics in the US and its Impact on Modern Genetic Research”

October 9, 2004

AGA KHAN UNIVERSITY, KARACHI, PAKISTAN

2nd Annual Symposium on Clinical Ethics

“Ethical Parameters for a Health Care Institution”; “Controversies over End of Life Issues”

October 7, 2004

WASHINGTON UNIVERSITY, ST. LOUIS, MO

Department of Biology Seminar

“Sins of the Mothers: *Buck v. Bell* and Eugenic Sterilization”

September 13, 2004

UNIVERSITY OF COLORADO, ASPEN

Center for Bioethics Symposium: *Genetics and Ethics in the 21st Century: Genetics and Race*

“A Nation of Mongrels: Race, Genetics and the Law”

July 24, 2004

COLD SPRING HARBOR LABORATORY, COLD SPRING HARBOR, NY

Symposium: *Eugenics, Genes and Human Behavior*

“Sterilization in the United States”

October 15, 2003

UNIVERSITY OF MICHIGAN, ANN ARBOR
Science, Technology and Society Colloquium
"Apologizing for Eugenics: RSVP, Regrets Only"
September 15, 2003

VIRGINIA HISTORICAL SOCIETY, RICHMOND
Banner Lecture
"Three Generations, No Imbeciles: *Buck v. Bell* and Virginia Eugenics"
September 4, 2003

STATE UNIVERSITY OF NEW YORK, DOWNSTATE MEDICAL CENTER, BROOKLYN
Division of Humanities in Medicine
"Lifeguards at the Gene Pool"
May 7, 2003

NEW YORK ACADEMY OF MEDICINE, NEW YORK
Liliana Sauter Lecture
"Better for All the World: Eugenics, the Supreme Court and *Buck v. Bell*"
May 6, 2003

DUKE UNIVERSITY, DURHAM, NC
Program in Medicine and Society
"Explaining Tuskegee: Eugenics, Public Health and Medical Education"
April 28, 2003

CALIFORNIA STATE UNIVERSITY, SACRAMENTO
California History Program: "Lifeguards at the Gene Pool"
March 11, 2003

SENATE, STATE OF CALIFORNIA
Select Committee on Genetics and Public Policy,
"Eugenics: Lessons from a History Hiding in Plain Sight"
Sacramento, CA
March 11, 2003

SUSQUEHANNA UNIVERSITY, SELINGSGROVE, PA
Degenstein Foundation Lecture
"Lifeguards at the Gene Pool"
November 18, 2002

PHI THETA KAPPA HONOR SOCIETY
Satellite Seminar: "The Genetic Dimension to Health"
Jackson, MS
September 24, 2002

FURMAN UNIVERSITY, GREENVILLE, SC
Phi Theta Kappa Honors Institute
“The Genetic Dimension to Health: A Bioethical Perspective”
June 26, 2002

UNIVERSITY OF KANSAS, KANSAS CITY, KS
Medical Center, *Hixon Lecture in Medical History*
“Manifestly Unfit? 75 Years of *Buck v. Bell*”
March 14, 2002

MID-ATLANTIC REGIONAL ARCHIVISTS CONFERENCE
“The Professorate and the Press: From the Footnotes to the Headlines”
Baltimore, MD
April 19, 2002

FLORIDA STATE UNIVERSITY, TALLAHASSEE
School of Law Conference, Bioethics & the Law: *Genes and Disability*
“Taking Eugenics Seriously: Three Generations of ??? Are Enough?”
March 1, 2002

PHI THETA KAPPA HONOR SOCIETY
Faculty Scholars Honors Institute, *Marshall Lecture*
“The Future of Medicine and Our Eugenic History”
Jackson, MS
February 3, 2002

NATIONAL HUMAN RESEARCH PROTECTIONS ADVISORY COMMITTEE
Panel: Consequences of Civil Actions in Human Subjects Research
Washington, DC
January 28, 2002

SOCIETY OF AMERICAN ARCHIVISTS ANNUAL MEETING
“History’s Dirty Words: Perils of Study in Eugenic Archives.”
Washington, DC
August 30, 2001

AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS
Health Law Teachers Annual Conference
“Tuskegee and Eugenics”
Boston, Ma
June, 2001

COLD SPRING HARBOR LABORATORY, COLD SPRING HARBOR, NY
Genome Sequencing and Biology, *Ethical, Legal and Social Issues of Genomic Research*
“Manifestly Unfit? *Buck v. Bell* & American Eugenics.”
Spring, 2001

UNIVERSITY OF MINNESOTA, MINNEAPOLIS

Sarah D. Wangensteen Memorial Lecture

“Three Generations, No Imbeciles: *Buck v. Bell* and American Eugenics”

Spring, 2000

CENTERS FOR DISEASE CONTROL AND PREVENTION, ATLANTA, GA

“Explaining Tuskegee: Eugenics, Medical Education and the Public Health Service”

Spring, 1999

UNIVERSITY OF MARYLAND, COLLEGE PARK

Lecture Series: *Diversity and Community in American Life*

“Eugenics, Sterilization and *Buck v. Bell*”

Winter, 1999

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE

“Tracking the Mongoloid Kansas City, Chromosome: Theophilus Painter and Eugenic Research”

Kansas City, MO

April 26, 2002

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE

Panel: “Policy History and the History of Medicine”

Paper: “A Woman’s Body and Informed Consent: Emerging Doctrines from the *Schloendorff* Case”

Bethesda, MD.

Spring, 2000

AMERICAN ASSOCIATION FOR THE HISTORY OF MEDICINE

“Facing Carrie Buck”

Rutgers University, NJ

Spring, 1999

NATIONAL HOSPICE ORGANIZATION

Ethics Institute: “Resuscitating the Living Will: Practical Considerations for Proxy Consent”

Dallas, TX

Winter, 1998

NATIONAL HOSPICE ORGANIZATION

Ethics Institute: “Assisted Suicide: A Review of the Supreme Court Decisions”

Atlanta, GA

Fall, 1997

AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES

“A Woman’s Body and Informed Consent: Revising our View of the *Schloendorff* Case.”

Nashville, TN

Fall, 2001

AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES
“Three Generations of Imbeciles: The 75th Anniversary of *Buck v. Bell*”
Philadelphia, PA
Fall, 1999

AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES
“The 65 Million Dollar Baby: Opting for Life or Wrongful Birth?”
Houston, TX
Winter, 1998

FLORIDA COLLEGE OF ADVANCED JUDICIAL STUDIES
“Ethical and Legal Aspects of Genetic Research
Orlando, FL
Spring, 1998

MID-ATLANTIC REGIONAL ARCHIVISTS
“Tracing Eugenic History Using Archival Sources”
Wilmington, DE
Fall, 1997

FLORIDA CONFERENCE OF SUPREME COURT & APPELLATE JUDGES
“Ethical and Legal Aspects of Genetic Research”
Jacksonville, FL
Fall, 1997

HARVARD/FACING HISTORY AND OURSELVES, CAMBRIDGE, MA
“From Race Betterment to the Bell Curve: The Pioneer Fund Turns Sixty”
Winter, 1996

AMERICAN ASSOCIATION OF BIOETHICS
“Legal Boundaries on Reproductive Rights: The Morning-After Pill”
San Francisco, CA
Winter, 1996

MEDICAL UNIVERSITY OF SOUTH CAROLINA, CHARLESTON
Ethics Grand Rounds
“Tracing the Pedigree of Reproductive Rights: Eugenic History and the Genomic Future”
Guest Faculty Presentation, Healthcare and the Humanities Seminar “Medicine and the State”
Winter, 1996

AMERICAN BAR ASSOCIATION
Appellate Judges Seminar
“Ethical and Legal Dimensions of New Genetic Research”
Portland, Oregon
Summer, 1996

FEDERAL BUREAU OF INVESTIGATION ACADEMY
“Models from the Professions for Teaching Applied Ethics”
Quantico, VA
Spring, 1996

UNIVERSITY OF CHICAGO, IL
School of Law
Roundtable Symposium: Genetics and the Law
“Genetic Confidentiality: Which Model Works?”
Winter, 1996

ROCKHURST COLLEGE, KANSAS CITY, MO
Roy Roberts Visiting Scholar Lecture
“Heredity, Bell Curves and America’s Eugenic Legacy”
Fall, 1995

AMERICAN SOCIETY OF LAW & MEDICINE
Health Law Teachers Conference
"Structuring a Course in Health Law around Mental Health Issues"
Baltimore, MD
Summer, 1993

VIRGINIA BAR ASSOCIATION
“Legislative Antecedents to the Americans with Disabilities Act”
Williamsburg, VA
Winter, 1992
"Duty to Warn under the Tarasoff Case"
Winter, 1991

NATIONAL ASSOCIATION OF STATE MENTAL HEALTH ATTORNEYS
"The Health Care Quality Improvement Act and Peer Review Records"
Orlando, FL
Fall, 1991

Editorial Positions

Editor, Developments in Mental Health Law (1990-1998)

Consulting Editor, BioLaw (1990-2008)

Manuscript Peer Reviewer:

Cambridge University Press

Virginia Quarterly Review

Organizational Ethics

Curriculum Inquiry

American Journal of Obstetrics and Gynecology

Nature Reviews: Genetics

Behavioral Sciences and the Law

Journal of Clinical Ethics

Bulletin of the History of Medicine

Journal of Health Policy, Politics and Law

University Publishing Group

Routledge Publishing

Oregon Historical Quarterly

American Heart Journal

Oxford University Press

Yale University Press

Georgetown University Press

Annals of Internal Medicine

Journal of Health Care for the Poor and Underserved

Journal of Medical Ethics

Johns Hopkins University Press

Canadian Review of American Studies

Canadian Bulletin of Medical History

American Political Thought

Annals of Epidemiology

Journal of Bioethical Inquiry

Hastings Center Report

Politics and the Life Sciences

Journal of the History of Medicine and Allied Sciences

Journal of Law, Medicine and Ethics

Journal of Legal Medicine

PROFESSIONAL MEMBERSHIPS

American Law Institute (elected, 2011)
American Bar Association
California Bar Association
District of Columbia Bar Association
Virginia Bar Association
American Association for the History of Medicine
American Society of Law, Medicine and Ethics
American Society of Bioethics and Humanities
Association of American Law Schools

BAR ADMISSIONS:

California (Inactive)
District of Columbia (Inactive)
Virginia (Active)
Federal Courts of the Eastern District of California
4th Circuit Court of Appeals
United States Supreme Court

RECENT MEDIA MENTIONS

Hidden Brain/NPR; BuzzFeed News; NewsWeek; Washington Post; New York Times, Washington Post, Chicago Tribune; Ozy.com; BBC; USA Today; National Public Radio; CBS Evening News; Al Jazeera America; Anderson Cooper 360, Reuters, LA Times, Scientific American, Politico, The Atlantic, Philadelphia Inquirer, Associated Press, PBS *American Experience*, *RadioLab*

Paul A. Lombardo

Publications

Who We Are and How we Got Here **Common Reader**, (forthcoming, winter 2019)

“Who Supported Eugenic Sterilization? The Politics of Sterilization Law”
Journal of Law, Medicine, & Ethics (Submitted, March 1, 2019)

“Soaking the Germ Plasm in Alcohol” Racial Poisons, Eugenics, and the Campaign for Prohibition in Alcohol, Stigma and Disability: Past and Present, Manchester University Press, Stephen Mawdsley and David Turner, eds. (Forthcoming, 2020)

Spector-Bagdady, K. and Lombardo, P.A., *U.S. Public Health Service STD Experiments in Guatemala (1946-1948) and Their Aftermath*, **Ethics & Human Research** 41, no. 2 (2019) (March/April, 2019).

Public Health Eugenics in
Oxford Handbook of Public Health Ethics
Jeffrey Kahn, Nancy Kass & Anna Mastroianni, editors,
Oxford University Press (2019)

The Power of Heredity and the Relevance of Eugenic History
Genetics in Medicine (20 :1305 – 1311, July 31, 2018)

From In Vivo to In Vitro: How the Guatemala STD Experiments Transformed Bodies into Biospecimens 96 **Milbank Quarterly** 244-271 (2018) with K.S. Bagdady.

‘A Child's Right to Be Well Born’ Venereal Disease and the Eugenic Marriage Laws, 1913–1935, **Perspectives in Biology and Medicine** Volume 60, Number 2, Spring 2017, 211-232.

Sincerely Yours, Carrie Buck **UnDark** (October 4, 2017)
<https://undark.org/article/carrie-buck-letters-eugenics/>

The Hidden War, **Nature**, vol. 541, (Jan. 2017) 154-155.

The Banality of Eugenics, **UnDark** (April 4, 2016)
<http://undark.org/article/the-banality-of-eugenics-tuskegee/>

Anthropometry, Race, and Eugenic Research: “Measurements of Growing Negro Children” at the Tuskegee Institute, 1932-1944, chapter in **The Uses of Humans in Experiment**, edited by Erika Dyck and Larry Stewart (Leiden: Brill, 2016).

How to Escape the Doctor’s Dilemma? De-Medicalize Reproductive Technologies
43 **Journal of Law, Medicine and Ethics** (Summer 2015).

When Harvard Said No to Eugenics: The J. Ewing Mears Bequest, 1927
57 Perspectives in Biology and Medicine 374 (2015).

OPED: Eugenics: Time running out to compensate Virginia sterilization survivors (with Peter Hardin)
Richmond Times Dispatch (February 24, 2015).

Review: *An Image of God: The Catholic Struggle with Eugenics*, by Sharon M. Leon,
Catholic Historical Review vol. 100, January, 2014, 179-180.

Contributor to **Anticipate and Communicate: Ethical Management of Incidental and Secondary Findings in the Clinical, Research, and Director to Consumer Contexts** (Washington, D.C.: Presidential Commission on the Study of Bioethical Issues, December, 2013)

"Something of an Adventure" How the Public Health Service STD Studies in Guatemala Launched the "New Horizon" of U.S. Medical Research (By Kayte Spector-Bagdady and Paul A. Lombardo) **41 Journal of Law, Medicine & Ethics** 697 (2013)
Reprinted in Arthur L. Caplan and Barbara K. Redman, eds., **Getting to Good: Research Integrity in the Biomedical Sciences** (Springer, 2018)

OPED: "North Carolina's Bold Model for Eugenics Compensation," with Peter Hardin,
Richmond Times Dispatch. (August 11, 2013).

OPED: "Compensate Eugenic Sterilization Victims," with Peter Hardin, **USA Today**, (August 21, 2013). Reprinted in **Battle Creek Enquirer, Jackson Clarion Ledger, Appleton Post Crescent, Nashville Tennessean, Iowa City Press Citizen, Great Falls Tribune, OshKosh Northwestern**.

When Heroes Stumble, Sexually Transmitted Diseases 2013 Apr; 40(4):280.

A Case of Abortion in India: Pro-Life, Pro-Choice or Pro-Market Surrogacy?
(Recent Developments in Health Care Law: Culture and Controversy) **25 HEC Forum** 10 (2013)

Contributor to **Privacy and Progress in Whole Genome Sequencing** (Washington, D.C.: Presidential Commission on the Study of Bioethical Issues, October, 2012)

Ethically Impossible: New Educational Tools, **Bioethics Forum** (Nov. 15, 2012)
<http://www.thehastingscenter.org/Bioethicsforum/Post.aspx?id=6088&blogid=140>

"Ethically Impossible": Investigating the PHS/Guatemala STD Scandal, **The Federalist**, 2nd Series, no. 34 (Summer 2012) 1, 4-5.

Review: *No Place for Dying: Hospitals and the Ideology of Rescue*, by Helen Stanton Chapple, **Ethics and Medicine**, vol. 28 (Fall, 2012) 121-122.

Review: *Examining Tuskegee: The Infamous Syphilis Study and Its Legacy*, by Susan M. Reverby, **Journal of American Ethnic History**, (Summer, 2012) 90-92.

Return of The Jukes: Eugenic Mythologies and Internet Evangelism, **Journal of Legal Medicine** 33:207–233 (2012)

Foreword to Against Their Will North Carolina's Sterilization Program, by Kevin Begos, Danielle Deavor, John Railey and Scott Sexton (Florida: Gray Oak Books, 2012)

Annotation: *Past and Present of Eugenics*, **Biopolitics**, vol. 1, 3-4 (Jan., 2012) <http://biopolitics.org/wp-content/uploads/2011/12/AnnotationsBP1-1.pdf>

Contributor to “**Ethically Impossible**”: **STD Research in Guatemala, 1946-1948** (Washington, D.C.: Presidential Commission on the Study of Bioethical Issues, September, 2011)

The Concept and the Practice of Eugenics: Historical Development up to Modern Times, **Proceedings of the XV Assembly of the Pontificia Academia Pro Vita: The New Frontiers of Genetics and the Risk of Eugenics** (20-21 February 2009) Edited by Elio Sgreccia and Jean Laffitte, Libreria Editrice Vaticana, (English/Italian) Vatican City, 2011.

Bioethics on the Subcontinent: the Sindh Institute in Karachi, **HEC Forum**, Volume 23, Number 1, (2011) 57-61.

A Century of Eugenics in America: From the Indiana Experiment to the Human Genome Project, edited by Paul A. Lombardo (Bloomington: University of Indiana Press, 2011)

The Genetic Nondiscrimination Act of 2008
HEC Forum, vol. 22 (June, 2010) 87-89.

Reflections on a Visit to Karachi: A Small World, After All
Bioethics Links, vol. 5 (December 2009)1

When Less Paperwork Means No Science: The Paperwork Reduction Act and Unintended Consequences for Public Health Research (with Michael Blank) **Science Progress**, Sept. 21, 20091-6

Legal and Ethical Issues surrounding Reproduction in Pediatric Patients with Disabilities, in **Pediatric Bioethics**, Geoffrey Miller, ed. (Cambridge University Press, 2009)

Tracking Chromosomes, Castrating Dwarves: Uninformed Consent and Eugenic Research, **Ethics and Medicine**, vol. 25 (Fall, 2009) 149-164.
Involuntary Sterilization

Buck v. Bell

The Tuskegee Study

Encyclopedia of American Disability History, Susan Burch, ed. (New York: Facts on File, 2009)

Review of *Davenport's Dream: 21st Century Reflections on Heredity and Eugenics*, Witkowski and Inglis, eds. **Human Biology**, (June, 2009) vol. 84, p. 178.

Outside the operating room—economic, regulatory, and legal challenges, **Cleveland Clinic Journal of Medicine** (November 2008) vol. 75 no. Suppl. 6 S61-S73

Disability, Eugenics and the Culture Wars, 2 **St. Louis University Journal of Health Law & Policy**, 2008, 57-79

Legal Archaeology: Recovering the Stories behind the Cases, **Journal of Law Medicine and Ethics**, vol. 36, Number 3, September, 2008, pp. 589-593.

Three Generations, No Imbeciles: Eugenics, The Supreme Court and Buck v. Bell (Baltimore: Johns Hopkins University Press, October, 2008) (paperback/Kindle--August, 2010)

Swimming Upstream: Regulating Genetically Modified Salmon with Ann Bostrom in B. Andrew Lustig; Gerald P. McKenny; Baruch A. Brody (eds.), **Altering Nature: Religion, Biotechnology, and Public Policy** (vol.II) (New York: Springer, 2008)

Human Sterilization

International Encyclopedia of the Social Sciences, 2nd edition Darity, William A. Jr., (ed.) (New York: Macmillan/Gale, 2007)

Saying "I'm Sorry": the Role of Apology in Public Health, *Proceedings: The Public's Health and the Law in the 21st Century* **Journal of Law, Medicine and Ethics**, vol. 35 (supp., Winter, 2007)134.

The History of Ethics in Innovative Surgery: A Few Stories, Many Questions, in **Ethical Guidelines for Innovative Surgery**, Angelique Reitsma and Jonathan Moreno, eds. (Frederick, Maryland: University Publishing Group, 2006)

Eugenics, Medical Education and the Public Health Service: Another Perspective on the Tuskegee Syphilis Experiment, **Bulletin of the History of Medicine**—vol. 80, (Summer 2006) 291-316.

Hysterical Women & Phantom Tumors: Revising Our View of the Schloendorff Case, 33 **Journal of Law Medicine & Ethics**, (Winter, 2005) 791-801.

Fletcher's Introduction to Clinical Ethics, Fletcher, Spencer and Lombardo, eds.(3rd Edition) (Frederick, Maryland: University Publishing Group, 2005)

Infected Physicians and Invasive Procedures: Safe Practice Management,
40 Clinical Infectious Diseases 1655-72 (June 1, 2005) (Reitsma, et al.)

A Tribute to John C. Fletcher, 32 **Journal of Law Medicine & Ethics** (Fall, 2004) 538-539.

Of Utmost National Urgency": The Lynchburg Hepatitis Study, 1942, in **In the Wake of Terror: Medicine and Morality in a Time of Crisis**, Jonathan D. Moreno, ed. (Boston: MIT Press, 2003) 3-15.

Testosterone and Aging: Clinical Research Directions (**National Academies Press**, 2003) (Institute of Medicine Committee Member)

Pioneer's Big Lie, 66 **Albany Law Review** (Summer, 2003) 1125-1144.

Facing Carrie Buck, **Hastings Center Report**, vol. 33 (March-April, 2003) 14-17.
Reprinted in J. Daar, **Reproductive Technologies and the Law** (LexisNexis, 2006)
Reprinted in **Contemporary Issues in Bioethics** (8th ed. Beauchamp, Walters, Kahn & Mastroianni (Wadsworth 2013).

Eugenics: Lessons from a History Hiding in Plain Sight, **California Senate Select Committee on Genetics, Genetic Technologies and Public Policy**, March 11, 2003.
(Senate Publications 1217-S)

Taking Eugenics Seriously: Three Generations of ??? Are Enough? 30 **Florida State University Law Review** 191 (Winter, 2003)

Review: A Life of Sir Francis Galton: From African Exploration to the Birth of Eugenics, by Nicholas Wright Gillham, **New England Journal of Medicine**, vol. 347, (Nov, 2002) 1537.

The American Breed: Nazi Eugenics and the Origin of the Pioneer Fund, 65 **Albany Law Review** 743-830 (April, 2002)

Pedigrees, Propaganda, Paranoia: Family Studies in Historical Context, 21 **Journal of Continuing Education in the Health Professions** 247-255 (December, 2001)

Carrie Buck's Pedigree, 138 **Journal of Laboratory and Clinical Medicine** 278-282 (October, 2001)

Review: Tuskegee's Truths: Rethinking the Tuskegee Syphilis Study, Susan M. Reverby, ed., 75 **Bulletin of the History of Medicine** 616-617 (Fall, 2001)

A Matter of Days in **Developing Organization Ethics in Healthcare**, Mills, Spencer, Werhane, eds. (Hagerstown, MD.: University Publishing Group, 2001)

Substance Abuse Treatment Records: A Special Corner of Medical Privacy
Virginia Bar Association News Journal (October, 2000) Reprinted, 10 **BioEthics Matters** 3-5 (Winter, 2001)

Medicine, Eugenics and the Supreme Court: From Coercive Sterilization to Reproductive Freedom. In: **Frontiers in Bioethics**, Franklin Miller, ed. (Hagerstown, Md.: University Publishing Group, 2000)

Eugenic Laws against Race Mixing, Eugenic Laws Restricting Immigration, and Eugenic Sterilization Laws; Theme Essays accompanying the **Digital Image Archive of the American Eugenics Movement** DNA Learning Center, Cold Spring Harbor (N.Y.) Laboratory (<http://vector.cshl.org>, February, 2000)

New Faces on the IRB: Who Speaks for Subjects?
11 **BioLaw S**:428-431 (September-October, 1999)

Cloning, Genetic Engineering, and Genetic Testing, in the **Norton Dictionary of Modern Thought** 2nd Edition, Bullock and Trombley, eds. (New York: Harper-Collins, 1999) published in the United Kingdom as the **Fontana Dictionary of Modern Thought**

Eugenics in the South: The Carrie Buck Case
94 **Journal of the South Carolina Medical Association** 389 (1998)
(Sally Webb, Mary Faith Marshall, Paul A. Lombardo)

Virginia Supreme Court Endorses Medical Confidentiality Claim
7 **BioEthics Matters** 3 (Winter, 1998)
Reprinted in 18 **Developments in Mental Health Law** 21 (Spring, 1998)

Review of *Medical Ethics in the Renaissance*, by Winfried Schleiner.
24 **Religious Studies Review** 279 (July, 1998)

New Virginia Medical Records Law Helps Physicians and Patients
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Miscegenation, Eugenics, and Racism: Historical Footnotes to *Loving v. Virginia*

Paul A. Lombardo*

*This Essay explores private correspondence contained in a restricted manuscript collection¹ along with contemporary news accounts and government documents to explain how eugenics — a popular “scientific” movement during the 1920s — was used to bolster the arguments in favor of the Virginia Racial Integrity Act of 1924 that was struck down in *Loving v. Virginia*. The genesis of the Act is described with reference to the private correspondence of the two Virginians who lobbied for its passage. Their involvement with the white supremacist Anglo-Saxon Clubs of America is revealed as an aid to understanding the true motives behind the antimiscegenation law.*

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The author wishes to acknowledge the assistance and encouragement of Professor Walter Wadlington whose premier scholarship on *Loving v. Virginia* is the starting point for this Essay and who generously pointed out the existence of the John Powell Collection upon which it focuses.

¹ The John Powell Collection (#7284) Manuscript Department, University of Virginia Library. The Powell papers are divided into material of professional interest, primarily relating to John Powell's career as a musician; and private interest, including correspondence, speeches, etc. on various political controversies such as the race question. The private material makes up a very small percentage of the collection, and access is restricted. I wish to thank Professor Earnest Mead, literary executor of the Powell estate, for his permission to study the restricted portions of the John Powell Collection [hereafter Powell Collection] (cited portions on file with the *U.C. Davis Law Review*).

INTRODUCTION

Laws against miscegenation² were part of the fabric of discrimination in the United States from the early Colonial Period³ until the 1967 Supreme Court decision in *Loving v. Virginia*.⁴ *Loving* invalidated a Virginia statute⁵ that forbade marriages between white persons and persons of other races. Thus, *Loving* struck down one of the most psychologically and socially sensitive laws upon which the American system of apartheid had rested for over three hundred years.

The demise of Virginia's antimiscegenation law in *Loving* occurred thirteen years after *Brown v. Board of Education*,⁶ clearly the Warren Court's most revolutionary civil rights decision, and only a few years after the passage of laws that opened public accommodations, housing, and the voting booth to black citizens.⁷ *Loving* is cited as a landmark decision of the Warren Court overthrowing racial discrimination and, consequently, may be understood as the official *coup-de-grace* to the parade of Reconstruction era legislation: The "Jim Crow" laws.⁸ Yet, while miscegenation laws undoubtedly were passed with support from the same political factions and with the help of the same arguments that boosted Jim Crow laws into the statute books, the law overturned in *Loving v. Virginia* had a much more complex pedigree. It became part of the Virginia Code in 1924 not simply as another law enforcing a tradition of racism, but was drafted by men who argued for its value in the name of the "science" of eugenics.

² The term "miscegenation" technically refers to relations between people of different races, without regard to whether the parties have the benefit of civil marriage. This Essay uses the term in reference to interracial marriage, since that was the focus of Virginia's 1924 act challenged in *Loving v. Virginia*, 388 U.S. 1 (1967).

³ For a history of miscegenation laws with particular attention to the pattern of law that was enacted in Virginia, see Wadlington, *The Loving Case: Virginia's Anti-Miscegenation Statute in Historical Perspective*, 52 VA. L. REV. 1189 (1966). Wadlington notes that in 1630 authorities punished a white man "for defiling his body in lying with a negro," see *id.* at 1191, and locates a 1691 Virginia Statute as the Colony's first formal prohibition against interracial marriage. *Id.* at 1191-92.

⁴ 388 U.S. 1 (1967).

⁵ An Act to Preserve Racial Integrity, Act of March 20, 1924, ch. 371, 1924 Va. Acts 534.

⁶ 347 U.S. 483 (1954).

⁷ The Civil Rights Acts of 1960, 1964, and 1968 and the Voting Rights Act of 1965 and their effects are discussed in detail in H. ABRAHAM, *FREEDOM AND THE COURT* (4th ed. 1982).

⁸ "Jim Crow," the South's state-approved system of racial segregation, is explored and analyzed most completely in the classic book, C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (3d rev. ed. 1974).

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The eugenics movement⁹ originated in nineteenth-century Britain and reached a high point during the Progressive Era in America. Eugenicists believed that most human ills are hereditary. They argued that the human race could be perfected by encouraging the mating of successful, healthy, productive stock. Conversely, they discouraged reproduction among the “less fit.” These general hereditarian notions often were derived from an uncritical application of the developing fundamentals of genetic theory. However, the eugenicists expanded the hereditarian premise into a pseudo-science that encompassed anthropology, ethnology, and sociology. American eugenicists applied their theory toward a conscious program of social engineering mandated through law.

Eugenicists were successful in promoting restrictive laws at both the state and federal levels. The United States Congress passed the Immigration Restriction Act of 1924¹⁰ after testimony on the dangers of America being flooded by “weak-gened” Europeans. The result of eugenicist lobbying was a dramatic reduction in the immigration quota of southern and eastern Europeans, most notably Italians and Jews.¹¹ While Congress endorsed the eugenic motive for curbing immigration, the Virginia General Assembly followed similar arguments in passing two laws that resulted in landmark United States Supreme Court decisions. The first law, the Racial Integrity Act of 1924, forbade miscegenation on the grounds that racial mixing was scientifically unsound and would “pollute” America with mixed-blood offspring.¹² The Racial Integrity Act remained a valid state statute until *Loving v. Virginia*. The second Virginia statute mandated sexual sterilization of epileptics, the insane, or retarded, and all those generally suffering from “social inadequacy.”¹³ That law was upheld in *Buck v. Bell*,¹⁴ which has yet to be

⁹ See generally A. CHASE, *THE LEGACY OF MALTHUS* (1977); M. HALLER, *EUGENICS: HEREDITARIAN ATTITUDES IN AMERICAN THOUGHT* (1984); D. KEVLES, *IN THE NAME OF EUGENICS* (1985); K. LUDMERER, *GENETICS AND AMERICAN SOCIETY* (1972).

¹⁰ Sections 31-32, 43 Stat. 190, 153-64 (1924).

¹¹ Harry Laughlin was the most prominent eugenicist working in the campaign for immigration restriction. On Laughlin’s role as lobbyist, see A. CHASE, *supra* note 9, at 291-301. For a more detailed account of Laughlin’s role, see F. Hassencahl, *Harry Laughlin, Expert Eugenics Agent for the House Committee on Immigration and Naturalization, 1921-1931* (Case Western Reserve University, 1970) (unpublished Ph.D. dissertation).

¹² VA. CODE ANN. §§ 20-54 (1960 Repl. Vol.).

¹³ Act of Mar. 20, 1924, ch. 394, 1924 Va. Acts 569, 570 *repealed by* Act of Apr. 2, 1974, ch. 296, 1974 Va. Acts 445.

¹⁴ 274 U.S. 200 (1927).

overturned and remains a memorial to the eugenics movement in America.¹⁵

Although eugenic rhetoric clearly influenced the passage of these laws, the role of the eugenicists who lobbied for the Virginia Racial Integrity Act has escaped the general attention of scholars.¹⁶ This Essay explores private correspondence contained in the John Powell Collection, a set of restricted manuscripts, along with contemporary news accounts and government documents. This material explains how two Virginians, John Powell and Walter A. Plecker, used eugenics and their association with the white supremacist Anglo-Saxon Clubs of America (A.S.C.O.A.) to lobby for the passage of Virginia's miscegenation law, the Virginia Racial Integrity Act of 1924 and its subsequent amendments.

Powell, a prominent composer and pianist, founded the A.S.C.O.A., under whose sponsorship the Virginia legislation was originally proposed. Powell's personal papers include correspondence from nationally prominent members of the eugenics movement and others that cata-

¹⁵ For the background of Virginia's Eugenic Sterilization Act, see Lombardo, *Three Generations, No Imbeciles: New Light on Buck v. Bell*, 60 N.Y.U. L. REV. 30 (1985).

¹⁶ Mark Haller's broad history of the eugenics movement concludes that the "eugenicists never launched a formal campaign for laws against miscegenation." M. HALLER, *supra* note 9, at 158. D. KEVLES, *supra* note 9, comes closest to describing the actual role played by a number of "eugenical" lobbyists, stating:

Clearly, eugenicists did not single-handedly cause the passage of the large variety of restrictive marriage laws enacted in the first quarter of the century; they were part of a coalition that put the laws on the books, and they provided prior (or, at times, post hoc) biological rationalizations for what other interest groups wanted.

Id. at 100. K. LUDMERER, *supra* note 9, explains Immigration Restriction Act lobbying and eugenical sterilization laws in detail, but bypasses the role of eugenic theory in racial integrity laws. R. SICKELS, *RACE, MARRIAGE AND THE LAW* (1972) is the only book-length treatment of *Loving v. Virginia*, but fails to indicate the significance of eugenic lobbyists to the Act's passage. Among the dozens of law review articles that analyze *Loving v. Virginia*, only Wadlington, *supra* note 2, suggests the role of eugenicist Walter A. Plecker, Virginia's Registrar of Vital Statistics, as administrator of the Act. Chief Justice Warren cited Wadlington in his opinion. *Loving*, 388 U.S. at 5-6. Details of lobbying for passage of the miscegenation law are, however, available from two unpublished sources. A master's thesis by F. Arness, *The Evolution of the Virginia AntiMiscegenation Laws* (Old Dominion University, 1966) (unpublished thesis), explores the public record, noting the involvement of well-known Virginians and nationally prominent eugenicists in lobbying for the miscegenation law. B. Thomson, *Racism and Racial Classification: A Case Study of the Virginia Racial Integrity Legislation* (University of California, Riverside, 1978) (unpublished Ph.D. dissertation), produced an exhaustive sociological analysis of the miscegenation law, using both public records and manuscripts from the Powell Collection.

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logue the lobbying efforts preceding the 1924 Act. Walter A. Plecker supported Powell's proposal for a miscegenation law. Plecker was a physician and an administrator in the Virginia Bureau of Vital Statistics. His position provided him with a powerful platform not only to enforce the racial registration provisions of the miscegenation law, but also to stretch the law's commands to require unrelated segregation practices by threatening, harassing, and in some cases, coercing private citizens. Plecker's official correspondence as state registrar also is collected among the Powell papers and supplies a detailed record of more than twenty years of the administration of Virginia miscegenation law.

An investigation of the people who laid the groundwork for Virginia's miscegenation law reveals that the pseudo-science of eugenics was a convenient facade used by men whose personal prejudices on social issues preceded any "scientific theory." Stated more bluntly, the true motive behind the Racial Integrity Act of 1924 was the maintenance of white supremacy and black economic and social inferiority — racism, pure and simple. It was an accident of history that eugenic theory reached its peak of acceptability in 1924 so as to be available as a respectable veneer with which to cover ancient prejudice. For Powell, Plecker, and their ilk, eugenical ideology was not a *sine qua non* for legislation, but merely a coincidental set of arguments that provided intellectual fuel to the racist fires.

This Essay is divided into four parts. Part I includes an exposition of the public and private "racial purity" propaganda generated by Powell and Plecker. Part II focuses on details of the passage of the Virginia Racial Integrity Act of 1924. It describes the roles that Powell and Plecker played as lobbyists for the Act and details the extensive work Plecker undertook to "educate" the public to the Act's importance after its passage. Part III analyzes the case of Atha Sorrells, the first serious challenge to the 1924 law. This part also discusses responses to Sorrells' challenge, including Powell's newspaper series and Plecker's work as legal administrator. The Essay concludes with the Act's demise in *Loving v. Virginia* and reflections on the effect of "eugenics" in the legal context.

I. PUBLICIZING RACISM: POWELL AND PLECKER AS PROPAGANDISTS

At the time of the passage of Virginia's 1924 Racial Integrity Act, Jim Crow laws were in full bloom in the South and the promotion of white supremacy was as strong and prevalent as it had been during the days of slavery. For almost three hundred years stringent laws prohibit-

ing marriage among the races¹⁷ had been in force in dozens of states and court decisions enforcing those laws took on the tenor of disquisitions on a divine mandate.¹⁸

However, the law was only one avenue through which the folkways

¹⁷ See E. REUTER, *RACE MIXTURE; STUDIES IN INTERMARRIAGE AND MISCEGENATION* 75-100 (1931).

¹⁸ Judicial decisions, in addition to their florid rhetoric on the evils of racial mixture, also reveal some of the misinformation — portrayed as folk wisdom — that appeared in support of miscegenation law. Some examples:

The amalgamation of the races is not only unnatural, but is always productive of deplorable results. Our daily observation shows us, that the offspring of these unnatural connections are generally sickly and effeminate, and that they are inferior in physical development and strength, to the full-blood of either race. It is sometimes urged that such marriages should be encouraged, for the purpose of elevating the inferior race. The reply is, that such connections never elevate the inferior race to the position of the superior, but they bring down the superior to that of the inferior. They are productive of evil, and evil only, without any corresponding good.

Scott v. Georgia, 39 Ga. Rep. 321, 324 (1869).

The laws of civilization demand that the races be kept apart in this country. The progress of either does not depend upon an admixture of blood. A sound philanthropy, looking to the public peace and the happiness of both races, would regard any effort to intermerge the individuality of the races as a calamity full of the saddest and gloomiest portent to the generations that are to come after us.

Doc. Lonas v. State, 50 Tenn. 287, 310-11 (1871).

Manifestly, it is for the peace and happiness of the black race, as well as of the white, that such laws should exist. And surely there can not be any tyranny or injustice in requiring both alike, to form this union with those of their own race only, whom God hath joined together by indelible peculiarities, which declare that He has made the two races distinct.

Green v. State, 58 Ala. 190, 195 (1877).

The purity of public morals, the moral and physical development of both races, and the highest advancement of our cherished southern civilization, under which two distinct races are to work out and accomplish the destiny to which the Almighty has assigned them on this continent — all require that they should be kept distinct and separate, and that connections and alliances so unnatural that God and nature seem to forbid them, should be prohibited by positive law, and be subject to no evasion.

Kinney v. Commonwealth, 71 Va. (30 Gratt.) 858, 869 (1878).

And finally,

It is stated as a well authenticated fact that if the issue of a black man and a white woman, and a white man and a black woman, intermarry, they cannot possibly have any progeny, and such a fact sufficiently justifies those laws which forbid the intermarriage of blacks and whites, laying out of view other sufficient grounds for such enactments.

State v. Jackson, 80 Mo. 175, 179 (1883).

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of racism were preserved. Administrative enforcement by minor state bureaucracies also perpetuated the accepted mythologies, especially those involving the miscegenation taboo. In Virginia, Walter Plecker, as head of the Bureau of Vital Statistics for more than thirty years, helped maintain these myths.¹⁹ In 1946, when his service in the Bureau ended, he wrote a letter to his friend John Powell:

June 29, 1946

Dear Mr. Powell:

With today my service as State Registrar of Vital Statistics ends. I am now past 85 years of age and have resigned for that reason. . . .

With this bunch of letters, your receipt of such copies will likewise end. If you have preserved them, you have a pretty good history of the various racial problems which have come before us since we began sending you these. As I do not know who my successor will be and whether he is at all interested in the subject and as this correspondence may ultimately be destroyed or lost, your copies would furnish a pretty good outline of the situation

Very sincerely, your friend,
W. A. Plecker²⁰

The correspondence between Powell and Plecker referred to in the 1946 letter provides a fascinating picture of their twenty-five year effort to promote racially discriminatory laws. Plecker's use of his public ministerial office to advance racist propaganda and his revelations to Powell of the Bureau's confidential business provide a rare insight into the interplay among law, public administration, and private prejudice. The private records that survive in the John Powell Collection, augmented by the Virginia Vital Statistics Reports, newspaper accounts of Powell's political activism, and publications that Plecker authored, yield a fairly complete picture of their roles in the racial politics of the 1920s.

A. The Bureau of Vital Statistics

As a physician within a state health agency, Plecker had several avenues through which to present his views on issues characterized as

¹⁹ Plecker (1861-1947) attended the University of Virginia. Upon graduation from the University of Maryland Medical School he spent 20 years in private medical practice. See P. BRUCE, *HISTORY OF VIRGINIA* 397 (1924). In 1910, at age 49, Plecker became a district hookworm investigator for the Virginia Board of Health, and in 1912 was named Assistant Registrar of Vital Statistics to administer the new Vital Statistics Act. In 1914 Plecker was named Registrar of the Bureau of Vital Statistics, a post he held until 1946, a year before his death.

²⁰ Letter from W.A. Plecker to J. Powell (June 29, 1946) (Powell Collection).

“public health” concerns. His annual Vital Statistics Reports were compendia of data on births, deaths, communicable diseases, and other demographic information. In addition, they contained editorial comments on the causes of health problems. At various times during Plecker’s career he also lectured on the radio and to live audiences and published essays in newspapers and magazines. Many of these opportunities for publicity became occasions for Plecker to propound his most fervent “professional” opinions as a man of medical science. These opinions often focused on questions of race.

Plecker’s first published comments appeared in the *Virginia Health Bulletin*, which included annual reports on vital statistics.²¹ From 1912 to 1915 he concentrated on explaining the workings of the 1912 Vital Statistics Registration Law which required the State Board of Health to register all births and deaths.²² However, in 1915 Plecker began to suggest new reasons for the Vital Statistics Law: It generated the first accurate data “for any American State in which there is so large a negro element.”²³ He made clear that the black population was “so serious a factor in public health”²⁴ that it should receive particular attention in the future. Comments in succeeding years noted the unusually high rates of illegitimacy among the “colored population”²⁵ and the perplexingly low birth rate among “native virile Virginia” whites.²⁶

The impact of the “negro element” on Virginia’s public health became more prominent in Plecker’s reports after 1924. His strongest official rhetoric often coincided, sometimes intentionally, with the appearance of John Powell’s public campaign for “white supremacy” under the banner of the A.S.C.O.A.

B. The Anglo-Saxon Clubs

Articles in Richmond newspapers in the summer of 1923 directed the attention of many Virginians to the developing political visibility of the

²¹ The inclusion of Plecker’s editorials on miscegenation in the pages of the *Virginia Health Bulletin* marked a significant change in focus for that publication. Its earliest years were characterized by repetitive features on the prevention of malaria, tuberculosis, and smallpox along with annual, pictorial supplements — “how to” pieces — on building a privy or exterminating rats. See generally VIRGINIA HEALTH BULL. (1907-1925).

²² See Act of March 12, 1912, ch. 181, 1912 Va. Acts 440.

²³ 7 VIRGINIA HEALTH BULL. 48 (1915).

²⁴ *Id.* at 47-48.

²⁵ 13 VIRGINIA HEALTH BULL. 167-68 (1921).

²⁶ 14 VIRGINIA HEALTH BULL. 4 (1922).

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A.S.C.O.A. The A.S.C.O.A., founded in Richmond in 1922,²⁷ announced its purpose as “the preservation and maintenance of Anglo-Saxon ideals and civilization in America.”²⁸ To achieve this purpose and to retard the “rapid breakdown of the traditional American virtues and principles,” the A.S.C.O.A. stated three goals: “first, by the strengthening of Anglo-Saxon instincts, traditions and principles among representatives of our original American stock; second, [the] intelligent selection and exclusion of immigrants; and, third, [the] fundamental and final solutions of our racial problems in general, most especially of the negro problem.”²⁹

The third goal, a solution to “the negro problem,” prompted the A.S.C.O.A. to advance its first legislative proposal: a bill “for the preservation of the white race.”³⁰ This legislation listed four “regulations” that the A.S.C.O.A. hoped to have written into law. The regulations included a registration system that required birth certificates to show the racial background of every citizen; regulations that forbade the issuance of marriage licenses to any person who did not possess a racially keyed birth certificate; a definition of “white persons” that included only those with “no trace whatsoever of any blood other than Caucasian”;³¹ and the strict prohibition of a “white person” from marrying anyone other than another “white person.”³² The A.S.C.O.A. was quick to insist that these racial policies should be “handled in the most humanitarian and liberal spirit” and that the A.S.C.O.A. was “definitely and explicitly opposed to . . . racial prejudice.”³³

As founder of the A.S.C.O.A., John Powell emerged as one of its foremost spokesmen.³⁴ Although professionally Powell was a musician,

²⁷ See *The News Leader*, June 5, 1923, at 18, col. 1. This article, which ran under the banner headline *Post No. 1, Anglo-Saxon Clubs, Has 400 Members* was reprinted in a recruiting pamphlet of the A.S.C.O.A. that is part of the Powell Collection. See also, *The Price of Pollution*, *The News Leader*, June 15, 1923, at 10, col. 2 (editorial supporting the A.S.C.O.A. proposal).

²⁸ *The News Leader*, June 5, 1923, at 18, col. 1.

²⁹ *Id.* at col. 2.

³⁰ *Id.* at col. 4.

³¹ *Id.*

³² *Id.*

³³ *Id.* at col. 6.

³⁴ Several letters in the Powell Collection indicate that Powell was the founder of the A.S.C.O.A. See letter from Walter Plecker to Louisiana Club for Segregation (Dec. 19, 1924) (Powell Collection) (“Mr. Powell is the father of our Anglo-Saxon Clubs”); letter from Walter Plecker to Wendell White (May 10, 1924) (Powell Collection) (requesting that he “correspond with Mr. Powell in reference to establishing Anglo-Saxon Clubs in South Carolina. He originated that move, which while confined at present to

his speeches and articles in favor of strict antimiscegenation laws and other racially restrictive legislation became a consuming avocation.

The Richmond *Times-Dispatch* editorial writers clearly favored the bill proposed by the A.S.C.O.A. and applauded the light Powell threw on the “menace of Negro amalgamation.”³⁵ Plecker soon expressed open approval of the proposed legislation. Without revealing his own involvement with Powell and the A.S.C.O.A.,³⁶ he wrote a short article in response to Powell’s legal scheme.³⁷ The article, somewhat disingenuous in its tone, described the “puzzling situation” in which Plecker, as State Registrar, found himself when confronted with registering children of mixed marriages. Plecker explained his own procedure of reporting mixed marriages to the commonwealth’s attorney as well as his prodding of local authorities “to unite and decide the status of these [mixed race] people and to firmly refuse to admit them as white if they have even a trace of Negro blood on either side.”³⁸ He also noted the role of his agency as “the greatest force in the state today combating this condition [mixed racial heritage].”³⁹

The A.S.C.O.A. grew quickly. The recruitment pamphlet that reprinted copies of the newspaper articles of Powell and Plecker listed twelve chartered chapters of the organization; a letter a few months later requesting support for the A.S.C.O.A. legislative petition listed twenty-six posts in Virginia alone.⁴⁰ The A.S.C.O.A. held its first convention in Richmond on October 13, 1923, and adopted a formal constitution. Among the constitution’s stated aims was the “preservation of racial integrity.”⁴¹

Virginia is intended to be national”); letter from Walter Plecker to L.M. Nance (Dec. 19, 1924) (Powell Collection) (containing similar statements); and letter from Walter Plecker to Stone Deavors (Apr. 15, 1925) (Powell Collection). Powell’s leadership of the University of Virginia branch of the A.S.C.O.A. is noted in V. DABNEY, MR. JEFFERSON’S UNIVERSITY 66 (1981).

³⁵ See *Racial Integrity*, Richmond Times-Dispatch, July 22, 1923, at 4, col. 1.

³⁶ However, the A.S.C.O.A. published Plecker’s letter in their recruiting pamphlet. See *Anglo-Saxon Clubs of America* (Powell Collection).

³⁷ *Bureau of Vital Statistics Finds Solution [to] Puzzle*, The News Leader, Aug. 4, 1923, at 22, col. 5.

³⁸ *Id.* at col. 8.

³⁹ *Id.* at col. 5.

⁴⁰ Letter from Lawrence Price, Chairman of the National Executive Committee and co-founder of the A.S.C.O.A. (undated) (Powell Collection). Neither the recruitment pamphlet nor the letter is dated. The pamphlet probably was printed in late summer and included with the letter in an early fall 1923 mailing.

⁴¹ The 1923 constitution also called for “The supremacy of the white race in the United States of America, without racial prejudice or hatred” and limited the member-

Along with his contacts in the Virginia-based A.S.C.O.A., Powell corresponded with national figures in the eugenics movement and other men of prominence in racial politics. He wrote to Madison Grant, a New York attorney and officer of the American Eugenics Society, whose book, *Passing of the Great Race or The Racial Basis of European History*,⁴² attempted to explain the effect of race on the “decline” of European civilization. Powell also corresponded with Lothrop Stoddard, a disciple of Grant, whose book, *The Rising Tide of Color Against White World-Supremacy*, echoed racist alarms.⁴³ Powell also contacted Franklin Giddings, first professor of sociology at Columbia University.

Powell’s letters to Grant, Stoddard, and Giddings explained the theoretical basis of the antimiscegenation bill⁴⁴ and requested statements of support to present to the state legislature in support of the Racial Integrity Act of 1924.

ship to “[a]ll native born, white, male American citizens, over the age of 18 years.” (Powell Collection).

⁴² M. GRANT, *PASSING OF THE GREAT RACE OR THE RACIAL BASIS OF EUROPEAN HISTORY* (1916). While Grant’s book was historical in character and had little reference to the American situation, he did offer these comments on marriages between different “racial types”:

When it becomes thoroughly understood that the children of mixed marriages between contrasted races belong to the lower type, the importance of transmitting in unimpaired purity the blood inheritance of ages will be appreciated at full value, and to bring half-breeds into the world will be regarded as a social and racial crime of the first magnitude. The laws against miscegenation must be greatly extended if the higher races are to be maintained.

Id. at 56. John Higham designates Grant as the man upon whom “[a]ll the trends in race thinking converged.” See J. HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925* at 155 (1955). Higham credits Grant with relying upon questionable “scientific truth” to summarize a world view that is best characterized as racism. *Id.* at 157.

⁴³ See L. STODDARD, *THE RISING TIDE OF COLOR AGAINST WHITE WORLD-SUPREMACY* (1920). Among other arguments in his book, Stoddard took aim against bolshevism as a dangerous theory that preached universal equality; a message at odds with white supremacy. *Id.* at 219-21.

⁴⁴ Letter from Franklin Giddings to John Powell (Jan. 3, 1924) (Powell Collection) (thanking Powell for sending a copy of Cox’s *White America*, but politely disagreeing with some “yet [to be] proven” biological premises upon which Cox’s argument rested).

II. PASSAGE OF THE RACIAL INTEGRITY ACT OF 1924

A. *Powell and Plecker as Lobbyists*

When Virginia's General Assembly convened in 1924, Powell's writing campaign had yielded letters of support from all three of his northern contacts. Grant, whom Powell had invited to appear before the legislative committees considering the Bill,⁴⁵ was most thorough in his support. He offered his "unqualified endorsement" for the antimiscegenation Bill and repeated his own conclusions about race and civilization:

It would, of course, be a frightful calamity, not only to the South but to the whole nation — in fact to civilization, itself — if the struggle for the supremacy of the white race were in any degree diminished. It is the insidious increase of mixed breeds in the lower strata of society which has heretofore undermined and ruined many white civilizations.⁴⁶

Stoddard, like his mentor Grant, was equally effusive in his approval of the proposed legislation. It was of "the highest value and greatest necessity" to preserve the white race:

White race-purity is the corner-stone of our civilization. Its mongrelization with non-white blood, particularly with [N]egro blood, would spell the downfall of our civilization. This is a matter of both national and racial life and death, and no efforts should be spared to guard against the greatest of all perils — the peril of miscegenation.⁴⁷

Giddings focused on the need for registration of citizens by race but made no comment on the prohibition of interracial marriages or definition of races contained in the Powell Bill.⁴⁸

Armed with these testimonials, Powell took his case to the state legislature. On February 12, 1924, Powell was invited to speak to the Virginia House of Delegates in support of his "Bill to Preserve the Integrity of the White Race."⁴⁹ By the time Powell spoke, the Bill already had been formally presented and considered in committee. Newspaper reports noted that a "well-filled gallery listened attentively" to the Powell presentation, an address that the press predicted "may become historic."⁵⁰ Powell's speech repeated the arguments of his earlier

⁴⁵ Grant was unable to attend and sent his regrets. Letter from Madison Grant to John Powell (Feb. 1, 1924) (Powell Collection).

⁴⁶ *Id.*

⁴⁷ Letter from Lothrop Stoddard to John Powell (Feb. 1, 1924) (Powell Collection).

⁴⁸ Letter from Franklin Giddings to John Powell (Feb. 5, 1924) (Powell Collection).

⁴⁹ 1924 *Virginia Bills* (House) No. 311.

⁵⁰ See *Powell Asks Law Guarding Racial Purity — Pleads Before House for Statute Dealing with "Mongrelization"*, Richmond Times-Dispatch, Feb. 13, 1924, at 1,

A.S.C.O.A. proposals and those that he had borrowed from Cox, Grant, and other racial propagandists.⁵¹

The alleged litany of horrors that resulted from “race mixture” was recited. Powell explained that interracial marriage would result in the disappearance of the white race and that with it would disappear western civilization and Virginia’s traditions of honor. The Racial Integrity Act was a means of forestalling the decline of white supremacy, he claimed, and should command the support of those who treasured their racial heritage. Powell read the letters from Grant, Stoddard, and Giddings in support of the Bill, noting that they were “the greatest authorities on ethnology and sociology in America.”⁵² The address was met with the congratulations and support of “several leading members of the House.”⁵³

Powell’s Bill was presented in the House of Delegates three days after his appearance, but because of its exclusion of persons with Indian heritage and a controversial registration requirement,⁵⁴ it failed to gain support. Substantially the same bill had been introduced in the Senate, where the legislative debate shifted.⁵⁵

Powell’s appearance before the legislature was followed by a letter from his friend Dr. Plecker to the measure’s chief sponsor in the State Senate. Plecker’s letter spoke to “the need of a law such as Senate [B]ill 219, especially for the purpose of defining the colored race, and giving us a strong penalty to aid in its enforcement.”⁵⁶ Plecker cited a number of cases in which miscegenation had occurred for generations with the acquiescence of local authorities. He also noted that his office had changed the race on some birth certificates from white to negro “after securing additional information.”⁵⁷ Plecker enclosed letters from his office files as evidence to verify the need for the proposed law.

The senatorial sponsors released the text of the Plecker letter to the

col. 1.

⁵¹ See *supra* text accompanying notes 27-33, 42, and *infra* notes 107, 117.

⁵² See Richmond Times-Dispatch, *supra* note 50.

⁵³ *Id.*

⁵⁴ 1924 *Virginia Bills* (House) No. 311.

⁵⁵ House Bill No. 311 was presented February 15, 1924, and reported out of committee February 19, 1924. It failed on a vote for endorsement February 21, 1924. 1924 *Journal of the House of Delegates* (Va.) at 308, 338, 377. Senate Bill No. 219 appeared before the Powell speech, having been presented on February 1, 1924. 1924 *Journal of the Senate* (Va.) 135.

⁵⁶ Letter from Walter Plecker to Sen. M.B. Booker (Feb. 15, 1924) (Powell Collection).

⁵⁷ *Id.*

Richmond *Times-Dispatch* where it was printed under the heading, *Bureau of Vital Statistics Favors Race Integrity Bill*.⁵⁸ The *Times-Dispatch* followed this story with an editorial in support of the Bill. The editorial reflected Powell's influence, stating that "if this bill is passed, it may presage a national movement in behalf of racial integrity."⁵⁹

Several features of the Senate Bill met the same opposition that had surfaced during the legislative debates in the House. The Bill originally included a provision exempting persons with less than one sixty-fourth of American Indian blood from the prohibition of marriage with whites. This fractional exception was increased to one-sixteenth as a means of honoring the descendants of John Rolfe and Pocahontas. Apparently some of the "first families" of Virginia took exception to the use of their distant Indian heritage to exclude them from the white race.⁶⁰

Another provision of the Senate Bill that encountered debate mandated racial registration for every citizen in the State. This feature was publicly ridiculed in one Virginia newspaper as a measure "pestiferous . . . and utterly without value," which would require "racial passports" for the state's population.⁶¹ The debate focused on the administrative difficulty and expense of implementing and maintaining the reg-

⁵⁸ See Richmond Times-Dispatch, Feb. 17, 1924, at 6, col. 1.

⁵⁹ *Id.* Feb. 18, 1924, at 6, col. 1. The Powell Collection includes correspondence from a number of newspaper editors and suggests that Powell had contacts around the state with whom he could place timely letters or articles. See, e.g., letter from D.S. Freeman to John Powell (Feb. 14, 1924) (Powell Collection) (asking whether or not to publish a letter critical of the Racial Integrity Act).

⁶⁰ Plecker explained this amendment in an address to the Annual Meeting of the Southern Medical Association, New Orleans, November 24-27, 1924. The address, "Shall America Remain White," was later reprinted in a Plecker pamphlet *The New Family and Racial Improvement* issued by the Bureau of Vital Statistics in 1928:

When the Racial Integrity Act was being enacted, it was the desire of all to recognize as an integral and honored part of the white race the descendants of John Rolfe and Pocahontas, and also to protect other white citizens of Virginia who were descendants of members of the civilized tribes of Oklahoma and who were of no other admixture than white and Indian.

To protect these persons, an exception was made admitting as members of the white race all persons of one-sixteenth or less of the blood of American Indians, with no other non-Caucasic blood. It is believed that it was the desire of no one to admit into the white race other families or groups of people who may have been recognized as Indian or who may claim to be such.

Id. at 26.

⁶¹ See *Racial Passports*, Virginia Pilot-News Leader, Feb. 19, 1924, at 4, col. 2.

istration scheme. The Bill faced defeat in the Senate until registration was made optional for persons born before 1912, the date when mandatory registration began under the Vital Statistics Act.⁶²

The amended Senate Bill passed by a vote of 23 to 4 on February 27, 1924.⁶³ The loss of the universal, compulsory racial registration clause was bemoaned in the Richmond press. A *Times-Dispatch* editorial despaired that the Senate had “cut the heart out” of the Bill as the registration provision would have clarified “once and for all who is a Caucasian and who is not.”⁶⁴ The *Times-Dispatch* pleaded for the House of Delegates to reconsider the Senate Bill to cure its “deadly defect.”⁶⁵ Perhaps because Powell and Plecker did not press for compulsory registration,⁶⁶ the House accepted the Bill without delay. It passed by a vote of 72 to 9,⁶⁷ and the governor signed the Bill on March 20, 1924, as “An Act to Preserve Racial Integrity.”⁶⁸

⁶² Plecker complained of the changes in the original bill in a letter to an Ohio legislator who inquired about the genesis of the Virginia Racial Integrity Act:

The bill itself was very much altered and patched up in Committees and on the floor and is very unlike the original bill. In fact, it is not at all symmetrical and has a number of defects.

The chief feature, however, passed through all of its tribulation unscathed, that is the definition of a white person as “one who has no trace whatsoever of any blood other than Caucasian.” As long as that definition was untouched, its friends were willing to make any other kind of compromise.

Letter from Walter Plecker to Harry E. Davis (Oct. 4, 1924) (Powell Collection). Other Plecker correspondence suggests his participation in the amendment of Powell’s bill and its eventual passage. *See, e.g.*, letter from Walter Plecker to Dr. F.M. Register (Aug. 9, 1924) (Powell Collection) (“Mr. Powell addressed the Legislature itself, with great effect. . . . All of us appeared from time to time before the Committees.”); letter from Walter Plecker to Rev. Wendell White (May 10, 1924) (Powell Collection) (“The Legislature was about to vote the whole measure down when we offered it making registration optional.”); letter from Walter Plecker to Dr. C.W. Garrison (Jan. 5, 1925) (Powell Collection) (“When the law was about to be lost I erased the word ‘shall’ in connection with the registration and substituted ‘may’ which was not objectionable, especially as it contained no appropriation.”).

⁶³ 1924 *Journal of the Senate* (Va.) 476.

⁶⁴ *Emasculating a Good Bill*, Richmond Times-Dispatch, Feb. 29, 1924, at 8, col. 2.

⁶⁵ *Id.*

⁶⁶ Plecker apparently felt that the definition of “race” was the critical point of the bill. *See supra* note 60.

⁶⁷ *See* Mar. 8, 1924 *Journal of the House of Delegates* (Va.) 774.

⁶⁸ *See* 1924 Va. Acts 534. The Senate amended the title of the law from its original form, “A Bill to Preserve the Integrity of the White Race” only after the vote in favor of passage. *See* amendment by Mr. Jeffreys, 1924 *Journal of the Senate* (Va.) 477. Plecker’s sentiments as to the law’s title are clear from a letter he wrote endorsing a

The provisions of the law that survived legislative amendment settled specific powers in the office of the Registrar of Vital Statistics. Plecker was directed to prepare “registration certificates” to record the racial history of any person born before June 1912.⁶⁹ This provision was available to citizens at their discretion if birth certificates or other records confirming race were not currently on file. False registration of race or the completion of a false birth certificate was a felony, punishable by one year in prison. Court clerks were required to have “reasonable assurance” of a couple’s race before issuing a marriage license. If clerks found “reasonable cause to disbelieve” that applicants were “of pure white race” when the couple had attested to that fact, licenses could be withheld until “satisfactory proof” was available.⁷⁰ All marriages between whites and nonwhites were prohibited except for marriages between whites and those with “[one-sixteenth] or less of the blood of the American Indian and . . . no other non-Caucasic blood.”⁷¹ The Act was funded by fees collected from local registrars and clerks. As both Powell and Plecker had desired, the Act implemented the most important objectives of the A.S.C.O.A.’s legislative petition, specifically, the definition of “white persons” that excluded anyone with “a single drop of Negro blood,” and the absolute prohibition of miscegenation.⁷²

Passage of the Racial Integrity Act brought public attention to Powell and Plecker. Congratulations from the Act’s early supporters arrived⁷³ and inquiries from around the country provided names of like-minded officials and possible members for the A.S.C.O.A. Plecker and Powell visited regularly to share correspondence and coordinate their contacts with sympathizers. They also worked with E. Lee Trinkle, then governor of Virginia, in a campaign to pass miscegenation laws in other states.⁷⁴

miscegenation bill for the District of Columbia. That bill focused upon “the integrity of the white race,” which, as Plecker agreed was “preferable, as it is the protection of the white race that is aimed at, and not the others.” *See* letter from Walter Plecker to Sen. Morris Shephard (Mar. 12, 1925) (Powell Collection).

⁶⁹ 1924 Va. Acts 534.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *See* letter from Lothrop Stoddard to John Powell (Apr. 8, 1924) (Powell Collection).

⁷⁴ For example, a copy of one letter noting Trinkle’s out-of-state lobbying was sent to Powell with the notation: “When you come to Richmond you will probably be interested in looking over the Government letters in our office. Send Mr. White Anglo-Saxon literature.” *See* letter from Walter Plecker to Rev. Wendell White, *supra* note 62. Among the states Plecker contacted were South Carolina, *see* letter to Rev. White

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The correspondence of Powell and Plecker reveals that both men were highly active in promoting antimiscegenation laws and in distributing literature advancing the objectives of the A.S.C.O.A.⁷⁵ Not all of their contacts wished to publicize the work that went on behind the scenes,⁷⁶ but in general, the passage of Virginia's law provided a legitimacy to racial propaganda that it had lacked earlier.

B. Public "Education" on the Racial Integrity Act

Following passage of the miscegenation law, Plecker wasted little time institutionalizing his theories about race. As State Registrar he was charged with the Act's administration and took every opportunity to publicize its import. His regular vehicle for publicity was the *Virginia Health Bulletin*, in which his Vital Statistics Reports appeared annually. Two "extra" editions of the *Bulletin* printed in 1924 con-

supra note 62; North Carolina, *see* letter from Walter Plecker to Dr. F. M. Register (Aug. 9, 1924) (Powell Collection); Ohio, *see* letter from Walter Plecker to Harry E. Davis (Oct. 4, 1924) (Powell Collection) and letter from Walter Plecker to George Roberts (Feb. 25, 1925) (Powell Collection); Massachusetts, *see* letter from Walter Plecker to H.W. Urquhart (Mar. 17, 1925) (Powell Collection); and Arkansas, *see* letter from Walter Plecker to Dr. C.W. Garrison (Jan. 5, 1925) (Powell Collection).

⁷⁵ In some cases, Powell and Plecker gave joint presentations on the need for strict enforcement of the miscegenation law. *See* letter from Walter Plecker to Earnest Cox (Aug. 9, 1924) (Powell Collection) (explaining that Powell and Plecker would speak to a meeting of city and county clerks, and that Plecker was holding proceeds from the sale of copies of Cox's book, *White America*). Powell went to personal expense in traveling to Atlanta to speak before the Georgia legislature in favor of a 1925 bill against miscegenation. *See* letter from J.C. Davis to John Powell (May 25, 1925) (Powell Collection) (inviting Powell to speak); letter from John Powell to J.C. Davis (May 30, 1925) (Powell Collection) (accepting the invitation); and letter from J.C. Davis to John Powell (Aug. 22, 1927) (Powell Collection) (noting the passage of the bill Powell had supported); *see also* Small, *Wide Interest Is Aroused in Racial Integrity Bill*, *Atlanta Constitution*, June 27, 1925, at 6, col. 7 (discussing Powell's speech before the Georgia legislature).

⁷⁶ A letter from A.J. Bowley to John Powell (Feb. 7, 1925) (Powell Collection) suggests some of the controversy that must have remained to impede Powell's proselytizing. Bowley was a Brigadier General and Commanding Officer at Fort Bragg, North Carolina. After accepting with thanks a package of pamphlets Powell had sent, he asked that Powell

be very careful not to mention my name in connection with this propaganda, or under any circumstances to allow my name to be published in print. You will understand that in my official position, I cannot afford to have it known that I have taken any interest in your organization. However, I can do a great deal more good by quiet work on the side than I could in the open.

Id.

tained the Racial Integrity Act's full text and instructions to local Registrars on enforcement of the Act.⁷⁷ Plecker's messages were not the dry directives of a bureaucrat, but contained all the passion, and much of the misinformation masquerading as science that characterized the publications of men like Earnest Cox and Madison Grant.

Plecker declared that the "Bureau of Vital Statistics, [c]lerks who issue marriage licenses, and the school authorities are the barriers placed by this law between the danger and the safety of the Commonwealth."⁷⁸ Noting that the Bureau "has guarded the welfare of the State as far as possible," he predicted that

[u]nless radical measures are used to prevent it, Virginia and other parts of the Nation must surely in time go the way of all other countries in which people of two or more races have lived in close contact. . . . Complete intermarriage or amalgamation is the inevitable result. . . . The intermarriage of the white race with mixed stock must be made impossible. But that is not sufficient, public sentiment must be so aroused that intermixture out of wedlock will cease.

The public must be made to look with scorn and contempt upon the man who will degrade himself and do harm to society by such abhorrent deeds.⁷⁹

The *Racial Integrity Law* became the title of a portion of Plecker's reports that he repeated annually. As he analyzed the statistics on racial composition, Plecker often made dramatic observations. In 1924 he stated that "[n]ot a few white women are giving birth to mulatto children. These women are usually feebleminded, but in some cases they are simply depraved."⁸⁰ He recommended sexual sterilization as the solution.⁸¹ The rhetoric that surrounded the passage of the 1924 Act became Plecker's hallmark: "Young men must be brought to realize that it is as great a crime against their [s]tate and race to mix their blood with that of another race, out of wedlock, as in it."⁸²

Branching out beyond his role as an administrator, Plecker traveled to conventions and meetings and told the story of Virginia's crusade to prevent race mixture. In October 1924 he spoke to the American Public Health Association on "Virginia's Attempt to Adjust the Color Prob-

⁷⁷ See 16 VIRGINIA HEALTH BULL. 1-3 (Mar. 1924).

⁷⁸ *Id.* at 2 (Extra no. 2).

⁷⁹ *Id.*

⁸⁰ 17 VIRGINIA HEALTH BULL. 9 (1924).

⁸¹ Both the statute allowing sexual sterilization of the "feebleminded" and the Racial Integrity Act passed in 1924. See *supra* text accompanying notes 13-24. Plecker may have seen the sterilization of women bearing mulattoes as a particularly efficient modern use of eugenical sciences: preventing race mixture and mental defect in one act.

⁸² 17 VIRGINIA HEALTH BULL. 11 (1927).

lem.”⁸³ Quoting at length from Cox’s book, *White America*,⁸⁴ Plecker praised the Virginia Act as “the most perfect expression of the white ideal, and the most important eugenical effort that has been made in 4000 years.”⁸⁵ In all his appearances he repeated the most long-lived of all miscegenation myths — the myth of “reversion to type.” The fable inevitably took the form of apocryphal stories featuring two apparently white parents giving birth to a black child. According to Plecker, all families “tainted” by miscegenation were faced with this possibility and he often referred to “Mendel’s law” as authority.⁸⁶ In fact, Franklin Giddings previously had instructed Plecker and Powell that he and Edward Conklin, a Princeton biologist and mainstream eugenicist, were “skeptical” of this interpretation of Mendel’s theory.⁸⁷ More than ten years earlier Charles Davenport, Director of the Eugenics Record Office, had concluded that the “reversion to type” argument was unfounded.⁸⁸ Similarly, although Plecker continued to issue “eugenical” warnings about the hidden danger of marrying someone with the least trace of black ancestry, the *Eugenical News* published the conclusion of Harvard geneticist W.E. Castle that “[t]he science of eugenics is not yet prepared either to condemn or to commend extensive race crossing.”⁸⁹ Plecker’s arguments for the antimiscegenation law — supposedly based on “eugenical science” — did not comport with orthodox thought even in that theoretically problematic arena.

The publications, however, continued. Plecker’s address was printed in *The American Journal of Public Health* and excerpted in *The Literary Digest* under the caption: *Shall We All Be Mulattoes?*⁹⁰ In Novem-

⁸³ This speech constituted the major portion of the text of *Eugenics in Relation to the New Family and the Law on Racial Integrity* (1924), a pamphlet issued to young mothers under the auspices of the State Board of Health.

⁸⁴ E. COX, *WHITE AMERICA* (1923).

⁸⁵ *Id.* at 24.

⁸⁶ *Id.* at 25.

⁸⁷ See letter from Franklin Giddings to John Powell (Jan. 3, 1924) (Powell Collection).

⁸⁸ See Davenport, *State Laws Limiting Marriage Selection Examined in the Light of Eugenics* in *EUGENICS RECORD OFFICE BULL.* NO. 9 32-36 (1913). Davenport states that:

So far as skin color goes, therefore, a white skinned person with one-eighth Negro blood might be given a license to marry a white person, without fear of reproducing “colored” children. . . . The reasonable conclusion, then, would seem to be this: in legislating, forget skin color and concentrate attention upon matters of real importance to organized society.

⁸⁹ See *Race Mixture*, 9 *EUGENICAL NEWS* 132 (Nov. 1926).

⁹⁰ *THE LITERARY DIGEST* 23 (Mar. 27, 1925).

ber 1924 Plecker traveled to New Orleans to raise the question “Shall America Remain White?” for the edification of the Southern Medical Association. Not surprisingly, his answer was “affirmative today, but if delayed for several generations it may be forever too late.”⁹¹ Plecker’s September 1925 paper on the dangers of birth control concluded with a woeful glance at “the great black cloud which is threatening to envelope us, Race Amalgamation.”⁹² The following month he lectured physicians on “racial improvement,” and asserted that “America was claimed by the great Nordic race as its final and chiefest possession.”⁹³ The “fatal mistake” made by early Americans, according to Plecker, was to import slaves “many being recently cannibals from the west coast of Africa.”⁹⁴

Thus Plecker, in the full flush of victory after passage of Virginia’s antimiscegenation Act, flooded state and national publications with his racial evangelism. It was generally repetitive, and relied on the fears purveyed by the likes of racial propagandist Earnest Cox rather than on serious attention to biological data. However, it was in vogue during the Progressive Era to portray reform as the handmaiden of science, and Plecker made full use of his position as a state sponsored “scientist” to broadcast his racist message under the banner of “eugenics.”

III. A CHALLENGE TO THE RACIAL INTEGRITY LAW: THE ATHA SORRELLS CASE

Despite the Act’s directives for rigid enforcement, the first serious challenge to the Act occurred only a few months after its passage and demonstrated that tracing racial ancestries was a nightmare to clerks and registrars. That distasteful task included invasions of privacy and the infliction of emotional trauma in which many local officials did not care to be involved. In addition, serious questions remained in the minds of some legal officials about the Act’s constitutionality.

The challenge to the Act began when Atha Sorrells, whose grandmother’s birth records designated her as a “free colored person,” attempted to marry Robert Painter, a white man. The clerk rejected the couple’s application for a marriage license as their marriage would vio-

⁹¹ Reprinted in THE VIRGINIA BOARD OF HEALTH, THE NEW FAMILY AND RACIAL IMPROVEMENT 14 (1928).

⁹² *Id.* at 14, “Shall America Head for Race Suicide or Race Improvement?” Originally read before the Southside Medical Society, Petersburg, Va., September 8, 1925.

⁹³ See Plecker, *Racial Improvement* in VIRGINIA MEDICAL MONTHLY 486 (Nov. 1925).

⁹⁴ *Id.*

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late the Racial Integrity Act. The couple filed an action for mandamus to force the clerk to issue a license. The hearing on the motion for mandamus became an occasion of great moment for Plecker and Powell.⁹⁵

Sorrells contended that the “colored” designation on her family birth records indicated that she was part Indian, not part black. Since “colored” characterized racially mixed persons of both black and Indian heritage, additional evidence was necessary to determine ancestry. The Racial Integrity Act allowed persons with one-sixteenth Indian ancestry to marry whites, therefore Sorrells had a claim in favor of marriage. The case was focused on the question of who had the burden of proving the “purity” of bloodline.

Plecker and Sorrells presented evidence at the hearing.⁹⁶ Plecker produced one hundred years of tax records, civil war records, and other sources to prove that Atha Sorrells’ family was at least partially black. Sorrells presented a family genealogy to prove that her family heritage was part Indian. Although Plecker was adamant that his evidence was superior, Judge Henry Holt ruled in favor of Sorrells and ordered the clerk to issue a license.

Judge Holt’s opinion criticized the Racial Integrity Act as constitutionally infirm: “The clerk in refusing [a] license is not required to take evidence and can act without a hearing. Of course, if the statute stopped here we would have want of due process of law.”⁹⁷ Since the clerk’s decision to withhold a license was binding, the burden of proof rested on the applicants to prove that their bloodlines were racially “pure.” The legal problem was submerged in the practical problem of proving a negative case: that a person did not have “mixed blood.” Judge Holt found this procedure reminiscent of Alice in Wonderland:

If we apply the statute literally, the relief granted [an action for mandamus when the applicant still bears the burden of proof] is no relief at all. In twenty-five generations one has thirty-two millions of grandfathers, not

⁹⁵ The Sorrells case was covered in a series of articles in the *Richmond News Leader*. See *Woman, Listed Negroid, Wins Right to Be Called “White,”* The News Leader, Nov. 18, 1924, at 1, col. 5.

⁹⁶ Details of the Sorrells case were related in a pamphlet by John Powell and published by the A.S.C.O.A. Powell, *The Breach in the Dike: An Analysis of the Sorrells [sic] Case Showing the Danger to Racial Integrity from Inter-marriage of Whites and So-called Indians*, A.S.C.O.A. (draft version available in Powell Collection) [hereafter *Breach in the Dike*].

⁹⁷ The text of Judge Holt’s opinion was printed in a *News Leader* article. See *News Leader*, *supra* note 95. A manuscript copy of the opinion with Judge Holt’s comments is available in the Powell Collection.

to speak of grandmothers, assuming there is no intermarriage. Half the men who fought at Hastings were my grandfathers. Some of them were probably hanged and some knighted, who can tell? Certainly in some instances there was an alien strain. Beyond peradventure I cannot prove that there was not, and so the relief granted by appeal is no relief at all. . . .

There is no inhibition against the intermarriage of those who are unable to prove absence of a trace of blood of stock prohibited, and since nobody can prove this, we find ourselves where we were in the beginning. Alice herself never got into a deeper tangle.⁹⁸

Judge Holt also declared that “statutes to be valuable must have written into them common sense.”⁹⁹ Although he was clearly in favor of the Act’s objective, the impossibility of its fair administration led Judge Holt to endorse precisely the types of marriages Plecker and Powell feared most — marriage of a white person and another person of indeterminate racial background. Since large numbers of Virginians had a mixed racial heritage — part black, part white, part Indian — many lighter-skinned people could claim only their Indian background to avoid the miscegenation law. The invisible “pollution” of white bloodlines that the Act’s authors abhorred would not be prevented.

Powell and Plecker contacted the state attorney general in an attempt to overturn the precedent they feared as a result of the Sorrells case. They were advised that appeal was dangerous since a loss at the appellate level would set a binding precedent throughout the state. The letter to Powell containing this advice indicated the extent of the political leverage of Powell and Plecker, as it left the question of an appeal by the state open to their discretion.¹⁰⁰

After several months of considering the issues, Powell and Plecker decided not to appeal. Instead Powell wrote a pamphlet, *The Breach in the Dike*,¹⁰¹ explaining the Sorrells case and calling for an amendment

⁹⁸ *News Leader*, *supra* note 95, at 4.

⁹⁹ *Id.*

¹⁰⁰ See letter from Leon M. Bazile, Assistant Attorney General, to John Powell (Nov. 26, 1924) (Powell Collection). Bazile stated: “Of course, if you and Dr. Plecker wish the case to go to the Court of Appeals, this office will take it there. . . . I would be very glad if you would write me your views about this matter, as something has to be done about appealing this case.” Bazile later sat as trial judge in *Loving v. Virginia*. See *infra* note 134; see also *May Test Law on Racial Integrity*, Richmond News Leader, Nov. 19, 1924, at 1, col. 5; *State May Appeal from Decision of Judge Henry Holt*, Richmond News Leader, Nov. 20, 1924, at 2, col. 6.

¹⁰¹ See *Breach in the Dyke*, *supra* note 96. Powell in concert with the attorney general and legal counsel for the A.S.C.O.A. decided not to appeal. *Id.* The pamphlet was written specifically to save face for the A.S.C.O.A. and Powell who were concerned that they would appear to be acquiescing in the Sorrells verdict by their failure to pursue an appeal. See letter from John Powell to Judge Holt (Apr. 6, 1925) (Powell

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to the Racial Integrity Act that would remove the exception for those of one-sixteenth Indian blood. Powell's pamphlet concluded that the exception in the Act actually was unnecessary since "[a]fter profound analysis of the situation, Dr. Plecker has reached the conclusion that there are at present in Virginia no Indians who do not possess some degree of negro blood."¹⁰²

The loss in the Sorrells case apparently was cause for an alteration of the long-range plans of Powell and the A.S.C.O.A. They revived plans for a "final solution" to remove the threat of "amalgamation." A "back to Africa" movement to deport all American blacks had already commenced, led by black separatist Marcus Garvey. Powell visited Garvey in federal prison during a trip to Atlanta,¹⁰³ and Earnest Cox praised him in a pamphlet "Let My People Go" as a proper leader for the A.S.C.O.A. solution, the exodus of America's blacks.¹⁰⁴ Plecker also supported the Garvey movement and wrote President Coolidge in support of a pardon for Garvey, so that he might "inspire his people . . . and . . . teach them abhorrence of mongrelization."¹⁰⁵

Garvey's movement, and the A.S.C.O.A.'s hopes for it, ultimately

Collection). Powell stated, "I have prepared a paper on this case for publication . . . the purpose of which is to cover our temporary retreat, and to consolidate our position to resist the next attack." Judge Holt responded: "I have no pride of opinion and have done what I could to make an appeal in that case easy. . . . The question is one of law and presents as little field for feeling as does the multiplication table." See letter from Henry Holt to John Powell (Apr. 9, 1925) (Powell Collection).

¹⁰² *Breach in the Dike*, *supra* note 96, at 16. Plecker regularly contended in subsequent publications that all Virginia Indians were also part black. Plecker lobbied continually for a change in the law to close the "Indian route" which he saw as the "chief method . . . of entering the white race." 21 *VIRGINIA HEALTH BULLETIN* 52 (1928); see letter from Walter Plecker to N. B. Pfeiffer (June 19, 1946) (Powell Collection). Plecker stated, "The Indians of Virginia have disappeared into the negro and white race. The rest have been eliminated by disease, rum and war amongst themselves and with the white people." Despite his efforts, the 1926 legislature turned down an attempt to remove the Indian exception, primarily because it would have affected so many prominent Virginia families including "at least a dozen members of the general assembly." *Integrity Act Affects 20,000 Whites, Claim*, *Richmond News Leader*, Feb. 8, 1926, at 1, col. 8; see also *The Racial Bills*, *id.*, at 8, col. 1 (editorial); *Bill Brands 63 First Families of Va. as 'Colored,' id.* Feb. 9, 1926, at 1, col. 6.

¹⁰³ Garvey was the founder of the Universal Negro Improvement Association. Powell met Garvey during a trip to lobby for the Georgia miscegenation law. See *supra* note 75.

¹⁰⁴ See *Deportation of Garvey*, *Richmond Times-Dispatch*, Aug. 10, 1925, at 6, col. 2.

¹⁰⁵ Letter from Walter Plecker to President Coolidge (Mar. 19, 1927) (Powell Collection).

failed. Powell and Plecker were left with their 1924 Act as the last, best hope for a white America. The “breach in the dike” left by the Sorrells case was to become a major focus of their race propaganda.¹⁰⁶

A. Using the Press to Plug the “Dike”

Following the Sorrells case, Plecker and Powell combined efforts to produce a series of newspaper articles that would capture public sentiment in favor of amendments to the Racial Integrity Act. Powell’s premier public statement on the dangers of miscegenation appeared in 1925 in an article in the *Richmond Times-Dispatch* entitled *Is White America to Become a Negroid Nation?*¹⁰⁷ With this article, the campaign to replace the 1924 Act and its apparent loopholes began in earnest.

The article criticized the state legislature’s attention to “nullification of the reconstruction policies of the carpet baggers”¹⁰⁸ as short-sighted. “It is not enough,” he emphasized, “to segregate the Negro on railway trains and street cars, in schools and theaters; it is not enough to restrict his exercise of franchise, so long as the possibility remains of the absorption of Negro blood into our white population.”¹⁰⁹

Powell noted that the existing law against interracial marriage had been revised several times. The first miscegenation law of 1866 had allowed marriages between whites and people of less than one-fourth “negro blood.”¹¹⁰ The percentage of Negro blood allowable for intermarriage was later limited to the “octaroon,”¹¹¹ anyone with one-eighth Negro blood or less. Powell contended that the 1924 Act, which forbade intermarriage between whites and anyone with one-sixteenth or more Negro blood,¹¹² could be traced to “the development of eugenical science.”¹¹³ According to Powell, additional studies in the science of heredity required further restrictions to the 1924 Act, as the studies simply

¹⁰⁶ See *Breach in the Dike*, *supra* note 96.

¹⁰⁷ *Richmond Times-Dispatch*, July 22, 1925, at 1, col. 1. Comparison of this article with the *News Leader* article of June 5, 1923, *supra* note 27, suggests that Powell authored both. The earlier article was not signed but appeared under the caption “written for the *News Leader*.”

¹⁰⁸ *Times-Dispatch*, July 22, 1925, *supra* note 107.

¹⁰⁹ *Id.*

¹¹⁰ See Act of Feb. 27, 1866, ch. 17, Sec. 1, 1865-1866 Va. Acts 84.

¹¹¹ See *Times-Dispatch*, July 22, 1925, *supra* note 107, at 18, col. 2. Powell’s analysis did not match the legislative record in Virginia, which contains no enactment covering “octaroons” and miscegenation.

¹¹² See Act of March 17, 1910, ch. 357, 1910 Va. Acts 581.

¹¹³ See *Times-Dispatch*, July 22, 1925, *supra* note 107, at col. 2.

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underlined the “instinctive Anglo-Saxon conviction that one drop of Negro blood makes the Negro.”¹¹⁴ It was this conclusion that justified the birth certificate and marriage provisions of the proposed law. Powell believed that even if intermarriage was not affected, registration would be valuable for the record it would provide indicating “who is and who is not tainted.” Registration would separate whites from others “of dubious racial purity.”¹¹⁵

Powell’s article touched on the “advance of social equality,” a bothersome trend to him, and passed delicately over what he considered more scandalous, the “increasing number of hybrids born of white women.”¹¹⁶ The remainder of the article repeated the lofty goals of the A.S.C.O.A., which allowed anyone with any “original American stock” to join the organization along with Anglo-Saxons. The clubs were open to all those who wished to preserve “Anglo-Saxon civilization.”¹¹⁷

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at col. 4. Powell qualified this trend as “too abhorrent to be discussed in the public press.” *Id.*

¹¹⁷ *Id.* at col. 6. Powell’s article preceded a lengthy article by Colonel Earnest S. Cox, a self-proclaimed ethnologist and explorer. Cox’s publications on the subject of race and civilization were reportedly based on many years of travel throughout the world. His major theoretical work, *White America*, appeared in 1923 and provided a good measure of the doomsday rhetoric drawn upon by Powell and the A.S.C.O.A. in their campaign for the Racial Integrity Act. Cox’s thesis on the danger of race mixture appeared in *White America* as three “proven” propositions:

Scientific research has done much toward establishing the following propositions:

- 1) The white race has founded all civilizations;
- 2) The white race, remaining white has not lost civilization;
- 3) The white race becoming hybrid has not retained civilization.

E. COX, *WHITE AMERICA* 23 (1923). Cox’s conclusions also included the observation that history had proven the “Teutonic-Nordic” racial strain as the “Master Race.” *Id.* at 43. Copies of *White America* were distributed to every member of the United States Congress in 1925 in the campaign for a national law against miscegenation. Cox’s later publications included *Teutonic Unity* (1951), a privately published anti-Communist tract that asserted, among other curiosities, that the power of the papacy sprang from the insidious work of “two Jews”: Peter and Paul. *Id.* at 284. The thesis of *Teutonic Unity* was that a strong alliance between the United States and “white” democracies of Europe would save the world from Soviet domination. Cox’s last book was a biography of his own travels and convictions. E. COX, *BLACK BELT AROUND THE WORLD AT THE HIGH NOON OF COLONIALISM* (1963). Cox died in 1966, three years after his colleague John Powell. The Powell Collection contains a number of pamphlets by Cox. See E. COX, *LINCOLN’S NEGRO POLICY* (1938); E. COX, *LET MY PEOPLE GO* (1955).

Several months later, *The Last Stand*, thirteen articles that ran in the Richmond *Times-Dispatch* under Powell's signature, demonstrated "the necessity for race integrity legislation in Virginia as shown by an ethnological survey of the state."¹¹⁸ With a mass of cases clearly supplied to him from Plecker's files, Powell described the declining racial purity of the Commonwealth. He noted the increasing number of illegitimate mulatto children, described the amount of "passing" by non-whites who successfully hid their racial background, and dredged up the usual stories of "reversion to type" when black children allegedly were born to apparently white parents.

The newspaper articles were timed to appear as the General Assembly was in session. They included proposed amendments to the 1924 Act that would ease administration and close loopholes such as those which the Sorrells case highlighted. The articles emphasized the "scientific" nature of the data from which they were drawn, and also relied on the conclusions of Arthur Estabrook and Ivan McDougale, whose book, *Mongrel Virginians*,¹¹⁹ was offered as the definitive study of the WIN tribe — an acronym concocted as an abbreviation for communities of White-Indian-Negro mixture. The *The Last Stand*'s effect on legislation was negligible. However, it was noteworthy because of the degree to which Powell repeated anonymous and apocryphal stories to prove "racial amalgamation and decadence of racial sense."¹²⁰

The most remarkable of Powell's tales was the alleged "comb test." This story concerned a group of persons of mixed racial background who founded a church in rural Virginia. According to Powell's infor-

Powell's own musical work reflected his sympathies with things "Teutonic" and the Powell papers contain notes and articles on the German Hero sagas as well as Powell's orchestral composition, *Sonata Teutonica* (1913) (Powell Collection).

¹¹⁸ *The Last Stand* ran from Feb. 16 to Mar. 2, 1926, and was introduced by a supporting editorial, *Know the Facts* Richmond Times-Dispatch, Feb. 16, 1926, at 6, col. 1.

¹¹⁹ A. ESTABROOK & I. MCDUGLE, *MONGREL VIRGINIANS* (1926) was produced with the help of Plecker's records at the Bureau of Vital Statistics. Its "eugenical" focus included a copy of the 1924 Racial Integrity Act. Estabrook was a field worker from the Department of Genetics of the Carnegie Institution in Washington, and McDougale a sociologist from Sweetbriar College in Virginia. Estabrook spent a number of years in Virginia, and during the study that would culminate in *Mongrel Virginians*, took time off to appear as an expert witness at *Buck v. Bell*, 274 U.S. 200 (1927), the test of Virginia's eugenical sterilization statute. See Lombardo, *supra* note 15.

¹²⁰ This is the caption on the collection of cases from which the *The Last Stand* series was drawn. See Powell, *Citation of Cases Showing Racial Amalgamation and Decadence of Racial Sense* (1926) (unpublished compilation of cases) (Powell Collection).

mant, admission to the church depended upon the result of drawing a comb through the applicant's hair. If the comb passed through the hair, the applicant was admitted as a true Indian; if the comb stuck, the applicant was rejected as black. One elderly applicant, clearly black, was presented for admission by his "Indian" brother, already a member. The comb was retrieved, and the test proceeded:

The comb was inserted into the wool by the chief, where it stuck fast. The mortified Indian brother, with clenched fists and the gestures of a football rooter, was exclaiming, "Pull it through, chief, for Gawd's sake, pull it through!" Chief responded vigorously, but the comb still stuck. The old darky stood all he could, until finally, with streaming eyes and trembling knees, he yelped, "Gawdie-mighty, Marster, take dat comb outer my hyah befo' you pull ev'y stran' off o' my haid!" Whereupon, to the chagrin of his brother, the old man ducked away and fled incontinently from the church.¹²¹

The point of this story, like most of the *The Last Stand* articles, was to ridicule blacks with Uncle Remus humor and Faulknerian horror stories about the shame and the tragedy of miscegenation. Although the articles were touted as a product of Plecker's data and Powell's "scientific" observations, they were nothing more than a collection of the fears and prejudices common to generations of racists.

B. Plecker as Administrator

While the propaganda on race issues revealed the extent to which Powell and the A.S.C.O.A. would go in public, the power of Plecker's office as a tool for racial harassment is most visible through Vital Statistics records.¹²² As administrator of the Bureau of Vital Statistics, Plecker was able to counter the threat posed by the Sorrells case with more direct methods than Powell's articles.

In his capacity in the Bureau, Plecker regularly conducted "investigations" of racially "suspect" Virginians. He boasted of the "many citizens [who] have furnished data upon which to trace groups and fami-

¹²¹ Richmond Times-Dispatch, Feb. 19, 1926, at 9, col. 5.

¹²² In fact, Plecker's public rhetoric cooled somewhat following his partisan appearances in favor of legislation in 1924 and 1926. Letter from Walter Plecker to Augusta Fothergill (Jan. 21, 1928) (Powell Collection) ("I have been advised not to show too much interest in this subject [racial integrity law] in the Legislature as not all are agreed on it and too much activity might reflect on the Health Department."). Plecker also suffered a minor setback when he was called to task by Secretary Davis of the United States Department of Labor, for "using the government franking privilege to spread propaganda derogatory to the negro race." *Plecker Aroused by Blow Aimed at Racial Law*, Richmond Times-Dispatch, March 31, 1925, at 1, col. 6.

lies . . . though they hesitate to testify in court.”¹²³ He also instituted a system of notations that appeared unofficially on the back of birth certificates already filed under what he considered the incorrect race. These notations were used to justify refusal of birth certificates to children of the same families, until all were registered properly — inevitably as black.¹²⁴ Vital statistics records were apparently available as proof of race to any citizen who requested them. Plecker was happy to report both annulments of interracial marriages and the prevention “of other similar marriages by giving out the facts to inquiring young people whose suspicions were aroused.”¹²⁵

To those who were unfortunate enough to deal directly with Plecker, threats and insults were often forthcoming. To one woman who attempted to be married using a photostatic copy of her birth certificate, Plecker sent this response:

We are returning to you the photostatic copy of your birth certificate. The law makes it my duty to put on the back of certificates containing false records of race a correct statement shown from the records of the racial ancestry of the claimant.

All of the records in your family . . . show them before the war between the states as free negroes. . . . Now many of these women have mixed up with white men out of wedlock so that many of them look almost white . . . and are trying to pass as white. . . .

Your parents started out to make false statements about themselves, and their children are suffering. Giving a false registration as to race, makes the parents, or whoever wrote it down, liable to one year in the penitentiary.

After the war it is possible that some of these cases will come into court. We might try this one. It would make a good one, if you continue to try to be what you are not.¹²⁶

¹²³ 20 VIRGINIA HEALTH BULL. 47 (1928).

¹²⁴ *See id.* at 54. This practice was later codified. *See* Act of Feb. 22, 1944, ch. 52, 1944 VA. ACTS 51.

¹²⁵ 19 VIRGINIA HEALTH BULL. 157 (1927). One such case is recorded in a letter from Walter Plecker to L. Quibell (Mar. 10, 1934) (Powell Collection) (“We hope that your daughter can see the seriousness of the whole matter and will dismiss this young man without more ado.”). Plecker also regularly contacted school officials to alert them to the presence of children whose race might be suspect. *See also* letter from Walter Plecker to Harry E. Davis (Oct. 4, 1924) (Powell Collection).

¹²⁶ Letter from Walter Plecker to Aileen Hartless (Mar. 9, 1944) (Powell Collection); *see also* letter from Walter Plecker to Mrs. Robert Cheatham (Apr. 30, 1924) (Powell Collection) (“This is to give you a warning that this is a mulatto child and you cannot pass it off as white. . . . [S]ee that this child is not allowed to mix with white children. It cannot go to white schools and can never marry a white person in Virginia. It is an awful thing.”); and letter from Walter Plecker to Mrs. Mary Gildon (Apr. 30, 1924) (Powell Collection) (“This is to notify you that it is a penitentiary offense to

In addition to work that arguably came within his purview in the Bureau of Vital Statistics, Plecker ranged far afield by giving legal advice and general opinions on racial matters to everyone who contacted his office. At various times he interpreted the Racial Integrity Act as setting the same standard for school segregation as for marriage (no one with a trace of nonwhite blood should be allowed in white schools);¹²⁷ forbidding people of mixed race from being buried in white cemeteries;¹²⁸ and segregating the races in the military.¹²⁹ In one case, he used his official position and the threat of personal financial retribution to have a child of “questionable” background removed from a private orphanage.¹³⁰ Another Plecker letter went so far as to lecture a judge about the legal authority of the Bureau of Vital Statistics in “establishing race,”¹³¹ and in yet another, he boasted that the “mass of original information and pedigree charts” on the racial origins of Virginians was so detailed “that Hitler’s genealogical study of the Jews is not more complete.”¹³²

willfully state that a child is white when it is colored. You have made yourself liable to very serious trouble. What have you got to say about it?”).

¹²⁷ See letter from Walter Plecker to David Peters, President, State Teacher’s College (Apr. 17, 1940) (Powell Collection) (“This law has generally been interpreted by school authorities to prevent the admittance of any colored races into white schools.”).

¹²⁸ See letter from Walter Plecker to Superintendent, Riverview Cemetery (Aug. 1, 1940) (Powell Collection) (“We are under the impression that . . . you are not aware of the fact that . . . this man [already buried] is of negro ancestry. . . . We are giving you this information to take such steps as you may deem necessary.”); and letter from Walter Plecker to W.G. Muncy (Aug. 3, 1940) (Powell Collection) (“In the case of burials in the ‘Pauper Section,’ the question might not be as serious, but to a white owner of a lot, it might prove embarrassing to meet with negroes visiting at one of their graves on the adjoining lot.”).

¹²⁹ See letter from Walter Plecker to Selective Service System (Jan. 29, 1943) (Powell Collection).

¹³⁰ See letter from Walter Plecker to Rev. J.J. Murray (Mar. 20, 1944) (Powell Collection) (“I personally desire the racial origin of these children cleared up. . . . I, as a Presbyterian elder, have for many years been interested in the orphanage . . . and have been contemplating including the orphanage in my will.”); and letter from Walter Plecker to R.E. Moore (May 18, 1944) (Powell Collection) (“[T]he fact that [the orphan] is illegitimate would be very much in favor of her being of mixed stock and not white.”).

¹³¹ See letter from Walter Plecker to Honorable Herbert G. Smith (Apr. 22, 1943) (Powell Collection). Plecker stated: “This responsibility is generally recognized in various parts of the State by school authorities and all others. . . . You are, of course, in better position than myself to answer as to your authority. If any is given in the Code, my attention has never been called to it.” *Id.*

¹³² Letter from Walter Plecker to John Collier, Office of Indian Affairs (Apr. 6, 1943) (Powell Collection).

Even after his resignation at age eighty-five, Plecker attempted to maintain his influence by securing a new title — “ethnologist” — that would allow him to continue to work as racial propagandist.¹³³

CONCLUSION

The legacy of Walter Plecker and his friend John Powell remained essentially intact in the Racial Integrity Act’s prohibition of miscegenation from its 1924 passage until the Act’s demise in *Loving v. Virginia* in 1967. The arguments proposed by the state of Virginia during the *Loving* litigation are, in retrospect, almost comical in attempting to resurrect “eugenical” authorities as the explanation for a law founded upon racism. It was not enough that Judge Leon M. Bazile¹³⁴ would banish Mildred Jeter and Richard Loving from Virginia for twenty-five years, retreating for legal authority to the bigot’s last refuge — a specious religious inspiration:

Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with this arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.¹³⁵

Nor was it enough that the Virginia Supreme Court of Appeals upheld Judge Bazile’s outrageous verdict, choosing to affirm the convictions while it voided the twenty-five year suspension of sentence conditioned on banishment, and remanded the case for resentencing.¹³⁶ As if anxious to recall the “scientific” history of the Virginia miscegenation law, when attorneys for the state of Virginia argued before the United States Supreme Court, they defended the Act and the lower court decisions by

¹³³ See Resignation Letter from Walter Plecker to Dr. I.C. Riggin (May 27, 1946) (Powell Collection) (“A plan that occurs to me is to be appointed by the Health Department or yourself for a new position — “ethnologist” — without salary, or at a nominal one.”).

¹³⁴ Judge Bazile of the Caroline County Circuit Court, Virginia, sentenced Richard Loving and Mildred Jeter to one-year terms and then suspended the sentence on the promise that they both leave the state and not return together for twenty-five years. As assistant attorney general in 1924, Bazile had solicited the advice of John Powell and Walter Plecker about appealing the Sorrells case. See *supra* note 100. For a summary of Bazile’s career, see W. BRYSON, *LEGAL EDUCATION IN VIRGINIA, 1789-1979* at 83 (1981).

¹³⁵ The Bazile opinion of July 11, 1958, is printed in Va. Briefs and Records, No. 6163 at 14, *Loving v. Commonwealth*.

¹³⁶ See *Loving v. Commonwealth*, 206 Va. 924, 147 S.E. 2d 78 (1966).

citing the dissent in *Perez v. Lippold*,¹³⁷ which overturned California's miscegenation law. The dissent in *Perez* relied upon the same "eugenical" treatises that Powell and Plecker used in support of the 1924 Act.¹³⁸ While the attorneys for Virginia were more timid than the A.S.C.O.A. might have been in insisting on white supremacy, they continued to argue that valid "scientific" evidence existed to support laws against miscegenation.¹³⁹ However, a unanimous Supreme Court disagreed.

Thus, the political crusade of John Powell and Walter Plecker was ultimately discredited, but not until their Act for "racial purity" had been part of the Virginia Code for forty-three years. Their intentions in passing and supporting the Act clearly had much more to do with politics than with science. The zealous racism that is reflected in their private papers and their public propaganda has little to do with a rigorous application of the principles of genetics, even as they were imperfectly understood in 1924. They, like all "successful" eugenicists,¹⁴⁰ were not bound by empiricism, but by ideology. That ideology prompted them to drift far from the mainstream of eugenic orthodoxy in offering legal proposals to ensure their vision of white supremacy and social inequality among the races. Their invocation of "eugenical" arguments in support of discriminatory legislation occurred often enough to convince many in their audiences, and perhaps even themselves,¹⁴¹ that the Ra-

¹³⁷ 32 Cal. 2d 711, 198 P.2d 17 (1948).

¹³⁸ *Id.* at 737-59, 198 P.2d at 47-59. For example, C.B. Davenport of the Eugenics Record Office was quoted, as was W.E. Castle of Harvard and J.W. Gregory, author of the 1925 tract *The Menace of Color*.

¹³⁹ The oral arguments in *Loving* are particularly revealing of the deference Virginia's attorneys paid to the changed climate of public opinion by 1966. The focus of the scientific argument in *Loving* was that racial "superiority" and "inferiority" were not at issue, but that the "differences" between blacks and whites were so great that children of intermarriage were harmed by it. See comment of McElwaine, LANDMARK BRIEFS AND ARGUMENTS OF THE SUPREME COURT 987-993 (P. Kurland & G. Casper eds. 1975).

¹⁴⁰ The popular repute of eugenicists did not depend on their willingness to follow theoretical constructs with intellectual rigor. Some, like Alexander Graham Bell, left the eugenics movement when developing trends in genetics made many "hereditarian" assumptions untenable (e.g., that handicaps, morality and criminality were all inherited). Others, like Harry Laughlin, pursued the eugenic creed with an almost rabid fervor, regardless of research findings in other fields. Laughlin eventually found sympathetic colleagues among the Nazis, who awarded him an honorary medical degree in 1936 for his work in "the science of race cleansing." See Hassencahl, *supra* note 11, at 359.

¹⁴¹ It is likely that both Plecker and Powell believed that they had tapped the truths of science for the benefit of civilization. They kept in touch with others who showed an

cial Integrity Act reflected the most critical of scientific truths.

The attitudes of Powell and Plecker, as their private correspondence suggests, were to survive beyond the assertions of “Teutonic superiority” and “Nordic purity” that fell into disrepute with Hitler’s defeat. More importantly, the Act for which Powell and Plecker were responsible survived even beyond their deaths as a monument to bigotry and a memorial to the misuse of science.

interest in “eugenical” topics, and no doubt felt that they were on sound theoretical ground in their application of the principles of eugenics. *See* letter from Mary Baughman, M.D. to John Powell (Aug. 20, 1927) (Powell Collection) (discussing a meeting of the American Eugenics Society); letter from Walter Plecker to E.B. Ford of the British Bureau of Human Heredity (Mar. 22, 1939) (Powell Collection) (noting a Plecker paper given before the International Congress of Eugenics); and letter from Walter Plecker to Milton Lehr (Apr. 25, 1939) (Powell Collection) (referring to a letter from “my friend, Dr. Harry H. Laughlin”).