

Georgia State University College of Law

From the Selected Works of Paul A. Lombardo

March 1, 2003

Facing Carrie Buck

Paul A. Lombardo, *Georgia State University College of Law*



Available at: https://works.bepress.com/paul_lombardo/77/

Facing Carrie Buck

BY PAUL A. LOMBARDO

Three generations of imbeciles are enough.”¹ Few phrases are as well known among scholars of bioethics as this remark by Oliver Wendell Holmes Jr. in his opinion in *Buck v. Bell*. The *Buck* case arose as a challenge to a 1924 Virginia law authorizing the sexual sterilization of people designated as “socially inadequate.” The law explicitly adopted eugenic theory, affirming the proposition that tendencies to crime, poverty, mental illness, and moral failings are inherited in predictable patterns. The social costs of those conditions could be erased, the eugenicists thought, and Carrie Buck’s case went to court to establish a constitutional precedent and ratify the practice of eugenic sterilization.

The sterilization law received a thundering endorsement from the U. S. Supreme Court in 1927. Holmes, by then perhaps the most revered judge in America, wrote an opinion that proclaimed: “It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. . . .” His comment about generations of imbeciles was intended to summarize the evidence introduced in court about Carrie, her mother, and her daughter. Holmes’ opinion became the rallying cry for American eugenicists. Within a decade of the decision, eugenic sterilization was enshrined in the laws of a majority of American states; the practice of state-mandated surgery remained intact for nearly three-quarters of the twentieth century, generating at least 60,000 victims.

Paul A. Lombardo, “Facing Carrie Buck,” *Hastings Center Report* 33, no. 2 (2003): 14-17.

When I met Carrie Buck in December 1982, it was clear that her frailty reflected the trials of a long, hard life. Her death only three weeks later was a surprise to no one. Weak from the infirmities of old age, she spoke sparingly, saving the little energy she had. In our brief conversation, little was said of the Supreme Court case that had settled her fate years earlier. In the decades since that meeting, I have searched for evidence that would shed light on the “three generations” condemned in Holmes’s chilling phrase, particularly the young woman whose infamy it insured.

Slowly, the search yielded startling results. Virginia mental health agency records revealed that the sterilization law was originally written to protect a doctor who feared malpractice lawsuits from patients who had endured his freelance, coerced sterilizations. Those records also confirmed that the lawyer paid to defend Carrie Buck actually betrayed her, by neglecting to challenge the claims of eugenicists who testified at her trial and colluding with the state’s lawyer to guarantee that the sterilization law would remain in force.² School report cards demonstrated the intelligence of Vivian, Carrie’s daughter. The grade book I found showed her to be an “honor roll” student, contradicting the impression of trial witnesses that as an infant she was “peculiar,” “not quite normal,” and probably “feble-minded.”³ Carrie’s case turned out to be less about mental illness than about moralism, and the comments about her illegitimate baby served to hide the fact—confirmed by Carrie herself—that rape by a relative of her foster parents had left her pregnant.

But the records of lawyers and bureaucrats could never provide a complete perspective on Carrie Buck’s

story. As for my talk with Carrie: an aging woman's final recollections of the most painful memories of her adolescence were understandably brief, and some details continued to elude me. How did seventeen-year-old Carrie Buck feel as she faced a trial that would determine her future as a mother? What did this girl, described in court records as having "a rather badly formed face," really look like in 1924? Similar questions remained about the other two generations of the Buck family: Carrie's mother, Emma, and the baby Vivian.

Picturing Three Generations

Years after Carrie's sterilization, Dr. John Bell, the physician who eventually sterilized Carrie Buck, attempted to find pictures of Carrie and her baby that could be included in an article written by California eugenics enthusiast Paul Popenoe. Bell was successful in locating a photo of Carrie, but was frustrated in his search for a picture of Vivian, Carrie's baby, and wrote that the absence of documentation "has deprived the child of an opportunity to become a permanent figure in eugenic history."⁴ Bell submitted a portrait of himself to be paired with Carrie's image in the article celebrating the notorious case.⁵ He was unaware that any other photos of the Buck family existed and could not have known that, far from being a high point in American history, the eugenic sterilization movement would later be listed among the country's most shameful memories.

In my searches through university archives, I discovered two pictures that escaped Bell's attention. Both were taken at the time of the 1924 trial. The photographer was an expert witness who visited Virginia in preparation for his testimony in favor of Carrie Buck's sterilization. Our only perspective on the Bucks has been shaped by Holmes's callous proclamation. These photos show us the Buck family and provide the faces that we have thus far only imagined: three generations of the most famous but previously faceless victims of the eugenics movement in America.

Carrie Buck was committed to the Virginia Colony for Epileptics and Feeble-minded as a prelude to her sterilization. Her mother Emma preceded her at the Colony, arriving four years earlier. In November 1924, the Colony attorney contacted Arthur Estabrook, an experienced field researcher employed by the Eugenics Record Office at Cold Spring Harbor, New York, whose work was funded through the division of genetics of the Carnegie Institution of Washington. In addition to a doctoral degree from Johns Hopkins, Estabrook's scientific experience included his investigation of the Jukes family, a notorious New York clan first examined in the 1870s



Carrie Buck and her mother, Emma Buck

and described in the classic study, *The Jukes*.⁶ Estabrook's follow-up analysis of the Jukes, by then a near mythical font of crime, poverty, and mental disease, culminated in his book *The Jukes in 1915*.⁷ He was also responsible for analyzing two other problem families, the Nams of New York and the "Indiana gypsies" known as the *Tribe of Ishmael*.⁸

In response to the lawyer's request, Estabrook left his fieldwork in Kentucky, hurrying by horseback and rail to the Colony near Lynchburg, Virginia.⁹ His task was to examine the Buck family and validate the supposedly inherited propensity to promiscuity and mental defect that would be used to justify Carrie's sterilization. He interviewed Carrie and her mother, Emma, then traveled to Charlottesville to see Vivian and question other Buck relatives and their teachers and neighbors.¹⁰

It was Estabrook's habit to photograph the subjects of his eugenic family studies, and several examples of these pictures survive in his field records. The snapshots he took of the Buck family have remained hidden among his records since 1924. They are apparently the only surviving photos of the Bucks.¹¹ One photo shows Carrie and her mother Emma. It was taken after Estabrook read their medical files and made what he described at trial as a "brief study" of the two women.¹²

On one level, the photo is unremarkable. The women appear to have been posed. They are sitting together on a bench late on a cold November day. Emma wears a gingham house-dress. One hand is placed on Carrie's shoulder. The other rests on her leg. Her hair is graying and her skin looks tanned. Her face shows no emotion. Carrie is wearing a long smock over a black, long-sleeved shirt. Her hands are formally cupped in her lap; her eyes seem slightly pained, and her mouth betrays hints of a frown. One cannot help but speculate about her state of mind. She had arrived at the Colony in June of 1924,

separated from her baby soon after giving birth in late March. She was locked in an institution with strangers and interrogated repeatedly; within a month of her arrival she learned she would be the focus of a legal proceeding. At the time of the photograph she was seated next to the mother from whom she had been taken at least a dozen years earlier. In the photograph, the heads of the two women are tilted slightly away from each other.

Estabrook's second picture includes several subjects. On one side is a mature woman wearing a housedress and an apron; an infant is seated on her lap. In the background, within the house, two boys watch while the subjects are posed outdoors in the fading winter light. The woman is Alice Dobbs, Carrie's foster mother for more than a dozen years and now foster mother to Carrie's baby, Vivian. Dobbs appears to hold a coin in front of Vivian's face, perhaps in an attempt to catch her attention. The baby looks past her, staring into the distance.

Although copies of intelligence tests given to Carrie and Emma remain among Colony records, no evidence of formal mental testing of Vivian appears in the Colony files or in Estabrook's papers. It is clear that before Estabrook's visit, plans had been made to get a "mental test" of the baby, and that Estabrook was retained to collect more thorough evidence in favor of sterilization.¹³ At that time, testing for an infant would have included attempts to gauge neurological development through simple exercises. Exercises for children as young as three and six months included turning the head toward a source of sound, following a moving light, and balancing the head while sitting.¹⁴ At the age of one year, children were expected to show visual coordination of the head and eyes while following a moving object.¹⁵ If Dobbs is holding a coin in this picture, it is plausible that the photo is a reenactment of some portion of an I.Q. test conducted by Estabrook. His testimony about Vivian came the day after the photos were taken. He described his short encounter, saying: "I gave the child the regular mental test for a child of the age of six months, and judging from her reaction to the tests I gave her, I decided she was below the average."¹⁶ This comment, coupled with a nurse's recollection that Vivian was "not quite normal," sealed the



Carrie's baby in Charlottesville, with Mrs. John Dobbs

conclusion that the Buck family defects spanned three generations.

The Apology

The seventy-fifth anniversary of the Supreme Court decision in *Buck v. Bell* was 2 May 2002. In Carrie Buck's hometown of Charlottesville on that day, a historic marker was erected to commemorate the case. Virginia Governor Mark Warner sent an official apology that was read at the marker's dedication, denouncing his state's involvement in the eugenics movement as a "shameful effort."¹⁷ The state's flagship newspaper, which applauded the eugenics movement during its heyday, condemned sterilization as "state sanctioned butchery."¹⁸ The story drew national press attention, reminding readers that the sterilization of Carrie Buck was the first of more than 8,000 state-

mandated operations performed under Virginia's 1924 eugenic sterilization law.¹⁹ The Virginia law paved the way for more than 60,000 operations in more than thirty American states with similar laws and provided a precedent for 400,000 sterilizations that would occur in Nazi Germany.

Orego, North and South Carolina recently followed Virginia in repudiating their history of eugenics.²⁰

1. *Buck v. Bell*, 274 U.S. 200 (1927).

2. See generally, P. Lombardo, "Three Generations, No Imbeciles: New Light on *Buck v. Bell*," *New York University Law Review* 60, no.1 (1985): 30-60.

3. Vivian's grade sheets were published by Stephen Jay Gould in a 1984 essay, recently reprinted as a posthumous tribute to the recently deceased Gould, see S.J. Gould, "Carrie Buck's Daughter," *Natural History* 111, (July-August, 2002): 10-17.

4. J.H. Bell to Margaret Faris, June 29, 1933. Carrie Buck file, Virginia Colony.

5. P. Popenoe, "The Progress of Eugenic Sterilization," *Journal of Heredity* 25, no. 1 (1934): 19-27.

6. R.L. Dugdale, *The Jukes: A Study of Crime, Pauperism, Disease and Heredity* (New York: G.P. Putnam's Sons, 1877).

7. A.H. Estabrook, *The Jukes in 1915* (Washington, D.C.: Carnegie Institution, 1916).

8. A.H. Estabrook and C.B. Davenport, *The Nam Family: A Study in Cacogenics* (Cold Spring Harbor, N.Y.: Eugenics Record Office, 1912); A.H. Estabrook, "The Tribe of Ishmael" in *Eugenics, Genetics and the Family: Scientific Papers of the Second International Congress of Eugenics*

(Baltimore: Williams and Wilkins, 1923), 398-404.

9. Arthur Estabrook to Aubrey Strode, 8 November 1924, Arthur Estabrook Collection, State University of New York at Albany.

10. Aubrey Strode to Arthur Estabrook, 6 November 1924, Arthur Estabrook Collection, State University of New York at Albany.

11. The Buck photos are reprinted with the permission of the State University of New York at Albany.

12. Record, *Buck v. Bell*, 88.

13. A.S. Priddy to Joseph DeJarnette, 1 November 1924, Carrie Buck file; Aubrey Strode

to Arthur Estabrook, 6 November 1924, Arthur Estabrook Collection.

14. F. Kuhlmann, *A Handbook of Mental Tests* (Baltimore: Warwick and York, 1922), 150-153.

15. Table 12.2, "Sample of the Items Used by Binet in the 1908 and 1911 Versions of the Binet-Simon Tests" J. Deese, *General Psychology* (Boston: Allyn and Bacon, 1967), 384.

16. Record, *Buck v. Bell*, 89.

17. C. Santos, "A Sad Reminder/Marker Honors State's First Eugenics Victim," *Richmond Times-Dispatch*, 3 May 2002, B1.

18. Editorial, "Eugenics" *Richmond Times-Dispatch*, 8 May 2002, A12.

19. See T. Mauro, "Did Eugenics Foreshadow Genetic Engineering?" *USA Today* 2 May 2002, 11A. B. Branigin, "Warner Apologizes to Victims of Eugenics/Woman Who Challenged Sterilizations Honored," *Washington Post*, 3 May 2002, B1; D. Blum, "Reproductive Wrongs," *Los Angeles Times*, 12 May 2002, M6.

20. J. Sullivan, "State Sorry for Great Wrong," *Oregonian*, 3 December 2002; K. Begos, D. Deaver and J. Railey, "Easley Apologizes to Sterilization Victims," *Winston-Salem Journal*, 13 December 2002. T. Smith, "Hodges Apologizes for Sterilizations," *Greenville News*, 8 January 2002.

essay

Listening to Aslan®

BY NANCY BERLINGER

Jonathan Franzen's most recent novel, *The Corrections*—winner of the National Book Award and a finalist for the Pulitzer Prize, but perhaps best known for its author's lack of enthusiasm at being selected for Oprah's Book Club—is an unapologetically epic story of the life of an American family, the Lamberts, from the 1950s through the 1990s. The millennial touchstones include self-help books, a frenzied IPO for a biotech company touting "directed neurochemotaxis" (later, we learn that the company's stock tanks), and the online sell-off of an entire Baltic nation (lithuania.com).

And, of course, antidepressants. Franzen gives us a fantastical family of SSRI-like pharmaceuticals named Aslan®. (Yes, they are named after *that* Aslan, the lion-Christ figure of C.S. Lewis's *Chronicles of Narnia*.) But some readers of *The Corrections* may worry that the niche marketing of the Aslan products is likely to be, indeed is turning out to be, all too true to life.

Enid Lambert, the family matriarch, is introduced to Aslan on the high seas. She and her husband Alfred, who has advanced Parkinson disease, have splurged on a

cruise, a rare respite from lives built around illness and caregiving. Sleepless and anxiety-ridden due to the unpredictable nature of her husband's illness, Enid seeks out the ship's physician, Mather Hibberd. After asking Enid a few questions, Dr. Hibberd diagnoses her as suffering from subclinical dysthymia, which he helpfully defines as "shame." His prescription, which seems to be the same for all of the retirees—or "cruisers"—on the ship, is Aslan "Cruiser," formulated to help Enid "comfortably enjoy the remainder of [her] cruise and afterward follow the recommended thirty-twenty-ten step-down program." As Dr. Hibberd explains:

If Aslan prevents you from missing just one prepaid Pleasurelines activity due to your subclinical dysthymia, it has paid for itself, by which I mean that your flat-fee consultation, at the end of which you'll receive eight complimentary SampLpaks of thirty-milligram Aslan "Cruiser," has paid for itself.

Enid learns that Aslan has not yet been approved for sale in the United States, which is why Dr. Hibberd is careful to make his diagnosis in international waters, charging a hefty "consulting fee" for the "complimentary SampLpaks" he purchases in bulk from the drug's manu-

Nancy Berlinger, "Listening to Aslan," *Hastings Center Report* 33, no. 2 (2003): 17-18.