West Virginia Race Relations at the Turn of the 21st Century: A New Historical Perspective and Legislative Study of Racial Disparities in Education, Health, Civil Rights, Criminal Justice, Economic Development and Employment

Larry W. Rowe

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WEST VIRGINIA RACE RELATIONS AT THE TURN OF THE 21ST CENTURY: A NEW HISTORICAL PERSPECTIVE AND LEGISLATIVE STUDY OF RACIAL DISPARITIES IN EDUCATION, HEALTH, CIVIL RIGHTS, CRIMINAL JUSTICE, ECONOMIC DEVELOPMENT AND EMPLOYMENT

Larry L. Rowe*

I. INTRODUCTION: SELF EVALUATION WITH A HISTORICAL PERSPECTIVE...................................................... 638
II. AFTER THE HORROR OF SLAVERY: SEGREGATION DAYS IN OLD MALDEN ............................................................. 639
III. A ROMANTIC LIFE IN SEGREGATION DAYS WITH NO BITTERNESS OVER RACE DISCRIMINATION ........................................... 643
IV. A WHITE KID GROWING UP IN RURAL SOUTHERN WEST VIRGINIA .............................................. 644
V. CELEBRATING BROWN V. BOARD OF EDUCATION: REFLECTION AND CONCERN FOR THE FUTURE ........................................ 645
VI. NEW AMERICAN RACE RELATIONS AFTER BROWN........................................................................ 647
VII. "THE" QUESTION AFTER BROWN: ARE WE NOW A BETTER PEOPLE, LIVING WITH GREATER SOCIAL JUSTICE IN A MORE MORAL COMMUNITY? ........................................................................ 647
VIII. A LEGISLATIVE STUDY OF RACIAL DISPARITIES IN WEST VIRGINIA IN 2003 ........................................... 648
IX. A NEW HISTORICAL PERSPECTIVE ON RACE RELATIONS IN INDUSTRIAL WEST VIRGINIA AFTER RECONSTRUCTION ........................................ 650
X. INTEGRATION OF KANAWHA COUNTY SCHOOLS IN 1956 ................................................................. 651
XI. WEST VIRGINIA VALUES: INDUSTRIAL, SOCIAL, EDUCATIONAL AND POLITICAL HERITAGE SEPARATE WEST VIRGINIA

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637
FROM CULTURE OF OLD SOUTH ............................................................... 652

XII. WEST VIRGINIA VALUES ENCOURAGE AFRICAN AMERICAN
FAMILIES IN THE KANAWHA VALLEY TO NURTURE AND PRODUCE
WORLD LEADERS: BOOKER T. WASHINGTON AND
REVEREND LEON SULLIVAN .................................................................. 654

XIII. THE MILITANT “BOOKER T-ISM” OF THE BLACK POWER MOVEMENT
IN THE 1960’S ...................................................................................... 656

XIV. LEGISLATIVE REPORT ON RACIAL DISPARITIES IN WEST VIRGINIA
AT THE TURN OF THE 21ST CENTURY ................................................... 657

XV. LANDMARK 2004 LEGISLATIVE SESSION: LEGISLATIVE FINDINGS
OF FACT AND ACTION ON RACIAL DISPARITIES ............................... 661

XVI. SECOND INTERIM STUDY OF RACE DISPARITIES IN 2004 ..................... 671

XVII. CONCLUSION: CLIMBING THE MOUNTAIN OF JUSTICE TO MORAL
COMMUNITY .......................................................................................... 672

I. INTRODUCTION: SELF EVALUATION WITH A HISTORICAL PERSPECTIVE

It is a great honor to be here as part of the West Virginia Law Review’s
symposium, “A Look at Brown v. Board of Education in West Virginia: Re-
membering the Past, Examining the Present, and Preparing for the Future” at the
West Virginia University College of Law.

I have to ask myself, “How is it that a white kid from Peterstown, in
Monroe County, West Virginia is at the West Virginia University College of Law to talk about racial disparity?” Of course it is a long road for many of us to
be here to celebrate Brown v. Board of Education.

For me the road begins with a study of West Virginia history. A num-
ber of people have encouraged my passion for West Virginia and its history.
The first was my grandmother Alma Lee Davis Rowe, a grand and nurturing
lady who helped me earn a West Virginia History Golden Horseshoe Award in
eighth grade. The most recent was Minnie Wayne Cooper, a grand African
American lady, well known in Kanawha County as a civic leader and educator.

I met Mrs. Cooper when she was 89 years old and no longer living on
her own. Her friends were helping her sell her cottage near the Kanawha River
in historic Old Malden where she had lived since she was seven years old and
knew Booker T. Washington and his family. I was able to purchase her home
where I live with my family today.

** This Article is based on a presentation given by Larry L. Rowe on February 21, 2005 at the
West Virginia University College of Law as part of the West Virginia Law Review symposium,
“A Look at Brown v. Board of Education in West Virginia: Remembering the Past, Examining
the Present, and Preparing for the Future.”

1 From 1808 while Thomas Jefferson was President, until the Civil War, the salt works in the
Kanawha River Valley made this region western Virginia’s most concentrated industrial economy.
Notably, it was built on the labor of African Americans during The Horror of Slavery. King Salt
created a major economic power base for new American heavy industries of coal, oil, natural gas
Mrs. Cooper and I had many talks. She was a tall, attractive, and commanding lady. Governor John D. Rockefeller IV awarded her the first Washington Carver Award for outstanding service to African Americans in West Virginia.

II. AFTER THE HORROR OF SLAVERY: SEGREGATION DAYS IN OLD MALDEN

In Malden, Mrs. Cooper's enslaved grandmother helped organize what became West Virginia's first African American Baptist church in western Virginia during the "Horror of Slavery" in the early 1850's.

I think the phrase "the Horror of Slavery" should be used for the time when all people were not equal under the law in America. This era began with European exploration of the Western Hemisphere and continued through colonial days and the early Republic to the romanticized surrender of General Robert E. Lee. It ended with passage of the Thirteenth Amendment to the United States Constitution in 1865. "Segregation Days" cover the period after the failure of post war reconstruction and include a century of universal accommodation of Old South traditions and power structures. Segregation Days ended with the

and chemicals. It also made possible the move of West Virginia's state capital from Wheeling to Charleston. King Salt is the reason little Booker came to Old Malden.

Mrs. Cooper's cottage was reconstructed to a two-story home to save its original cottage rooms, floors, windows and doors while accommodating a modern family. It has been called the "Grand Dame of the Kanawha River" and is now known as "The Alma Lee" in honor of the Author's grandmother, Alma Lee Davis Rowe, whom he lovingly compares with Mrs. Cooper. The home has been the subject of two newspaper articles: Jenny Didas, On Malden Pond, CHARLESTON SUNDAY GAZETTE MAIL, Jan. 2, 2000, at 1E; Therese Smith, Remaking History: Malden Home with a Rich Past Gets Renovations – and Then Some, CHARLESTON DAILY MAIL, June 19, 2004, at 1C.


JOHN ALEXANDER WILLIAMS, WEST VIRGINIA: A HISTORY 92-94 (2d ed. 2001); supra note 4 at 532-33. Sympathy for the Old South and the romance of its lost era of slavery riches takes many forms. It is the fabric of Post-Reconstruction American culture. My wife, Julia Beury's history textbook from Emory University in the late 1970's was HISTORY OF THE MODERN WORLD SINCE 1815, by R. R. Palmer and Joel Colton. It contains a section that in 2005 is surprising to read. It harangues passage of the Thirteenth Amendment to the United States Constitution, as an "annihilation of individual property rights", because the Amendment did not provide for payment to southern slavers for loss of their property. Id. at 532. At the time of its 5th edition, the writers of this 1950 textbook were R. R. Palmer, emeritus professor of history at Yale University and Joel Colton, Chair of the Department of History at Duke University. It is doubted that the underlying premise of this passage would be accepted at these history departments today. Times change and history follows change.
rising expectations of African Americans in the aftermath of the Supreme Court's unanimous 1954 decision of *Brown v. Board of Education*.\(^6\)

As a stark contrast to the history of the Old South, Mrs. Cooper's family church stands proudly in Malden as what has become an icon for good race relations in a former slave territory after the Civil War. It is known widely as the home church of Booker T. Washington.\(^7\)

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This passage reads:

The Thirteenth Amendment in 1865 abolished slavery everywhere in the country. No compensation was paid to the slave owners, who were therefore ruined. The legal authority of the United States was thus used for an annihilation of individual property rights without parallel (outside of modern communism) in the history of the Western world; for neither the nobility in the French Revolution, nor the Russian serf owners in 1861, nor the slave owners of the West Indies in the nineteenth century, nor the owners of businesses nationalized by twentieth-century socialists in western Europe had to face such a total and overwhelming loss of property values as the slave owners of the American South.

*Id.* at 232. The passage ignores the Horror of Slavery for those who were enslaved and their loss of the value of their work, and, worse, the tragic loss of thousands of soldiers in a war of rebellion needed to free the slaves. The ruination of property owners in the south was a popular subject for a century. In general, reversal of fortune is a popular theme in American literature, television and movies, the finest of which is the Old South classic novel by Margaret Mitchell, *Gone with the Wind*, immortalized by legendary producer David O. Selznick, in his equally classic 1939 movie of the same name.

\(^6\) *See* *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); *Cooke*, *supra* note 3, at 384.

\(^7\) 2 *THE BOOKER T. WASHINGTON PAPERS* 177 (Louis R. Harlan ed., 1972). The African Zion Baptist Church was organized in the 1850's as the first African American Baptist church in western Virginia by the Wayne, Isaac, Sullivan, Johnston, Johnson, Gilmore, Liggins, Jordan, Bush, Brooks, and other African American families during the Horror of Slavery. As respected salt workers, they were encouraged to be a religious community here by General Lewis Ruffner, a slaver and salt maker who became their great champion after the Civil War. His second wife Viola Knapp, known as a Yankee Lady, became Booker's mentor who encouraged him to help African Americans.

In 1872, the legendary early minister Reverend Lewis Rice, built today's church building on Malden's Main Street with financial support from General Ruffner. *Id.* at 17, 22. Booker was a teenager and was soon to walk to college at Hampton Institute near the Chesapeake Bay in Virginia.

In 1875, young Booker returned to Malden after finishing at the top of his graduating class at Hampton. He began his teaching career in Malden and married a Malden girl, Fanny Norton Smith. *See id.* at 67, 68, 76, 159, 207-08, 241, 249, 250, 251. Long-time pastor Reverend Paul Gilmer, Sr., and his wife Anna Evans Gilmer, Minnie Wayne Cooper and James F. Thibeault of Cabin Creek Quilts worked to preserve the sanctity and structure of the building. Worship services are no longer conducted and West Virginia State University now maintains this historic structure.

In 1998, a Salt Village prototype was constructed behind the African Zion Baptist Church. The village provides disability access to the Church and contains a reconstruction of Booker T. Washington's childhood home and early school in the old salt works.
Erected on a main street in Old Malden circa 1872, the African Zion Baptist Church stands a few blocks away from the old salt makers' church, the Kanawha Salines Presbyterian Church. West Virginia State University now maintains the African Zion Baptist Church as a historic monument to Booker T. Washington and the families of Old Malden who enabled him to succeed in life. West Virginia State was established west of Charleston as a black land grant college in 1891. In 1929, it was named West Virginia State College. Its current name and status as a university was granted during the 2004 West Virginia Legislative Session, a truly historic session for African American citizens in West Virginia.

Mrs. Cooper talked long about her love of Malden and her days there as a young girl. Booker T. Washington would come to Malden as a world celebrity in 1865, little Booker, at age 9, walked with his family 225 miles from Hales Ford, Virginia (near today's Roanoke, Virginia) to his freedom home in Malden, West Virginia. There he worked in the salt works and a coal mine with his stepfather, and then he began work as a garden helper and then houseboy for the wealthy Ruffner family, which encouraged his early education. It was obvious that this special boy would become a man of substantial intelligence, energy and success. But, no one could imagine he would be known at his death in 1915 as the most important leader of any race to come out of the South between the Civil War and World War I. This tribute was paid by his most noted critic, W.E.B. DuBois. See also W.E.B. DU BOIS, THE SOULS OF BLACK FOLK 25-35 (Dover Publications 1994) (1903).

A prototype cabin was built to match a photograph of Booker’s home, just behind the church where Booker learned to read in Malden while working for Viola Ruffner. STEPHEN MANSFIELD, THE DARKNESS FLED: THE LIBERATING WISDOM OF BOOKER T. WASHINGTON 61-64 (1999). He was with her for one and a half years as she taught him the social graces of the day. Booker used her strict example of character building and hard work for his new college in Tuskegee, Alabama, where at age 25, he created the first true vocational college and the nation’s premier African American college. He is buried there.

For more information on Booker T. Washington, his book, Up FROM SLAVERY is a good, fast read. In print today, it was selected as America’s third best nonfiction book of the 20th century, making little Booker Malden’s most noted author and international figure. See BOOKER T. WASHINGTON, UP FROM SLAVERY (Dover Publications 1995) (1901).

The Old Kanawha Salines Presbyterian Church is a beautiful antebellum church, organized in 1819 by the wealthy Ruffner family, Malden’s first salt industrialists. The current building was constructed in 1840 in the Ruffners’ "Saltborough" subdivision near the Dickinson family property line. It had a balcony used by African Americans. Its first minister wrote an abolitionist paper. The THIRTY-FIFTH STATE: A DOCUMENTARY HISTORY OF WEST VIRGINIA 246-51 (Elizabeth Cometti & Festus P. Summers eds., 1966) [hereinafter THE THIRTY-FIFTH STATE]. From 1819 to 1848, Dr. Henry Ruffner was a professor and then president of Washington College, which was renamed Washington and Lee College, after its most famous president Robert E. Lee. In 1847, Dr. Ruffner published the controversial, pragmatic paper known as "The Ruffner Pamphlet" to advocate for abolition of the Horror of Slavery in America. It is the first publication known to suggest the new name “West Virginia.” Id.

MANSFIELD, supra note 7, at 64.

to visit his sister Amanda Johnston. She lived in a house he provided to her and her family on the same street as the African Zion Baptist Church a few blocks from Mrs. Cooper’s home. He would bring her dolls and toys each time he came to Malden. Mrs. Cooper’s mother was best friends with “Aunt Amanda.” Mrs. Cooper said “Uncle Booker” was like family to her, although no blood relation existed.

Always in the role of a grade school teacher, Mrs. Cooper described in visual detail the excitement of children when riverboats came to town and docked near her home. These were days long ago. Malden had a water

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11 See generally THE BOOKER T. WASHINGTON PAPERS, supra note 7, at 5, 7, 11, 19, 20.

12 Amanda Johnston lived across the street from today's Hale House in Old Malden, which, was the Malden home of Dr. John P. Hale. It is now the retail home of Cabin Creek Quilts. Ironically, Dr. Hale was a physician from Hales Ford, Virginia, and became the area's best-known salt industrialist and early coal entrepreneur. He built Charleston's first elegant railroad hotel, Hale House, which burned and was replaced by the Ruffner Hotel. COHEN & ANDRE, supra note 10, at 288. Dr. Hale helped move the state capital from Wheeling to Charleston. He financed the world's first brick street on Summers Street in Charleston.

In 1871, Dr. Hale became mayor of Charleston, succeeding Henry C. Dickinson, a co-founder of former Kanawha Valley Bank and a Confederate War hero who was part of the prominent Dickinson salt making family. Their ancestor was Revolutionary War Colonel John Dickinson, whose 10th generation descendants reside in the Charleston area.

It was only about 40 years after his barefoot trek from Hale's Ford, Virginia, to Malden that Booker T. Washington had his beloved sister Amanda Johnston living in a fine two-story brick house on Malden's Main Street across from Dr. Hale’s house.

It was here at Amanda Johnston's home-place that Old Malden residents, including Mrs. Cooper, Mary Price Dickinson Ratrie, a seventh generation Dickinson heir, Martha Cole, Llewellyn Cole, James F. Thibeault and local history groups including the Malden Historic Preservation Society, the Booker T. Washington Memorial Association and the Kanawha Valley Historical and Preservation Society first worked to save Malden's historic sites. They helped create a park at Amanda Johnston's home-place, which was in ramshackle condition. Inspirational James Thibeault came to West Virginia as a VISTA worker in 1970 and started Cabin Creek Quilts, a premier cooperative for authentic handmade quilts. WILLIAMS, supra note 5, at 192-94. After Jacqueline Kennedy Onassis had a Cabin Creek quilt, the fashion world began using patchwork design in the 1970s.

13 COHEN & ANDRE, supra note 10, at 50-73 (1987). A bell on a pole with a metal striker rod sits atop the riverbank near Old Malden's Welch-Oakes House. In the early 1900's, a similar bell was used to call the ferryman from his home across the Kanawha River in Kanawha Estates east of today's Kanawha City I-64 exit, to ferry them to the south side of the Kanawha River so they could take a local train into Charleston.

Minnie Wayne Cooper taught Latin to her Malden friends and playmates on their ferry and train trip to segregated high schools in Charleston. In 1999, the Author constructed a prototype bell about 100 feet east of its original location.

In 1850 the Post Office for “Kanawha Salines,” as the area was known near the dock for steamboats, would load salt barrels and unload supplies for over a hundred years until the 1920's. Also nearby in 1850 was a toll booth for the James River and Kanawha Turnpike, which was a toll carriage trail along the riverbed through Malden to Charleston and overland to Guyandotte on the Ohio River near today's Huntington.
trough system before water pipes were laid underground. Horse and wagon were used to bring the water out of the river. All water was boiled for in house use. Mrs. Cooper’s home was in town and not far from the salt works where industrialization of the Kanawha Valley began in 1808 soon after the Lewis and Clark expedition into the Northwest.¹⁴

III. A ROMANTIC LIFE IN SEGREGATION DAYS WITH NO BITTERNESS OVER RACE DISCRIMINATION

I was greatly touched by Mrs. Cooper’s passion for Old Malden through the stories she shared with me. I asked about her trips to New York during Segregation Days. She raised her graceful arms and touched long manicured fingers to her chest and said, “I have had a romantic life.”¹⁵ Since we were talking of Segregation Days, I was puzzled by her response. Where was the upset and anger over discrimination? Did she have a humiliating event in her life?¹⁶ I had shame and anger about the Horror of Slavery and Segregation Days.¹⁷

She did not mention a time when she was mistreated. She had happy memories and reported no regrets. She loved her neighbors and friends in Malden, white and black.¹⁸ She used whispered words to say to me, “I never heard

In 1898, America’s first lock and dam system was completed on the Kanawha River. This remarkable engineering feat opened up the rich Kanawha coalfields for a boom era of King Coal at the turn of the 20th Century. The 1912 Mother Jones’ Mine Wars on Paint and Cabin Creek followed. WILLIAMS, supra note 5 at 130-58. The locks raised the water level in Malden above the old carriage road. The C & O Railway had made the toll road obsolete with the last spike driven at Hawks Nest in 1873. Id. at 159; In the 1920’s, the overland area of the old carriage trail made a comeback with automobile travel on national U.S. Route 60, from the Atlantic Ocean to the Pacific Ocean. The “Midland Trail,” as the coast-to-coast automobile route became known in the 1920’s, was West Virginia’s first official state highway. In 1988 it was named a state scenic highway and then became West Virginia’s first state scenic byway in 1993.

In 2000, when Senator Rowe was president of the Midland Trail Scenic Highway Association, the Midland Trail was designated a national scenic byway, and the it was extended as a state scenic byway west generally along old Route 60 from the state capitol to the Kentucky border. Malden now rests proudly as an historic district at the center of the Midland Trail.


¹⁸ See THE THIRTY-FIFTH STATE, supra note 8, at 601.
the "n" word in Malden." She asked if I knew that word, and I said that I did, with due respect to her soft question and remarkable life.

In Malden, housing had always been integrated. Mrs. Cooper attended African American schools but grew up with white and black children. She was intelligent and commanded respect and deference. She was a grand lady living in a small cottage home like many other ladies of her day, black and white. She became the lady who her mother and father expected her to become. She attended Wilberforce Normal School and Columbia University. Mrs. Cooper told me that since West Virginia had no graduate programs for African American students, the state paid for her to attend Columbia University, opening a grand experience of arts, music and entertainment in New York City well away from the limitations of segregated Charleston.

Mrs. Cooper gave me a passion for West Virginia's African American history. It is the history of our town — Malden, West Virginia. It is a history very different from other southern states after the Civil War. It is not a perfect history of race relations, but it clearly is a better history than those of the other states of the Old South.

IV. A WHITE KID GROWING UP IN RURAL SOUTHERN WEST VIRGINIA

In West Virginia today, we never refer to ourselves as "southerners." I like to think this is a credit to our attitude about where we belong as an independent mountain people in America's history of social justice. But, as I flash back to growing up as a white boy in Monroe County, West Virginia in the 1950's, I remember we were very much a southern community with a southern farm culture, south of the now forgotten Mason-Dixon Line. And like our neighbors Virginia, Kentucky, and Maryland, West Virginia needed Brown v. Board of Education to end our era of segregation.

My hometown in Peterstown, West Virginia had no African Americans in town but our high school was integrated from feeder schools by several respected African American families. In my class of one hundred students at Peterstown High School there was only one African American student. Drema Johnson was a quiet, good student. She was elected "best dressed" because of her poise and presence, as well as her fashion sense.

Peterstown High School was one of the first white schools to play all black Park Central High School in Bluefield in the 1960's before it closed and its students were transferred to Bluefield High School. The African American community of this school actively resisted its closing because it was the center

19 See generally Joe William Trotter, Jr., Coal, Class, and Color: Blacks in Southern West Virginia 1915-32 27 (1990); see also Washington, supra note 7.
20 See generally Williams, supra note 5. Monroe County, West Virginia (where Author grew up) had a small number of African American families and integrated before 1956.
21 The Thirty-Fifth State, supra note 8, at 513-15.
of a strong, proud community of African Americans. Our teachers and coaches were very careful to encourage good sportsmanship at these games. I remember Park Central's cheering section was the most spirited and active of all schools we played. They usually won our games.

My high school teacher, Coach Steve Miller, recently told me that it was our school's longtime principal Charles Houchins who wanted us to play Park Central. Coach Miller remembered Park Central's principal and its football coach were gentlemen, some of "the nicest men" he worked with as a coach in high school. After Peterstown went on their schedule, other white schools began playing Park Central at a time when its rival African American schools were being absorbed into white schools.

V. CELEBRATING BROWN V. BOARD OF EDUCATION: REFLECTION AND CONCERN FOR THE FUTURE

With these memories shared as part of this symposium at the West Virginia University College of Law, we come together to remember the days of Brown v. Board of Education. But our meeting should not be just a memorial or celebration of a historic event.22 True, that event is our focus, our campfire to join hands around to enjoy, for its light and reassuring warmth that America, with its evolving history, is all about social justice and moral community. Nelson Bickley reminded us in his remarks that it has not been a smooth, easy road for us to now enjoy today's warmth and reassuring light of Brown v. Board of Education.23 Its light has not shown equally upon all of us.24

We should use the glowing light and warm spirit of that Supreme Court decision to study social justice and the morality of our statewide community as it exists today. It should be a study of law, economics, and criminal and social justice systems. Especially, it should be a study of the education of our young people and of human relations in our community.

Most of all, we should study the universal passion for self-fulfillment and human dignity in all forms of community. That passion, I believe, is the only hope to carry our future generations through the tangles, twines and allurements of status materialism, growing government control and militarism in every part of American life.25 That passion is the hand that holds the torch for social justice and moral community.

22 See generally Cooke, supra note 3, at 384.
24 See generally William M. Drennen, Jr. & Kojo Jones, Jr., Red, White, Black and Blue: A Dual Memoir of Race and Class in Appalachia (Dolores M. Johnson ed., 2004); Armstead, supra note 16, at 123.
25 Cooke, supra note 3, at 388; see generally H. G. Wells, The Outline of History: Being A Plain History of Life and Mankind 1086-1101 (1920) (discussing the hope of mankind after World War I); Alex Barnett, Words That Changed America 273-76 (2003) (reciting Dwight
Circling our campfire are the stones of racial differences that can separate us from the flames of truth and justice. Sometimes those flames provide light and energy for our endeavors, and sometimes they burn us deeply as we study our hearts and mature in our understanding of self, success, and true value in life during our separate journeys through life.26

With all this self and social evaluation, I readily admit my surprise at being here over 30 years after I helped open this building, as a student in the [West Virginia University College of Law’s] first second year class in 1974. Our law class was a historic event.27 We had thirteen women graduate among us.28 At the law school, times were changing for women, and we knew it. But, less obvious to us, was the fact we had only one African American, Marye Wright, a good student of great dignity and spirit.

In this same period, the West Virginia University College of Law had enrolled many future leaders of the state, the nation, and even the world economy with Cisco Systems, Inc.’s founder John Chambers a law student here.

But where were the African American students who would be those leaders? Remember, law students in the 1970’s were the elementary school children who were blessed with education in integrated schools after Brown v. Board of Education.29 But few African Americans came to West Virginia University College of Law. Why? African Americans were not barred admission, so why were they not here in greater numbers?

Was racial integration itself the goal of Brown v. Board of Education? Or, was the goal the creation of a moral community supported by social justice, with a fabric of equal education, hard work, and fair play in the workplace, opening up to all of us the American dream of success and happiness based on character and merit rather than status or race?30

West Virginia has produced national and world leaders from its communities of African Americans, especially in the Kanawha Valley originally centered by Old Malden, the boyhood home of Booker T. Washington.31

Again, I am compelled to ask: Why were there not more African American law students at our law school in the 1970’s? Where was the next wave of African American leaders when I was a law student here in the 1970’s?

D. Eisenhower’s Farewell Address of January 17, 1961).

26 See WILLIAMS, supra note 5, at 191, 205.


28 Today there are more women in law school than men.


30 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 209 (Westvaco Corp. 1999) (1900).

VI. NEW AMERICAN RACE RELATIONS AFTER BROWN

Fast forward to 2005, and we see that race relations across America are different, essentially much better than in 1974. African Americans are on television and are a visible, viable part of mainstream American culture. Blatant racism is now immoral in most all social discourse. It is "un-American" to many people. Hints of racism in academia lead to scandal and shunning. Most racial discrimination is illegal. Racism is not politically correct.

In the 1950's, we had a very different society of correctness, where standards of conduct ruled supreme and with little challenge. My grandmother Alma Lee and Mrs. Cooper were peers in both age and outlook. They were very much a part of that correct society, each sharing the vision of who West Virginians have been and who they should be. That is, they were both romantic believers in the goodness of people and devotees of duty and standards of fair behavior. They may be heard to say in ghost whispers, about race discrimination, "It is simply not done... these days." The length of a proper pause sheds some light on the history of this country, which was rock-hard racist from its founding.

Many of us who grew up in the 1950's remember our elders in correct society speaking in the terms of universal truisms of their day about "blood relations," the natural superiority of "good blood," proper families, and the importance of knowing one's place. The words of hard racism were never used in polite company, but they were unnecessary because social institutions established the discourse and interaction along clear racial boundaries.

VII. "THE" QUESTION AFTER BROWN: ARE WE NOW A BETTER PEOPLE, LIVING WITH GREATER SOCIAL JUSTICE IN A MORE MORAL COMMUNITY?

Those days of clear boundaries and universal standards, moral and immoral, are gone along with the days of legal segregation. Our social boundaries and barriers now are set in stone by economic differences, more social class differences rather than those of race. Integration is judged good by most everyone.

Now our attention, as the adult children of Brown v. Board of Education, seems averted from social justice issues at home. We are attending to the hatreds arising from religious and cultural boundaries on the other side of a

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32 See THE THIRTY-FIFTH STATE, supra note 8, at 601.
34 In 1973, a popular historian from England wrote that he was "not sure than an integrated society will work" in America and that if not, he hoped "the blacks, whether inside or outside white society, can become an equal race separately respected." COOKE, supra note 3, at 385.
shrinking world, instead of those that crisscross on the social railroad tracks of our day.\textsuperscript{35} And, properly, like we did as children in the 1950's regarding integration, our children wonder what all the fuss is about. Our children do not ride trains. They never have to watch the television their parents are watching. And, they will play ball with anyone who will play.

It has been said that \textit{Brown v. Board of Education} changed the fabric of American society. More precisely, I think it was a loud signal of the changing times of that fabric. It clearly was not a "pendulum swing," as some analysts would predict in the 1960's.

We became a different people in America after World War II, for lots of reasons.\textsuperscript{36} Most, I think, are due to post-World War II economics, unified interstate highways,\textsuperscript{37} women in the workplace, affordable air travel, and the revolutions in telecommunications; first in radio, followed by television\textsuperscript{38} and now the Internet — yes with the help of West Virginia University's own John Chambers.

That list is too simple, of course, but it reminds us that many social and economic forces have converged to make racism socially immoral today. That list should also warn us for the future that social and economic forces made the Horror of Slavery a cultural norm and the fabric of postcolonial society just a few lifetimes ago.\textsuperscript{39} Mrs. Cooper's grandmother knew all about it; Grandmother Sullivan lived through it in Malden. Of course, I welcome you to challenge the claim that we are a different people. True, the visible barriers in America to self-fulfillment and human dignity are gone. Highly successful African Americans are common and visible to us. The African American middle class has grown and become a prosperous force in American society.

The visible success of African Americans reassures us in the icon of the American dream. But, what about everyone else? Do we have a moral community with social justice which rewards hard work fairly and equally? What about those of us who need more than cracks in a glass ceiling? What about those of us who need nurturing merely to cope with whom we are and the sometimes dire circumstances God has given us to survive in?

VIII. A LEGISLATIVE STUDY OF RACIAL DISPARITIES IN WEST VIRGINIA IN 2003

Flashback to 2002, I was in the West Virginia State Senate when Delegate Carrie Webster proposed a formal legislative study on minority issues in

\textsuperscript{35} \textit{See Tocqueville, supra} note 30, at 159.
\textsuperscript{36} \textit{See id.} at 293.
\textsuperscript{37} \textit{See Drake, supra} note 31, at 189.
\textsuperscript{38} \textit{See id.} at 188.
\textsuperscript{39} \textit{See generally} Frederick Douglass, \textit{My Bondage and My Freedom} (Dover Publications 1969 (1855)).
West Virginia. In 2002, the Legislature passed a resolution to study the issue during committee meetings between our 60-day regular sessions. Delegate Webster's resolution was adopted, but it was not scheduled for study in that interim period.

In 2003, Speaker Robert Kiss of the House of Delegates and Senate President Earl Ray Tomblin appointed a select interim study committee to meet after the Legislature's Regular Session. The committee, known as the Select Committee B on Minority Issues, was comprised of three members each from the West Virginia House of Delegates and the State Senate. We were to meet formally once a month to study minority issues. Usually the topics of interim committees are very narrowly defined, but, our committee had a full array of minority issues to study. Support from the leadership of our respective houses was very strong. We were approved to proceed on any racial disparity issue.

Delegate Carrie Webster was appointed as Chair with Delegates Dale Manuel and Patti Eagloski Schoen to serve as members. I was honored to be the Senate Chair to serve with Senator Jon Blair Hunter and Senator Russ Weeks. This small committee had almost perfect attendance every month, which was unheard of for an interim study committee. This reflected the hard work of the committee and its excellent staff including staff attorneys Connie A. Bowling and Daniel E. Kimble and their assistants: Beverly A. Brooks, Sandra K. Johnston, and Mark A. White.

We soon discovered the scope of the work was daunting. We reviewed the full range of minority issues and decided to study these issues in five categories including: civil rights, health and human resources, economic development and employment, education, and adult criminal and juvenile justice. We met monthly and announced our topics and meeting dates to a growing list of persons who were interested in our work through email. Each month we would invite people to speak and others came on their own to observe our work and volunteer ideas.

As the information we collected expanded, it became apparent we were creating archives on West Virginia race relations. In fact, the Committee staff collected about 1,500 pages of information from participants. This information was collected from state agencies, local governments, private groups, and the United States Human Rights Commission Study, which had been centered here in Morgantown, West Virginia. When assembled, it created a remarkably comprehensive archive of race relations in West Virginia. The information is pre-

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41 Report at 2.
42 Id. at 3.
43 Id.
44 See generally Report.
served by the West Virginia State Senate, and a copy is lodged with the documents of the proceedings from this symposium.

We discovered that no one agency or official was charged with the duty to collect data on racial disparities on a comprehensive basis in West Virginia.

The study presented several issues that need to be addressed in West Virginia. We found racial disparities in numbers that shocked us in several areas: health, criminal justice, juvenile justice, and education. As a very small state, West Virginia has a small percentage of African-Americans. But, the statewide numbers belie the fact that West Virginia has at least eight counties with strong communities of African Americans who are valuable and visible in the life of their counties, regions, and the state.

IX. A NEW HISTORICAL PERSPECTIVE ON RACE RELATIONS IN INDUSTRIAL WEST VIRGINIA AFTER RECONSTRUCTION

A short history of Old Malden and West Virginia’s industrial past is needed to understand these well established core African American communities which were formed after Reconstruction during the time of Booker T. Washington. Unlike any other state south of the Mason-Dixon Line, African Americans came to West Virginia after the Civil War in large numbers to work on railroads and then in coal mines in new towns created to serve a growing industrial economy.45

What they found here by 1890 was equal pay for equal work,46 a family-oriented social structure,47 good schools for their children where they learned race pride with other African American children,48 and West Virginia’s special protection of their right to vote, which was never abrogated since the Flick Amendment of 1871 to the West Virginia Constitution enfranchising all males in West Virginia.49 Unlike all other states of the Old South, which had special statutes called “Jim Crow Laws” to enforce race discrimination in all aspects of southern life, West Virginia resisted these demeaning Jim Crow

46 TROTTER, JR., supra note 19, at 26.
48 CORBIN, supra note 47, at 70-72.
49 THE THIRTY-FIFTH STATE, supra note 8, at 455-56. The purpose of this state constitutional amendment was to secure the rights of confederates who had been barred from voting. Its greater effect was to protect African American civil rights in the state. See generally DRAKE, supra note 31, at 154-55.
West Virginia did not have laws to enforce segregation in railroad cars, buses, most public buildings, and places of accommodation. In West Virginia, African Americans used their political power, encouraged by Booker T. Washington and others, to be a major voting block for the Party of Lincoln in state and local elections, at least until the Great Depression. In these African American communities, their leaders demanded good schools with equal funding. Segregation in schools was mandated by the West Virginia Constitution and was part of southern life at that time. So they insisted that their communities have schools equal to those for white children. At least in Charleston and McDowell County, it is undisputed that their schools were as good as white schools.

X. INTEGRATION OF KANAWHA COUNTY SCHOOLS IN 1956

I have known two outstanding teachers in Malden who helped integrate Kanawha County schools, soon after the Brown v. Board of Education decision was announced – Martha Cole, and her sister, Llewellyn Cole. Llewellyn Cole taught at Lincoln Junior High School. Martha Cole, taught at Charleston High School. 52 The Cole sisters are well known and loved local historians. They are descendants of one of Malden's original salt maker families, the Shrewsburys. For additional information on the Shrewsbury's, see BILL DRENNEN, ONE KANAWHA VALLEY BANK: A HISTORY 13-16 (2000). A family residence is preserved as Norton House, which is the oldest frame house in Malden. During the Civil War, soldiers for the North and the South slept there when the armies had control of the Kanawha Valley.

The home was built by Moses Norton and James G. Norton. They were father and son businessmen in Malden. James' daughter Llewellyn married Robert Peel Shrewsbury of the prominent salt making family. Norton House was renovated in 1994 by Cabin Creek Quilts and its director James F. Thibault, with federal and state highway grant funds. It had murals painted in 1998 by the artist Remy Cabrera showing the unique history of the home.

Fannie Norton Smith married Booker T. Washington and her connection to the Norton's here is uncertain. One of its twentieth century residents was Mary Frances Norton. She was a school mate and best friend of the mother of Pearl S. Buck, who won the Nobel Prize for Literature for her book, THE GOOD EARTH. Llewellyn Shrewsbury, granddaughter of Robert Peel Shrewsbury, married John Cole, a well-known civil and mining engineer who surveyed land throughout the Kanawha Valley and southern West Virginia. He designed a conveyer belt used in local mine operations.

As local historians, the Cole sisters have a powder horn used by Daniel Boone, who lived in a cave in Malden while trying to develop a salt business there before 1795. He walked to Richmond to represent this area in the Virginia Assembly. COHEN & ANDRE, supra note 10, at 13. As children, the Cole sisters were photographed in the dedication ceremony for a monument to him now located at Daniel Boone City Park. See generally id. at 13.
School. She was named West Virginia Teacher of the Year in 1980. Both sisters say that the teachers they knew from Garnet High School, the black high school established in Charleston in 1889, were well-prepared and experienced educators. Adding these teachers to Charleston High School ("CHS") created a very fine faculty for a number of years after integration.

In 1956, the first year of integration in Kanawha County, four African American teachers transferred to CHS, two of whom had coached at Garnet, James Jarrett and Bill Moore. "Chief" Moore did not coach at CHS. He taught biology with Martha Cole. These men were important to the African American students who labored with uncertainty to make integration a success. Also important and highly respected was Ruth Newsome, wife of Reverend Moses Newsome whom the revered African American leader, Reverend Leon Sullivan, credits as an inspiration of his youth because Reverend Newsome "reached out and down to the poorest and lowest he could find."

The Cole sisters also acknowledge that Minnie Wayne Cooper was an excellent teacher, who with other African American grade school teachers gave white Kanawha County elementary students across the board, an African American teacher early in their educations. This was done for the purpose of easing integration as the children progressed from elementary to junior high and high school. It was thought that giving white students (who were the majority of students) an African American teacher in second grade would help make integration the norm in just one generation, my generation. But, it required great courage and disruption for African American teachers, students, and families. In the aftermath of Brown and integrated schools, there are many unwritten stories of the quiet courage needed by minority students to do our society a great public service. As a white child in an all white elementary school, I wondered at the time what the fuss was about. I was happy to play with anyone.

XI. WEST VIRGINIA VALUES: INDUSTRIAL, SOCIAL, EDUCATIONAL AND POLITICAL HERITAGE SEPARATE WEST VIRGINIA FROM CULTURE OF OLD SOUTH

Human rights in West Virginia were different from the other states of the Old South perhaps because in our industrial mountain culture, people are respected for hard work, regardless of their race or birth status. Racism existed as a norm, but our unusual commitment to the principal of equal pay for equal work sets West Virginia wholly apart from all the Jim Crow states. The essen-

53 Id. at 310.

54 SULLIVAN, supra note 17, at 7.

55 See, e.g., DRENNEN, JR. & JONES, supra note 24, at 67-68. See generally MEMPHIS TENNESSEE GARRISON, supra note 24, at 185-88.

56 But see MEMPHIS TENNESSEE GARRISON, supra note 24, at 96 (sharing concerns of a McDowell County school teacher about discrimination in the coal mines there).
tial purpose of the Jim Crow laws was to assure that African Americans were
depreciated as people by a system that paid them some amount less for their
work than the pay for the same work performed by white workers. The Jim
Crow system set the value of African Americans below the value of white peo-
ple.

In West Virginia that was not true because the salt makers in Old Mal-
den used integrated housing and equal pay for equal work at the end of the Hor-
ror of Slavery. They started the coal industry based on the same industrial wage
principle of equal pay for equal work, not so much as social humanitarians,
rather as hard-nosed businessmen who wanted the best performance and profit
possible.

By 1900, the coal industrialists were out of state entrepreneurs who
owned most of West Virginia’s rural lands and property interests.57 They were
not southern traditionalists.58 They generally supported equal pay and other
rights of African Americans because racism was seen as a destabilizing force,
which got in the way of production.59

Coal company towns in rural West Virginia were effectively integrated
either by plan or the realities of small town life in rural mountain river valleys.60
It was difficult to attract and keep workers in rural company towns, so family
oriented workers were recruited, and coal companies paid bonuses in their towns
to teachers for the children of their workers. Life in the mines and in company
towns with monopolistic company stores was difficult for all workers, black and
white.61

The Old South’s economic system was based on an agrarian model,
which put a low value on work and produced a patrician society where wealthy
people were a leisure class and social status was inherited.62 The old salt mak-
ers valued the work of African American workers. Merit rather than birthright
or race set their standards. This principle is common to mountain people who
value hard work and respect people for what they do and not for their ascribed
status.

In sum, a high value on education and hard work accompanied by po-
itical power, have continued to make West Virginia’s race relations different
from the Jim Crow states. African American communities developed a striving
middle and professional class with educated young people ready to lead in

57 See WILLIAMS, supra note 5, at 105-09.
58 See id. at 116-19; DRAKE, supra note 31, at 152.
59 CORBIN, supra note 47, at 63.
60 Id. at 66.
61 ARMSTEAD, supra note 16, at 32, 41. DRAKE, supra note 31, at 149.
62 COOKE, supra note 3, at 196-98; TOCQUEVILLE, supra note 30, at 209.
America, a number of generations ahead of African Americans in the Old South. 63

XII. WEST VIRGINIA VALUES ENCOURAGE AFRICAN AMERICAN FAMILIES IN THE KANAWHA VALLEY TO NURTURE AND PRODUCE WORLD LEADERS:

BOOKER T. WASHINGTON AND REVEREND LEON SULLIVAN

I think this history constitutes West Virginia's monument to the communities and families here who helped Booker T. Washington become a world leader with a philosophy founded on hard work, education for jobs, race pride and the generational giving of families to their posterity. 64 These values of family and community are the underpinning of his complete faith in the American dream, of which he is one of the greatest role models.

Equal pay, equal work, education, race pride and access to political power are the reasons that West Virginia produced African American world leaders, notably Booker T. Washington and Reverend Leon Sullivan.

But there are other great leaders from West Virginia. Carter G. Woodson, a renowned historian, and the father of Black History Month was once a coal miner in this area and then a Harvard graduate and a dean at West Virginia State.

We are also proud of PBS host and journalist, Tony Brown; Harvard professor and writer Henry Louis Gates, Jr.; as well as renowned evangelist Bishop T. J. Jakes, recognized by Time Magazine on its cover as "America's Best Preacher" in September 2001. All these well-known leaders and others have excelled after formative years in West Virginia. 65

The story of Reverend Leon Sullivan is remarkable. Reverend Leon Sullivan grew up in Charleston, near Old Maiden and attended West Virginia State on a basketball scholarship in the 1940's. Reverend Sullivan became a renowned Philadelphia minister who used America's economic might to help end apartheid in South Africa.

Reverend Sullivan was a twentieth century man who adopted the philosophy of Booker T. Washington, although he did not acknowledge him or his philosophy in his autobiography, MOVING MOUNTAINS: THE PRINCIPLES AND PURPOSES OF LEON SULLIVAN. 66 He lived in the community of First Baptist

63 See Trotter, Jr., supra note 19, at 169.

64 Corbin, supra note 47, at 6. See also Armstead, supra note 16; Memphis Tennessee Garrison, supra note 15, at 65; Ancella R. Bickley, In Spite of Obstacles: A History of the West Virginia Schools for the Colored Deaf and Blind 1926-1955 (2001); Mansfield, supra note 7.


66 Sullivan, supra note 17.
Church in Charleston about four generations after Booker T. Washington grew up in nearby Old Malden.

Reverend Sullivan was humiliated as a small child when he was ordered sharply to leave a lunch counter to drink his soft drink simply because he was not white.\textsuperscript{67} This event was a lightning rod for Reverend Sullivan’s determination to be proud, free and to make a difference.\textsuperscript{68} The power of that simple meanness in his life shows how times had changed from the days of young Booker’s slavery, at a time when he was chattel property, and it was a crime for even a mother to teach her enslaved child how to read.\textsuperscript{69} Times had improved but humiliation is immutable. It can cause a person of character to remember and respond with energy for lifelong good works to help others.\textsuperscript{70}

Reverend Sullivan used the values of hard work, education for jobs, race pride and the political and economic power of African American communities to better the lives of millions of African Americans. He established job training opportunity centers in America and in many countries around the world, notably in Africa.\textsuperscript{71} These community revitalization operations are known as Opportunities Industrialization Centers or OIC Centers, where employees are trained for specific jobs of local employers who sell goods and services to their communities. This is a fundamental approach to moral community.

Reverend Sullivan was very successful with this bootstrap style Black Power concept in Philadelphia. He learned first hand about racial solidarity and community economic power from his early ministry in the 1940’s in Harlem, while a young minister at Abyssinian Baptist Church with Adam Clayton Powell, Jr.\textsuperscript{72}

In 1971, he was elected as the first African American to the Board of Directors of General Motors, at the time the largest corporation in the world.\textsuperscript{73} As a very visible member of that board, he convinced most all corporate giants around the world to help eliminate modern slavery in South Africa by boycotting its goods and trade.\textsuperscript{74}

Unlike Booker T. Washington who died at age 59,\textsuperscript{75} Reverend Sullivan lived into his late 70s, long enough to see South Africa eliminate apartheid on a

\textsuperscript{67} \textit{Id.} at 46. He was told, “Stand on your feet, black boy, you can’t sit down here.” \textit{Id.}

\textsuperscript{68} \textit{Id.} at 46.

\textsuperscript{69} See \textit{WASHINGTON, supra} note 7.

\textsuperscript{70} MANSFIELD, \textit{supra} note 7, at 165-67.

\textsuperscript{71} SULLIVAN, \textit{supra} note 17, at 292-93.

\textsuperscript{72} \textit{Id.} at 8-10.

\textsuperscript{73} \textit{Id.} at 25-31.

\textsuperscript{74} \textit{Id.} at 74-95.

\textsuperscript{75} MANSFIELD, \textit{supra} note 7, at 118.
slow-paced, peaceful basis in 1993. Reverend Sullivan was criticized for his "slow" economic approach to ending apartheid in South Africa. He would reply, "TTT" or "things take time," which was one of his favorite expressions.

If like Reverend Sullivan, Booker T. Washington had lived another 20 years, until 1935, he likely would have imprinted his philosophy directly upon the early urban Black Power movements that followed his death. Further, if Booker T. Washington had lived to age 95 like his critic W.E.B. DuBois, he would have lived until 1951 and his imprint would likely be obvious for the entire civil rights movement in the second half of the 20th Century. But he died at age 59 in 1915 well before these broad based movements for race pride and civil rights began.

XIII. THE MILITANT "BOOKER T-ISM" OF THE BLACK POWER MOVEMENT IN THE 1960'S

The Black Power movement of the 1960's, according to Bayard Rustin was, "nothing but the economic and political philosophy of Booker T. Washington given a 1960's militant shot in the arm and brought to date." Harold Cruse, an outspoken University of Michigan history professor, wrote that "[t]he very last people to admit that Black Power is militant Booker-T-ism are the Black Power theorists themselves."

It is no accident that Booker T. Washington and Reverend Sullivan grew up in the same community of African American families about four generations apart. These men believed in the progress of people through quality education, hard work, and equal pay for equal work. They both believed in working through existing power structures of their day, albeit very different ones in the modern urban North and the reconstruction era of the Deep South.

These are West Virginia values, which Reverend Sullivan put on the world stage in his famous "Sullivan Principles," to establish standards of de-

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76 SULLIVAN, supra note 17, at 96.
77 Id.
78 Id. at 97.
79 BLACK LEADERSHIP IN CRISIS, supra note 3, at 177.
80 Id.
81 Booker T. Washington experienced race hatred and returned it with compassion and "Christlike-"ness in his leadership role. I think Reverend Sullivan did as well. Both men lived in an area where a strong African American community nurtured its young people in prominent centers of faith. See generally MANSFIELD, supra note 7, at 146-47, 191.
82 No one worked harder day-to-day than Booker T. Washington. Id. at 121.
83 See generally SULLIVAN, supra note 17, at 48-53.
84 Id. at 106-12; MANSFIELD, supra note 7, at 24, 118-21.
cency and justice required for a country to be included in the world community of nations.\textsuperscript{85}

It is no accident that journalist Tony Brown shares a similar philosophy. In a speech in Charleston in 2004, Tony Brown made two key points.\textsuperscript{86} First, he thinks a primary difference between average African American and white families today is that many more African Americans are struggling in this generation to pay for the higher education of their youth.\textsuperscript{87} He said most African Americans are paying their own way without full financial help from their parents and grandparents, who are not themselves financially secure.\textsuperscript{88}

Second, Tony Brown stated that there is one social program which is absolutely necessary to help working African Americans assume equal status with white Americans.\textsuperscript{89} He proposed the federal government fund programs to create single-family home ownership.\textsuperscript{90} He said home ownership is the only way more working people can earn equity to pass on to future generations in the form of higher education and greater economic success.\textsuperscript{91} That is the only way families, white or black, get ahead in our society today: home ownership.\textsuperscript{92}

I am impressed with his analysis and understanding of family intergenerational giving. He and Reverend Sullivan from a generation before, credit their wise and nurturing grandmothers who directed them to lives of morality, while they grew up in secure and supportive African American communities in the Kanawha Valley.\textsuperscript{93}

\section*{XIV. LEGISLATIVE REPORT ON RACIAL DISPARITIES IN WEST VIRGINIA AT THE TURN OF THE 21ST CENTURY}

Flash again to 2003, our legislative interim study committee finished its work and issued a report of our study, area by area, with a list of participants and a summary of information collected, known as the Report of the Proceedings of Select Committee B on Minority Issues 2003 Legislative Interim Study

\textsuperscript{85} Id.
at 193-97.

\textsuperscript{86} Tony Brown, Address at the Kanawha Institute for Social Research and Action, Inc. Benefit Dinner (June 4, 2004).

\textsuperscript{87} Id.

\textsuperscript{88} Id.

\textsuperscript{89} Id.

\textsuperscript{90} Id.

\textsuperscript{91} Id.

\textsuperscript{92} Id.

\textsuperscript{93} See generally SULLIVAN, supra note 17.
Recommendations were also made. The Report establishes benchmarks for who we should be as a people and what changes we need to make to become a moral community.

It is obvious that committee members were shocked by facts we discovered and had to make as findings in the Report. We found that 63 percent of all “hate crimes” in West Virginia are racial based.95 We found that of 606 State Troopers in 2003, only three are African American.96 We also found very few females in the police forces of West Virginia.97

The racial disparities in health are shocking. We found that African Americans have double the risk of diabetes.98 Compared to their white peers, they have a double rate of death by diabetes, homicide, and prostate cancer in West Virginia.99 Tragically, infant mortality for African American babies is double the rate for white babies.100 One cause for those terrible disparities is the finding that African Americans have much less access to health care and health insurance than whites.101 Also, there are too few African American physicians and other healthcare professionals in our state.102

We discovered that many African American children are living in poverty. They are placed for adoption at higher rates.103 Few African Americans are government social service workers.104 Public schools in some areas employ too few African Americans.105 It is interesting that in 1999, in Monongalia County (which is the home of West Virginia University) the African American population was 6.8 percent of the county's population, but there were only six African Americans of 1,281 public school employees.106 That is less than one half of one percent.

94 Report, supra note 40.
95 Id. at 8 (citing West Virginia Advisory Committee to the United States Commission on Civil Rights).
96 Id. (citing PERD Full Performance Review of the West Virginia State Police).
97 Id.
98 Id. at 10.
99 Id.
100 Id. at 11.
101 Id.
102 Id.
103 Id. at 12.
104 Id. at 13.
105 Id.
106 Id. at 14.
There may be explanations here and there for racial disparities, but a clear pattern shows, category after category in our study, that while *Brown v. Board of Education* integrated our schools, it did not bring the social justice needed for us to create a moral community.

While West Virginia has a good history of race relations on the whole, we must address these racial disparities. We are a state where overt, blatant, intentional racism does not exist on an institutional basis. I think it does not exist in the intended acts of the officials of state or local government. However, the racial disparities we found cannot be ignored however they are caused. Clearly, they cannot be forgiven upon assurances that our intent is not to discriminate.

For years in Kanawha County, the seat of state government and the economic and social center of West Virginia, we felt comfortable that our schools were fair and open for all children to learn and grow. Again, the visible symbols of moral community were present everywhere. We had cheerleaders and very successful athletes who were African Americans. We had well known, successful African Americans in most all professional fields and in state and local government. But, when our school officials looked closely, they were shocked to find that African American students were greatly underrepresented in gifted programs and overrepresented in special education classes.

Dr. Pat Kusimo, an inspirational visionary and speaker in this symposium, has helped Kanawha County School officials understand and focus on solutions to the problems creating those statistics. She discovered that West Virginia as a whole needs new initiatives to allow counties and their own communities to develop ways to attack their specific problems of minority and low income youth. We can no longer ignore disparities for those students under the new federal mandates of the No Child Left Behind Act. That statute has left us with real funding problems, but one of the benefits of its mandates is that it forces us to look very carefully at the status of all children in our schools.

The No Child Left Behind Act requires states to determine which defined groups of children are succeeding and which are failing. These groups of children are studied in quartiles of 100 percent - that is in four levels of 25 percent each. For all children who are in the two middle quartiles, representing the

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107 For a good caution about bragging and distortions of historical fact, see WILLIAMS, * supra* note 5, at 204-05.

108 Dr. Pat Kusimo is an educational researcher and president of PK Enterprises, her own consulting firm. Dr. Kusimo is active in local and state efforts to improve the academic achievement of African American and underprivileged children in West Virginia. Dr. Kusimo has presented research to legislators and senators, community groups, and the West Virginia Board of Education. Editor's note: Dr. Pat Kusimo's remarks from the *WEST VIRGINIA LAW REVIEW* symposium, "A Look at *Brown v. Education* in West Virginia: Remembering the Past, Examining the Present, and Preparing for the Future" on Feb. 22, 2005 are on file with the West Virginia University College of Law Library.
middle 50 percent of all students, our schools are performing well on the statistics for African-American children.

Sadly, statewide like in Kanawha County, African American children are overrepresented in the lowest quartile and underrepresented in the highest quartile. Our schools are failing them badly. We must improve these statistics, and real punishments await under the new federal mandates if they are not improved.

Our committee discovered from Dr. Kusimo's work that there is a growing educational achievement gap between white and African American children. The gap is significant in about fourth grade and grows as students mature. It reveals a failure of education in the graphic shape of a megaphone.

Worse, a similar megaphone shaped achievement gap appears in juvenile and criminal detention and incarceration. It starts in the younger juvenile detention and incarceration statistics and grows as children become adults. African Americans go to adult detention and adult incarceration at rates that rise significantly as they mature.

Are these achievement gaps similar? Yes. They show we are not addressing racial disparities in public school education or in our social and economic affairs. It was obvious to our committee, and we made recommendations for educational changes, largely following the work of Dr. Kusimo.

To Dr. Kusimo's great personal credit, she worked with the House of Delegates Education Committee to pass a bill to create in up to ten counties, special demonstration school projects where usual state requirements are relaxed, such as seniority guidelines. Because West Virginia has a state paid system of public education, we have great problems when one size does not fit all. Our state mandates and models are not working for minority and low-income children, despite recent improvements in education statewide. Importantly, any success for disadvantaged students is seen as a help to every student who is not succeeding in our public schools.

In economic affairs, our committee found that the number of African American owned and operated businesses in West Virginia is few for their percentage of our population. Again, our history does not save us. One of America's most successful African American family owned businesses began in Charleston, West Virginia. For a number of generations the C.H. James family has had remarkable international business success after beginning as a wholesale produce company in the times of Booker T. Washington. Despite that notable success, we do not have African Americans in business in sufficient numbers, and even worse, the rates of unemployment of African American males are twice the rates of white males.

110 COHEN & ANDRE, supra note 10, at 297.
Our study committee made recommendations for change in each category of our study. These recommendations are set out in the concurrent resolution we drafted which was adopted with few changes by the West Virginia Legislature in the 2004 Regular Session and the Report.

House Concurrent Resolution 25 is an important step in what should be a march of our state in the 21st century toward moral community through true equal opportunity and social justice for all. The Resolution reads as follows:

**HOUSE CONCURRENT RESOLUTION NO. 25**

(By Delegates Webster, Manuel, and Schoen)

[Adopted March 13, 2004]

Requesting the three branches of state government to cooperate and encourage leaders of the state, county and municipal governments to identify and affirmatively address minority issues and racial disparities in the areas of civil rights, health, education, housing, social issues, employment, economic development and criminal and juvenile justice systems in West Virginia in the interest of equality.

Whereas, House Concurrent Resolution No. 76, adopted by the West Virginia Legislature in 2002, recognizes and outlines a number of employment, social, health, educational, criminal justice and economic problems confronting African Americans and their communities in this state; and

Whereas, Select Committee B on Minority Issues was created by the Joint Committee on Government and Finance as part of the 2003 legislative interims to consider House Concurrent Resolution No. 76 and to study and make recommendations and offer solutions to address problems identified in House Concurrent Resolution No. 76; and

Whereas, According to the 2000 Census, African Americans comprise approximately 3.2 percent of the state's population and more than 5 percent of the population in seven counties; and

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Whereas, The West Virginia Legislature should be committed to connecting communities, exploring strategies for racial and social equality and taking proactive steps to remedy the effects of past discrimination on African American children, adults and families; and

Whereas, Prevention of discrimination in civil rights, the justice system, education, health care, economic development, employment, business development, housing and community and family services is preferable to attempting to remedy the consequences of discrimination; and

Whereas, There is a wide disparity between African American and Caucasian public school students in West Virginia with regard to standardized testing scores, indicating a significant achievement gap which widens with tragic consequences for a number of African American students as they progress in school; and

Whereas, On the 2003 ACT college entrance examination, which is used by the PROMISE scholarship program to determine eligibility for college scholarships, African American students' success rate was significantly lower than that of Caucasian students; and

Whereas, African American children have been overrepresented in special education programs in schools in Kanawha County, the only area of the state for which statistics were provided to the Committee, and underrepresented in advanced education programs and programs for performing or gifted students; but the Kanawha County Board of Education has established programs to identify and include all qualified students, without regard to race, in special programs to enhance performance and to address the academic achievement gap between African American and Caucasian children at early stages of the public education process; and

Whereas, The percentage of African American teachers and educational professionals in many of the state's public schools is disproportionately lower than the African American student population, to some degree depriving minority students of important African American role models and advocates in educational settings; and
Whereas, Training assistance and education programs with affirmative outreach to African Americans combine to help prevent racial discrimination; and

Whereas, African Americans in West Virginia experience a disproportionately higher incidence of health risk and mortality from cancer, diabetes, hypertension, heart disease and HIV; African American women tend to be diagnosed with breast cancer at later stages than Caucasian women; and the teen birth rate and the infant mortality rate among African Americans is twice that of Caucasians; and

Whereas, The percentage of African American children in the care and/or custody of the Bureau of Children and Families in 2003 was more than twice the percentage of African Americans in the general West Virginia population; and

Whereas, Business ownership among African Americans in Charleston, West Virginia, the only area of the state for which statistics were provided to the Committee, is proportionately less than minority business ownership nationwide; and

Whereas, The unemployment rate of African Americans recently has been about twice the unemployment rate for Caucasians and significantly higher in some counties with a greater concentration of African American population; and

Whereas, Statistics provided by the State Equal Employment Opportunity Office indicate that the percentage of minority employees among the full-time state government employees under the control of the Department of Administration is approximately the same as the percentage of African Americans in the state's population as a whole; and

Whereas, The West Virginia Advisory Committee to the United States Commission on Civil Rights has found continuing reports of racial discrimination in hiring, tension between law-enforcement officers and African American citizens and hate crimes and violence against minorities, including reported incidents of harassment of racial and ethnic minorities in schools; and

Whereas, The West Virginia Human Rights Commission reports that two-thirds of the hate crimes reported between 1992 and 2000 were racially motivated; and
Whereas, The West Virginia Legislative Auditor's Performance Evaluation and Research Division (PERD) reports that there is a scarcity of minority and female state troopers, especially in upper ranks, with only 16 (2.6 percent) of 606 troopers being female and only 3 (1.3 percent) of 606 troopers being African American; that the percentages of female and African American officers in county sheriff's departments are even lower; and that the state's 10 largest cities employ, on average, only 4.6 percent female officers and 3.9 percent African American officers, even though most of those cities have significantly greater populations of African Americans; and

Whereas, The West Virginia State Police have voluntarily sought to determine and monitor their own efforts relating to racial profiling sensitivity during routine traffic stops; and

Whereas, According to data voluntarily collected and provided by the West Virginia State Police, between October, 2002, and March, 2003, motor vehicles operated by minority drivers were stopped by state troopers at a rate roughly comparable to the percentage of minorities in the general state population. After being stopped, 63 percent of minority drivers were ticketed or arrested, compared to 51 percent of Caucasian drivers, and warnings were issued to 37 percent of all minority drivers, compared to 49 percent of Caucasian drivers; and

Whereas, West Virginia enjoys both a low juvenile crime rate and one of the nation's lowest juvenile detention rates, yet the percentage of minority youth in the West Virginia juvenile justice system exceeds the national rate of minority youths in the juvenile justice system; and

Whereas, In West Virginia, African Americans make up only 3.2 percent of the general population, but account for one third (1/3) of the adult prison population, one fifth (1/5) of the juveniles placed in detention and admitted to correctional facilities, and over one half (1/2) of the juveniles transferred to adult jurisdiction for major felonies; and

Whereas, There is a great and immediate need for comprehensive data collection and analysis on a multiyear basis and for continuing examination and review of solutions with regard to racial disparities in the areas of civil rights, health, education, housing, social issues, employment, economic development and criminal and juvenile justice systems; therefore, be it
Resolved by the Legislature of West Virginia:

That the three branches of state government should cooperate and encourage leaders of the state to identify and affirmatively address minority issues and racial disparities in the areas of civil rights, health, education, housing, social issues, employment, economic development and criminal and juvenile justice systems; and, be it

Further Resolved, That county boards of education should be encouraged to aggressively recruit minority teachers and other professionals to work in the public school system; and, be it

Further Resolved, That the Department of Education and county boards of education be given greater flexibility to employ teachers who are trained or experienced in working with African American children and parents; and, be it

Further Resolved, That the Legislature should provide funding for professional development to improve teachers' effectiveness with African American students and parents; and, be it

Further Resolved, That the Legislature should provide more funding for academic enrichment programs in locations where there are concentrations of poor and minority students, including more early preschool programs and after-school programs; and, be it

Further Resolved, That the Department of Health and Human Resources should increase access to education in welfare-to-work programs and evaluate placement and referral policies; and, be it

Further Resolved, That the Governor continue the mission of the Governor's Minority Students' Strategies Council to collect and analyze information from other states and organizations regarding effective policies and strategies for closing the academic achievement gap between Caucasian and minority students and to prepare an annual report for the Governor, the State Board of Education, the Higher Education Policy Commission, the Legislative Oversight Commission on Education Accountability and the public, outlining issues, recommendations and strategies to close the academic achievement gap; and, be it

Further Resolved, That the Department of Education be required to review its Policy No. 2421, 126 CSR 18 (1996) gov-
erning peer harassment and violence against minority students, to study the extent to which the Policy has been implemented in public schools throughout the state and to take necessary steps to ensure complete implementation of the Policy in all public schools as soon as reasonably possible; and, be it

Further Resolved, That the Department of Education and county boards of education themselves, with the input of the local communities, should provide hate crime prevention and response programs in schools and anti-bias training and education for students and teachers, including mechanisms to ensure harassment is reported before problems escalate, and that there are appropriate responses to incidents of harassment when they do occur; and, be it

Further Resolved, That the Legislature should direct resources to support community-level partnership and innovation to address racial and ethnic disparities in health care; and, be it

Further Resolved, That all governmental agencies, institutions and corporate bodies at state and local levels should be encouraged to regularly collect, analyze and report to the Department of Administration data relating to racial disparities among children, adults and families in West Virginia; and, be it

Further Resolved, That the Department of Administration should review and, if necessary, establish or reform state procurement policies and practices to assure that they meet federal and state requirements and that they effectively encourage meaningful participation of African Americans and other minorities in the process of competing for and awarding of state contracts for goods and services; and, be it

Further Resolved, That the State should continue to support and expand small business incubator programs like the one in place at Bluefield State College to encourage new and minority small business development; and, be it

Further Resolved, That the State should undertake initiatives to encourage African American business ownership similar to those efforts used to encourage greater rates of business ownership among women; and, be it

Further Resolved, That the State should assist community and economic development corporations to provide effective techni-
Further Resolved, That the Governor and the Legislature should encourage industry, banks and other private businesses to hire African Americans and to encourage businesses to be more aggressive in establishing diversity-conscious practices as employers and for their operations; and, be it

Further Resolved, That the State should encourage traditional and nontraditional lending institutions to be more creative and favorable to lending in minority communities and to minority persons, especially for business enterprises; and, be it

Further Resolved, That the Legislature should encourage small business start-up and expansion and provide funding to assist African American and other minority vendors to meet bid bonding requirements; and, be it

Further Resolved, That workforce investment boards should be accountable for educating poor and minority persons for jobs better than low-paying service jobs; and, be it

Further Resolved, That the West Virginia State Police and local law-enforcement officers should be trained and required to collect data regarding stops of motor vehicle operators which affect everyone's precious right of privacy in their motor vehicles, which data should include information on the stops and arrests of African Americans; and, be it

Further Resolved, That the West Virginia State Police and local law-enforcement agencies be required to provide diversity training for officers, including training to recognize and report hate crimes; and, be it

Further Resolved, That the West Virginia State Police be required to develop, in writing, goals for increasing the number of women and African Americans for all grades of officers and staff and to report annually as to its efforts and success in meeting those goals and be encouraged to employ African American and other minority persons as recruiting officers; and, be it

Further Resolved, That the Legislature, the Governor and the Supreme Court should increase support for criminal justice research and for the development, maintenance and continued assessment of data related to the effectiveness of the court system
in the areas of criminal sentencing, juvenile adjudication and community-based corrections; and, be it

Further Resolved, That the Legislature should protect and maintain the confidentiality of juvenile records pending a study on the adverse impact of the release of such records on the employment and higher education opportunities of minority youth; and, be it

Further Resolved, That the West Virginia Supreme Court of Appeals should continue to study issues related to minority youth, including the highly disproportionate number of minority youth transferred from juvenile to adult jurisdiction in the criminal justice system through its Task Force to Study Perceived Racial Disparity in the Juvenile Justice System and to study and develop similar research projects with data collection in regard to adult offenders; and, be it

Further Resolved, That state agencies should study racial disparities in a number of areas to reduce gaps in educational achievement and in the overrepresentation of African Americans in adult prisons and juvenile facilities and encourage all participants in the educational and justice systems, including teachers, principals and other educational personnel, probation officers, juvenile referees, judges, justices, prosecutors, attorneys, law-enforcement officers, detention and correctional officers, caseworkers, social service providers, agency staff and members of the community to join in the study and development of policies and programs to address racial disparities; and, be it

Further Resolved, That the Legislature, the Governor and the Supreme Court should take immediate steps to develop, implement and fund a collaborative and comprehensive community-based plan to study and correct overrepresentation of minority children and adults in the state's criminal and juvenile justice systems, with particular attention to prevention of juvenile crime through mentoring, diversion, recidivism-reduction strategies, in-school and after-school programs, entrepreneurial education, job training and placement alternatives, community-based sentencing for nonviolent offenders and transition and re-entry programs for offenders upon completion of their sentences; and, be it

Further Resolved, That state agencies and the Legislature should be encouraged to propose specific legislative proposals
where appropriate to facilitate these recommendations; and, be it

Further Resolved, That the Legislature should continue to study minority and racial disparity issues in 2004; and, be it

Further Resolved, That the Clerk of the House is hereby directed to forward a copy of this resolution to the Governor of West Virginia, the Justices of the West Virginia Supreme Court of Appeals, the President of the West Virginia Senate and the Speaker of the West Virginia House of Delegates.112

This resolution establishes key facts about who we are as a people early in this century. The West Virginia Legislature has now made findings of fact that racial disparities exist and that the West Virginia Legislature is committed to doing something about these disparities.

Along with the resolution, two bills proposed by our committee were passed. One was an anti-racial profiling bill requiring all police officers in West Virginia to fill out a short form on the particulars of every stop of a motor vehicle, some of which would include the officer's personal perception of the age, race, and gender of the operator and why the stop was made.113 The second bill related to the powers of the West Virginia Economic Development Authority to encourage greater business and employment opportunities for African Americans.114

I thought it was remarkable that in West Virginia there was no documentation of motor vehicle stops unless a citation or written warning were issued. Police officers estimated that for every documented stop there was one undocumented stop with no formal action taken. There are about 70,000 warnings or citations issued annually, meaning that there are about an equal number without documentation. These numbers reveal that there are over 180 motor vehicles stops with no documentation each day in West Virginia. It is fair to say that for most of us [attending this symposium], a motor vehicle stop is the most likely constitutional intrusion of police officers into our day-to-day lives. The anti-racial profiling statute will document those events and provide needed information on racial disparities in stops and official action taken. I doubt the disparities will be significant, but the numbers will tell. The statute is controversial and may be amended in the near future. If implementation is smooth and accommodating to law enforcement officers who must record the data, I think it will be a great tool for law enforcement administration. It will also allow us to

112 Id.


better track the enforcement of drunk driving laws, and equipment and safety requirements.

Dr. Kusimo's House Bill 4669 was enacted by the work of the House Education Committee, to establish five-year special demonstration school projects in up to three schools in up to 10 counties, to help local schools improve their success with minority and low-income students.\(^1\)

Another bill not originating in our study committee (but which we strongly supported) was sponsored by Senator Ed Bowman to require the state police to report on its success in recruiting and retaining more African Americans.\(^1\)

Finally, the 2004 Regular Session was a landmark for the progress of the state's oldest historically black college, when West Virginia State College was granted university status and renamed West Virginia State University.\(^1\) It was the last of America's historically black colleges with 1891 land grant status to be named a university. This change came from the Senate Education Committee as part of a bill to reorganize higher education. I had written Senate bills for three years to name West Virginia State as a University and the passage of this bill was my proudest moment and a clear legacy of my public service career because before that session, I had announced I would not seek reelection in 2004.\(^1\)

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\(^1\) H.D. 4669, supra note 109.

\(^1\) S. 200, 76\(^{th}\) Leg., Reg. Sess. (W. Va. 2004).

\(^1\) S. 448, 76\(^{th}\) Leg., Reg. Sess. (W. Va. 2004).

\(^1\) The amendment to make West Virginia State a university was first defeated, then passed by a narrow unrecorded vote in the Senate Education Committee. The bill was a comprehensive reorganization of higher education affecting all colleges and the state's two universities, West Virginia University and Marshall University. It was a controversial bill because it affected most colleges of the state and, accordingly, most members of the Legislature. After the amendment passed, it became obvious that the bill would fail without inclusion of university status and name changes for West Virginia State and three other colleges which followed the lead of West Virginia State: Fairmont State College, Shepherd College and Concord College. West Virginia State could never get this plum without schools in other areas (legislative districts) being included. I spoke against the original bill on the floor of the Senate even before it was passed by the House of Delegates, to announce clearly my position to protect my local colleges' interests in the bill and to soften up opposition to university status for West Virginia State.

The bill passed in the last few hours of the last night of the Regular Session. The House had to vote on all the Senate amendments to the bill. Working on the Senate floor at the time, I had no idea how the bill was progressing in the House. It appeared to be rolling toward passage, but growing opposition over changes at Bluefield State College was significant. Happily, West Virginia State President Hazo Carter and his wife, Phyllis Carter, came to me to tell me personally of the good news of its passage and were very gracious in thanking me for my help to West Virginia State over the years. It was an honor to see their joy and pride. University status for their school was a monument to their lifelong work together for higher education in the Kanawha Valley.
XVI. SECOND INTERIM STUDY OF RACE DISPARITIES IN 2004

After the 2004 Regular Session, our committee was reappointed to study implementation of the anti-racial profiling bill and other minority issues. The Senate membership of Senators Jon Blair Hunter, Russ Weeks and myself was continued and the House membership was increased to include three more distinguished delegates. Joining Delegate Carrie Webster as Chair, and Delegates Dale Manuel and Patti Eagloski Schoen were Delegates Larry Williams, Sally Susman and Mitch Carmichael.

In our second year, we studied the same categories, and proposed several bills and resolutions. First, we proposed a bill to create a special minority business and economic development fund in the state budget.\(^{119}\) Second, we proposed a bill to require sickle cell anemia to be tested for all children, because it is now understood that children of all races may be at risk of the disease since it is in the genetic pools of most people from the Mediterranean area.\(^{120}\)

Third, we proposed a resolution seeking to eliminate racial disparities in health care and disease prevention.\(^{121}\) We have too few medical and dental students who are African American. At Marshall University only 10 of 24 minority students in 2002 were African American.\(^{122}\) At the West Virginia University School of Medicine, only five of 71 minority students were African Americans.\(^{123}\) At West Virginia University School of Pharmacy, three of 10 minority students were African Americans.\(^{124}\) At the West Virginia School of Osteopathic Medicine in Lewisburg, no African Americans were enrolled, and at the West Virginia University School of Dentistry there were no African Americans enrolled.

Fourth, we proposed a resolution to help disadvantaged small businesses to compete for state contracts.\(^{125}\) Fifth, we proposed a resolution to create a loan pool for small businesses that are properly defined under constitutional requirements as disadvantaged businesses, which would help African American and other minority businesses.\(^{126}\) Sixth, we proposed a resolution for the West Virginia Legislature to fund Dr. Pat Kusimo’s local school special demonstration projects to help minority and low-income students under House Bill 4669.\(^{127}\)


\(^{120}\) H.D. 2766, 77\(^{th}\) Leg., Reg. Sess. (W. Va. 2005). (not enacted)


\(^{122}\) Report, supra note 40, at 15.

\(^{123}\) Id.

\(^{124}\) Id.


The West Virginia Department of Education has undertaken the program but with no special funding so far from the West Virginia Legislature.

All of these issues are important, and I invite each of you, after the symposium, to monitor them during the 2005 Regular Session and in the future. Call your legislators and ask them to help on your own agenda for social justice and moral community.

XVII. CONCLUSION: CLIMBING THE MOUNTAIN OF JUSTICE TO MORAL COMMUNITY

I am honored to participate in this great event celebrating the vision and hope of all people who support Brown v. Board of Education as the law of a moral community, and well befitting our great nation as the land of liberty with justice for all. That landmark case gave us the moral human principle of full community interaction of all peoples through racial integration. It is a simple truth. Once we know our neighbors, we can love them as we love ourselves.

Brown v. Board of Education put us climbing up the mountain of social justice, climbing toward moral community.128 Racial integration is not enough. It is a vehicle, not a goal. The climb is ahead of us. Individually, many of us are climbing the mountain today because others have let us rest on their shoulders and push up against their courage and effort, longing to be free. So let us climb for our children as we show them our respect for our ancestors and ourselves.

We should be spurred to action, not discouraged, as we understand more about West Virginia's race relations and our African American communities and families which have been successful, strong, and nurturing for so many of their young people - a number of whom are forever known worldwide as making this earth a better place for moral community.

In Old Maiden, there is a small sign that reads, "Kanawha Salines 1863: Remember here those enslaved African Americans who were chased, beaten and abused because God's spirit of freedom was manifest in them."

It is no accident that in West Virginia we have our beautiful mountains and our nurturing families, and a great past and bountiful future.129 For all of our children, if we keep remembering, we will keep climbing.

128 See TOCQUEVILLE, supra note 30 at 84 (quoting JAMES MADISON, THE FEDERALIST NO. 51 'Justice is the end of government. It is the end of civil society.'

129 WILLIAMS, supra note 5, at 199 (quoting poet William Blake, 'Great things are done when men & mountains meet.'