

The Family Tree (2003)

An Essay about *Loving v. Virginia* and the 1924 “Act to Preserve Racial Integrity,”

with a Personal Tribute to Richard and Mildred Loving

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Conviction of a felony is a serious matter. You lose your political rights; and only the government has the power to restore them. And as long as you live you will be known as a felon.

—Judge Leon M. Bazile, Circuit Court of Caroline County (January 22, 1965)

If you love somebody, you don't have to give it up. You don't have to do what someone else wants you to do. You do what you think's right.

—Brittany Houser, Kings Mountain, NC (March 4, 2000)

Richard Perry Loving and Mildred Delores Jeter were married on June 2, 1958. Five weeks later, nestled in the comfort of their bed during the still hours of morning, a clamorous sound jolted the young Virginia couple from peaceful slumber.¹ Behind flashlights stinging their eyes, a threatening voice demanded an answer:

“Who is this woman you’re sleeping with?”

“I’m his *wife*,” said Mrs. Loving.² The newlyweds had exchanged vows in Washington, D.C., but the Caroline County sheriff who had ruptured their solitude stood unmoved. Mr. and Mrs. Loving were immediately arrested. Their crime? Because the state of Virginia classified Richard

as “white” and Mildred as “colored,” the Lovings’ marriage violated Virginia’s eugenicist scheme, the “Act to Preserve Racial Integrity,” which in 1924 declared: “It shall hereafter be unlawful for any white person in this state to marry any save a white person[.]”³

At the Lovings’ hearing on January 6, 1959, Caroline County Circuit Court Judge Leon M. Bazile sentenced the couple to one year in jail, suspended on the condition that they leave the state, not to return together for twenty-five years. The Lovings fled to Washington, D.C., but they were country folk who didn’t care for big city life. After years of exile from their ancestral home, in 1963 Mrs. Loving mailed a plea for help to United States Attorney General Robert F. Kennedy, who enlisted the aid of the American Civil Liberties Union. When Alexandria, Virginia attorney Bernard S. Cohen offered to take the Lovings’ case pro bono, they launched a public fight for freedom that would ultimately ascend to the final arbiter—the U.S. Supreme Court.

Richard and Mildred Loving had no desire to establish themselves in the pages of history. They sought only to love one another freely as husband and wife on the land where they had grown from children into adults. But history forever marked them as heroic civil rights defenders when on June 12, 1967, the United States Supreme Court unanimously ruled Virginia’s racist statute unconstitutional.

Sadly, Richard Loving lost his life in an automobile accident in 1975. The Lovings’ legacy, however, continues to touch countless lives.

As an influence on America’s civil liberties, *Loving v. Virginia* has painted a broad swath across our sociopolitical landscape. In 1959, the year when the Lovings were banished from

Virginia, Hannah Arendt wrote:

Even political rights, like the right to vote, and nearly all other rights enumerated in the Constitution, are secondary to the inalienable human rights to “life, liberty, and the pursuit of happiness” proclaimed in the Declaration of Independence; and to this category the right to home and marriage unquestionably belongs.⁴

This essay is about a landmark civil rights case, and about how Virginia’s Act to Preserve Racial Integrity—and the actions of three of its proponents, John Powell, Walter Plecker, and Leon Bazile—shaped the outcome of the Supreme Court trial in 1967. But this paper is also about that which Hannah Arendt recognized as the “right to home and marriage,” and about not-so-ordinary people who, sometimes consciously, oftentimes not, “write” their own histories. It was Richard and Mildred Loving’s personal collision with and reactions to an unjust legal network that gives the history of *Loving* human significance and adds dimension to its study. This essay, then, seeks also to pay tribute to the Lovings, and to share some historiographic real estate. For the Lovings’ mark on history has inspired some other scholars, as well.

When Brittany Houser saw a television movie in 1998 about Mr. and Mrs. Loving, her nine-year-old heart swelled with mixed emotion.⁵ Sadness. Admiration. Empathy. The Lovings’ struggle was and is inextricably woven into Brittany’s fiber. She identifies herself as a biracial child; her mother is “white,” her father is “black.” Learning that the widowed Mildred Loving still lives in Caroline County, Virginia, Brittany resolved to meet her new hero.

“I don’t know if we can do that,” said her mother, Leslie Houser. Brittany sensed otherwise.

“She wanted to know where it [Caroline County] was, how far was it from here,” said Leslie. “Could she get an address so she could write a letter?” After extensive research, the Housers found a street name and a house number.

“Brittany would write [to Mrs. Loving] sometimes one, two letters a week. And this went on for months and months and months.” But Brittany received no reply. “Finally, she just said, ‘Mama, please, can we just go there? I have to find this place.’ I told her, ‘Get the map.’”

“I got the map,” said Brittany, “and the first thing I pointed to was Bowling Green, Virginia.”⁶

There are just two incorporated towns in Caroline County. One is Port Royal. The other is Bowling Green—the seat of Caroline County justice, the former dominion of Judge Leon Bazile. I shall return to the Housers and their place in this particular historiography at the end of the essay. Let us now, however, turn back the clock to Caroline County in the mid 1960s.

On January 22, 1965, Judge Leon Bazile denied a motion filed in Caroline County’s trial court by ACLU attorneys Bernard Cohen and Philip J. Hirschkop—a newly-graduated and ambitious young attorney experienced in civil rights law, whom in September 1964 Mr. Cohen had hired to take over the case.⁷ Fully aware that they would probably fail to persuade the judge to vacate the judgment and set aside the sentence he had imposed against Richard and Mildred Loving in 1959, the attorneys’ next step would be to appeal Bazile’s trial court ruling to the Supreme Court of Virginia. But first, the Lovings would make a very public appearance.

The January 26, 1965 network news interview—televised in black and white—shows the Lovings seated side by side. To the right of the camera sits Richard, his crewcut blond hair and

clean-shaven face suggesting a boyish innocence that mismatches his 30-plus years. The interviewer asks: “Mr. Loving, what’s been the hardest part for you?”

Richard’s dark eyes peer through guarded slits, meeting neither the interviewer’s eyes nor the lens. “Leaving my home was the hardest for me.” His head dips, and a brief smirk expresses the absurdity of it all. “I didn’t see why it made sense to have to leave.”

Mildred Loving’s tranquil demeanor reveals little of the torment she endured for the previous six and a half years. Her long, slender arms draped casually across her lap telegraph a sense of poise and grace. Mildred’s chin tilts a degree upward, resolutely facing her questioner, but with not a trace of anger. “I guess the worst thing was spending that little time in jail. That’s the worst thing.”

“Just what did the court say to you?” the interviewer asks.

Richard awards the stranger a fleeting glance. “They said I had to leave the state.”

“And what happened?”

“I got up and I left.” Richard’s face hardens. “And if it’s necessary, I’d leave again today. I’m *not* going to divorce her.”⁸

Ten months later at the Supreme Court of Appeals of Virginia, Cohen and Hirschkop argued that, on January 6, 1959, when—on the condition that Richard and Mildred leave the state for twenty-five years—Judge Bazile *suspended* the Lovings’ initial sentence, he had, in legalese, “banished” them from Virginia, cast them into legislative purgatory. And, said the attorneys,

[s]uspension of sentence on the provision of leaving the Commonwealth for an extended period of time, or banishment, is not authorized by the Virginia Code

and is not in keeping with the spirit of the statute authorizing suspension.

Banishment is, in fact, completely opposed to the purpose for which suspension is allowed, namely the rehabilitation of the criminal.⁹

On March 7, 1966, Virginia's Chief Justice, Harry L. Carrico ruled that Bazile's 1965 order "upholding the validity of the sentences imposed upon the defendants is reversed[.]"¹⁰ The Lovings could return home, but the state still refused to recognize their marriage. Mr. and Mrs. Loving had one last hurdle to clear.

On Wednesday, April 10, 1967, Supreme Court Chief Justice Earl Warren called "[n]umber 365, Richard Perry Loving, et. al., appellants, versus Virginia."¹¹ Cohen and Hirschkop were present to argue the Lovings' case on their behalf. Richard and Mildred, the parents of three young children (Sidney, Donald, and Peggy; ages nine, eight, and seven, respectively), chose not to attend.

"Mr. Chief Justice, Associate Justices," Mr. Hirschkop began, "may it please the court:

"[. . .]You have before you today what we consider the most odious of the segregation laws and the slavery laws."¹² Explaining "why Virginia passed these miscegenation laws, and why other states had similar laws on the books,"¹³ Hirschkop pointed to "a 1662 [Virginia] Act which held that the child of a Negro woman and a white man would be free or slave according to the condition of its mother. It was a slavery law," concerned with "the purity of the white woman[.]"¹⁴ a notion manufactured partly out of moral concerns, which, writes Eva Saks, "stemmed from the popular white mythology that blacks descended from the Ham of *Genesis*," whose "blackness was a punishment for sexual excess[.]"¹⁵

In the year preceding Virginia's 1662 law, Maryland had addressed the issue more directly in the country's first "miscegenation" statute, which criminalized marriage between European-American women and African-American men. It also expressed the "economic concerns" of a pigmentocracy wherein, writes Saks, "marriage between a white woman and a black slave would produce legally free children, thereby depriving the slaveowner of potential slaves—a reduction in the stream of future earnings capitalized in the black body."¹⁶

Hirschkop also argued that later "in 1924, in a period of grave hysteria in the United States, [. . .] when the Klan rode openly in the South[,]” the country “talked about ‘bastardy of the races,’ and ‘miscegenation’ and ‘amalgamation’ and ‘race suicide’ became the watchword[s].”

And John Powell, [. . .] a noted pianist of his day, started taking up the Darwin theory and perverting it through the theory of eugenics, a theory that applied to animals—to pigs and hogs and cattle—and started applying it to human beings[.]

[. . .] And that's when the Anglo-Saxon clubs formed in the State of Virginia.¹⁷

“Well,” asked the Court, “what relevance does that 1924 period have” to the *Loving* case at hand? It was relevant, Hirschkop answered, because 1924 was the year when the bill was passed “to preserve ‘racial integrity.’”

And we would advance the argument very strongly to the Court that they're [the state of Virginia] not concerned with the racial integrity of the Negro race, only with the white race. In fact, in Virginia it's only a crime for white and Negro to intermarry, and the law is couched in such terms that they say white may only

marry white[.]

[. . .]They were not concerned with racial integrity, but racial supremacy of the white race.¹⁸

In 1922, John Powell, who was born in Richmond, Virginia forty years earlier, founded, with the support of Dr. Walter Plecker, the Anglo-Saxon Clubs of America, whose goals were echoed in Philip Hirschkop's argument in 1967: "the preservation and maintenance of Anglo-Saxon ideals and civilization in America."¹⁹ Two years after the Clubs' founding, Powell presented to the General Assembly of Virginia a signed petition calling for a bill to preserve "racial integrity." On February 18, 1924, the day the bill was to be considered, the *Richmond Times-Dispatch* published an editorial endorsing it, with a warning that "[u]nless stringent measures are adopted to keep the races separate in the matter of marriage, amalgamation is inevitable."²⁰

Walter Plecker was born in Augusta County, Virginia in 1861, at the start of the Civil War. In 1912, he was appointed Richmond's registrar of the state's primary watchdog for "racial purity," the Bureau of Vital Statistics. "[H]e used his position and influence," writes J. David Smith, "to promote the agendas of John Powell and the Anglo-Saxon Clubs," and for years "pursued with vengeful enthusiasm individuals and groups" that he felt violated "the natural laws of racial separation [.]"²¹ John Powell's proposed bill would further tighten the doctor's legal grip by making it "a felony to falsify one's race on a certificate[.]" and would give county clerks the authority "to deny marriage licenses to couples who could not prove upon demand that they were of the same race."²²

On March 20, 1924, Virginia's governor signed into law the "Act to Preserve Racial Integrity."

But it was only in a few quick months after its passage that quite a significant challenge to the Act began, writes Paul A. Lombardo, “when Atha Sorrells, whose grandmother’s birth records designated her as a ‘free colored person,’ attempted to marry” a white man. “The clerk rejected the couple’s application for a marriage license,”²³ because it would have violated the new statute. When they filed a protest suit, Judge Henry Holt, who presided over the hearing, “ruled in favor of Sorrells and ordered the clerk to issue a license.”²⁴ Alarmed by Holt’s ruling, John Powell and Walter Plecker “contacted the state attorney general in an attempt to overturn the precedent they feared as a result of the Sorrells case.” They were advised, however, “that appeal was dangerous since a loss at the appellate level would set a binding precedent throughout the state.”²⁵

This note of practical advice came not from the state attorney general, however, but from the then Assistant Attorney General, Leon M. Bazile, who, addressing “My Dear Mr. Powell,” on November 26, 1924 deferentially wrote:

If you and Dr. Plecker wish the case to go to the Court of Appeals, this office will take it there, but the thought has occurred to me that inasmuch as the law seems to be working all right outside of Judge Holt’s circuit, *we* [emphasis added] would run the risk of losing a great deal on the chance of reversing him in one case.²⁶

In other words, Bazile was advising his colleagues to leave matters better off alone. Why get into a minor skirmish today when they could ultimately win the war tomorrow? Though the Sorrells case had created a small “breach in the dike,”²⁷ the Racial Integrity Act itself remained intact. Moreover, Powell and Plecker now had a formidable ally who would stalwartly guard Virginia’s

front lines in their racist campaign. Ironically—and fortunately—however, their ally would also help facilitate the Act’s demise.

Standing before the United States Supreme Court on Wednesday, April 10, 1967, Philip Hirschkop neared the end of his defense of Richard and Mildred Loving. To illustrate the emotional foundation of Virginia’s antimiscegenation argument, he recited a now infamous and often-published opinion aired by Judge Bazile, who had in 1959 effectively banished Mr. and Mrs. Loving from the state for twenty-five years, and who, six years later, stubbornly denied a motion to set aside his ruling. “In the case before you,” said Mr. Hirschkop, the judge had proclaimed: “‘Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents.’ And I needn’t read the whole quote, but it’s a fundamentally ludicrous quote[.]”²⁸

Though he had recited only a small portion of that quote, Hirschkop’s was an effective legal strategy, for on June 12, 1967, when U.S. Supreme Court Chief Justice Earl Warren delivered the court’s unanimous decision that struck down all standing antimiscegenation laws, he, too, recited the Virginia judge’s opinion. Thus does it bear repeating here at length:

Almighty God created the races, white, black, yellow, malay, and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix. The awfulness of the offense is shown by the fact . . . [that] the code makes the contracting of a marriage between a white person and any colored person a

felony. Conviction of a felony is a serious matter. You lose your political rights; and only the government has the power to restore them. And as long as you live you will be known as a felon. “The moving finger writes and moves on and having writ / Nor all your piety nor all your wit / Can change one line of it.”²⁹

With a nod to polygenesis and with a literary flourish, Judge Leon Bazile had dutifully upheld the Racial Integrity Act of 1924, which Powell and Plecker had worked so arduously to establish.

In an interview with Philip Hirschkop on June 27, 2000 at his law practice in Alexandria, Virginia, Mr. Hirschkop told me that when he and Bernard Cohen appealed the Lovings’ case in 1965 there were bigots inside the court system who hoped to prevent the case from reaching the federal level. There were hopeful whispers that Bazile would back off, for it seemed far too likely that the Warren bench would rule in the Lovings’ favor. “But,” said Hirschkop, “Bazile just didn’t get it.”³⁰ Had Bazile heeded his own counsel to “Dear Mr. Powell” in 1924, “that appeal was dangerous since a loss at the appellate level would set a binding precedent,”³¹ and kept his own obsessions at bay, the history of loving might have taken a decidedly different turn.

“Justices Upset All Bans On Interracial Marriage,” the front page headline announced in the Tuesday, June 13, 1967 edition of *The New York Times*:

WASHINGTON, June 12—The Supreme Court ruled unanimously today that states cannot outlaw marriages between whites and nonwhites.

The opinion by Chief Justice Earl Warren was directed specifically at the antimiscegenation laws of Virginia[.]

However, the wording was sufficiently broad and disapproving to leave no

doubt that the antimiscegenation laws of 15 other states are also now void.

“We have consistently denied the constitutionality of measures which restrict the rights of citizens on account of race,” Chief Justice Warren said.

“There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the [Constitution’s] equal protection clause.”³²

“Under our Constitution,” the justices concurred in their landmark ruling, “the freedom to marry or not marry, a person of another race, resides with the individual and cannot be infringed by the state. These convictions must be reversed. It is so ordered. Reversed.”³³

September 30, 1998 is a date burned into Brittany Houser’s memory; it’s the day when the nine-year-old, and her mother Leslie, found Mildred Loving who lives in the little white house that Richard built fourteen years before Brittany was born. “This was a dream come true for me,” the young historian wrote for a fifth-grade class project. When Brittany first met Mrs. Loving,

she was just like I thought she’d be. She told me she was glad to meet me. We talked about lots of things, and my mom told her that my daddy’s mom had died and I missed her a lot and that I wonder would she be my other grandmother.

And that’s when she told me I could call her grandma. I was so happy. My mom said I was grinning all over the place. I feel so special now that I have met Mildred.³⁴

My wife Clara and I met Leslie and her daughter after we read a newspaper article about

Brittany's search for her new hero.³⁵ The four of us have bonded through our shared histories. Clara and I partook in the fruits of the Housers' quest when during the weekend of February 19 and 20, 2000 we enjoyed the company of Mrs. Loving and other members of her family.

When I heard the sound of stones popping beneath the car's wheels as Leslie edged her Bonneville into Mrs. Loving's gravel driveway that weekend, I suddenly understood the significance of the moment. I couldn't shove a camera or tape recorder into the face of she who helped make my marriage possible. I would take pictures and record voices, but not hers.

After 1967, even before, the media and scholars have continuously sought out Mrs. Loving. Donald Loving, Jr., Richard and Mildred's grandson, was eager to talk to me—not, I knew, because of anything *I* had done; I was but a fortunate beneficiary of a trust that Brittany and Leslie had long since worked to establish. “Grandma,” Donald Jr. told me simply, “hates publicity.”³⁶ She's not unwilling to share her and her husband's history, but it sometimes pains Mrs. Loving to talk about it, especially since Richard's death in 1975:

“They were coming from a carnival[,]” said Brittany, and “had left the kids with Mildred's mom[.]” Mildred sat in the front passenger's seat. Richard was crossing an intersection when a drunk driver ran a stop sign and “hit them on Mildred's side. Her head went through the glass.” Mildred was blinded in one eye. Because of his impact with the steering wheel, said Brittany, “Richard was killed instantly.”³⁷

“Richard loved daisies,” Leslie Houser had suggested before our trip to Caroline County. So

Clara made a bouquet of yellow, silk daisies to set atop his granite headstone. In 1975, Mildred Loving composed for her husband's memorial an uncomplicated inscription: "Richard Perry Loving, 1933-1975." He lived in their little white house for only two years before the accident.

Richard lies buried in a community cemetery with others who Mildred has loved and lost. His memory thrives in her heart less than one mile away. Years from today she will lay down again by his side. Perhaps their passion for justice will fill the soil that nourishes the roots of our communal family tree.

I had traveled to Caroline County to get something that I selfishly needed for myself, to find something more than any historiography about the Lovings can reveal. I discovered that history is more than a record *about* people. History is what people *do*, and about how they affect present and future lives.

On the Sunday when we would travel back to our homes in North Carolina, the widow Mildred cooked a bountiful midday meal for Brittany and Leslie and Clara and me. Turkey and stuffing and greens and candied yams and biscuits. Every morsel prepared by her gracious, wizened hands we savored amid the communion of family and friends in the little white house where the illusion of race disappears.

Footnotes

1. Personal interview with Mildred J. Loving at her home in Carolina County, Virginia. 19 February 2000. Mrs. Loving recalls that it was around 2:00 a.m. when the arrest occurred.
2. Telephone interview with Leslie Houser, regarding her phone conversation with Mrs. Loving. 10 March 2000.
3. The Virginia “Act to Preserve Racial Integrity” of 1924. From Ivan McDougale, *Mongrel Virginians: The Win Tribe* (Baltimore: Williams & Williams, 1926), 203-255. In Werner Sollors, ed., *Interracialism: Black-White Intermarriage in American History, Literature, and Law*. (Oxford and New York: Oxford UP, 2000), p. 23-24.
4. Arendt, Hannah. “Reflections on Little Rock.” From *Dissent* 6.1 (winter 1959): 45-56. In Werner Sollors, ed., *Interracialism: Black-White Intermarriage in American History, Literature, and Law*. (Oxford and New York: Oxford UP, 2000), p. 492-502.
5. “Mr. and Mrs. Loving.” A Showtime drama made for television. Written and directed by Richard Friedenberg. (Hallmark Home Entertainment, 1996).
6. Personal interview with Brittany and Leslie Houser at their home in Kings Mountain, North Carolina. 4 February 2000.
7. Personal interview with Philip J. Hirschkop at his law offices in Alexandria, Virginia. 27 June 2000.
8. “The Real Mr. and Mr. Loving.” Videotaped interview with Mrs. Loving and her three children, following the televised premier of “Mr. and Mrs. Loving.” (Showtime Networks, Inc., 1996).
9. *Record No. 6163. In the Supreme Court of Appeals of Virginia at Richmond. Richard Perry Loving, et al., versus Commonwealth of Virginia. From the Circuit Court of Caroline County.* (Filed 10 Nov. 1965).
10. *Richard Perry Loving, et. al. v. Record No. 6163, Commonwealth of Virginia.* Opinion by Justice Harry L. Carrico. (Richmond, VA, March 7, 1966).
11. *Landmark Briefs and Arguments of the Supreme Court of the United States:*

Constitutional Law, Volume 64. Philip B. Kurland and Gerhard Casper, eds., (Arlington, Virginia: University Publications of America, 1975), p. 962.

12. Ibid.
13. Ibid., p. 961.
14. Ibid., p. 961-62.
15. Saks, Eva. "Representing Miscegenation Law." In Werner Sollors, ed., *Interracialism: Black-White Intermarriage in American History, Literature, and Law.* (Oxford and New York: Oxford UP, 2000), p. 64.
16. Ibid.
17. *Landmark Briefs*, p. 963
18. Ibid., p. 964.
19. Smith, J. David. *The Eugenic Assault on America: Scenes in Red, White, and Black.* (Fairfax, Virginia: George Mason UP, 1993), p. 17.
20. Ibid., p. 19.
21. Ibid., p. 60.
22. Rountree, Helen C. *Pocahontas's People: The Powhatan Indians of Virginia Through Four Centuries.* (Oklahoma: University of Oklahoma Press, 1944), p. 219.
23. Lombardo, Paul A. "Miscegenation, Eugenics, and Racism: Historical Footnotes to *Loving v. Virginia.*" *University of California, Davis Law Review*, 21 (1988), p. 422-452.
24. Ibid., p. 441.
25. Ibid., p. 442.
26. Smith, p. 75.
27. Lombardo, p. 444.
28. *Landmark Briefs*, p. 965

29. Higginbotham, Jr., A. Leon and Barbara K. Kopytoff. "Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia." From *Georgetown Law Journal* 77.6 (August 1989): 1967-2029. In Werner Sollors, ed., *Interracialism: Black-White Intermarriage in American History, Literature, and Law*. (Oxford and New York: Oxford UP, 2000), p. 133.
30. Personal interview with Philip J. Hirschkop at his law offices in Alexandria, Virginia. 27 June 2000.
31. Smith, p. 75.
32. "Justices Upset All Bans On Interracial Marriage." (13 June 1967). *The New York Times*, p. 1A, 28A.
33. "*Loving v. Commonwealth of Virginia, 1967*." From 388 U.S. 1; 87 S. Ct. 1817; 1867 U.S. In Werner Sollors, ed., *Interracialism: Black-White Intermarriage in American History, Literature, and Law*. (Oxford and New York: Oxford UP, 2000), p. 34.
34. Houser, Brittany. "The Movie Mr. & Mrs. Loving." Unpublished essay, 1998.
35. "Looking for Mrs. Loving: A biracial girl's heroic quest." (19 December 1998). *The Charlotte Observer*, p. 1A, 21A.
36. Personal interview with Donald Loving, Jr. at his grandmother's (Mrs. Loving) home in Caroline County Virginia. 19 February 2000.
37. Personal interview with Brittany and Leslie Houser at their home in Kings Mountain, North Carolina. 4 March 2000.