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PAVING THE PATHWAY FOR *LOVING v VIRGINIA*

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PAVING THE PATHWAY FOR *LOVING v VIRGINIA*

Mildred and Richard Loving were a regular young couple that wanted to live side-by-side, joined by legal marriage, for the rest of their lives. The pair were average people, both just out of high school and in love, and expecting a child within a few months. The problem was, Virginia, their home since childhood, had laws banning interracial marriage. Richard was white and Mildred was black. The couple fought for their rights to marry one another for years against the state of Virginia, and their case eventually was heard by the Supreme Court. On June 12, 1967, the Supreme Court voted in favor of the Lovings, banning miscegenation laws in Virginia, and in all remaining states in America. The Supreme Court voted to repeal all interracial marriage laws in the country not just because of the Loving's story and arguments, but along with the many years of supporting, similar cases and arguments that paved the pathway for *Loving v. Virginia*.

The legal bond of two individuals is defined by the term marriage. History has shown the challenges faced within the constraints of who can and cannot marry, as figures in political power have voiced many opinions and created numerous laws as to how the government should control the legality of marriage. Due to political and religious beliefs, people have developed

their own opinions on what is morally, spiritually and socially acceptable for two people to marry one another. Historically, social conservative values have pushed for legal marriage to only be allowed between a man and a woman, along with the immense amount of racism, slavery and oppression on African Americans and other non Caucasians throughout the history of the United States of America has paved the way to the creation of anti-interracial marriage laws in many states.

Numerous events have paved the way, starting in the 1920s through the outcome of *Loving v. Virginia* in 1967, towards the end result of the lifting of anti-miscegenation. The 1920s do not mark the beginning of the movement towards anti-miscegenation laws by any means, but it marked a new time where much of the American population was spent dealing with anti-miscegenation laws in the United States. Miscegenation, as a term, is connected to the 1864 presidential election when David Goodman Croly and George Wakeman created pamphlets with the intention of undermining Abraham Lincoln's re-election campaign.¹ The pamphlets were titled "Miscegenation: The Theory of the Blending of the Races, Applied to the American White Man and Negro," and the roots of the word can be traced back to the Latin words *miscere* (mixing) and *genus* (race).² Historically, miscegenation laws have been used to separate and justify interracial sexuality, interactions and marriage.

Throughout much of America's history, racism has proven to be one of the most well known and problematic ideas that has shaped the pathway of the United States. The United States was developed from the start with a nationalistic viewpoint that Americans' "deserved"

¹Susan Dudley Gold, *Loving v. Virginia: Lifting the Ban Against Interracial Marriage* (Tarrytown: Marshall Cavendish, 2008), 19.

² *Ibid.*, 19.

the land and “were destined” to prosper on the North American continent, and that all other races could not live up to their standards. As hundreds of years passed, those racist and nationalistic ideals continued in many Americans, shifting from more drastic means such as slavery to less physical, but still oppressive forms of discrimination, such as miscegenation laws.

The state of Virginia, as well as numerous other states across America, enacted laws as early as 1661 that prohibited interracial marriage, and revised it in 1691 shortly after.³ Under the Virginia law in the early 1700s, if a white woman was found to have given birth to a child of more than one race, she would have to pay the church fifteen pounds or act as an indentured servant for a total of five years.⁴ In 1878, that law in Virginia changed yet again, and included a prison sentence for those who married across racial bounds, of up to five years.⁵ African American spouses could now be punished by the law as well, not just the white partner.⁶ In many of the states, such as West Virginia, the punishments could continue on to the ministers or officials that performed the ceremony.⁷

Beginning in 1881, when interracial interactions were highly frowned upon in Alabama, and other states across America, Tony Pace and Mary J. Cox were tried and convicted under sec. 4189 of the Code of Alabama for “living together in a state of adultery or fornication.”⁸ Tony

³ Gold, 17.

⁴ *Ibid.*, 18.

⁵ Annette Gordon-Reed, *Race on Trial: Law and Justice in American History* (New York: Oxford University Press, 2002), 179.

⁶ *Ibid.*, 26.

⁷ Golden, 268.

⁸ *Pace v. Alabama*, 106 US 583 (January 29, 1883), 1.

Pace was black and Mary J. Cox was white, making their relationship a crime under Alabama law, and each person was sentenced to two years in the state penitentiary. Their case was taken to the Supreme Court as Tony Pace believed that “the act under which he was indicted and convicted [was] is in conflict with the concluding clause of the first section of the Fourteenth Amendment of the Constitution.”⁹ The Supreme Court ultimately withheld the Alabama laws and determined they were constitutional because “section 4184 equally included the offense when the persons of the two sexes are both white and when they are both black.”¹⁰ The Supreme Court decided the two sections of the Code of Alabama regarding interracial relationships were “entirely consistent” and therefore the punishments for both of the people, no matter what race they were, were the same.¹¹ This case, in 1881, was one of the first major interracial marriage cases that caught the public’s attention, but it was not until the early 1920s that the film industry began using interracial marriage intentionally, to gain more viewers and awareness.

Hollywood and the film industry created new means of developing ideas and stories to persuade the public’s opinions on popular topics, or simply to entertain. The newly advanced film industry in the 1920s created a mediated form of propaganda to show how interracial marriage was thought to be “suicidal to whites” in the minds of many racist whites.¹² There had been an influx of black Americans into urban areas starting in 1916, because of the Great

⁹ *Ibid.*, 2.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Alex Lubin, *Romance and Rights: The Politics of Interracial Intimacy, 1945-1954* (Jackson: University Press of Mississippi, 2005), 12.

Migration, which led to an increase of interracial interactions.¹³ Many racists urged others that interracial marriages would contaminate the gene pool, and in turn, these claims during the 1920s were seen as invalid and senseless by many non-racists. Interracial marriage laws were justified for so long because of the racist thought that anyone who was not purely white was inferior and would affect the future of America negatively, in order to maintain white superiority over other nations.

Joe Kirby, a white man, took his own wife, Mayellen, to court on March 21, 1921 to ask for an annulment to end their marriage.¹⁴ The couple had been married for seven years, but Mr. Kirby decided he no longer wanted to be married to Mayellen, so he claimed his marriage was invalid under Arizona's laws prohibiting marriages between Caucasians and people of Indian, African American or Mongolian descent, because Mayellen was "a person of negro blood."¹⁵ While Joe Kirby was on trial as a witness, the lawyer asked him what his race was and he answered "I belong to the white race I suppose", but he "never knew any one of his people," the people being his father's side of Irish heritage.¹⁶ Judge Samuel L. Pattee of the Arizona Court eventually decided solely by looking at Mayellen Kirby that she had African American heritage, but Mayellen was never allowed to speak in the court or tell the judge about her racial heritage, compared to Joe Kirby who was allowed to argue for why he was white.¹⁷ Mayellen's lawyer

¹³ *Ibid.*, 12.

¹⁴ Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America." *The Journal of American History*, 83:1 (June 1996), 44.

¹⁵ *Ibid.*, 44.

¹⁶ *Ibid.*, 45.

¹⁷ *Ibid.*, 51.

told Judge Pattee that Joe “appeared” to be an Indian, but Pattee claimed that “parentage, not appearance, was the key to Joe’s racial classification.”¹⁸ Judge Pattee sided with Joe Kirby and declared the marriage invalid because of Mayellen’s supposed “negro blood,” just by looking at her face.

Virginia was by no means the only state to enact an interracial marriage law during its history. The majority of these laws had boundaries that were defined with little specificity, as the terms were often set that someone purely “white” and someone with any trace, no matter how insignificant, of “black” could not marry one another.¹⁹ Some states only banned black and white marriage, black, Asian and white marriage or whites and people who were “not” white.²⁰ Until 1910 in Virginia, a person was considered black if they had 25 percent or more of African blood, and after 1910 that changed to 15 percent. In 1924, the Racial Integrity Act was set in place where someone was considered black if they had “one-drop” of African blood.²¹ There were a few main features of the 1924 legislation.²² First, no white person could marry anyone other than a white person. Second, marriage licenses could not be issued to a couple until there was evidence that their races were as they said they were. It was a felony if someone had or knew

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Gordon-Reed, 178.

²¹ Gold, 29.

²² Walter Wadlington, “The Loving Case: Virginia's Anti-Miscegenation Statute in Historical Perspective.” *Virginia Law Review*, 52:7 (November 1966), 1201.

about a false certification of race and did not tell the authorities. Third, regulations attached to the Code of 1924 and the Code of 1919 were continued in the law.²³

Between the end of the Civil War and the 1930s, thoughts on interracial sexuality changed drastically. The topic of interracial sexuality, including interracial marriage, was previously seen as a local issue, usually never looked at by larger political standings.²⁴ After the Civil War had ended, former slave-owners used the argument of interracial affinity to further explain how the South was undermined by the North, thus expanding the attention of interracial sexuality and marriage to a greater level of popularity. The amount of attention upon miscegenation laws and couples of multiple races “was at the crux of national remembrance of the Civil War through the 1930s.”²⁵ This new attention on interracial intimacy further expanded with the influx of immigrants as the government and citizens debated on how to regulate it. Many white supremacists and worried Americans were concerned about the attention interracial marriage was gaining during the 1930s, because it threatened the likelihood that miscegenation laws would be banned, thus “contaminating” the gene pool and future of the American race.

In 1937, Grace Mohler and Samuel Christian Branaham married each other in Fincastle, Virginia, where the state soon decided they had violated the state’s miscegenation laws.²⁶ Grace Mohler, a white woman, decided to attempt and free herself of the conviction by pleading she was not aware Samuel was African American. Samuel Branaham also testified he was a pure

²³ *Ibid.*, 1200.

²⁴ *Ibid.*, 4.

²⁵ *Ibid.*

²⁶ Gordon-Reed, 179.

Caucasian male and he did not have any African American heritage.²⁷ Judge Benjamin Haden decided Samuel Branaham was black after looking into his history, and therefore, he had broken Virginia's ban on interracial marriage, and he was then sentenced to one year in prison along with the decision, "Never again to live with the pretty young white woman he married here a year ago under penalty of serving a year's suspended sentence."²⁸ This court case was essential to later arguments on how interracial marriage laws needed to be overturned. Samuel Branaham was sentenced to prison for being defined as a "black" man who was illegally married to a white woman, where the white woman was not charged with anything even though she was legally married as well. The state of Virginia has modified their interracial marriage laws numerous times, and with the passing of the Racial Integrity Act of 1924, Virginia followed the rule that someone containing "one-drop" of African American blood was considered black.²⁹

At the beginning of the 1940s, interracial intimacy rose once again to the attention of the nation. The South strongly urged that the government had no right to regulate interracial marriage or sexuality among the citizens in the southern states, and the courts in those states attempted to keep interracial sexuality cases within state borders.³⁰ Civil rights movements were the cause of the national attention towards interracial marriage laws, and even though the

²⁷ *Ibid.*, 179.

²⁸ *Ibid.*, 180.

²⁹ *Ibid.*, 29.

³⁰ *Ibid.*, 4.

southern states and the federal government disagreed on how to regulate interracial intimacy issues, they both concurred marriage was not a civil rights problem.³¹

The fight against racism and rights for African Americans continued to develop during and after World War II. World War II “fundamentally changed racial formations in the United States and in so doing made interracial intimacy especially charged.”³² Interracial marriage laws were gaining even more attention after the war, as more people believed that they should be banned. The United States entered the war in order to fight against Japanese and German regimens, along with the endeavor in opposition of racism and the desire for democracy.³³ Black activists such as W.E.B. Du Bois and A. Philip Randolph, along with the NAACP, argued that the United States’ fight against racism abroad was hypocritical due to the anti-miscegenation laws within America’s borders that were still observed. Lubin explained because of the international audience that was watching America’s citizens speak out against this contradictory behavior, black leaders and the NAACP had a more powerful standpoint to gain racial justice in the United States’s borders.³⁴ It was necessary for the United States to make their image as presentable and consistent as possible, which included America’s need to be viewed as democratic and anti racist as they entered World War II. The United States government was no longer able to reject many of the Black Rights protesters, as a precaution to protect their image, which allowed for more African Americans to enter the war effort as soldiers and passed

³¹ *Ibid.*, 5.

³² *Ibid.*, 13.

³³ *Ibid.*

³⁴ *Ibid.*

legislation for an increased amount of supervision over racial discrimination within the United States.³⁵ World War II acted as a major event and causation which attributed to the United States Supreme Court case's decision for *Loving v. Virginia*, which ended anti-miscegenation laws in the United States.

Miscegenation laws were enforced for many years, and in 1880, four states decided to repeal their laws on interracial marriage. Between 1880 and 1948, no other states had repealed their laws, until October 1, 1948 when California repealed their laws on interracial marriage.³⁶ Sylvester S. Davis Jr, a man classified by law as an African American, and Andrea D. Perez, a white woman, decided to fight against the interracial marriage laws within that state so they could obtain a legal marriage license. The couple filed a petition to the Los Angeles County in order to receive that license, and their case was heard from California's Supreme Court. The Supreme Court of the state decided in favor of the couple, and they found the law on interracial marriage to be unconstitutional, because marriage is a "fundamental right of free men."³⁷

Numerous people lived with multiple racial histories in the United States and across the globe as more people of different races had children, thus causing issues for those families if they lived in an area where interracial intimacy was frowned upon. Shanti Thakur, a Canadian woman with an East-Indian father and a Danish mother, wrote a story about her struggles growing up as a mixed race child with parents who attempted to assimilate themselves into

³⁵ *Ibid.*

³⁶ Joseph Golden, "Social Control of Negro-White Intermarriage," *Social Forces*, 36:3 (March 1958), 268.

³⁷ *Ibid.*, 268.

Canadian culture.³⁸ This story provided an interesting and personal perspective surrounding family issues of interracial couples and how their goal to rid themselves of their heritage led to Thakur's identity issues as an adult. Thakur explained, "back in the 50s, 60s and 70s, assimilation was a symbol of the cultural amnesia needed in order to survive. But in rejecting their differences, they denied their children the self-esteem, pride and tools for managing racism."³⁹ Many immigrant interracial couples set their children up for inadequate racial management skills, which in turn caused for little understanding and experience of what it truly meant to be a multiracial person, thus creating less educated multiracial children who could not speak about their heritage. Throughout the time period between the 1920s and the late 1960s, many interracial couples could not get married in greater than 25% of the fifty states due to anti-miscegenation laws, and many of their children were discriminated for having African American or other mixed ancestry. After World War II, as black civil right movements grew in power and numbers, the fight against interracial marriage laws established a greater amount of support and awareness. This increase in awareness for the issue of interracial marriage allowed mixed race people to understand more about how to stand up against the discrimination, thus continuing to the ultimate decision of *Loving v. Virginia* in 1967.

In Virginia in 1955, Ruby Naim filed for an annulment, because under Virginia law her marriage with Han Say Naim was illegal, since she was white and Han Say was Chinese.⁴⁰ The couple got married in North Carolina and returned to Virginia together, but three years later the

³⁸ Carol Camper, *Miscegenation Blues: Voices of Mixed Race Women* (Ontario: Black Women and Women of Colour Press, 1994), 348.

³⁹ *Ibid.*, 349.

⁴⁰ Richard Delgado, "Naim v. Naim", *Nevada Law Journal*, 12:3 (2012), 525.

couple attempted to take *Naim v. Naim* to the Supreme Court, but the same year the Supreme Court “declined to accept review of a case that would have enabled it to set aside a Virginia law forbidding interracial marriage.”⁴¹ During the 1950s the Civil Rights movement had just begun gaining a tremendous amount of support, however the Supreme Court dismissed *Naim v. Naim*, which had the potential to repeal interracial marriage laws twelve years earlier than *Loving v. Virginia*. The Supreme Court argued that declining *Naim v. Naim* was justifiable because of the recent case, *Brown v. Board of Education* in 1954, where laws establishing separate schools for blacks and whites were declared unconstitutional.⁴² The Supreme Court said that “[o]ne bombshell at a time is enough,” referring to the decision of *Brown v. Board of Education*.⁴³ *Naim v. Naim* had some similarities to *Loving v. Virginia*, but since it occurred before the influx of Civil Rights movements, the Supreme Court did not believe it was necessary to have been reviewed.

Film industries, like Hollywood in California, created movies and shows that depicted couples of mixed races.⁴⁴ *Island in the Sun*, created in 1957, was one of Hollywood’s many films that starred an interracial couple, and according to *Life* magazine it was “A lush Technicolor romance with so many interracial subplots that telling white from black becomes a guessing game.”⁴⁵ *Island in the Sun* is remembered as the first type of film of the era to create a movie

⁴¹*Ibid.*

⁴²*Ibid.*, 526.

⁴³*Ibid.*

⁴⁴ Susan Courtney, *Hollywood Fantasies of Miscegenation: Spectacular Narratives of Gender and Race, 1903-1967* (Princeton: Princeton University Press, 2005), 193.

⁴⁵ *Ibid.*

type where an interracial couple was popular and helped bring notice to that genre of film, which were further accepted as “miscegenation films.”⁴⁶ Numerous other miscegenation films were created as the American public started to enjoy and bring popularity to the new trend, it was Hollywood’s taboo of the era. This new genre of film, that had Americans plastered to their television screens, was viewed by many citizens as a threat to accepted racism of African Americans, and promoting interracial couples would only continue the downfall of the purely white gene pool.⁴⁷ Interracial marriage was still discouraged and illegal in many states, and the film industry was threatening the potential change of the public’s opinion, which was a worry for racists and white supremacists that believed the mixing of the races was detrimental to America’s success. Nonetheless, the Hollywood promotion of interracial couples as normal and accepted, which allowed for anti-miscegenation protests, cases and efforts to continue in the fight to end interracial marriage laws in the United States. Films such as *Island in the Sun* (1957), *Tomango* (1957) and *Kings Go Forth* (1958) are a few examples of Hollywood movies that aided in the aspiration towards banning anti-miscegenation laws. Families watched and gawked at the couples in these Hollywood films, forming connections and personal views towards interracial marriage, which in turn promoted more support for the movement towards the final decision in *Loving v. Virginia*.

During the 1950s and 60s, the classic image of masculinity began to shift due to World War II, while simultaneously shifting the opinions on interracial marriage. The typical image of masculinity was no longer the “strong-minded man who pioneered the continent and built

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

America's greatness," and much of this change was due to middle class entertainment in the forms of movie and shows.⁴⁸ A writer from the *Oklahoma Black Dispatch* talked about how marriages should not be based on race, but rather the relationship between the genders.⁴⁹ This writer argued it does not matter if a woman is black, Asian or white. What mattered was "the relative worth, for men, of the women typically claimed by them."⁵⁰ Writers, such as the one described above, were involved in the changing opinions on interracial marriage during the 1950s and 60s, along with other opinions in Hollywood. In many films during this period, wives and spouses were often portrayed as caring and dutiful in regard to their husbands, no matter what race. Reporters and photographers were often found capturing events that further appropriated the "ideal" image of a wife, and often times the race was less important than how well they maintained a good companionship with their husbands and family.⁵¹ Different forms of media were used greatly to twist and form stereotypes of "normal" marriages and relationships, which developed the public's opinions about interracial sexuality. Even though these opinions of women's roles in marriage were sexist and demeaning, they were the typical opinions of thousands of citizens across the country during the time period, therefore the more radical opinion was to promote interracial marriage.

⁴⁸ *Ibid.*, 198.

⁴⁹ *Ibid.*, 199.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

Between 1931 and 1965, the number of interracial marriages in Washington D.C. based on sex and race were collected.⁵² According to the chart found in M. Annella's excerpt in *The Journal of Negro Education*, the largest number of interracial marriages in Washington D.C. in those years were between white grooms and Filipino brides, a total of 774 marriages.⁵³ The next largest amount of marriages were between white grooms and African American brides, reaching a total of 523 marriages.⁵⁴ Even though Filipino-caucasian marriages were the most abundant, between 1946 and 1955, African American-caucasian marriages increased the fastest and most. According to research, this trend was proposed to have continued to increase in 1966.⁵⁵

The United Presbyterian Church put in a large effort to fight against interracial marriage laws, and about 3.3 million members worked towards prohibiting interracial marriage laws across the country.⁵⁶ In May 1966, a paper was written and given to the 835 commissioners who attended the general assembly of the church. This paper stated, "there are no theological grounds for condemning or prohibiting marriage between consenting adults merely because of their racial origin."⁵⁷ The church also published other pieces talking about interracial marriage and how laws against it were unjust. In 1967, the Catholic Bishops and Archbishops filed a brief when the

⁵²M. Annella, "Interracial Marriages in Washington, D.C." *The Journal of Negro Education*, 36:4 (Autumn 1967), 429 .

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, 431.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

outcome of *Loving v. Virginia* was going to be decided in a few months, to explain that the Presbyterian Church has been working towards eliminating miscegenation laws.⁵⁸

Mildred Delores Jeter was born in Virginia on July 22, 1939 with European, African American and Native American heritage. Mildred grew up as a normal young girl of color in Virginia, and attended an all-black school. She met Richard Loving during in high school and the two began dating in secret. At the age of 18 Mildred found out she was pregnant with Richard's child, so the couple decided to get married. Richard Loving was also born in Central Park, Virginia in Caroline County, but he had Irish and English heritage only. This county was historically known for interracial mixing, so when the two socialized as teenagers, it was nothing out of the ordinary. Richard was six years older than Mildred, but the couple fell in love and wanted to get married nonetheless.

The young couple knew there were marriage laws set in the state of Virginia that prohibited them from obtaining a marriage license, due to their races.⁵⁹ During the spring of 1958 Richard and Mildred decided they wanted to get married legally, so they drove out of the state to the District of Columbia where it was legal for an interracial couple to marry. Once the couple traveled hundreds of miles to legally marry each other, they moved into Mildred's parents home in Virginia. The couple believed since they did not marry in Virginia, that the law would allow them to live there in peace, but that was not the case. In July, 1958, the couple was asleep in their bed when Sheriff R. Garnett Brooks stormed into their house and asked the couple why they

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, 1210.

were in bed together.⁶⁰ Richard and Mildred Loving politely told the officer that they were legally married to one another, but the sheriff explained that was not allowed in the state of Virginia. Sheriff Brooks arrested the couple for breaking the interracial marriage laws in the state of Virginia.⁶¹

Soon after the couple moved into Mildred's parents home in Virginia, it was revealed someone got a hold of the authorities and told them Richard and Mildred had gotten married, someone that the Lovings never knew personally. Richard and Mildred were both taken to jail that night, and while Richard was released after only spending a single night, Mildred was kept in holding for multiple more days than Richard. Each person posted a \$1,000 bail. The Lovings had their first court hearing on January 6, 1959 and they pled not guilty, but they soon changed their pleas to guilty. They were both sentenced to a single year in prison at first; however, Circuit Court Judge Leon M. Bazile gave them a different sentence.⁶² The couple was relieved from going to prison if they agreed to 25 years where both could no longer live in Virginia, and when visiting, they could not be in the state at the same time.⁶³ After 25 years the couple still would not be allowed to live together in Caroline County, Virginia. If the couple was found living or socializing together, in the state of Virginia, and after the 25 year banishment, they would serve their original prison sentence.

⁶⁰ Gordon-Reed, 177.

⁶¹ Annella, 429.

⁶² *Ibid.*

⁶³ Gold, 10.

The couple were distraught at the punishment they got, as they both grew up in Virginia and knew it as home. Richard and Mildred Loving moved to Washington D.C. where they could legally live together, but if they wanted to visit their families in Virginia, they could not travel together. In the years following their banishment, Mildred had three children, and she returned to Virginia to have them with her family by her side, however Richard could not come. The couple grew extremely tired of their way of life, so in 1963 Mildred began the movement toward lifting the ban on interracial marriage by writing a letter to Robert F. Kennedy who was the current U.S. attorney general, advice that was given to her by her cousin.⁶⁴ She informed Kennedy of their situation and asked if he could help, but a reply came that said she should reach out to the American Civil Liberties Union (ACLU).⁶⁵ The ACLU had been involved with advocating and pushing for the ban against miscegenation laws since the late 1940s. Mildred explained to the ACLU that her family could not afford a lawyer, and that they needed their help.⁶⁶ They were soon introduced to Bernard S. Cohen, a member of the ACLU and a lawyer that was willing and eager to help the Lovings. Cohen explained this case was perfect to test the nation's miscegenation laws and he wanted to help the couple gain the independence they deserved, and thus *Loving v. Virginia* began.

The couple moved back to Virginia, even though they knew the potential consequences, and Cohen began making their case to the state of Virginia. He argued that the miscegenation law directly went against the Fourteenth Amendment's Equal Protection Clause, and banning a

⁶⁴ *Ibid.*, 13.

⁶⁵ Gordon-Reed, 184.

⁶⁶ Gold, 13.

couple from marriage based on race was cruel and unusual punishment because it denied the fundamental right of freedom.⁶⁷ He argued the 25 year punishment was thought to have violated the Virginia Constitution and the law. Philip J. Hirschkop joined Cohen in 1964 to continue the fight against Judge Bazile and the state of Virginia. The two lawyers petitioned a three-judge court convene in order to establish the constitutionality of the miscegenation laws in Virginia, and to reevaluate the decisions made for the Loving's case under those laws.⁶⁸ The lawyers also requested a temporary injunction against the banishment of the Lovings, arguing the laws were, "solely for the purpose of keeping the Negro people in the badges and bonds of slavery."⁶⁹ The judge denied the injunction but he did set a date to listen to Cohen's arguments on the Loving's case.

In January 1965 the Loving's arguments were heard by Judge Bazile and his court. Bazile negated any of the arguments Cohen made and explained the Loving's marriage was illegal in the state of Virginia. Bazile explained that marriage was an issue each state was individually allowed to decide and the Supreme Court had never decided anything else. Bazile argued the laws are justifiable because they prevent the "corruption of blood" between the races, because anything but white blood would "weaken and destroy the quality of the citizenship."⁷⁰ He used God as a reason to justify his stance, saying marriage between people of different races was never intended to occur because God put people of different races on separate continents,

⁶⁷ Gordon-Reed, 185.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Gold, 81.

therefore it is not right.⁷¹ The oddity, of course, was that Judge Bazile was a caucasian male of European descent, and the land where God placed them was not in Virginia at all, because Native Americans held the land before Europeans took it over.⁷² The Lovings and their lawyers did not intend to give up, so Cohen and other lawyers who supported their case, decided this would not be the end of their fight.

Cohen and Hirschkop began their arguments by looking back to the *Perez v. Sharp* case in 1948 where the California Supreme Court ruled that miscegenation laws were unconstitutional.⁷³ They said that by restricting marriage laws because of race is an infringement on one's liberty and that the government should not be involved in a extremely personal issues like marriage. After making these arguments to the Supreme Court of Virginia, on March 7, 1966, the court decided that there was not justifiable evidence to change the law on interracial marriage.⁷⁴ The Lovings and their lawyers had not made any real progress in the case, and Richard and Mildred were still not allowed to live together in the state of Virginia, so they appealed to the Supreme Court. The Lovings wanted to continue fighting for their case because it would bring themselves and others happiness, and the happy life they deserved together.

The Loving's lawyers, Cohen and Hirschkop, came to the Supreme Court with a claim to argue why their case should be heard. The *New York Times* covered the event on July 30, 1966, as they announced that "a Virginia couple appealed to the Supreme Court today to strike down

⁷¹ *Ibid.*

⁷² Gordon-Reed, 186.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

that state's law banning interracial marriages."⁷⁵ The lawyers explained that laws against segregation have been terminated across the country, except for miscegenation laws, and that they violated the "Federal Constitution because it makes the color of a person's skin the test of whether his marriage constitutes a criminal offense."⁷⁶ They also said:

There are no laws more symbolic of the Negro's reflection to second-class citizenship. Whether or not this Court has been wise to avoid this issue in the past, the time had come to strike down these laws; they are legalized racial prejudice, unsupported by reason or morals, and should not exist in a good society.⁷⁷

The Supreme Court responded to the Lovings on December 12, 1966 that they would hear their case.⁷⁸ Cohen and Hirschkop gave a brief to the Supreme Court that explained Virginia's miscegenation laws throughout history, and that those laws were continuous forms of slavery and "expressions of modern day racism."⁷⁹ The lawyers also argued the miscegenation laws have violated the Fourteenth amendment because, "they are slavery laws pure and simple-- the most odious of the segregation laws."⁸⁰ The lawyers went into detail about the degradation and shame the Lovings felt as they were dragged from their beds in the middle of the night for only trying to live as a happy couple, which violated the Equal Protection Clause of the Fourteenth Amendment, they claimed that "the Lovings have the right to go to sleep at night knowing that

⁷⁵ "Virginia Suit Scores Mixed Marriage Ban.," *New York Times*, 115:39,634 (July 30, 1966), 9.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Gold, 105.

⁸⁰ *Ibid.*

should they not awake in the morning their children would have the right to inherit from them, under intestacy.”⁸¹ Cohen further explained that the Lovings’ protection rights were violated because they should be able to feel secure in their own home, married to one another.⁸² At the end of the argument, Cohen completed his statement with a quote from Richard Loving that said, “Mr. Cohen, tell the Court I love my wife, and it is just unfair that I can’t live with her in Virginia.”⁸³

The *New York Times* wrote an article on Feb 17, 1967 covering the Roman Catholic hierarchy’s opinion on interracial marriage laws. Sixteen clerics explained to the Supreme Court that interracial marriage laws needed to be repealed, because “such laws restricted the free exercise of religion and the right to have children.”⁸⁴ A Catholic clergyman was brought into the *Loving v. Virginia* Supreme Court Case in order to state his arguments. The clergyman claimed that “so long as antimiscegenation laws remain valid, the children in such families are forced to suffer the penalty of being legally denominated as bastards.”⁸⁵

The day after the Supreme Court case on April 11, 1967, newspapers wrote and distributed their versions of what happened during the hearing. Fred P. Graham of the *New York Times* wrote an article about the event on April 10, 1967.⁸⁶ Graham wrote that Philip J.

⁸¹ *Ibid.*, 187.

⁸² Gold, 102.

⁸³ Gordon-Reed, 188.

⁸⁴ “16 Catholic Prelates Attack Mixed Marriage Bans.,” *New York Times*, 116:39,836 (February 17, 1967), 20.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

Hirschkop, the lawyer for the Lovings, “compared Virginia’s antimiscegenation laws with the laws of Nazi Germany and South Africa and urged the Justices to strike down the system of statutes that dates back to 1691.”⁸⁷ Graham wrote about how in the two hours of the court hearing, no member of the Court “suggested that the antimiscegenation laws might be constitutionally valid.”⁸⁸ Newspapers all published articles about *Loving v. Virginia*, as it was an important part in the final repeal of interracial marriage laws.

The day the Lovings’ and their lawyers waited for had finally come, and on June 12, 1967 the Supreme Court, under Chief Justice Earl Warren, announced a unanimous decision that the Lovings had won, and the state of Virginia’s case was rejected.⁸⁹ Justice Warren decided that the miscegenation laws in Virginia violated the Fourteenth Amendment, as “the clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination.”⁹⁰ The state’s argument that their interracial marriage laws punished both African Americans and whites equally was denied by Justice Warren, and he explained that the laws did not serve any rational purpose. Justice Warren further explained that the Fourteenth Amendment was created to protect all people and eliminate racial discrimination, and that the purpose of the laws to protect the purity of all races was irrelevant and unconstitutional, claiming that “we have consistently denied the constitutionality of measures which restrict the rights of

⁸⁷“Marriage Curbs By States Scored: High Court Hears Attack On Virginia Miscegenation Ban.,” *New York Times*, 116:39,889 (April 11, 1967), 16.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, 188.

⁹⁰ Gold, 106.

citizens on account of race.”⁹¹ Warren also claimed that the Equal Protection Law was clearly violated as well, he said “there can be no doubt that restricting the freedom to marry solely because of racial classification violates the central meaning of the Equal Protection Clause.”⁹² Warren’s final claim was that “Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State.”⁹³ A few days later, Richard and Mildred Loving who had been illegally married for nine years in the state of Virginia, saw their banishment lifted, along with other miscegenation laws in fifteen other states in America.⁹⁴

Richard and Mildred Loving were beyond ecstatic about winning the case, and they planned to move back to Virginia, build a new house of their own and raise their kids together as a happily married couple. *Loving v. Virginia* began a new time where people were completely free to marry the people they loved, and racial differences could no longer hold them apart.

In the years after *Loving v. Virginia* had created open marriage laws in those remaining sixteen states, many citizens continued to express their opinions in opposition to interracial marriage. Of all American’s in 1968, 72 percent were against marriages between African Americans and caucasians.⁹⁵ Many states meandered through the process of repealing the codes on banning interracial marriage in their law books, even though the Supreme Court had declared

⁹¹ Gordon-Reed, 188.

⁹² *Ibid.*, 189.

⁹³ *Ibid.*

⁹⁴ Annella, 428.

⁹⁵ Gold, 109.

anti-miscegenation laws unconstitutional. *Loving v. Virginia* ended the laws preventing interracial marriage, but the racism towards those couples continued.

Newspapers in Virginia and across the country talked about the Supreme Court's decision, as it was the most popular event of the time. The *Virginian-Pilot*, based in Norfolk, Virginia, wrote about how "social discouragements to mixed races" would still be prominent in the years to come, as many people across the country still believed in the original purpose of miscegenation laws.⁹⁶ Not only could African American and Caucasian couples marry one another, couples of Asian and Native American descent were included as well. The *Journal and Guide*, based in Norfolk, Virginia, wrote about how the Supreme Court's decision was important because it finally took away the "psychological barrier" that insinuated that African Americans were lesser human beings, and that they were not worthy of marrying a white Virginian.⁹⁷ Many newspapers on the topic gave a positive outlook on the change, but some public figures spoke out about their disapproval as well. Secretary of State Dean Rusk, a southern civil rights activist, offered to resign his position when the press announced that his daughter was going to marry an African American because he worried that President Lyndon Johnson's political standing in the South would be harmed.⁹⁸ Even though Dean Rusk claimed to promote civil rights, he still believed that when daughter married a black man, issues would arise.

The Lovings' push for the change allowed similar couples to marry peacefully in Virginia, and other states across America. South Carolina and Alabama, even after the Supreme

⁹⁶ Gordon-Reed, 190.

⁹⁷ *Ibid.*, 191.

⁹⁸ *Ibid.*

Court's decision, continued provisions that banned interracial marriage, but the laws could no longer be enforced after 1967.⁹⁹ In November 2000, Alabama's law was officially repealed, making it the last interracial marriage law in the history of the United States.¹⁰⁰

⁹⁹ *Ibid.*, 110.

¹⁰⁰ Gordon-Reed, 192.

TABLE II
 NUMBER OF INTERRACIAL MARRIAGES IN WASHINGTON, D.C.
 (Number distribution by race and five year period)

	1931-'35	1936-'40	1941-'45	1946-'50	1951-'55	1956-'60	1961-'65	Total
Negro-White	15	8	17	26	82	177	493	818
Filipino-White	27	67	142	120	109	146	243	854
Chinese-White	3	7	32	56	67	59	74	298
Japanese-White	3	4	11	20	32	46	71	187
Indian-White	12	3	20	14	17	41	61	168
Other Races-White	1	3	5	15	26	55	105	210
Filipino-Negro	4	7	8	6	10	4	5	44
Indian-Negro	3	4	3	4	11	10	19	54
Chinese-Negro	..	2	4	6	6	10	4	32
Japanese-Negro	2	..	..	..	3	..	1	6
Other Races-Negro	1	..	4	7	12
Totals	70	105	242	268	363	552	1,081	2,683

¹⁰¹ *Ibid.*, 429.

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TABLE I
 INTERRACIAL MARRIAGES IN WASHINGTON, D.C. BY SEX AND RACE
 1931 - 1965

Groom	White	Indian	Filipino	Other Races	Chinese	Japanese	Negro	Total Grooms
Negro	523	20	10	8	5	5	..	571
Filipino	774	..	..	..	..	34		808
White	..	87	80	94	103	119	295	778
Chinese	195	..	..	..	..	..	27	222
Other Races	116	..	..	..	..	..	4	120
Indian	81	34	115
Japanese	68	1	69
Total Brides	1,757	107	90	102	108	158	361	2,683

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