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Loving v. Virginia - III

Lead: In one of the most important decisions of his term as Chief Justice of the U.S. Supreme Court, Earl Warren struck down racially based anti-miscegenation laws.

Intro: *A Moment in Time* with Dan Roberts

Content: After being convicted of the violation of Virginia's Racial Integrity Act (1924) Mildred and Richard Loving were banished from the Commonwealth. They contacted the American Civil Liberties Union (ACLU) to help them seek redress.

ACLU lawyers Bernard S. Cohen and later Philip Hirschkop enthusiastically accepted the case to further the ACLU's crusade against anti-miscegenation laws nationwide. *Loving v. Virginia* would be the signature case in that crusade.

They first entered an appeal in Caroline County Court based on the Equal Protection Clause of the Fourteenth Amendment of the US Constitution and the Virginia Constitution's prohibition against "cruel and unusual punishment" and that their sentence was in essence banishment violating the Constitution's requirement of due process. Judge Leon Bazile sat on the appeal until the ACLU lawyers went into Federal court to block enforcement of relevant Virginia statutes. The Federal Court declined to enjoin the Commonwealth from enforcing its anti-miscegenation statutes, but the action lit

a fire under Judge Bazile and he set a date for arguments.

The Judge rejected all the ACLU arguments and concluded with his “Almighty God” peroration (see amt22-21) though he never quite explained why continental racial integrity was preserved as the “red” race was supplanted by Europeans moving to Virginia or African Americans were imported to mingle with and serve whites. The Virginia Supreme Court of Appeals upheld Virginia’s laws and the Lovings appealed to the U.S. Supreme Court. In a unanimous decision the Court reversed the Loving’s conviction and declared all similar laws nationwide to be unconstitutional.

Their victory and their marriage secure, Richard and Mildred Loving lived a quiet and peaceful life in Virginia until their deaths in 1975 and 2008 respectively. Echoes

of the vigorous Court decision in *Loving* would be heard in future Supreme Court decisions including those involving contraception, abortion, and gay marriage. Research assistance by Ellie Marie Estupinan, at the University of Richmond's School of Professional and Continuing Studies, I'm Dan Roberts.

Resources

- Botham, Fay. *Almighty God Created the Races: Christianity, Interracial Marriage, & American Law*. Chapel Hill, NC: University of North Carolina Press, 2009.
- Gordon-Reed, Annette. *Race on Trial: Law and Justice in American History*. Oxford, UK: Oxford University Press, 2002.
- Ibrahim, Habiba. *Troubling the Family: The Promise of Personhood and the Rise of Multiracialism*. Minneapolis, MN: University of Minnesota Press, 2012.
- Kennedy, Randall. *Interracial Intimacies: Sex, Marriage, Identity, and Adoption*. New York, NY: Pantheon, 2003.
- "Loving v. Virginia." Cornell University Law School.
<https://www.law.cornell.edu/supremecourt/text/388/1>.
- "Mildred Loving." The Biography.com Website.
<http://www.biography.com/people/mildred-loving-5884#synopsis>.
- Moore, Elizabeth R. "Loving V. Virginia." *Encyclopedia of Civil Rights in America* (2,1998): 548-49.
- Newbeck, Phyl. *Virginia Hasn't Always Been for Lovers: Interracial Marriage Bans and the Case of Richard and Mildred Loving*. Carbondale, IL: Southern Illinois University Press, 2004.
- Root, Maria P. P. *Love's Revolution: Interracial Marriage*. Philadelphia, PA: Temple University Press, 2001.
- "Virginia Memory: Loving v. Commonwealth." Library of Virginia.
http://www.virginiamemory.com/online_classroom/shaping_the_constitution/doc/loving_v_commonwealth.
- Wallenstein, P. "The Right to Marry: Loving v. Virginia." *OAH Magazine of History* 9, (2, 1995): 37-41.

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