

University of Pennsylvania Carey Law School

Penn Carey Law: Legal Scholarship Repository

Faculty Scholarship at Penn Carey Law

2018

***The Loving Story*: Using a Documentary to Reconsider the Status of an Iconic Interracial Married Couple**

Regina Austin

University of Pennsylvania Carey Law School

Follow this and additional works at: https://scholarship.law.upenn.edu/faculty_scholarship



Part of the [African American Studies Commons](#), [Civil Rights and Discrimination Commons](#), [Constitutional Law Commons](#), [Family Law Commons](#), [Family, Life Course, and Society Commons](#), [Law and Race Commons](#), [Law and Society Commons](#), [Legal History Commons](#), [Policy History, Theory, and Methods Commons](#), [Public Law and Legal Theory Commons](#), [Race and Ethnicity Commons](#), [Social Control, Law, Crime, and Deviance Commons](#), [Social History Commons](#), [Social Policy Commons](#), [United States History Commons](#), and the [Visual Studies Commons](#)

Repository Citation

Austin, Regina, "*The Loving Story*: Using a Documentary to Reconsider the Status of an Iconic Interracial Married Couple" (2018). *Faculty Scholarship at Penn Carey Law*. 2013.

https://scholarship.law.upenn.edu/faculty_scholarship/2013

This Article is brought to you for free and open access by Penn Carey Law: Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship at Penn Carey Law by an authorized administrator of Penn Carey Law: Legal Scholarship Repository. For more information, please contact PennlawIR@law.upenn.edu.

THE LOVING STORY: USING A DOCUMENTARY TO RECONSIDER THE STATUS OF AN ICONIC INTERRACIAL MARRIED COUPLE

*Regina Austin**

INTRODUCTION

Given how liberally the term “civil rights icon” is applied to figures associated with the black civil rights movement of the 1960s, it would seem fitting to apply it to Mildred and Richard Loving, the appellants in *Loving v. Virginia*,¹ the landmark 1967 U.S. Supreme Court decision that outlawed the criminalization of interracial marriage. If nothing else, their surname has sealed a place for them in movement history by signifying the very quality that motivated the couple to seek relief from the high court.

Exactly what the Lovings are icons of, however, is a matter of debate. Whether they are considered with ambivalence or wholehearted embrace depends on the interests of those invoking the Lovings’ story. Black women, who, in 2015, had half the rate of interracial marriage of black men,² likely attach a different significance to them than, say, white lesbians and gays, for whom the Lovings were a source of hope and inspiration along the road to *Obergefell v. Hodges*,³ the Supreme Court’s same-sex marriage case.

This Essay reconsiders or reaffirms the Lovings’ status as civil rights icons by drawing on source material provided by the documentary *The Loving Story*.⁴ This nonfiction treatment of the couple and their lawsuit reveals their complexity as individuals and as a couple, the social relationships that made them desperate to live together and raise their children in Virginia, and the oppression they suffered at the hands of state actors motivated by a virulent white supremacy to make the Lovings’ desire to make a home for themselves in the state impossible. Part I briefly describes the Lovings’ struggle against Virginia’s Racial Integrity Act and suggests how movement politics on the

* William Schnader Professor and Director, Penn Program on Documentaries and the Law, University of Pennsylvania Law School. This Article was prepared for the *Fordham Law Review* Symposium entitled *Fifty Years of Loving v. Virginia and the Continued Pursuit of Racial Equality* held at Fordham University School of Law on November 2–3, 2017. For an overview of the Symposium, see R.A. Lenhardt, Tanya K. Hernández & Kimani Paul-Emile, *Foreword: Fifty Years of Loving v. Virginia and the Continued Pursuit of Racial Equality*, 86 *FORDHAM L. REV.* 2625 (2018).

1. 388 U.S. 1 (1967).
2. GRETCHEN LIVINGSTON & ANNA BROWN, PEW RESEARCH CTR., *INTERMARRIAGE IN THE U.S. 50 YEARS AFTER LOVING V. VIRGINIA* 12–13 (2017).
3. 135 S. Ct. 2584 (2015).
4. *THE LOVING STORY* (Augusta Films 2011).

subject of antimiscegenation laws, as well as the Supreme Court's opinion, impacted the Lovings' status as icons. Part II considers the rich portrait of the Lovings revealed in images captured by documentarians that spent time with the family. The couple comes across as ordinary people whose resistance to the law grew out of a genuine commitment to each other and to the place they considered home. Part III situates the Lovings within a multiracial community that broadly supported them but also exposed them to racial animus enforced informally by whites and officially by law enforcement. Part IV focuses on the abuse meted out by specific state actors who fought the Lovings' right to marry and live in Virginia. This Essay concludes that, when appropriately viewed in the full context of their lives, struggles, and victories, it is fitting that the Lovings be recognized as progressive civil rights icons.

I. *LOVING V. VIRGINIA* AND AMBIVALENT CHALLENGES OF THE ANTIMISCEGENATION LAWS

The equivocalness of the Lovings' iconic status is reflective of both the ambivalent politics of the civil rights movement with regard to attacking antimiscegenation laws and the reasoning employed in the Supreme Court's opinion itself.

In 1958, Mildred Delores Jeter and Richard Perry Loving, both of Caroline County, Virginia, were married in Washington, D.C., and returned to the county to live.⁵ Six weeks later, they were arrested and charged with violating Virginia's Racial Integrity Act,⁶ which criminalized both traveling out of the state to marry with the intent of returning to cohabit in the state and living there as a married couple.⁷ Virginia state court precedent indicated that the purpose of the Act was "'to preserve the racial integrity of its citizens,' and to prevent 'the corruption of blood,' 'a mongrel breed of citizens,' and 'the obliteration of racial pride,'" which, in the view of the U.S. Supreme Court, was "obviously an endorsement of the doctrine of White Supremacy."⁸ The Lovings pled guilty to violating the law and were given a sentence of one year in prison.⁹ This sentence was suspended on the condition that the Lovings leave the state for a period of twenty-five years.¹⁰ Banished from the state, the Lovings moved to Washington, D.C.¹¹

In 1963, the Lovings secured legal representation through the American Civil Liberties Union (ACLU) to contest their convictions and expulsion from Virginia.¹² The next year, a class action was filed in their name, which

5. *Loving*, 388 U.S. at 2.

6. *Id.* at 4 ("Punishment for marriage.—If any white person intermarry with a colored person, or any colored person intermarry with a white person, he shall be guilty of a felony and shall be punished by confinement in the penitentiary for not less than one nor more than five years." (quoting VA. CODE ANN. § 20-59 (1960) (repealed 1968)).

7. *Id.* at 3.

8. *Id.* at 7 (quoting *Naim v. Naim*, 87 S.E.2d 749, 756 (Va. 1955)).

9. *See id.* at 3.

10. *Id.*

11. *Id.*

12. THE LOVING STORY, *supra* note 4.

attacked the constitutionality of Virginia's antimiscegenation law.¹³ The lawyers speculated that the case might go all the way up to the Supreme Court.¹⁴

The Lovings' lawsuit, however, exposed a tension between, on the one hand, black people's collective aspirations to secure full political citizenship and equal educational and economic opportunity and, on the other hand, the seemingly more personal goals that would be achieved by a successful assault on the antimiscegenation laws. This was captured by William Zabel, then a young law school graduate, in an article about the case that appeared in *Atlantic Monthly* in October 1965.¹⁵ Zabel noted that the Lovings were neither connected with the civil rights movement nor "represented by attorneys of a Negro civil rights organization."¹⁶ Zabel further noted that miscegenation was at the top of white people's anxieties about integration, but antimiscegenation laws were at the bottom of black people's "list of grievances."¹⁷ "[F]ear of miscegenation [was] the strongest reason for the desire of whites to keep the Negro permanently segregated," whereas the black man was "more concerned with obtaining a job, decent living accommodations, and an education than with marrying 'your daughter.'"¹⁸ Zabel acknowledged that "Negroes as a group are not concerned" with miscegenation and that an adverse decision might set back the civil rights movement.¹⁹

Still, in Zabel's view, the right to marry belongs to the individual and is personal; furthermore, it should be protected under the Fourteenth Amendment.²⁰ Zabel suggested that black people were perhaps underestimating the significance of antimiscegenation laws and the psychological harm they cause given that the laws were based on assumptions of blacks' innate inferiority. He contended that "[t]here are no laws more symbolic of the Negro's relegation to second-class citizenship. The fact that legislation cannot end prejudice does not mean that laws [that] foster it should continue to exist."²¹

In 1967, the Court overturned the Lovings' convictions and declared state antimiscegenation laws unlawful.²² First, it reasoned: "The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy."²³ It concluded that

13. *Loving*, 388 U.S. at 3.

14. THE LOVING STORY, *supra* note 4.

15. See generally William D. Zabel, *Interracial Marriage and the Law*, ATLANTIC MONTHLY, Oct. 1965, reprinted in *INTERRACIALISM: BLACK-WHITE INTERMARRIAGE IN AMERICAN HISTORY, LITERATURE, AND LAW* 54 (Werner Sollars ed., 2000).

16. *Id.* at 55.

17. *Id.*

18. *Id.*

19. *Id.* at 56.

20. *Id.* at 59.

21. *Id.* at 61.

22. *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

23. *Id.* at 11.

“restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause” of the Fourteenth Amendment.²⁴ In addition, the Court relied on the Due Process Clause: “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.”²⁵ The Court characterized “[t]he freedom to marry . . . as one of the vital personal rights essential to the orderly pursuit of happiness by free men.”²⁶

Although *Loving* can be associated with race, eugenics, and group resistance to white supremacy,²⁷ it is most often thought of in terms of love, marriage, and the protection of individual freedom against an overly intrusive state. When the decision was rendered, interracial marriage was not a priority as compared to the struggle to secure political and economic rights for the majority of black people; indeed, there was a concern that Court precedent overturning antimiscegenation laws would fuel Southern resistance to school desegregation.²⁸ However much legal prohibitions against interracial marriage reeked of white supremacy, for many blacks, the marriage of a black person to a white person even today suggests assimilation and acceptance of white social superiority.²⁹ Operating under the weight of both legal and social enforcement of white supremacy, no single court decision could end the stigma attached to interracial heterosexual intimacy, even when supported by the bonds of matrimony.

Still, there ought to be a way to harmonize the two competing perspectives of the case and to reassess the Lovings’ status as icons of a progressive agenda of racial justice. Icons are symbols.³⁰ The ideals and virtues they embody and the dreams and practices they inspire depend on the interests of the beholders, perhaps more than those of the beheld.³¹ As a result, icons are fluid and subject to diverse, contradictory, and even revisionary readings.³² Their meaning can change over time and be a source of inspiration for new forms of civil rights praxis.³³ Tracing icons back to their “roots,” to the “interests” that sparked their “will to power,” provides an opportunity to rework their narratives and open them up to being heroes in support of new efforts to achieve social justice.³⁴

24. *Id.* at 12.

25. *Id.*

26. *Id.*

27. Osagie K. Obasogie, *More Than Love: Eugenics and the Future of Loving v. Virginia*, 86 FORDHAM L. REV. 2795, 2798–99 (2018).

28. Dorothy E. Roberts, *Loving v. Virginia as a Civil Rights Decision*, 59 N.Y.L. SCH. L. REV. 175, 185–86, 189, 197–98 (2014).

29. Erica Chito Childs, *Listening to the Interracial Canary: Contemporary Views of Relationships Among Blacks and Whites*, 76 FORDHAM L. REV. 2771, 2779 (2008).

30. See generally Dennis Carlson, *Troubling Heroes: Of Rosa Parks, Multicultural Education, and Critical Pedagogy*, in PROMISES TO KEEP: CULTURAL STUDIES, DEMOCRATIC EDUCATION, AND PUBLIC LIFE 185 (Greg Dimitriadis & Dennis Carlson eds., 2003).

31. See *id.* at 185–92.

32. See generally *id.*

33. See generally *id.*

34. *Id.* at 197.

The precedent bearing the Lovings' name freezes them in status (as an interracial couple) and in time (at the end of the effort to overturn the laws establishing de jure segregation). It wipes out memory of the couple as real people: of the indignities and humiliations they endured; of the state actors whose abuse of governmental power put the couple in criminal jeopardy; and of the mobilization of personal, social, and political resources that allowed them to sustain their family and persevere through the nine years of legal banishment and convoluted state and federal litigation that ultimately led to their Supreme Court victory.

To understand the Lovings and *Loving*, both need to be contextualized or situated within an expanded setting in order to better reveal their significance. This means thinking about the Lovings as complex individuals who are more than clichés. It requires conceptualizing them as insiders and outsiders of networks—with social capital to share or withhold—and as empowered agents, rather than disempowered pawns, negotiating the obstacles and opportunities they encounter in the pursuit of a good life, as they viewed it, for themselves and their children.

The documentary *The Loving Story* provides a rich resource for resituating the Lovings in their original context and reconsidering them as civil rights icons.³⁵ Released in 2012—while the issue of same-sex marriage was making its way to the Supreme Court—and honored with both Peabody and Emmy awards, *The Loving Story* portrays the couple as unique individuals whose lives were enriched by their deep commitment to each other and a network of solid social relationships. Ultimately, it situates them as determined people at home in a community where they were able to resist the impact of an oppressive state apparatus dedicated to the maintenance of white supremacy and under the control of state officials intent on destroying their marriage.

II. MEET THE LOVINGS: NOT STEREOTYPES, JUST ORDINARY PEOPLE

The Loving Story draws on a rather large amount of archival visual material of the Lovings that was produced after they agreed that publicity in national media would help their case.³⁶ Photographer Grey Villet spent two weeks with the Lovings and produced a photo essay that appeared in *Life* magazine

35. THE LOVING STORY, *supra* note 4. There are also two narrative treatments of *Loving*. *Loving*, the narrative film, draws heavily on the documentary *The Loving Story*, as Nancy Buirski was a producer of the former and a director of the latter. See LOVING (Focus Films 2016); THE LOVING STORY, *supra* note 4. The narrative film, *Loving*, was adapted from the documentary, but given the existence of the documentary with its vérité footage of the Lovings, their family members, and lawyers, there is little basis for relying on it to reinterpret the symbolic value of the Lovings and their legal case. The third film was a made-for-television narrative that is not likely to be familiar to contemporary viewers. See MR. AND MRS. LOVING (Showtime Networks 1996). The storyline of *Mr. and Mrs. Loving* contained significant departures from the Lovings' actual experiences. The film contained the following coda: "This story is based upon certain actual events and persons. However, some of the characters, incidents and names are fictionalized." *Id.*

36. Hirschkop said that they wanted to keep coverage of the case low because, at the time, mixed marriages generated strong emotions. Their other lawyer, Bernard Cohen, however, was of a different mind and prevailed. See THE LOVING STORY, *supra* note 4.

in March 1966; the photographs are reproduced in a book with text by Villet's wife, Barbara.³⁷ According to Barbara Villet, the visual images capture a “quintessentially ordinary couple extraordinarily in love with each other.”³⁸ In addition, observational or “fly on the wall” black-and-white footage, which was directed by Hope Ryden and filmed by Abbot Mills, provided a rich resource for the directors of both the documentary *The Loving Story* and the narrative film *Loving*.³⁹ Ryden was “in the vanguard of cinéma vérité filmmaking.”⁴⁰ She spent months with the Lovings.⁴¹ The footage was kept in a closet for forty-four years until Ryden retrieved it for director Nancy Buirski; it was never shown before it was included in *The Loving Story*.⁴² If icon status requires a visual image, then the still and moving images of the couple and their children fulfill that requirement for the Lovings.

Much of *The Loving Story* is about their love for one another. According to their daughter, “It was love at first sight. To marry someone and then to have to go through all they went through, it was nothing but love.”⁴³ There are numerous images of Mildred and Richard embracing, kissing, and holding hands. Their marriage became “a symbol of love as an inalienable right,” as Grey Villet put it in his blog.⁴⁴ But there was more to them than that.

The Lovings were, of course, also clients and litigants. Philip Hirschkop, one of the ACLU attorneys who litigated *Loving*, described how they defied stereotypes he himself harbored about them.⁴⁵ He and cocounsel Bernard S. Cohen appear as young professionals in the documentary's photographs and vérité footage shot in the sixties, as well as in interviews conducted thirty years later.⁴⁶ In the latter, the two, now-older lawyers recount vivid memories of the big case they lucked into that took them to the Supreme Court at a surprisingly early stage in their legal careers.

According to Hirschkop, Mrs. Loving was smart and very articulate.⁴⁷ She wrote in a neat hand. Her letter seeking the assistance of the ACLU exhibited “excellent writing”—better than he expected from a black person presumably educated in inferior segregated schools.⁴⁸ Furthermore, she was instantly likeable. Richard, on the other hand, was not very communicative.

37. GREY VILLET & BARBARA VILLET, *THE LOVINGS: AN INTIMATE PORTRAIT* (2017).

38. *Id.* at 16.

39. Sam Roberts, *Hope Ryden, Wildlife Protector and Photographer, Dies at 87*, N.Y. TIMES (June 26, 2017), <https://www.nytimes.com/2017/06/26/books/hope-ryden-dead-photographer-animal-rights-advocate.html> [<https://perma.cc/8FRH-EV26>].

40. *Id.*

41. *Id.*

42. Kristin McCracken, *Nancy Buirski: The Loving Story*, TRIBECA (Mar. 28, 2011), <https://www.tribecafilm.com/stories/512bfcf71c7d76d9a9000063-nancy-buirski-the-loving> [<https://perma.cc/XB4W-RE3B>].

43. THE LOVING STORY, *supra* note 4.

44. Grey Villet, *Loving Story*, GREY VILLET—PHOTOGRAPHY, <http://greyvillet.com/essay/loving.html> [<https://perma.cc/SK4D-D6PL>] (last visited Apr. 13, 2018).

45. THE LOVING STORY, *supra* note 4.

46. *Id.*

47. *Id.*

48. *Id.*

Hirschkop's initial reaction to him was negative because he looked like "a redneck" with his red neck and crew cut.⁴⁹ If Richard's character had matched Hirschkop's stereotype of him, which would have made him "part of the ruling class" in Hirschkop's view, he would have left Mildred and all the grief that came with staying, but leaving was "never a question, never a possibility" with Richard.⁵⁰

As a white man who lived among blacks and American Indians in Caroline County in the middle of the twentieth century, Richard was hardly a member of the "ruling class."⁵¹ In the vérité footage of the documentary, viewers can see and hear Richard and Mildred Loving and judge their character and circumstances for themselves. Tall and slender, Mildred comes across as a smart, gentle, and elegant woman who is an attentive spouse and nurturing mother. Mildred is often shown with a cigarette in her hand; she has the mannerisms of a smoker. She seems older and more mature than her biological age. Born in 1939, she was eighteen when she married and twenty-seven years old when the Supreme Court ruled in her favor. Her husband was six years her senior.

Richard appears to be a strong man whose ways were likely considered charming and affectionate by his mate. He is described as being "warm," "affable," and "comfortable" around both blacks and whites.⁵² He had good friendships with black men with whom he raced cars and socialized.⁵³ They, in turn, used their relationship with him to validate their own light-skin social status, according to one of Mildred's relatives who was also a boyhood friend of the Loving children.⁵⁴ Taking a wife who could write a letter to the then-Attorney General, Robert Kennedy, get a reply, and then write a letter to the ACLU that reaped them two lawyers who took their case to the Supreme Court suggests that Richard married up. He seemed proud of his wife. He supported his family by working as a bricklayer.⁵⁵ He built his wife a house on a plot of land given to him by his father; it was across the road from his mother's house.⁵⁶

There was a naturalness about the Lovings' interactions that the presence of the cameras could not entirely stifle. Cameras frequently alter behavior, causing subjects to do either what they ordinarily would not do or what the filmmaker asks them to do. The Lovings seemed comfortable in their skins when at home: she in her curlers, flowered top, and checkered skirt, and he

49. *Id.*

50. *Id.* The narrative film *Loving* broaches a few questions that the documentary does not, like whether it was wrong for Richard to marry Mildred as opposed to maintaining an extramarital relationship and how much pressure the authorities put on Richard to divorce Mildred. Biopic filmmakers have more freedom than documentarians to shape the facts to tell a more compelling story. Moreover, audiences for documentaries and fiction films likely have different expectations of the portrayals of the black civil rights movement and the characteristics they appreciate in civil rights icons.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

with his baggy pants and work boots, embracing on the couch while watching television. When they responded to questions, he thought before he spoke and his comments were frank, whereas she was earnest and tactful; her words flowed naturally but with an underlying suggestion of reflection.

Viewers of the documentary should be satisfied that the Lovings were real, ordinary people attempting to live ordinary lives in a state where, because of their races, that was supposed to be impossible.

III. BETWEEN INDIVIDUALS AND THE STATE: THE LOVINGS' SOCIAL SITUATION

Viewing the Lovings in terms of their social networks adds another layer of complexity to them as real people. According to Barbara Villet, "Far from being civil rights activists, as they would often later be described, they were motivated entirely by personal reasons. All they wished for was the freedom to live together as husband and wife, at home, near their family and friends."⁵⁷ Unfortunately, such a desire was a radical idea at that time in Virginia.

The Loving Story situates the Lovings socially and culturally. There are many images of them with their children and of their children happily playing in their yard. Richard's mother was interviewed in the sixties by a national news correspondent.⁵⁸ Almost as reticent as her son, it is hard to say whether she was pleased or displeased with his marriage. There are images of Richard and Mildred at the drag race track surrounded by friends including the men who, with Richard, jointly owned a car that frequently won trophies.⁵⁹

Other aspects of their social interactions were less than harmonious, if not downright threatening to their relationship. When an interviewer asked Richard why the law had targeted them, he replied that someone "talked."⁶⁰ According to Richard, there were other interracial couples that lived in the area, though he declined to say who they were.⁶¹ He never identified who the snitch was. Richard said that there were people who did not like them, but he did not attribute their attitudes to the Lovings' interracial marriage. Mildred, in her unassuming way, said only that she knew they had enemies, but they also had some friends. Indeed, after they moved back to Virginia in defiance of the law, they counted on friends and neighbors to give them advance warning if law enforcement was approaching.

Associating with blacks did generate social censure from whites in Caroline County. One interviewee indicated that Richard lived in the part of the county where the Native Americans lived, where whites and blacks "mixed together."⁶² Richard belonged to a part of the Loving clan that was the subject of a good bit of gossip and teasing among school children because of their relationships with blacks, according to another informant whose

57. VILLET & VILLET, *supra* note 37, at 16.

58. THE LOVING STORY, *supra* note 4.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

mother was a Loving but claimed not to be kin to Richard's family. But Peggy Loving, the couple's daughter, saw the couple's successful effort to return to Virginia legally as a form of vindication. It was her opinion that the authorities

barked up the wrong tree. I guess they thought that [her parents] were poor and low class, as the sheriff said they were, that they wouldn't do anything. I guess they determined that they would show them that they may be poor and they may be low class, . . . but they had the determination and the will to come back and do what they needed to do to be with their family.⁶³

Finally, there is the matter of Mildred's racial identification. The documentary does not really explore the question of her racial identification. She is described as "a [c]olored person" by the Virginia Supreme Court of Appeals⁶⁴ and as "a Negro woman" by the U.S. Supreme Court.⁶⁵ She variously described herself as being either Indian (Rappahannock Nation) or part Indian and part Negro.⁶⁶ How she identified herself may have been a response to the couple's precarious legal situation. In any event, listing herself as Indian was not an individual attempt at "passing" but rather a claim of racial identification—likely based on heritage, kinship, physical traits, or social affiliations—that materialized as part of the social practices of the people in Mildred's community.⁶⁷

Additionally, police enforcement of racial categorizations based on strict notions of white purity attempted to control (with seemingly limited success) the racial identities adopted by people in the community. This is illustrated by a vignette told by Mildred's brother, Lewis Jeter, about an incident in which the sheriff who arrested the couple played the role of identity police. He entered an establishment on Saturday night where people were socializing and asked for their driver's licenses, which indicated their races. "Some folks went for white and some went for Indian, as well as some Indians who went for white."⁶⁸ The sheriff tore up everyone's licenses and parked outside waiting to see who would attempt to drive away without one. "He was the sheriff and he had the power to do that."⁶⁹

For the Lovings, then, white supremacy had an impact at the group level, where networks and social connections can buffer individuals from onerous state oversight and regulation. Although the Lovings had social ties that provided support for their resistance, they also had social interactions and knew community members that reinforced the state's unjust treatment and control of them.

63. *Id.*

64. *Loving v. Commonwealth*, 147 S.E.2d 78, 79 (Va. 1966), *rev'd*, 388 U.S. 1 (1967).

65. *Loving*, 388 U.S. at 2.

66. THE LOVING STORY, *supra* note 4.

67. PETER WALLENSTEIN, RACE, SEX, AND THE FREEDOM TO MARRY: *LOVING V. VIRGINIA* 218, 228 (2014); *see also* ARICA L. COLEMAN, THAT THE BLOOD STAY PURE: AFRICAN AMERICANS, NATIVE AMERICANS, AND THE PREDICAMENT OF RACE AND IDENTITY IN VIRGINIA 151–76 (2013). In fact, Mildred's community was known as "Passing, Virginia," which was indicated on the couple's marriage license. *Id.* at 154, 157.

68. THE LOVING STORY, *supra* note 4.

69. *Id.*

IV. INDIGNITIES BY STATE ACTORS AND
THE LOVINGS' RESISTANCE IN AND OUT OF COURT

Laws promoting white supremacy are not self-enforcing. There were flesh and blood state actors who were authorized to enforce Virginia's antimiscegenation laws and actively played a role in subjugating the Lovings. Sheriff Garnett Brooks of Caroline County barged into the Lovings' bedroom with flashlights in the early morning hours and carted them off to jail in Bowling Green, where Mildred stayed because her family, unlike Richard's, was unable to make bail.⁷⁰ Brooks's deputy says that Brooks did not get along with black people and harbored prejudice toward them.⁷¹

Then there was Judge Leon Bazile who, in justifying his sentence of the Lovings, opined:

Almighty God created the races white, black, yellow, malay [sic] 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.⁷²

His decision was affirmed by the judges of the Supreme Court of Appeals of Virginia who sustained their convictions but remanded the case for resentencing with the instruction that the condition of banishment be replaced with the proviso that the Lovings not live in Virginia as husband and wife.⁷³

Finally, there was R.D. McIlwaine III, the State Assistant Attorney General. McIlwaine's argument before the Court was characterized as unethical and immoral by Philip Hirschkop, one of the Lovings' attorneys.⁷⁴ In his argument, the state's attorney said that the antimiscegenation law was intended to protect the children of interracial marriages when he knew that its whole purpose was to preserve white racial integrity.⁷⁵

The Lovings' resistance to the state's sentences was not limited to the litigation. After the Lovings left Virginia as convicted felons, they moved to Washington, D.C., but made surreptitious trips home.⁷⁶ When they returned to visit Mildred's relatives, Richard stayed mostly indoors.⁷⁷ Mildred hated city life.⁷⁸ Her disquiet grew after a car struck her younger son while he was playing in the street.⁷⁹ In the city, the children had no place to play.⁸⁰ The family moved back to Virginia in 1964, in defiance of the state courts and without full disclosure to the federal court.⁸¹

70. *Id.*

71. *Id.*

72. *Loving v. Virginia*, 388 U.S. 1, 3 (1967).

73. *See Loving v. Commonwealth*, 147 S.E.2d 78, 83 (Va. 1966), *rev'd sub nom. Loving*, 388 U.S. 1.

74. THE LOVING STORY, *supra* note 4.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

They hid their living arrangements. They lived in King and Queen County, not in Caroline County.⁸² Though the danger of being rearrested and incarcerated eased, they were still not free to travel together. They had to travel well outside their community in order to shop in supermarkets.⁸³ They feared being caught and rearrested, and their lawyers feared that they would be unable to bail them out of jail quickly.⁸⁴ The difficulties the state imposed on their relationship do not appear in the photographs and footage used in the documentary, although there is a photo of an uneasy Mildred pulling back a curtain to look outside while waiting for Richard to return home.⁸⁵

Despite all of this, the Lovings did not think of themselves as activists, nor did they think of their claim in constitutional terms. Rather, they considered the prohibition on interracial marriage to be “unfair.” Richard summed up his sentiments in words that Cohen used in his argument before the Court: “I love my wife and it is just unfair that I cannot live with her in Virginia.”⁸⁶ Mildred said that it was the principle of the thing that took them to court.⁸⁷ She recognized that if they won, they would be helping a lot of people.⁸⁸ And so they did.

ICONS REIMAGINED

The Loving Story makes a tremendous contribution to the viewers’ understanding of what the couple and their case were really about. It makes manifest the importance of their desire to live together as a married couple in the rural county they called home, surrounded by family, friends, and neighbors who were supportive and could be counted on to assist them in times of trouble.

First and foremost, we should give the Lovings credit for being “ordinary people [who] took it upon themselves to rise up and challenge . . . racial oppression” in an act of self-empowerment.⁸⁹ That in and of itself makes the Lovings iconic. The political agenda behind the Lovings’ resistance was not the pursuit of assimilation, interracial marriage, or even marriage equality. Rather, it was a quest for a home life, plain and simple, based on love and respect, sustained by familial and communal support, and buttressed by the entitlements associated with economic, social, and cultural rights.

There is a contemporary movement that involves race, culture, marriage, and home life; implicates the state; and has a role for the law to play. It is the movement to secure guaranteed access to education, housing, food, health care, employment, and security for ordinary families, and particularly for

82. *Id.*

83. VILLET & VILLET, *supra* note 37, at 17 (“[I]f they needed to visit a supermarket or purchase other supplies, it required a long trip to Tappahannock, where they were strangers.”).

84. THE LOVING STORY, *supra* note 4.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. Edward P. Morgan, *The Good, the Bad, and the Forgotten: Media Culture and Public Memory of the Civil Rights Movement*, in THE CIVIL RIGHTS MOVEMENT IN AMERICAN MEMORY 137, 161 (Renee C. Romano & Leigh Raiford eds., 2006).

their children. In some locations, these rights are also being fought for by “ordinary people” rising up and challenging racial and ethnic discrimination.⁹⁰ And it is with regard to this contemporary civil rights movement, and its ordinary people, that the Lovings might be looked upon as icons.

90. *See id.*