

# arts & leisure

## Loving Sets a Precedent

Vermont author Phyl Newbeck examines the case that overturned racist marriage laws.

BY EUAN BEAR

Phyl Newbeck is quietly intense and very precise. Those qualities made her an excellent candidate to research *Loving v Virginia*, the Supreme Court case that overturned racist marriage laws, just as the *Lawrence v Texas* case overturned sodomy laws governing sexual behavior in private between consenting adults.

Newbeck, a lawyer, has never written a book before. This one came about after she and her then-husband rented and watched an HBO movie, *Mr. and Mrs. Loving*. Her interest was more than academic: theirs was an interracial marriage. She went looking for the book to get more of the story, and found there was no book. "So I decided to write the book I couldn't find," Newbeck explained in an interview.

The framework is this: Richard Perry Loving, a white man, and Mildred Jeter, a "colored" woman, in 1958 traveled to Washington, DC, from their home in Virginia, got married, and then returned to Virginia to live as a married couple. In Virginia it was illegal for two people of differing races to marry. The two were arrested in the middle of the night "for the crime of being married," although they were initially charged with "unlawful cohabitation," since their DC marriage license was invalid in the state. They were convicted and sentenced to a year in jail. The sentence was suspended, provided both parties left Virginia "at once" and did "not return together or at the same time ... for a period of 25 years."

The ruling by the Supreme Court came in 1967, when Virginia was one of 16 remaining states to still ban interracial marriage (compare to the *Lawrence* decision, issued when only 13 states contin-

**Virginia Hasn't Always Been For Lovers: Interracial Bans and the Case of Richard and Mildred Loving**

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ued to outlaw sodomy). It's what happened before the arrest, during the trial, and all the history leading up to the Supreme Court ruling that Newbeck reveals in an organized, lawyerly, yet conversational tone that set this book apart.

In fact, Newbeck says she had a hard time finding a publisher: editors at the academic presses thought her writing was too "breezy" and informal, while the popular presses thought the subject matter too academic.

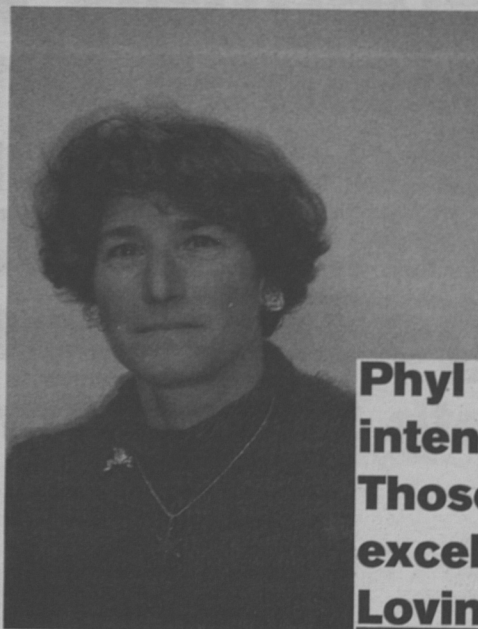
Asked about the most surprising thing she discovered during her research, Newbeck says, "Only nine states did not ever have an anti-miscegenation law." Only in one - Vermont - did no one ever even try to introduce one. "I love it here," the New York native reveals, saying that she and her now ex-husband had only positive experiences as an interracial couple. "My ex-husband says this state has shown the least racial prejudice he's ever seen. He's a Ski Patroller. We were together almost 12 years."

The other surprising thing Newbeck discovered was that anti-miscegenation laws went well beyond black and white. "In Oregon the law prohibited marriage of whites with 'Kanakans' - Hawai'ian Islanders. In Arizona Hindus were prohibited from marrying across race lines."

And then there was Massachusetts' infamous attempt to prevent couples from circumventing anti-miscegenation laws in their own states by marrying in Massachusetts: the 1913 law now being used to

keep out-of-state same-sex couples from celebrating their vows and then returning home legally married.

There were other cases that tried to overturn the racially discriminatory laws in the states, and Newbeck looks at them in her book. "Henry Oyama in 1959 in Arizona was a perfect test plaintiff," Newbeck explains. "He was interned during World War II, joined the army, fought for the U.S., and was a high school civics teacher.



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But the Arizona officials who defended the state law hated it as much as he did." The state appealed the verdict in favor of Oyama, and while the appellate court was sitting on the case, the legislature repealed the statute.

Even earlier, a case called *Naim v Naim* got to the U.S.

Supreme Court "a year after *Brown [v Board of Education]*, and the Supreme Court quaked. They found a technical reason to avoid a ruling."

While Newbeck and her book are focused on the history of the *Loving* case, she admits the pertinence of the case to attempts to establish the legality of same-sex marriage is obvious. "After *Lawrence* I thought things looked positive." But, she adds, there is history behind all the anti-gay-marriage laws passed this year, too.

"In 1913 there was a black boxer named Jack Johnson who married a white woman in Illinois, where it was legal at the time," Newbeck recalls. "Half the states that didn't have laws banning interracial marriage tried to pass them that year, although almost all of them failed. A lot of these state laws wouldn't have been proposed without the image of this powerful black

credited.

Among other parallels Newbeck mentions are the oft-quoted scriptures in support of legal marriage bans. Both interracial and same-sex marriages have been called "unnatural," "against the word of God," and "an abomination," among other characterizations. Likewise they have both been damned with questionable "science": one Missouri judge said that the children of blacks and whites who were married would not be able to procreate, "like mules"; a Georgia judge opined that the children would be "sickly and effeminate" and would "eventually die out." Gay couples have been demonized as disease carriers, pedophiles, and worse. Both interracial couples and gay and lesbian couples have been identified as a "threat to the social order" and to "morality as we know it."

man and his white wife being in the newspapers." Newbeck lets me draw the parallel to the images of same-sex weddings from San Francisco and elsewhere as evoking a similar legal backlash.

Further, she says, in 1913, the NAACP had lobbied to defeat the marriage laws but stopped for fear the organization would be dis-

Virginia, now one of the most homophobic states in the country, has a long history of restricting the rights of minorities, and it is clear from this well-researched and well-told tale that it hasn't learned much from *Loving*. ▼