Lawyering in Black and White: A Book Review of *According to Our Hearts*, Rhinelander v. Rhinelander *and the Law of the Multiracial Family*

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I. INTRODUCTION

According to Our Hearts[1] is an impressive work that advocates for a robust protection of the American family. Thus, in many ways, at its core, the book is very traditional and classic.[2] What makes it groundbreaking and innovative, however, is Professor Angela Onwuachi-Willig's ability to integrate the understanding of intimate family relationships seamlessly with issues of race

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1. *See generally* ANGELA ONWUACHI-WILLIG, ACCORDING TO OUR HEARTS: *RHINELANDER V. RHINELANDER* AND THE LAW OF THE MULTIRACIAL FAMILY (2013).

2. *See* Jennifer Chacón, *Opening Our Hearts: A Response to Angela Onwuachi-Willig's* According to Our Hearts, 16 J. GENDER RACE & JUST. 725, 735–36 (2013).

and the performance of race. The narration of the historic racial fraud annulment case, *Rhinelander v. Rhinelander*,[3] coupled with the personal interviews with present-day multiracial families, offers the reader a fresh perspective on interraciality and opens one to the prospect that modern law should naturally include "the law of the multiracial family."

According to Our Hearts has been praised for its effective presentation, its innovations in thinking about racial-, familial-, and collective-identity injuries that stem from the intersectionality of race and family,[4] plus its ambition in addressing gaps in antidiscrimination law.[5] In my opinion, however, the book has not been sufficiently recognized for its contribution to trial advocacy, especially trial advocacy in racialized litigation. In the book, Professor Onwuachi-Willig employs the narrative style of legal storytelling that the pioneers of critical race theory have utilized. However, I think she uses this style, in a rather original way, to tell the lawyer's story of how to manage—or mismanage—a racialized trial. The book includes a behind-the-screens and detailed retelling of the *Rhinelander* trial, which at first I thought was largely a tragic love story, and secondarily a tale about gender and race norms in the 1920s. But soon I realized that the book's narrative is really about lawyering—critical race lawyering[6]—"lawyering in black and white."

The book explores not only notions of romantic love and family, but it also seriously confronts the complex and systemic legal problem of racial discrimination. Acknowledging the influences of both law and society on issues of race in America, Professor Onwuachi-Willig offers the reader a critical lens with which to think seriously about interraciality, as well as the racial identity of a family.[7] Prior to *According to Our Hearts*, the discussion of racial identity, largely, was recognized as an individual concept. The book broadens the dialogue and encourages an understanding of interraciality that can be applied to a collective identity—a familial identity. Professor Onwuachi-Willig further teaches the reader that because racial identity can be a collective one, cognizable legal harms can flow to individuals based on membership in the family. Consistent with the book's expanded definitional framework of interraciality, it follows that statutes proscribing racial discrimination may, too, warrant a correspondingly more expansive scope in order to adequately protect the American family. Professor Onwuachi-Willig

3. Rhinelander v. Rhinelander, 219 N.Y.S. 548 (App. Div. 1927) (per curiam).

4. Chacón, *supra* note 2, at 738–39.

5. D. Wendy Greene, *All in the Family: Interracial Intimacy, Racial Fictions, and the Law*, 4 CALIF. L. REV. CIRCUIT 179, 185–86 (2013).

6. Scholars have acknowledged the importance of including critical race perspectives in lawyering all cases. *See* Symposium, *Critical Race Lawyering*, 73 FORDHAM L. REV. 2027 (2005).

7. ONWUACHI-WILLIG, *supra* note 1, at 233 ("So far in this book, I have utilized the lives of Alice and Leonard Rhinelander as a window into understanding how law and society have functioned together to frame the normative ideal of family as monoracial (and heterosexual), both historically and presently.").

urges legislative change as one solution, proposing that Congress amend current antidiscrimination laws to include "interraciality" as a protected category within the current statutory scheme.

The book takes the reader through an enchanting love story between Leonard and Alice Rhinelander and their new marriage, while simultaneously exposing the harsh reality of Leonard's allegation that Alice fraudulently misled him to believe that she was a white woman, when, in fact, "colored blood was coursing through her veins."[8] Leonard's accusations surrounding Alice's racial identity, and his asserted lack of knowledge of it, formed the basis of his civil lawsuit seeking to annul their marriage. The book guides the reader through the details of the infamous *Rhinelander* lawsuit and shares the newspaper story that likely prompted the litigation and pressure from Leonard's family to end the marriage: "Rhinelander's Son Marries Daughter of a Colored Man."[9] The author reveals several amazing details about the *Rhinelander* case, including the fact that Leonard continued to send Alice love letters urging her to "fight the lawsuit" and win the case, so that "they could remain together as husband and wife."[10]

The book discusses unique facts about the courtroom dynamics, including the description of Alice as a live physical exhibit in court. As part of the case, Alice's lawyer, Lee Parsons Davis, had Alice expose her nude breasts and thighs to the all-male, all-white jury. Leonard had testified about the couple's premarital sexual encounters, thus Alice's lawyer strategically used Alice's intimate bare skin as evidence that Leonard knew her true racial identity prior to marriage.[11] Further, the book illustrates other trial strategies employed in the litigation. Distinctively, these strategies largely relied on the lawyer's understanding of the common racial biases of the jurors, as well as the evidentiary inferences believed to flow from one's race, what is phenotypically perceived as one's race, and additionally, the cultural performance of one's racial identity. The trial itself is a tutorial in the navigation of racial prejudice in court, as well as a lesson on how the social undercurrent of racism against the multiracial family may prove to be more powerful than any laws intending to protect it.

The narrative style employed by Professor Onwuachi-Willig is an extraordinarily powerful method in which to convey complex legal concepts that may otherwise remain invisible.[12] She harnesses the tools of critical race theory with incredible skill and grace, such that she brings the reader into an

8. *Id.* at 93 (quoting Alice Rhinelander's attorney, Lee Parsons Davis) (internal quotation marks omitted); *see also id.* at 33–34 (quoting Leonard's first amended complaint).

9. *Id.* at 31.

10. *Id.* at 38.

11. *Id.* at 112–13. Davis presented this evidence so that the jury could confirm Alice's obvious race, based on skin color. *Id.*

12. *See* Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413–15 (1989).

intolerable quandary about intimate love and racial discrimination that is so real and heavy, it is palpable even to those who have not personally experienced it. It is an incredible accomplishment of a text, especially a legal text, to allow its reader to have an emotional experience strong enough to cause a change in thinking, understanding, and maybe even law. The book, although nonfiction, is truly captivating, and has its reader on the edge of her seat wondering: Will love prevail? What will come of Leonard and Alice?

Leonard's lawsuit against Alice ended in a jury verdict in Alice's favor, followed by a quiet divorce months later. Leonard and Alice were never reunited. Love did not prevail. Neither ever remarried. However, their story provides many lessons of law and society that Professor Onwuachi-Willig develops throughout the book.

II. *RHINELANDER V. RHINELANDER*—A LESSON IN TRIAL ADVOCACY

A. THE LAWYER'S ROLE

Grounded in the substantive legal backdrop of family law, *According to Our Hearts* uses *Rhinelander v. Rhinelander* to teach the reader about civil litigation, trial advocacy, trial strategy, and legal storytelling in jury trials.[13] Additionally, it gives a vivid example of how race can be used—and, arguably, misused—in jury trials. Some scholars argue that training on multicultural lawyering should be part of the law school curriculum,[14] and this book provides needed exposure to multicultural lawyering in a very dynamic way.

It is from the charismatic role of Alice's lawyer, and the way the author profiles his persona in the courtroom,[15] that I titled this review "lawyering in black and white." The role of Alice's lawyer and his ability to utilize all the case facts, including racialized facts that have the potential to skew a juror's perception of the relevant evidence, to me, is what makes *According to Our Hearts* particularly instructive for law students and trial lawyers.

The book takes considerable time with the details of the trial, especially the substantive decisions made by Alice's trial lawyer and the tactical strategy used to present the defense against the racial fraud allegation that Leonard

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13. *See* Lenora Ledwon, *Understanding Visual Metaphors: What Graphic Novels Can Teach Lawyers About Visual Storytelling*, 63 DRAKE L. REV. 193, 195–96 (2015) ("Successful litigators need to be visually literate. . . . Effective legal storytelling requires not only facility with words, but also facility with images.").

14. *See, e.g.*, Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 239 (2002).

15. *See* ONWUACHI-WILLIG, *supra* note 1, at 113.

> Davis must have understood the importance of expected racial and gender performances. He understood that, while Leonard Rhinelander would be punished by the jurors for failing to perform his racial, class, and gender identities as an upper-class white man, Alice . . . would be "rewarded" by the jury for performing the role of the stereotypical "Black Jezebel" . . . .

Id.

put forth. Accused of being "of colored blood," and misrepresenting herself as a white woman, it was a surprise to many that Alice did not choose to defend her whiteness.[16] Leonard's love letters implied that he expected her to win the case by defending her whiteness so they could be together.[17] Instead, her lawyer's strategy was to concede non-whiteness and show the jury that Alice's "colored blood" was obvious to anyone with eyes to see. Choosing to lead with this strategy meant that Leonard and Alice's future together would be forever foreclosed.

The trial strategy was further complicated because it required both direct and circumstantial evidence to prove the theory of the defense, the case narrative being something like: "Alice is obviously colored. You see it jurors, don't you? And so did Leonard."[18] The key to the defense was to show both that Alice's biological race and her cultural race were obviously non-white, such that anyone, including Leonard, could easily see it, thus negating any possible allegation of racial fraud.[19] Therefore, at the same time that the defense had to exploit racial prejudice to prove that Alice was obviously non-white, the defense also had to tame the racial bias against Alice because she was challenging a white man (her husband) in court, and being judged by an all-white, all-male jury.[20]

The same trial strategies that Alice's lawyer used are still effective in racialized trials today. I have previously analyzed the use of race in jury trials, such as George Zimmerman's prosecution for the death of Trayvon Martin, specifically noting how Zimmerman's defense team used what I call "the Jedi

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16. *Id.* at 104–05.

> The idea that Alice could have tried to litigate her whiteness is not outrageous. After all, as Jamie Wacks has suggested, Alice purportedly identified as white. In fact, Wacks wondered whether Alice was never put on the witness stand because she viewed herself as white and would have stated so if asked about her racial identity on the stand.

Id. (citing Jamie L. Wacks, *Reading Race, Rhetoric, and the Female Body in the* Rhinelander *Case*, *in* INTERRACIALISM: BLACK-WHITE INTERMARRIAGE IN AMERICAN HISTORY, LITERATURE, AND LAW 162, 163–64 (Werner Sollors ed., 2000)). However, the case law seemed to be against Alice, largely due to her father being a confessed mulatto. *Id.* at 107; *see also Mulatto*, MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/mulatto (last visited Mar. 24, 2015).

17. ONWUACHI-WILLIG, *supra* note 1, at 38. "Honey Bunch, old scout—I hope you will win this case. Get the best lawyer." *Id.* (quoting *Rhinelander Bride Fears He Is Captive*, N.Y. TIMES, Nov. 30, 1924, at 14) (internal quotation marks omitted). "Dearest, this little separation will but draw us closer to each other. You know I love you, and you only; there is nothing that can happen that would make me change." *Id.* (quoting *Mrs. Rhinelander Balks on Society: Rhinelander Bride Flays N.Y. Society*, CHI. DEFENDER, Mar. 21, 1925, at 1) (internal quotation marks omitted).

18. *Id.* at 111 ("Throughout the trial, Davis played upon the notion of race as easily recognizable."). After showing the jury Alice's nude body, Davis "left the jury with the legal notion of res ipsa loquitur—'the thing speaks for itself.'" *Id.* at 112.

19. *Id.* at 111 ("Davis's decision to not litigate Alice's whiteness was clever in that it allowed him to play upon general beliefs of biological race within the white population.").

20. *Id.* at 110–13.

mind trick of race"[21] to effectively trigger racial cues both in the opposing lawyers and in the jury to ultimately yield a winning verdict.[22] The reason I call this trial strategy a "Jedi mind trick" is because the strategy employs an overt objection to racial bias, coupled with a contemporaneous, yet clandestine, exploitation of the same racial prejudices in favor of one's client. The *Rhinelander* case was a racialized trial in which race was part of the formal allegation—Alice was sued for racial fraud. Whereas the formal charges in Zimmerman's prosecution were race-neutral: a second-degree murder charge without alleging racial bias as the motive for the killing. However, in both cases, the lawyers manipulated the inferences that stem from implicit racial bias within the jury to strategically navigate these cases in their clients' favors.

In the Zimmerman prosecution, the defense team affirmatively objected to the relevance of race in the case and filed motions to prevent the prosecution from even using the term "profiled" in its opening statement, arguing that the word had indirect racial inferences and its use in the context of an interracial murder trial was unfairly prejudicial.[23] The motion and its racialized arguments, however, were part of the defense's larger trial strategy. The prosecution became uncomfortable about the mention of race in its own case and the use of any evidence that had potentially racialized inferences. Meanwhile, the defense was able to harness commonly known racial biases within the jury and steer those inferences towards proving that Zimmerman was not the aggressor, but instead, was the victim of the criminal justice system, for simply defending himself against a suspicious, possibly high on drugs, black male teen, who he perceived did not belong in the neighborhood and who would have killed him if he did not defend himself with deadly force. Meanwhile, the prosecution ignored the racial inferences altogether and failed to inject counter-inferences in its presentation of the case.[24] In fact, the

21. "Jedi mind trick" is a term taken from the movie *Star Wars*, which refers to the ability to control another's thoughts and actions through the power of spoken word, i.e., the power of forced suggestion. Amelia Hill, *Star Wars Glossary: Jedi Mind Trick*, ABOUT ENT., http://scifi.about.com/od/starwarsglossaryandfaq/a/Star-Wars-Glossary-Jedi-Mind-Trick.htm (last visited Mar. 24, 2015).

22. *See* Tamara F. Lawson, *The* Res Gestae *of Race: The Implications of "Erasing" Race*, *in* TRAYVON MARTIN, RACE, AND AMERICAN JUSTICE: WRITING WRONG 125, 125–26 (Kenneth J. Fasching-Varner et al. eds., 2014).

23. Defendant's Motion in Limine Regarding the Use of Certain Inflammatory Terms at 1–2, State v. Zimmerman, No. 12-CF-1083-A (Fla. 18th Cir. Ct. May 30, 2013), *available at* http://www.gzdocs.com/documents/0613/limine_use_of_terms.pdf.

24. *See* LISA BLOOM, SUSPICION NATION: THE INSIDE STORY OF THE TRAYVON MARTIN INJUSTICE AND WHY WE CONTINUE TO REPEAT IT 77 (2014).

> Judge Debra Nelson decided that the word "profiling"—but not the phrase "racial profiling"—could be used in opening statements. . . . More incomprehensively still, the prosecution did not push back on this ruling . . . apparently because they had already decided that they were *not going there*. . . . [T]he state was too squeamish to put the touchy issue of race squarely before the six-woman jury.

Id. at 77–78.

prosecution was led to change its own case narrative, adopting the defense's narrative and espousing, "[t]his case is not about race,"[25] which further helped the defense to win the case.

Thus, in the Zimmerman trial, while the defense was backing the prosecution into the politically correct corner of arguing "this case is not about race," the defense trial strategy was rich with racial cues and indirect historical racial narratives, forcing the jury to view the case in the defendant's favor.[26] One of the main, implicit, racially-biased inferences employed by the Zimmerman defense team was the historic, yet ever powerful and venomous stereotype—"black-male-as-criminal."[27]

> The standard assumption that criminals are black and blacks are criminals is so prevalent that in one study, 60 percent of viewers who viewed a crime story with no picture of the perpetrator falsely recalled seeing one, and of those, 70 percent believed he was African-American. When we think about crime, we "see black," even when it's not present at all.[28]

Zimmerman's defense team was strategic and used the strength of the stereotypical image of the black-male-as-criminal to help lead the jury to more easily see the case facts in their client's favor, meaning, to see his case as one of self-defense. This strategy worked on the all-female, (and predominantly white) jury in 2013 to trigger a favorable defense verdict for Zimmerman.[29]

In the 1924 *Rhinelander* case, Professor Onwuachi-Willig similarly describes the trial strategies of each side's lawyer, as well as how the defense team was able to use racial prejudice to its advantage to trigger a favorable verdict for Alice, even though the jury was initially biased against Alice. What makes the trial advocacy incredibly interesting in Alice's case is that the lawyer's use of direct and circumstantial proof actually required inferences predicated on racial prejudice in order to work. For example, Alice's lawyer

> understood that, while Leonard Rhinelander would be punished by the jurors for failing to perform his racial, class, and gender identities as an upper-class white man, Alice—despite her attempts at challenging hierarchy by stepping over racial and class boundaries—would be "rewarded" by the jury for performing the

25. Jonathan Capehart, *Race and the George Zimmerman Trial*, WASH. POST (July 12, 2013), http://www.washingtonpost.com/blogs/post-partisan/wp/2013/07/12/race-and-the-george-zimmerman-trial/.

26. BLOOM, *supra* note 24, at 78–79.

27. *See id.* at 230; Anthony V. Alfieri, *Jim Crow Ethics and the Defense of the Jena Six*, 94 IOWA L. REV. 1651, 1658, 1669–76 (2009) (juxtaposing the use of the "antebellum defense" and its impact on black male defendants' trials with David Luban's race-based, criminal-justice ideas of morality); *see also* DAVID LUBAN, LEGAL ETHICS AND HUMAN DIGNITY 22–63 (2007).

28. BLOOM, *supra* note 24, at 231–32.

29. *Id.* at 91 ("Zimmerman was acquitted. . . . [T]he special prosecutor[] said, 'This case has never been about race.'").

> role of the stereotypical "Black Jezebel" and vamp, an oversexed and sexually aggressive black woman with no morals.[30]

Alice's lawyer manipulated these racial stereotypes against Alice to her benefit to show that she had "performed her race" to Leonard prior to marriage, such that he was, in fact, not defrauded. Her lawyer also exploited the racial bias against Leonard as being a race traitor who knowingly and willingly mixed with Alice, and therefore, should be punished by losing his case.

Thus, *Rhinelander* teaches its readers that a lawyer, in a racialized litigation, must be culturally competent enough in social norms, as well as relevant biases, to present the theory of the case in a way that any prejudice that does exist errs to the benefit of one's client. This is the essence of "lawyering in black and white," incorporating an understanding of the overt and subliminal race dynamics. In short, the lawyer is agile enough to exploit racial prejudices by crafting the "narrative of the case" to maximize the evidentiary inferences toward the client's favor. After the verdict was rendered in Alice's favor, her lawyer was quoted: "There was but one danger facing [Alice], namely, race prejudice."[31] Alice's lawyer was well aware of the unspoken racialized elephant in the courtroom and used it to his client's advantage. Professor Onwuachi-Willig does an excellent job highlighting the real dilemma of human dignity in which Alice was placed, and the role Alice's lawyer played in orchestrating the winning case narrative.

B. THE JURY'S CONSCIENCE—IN BLACK AND WHITE

At first blush, one might think that the title of the book was related to the love story between Leonard and Alice. However, in fact, the portion of the title, "according to our hearts," comes from a quote by a juror after the verdict. Professor Onwuachi-Willig gives the reader a glimpse into the jurors' psyche by including the post-verdict juror comments as part of the narration of the *Rhinelander* trial. One juror stated: "If we had voted *according to our hearts* the verdict might have been different."[32] The juror was implying that if the jurors had voted according to their hearts, they would have instead rendered a verdict in favor of Leonard. Why were their hearts yearning to vote for Leonard? One argument could be that the white, male jurors wanted to vote in solidarity with Leonard, a fellow white male.

Another juror commented: "We want it clearly understood that not for a single instance did race prejudice enter into the consideration of our verdict."[33] Strikingly, a jury so unaffected by race or prejudice or bias is also quite vocal about it, as to make multiple references to it. Racial prejudice must

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30. ONWUACHI-WILLIG, *supra* note 1, at 113.

31. *Id.* at 101 (quoting *Rhinelander Loses; No Fraud Is Found; Wife Will Sue Now*, N.Y. TIMES, Dec. 6, 1925, at 1).

32. *Id.* (emphasis added).

33. *Id.*

have been on the minds of the jury—otherwise they would not mention it after the verdict. Surely it was on their minds; the case was an extremely racialized litigation. However, their comments, coupled with the verdict in Alice's favor, show that, notwithstanding the racial biases that inevitably crossed their minds, the jurors were able to accept the request by Alice's lawyer in closing arguments "not to bend to any racial prejudices."[34] This is "lawyering in black and white"—the ability to address racial bias head-on with the jury.

The jurors' comments further illustrate the power and value of affirmatively addressing race in court. Professor Cynthia Lee argues, based on recent social science research, "making race salient" and transparent for jurors to consider can, in effect, render more fair and accurate verdicts: "Race salience means making jurors aware of racial issues that can bias their decision-making, like the operation of racial stereotypes."[35] Alice's verdict is an example of the benefit of "making race salient" and discussing the perils of racial prejudice with the jury during closing argument. Alice's lawyer argued in closing to the jurors "not to bend to any racial prejudice." Had he not addressed it, the jurors would have voted "according to their hearts" against Alice. His ability to employ critical race lawyering was vital to the ultimate outcome.

Zimmerman's case is an example where race was not made salient. Instead, the jurors were told the case "was not about race,"[36] thus the prosecution did not invite the jurors to tame their racial prejudices the way Alice's lawyer affirmatively did. Thus, any implicit racial biases that did exist in the Zimmerman jurors naturally flowed—unobstructed—to the benefit of the defense because the racial stereotypes in the Zimmerman trial were already set up in the defendant's favor.

Professor Onwuachi-Willig teaches the reader how critical race lawyering can have real impact on a jury's ability to suppress its own prejudices. She effectively uses the *Rhinelander* case not only to tell Alice's story, but also to further tell the lawyer's story of how to orchestrate a successful case narrative. In turn, she tells the jurors' story of how they responded to their lawyer-maestro's lead by returning a verdict not "according to [their own racially prejudiced] hearts." In this way, the book significantly contributes to the understanding of advocacy in general and trial advocacy in racialized cases in particular.

34. *Id.* at 93.

35. Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555, 1586 (2013).

36. *See supra* notes 24–25 and accompanying text.

III. DO LAWS REALLY MATTER? THE LOVING MARRIAGE SURVIVED WHILE THE RHINELANDER MARRIAGE FAILED

While engaged with the text of the book and its proposed legal solutions, I could not ignore the nagging question of whether law, even in an amended form, could provide the needed intervention to thwart discrimination motivated by racial bias, and more specifically, racial bias targeted at interraciality. In the back of my mind, I kept revisiting the stark differences between the Rhinelanders' love story in New York in the 1920s and the Lovings' love story in Virginia in the 1950s, which formed the basis of the United States Supreme Court case *Loving v. Virginia*.[37] The contradiction between the Rhinelander marriage and the marriage of Richard and Mildred Loving drew me in, because the laws in New York and Virginia were drastically different for interracial unions. Interracial marriage was legal in New York when the Rhinelanders' married, yet their marriage ended in divorce after a high-profile annulment trial alleging the marriage was predicated upon racial fraud. The Lovings' marriage in Virginia, although prohibited by Virginia criminal statute,[38] survived for 17 years until Richard Loving's untimely death in 1975.[39] The Rhinelanders' marriage had no governmental interference; yet, the Lovings were criminally prosecuted, jailed, sentenced, and exiled from the state of Virginia[40]—all for simply wanting to be a multiracial family.

Notwithstanding the lack of legal obstacles to the Rhinelanders' union, their marriage was in more peril than the Lovings' because of societal pressures, not criminal laws. Leonard Rhinelander was the equivalent of a

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37. Loving v. Virginia, 388 U.S. 1 (1967).

38. Virginia's antimiscegenation statute, the Racial Integrity Act of 1924, criminalized interracial marriage. VA. CODE ANN. §§ 20-50 to 20-60 (1960 repl. vol.), *repealed by* 1968 Va. Acts 430; *see also id.* § 20-59 ("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."). The law was found to be unconstitutional in violation of the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment. *Loving*, 388 U.S. at 2, 11–12.

39. Richard Loving died in a car accident wherein the other driver was under the influence. THE LOVING STORY 1:13:50 (HBO television broadcast 2011); *see also Richard P. Loving; In Landmark Suit: Figure in High Court Ruling on Miscegenation Dies*, N.Y. TIMES, July 1, 1975, at 32.

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

> On January 6, 1959, the Lovings pleaded guilty to the charge and were sentenced to one year in jail; however, the trial judge suspended the sentence for a period of 25 years on the condition that the Lovings leave the State and not return to Virginia together for 25 years. He stated in an opinion that: "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."
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> After their convictions, the Lovings took up residence in the District of Columbia.

Id.

billionaire, but his money ultimately was no help to save his marriage.[41] Richard Loving had no significant wealth, but what he did have was the emotional support and approval of his family regarding his wife and their marriage. From a criminal law perspective, lawmakers urge that criminal sanctions deter behavior. But in reality, social acceptance, or the lack thereof, may prove to be a stronger influence on deterrence, at least as it relates to intimate relationships and marriage.

In the HBO documentary *The Loving Story*, Richard Loving's mother talks about the fact that Richard and Mildred were happy together, and how she was happy too.[42] The documentary discusses that the area of Virginia where the Lovings lived was very rural, and multiracial couples were common, which implies that the community essentially accepted interraciality. The Lovings' small community and immediate family and friends accepted it, even though the laws of Virginia were clear that interracial marriage was a crime. Amazingly, the legal obstacles did not ruin their marriage, but instead, it endured and strengthened under the stresses of the trial. In the documentary, Richard Loving is interviewed and is asked why he does not just divorce his wife and make life easy on himself. Richard Loving responds: "I'm not going to divorce her."[43] Richard seemed clear on his desires and intentions and of only one mind on the subject: Mildred was his wife, period.

In contrast, Leonard Rhinelander was double-minded in his actions toward Alice. He married her, showing his commitment toward her, but soon thereafter publically sued her, alleging her to be a fraud for tricking him about her racial identity.[44] Yet, during the trial, Leonard sent her love letters calling her "honey bunch" and asking her not to give up on him and to fight the lawsuit so that they could be together.[45] In Leonard's defense, his behavior was likely driven not by his own will, but by the collective will of society and family pressure in particular. So, although New York appeared to legally allow multiracial families, in reality, its social norms were strong enough to ensure a multiracial family could not exist.

As I continue to play out the two love stories of the Rhinelanders and the Lovings in my mind, I am stuck wondering: Can law really change racial biases in intimate relationships? Comparing these two infamous interracial marriage cases, *Rhinelander v. Rhinelander* and *Loving v. Virginia*, I conclude that it is not law at all, but instead, society that plays the leading role in the discrimination

41. ONWUACHI-WILLIG, *supra* note 1, at 3, 30, 147.

42. *See* THE LOVING STORY, *supra* note 39, at 11:31. For more information about this documentary, see Alessandra Stanley, *Scenes from a Marriage That Segregationists Tried to Break Up*, N.Y. TIMES (Feb. 13, 2012), http://www.nytimes.com/2012/02/14/arts/television/the-loving-story-an-hbo-documentary.html.

43. THE LOVING STORY, *supra* note 39, at 19:26.

44. ONWUACHI-WILLIG, *supra* note 1, at 3.

45. *Id.* at 38.

of multiracial families—American society, not American family law, nor criminal law, nor even federal antidiscrimination law.

A contrasting example of the distinctive powers of law and society in relation to racial discrimination exists in the contemporary film *Selma*.[46] The movie tells the story of the struggle of African Americans in Selma, Alabama, to obtain access to the polls in order to exercise their constitutional right to vote. Martin Luther King, Jr., led the movement, and urged President Johnson to pursue a federal law to ensure the enforcement of voting rights. Although there was resistance to allowing blacks to exercise their right to vote, it seemed clear that law could, truly, actualize change. Yes, the Voting Rights Act,[47] when properly enforced, can, and did, in Selma and across the nation literally change equality in voting, fairness of elections, and helped to realize the constitutional "one person, one vote"[48] mandate. The resistance of the states in allowing blacks to vote was based on racial discrimination. But in comparing law's impact on racial discrimination in voting rights to its potential strength against the type of racial discrimination that multiracial families experience, it seems to me that law is impotent as a catalyst for change.

As a lawyer, it is hard for me to accept that law cannot cure the ills experienced by multiracial families. After all, racial discrimination, which is the real root of this problem, is illegal. But, even lawyers, at times, must realize that law has its limits. Thus, I am not convinced that legislative intervention, even with vigilant enforcement, will yield the result multiracial families need. Professor Onwuachi-Willig acknowledges both law and society in her analysis of "the law of the multi-racial family," and I am supportive of her proposal to amend current antidiscrimination laws to include "interraciality" as a protected category within the current statutory scheme, because it acknowledges a true and unique legal injury, as well as raises awareness of the harms experienced on the axis of interraciality. However, the deeper I ponder the proposal as a solution, the more concerned I am about the potential success rate of legal intervention of any kind. In order to ensure multiracial families are free from discrimination and free from "living in placelessness,"[49] both law and *society* must change.

IV. UNANSWERED QUESTIONS: RACE, CULTURE, AND THEIR UNIQUE COMBINATIONS

The readers' own individual knowledge, awareness, and experiences work to inform their understanding of race and the intersection of race in

46. SELMA (Paramount Pictures 2014).

47. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. §§ 1973–1973aa-6 (2012)).

48. Reynolds v. Sims, 377 U.S. 533, 565–66 (1964).

49. *See* ONWUACHI-WILLIG, *supra* note 1, at 156–98.

intimate family relationships. My initial reaction to the book, the concept of interraciality, and the idea of "the law of the multiracial family" was indeed influenced by my own family heritage from southern Louisiana, a region where being "interracial" (although it was not called that) was extremely common. Yet, notwithstanding the large numbers of mixed-race individuals, their lived experience of being interracial was dominated by a combination of the social taboo of being mixed combined with the legal restrictions of the "one drop rule."[50] The one drop rule mandated a monoracial identity for anyone with one drop of black blood, and suppressed any self-identity based on interraciality, or the multiracial family.[51] Thus, from my perspective, there have been generations of interracial blacks who do not identify as interracial, because of the legal suppression of this category and the lack of society's acceptance of the multiracial family generally. Thus, I consider the early mixed-race groups to be the first wave of interraciality, notwithstanding the fact that being multiracial is a label of self-identity that was not available to individuals at that time.

However, *According to Our Hearts* deals with what I consider a second wave of interraciality, where the legal restrictions on self-identity have been lifted; yet, the social norms are still strong and as forceful as ever. Individuals in the first wave were not placeless, because their place was clear. They belonged in the black community, which was consistent with the laws of segregation—whether those of slavery or Jim Crow. In contrast, individuals in the second wave of interraciality note a shared experience of "living in placelessness" due to the varying types of discrimination they experience as a result of their self-identity as multiracial. The book thoroughly documents this through personal interviews with multiracial families. These interviews give the book both depth and authenticity. Through the re-telling of the lived experiences of several of today's multiracial families, Professor Onwuachi-Willig gives context behind why discrimination based on "interraciality" is unique and ongoing.

"Living in placelessness" is a common experience for individuals in multiracial relationships as outlined in the book, yet some readers might still remain skeptical about this premise. As I suggested earlier, one's reaction to the book is likely connected to the reader's own individual knowledge,

50. *Id.* at 12 ("What is clear, however, is that both the legal and social notion of whiteness as a pure state of being that can be tainted by just one drop of black blood marked Alice not just as unsuitable for social recognition as a Rhinelander, but also as unsuitable for recognition as a mere white person."); *see also* Scott v. Sandford (Dred Scott Case), 60 U.S. 393, 396–97, 400 (1856); Christine B. Hickman, *The Devil and the One Drop Rule: Racial Categories, African Americans, and the U.S. Census*, 95 MICH. L. REV. 1161, 1163 (1997) ("[T]he boundaries of the African-American race have been formed by a rule, informally known as the 'one drop rule,' which, in its colloquial definition, provides that one drop of Black blood makes a person Black.").

51. *See* D. Wendy Greene, *Determining the (In)Determinable: Race in Brazil and the United States*, 14 MICH. J. RACE & L. 143, 149–58 (2009) (discussing racial classifications based on African descent). Interestingly, Leonard amended his civil complaint to allege that Alice defrauded him and in fact "had colored blood in her veins." ONWUACHI-WILLIG, *supra* note 1, at 34.

awareness, and experiences, and a diverse variety of lawyers and law students will likely be exposed to the book's text. Some readers might argue that today, in many ways, the multiracial family is not "living in placelessness" or invisibility, but rather, is celebrated and embraced by modern society. It could be said instead that it is hard to ignore the vibrant presence of the "multiracial family." I will share a few notable, albeit recent, examples.

In politics, Barack Hussein Obama II is the 44th President of the United States and the first African American to hold this office. President Obama is multiracial, with a white American mother and a black Kenyan father. President Obama self-identifies his racial heritage as a combination of Kenyan, English, African American, and Irish.[52] He has spoken about his multiracial family, his sister from Indonesia, and his in-laws from various countries.[53] Some might say that being elected President of the United States is the ultimate sign of social acceptance and that President Obama's interraciality is embraced for its unique contribution to American diversity. I am not suggesting that President Obama's rise to the White House was not without controversy, or even without unfair racial attacks to his legitimacy. But the majority of Americans have endorsed him, his mixed-race heritage, and his multiracial family.

In advertising, mainstream commercials now feature multiracial families. For example, Cheerios, a General Mills product, featured several different multiracial families in a recent series of ads.[54] In television entertainment, the primetime lineup for Thursday night on the American Broadcasting Company ("ABC") television network features two back-to-back shows that

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52. *See* Paul Finkelman, *Barack Hussein Obama: An Inspiration of Hope, an Agent for Change*, *in* AFRICAN AMERICANS AND THE PRESIDENCY: THE ROAD TO THE WHITE HOUSE 207, 207–08 (Bruce A. Glasrud & Cary D. Wintz eds., 2010).

53. President Barack Obama, Remarks by President Obama at Young Southeast Asia Leaders Initiative Town Hall (Apr. 27, 2014), *available at* https://www.whitehouse.gov/the-press-office/2014/04/27/remarks-president-obama-young-southeast-asian-leaders-initiative-town-ha.

> Many of you know this part of the world has special meaning for me. I was born in Hawaii, right in the middle of the Pacific. I lived in Indonesia as a boy. (Applause.) Hey! There's the Indonesian contingent. (Applause.) Yes, that's where they're from. My sister, Maya, was born in Jakarta. She's married to a man whose parents were born here—my brother-in-law's father in Sandakan, and his mom in Kudat. (Applause.) And my mother spent years working in the villages of Southeast Asia, helping women buy sewing machines or gain an education so that they could better earn a living.

Id.

54. *See, e.g.*, Natalie Zmuda, *Ad Campaigns Are Finally Reflecting Diversity of U.S.*, ADVERTISING AGE (Mar. 10, 2014), http://adage.com/article/news/ad-campaigns-finally-reflects-diversity-u-s/292023/. However, even as some positive changes are visible, bias against the multiracial family is still overt, evidenced by the backlash received after the Cheerios series of commercials were aired. Braden Goyette, *Cheerios Commercial Featuring Mixed Race Family Gets Racist Backlash (VIDEO)*, HUFFINGTON POST (May 31, 2013, 12:44 AM), http://www.huffingtonpost.com/2013/05/31/cheerios-commercial-racist-backlash_n_3363507.html.

contain interracial relationships as part of the main story line. In *Scandal*, the white president has a black mistress who is the main character of the show.[55] In *How to Get Away with Murder*, a black female attorney and law professor is married to a white psychology professor.[56] In beauty, Miss Jessie's, a black hair care product company, just launched a new line called "MultiCultural Curls."[57] The product is a hair gel. The words on the bottle of gel speaks to the customer in terms of her interraciality, stating: "[W]e celebrate . . . mixed race heritage and the curls that come with it."[58] ABC just debuted a new television show, *Black-ish*, based in part on the idea that the racial identity of being black is more about culture than it is about biological race.[59] Additionally, the show attempts to incorporate issues of interraciality, as one of the main female characters is of mixed race. *Black-ish* seeks to challenge the limitations of racial identity and seeks to substitute cultural identity in its place. I wonder where Alice Rhinelander would have fit in this new framework.

These are just a handful of examples in everyday life that seek to illustrate the conscious inclusion of the multiracial family. In some sense, the fact that companies are seeking the commercial business of the multiracial family sends a positive signal of acceptance, tolerance, and lack of intentional racial discrimination of the multiracial family. I believe Professor Onwuachi-Willig would also agree there is definitely progress in the right direction. But these examples do not seek to supplant the real incidents of discrimination that still also occur.

The book, although timely, may still present a challenge for those who say it is time to look beyond racial classifications. *According to Our Hearts* contains original and substantive legal advancements related to interraciality and antidiscrimination laws. However, the book exists against the backdrop of the current complex modern era, wherein societal racial norms at one end of the spectrum reveal that racial prejudice and biases still dominate, while at the other end of the spectrum, individuals display openness and tolerance espousing that America is "post-racial."[60] At the same time that some are asserting post-racialism, others are urging that it is one's culture, and not race, that is the common denominator.[61]

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55. *Scandal* (ABC television broadcast 2012).

56. *How to Get Away with Murder* (ABC television broadcast 2014).

57. *Multicultural Curls*, MISS JESSIE'S, http://missjessies.com/MultiCultural-Curls# (last visited Mar. 24, 2015).

58. *Id.*

59. *Black-ish* (ABC television broadcast 2014).

60. Ian F. Haney López, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama*, 98 CALIF. L. REV. 1023, 1024–25 (2010); *see also* Sumi Cho, *Post-Racialism*, 94 IOWA L. REV. 1589, 1591–93 (2009) (describing the harm associated with calling our society "post-racial" after President Obama's election).

61. *See* Alex M. Johnson, Jr., *The Re-Emergence of Race as a Biological Category: The Societal Implications—Reaffirmation of Race*, 94 IOWA L. REV. 1547, 1556 (2009) (challenging the continued

Still, others refuse to define themselves in terms of race or culture, and argue that "human being" is a preferred label—neutral and devoid of any race-based self-identity.[62] In an alleged "post-racial" environment, the challenge for Professor Onwuachi-Willig's proposal is that even those it seeks to protect may reject interraciality as a self-identifying category.

V. CONCLUSION

According to Our Hearts is a book about love, interracial relationships, and how law can help protect families from racial discrimination. Ultimately, though, the book is about advocacy: Advocacy, even when it is uncomfortable; advocacy, when it is controversial; advocacy, when it is heartbreaking. It forces the reader to grapple with sensitive and controversial evidence and to consider the real-life implications of a lawyer's decisions and strategies at trial. It forces one to consider creative legislative solutions to correct gaps in legal protections. It exposes its reader to differences between themselves and, potentially, their clients, in terms of race, beliefs, and experiences. It teaches multiracial lawyering, which is often absent in the legal curriculum. The book is a must-read for all lawyers and law students interested in advocacy of all types.

use of race in biomedical research and arguing "the ideal and practical resolution to this debate is to focus on ethnicity, rather than race, in biomedical research").

62. Celebrity actress Raven-Symoné was recently quoted in an interview with Oprah saying, "I want to be labeled a human who loves humans. . . . I'm an American, and that's a colorless person, [be]cause we are all people. . . . I don't label myself." *Raven-Symoné: "I'm Tired of Being Labeled,"* at 01:14, OPRAH, http://www.oprah.com/own-where-are-they-now/Why-Raven-Symone-Says-Shes-Tired-of-Being-Labeled-Video (last visited Mar. 24, 2015).