It is late on a June Washington evening, the cool air carrying only the slightest hint of the oppressive Potomac summer to come. Clarence Thomas, the youngest and most junior Justice on the Supreme Court, sits alone in his chambers. After two years maintaining the relatively low profile common to new members of the Court, Thomas is facing the most crucial decision of his young tenure. The moment of decision is at hand in the most important case in which he has yet participated, Loving v. Virginia. Loving is the latest suit arguing that a state law barring marriage between men and women of different races violates the Constitution. Though the Court has avoided addressing this question in the past, Thomas’s fellow Justices have decided that the time has come, and have unanimously voted to strike down the Virginia antimiscegenation statute. All the Justices have signed off on Chief Justice Warren’s short opinion. All, that is, save Thomas. All that remains before the decision is issued is for Thomas to take his stand. Though his position will not change the outcome of the case, he agonizes.

Before him are two drafts. At his left hand is a proposed dissent, arguing that the framers of the Fourteenth Amendment neither believed nor intended that their handiwork would invalidate state antimiscegenation laws. For a committed originalist, Thomas argues in the draft dissent, this is the end of the inquiry, whatever any twentieth-century Justice may think.

Glancing to his right, he sees his other option: a concurrence. It argues that antimiscegenation laws employ a racial classification, in violation of the color-blindness principle that lies at the core of the Fourteenth Amendment. This principle is every bit as important to him as the originalism contained in the dissent. Yet application of the two
principles yields contrary results. Hence his dilemma: dissent as an originalist, or concur on the basis of color-blindness?

The considerations that have been occupying his thoughts since oral argument vie again for attention. Try as he might, Thomas cannot ignore his personal discomfort with the notion of dissenting in *Loving*. The state has discreetly avoided enforcing its law against Ginnie and him since they moved to Virginia after his confirmation to the High Court. So upholding the law would not place them in direct jeopardy of prosecution. Still, dissenting from a decision guaranteeing the right of interracial couples to enter into lawful marriages in Virginia—he cannot help but wonder how a dissent from someone in his unique position would be used in the hands of racists who believe antimiscegenation laws are not only constitutional, but a good thing.

And he thinks of Ginnie. Their love is as real, and as entitled to respect, as that of any all-white or all-black couple. With a fierceness bordering on rage—an absolute moral outrage, of the intensity possible only for people like Thomas who believe in moral absolutes—he knows it is wrong for anyone to deny them that respect, especially on the basis of the color of their skin. It is worse still for the state to lend its official voice (and the weight of its criminal law) to that disrespect. The Court is doing the “right” thing, Thomas knows. How much better it would be, though, if Virginia would do so itself, or if the nation would use the political process to amend the Constitution to compel it to do the right thing.

Then, too, there are the jurisprudential implications. A dissent would become a central part of his legacy. It is not that Thomas is shy about vigorously advancing the uncompromising originalism in which he believes. He purposely has laid low for most of his first two terms on the Court, even quietly joining the majority opinion in *Miranda v. Arizona*, the self-incrimination case in which he was first tempted to express his discomfort with the Warren Court’s non-originalist methods. But as this second year comes to a close, the time seems right to emerge from the shadows and express his own, originalist judicial identity. In fact, Thomas is proud of the originalist analysis he has penned, knowing that it is the only stance he can take consistent with his unbending fidelity to the Originalist School of constitutional interpretation.

And that is what bothers him. The Court would be upholding the antimiscegenation statute were it employing the Originalist School’s meth-
ods—his methods. Thomas views it as his mission, perhaps even his destiny, to eventually bring the Court around to a committed, consistent originalism. He also knows that his dissent, should he issue it, would be misinterpreted in the mass media as an endorsement of antimiscegenation laws. A linkage between originalism and racism would be inimical to his goals. He wonders how long it would be (if ever), and how many law review articles and speeches it would take, before the public would grasp the difference between finding a practice constitutional, and approving of it. In the meantime, the originalist cause would have been set back by years.

Thomas suddenly becomes aware that he is growing increasingly irritated with himself. He prides himself on his decisiveness, but on this case he seems unconquerably hesitant; he senses no course which he can confidently follow. Damn it, he thinks, this will not do. Tonight, I will decide, and tomorrow I will circulate one of these opinions. He resolves to read each opinion, one last time, then make his choice. He begins with the dissent. . . .