



# The “Freedom to Marry” Case:

5 Keys to Experiencing the “This is Why I Went to Law School” Feeling

by Susan Ann Koenig

FREEDOM  
TO MARRY

By the time this issue of *The Nebraska Lawyer* is published, the United States Supreme Court will have ruled on the freedom of same sex couples to marry in *Obergefell v. Hodges*. All across the country people will be celebrating or condemning the landmark decision.

Early in 2014, our firm began work on the Nebraska case of *Waters v. Ricketts*. The suit was filed in November on behalf of seven same sex couples seeking either to have their marriages recognized in Nebraska or to be able to marry here. At the time of this writing, the case remains pending in the Eighth Circuit Court of Appeals as we await the outcome in *Obergefell*.

I am grateful to have been a part of one of the most meaningful journeys of my legal career. It started forty years ago, and this is what it taught me.

## 1. *The contributions you make will be uniquely yours.*

One of my first stops as freshman on the campus of Drake University was at the Women’s Center. It was 1974, and Ms. Magazine and consciousness-raising groups were in their hey-

day. I ate beans and rice cooked from *Diet for a Small Planet*, marched in protest of a beauty pageant, and made friends with lesbians.

The autumn of my sophomore year (when the legal drinking age was under 21), I accepted an invitation to go to a bar with some friends. Like many others who have accidentally wandered into a “gay” bar, it took me a moment to realize where I was. When I was home for Christmas break that year, I was in my parents’ kitchen telling the story of my recent venture to my first “gay” bar. I shared the sad feeling I had that this was the only place these couples felt safe to publicly sit close to one another, hold hands, be a couple. I had taken these small but precious privileges for granted since 7th grade.

I had barely finished my story when my younger brother, Tim, asked to talk to me in his bedroom. Within seconds he said, “There’s something I have to tell you. I’m gay.”

My relationship with my brother and my friendships with lesbians and gay men through my work with the National Organization for Women deepened my understanding of the daily injustices faced by people because of their sexual orientation. From families and friendships to schools, churches, and workplaces, unfair treatment was an ongoing way of life for LGBT people.

Over the years, word spread in the Omaha community that our law firm was a “safe” place for people to come for legal services. Our lawyers wrote law review articles and represented clients in landmark custody cases where sexual orientation was an issue. Years later, it seemed only natural that we would be a part of the Freedom to Marry work.

There are over a million lawyers in the United States, yet your path will be uniquely yours. You may be one of the law

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school graduates of recent years still struggling to get the job you dreamed of for that summer you endured weeks of torturous bar exam preparation. Or your current practice might be feeling routine after having achieved some mastery after years in one practice area. Nevertheless, there is no other lawyer who is just like you. No other lawyer has lived your life. Your family, your neighborhood, your adolescent adventures, your wise or foolish decisions, your opportunities, your disappointments. **Everything that you have experienced in your life prepares you for your next contribution.**

### *2. What inspires you can guide you.*

Despite decades of being a divorce lawyer, weddings inspire me. I appreciate ancient rituals that bind us to those who have gone before us and those who will follow. I appreciate the courage of two people who are courageous enough to speak their commitment into the world.

Years ago I spent one Sunday a month standing in front of a dozen people in Grand Island leading a meditation and giving a sermon, hoping to leave folks inspired for their week ahead. They hoped to start a church but did not yet have funds for a minister. This experience ultimately led to me being invited to perform weddings. Over the years, I have officiated at the weddings of three employees, one nephew, and a host of other dear friends.



We had barely crossed the threshold of what was once the small home of Nelson Mandela in Johannesburg when I was overcome with emotion. It was 2002 and our delegation of American family law lawyers listened attentively. As the guide told the apartheid story, I wept quietly. Being in the sacred space of one of my heroes, I was inspired. Justice. Freedom. Equality. When the opportunity to work for Freedom to Marry came along, the inspiration of freedom and the inspiration of marriage guided me.



When you feel your emotions rising, ask yourself, “What is it about this moment that is touching my heart so deeply?” Notice your answer. **Pay attention to those moments when you are in awe.**

### *3. Be brave.*

Practicing law demands courage. Filling our days with demands and doubts, it can bring a constant stream of insecurities for even the most brilliant and dedicated. To be ready for the day when opportunity knocks on our door to making a difference, we must practice the skill of acting despite our fear. The practice of law lets us do this every day.

I was lucky to be a part of the second wave of feminism in the 1970s. I watched the fight for justice on a host of issues while the advocates were the object of ridicule. These fierce fighters showed me that being brave was necessary if I wanted to be a part of leading change to make the world a better place.

The luxury of being a solo practitioner for most of my early career meant both the foolishness and the freedom to take cases no one else would. The federal case for the victim of ritualistic abuse by her parents. The whistleblower case against a local university. The civil suit for the woman abused by her foster parent. I paid attention to what I was passionate about and I had my mettle tested. Many times I failed. But with each effort, I built the muscle of being brave.

When the time came for the Freedom to Marry case, there were questions. Did our firm have the resources to provide excellent representation? Would our case matter, given how many others across the country were already underway? Could a small firm carry the financial impact of taking on such a big pro bono case? What if we weren't successful?

If not for those smaller opportunities over the years, the doubts might have won out. **Keep facing your fears and you'll be ready to say yes when the time comes.**

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### *4. Be willing to let in support.*

Chances are that if there is an opportunity for you to step up to a new level in your legal career, it will be in doing something that you haven't done before. It may require more time, more knowledge, or more skill than you alone have. At our firm, there was immediate and enthusiastic support for taking on the freedom to marry case. But divorce, not federal civil rights cases, are the focus of our daily practice. We'd need help. We'd need Amy.

As the Legal Director of the Nebraska chapter of the American Civil Liberties Union (ACLU), Amy Miller's dedication to justice is nothing short of magnificent. Our firm had partnered with Amy on a number of cases over the years, ranging from prisoners' rights to the civil suit on behalf of the family of Brandon Teena, a young transgender man who was raped and murdered. More importantly, Amy had led the original court challenge to Nebraska's 2000 ban on marriage for same sex couples in federal court. Judge Joseph Bataillon struck down the ban in 2005, but the Eighth Circuit Court of Appeals reversed the ruling.

I knew it would be a tremendous privilege to work with Amy again and that her extraordinary wit and humor would see us through any dark day, no matter how disappointing. Despite already having a lot on her plate—working to overturn the Nebraska death penalty and seeking driver's licenses for "Dreamers" being just two of the many causes—Amy immediately said yes. Soon thereafter, Leslie Cooper at the national ACLU office joined the team.

**The bigger the thing you are up to, the more support you need.**

### *5. Remember why.*

The reasons people enroll in law school are as diverse as the areas of practice. Some lucky ones like my law partner Angela could see themselves as Atticus Finch since they were youngsters. Others were pressured into it by family members or family tradition. Some, like me, weren't sure what to do with that sociology degree. Still others saw it as a path to earning a

good living to support their family.

No matter why you landed in the world of law, you want a work life that matters. Those of us lucky enough to have J.D. after our name have more options than many when it comes to finding that meaning through our work. As problem solvers, story tellers, or serious students of statutory interpretation, we each want to know that our work makes a difference.

Meaningful moments in the lives of lawyers look different for each of us:

The handwritten note of appreciation from a client.

A referral from another attorney to represent his or her child.

A creative insight to a complex legal problem.

A negotiated deal that leaves your client both satisfied and relieved.

When we remember why we stick with that difficult client, why we take on mentoring a new lawyer, or why we stay in a career that can keep us up at night, our underlying intentions can guide us. When we find the meaning in our work, we are more willing to get out of our comfort zone to make an even greater contribution.



In the Freedom to Marry case, the meaning was obvious. Not only was this a rare opportunity to advocate for recognition of a constitutional right, but our clients are extraordinary people. Deeply committed couples deserving the dignity of the recognition of their relationships, each is the kind of person you'd be lucky to know, whether or not he or she was your client.

*Susan and Sally:* Together for 15 years, they adopted one child, then another, then became legal guardians for a third. Sally now faces a Stage III Breast Cancer diagnosis. Heroines, both.

*Nick and Jason:* Partnered for over a decade, they are parents of a precious and precocious preschooler, although only one of

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the dads is able to be a legal parent.

*Crystal*, a veteran of the Iraq war, and *Carla*: Denied VA benefits because of their marriage is not recognized.

*Greg and Bill*: Committed for going on three decades, their dream is to get married in their home state of Nebraska.


*Jessica and Kathleen*: A lawyer and a therapist who returned to Nebraska to be near family now that they are raising their own child.

*Marj and Tracie*: Both professionals working with non-profits, they have been together over a decade.

*Randy and Tom*: A doctor and a CPA who own commercial property in Nebraska, they travel to Nebraska to care for aging family members. They've been together over 30 years.

When the dignity and the rights of others are at stake, the meaning in our work is apparent. When our clients are extraordinary people, it's simply a joy, on top of a privilege, to represent them.

I may not have gone to law school with great visions of being a part of a historic change, but when I was able to stand shoulder to shoulder with our legal team and our incredible clients, I did not have to know the ruling from the Supreme Court to experience my "this is why I went to law school" feeling.

No matter what motivated you to take the LSAT when you did, may you find that intention that takes you to this place. **Life as a lawyer doesn't get any better than this.** 

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