

## Ruth & Marty Day

*John Q. Barrett\**

June, a month of many weddings, is a time in which to think about the best in personal partnerships, including those that become marriages.

One marriage to recall is the union of Mildred Jeter and Richard Loving. In the United States each June 12, millions celebrate “Loving Day.” It is a date on which to remember the Lovings and *Loving v. Virginia*, the decision that they won in the U.S. Supreme Court on June 12, 1967. The Court held, unanimously, that the Commonwealth of Virginia’s law criminalizing interracial marriages such as the Lovings’ violated the Fourteenth Amendment of the Constitution’s Equal Protection Clause and its Due Process Clause’s substantive protection of liberty.



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Another union to remember, including in June, is the marriage of Jim Obergefell and John Arthur. On June 26, 2015, the Supreme Court, applying *Loving*, held in *Obergefell v. Hodges* that the Fourteenth Amendment requires every State to license same-sex marriages and to recognize same-sex marriages that were licensed and performed in another State. (Obergefell and Arthur, who were Ohio residents when its laws prohibited licensure of same-sex marriages, had traveled to Maryland and gotten married there.)

A third notable union that is connected both to the month of June and to the U.S. Supreme Court is the marriage of Ruth Bader and Martin D. Ginsburg. They became a couple when they were Cornell University undergraduates. On June 23, 1954, following her graduation from college and his completion of his first year of law school, they married in his parents' home in Rockville Centre, New York.

Twenty years later, Ruth Bader Ginsburg was a lawyer, a law professor and scholar, and a leading litigator for the American Civil Liberties Union (ACLU), attacking the constitutionality of laws based in gender stereotypes about women, men, and marriages.

Marty Ginsburg was Ruth's spouse and her career champion. A brilliant lawyer himself, he also was her live-in legal consultant. Indeed, in her first federal case challenging the constitutionality of an instance of gender discrimination, [\*Moritz v. Commissioner of Internal Revenue\*](#), she and Marty collaborated to win a Circuit Court decision invalidating a tax law that benefitted an unmarried parental-caretaking daughter but not an unmarried parental-caretaking son.

Marty Ginsburg died in 2010 and Justice Ginsburg died in 2020. So as of 2021, the anniversary of their wedding—2021 is the 67<sup>th</sup>—belongs in some sense to history. June 23 is a date on which to remember the great quality and the equality of the Ginsburgs' partnership, the power of their examples, and the greatness of the U.S. Constitution that they both flourished under and advanced.

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*RUTH AND MARTY DAY*

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I recently published a short article (with great photographs) in the Historical Society of the New York Courts' publication *Judicial Notice*. It is about Ruth Bader Ginsburg as a New Yorker and her 1970s ACLU litigation for women's and men's equal rights.

The article is the first mention of then-Professor Ginsburg's involvement in *Sontag v. Bronstein*, a little-remembered case that the New York Civil Liberties Union, the ACLU's New York affiliate, took to the New York Court of Appeals in 1973.

The *Sontag* case concerned a dumbbell-lifting test that New York City's civil service commission had imposed as a job qualification on two women who were school audio-visual aides—because they failed the weight-lifting test, the City moved to dismiss them from their jobs. New York's high court, voting 7-0, decided for the woman who pressed forward her claim that the City was discriminating based on her gender.

I suspect that if the New York Court of Appeals had decided the case the other way on constitutional grounds, the NYCLU and the ACLU would have sought U.S. Supreme Court review.

And if the Supreme Court had taken the case, my guess is that Professor Ginsburg would have argued it and probably won another constitutional law equality landmark.

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