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## 2b. Evan Wolfson on Gay Marriage: an Interview

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(Duan WU)

The issue of gay marriage has become the talk of the entire US almost overnight. But for Evan Wolfson (“EW”), a long-time gay rights advocate, and presently the Executive Director of “Freedom To Marry,” this is the cause he has been fighting for over the past two decades. Below is an excerpt from a telephone interview that I (“DW”) conducted on March 26, 2004, with Evan Wolfson for his insight and predictions.

DW: Congratulations, Evan, for being selected by the National Law Journal as one of the 100 most influential attorneys in America! Since the mid-1980s, you have been working on public interest and civil rights issues. You filed the amicus brief on behalf of Lambda Legal to the U.S. Supreme Court in two cases. You co-counseled in the Hawaii gay marriage case, *Baehr v. Anderson*, which you won. And you also contributed to the Vermont gay marriage case, *Baker v. Vermont*. Then you finally got to argue in front of the U.S. Supreme Court in *Boy Scouts of America v. Dale*. What were your early inspirations to enter this field of work, having gone to Harvard Law School?

EW: I have always believed in social justice and I really believe that we are here to make the world better. And while I was serving in the Peace Corp and again in law school, I was also coming out as a gay person, and coming to terms as what that meant for me. I realized that the way gay people are discriminated against and the injustice we face is wrong and can be changed, and that we have an obligation to do that both for gay people and our nation’s commitment to be a place where everyone has the right to be both equal and different. No one should have to give up his or her difference in order to be treated equally.

DW: You wrote your law school thesis in 1983 on equal marriage rights for gays, and that was when other issues facing gay people seemed more urgent, which included work place equality, housing discrimination, hate crimes, healthcare coverage for AIDS patients, police harassment. Why did you choose marriage?

EW: You can’t say that you are for equality and then acquiesce in our exclusion from the central social and legal institution of our society. Marriage is the preeminent gateway for protection and responsibility, both tangible and intangible. Marriage is a hallmark of citizenship. Marriage is a very, very important institution, and to be excluded from it has already put us in such a footing of inequality that all the rest, in some ways, seems to be dwarfed by it.

DW: How do you respond to criticism from within the gay community against fighting for access to the marriage institution?

EW: There were two kinds of arguments that were made against it. One was made by people, within our movement, who ideologically don’t care whether we have the freedom to marry or whether we should be fighting for it. Those people are entitled to their opinion; it’s just an opinion I don’t agree with. And an opinion that I think after 1993, when the Hawaii Supreme Court put the question before the country, really was beside the point. Whether you thought we should be fighting for it or not, after 1993, we *are* fighting for it and America *is* discussing it. We need to deal with that reality. But there are other people, also colleagues and friends of mine in the movement, that didn’t necessarily have an ideological opposition, but felt that it was not the right time. “We needed to lay the groundwork.” “We needed to be careful about triggering more of an attack that we could deal with.” And there were all very legitimate concerns; I just had

different positions on them. But again, as of 1993, once we were truly engaged, my view is that we have to deal with it and we have to do the best job we can.

DW: Now, even after 1993, there was still the issue of timing, how hard to press the issue, and whether America or its legislature is ready for it. How do you explain all the backlashes right now in various states?

EW: Well, there are two answers to that. Number one, I believe America is ready for this discussion and that is why we are winning the discussion, because fair-minded people are ready to hear the stories of gay couples who have made a personal commitment to each other [and who] now deserve a legal commitment to match. The right wing campaign that has been under way is not in response to what we are doing, but because they have their own agenda. They are anti-gay, but also anti-choice, anti-women's equality, anti-civil rights, anti-separation of church and state, and they are going to use this as part of their own agenda, particularly in an election year for their own purposes. And we have to fight that. You always meet some states and some people that move towards equality, while some people [and] some groups pursue their attack agenda. That is just part of it. I don't consider that a backlash. I don't like the word "backlash." It makes it sound like we did something and now they are reacting. Maybe if we hadn't asked for too much, they would've given us more. And that is just not at all the case. Martin Luther King, Jr., in 1966, gave a speech in which he said, "I hate the word 'backlash.'" And I agree with him.

DW: Do you see a difference in terms of the regions in America? When you say, "America is ready," I can see that some *part* of America is ready.

EW: Yes, that's true. America as whole, in the aggregate, is ready to accept, not yet ready to support, but to accept marriage equality for gay people. And the center is moving, in historic terms, towards marriage equality. But you are absolutely right--some are going to get there quicker than others. And that has always been the case, in every chapter of the civil rights history. Young people today overwhelmingly support marriage equality for gay people. People in certain states support by the majority marriage equality for [gay people]. Others are much more against it. The way this is going to unfold is the same way as other periods of our history.

DW: In terms of marriage, when you say "accept marriage right for gay people," does that include civil unions? Is civil union acceptable, or you need to go all the way?

EW: There is no substitute for full equality. One of the main protections that come with marriage is the word "marriage." Marriage itself tells people immediately who you are in relationship to the primary person you are building your life with. You don't need a document; you don't need a lawyer; you don't need 40 paragraphs of explanation. And people know this is somebody really important to you that has legal as well as personal significance in your life.

DW: But isn't it true that marriage, as an institution, has its roots in a lot of the religious establishments?

EW: Well, I would put it in a slightly different way. The word "marriage" talks about several different things. There is religious marriage in our country. And no government should be allowed to tell any religious official who he or she must marry. The First Amendment protects religions in their decisions whether or not to perform marriages for gay couples. It always will. But we are here talking about the legal institution of marriage, and who gets a civil marriage license from the government. When it comes to legal and civil marriage licenses, the government should not discriminate and no religion should tell the government who should get that legal

status or document. Civil union is not a whole other system that exists out there. There is only one relatively small state [Vermont] in the whole country that has civil union. And by contrast, all 50 states have, an easily understood, easily transferable, and vastly more resonant institution called "marriage." Not just like you want this one or the other one--one exists; the other barely exists.

DW: But if a gay couple got married in Canada where gay marriage is allowed in three provinces nowadays, it is not really getting married, right?

EW: That is not true at all. Those couples are legally married, and they rightfully expect that when they travel in Canada or United States, or for that matter, to China, they will be treated as exactly what they are--married.

DW: But only the state of New York has said that.

EW: Well, but I am telling you that, it doesn't matter what they say, what the history [has shown] and the general principle of the law is that a marriage that is valid where celebrated will generally be honored in other places, even places that will not themselves perform [such a] marriage. We are just at the beginning of that chapter. No matter what they say they are going to do, when push comes to shove, state, and even countries, honor marriages because they realize it makes much more sense to treat marriages as what they are than try to destabilize them. And as you pointed out, already New York has said they will honor gay marriages. Even more states will do so over time.

DW: What do you think time will do for the gay marriage cause?

EW: Most importantly, time will give non-gay Americans to see that the sky doesn't fall when gay couples are allowed to marry. They will see gay people won't use up all the marriage licenses... And they will realize that the country is strengthened, not weakened, by treating people equally. Not only is that what time will do, it's what time has already been doing. And that's why the right wing is so eager to shut this discussion down. Because they realize that given it a little bit of time and the chance to take a deep breath and to see these families and to learn what this is really about, people move toward equality. That is what is happening and that will continue to happen.

DW: What is the difference between the gay rights movement and previous civil rights movements?

EW: No civil rights chapters are going to be exactly the same. The experience of women and the discrimination they encountered is not exactly the same as the discrimination experienced by African Americans. The experience of Chinese Americans, or even Chinese in America, and the discrimination they have faced is not the same as the discrimination encountered by African Americans. But that does not mean that there aren't parallels to be drawn. Some of the commonalities are: the opponents are largely the same. The arguments made by the opponents are largely the same or very similar: the same kind of dehumanizing language--the same kind of claims that the people involved, whether the African Americans, Chinese, gays, or Jews, are somehow trying to take something away from other people or hurting other people, or destroying the society, or harming the kids, or spreading illness. I mean we see the same arguments again and again through the history of prejudice.

Marriage as the battleground is one of the commonalities. Marriage was used as a way of saying African Americans are not equal: they are not human beings; their marriages do not matter; their loving relationships don't matter. And that's what we are hearing today with regards to the gay people. The attack on the courts is very much the same. The claim that this is not something the constitution ought to address is very much the same. When Martin Luther King spoke, he said, for example, (and [Congressman] John Lewis, in making the connection to gay people, quoted this passage): "Races do not fall in love and get married. People fall in love and get married." And John Lewis pointed out that the same question is true [in the gay marriage issue]. Also another parallel is whether the government has a reason for this discrimination. The government had no good reason for the race discrimination that was rubber-stamped for centuries. And similarly here, the government does not have one for the sex discrimination.

DW: I want to talk about the international aspects of this. Civil unions, and even the gay marriages in Massachusetts, are not going to include any federal immigration rights.

EW: That is not necessarily true, either. It's just gonna take time and battling.

DW: How do you see that being played out?

EW: Eventually, these couples will challenge the discrimination that treats their marriage as second-class. And eventually, that discrimination will fall. Whether it goes in front of the court or through the legislature, only time will tell.

DW: In parts of Europe and Canada, gay rights movement has made great advances. What do you think of gay rights in general in the Muslim countries, Asia, and Africa?

EW: Clearly, there are large parts of the world that are extremely hostile to gay people and gay human rights, just as they are hostile to women's equality and rights. And they have a lot of improving to do to make the situation even minimally tolerable for those people. The world is very uneven in the human rights. And even in countries that are good on human right for some, [it is] not necessarily good for everyone. [Those countries include] the United States.

DW: You were co-counsel in the 1993 Hawaii marriage case, which you won equal marriage rights for the gays. But Hawaiian citizens amended their constitution afterward to ban gay marriage in 1998. Is there any reason to think that Massachusetts is going to be different?

EW: [First,] it is much harder to amend the constitution in Massachusetts than in Hawaii. [Second,] the public discussion has evolved much further. The public had more chance than in Hawaii to think and talk about this and to move in the direction of equality. And finally, what I believe [is happening] in Massachusetts is that the gay couples are due to get married on May 17<sup>th</sup>. And even if [the proposed amendment to the Massachusetts Constitution] does go to the voters, they will do so with actual [gay] couples being actually married, and having had the chance to really see the evidence of how no one is hurt [by these marriages.] In that case, when the voters are voting with full information on a reality, not on a hypothetical [as in Hawaii], they will vote against discrimination.

DW: The fact that the Democratic presidential nominee is almost certainly coming from Massachusetts, is that fortunate or unfortunate for getting gay marriage rights in Massachusetts?

EW: It is probably being a little bit more difficult in Massachusetts right now because I think some of the politicians at least are weighing what they do based on how they think it will affect

John Kerry's message and position. And it is probably less helpful. But in the grand scheme of things, I think [it is] not the biggest factor.

DW: What was your reaction to the whole episode in San Francisco?

EW: I think it's been thrilling for two reasons. Number one, it has given America a chance to hear stories and see faces like Del and Phillis and other families, couples that have been together for more than 50 years. [For] women who made a personal commitment to one another for half a century, why shouldn't they have a legal commitment to match it? [America also had] the opportunities to see those thousands of families waiting in line, some overnight, some in rain, not to hurt anyone, not to take anything away, but just to get married. So, San Francisco made a real contribution in terms of that opportunity to highlight this is really about these real people, these real families.

Secondly, because it was Mayor Newsom who had so much profile on that, I think he really role-modeled for the country the importance of non-gay people having the responsibility and opportunity to contribute to this discussion, that it is a civil rights moment and people should be speaking out. And he also showed young people, which includes him, and ambitious politicians, like him, [the chance] to be on the right side of the history. No civil rights movement is done solely by the people that experience discrimination. And in this case, gay people are a very small minority in this country. We need allies who may not even care that much about gay people, but who do care about the country and equality under the law. San Francisco helps galvanize a new wave of that.

DW: Thank you very much for taking time out of your very busy schedule to speak with me.

EW: You are very welcome!

(Author is an attorney practicing in Boston, Massachusetts.)