

Oral History Center  
The Bancroft Library

University of California  
Berkeley, California

The Freedom to Marry Oral History Project

Evan Wolfson

*Evan Wolfson on the Leadership of the Freedom to Marry Movement*

Interviews conducted by  
Martin Meeker  
in 2015 and 2016

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Evan Wolfson, ca. 2008

**Evan Wolfson** was the founder and president of Freedom to Marry. Wolfson was born in 1957 in Brooklyn, New York, and raised in Pittsburg, Pennsylvania. Wolfson was active in political and social justice causes from an early age. He attended Yale as an undergraduate and then served in the Peace Corps from 1978-1980 in West Africa. He returned to the United States and enrolled in Harvard Law School. While at Harvard, he first developed the notion that securing marriage for same-sex couples was an important and necessary step in the broader movement of equality for gay men and lesbians. Wolfson worked as an assistant district attorney while also volunteering with Lambda Legal, the fledgling gay and lesbian legal defense organization. He later accepted a fulltime position as a litigator for Lambda and worked on many landmark cases, including *Dale vs. Boy Scouts of America* and many dealing with discrimination against people with AIDS. Wolfson played a key role in the Hawaii marriage cases in the 1990s which resulted in the first-ever trial in which the argument on behalf of extending marriage was given its first full hearing. Wolfson established Freedom to Marry in 2001 and the organization went public in 2003. Between 2003 and 2015, when *Obergefell v. Hodges* extended marriage nationwide to same-sex couples, Freedom to Marry served as a national campaign headquarters through which strategies were devised, messages crafted, and supporters mobilized. The campaign switched into high gear in 2009 and 2010 with the expansion of the organization and the hiring of new key staff members. All along, Wolfson served as the leader of his organization, working alongside movement partners at the legal and the political organizations. In this interview, Wolfson describes the formative experiences of his upbringing and education, in particular what motivated his decision to champion the extension of marriage when few in the gay movement thought it a worthy goal. He provides insight into the legal struggles of the 1980s and 1990s, when the challenges were many and the victories few. And he describes in depth the marriage movement through the lens of his work at Freedom to Marry. In particular, he discusses the development of a multi-dimensional strategy for winning marriage first in a handful of states and, ultimately, at the United States Supreme Court.

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## Freedom to Marry Oral History Project

In the historically swift span of roughly twenty years, support for the freedom to marry for same-sex couples went from an idea a small portion of Americans agreed with to a cause supported by virtually all segments of the population. In 1996, when Gallup conducted its first poll on the question, a seemingly insurmountable 68% of Americans opposed the freedom to marry. In a historic reversal, fewer than twenty years later several polls found that over 60% of Americans had come to support the freedom to marry nationwide. The rapid increase in support mirrored the progress in securing the right to marry coast to coast. Before 2004, no state issued marriage licenses to same-sex couples. By spring 2015, thirty-seven states affirmed the freedom to marry for same-sex couples. The discriminatory federal Defense of Marriage Act, passed in 1996, denied legally married same-sex couples the federal protections and responsibilities afforded married different-sex couples—a double-standard cured when a core portion of the act was overturned by the U.S. Supreme Court in 2013. Full victory came in June 2015 when, in *Obergefell v. Hodges*, the U.S. Supreme Court ruled that the Constitution’s guarantee of the fundamental right to marry applies equally to same-sex couples.

At the very center of the effort to change hearts and minds, prevail in the courts and legislatures, win at the ballot, and triumph at the Supreme Court was Freedom to Marry, the “sustained and affirmative” national campaign launched by Evan Wolfson in 2003. Freedom to Marry’s national strategy focused from the beginning on setting the stage for a nationwide victory at the Supreme Court. Working with national and state organizations and allied individuals and organizations, Freedom to Marry succeeded in building a critical mass of states where same-sex couples could marry and a critical mass of public support in favor of the freedom to marry.

This oral history project focused on the pivotal role played by Freedom to Marry and their closest state and national organizational partners, as they drove the winning strategy and inspired, grew, and leveraged the work of a multitudinous movement.

The Oral History Center (OHC) of The Bancroft Library at the University of California Berkeley first engaged in conversations with Freedom to Marry in early 2015, anticipating the possible victory in the Supreme Court by June. Conversations with Freedom to Marry, represented by founder and president Evan Wolfson and chief operating officer Scott Davenport, resulted in a proposal by OHC to conduct a major oral history project documenting the work performed by, and the institutional history of, Freedom to Marry. From the beginning, all parties agreed the Freedom to Marry Oral History Project should document the specific history of Freedom to Marry placed within the larger, decades-long marriage movement. Some interviews delve back as far as the 1970s, when a few gay activists first went to court seeking the freedom to marry, and the 1980s, when Evan Wolfson wrote a path-breaking thesis on the freedom to marry, and “domestic partner” legislation first was introduced in a handful of American cities. Many interviews trace the beginnings of the modern freedom to marry movement to the 1990s. In 1993, the Supreme Court of Hawaii responded seriously to an ad hoc marriage lawsuit for the first time ever and suggested the potential validity of the lawsuit, arguing that the denial of marriage to same-sex couples might be sex discrimination. The world’s first-ever trial on the freedom to marry followed in 1996, with Wolfson as co-counsel, and culminated in the first-ever victory affirming same-sex couples’ freedom to marry. While Wolfson rallied the movement to work for

the freedom to marry, anti-gay forces in Washington, D.C. successfully enacted the so-called Defense of Marriage Act in 1996. The vast majority of the interviews, however, focus on the post-2003 era and the work specific to Freedom to Marry. Moreover, OHC and Freedom to Marry agreed that the essential work undertaken by individual and institutional partners of Freedom to Marry (such as the ACLU, GLAD, Lambda Legal, the National Center for Lesbian Rights, the Haas, Jr. Fund, and the Gill Foundation) should also be covered in the project. Once the U. S. Supreme Court ruled in *Obergefell* in June 2015, the proposal was accepted and work began on the project.

After an initial period of further planning and discussions regarding who should be interviewed and for roughly how long, an initial list of interviewees was drafted and agreed upon. By September 2016, 23 interviews had been completed, totaling roughly 90 hours of recordings. Interviews lasted from two hours up to twelve hours each. All interviews were recorded on video (except for one, which was audio-only) and all were transcribed in their entirety. Draft transcripts were reviewed first by OHC staff and then given to the interviewees for their review and approval. Most interviewees made only minimal edits to their transcripts and just a few seals or deletions of sensitive information were requested. Interviewee-approved transcripts were then reviewed by former Freedom to Marry staff to ensure that no sensitive information (about personnel matters or anonymous donors, for example) was revealed inadvertently. OHC next prepared final transcripts. Approved interview transcripts along with audio/video files have been cataloged and placed on deposit with The Bancroft Library. In addition, raw audio-files and completed transcripts have been placed on deposit with the Yale University Library Manuscripts and Archives, the official repository for the Freedom to Marry organizational records.

The collected interviews tell a remarkable story of social change, the rate of which was rapid (although spanning more than four decades), and the reach profound. Historians of social justice and social movements, politics and policy, and law and jurisprudence will surely pore over the freedom to marry movement and Freedom to Marry's role in that for explanations of how and why this change occurred, and how it could happen so rapidly and completely. Future generations will ask: What explains such a profound transformation of public opinion and law, particularly in an era where opinions seem more calcified than malleable? What strategies and mechanisms, people and organizations played the most important roles in changing the minds of so many people so profoundly in the span of less than a generation? Having witnessed and participated in this change, we—our generation—had an obligation to record the thoughts, ideas, debates, actions, strategies, setbacks, and successes of this movement in the most complete, thoughtful, and serious manner possible. Alongside the archived written documents and the media of the freedom to marry movement, this oral history project preserves those personal accounts so that future generations might gain insight into the true nature of change.

Martin Meeker  
Charles B. Faulhaber Director  
Oral History Center  
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December 2016

## **Freedom to Marry Oral History Project Interviews**

Richard Carlbom, “Richard Carlbom on the Minnesota Campaign and Field Organizing at Freedom to Marry.”

Barbara Cox, “Barbara Cox on Marriage Law and the Governance of Freedom to Marry.”

Michael Crawford, “Michael Crawford on the Digital Campaign at Freedom to Marry.”

Scott Davenport, “Scott Davenport on Administration and Operations at Freedom to Marry.”

Tyler Deaton, “Tyler Deaton on the New Hampshire Campaign and Securing Republican Support for the Freedom to Marry.”

Jo Deutsch, “Jo Deutsch and the Federal Campaign.”

Sean Eldridge, “Sean Eldridge on Politics, Communications, and the Freedom to Marry.”

James Esseks, “James Esseks on the Legal Strategy, the ACLU, and LGBT Legal Organizations.”

Kate Kendell, “Kate Kendell on the Legal Strategy, the National Center for Lesbian Rights, and LGBT Legal Organizations.”

Harry Knox, “Harry Knox on the Early Years of Freedom to Marry.”

Amanda McLain-Snipes, “Amanda McLain-Snipes on Bringing the Freedom to Marry to Oklahoma, Texas, and the Deep South.”

Matt McTighe, “Matt McTighe on the Marriage Campaigns in Massachusetts and Maine.”

Amy Mello, “Amy Mello and Field Organizing in Freedom to Marry.”

John Newsome, “John Newsome on And Marriage for All.”

Kevin Nix, “Kevin Nix on Media and Public Relations in the Freedom to Marry Movement.”

Bill Smith, “Bill Smith on Political Operations in the Fight to Win the Freedom to Marry.”

Marc Solomon, “Marc Solomon on Politics and Political Organizing in the Freedom to Marry Movement.”

Anne Stanback, “Anne Stanback on the Connecticut Campaign and Freedom to Marry’s Board of Directors.”

Tim Sweeney, “Tim Sweeney on Foundations and the Freedom to Marry Movement.”

Cameron Tolle, “Cameron Tolle on the Digital Campaign at Freedom to Marry.”

Thomas Wheatley, “Thomas Wheatley on Field Organizing with Freedom to Marry.”

Evan Wolfson, “Evan Wolfson on the Leadership of the Freedom to Marry Movement.”

Thalia Zepatos, “Thalia Zepatos on Research and Messaging in Freedom to Marry.”

## Interview 1: September 21, 2015

01-00:00:00

Meeker: Today is the 21<sup>st</sup> of September, 2015. This is Martin Meeker interviewing Evan Wolfson. This is the Freedom to Marry Oral History Project, session number one, and we are at the Freedom to Marry offices here in New York City. The way that we begin all of our interviews is by asking you, the interviewee, to say your name and date and place of birth.

01-0:00:59

Wolfson: Evan Wolfson, February 4, 1957, Brooklyn, New York.

01-0:01:09

Meeker: Tell me a little bit about the family that you were born into, maybe what kind of work you dad did, if your mom worked outside the home or not.

01-0:01:16

Wolfson: Sure. I was born and raised in a very close and loving family. My parents, Joan and Jerry Wolfson, have been married now, this year, for sixty years. We celebrated their sixtieth anniversary in June. I'm the oldest of four kids, and I was born in Brooklyn. My parents were both New Yorkers. I was born here; they then went and my dad did a stint in—he did his medical residency, his medical internship, and my sister was born in Pittsburgh, that's where he did it. Then they went to Texas for his Army service, and my brother, David, was born and then they moved back to Pittsburgh, where my younger brother was born, in the home that we then lived in until I went to college.

They were New Yorkers; they both grew up in New York, they met in New York, et cetera. But they kind of wanted to build a life outside of New York, raise their kids, et cetera, and they chose Pittsburgh as a great city to do that.

My dad was a pediatrician and had a medical practice, and eventually passed that practice on to my brother David, who now runs the family practice that's been in business for more than fifty years, in Pittsburgh. My mom, when I was growing up, was an at-home mom, raising the kids, keeping the house, et cetera. After most of us had gone through school, during my youngest brother's time in high school, she went back to school and got her social work degree and worked as a social worker for several years, until she retired. They're now both retired, both living in Pittsburgh.

My sister, who is after me, Alison, lives in Pittsburgh also with her wife, now; they were able to get married this year, thanks to the victory, and that was very joyous. And my next brother, David, as I said, runs my father's old practice, is now a doctor in his own right, and also lives in the home that we grew up in; my parents downsized to a smaller home and my brother took the home, and we actually this September, this month, celebrated fifty years of the house being in our family, which is a big deal for Jews. And then my youngest brother lives here in New York, as do I.

01-0:03:50

Meeker: What's his name?

01-0:03:50

Wolfson: His name is Michael.

01-0:03:53

Meeker: So, David, Michael—

01-0:03:53

Wolfson: Alison, David, Michael.

01-0:03:56

Meeker: What was it like to grow up at the home of a pediatrician? I know that there's not much to compare it to, right?

01-0:04:04

Wolfson: Right. I mean, obviously it was my experience, but it was great. He was well known in the community and very loved. Literally whenever the family would—whenever we'd go out, somebody would come up and say, "Say hi to Dr. Wolfson," to their kid or talk about how they'd been his patient and so on. And that continues to this day, even though he's been retired for many years. And that was neat. I remember in the early days, he used to do house calls, which of course they all stopped doing, but I remember going with him on a few of those and always finding it very interesting and great. So we felt like we were part of a community and that we were known in the community, and he was respected and my parents were both liked in the community. So it was a good experience, it felt very supported.

01-0:04:59

Meeker: What kind of community was it? Was it fairly diverse? When I think of Pittsburgh, I think of kind of Catholic working-class Polish steelworkers, that sort of thing.

01-0:05:11

Wolfson: Yeah, Pittsburgh, right, has that ethnic identity and that ethnic mix, but also was going through many transformations. Of course I didn't know all this articulately at the time. First of all, we lived in a community called Squirrel Hill, where they both still do live, and my brother lives, and my sister lives in the next community. Squirrel Hill was considered the Jewish neighborhood, although it probably wasn't majority Jewish, but it was heavily Jewish. So our community felt like a Jewish community within this melting-pot city that had that melting-pot identity. We lived right near several universities and near the hospitals and so on, so we were in kind of an educated, professional, Jewish milieu within this mixed city.

But as we went from elementary school to high school, we obviously came into much more contact and much more involvement with a much broader mix of students and families and so on. And I got glimpses of that even earlier on, number one, through my father's practice and seeing patients and so on, but



also I got very involved in an organization called Western Pennsylvania Student U.N. [United Nations], which was a U.N. club of several different schools; it was something like forty or fifty high schools throughout the western Pennsylvania area. So that took me out of my own school and my own community to meet with students and others, and as I rose in the organization and eventually became the secretary general, the head of the organization, I was dealing with people from this high school in this part of greater Pittsburgh, and this part and this part in western Pennsylvania, and so it became much more diverse and much more different, rural and mining and various ethnicities and so on, and certainly predominantly non-Jewish as opposed to the core of my own experience.

We were always very supported and very aware of being in this Jewish community, people knowing each other environment, and yet we were also very aware of the larger community, and I myself began getting out into the larger community.

01-0:07:36#

Meeker:

Tell me about this Western Pennsylvania Student U.N. work. So you born in '57, we're looking at early to mid-1970s at this point in time, right?

01-0:07:48

Wolfson:

Yes, well, early—I graduated high school in 1974. I was in high school from '70 to '74. Well, as a kid, I myself was always passionate about history, the great passion I retain to this day; that's the thing I most love to read, and when I travel, that's what I most want to see. But I was also very into international affairs and global and politics and government and so on. So the U.N. was a great source for me of being able to explore my interest in other countries, in travel, in history, in government, and in making the world better, human rights and so on.

So this organization really appealed to me, number one, because you enacted—each year you were assigned a country, and you were the ambassador from Belgium, the ambassador from U.S.S.R., et cetera. And it was fun debating the resolutions that were put forward by these various countries that related to actual substantive topics: the law of the sea, or global human rights, or—

01-0:09:08

Meeker:

So you were modeling, in essence, real debates that were happening in the U.N. in this student group.

01-0:09:11

Wolfson:

Yes, exactly. We were debating as if we were the U.N. delegates from X country, Y country, and so on. But then there was also the structure of the organization itself, running the U.N. So the politics of rising to the positions of authority and then power within the organization, and the internal politics of negotiating having this school's representative get to be on this committee,

et cetera, et cetera. And who gets to be the head of committee, and then who gets to be the head of the organization, and so on. So it was all very fascinating, and it played out—it gave me a chance to really dig into my interest in politics and my interest in leadership, as well as the substantive areas of political concern that the U.N. was addressing, which of course were the global concerns.

01-0:10:07

Meeker:

As secretary general of this group, did you ever go to the U.N. in New York?

01-0:10:11

Wolfson:

Not specifically in my role as secretary, but my family spent summers, typically, in New York, in the sense that we went—we the kids went to summer camp where my parents had met, the camp that my parents had met in when they were living in New York, and it was in upstate New York near Rhinebeck, in Dutchess County—which, by the way, is also where Hyde Park, the home of FDR, was, which was a whole affinity and a great interest of mine as well. And our grandparents lived in New York—one pair stayed in New York, one pair moved to Florida. So we were coming to New York every summer, if not more, and during those visits, visited the U.N. as well as museums and Broadway and so on.

01-0:11:04

Meeker:

What was the name of the summer camp?

01-0:11:05

Wolfson:

Boiberik.

01-0:11:06

Meeker:

Was it primarily young Jewish kids?

01-0:11:07

Wolfson:

It was Jewish, it was a Yiddish camp, Yiddish culture camp, and it came out of the Shalom Aleichem Folk Institutes, which was a whole network that came out of mostly socialist, as well as other, I guess, influences, Yiddish culture and so on, reaction to the tsar, reaction to Hitler, and so on. And this was the milieu in which my parents had grown up. They had gone to these schools and learned Yiddish and so on, while going to public school. This was on the side they'd done that. But their parents had been very involved, they'd helped found this camp, and had sent my parents to the camp, where they had met, and therefore it was always very, very special in the family.

And then once they began sending us from Pittsburgh to this New York camp, that was a huge adventure, and it was also one part of the year where we were, of course, away from our parents, it being an overnight camp, but also this big adventure of going to New York as a kid. I actually flew to New York on my own as an eight-year-old—that's what they would do in those days—and then my grandparents picked me up and then took me to the bus station, where I

was put on the bus to go up to this upstate camp. Things nobody would do now.

So it was a huge adventure and very formative, and we all went through it together. And eventually my father started arranging his schedule so that he could spend a month during the summer as the camp doctor, that was his vacation, and he and my mother would vacation in the camp—the camp had a guest side as well as a camper side. So they were there, but we were still obviously in the camp, but we could see them and so on. But it was something the whole family shared, and it was this reinforcement of a Jewish identity, reinforcement of a Yiddish cultural identity.

The camp was very, very committed to world peace, and so the end of the camp was a pageant that, unlike other camps where they might have a color war or this or that, this camp, the festival at the end of the camp was called “felker yontif,” which means the holiday of the peoples. And each bunk, each year, would dress up as a particular country, learn a song and a dance from that country in Yiddish, and perform. And then there were the common songs of peace and so on.

It was very inflected by the post–World War II experience, which, of course, as a kid to me seemed like ancient history, although I love ancient history, so I was very familiar with it and I read a lot about it. But it certainly seemed like a long time ago. But of course now, looking at it in retrospect, we were only twenty years away from World War II, whereas now, of course, we’re sixty, seventy years away from it, so we were much closer then to it than not.

The camp was a very, very important part of the family experience. It was definitely an important part, more than any other single thing, shaped the Jewish identity that was part of our family, and that remains part for all of us in different ways.

01-0:14:18

Meeker:

Was your family observant? Did they go to temple?

01-0:14:22

Wolfson:

We belonged to synagogues, I was bar mitzvahed, we were sent to Hebrew school, so we would go to that. We were sent to, “Sunday school,” where you learned not the language but the culture and the history and a little bit of religion. And we celebrated the holidays, which were important family occasions. But I would say that we were not really religious. It was much more a cultural identity than a religious identity.

01-0:14:49

Meeker:

The synagogues, were they reform synagogues that you went to?

01-0:14:51

Wolfson:

Actually, my parents briefly belonged to a reform synagogue, but most of the time that I was growing up it was a conservative synagogue, and I was bar mitzvahed in the conservative synagogue.

01-0:15:02

Meeker:

What's your family's longer migration history? When did they come to the U.S.?

01-0:15:02

Wolfson:

My grandparents came to the U.S. essentially in the twenties, in the early twenties. All four of them were from Eastern Europe: one was from Latvia, one was from the Ukraine border, one was from the Russian-Polish border, one was Russian, and they all, in various ways, came fleeing Russia and related areas, the bad life for Jews and the persecution there. Came to New York, settled in New York, struggled. All of them were successful in their own way.

My father's parents worked really hard, raised three kids, he was the youngest of three brothers. They had their father, my dad's grandfather, living with them for a long period of time. They were relatively poor but working, working poor. They did garment work and so on.

My mother's father, obviously also married, raised two daughters, one of whom died early; I'm named for her, my mother's older sister.

01-0:16:24

Meeker:

What was her name?

01-0:16:25

Wolfson:

Her name was Evelyn. And they were relatively well-to-do. He built a factory that became a furniture factory, Garnett Furniture Company, which was still in business as I was a young kid. I remember going to see it a couple of times. Then they retired, they moved to Florida. They had more money, relatively well off.

But all of them were—all of them spoke with an accent, all of them were new immigrants, had their feelings about the old country, their love of the new country, and their desire for their kids to succeed.

01-0:17:01

Meeker:

What were their feelings of the old country?

01-0:17:01

Wolfson:

Pretty disdainful. I mean, the old country represented, for them, fleeing, in the case that was most talked about, the tsarist oppression. My grandfather had a story of having to literally run on top of a train to escape from tsarist police officers who were trying to impress him into the draft for the tsarist army. And fled with my grandmother, and they had this long, elaborate story of

fleeing in their teens from northern Russia, Latvia, et cetera, all the way down to Odessa, where they boarded a boat and got to Turkey, and from Istanbul they were able to get to the U.S. on a ship that came in to Ellis Island.

Many years later, when they eventually reopened Ellis Island, I took my grandmother back. It was before they totally reconstructed it and really cleaned it up, so it was almost like in ruins. It was very haunting, and a great way to go to Ellis Island. It had just opened. I took her on this boat and she saw a boat that looked like the boat that she had come—not come from Europe on, but come from Ellis Island to New York on, the ruins of that like tugboat kind of thing. So it was very neat.

So they had no use for the old country, because, of course, bad as that was, they had gotten out, but then the family members who had stayed, their beloved parents, et cetera, many of them had been killed in the Nazi period. So they did not like it. Although when I, in high school, took Russian as one of my languages, which was a new thing then and also seemed very cutting-edge during still the cold war period of the early seventies, and we had a really excellent Russian teacher who made it available in our high school, they had no interest in going back to Russia, but they were, I'm sure, proud and enjoyed conversing with me in my Russian, so it brought that back for them. But they never looked back. They were about America, they were about Israel, they were about survival of the Jewish people, they were about family and about their kids and grandkids.

01-0:19:26

Meeker:

Did Zionism play a pretty big role in your upbringing?

01-0:19:30

Wolfson:

Not in an intense way. It was a given that we were Zionists. We were pro-Israel, we had family in Israel. My grandmother, my mother's mother, in particular was very close with the family members she had helped get out from Europe and had gotten them to then Palestine, now Israel.

And years later we did get to go visit them in our first big foreign trip that my parents took us kids on. It was 1971, it was the one year that they took us out of camp, and instead we had spent the summer and we went to London, Israel, and Paris. In Israel, we met this family, this branch of the family that had come to Israel and so on.

So we were always very pro-Israel. I remember during the 1967 war, going around the neighborhood collecting money for Israel, on my own initiative, and of course being very proud of the outcome of the Six-Day War and how it went.

01-0:20:29

Meeker:

Your engagement with current events, with politics, is probably pretty remarkable and pretty deep. Sometimes high school kids are into that, but it

seems like a real central concern of yours. What was your diet of news? Did you family subscribe to *The New York Times*? Was it television news? Where were you getting your sustenance of news and politics from?

01-0:20:56

Wolfson:

Yeah, news was from the local papers. They did not subscribe to *The New York Times*, and I remember when I got to college and you could subscribe to *The New York Times*, just being blown away by how wonderful it was and immediately deciding that I'm going to invest in buying *The New York Times* and subscribing to *The New York Times*, and it seemed so rich and exciting, because it was obviously just so much more news than you were getting anywhere else.

But at the time, Pittsburgh had two papers, morning and afternoon; my parents subscribed to both, so we got both papers. Then TV news would've been the other thing.

01-0:21:34

Meeker:

Were there any magazines, *The New Yorker* or *Harper's* or anything like that, that you would pick up?

01-0:21:40

Wolfson:

Not as a kid. I remember when *New York* magazine started, for whatever reason my parents subscribed to that, so we would get *New York* magazine, which again I loved, because as soon as we began going to summer camp, even though I lived in Pittsburgh, I always thought of myself as a New Yorker, and I could never fully understand why they as New Yorkers had chosen to leave. To me it was always about I'm going to get back to New York. So we began reading *New York* magazine. I don't remember reading *The New Yorker* then, as a kid. I subscribe now, but not then. I think we did get *Time* and *Newsweek*, though. In fact, I know we got *Time* and *Newsweek*.

01-0:22:25

Meeker:

Okay. Thinking about that, in the late sixties and early seventies, I know that *Time* and probably *Newsweek* as well starts to occasionally cover the burgeoning gay movement that's happening. Do you recall ever coming across any of those articles in high school?

01-0:22:47

Wolfson:

I don't recall that in high school from *Time* or *Newsweek*. I do remember seeing that later, in college or in law school. But I don't actually remember it in high school.

01-0:23:01#

Meeker:

It was probably Leonard Matlovich who was on the cover of *Time* [1975].

01-0:23:06

Wolfson:

I think that would've been later. I think that would've been when I was in college. I believe. Actually, the one thing I do remember, for whatever reason,

certain memories just stick in your head, I remember one time there was a magazine that showed two boys sitting together—it's as if they were crossed-leg sitting together with their legs entwined, sitting like this, kind of, and feeling very—not aroused so much sexually, but aroused, intrigued by it, that it was exciting to me. And I also knew it was something you weren't typically seeing, and I wished I could be one of those boys. So I remember, but I don't remember what magazine it was. I mean, it could even have been *Life* magazine or something like that, which we also got, and *Look*. *Life* and *Look*.

01-0:23:57  
Meeker:

And maybe it didn't even have anything to do with homosexuality, it was just the—

01-0:24:00  
Wolfson:

I think it did, though. But now I can't be sure. But I think it did.

01-0:24:04  
Meeker:

It's interesting how those memories become emblazoned, but they become decontextualized as well. You went to a public high school?

01-0:24:13  
Wolfson:

Went to a public high school. It was an excellent high school; it was considered to be an excellent high school. But going back to your earlier question about diversity and the makeup of the community. Even in my elementary school, there were kids who certainly were not Jewish, there were kids who were of different race and different background.

Actually remembering kindergarten, when a young boy was brought in from Korea, who had, I guess, been adopted. I didn't know that for sure. But he was the first Asian kid in the class, and it was treated as, we're going to welcome—I don't remember his name—so-and-do. And it was already a difference. But again, even in the school, even if the kids were not majority Jewish, there was definitely a feeling of it being the community, and we walked to school, and all that kind of stuff, in a familiar community in which most people knew most people, and then there were the other people.

When we got to high school, however, that changed. In high school, which we also walked to, and it was an excellent school, and it was still in our neighborhood, it was sort of distinguished by having three factions, essentially. There were the ethnic whites, who at the time people called honkies—Christian ethnic whites. There were the Jews, and there were black kids. And when I first got to high school it was 1970, and there was a great deal of racial strife, and the country had obviously gone through everything it had gone through in the sixties, and we were familiar with that and followed it. I remember when [Martin Luther] King [Jr.] was shot, I remember the aftermath and some of the riots and the fears and the concerns that there might be rioting in Pittsburgh, et cetera. I remember all of that tension and stuff in

the air. And certainly the Vietnam protests and debates I followed and was on top of and aware of and debated with my cousin and so on.

But literally the fact that there were riots in the school, and there were disturbances in that first year, and the turbulence amongst these factions was a new thing that obviously hadn't happened in our elementary school.

01-0:26:36

Meeker:

Did the Jewish faction get caught up in it, or were they kind of on the sideline?

01-0:26:39

Wolfson:

The Jewish faction was sort of in the middle. They were not, as I remember, they were not particularly the target—I mean, this is all probably a little more dramatic than it actually was, but it felt very real and very dramatic and tense and so on. The Jews were more in the middle.

But what happened then was, the next year the principal at the time retired, and he was an older—seemed ancient, but I don't know if he really was, but he seemed older—and a new principal came in who was African American and younger, and extremely dynamic and just very positive and very strong. And he really created a culture in the school that righted the school, and all of this stuff went away. I mean, I'm sure there were some tensions, but the whole atmosphere of tension and the whole division rhetoric kind of went away, and there was this notion of "Go TA!" (Taylor Allerdice), we're one school, school spirit, all that kind of stuff. And he would walk the halls—

01-0:27:46

Meeker:

How did he do it?

01-0:27:50

Wolfson:

I think he was just very hands-on. He walked the halls, he knew people's names, he met with people. Of course I only know from my own community and my own context. And it's not like we were sitting all day thinking, We're the Jews; We're the blacks. I assume he did some really deep engagement with kids in every community, and really made it clear on the one hand they weren't going to put up with this, and on the other hand there were many more ways to express yourself and to be involved. And it worked.

01-0:28:25]

Meeker:

Interesting. Were there any lessons that you drew from that, based on all the work that you were doing in politicking and U.N.?

01-0:28:31

Wolfson:

Not so much—yeah, that was not where I was—I wasn't looking at it that way at that point. I was more still having my own—I wasn't thinking about what he was doing as a leadership matter or any of that kind of stuff. I was more either doing my courses or doing the extracurricular stuff, or getting involved in other organizations like student U.N., the French club, et cetera.



01-0:29:00

Meeker:

Tell me about your coursework. What were you interested in and where did you see it leading to?

01-0:29:06

Wolfson:

Well, the courses I loved were history and literature, and actually in the beginning I enjoyed science as well. I kind of trickled out on that as it got more math-inflected, and math was always my least favorite and weakest subject, other than gym. But I loved the history, I loved the languages, I loved English literature. And we had great teachers and great classes, and lots of reading and lots of homework. But I was very into it.

01-0:29:39

Meeker:

Do you recall, when they were taking history, for instance, or even literature, had they started to kind of make the pivot to social history and the history of blacks in the United States and that kind of stuff? Or was it still the more traditional political history of elected officials and such?

01-0:30:00

Wolfson:

Two things: Number one, toward the end of my high school experience there actually was a course in sociology and international relations, so it was distinguished from history. There was a period in the middle where history became social studies and world culture, and then went back to, in eleventh grade, being advanced placement, AP, U.S. history and AP European history.

I think during the early period there was more of the interdisciplinary and less about a chronology of dates, and more about factors and forces and so on in the world cultures period and in the social studies period. I think it was ninth grade, we studied political systems and economic systems. We had two different books for the different parts of the year. So it wasn't just Charlemagne and et cetera.

But it wasn't overtly, "We're now going to do a chapter on African American studies, or women's studies." If anything, the thing I remember doing more like that was comparative religions, and they did a section on Islam and a section on Christianity, a section on Judaism, a section on Buddhism, and so on. I don't really remember a specific unit on African American studies.

01-0:31:33

Meeker:

So, given your interest in history and literature, were you pretty clear on what you wanted to do in college?

01-0:31:41

Wolfson:

Well, I was always the kind of kid who people said, "You should be a lawyer," or, "You're going to be in politics," or, "You're going to be the President." And my community expected me to be the first Jewish President of the United States. I was just back in Pittsburgh last week; I was being honored by the city council and I gave a talk at the University of Pittsburgh Law School on Constitution Day, and my family, my parents' friends came, which is very

sweet, as they always do, they turned out, in their eighties now and so on, and inevitably someone will say to somebody, often, embarrassingly, a reporter, “He was going to be the first Jewish President.”

So that was the atmosphere in which I was growing up. And I liked to argue, and they always made fun of me for pointing my finger and so on. So that it was sort of a given that I was going to go to law school as a stepping-stone toward politics, as a way of being involved in making history and social change and doing good. Which was really what did always excite me. I had no interest in making money or figuring out the law as an intellectual game that one could play, which was the way my cousin talked about it, my slightly older cousin, and we would discuss it. He liked the intellectual gamesmanship of it. He liked the competition of it. He liked to win.

Those things weren't what turned me on. What turned me on was this idea that you're helping make the country better, you're helping shape society, you're helping write history, et cetera. And so it was a given that I was going to go to college, and then to law school as a stepping-stone towards some kind of public service.

01-0:33:19

Meeker:

You know, Evan, there's still time for you to run.

01-0:33:22

Wolfson:

[Laughs] Literally last week, after I finished my Constitution Day, that was one of the questions somebody asked: Are you ever going to run for public office?

01-0:33:30

Meeker:

We'll talk about that at the end of the interview. I'll let you think of your answer.

01-0:33:34

Wolfson:

Well, good. I'll be interested to hear what comes of it.

01-0:33:39

Meeker:

When you talked about your motivation to engage in social change, and thinking about justice and law as an avenue for social change, what were the values? Did you have an idea of what it was that you saw as wrong and how that should be changed?

01-0:34:02

Wolfson:

In that period, a period in which I knew I was gay but it wasn't what shaped my identity and it wasn't the focus of my agenda, what was wrong was the injustice in the society, civil rights injustice, the disenfranchisement of African Americans and so on, subordination of women. I was very supportive of women's liberation and women's equality and what I think of now as women's empowerment. That was a very big part of the conversation as I was growing up, and there was a lot of sensationalizing, the bra burning and so on.

But there was also Mary Tyler Moore and there were all these different frontiers in civil rights and in the equal rights of women, and I was very interested in all of them.

I was also, as I said earlier, a huge FDR guy and a New Deal guy and a liberal, and really believed in progressive government and building the middle the class and all that. I was never so much an economic rights liberal as I was a civil rights and civil liberty liberal. That was what more excited me. But I certainly supported the idea of a strong middle class, of fairness in society, opportunity, and so on, and not rapacious wealth and gilded age agendas.

So as that got attacked, first in the attacks on the Great Society and Lyndon Johnson and then in the Nixon and then later even worse attempts to roll back the gains of the New Deal, or even the gains of the Square Deal under Teddy Roosevelt, I was on the side of advancing a progressive liberal U.S.

01-0:36:13  
Meeker:

And your parents were similar, too?

01-0:36:16  
Wolfson:

Yeah, they were liberal. They were political in the sense that the news was coming in, and we would sometimes talk about it, and they had political views, and they were all liberal. But they were not intensely political like I was. Although my father did some community service; he served on—there was a human relations commission. I don't remember what the exact name of it was, but it had to do with racial justice in the schools and trying to make sure that Pittsburgh was moving in the right direction in terms of integration and respect and so on, and he served on that. And he was involved in some neighborhood community organizing as well.

01-0:37:00  
Meeker:

In the late sixties and early seventies, most cities throughout the country had what they called human relations commissions; sometimes they were called human rights commissions.

01-0:37:09  
Wolfson:

I think it was human relations. There was another name for it. I'm tempted to call it something like the {RAC?}, but I think I may be confusing that with something else. But there was some name for it. But it was essentially getting the schools and the community to do better on race, racial equality.

01-0:37:28  
Meeker:

What schools did you apply to for college, and why did you end up at Yale?

01-0:37:37  
Wolfson:

From an early age, I of course knew I was going to college. Given who I was, that meant I had to go to the best. I set my eyes on Harvard, and I decided I'm going to go to Harvard, and I really want to go to Harvard. Part of the reason I wanted to do that was because Harvard had on its shield, I thought, Hebrew

letters. So I decide, just sort of unilaterally decided Harvard over Yale, Yale over Princeton, but it's going to be one of the three, and I really want to do it. So I and my group of friends were all applying for the same schools, and all very hopeful.

So as it turned out, I got admitted to Yale, rejected by Princeton, which I had really liked when I had toured, but my mother didn't particularly want me to go there, for whatever cultural assumptions she had about there, but I thought it was very beautiful. And wait-listed at Harvard. And I was disappointed, but decided, Okay, then I will go to Yale, which had been my second choice. Only then to discover that it was Yale that had the Hebrew letters on its shield. So it was a little lesson in karma, that things work out.

01-0:38:56

Meeker:

What do the Hebrew letters say on the shield?

01-0:38:59

Wolfson:

"Urim v'Thummim," which is Hebrew for "Lux et Veritas," which is Latin for Light and Truth, which is Yale's motto. And Harvard's motto is "Veritas," Truth, but it's just "Ve-ri-tas" printed out on the shield. So I had all those months of, I'm going to go to Harvard, I'm going to go to Harvard, and had based it on a faulty premise. So that was a life lesson.

01-0:39:23

Meeker:

But you still ended up there for law school.

01-0:39:25

Wolfson:

Yes, so I made up for it later. Gave them another chance.

01-0:39:30

Meeker:

So you attended from '74 to '78 and studied history, correct?

01-0:39:37

Wolfson:

Well, I had initially gone in to study political science. That was what I had chosen initially, because again, I thought politics. But I hated it. I just found it so much lingo and jargon and obvious analytics and not the juice of history. I had been taking history courses also, but I switched to a major in history, which I absolutely loved and continue to love.

01-0:40:07

Meeker:

Who did you take classes from that were particularly impactful for you?

01-0:40:12

Wolfson:

Well, not in either of those arenas. One professor who really thrilled me and I loved was Marjorie Garber, who taught a course on Shakespeare, and that was wonderful. And I had already actually had a good foundation in Shakespeare from high school, where again, I'd had some really great teachers and we had read many of the plays and I had really loved them. But this took it to a whole other level, and I really just enjoyed it.

Donald Kagan, who is a professor of classics and ancient history, I took a couple of courses with him in ancient history, which probably of all the subjects was my favorite. Although I didn't agree with many of his political views, I did agree with a lot of his historical analysis and really loved him as a teacher. I thought he was great.

I took a really terrific economics course, even though that was never my strength or my passion, but I really liked it. And probably the single best teacher, or the single most vivid classes and the ones I loved, was taught by a guy named Thomas Pangle, which was political philosophy. I absolutely loved it, devoured the books, devoured the lectures, loved it. Went on to teach it myself as a teaching assistant; while in law school I taught as a teaching assistant in the undergrad, going back over many of those same books and importing some of those ideas, some of which found their way into my law school paper and so on. Really loved that political philosophy course.

01-0:40:12  
Meeker:

So political philosophy, you're looking at Locke and Hobbes and Rousseau and Voltaire and it's that—

01-0:41:52  
Wolfson:

Yes, exactly. Hume and—

01-0:41:54  
Meeker:

Western tradition of political philosophy.

01-0:41:55  
Wolfson:

Yes, all Western. And I also enjoyed many of the, I would say, the smaller classes. Those were mostly the lectures—many of those, probably all of those were lecture classes; Kagan did one seminar. But I took several different history classes that were either smaller lectures or seminars, and loved all of them. I took one on German history from, I don't remember exactly, but it was probably from Bismarck through today. I took one on the Soviet revolution and basically cross-comparative revolutions. I took R.R. Palmer, who was the leading, or one of the leading, historians of the French revolution, took a great course with him. So several different smaller slices of history I really liked.

I mean, I also remember enjoying—this may be more than you want—I enjoyed a course I took on Aristophanes, I enjoyed a course I took on—the first psych course I took was really stimulating and interesting. I took a course on defense policy—

01-0:43:04  
Meeker:

Sounds like there wasn't much that didn't pique your interest.

01-0:43:06  
Wolfson:

Certainly in the liberal arts and the history spectrum, I really loved all of it. And actually, I wrote my law school—my college senior paper, you had to

write a big paper there too, on American history. But actually I don't think I took any American history courses while I was there. So it does show that I really did love, and do love, the range of history and can really get excited about almost any history. But also, as I said, I enjoyed the literature, I enjoyed the psych, I enjoyed—

01-0:43:45  
Meeker:

In reading political philosophy, and then later in teaching it, were there any particular thinkers who you were especially attracted to? Or maybe any particular works?

01-0:43:57  
Wolfson:

I don't know that I would say attracted to, but I really found Hobbes interesting: the starkness of the vision, but also the clarity of the analysis he came up with, even if wrong, was, I found, very interesting, and his description of society. And then really the debate amongst essentially Hobbes, Locke, and Rousseau was an interesting, obviously a really great debate.

I really enjoyed reading Socrates through Plato, that I really liked. And Hume I found interesting in the course we took. I found his thinking interesting, and the questions that arose interested me.

01-0:44:39  
Meeker:

Was John Stuart Mill being read much?

01-0:44:43  
Wolfson:

I mean, he was referenced, but I don't really remember him actually being read. Very typical experience. I can quote him, I don't think we read him as such. I think the idea was you got him through Locke.

01-0:45:02  
Meeker:

You know, later on, we'll talk about it in a few minutes, but your work in law school, the right to privacy through *Griswold* and Brandeis and everything, is something that you grapple with a lot. Was that something you were introduced to in your undergraduate years?

01-0:45:26  
Wolfson:

No. I did take one course from a law professor who taught in the undergrad as well, Charlie Black. It was a constitutional law course, so I did have a constitutional law course. But I don't remember a special emphasis or a special attraction at that point to the right to privacy and Brandeis and so on.

01-0:45:52  
Meeker:

A couple of the professors you mention—Marjorie Garber, Donald Kagan—were Jewish. Were you surprised by the number of Jewish professors there? Was different than your high school?

01-0:45:59  
Wolfson:

I would not have been surprised, but I don't remember focusing on that.

01-0:46:05

Meeker: That wasn't a reason to take their courses, for instance.

01-0:46:07

Wolfson: No, no.

01-0:46:11

Meeker: You also became involved in a lot of extracurricular activities. The political union is one of those that is still on your CV. What was the Yale Political Union and what kind of work did you do with them?

01-0:46:24

Wolfson: Well, the Yale Political Union as such, first it was a debating society and it was also a speaker society. So students would hear from various luminaries and intellectuals and others who would come in either to do debates or to do speeches. And in addition, we as the members would debate resolutions. So it was modeled on unions like in Oxford and Cambridge and so on.

It was, again, like student U.N., it was interesting in its own substantive arena, and interesting as a venue for learning politics and rising through the organization and maneuvering and so on. There were five, at my time, parties within the union, and then you rose within your party, and then you rose within the union, and you also could shine or not shine on the floor in debate, if that's what you chose to do. And meanwhile, you could also hear really interesting speakers.

So I and many of my friends were all drawn to this and were into the union for several years, and I really enjoyed the program, and I also enjoyed rising through the organization and becoming the speaker of the union, on a slate that was all five friends, with the president, the speaker, the secretary, the treasurer, and I think there was another office.

We actually, for many years, four of us, when we moved to New York after law school years later, bought a brownstone together and each lived in an apartment on one floor of the building for many years, which was a really great bonding experience, as well, as it turned out, a good financial investment. And in the hallway of the building we actually hung the letterhead of the political union with each of our names on it, from our office back years earlier.

01-0:48:29

Meeker: So that election was a sweep, it sounds like.

01-0:48:32

Wolfson: It was a liberal sweep.

01-0:48:34

Meeker: What were the five parties? Sounds like you were, you said floor speaker for the left, so I'm guessing yours was a left party.

01-0:48:41

Wolfson:

It was the progressive party, the liberal party, the conservative party, the tory party, and the party of the right. And in our day, the liberal party was the biggest party, but there were some who were more left, more progressive, who were the progressive party, the progs. And then there was the middle-of-the-road conservative party, and then increasingly more right-wing, including the party of the right, which has become now the governing party of the United States. I mean, that is what the U.S. government looked like for many years after we graduated, to our shock, with Reagan and on. That was the party of the right crowd.

01-0:49:26

Meeker:

Were there any specific people in the party of the right that we might know today?

01-0:49:30

Wolfson:

You may not know them as household names, but there are people who certainly have risen. There are people like Lee Lieberman, who was an important counsel under Bush and Regan and so on, and helped choose many of the Supreme Court Justices. Peter Keisler, who rose to become, I think, acting attorney general at one point during the Bush administration. Richard Brookhiser became editor of the *National Review*, I think, and then a writer, and he's written several well-regarded biographies of Washington and Jefferson and so on.

01-0:50:10

Meeker:

What about the liberal and left group? Were there any people that you knew in that that have gone on to—

01-0:50:17

Wolfson:

There were a couple of people who became judges or were elected to Congress and so on. Nobody rising all the way to the top. The guy I actually thought of at the time as, Wow, he was speaker of the political union and went on to political office was David Boren, who became a senator from Oklahoma, and now, I think, he's still the chancellor at the University of Oklahoma, but he's a conservative and not somebody I particularly looked up to. But he had achieved.

01-0:50:48

Meeker:

Do you recall some of those speakers who came through that you found to be particularly impressive?

01-0:50:53

Wolfson:

Oh, tons. I became press secretary of the political union in my second semester of my freshman year. So I got to essentially serve many of the speakers who came through and arrange their press conference and so on. So I got to meet Reagan, I got to meet Carter. Abba Eban was another one who I was really moved to meet. There was a guy named Vernon Belacourt, was an important American Indian movement activist. Buckley.



01-0:51:36

Meeker: So left and right, and center, I suppose.

01-0:51:37

Wolfson: Yeah, it was all over the spectrum. Moynihan. There was a big debate with Moynihan, when he was ambassador to the U.N., running for the senate.

01-0:51:50

Meeker: Were there any people, when they presented, that you found to be particularly sympathetic? Or inspiration, maybe?

01-0:52:04

Wolfson: I don't know that I found anybody, per se, inspirational. I found many of them interesting. It was interesting listening to Dean Rusk, and actually this was a small group, so it was like sitting around a table like this with Dean Rusk and hearing him be defensive and/or offer insights. That was really kind of interesting.

Abba Eban was moving and interesting. In part, when I look back at him and think that he actually never really rose—he never really got what he sought and never really became what he could've become, but as a childhood figure, collecting money for the State of Israel and so on, he had been such a prominent name during the Six-Day War. But then history kind of passed him by. That was interesting to observe. It was interesting to watch Reagan in action. This was before he was president, when he was getting ready to run the first time.

I presided over a debate between Phyllis Schlafly and Karen DeCrow, who was then the president of NOW, and that was a really ferocious, roiling debate. But I think one of the things that was interesting to me was to see how effectively Schlafly presented herself. Even though her views were so horrid, she was polished, and she was effective for her own side. And that was interesting to observe.

01-0:53:43

Meeker: Something about learning how to stay so disciplined and on message.

01-0:53:49

Wolfson: Yeah, no matter how crazy your message is.

01-0:53:52

Meeker: I'm wondering, do you recall in that presentation, was it focused specifically on feminism and gender, or did she—

01-0:54:00

Wolfson: It was a debate on the ERA.

01-0:54:03

Meeker: Did homosexuality come into that at all, do you recall?

01-0:54:04

Wolfson: I don't remember. It may have, but I don't remember.

01-0:54:09

Meeker: I mean, this is the time of Anita Bryant and the overturning of the law down in Florida, Dade County, and the Briggs initiative in California. Did this ever cross your radar? Were you starting to pay attention to some of this at that time?

01-0:54:25

Wolfson: Well, I think most of the things you mentioned came just a teeny bit later. They were '77, '78; I was speaker in '76.

01-0:54:36

Meeker: Right, so you graduated in '78.

01-0:54:37

Wolfson: I graduated in '78. So there wasn't as much, at least as much that penetrated my consciousness, or even, I think, our milieu, as you might think. That said, I also think I was not ready for it. And even though I knew I was gay and even though I had no negative feelings about myself, I really saw it as society's problem, not my problem, and again, having a loving family, even though they hadn't yet—I hadn't yet come out to them and they didn't yet know, but I didn't doubt they were going to love me, so I wasn't being bombarded by horrible messages that made me fearful or anything.

But I knew at the same time it was something not to talk about, that it was something not favored, and I didn't know really what to do about it myself. I just didn't know, "Okay, I'm gay, now what?" Which sounds stupid, but that is how I saw it at the time, and I know that's how I saw it at the time. I had vaguely heard that there was a gay bar on the fringes of campus, but I never had gone to check it out or see what that was. Partly I didn't drink, so going to a bar was never my thing, but that's not really why. I just didn't have yet the gumption or the drive to go. I was sort of just waiting for something to happen.

The two things I remember are: there were a few people who were rumored to be gay, or homosexual, as was more often used, and they were sort of the subject of a little murmuring and disparaging remarks and snotty this and that and so on, and there were some people who were more egregiously—who would make a comment if someone walked past in the dining hall. I was never in that mode at all, but nor did I rise up and push back, let alone come out. Nor did I seek them out, the people who were purportedly gay. So that was there. I mean, there was a sprinkling of comments, a sprinkling of so-called this one, that one being this and that.

Then, in addition, in I think it was my junior year, there was a big rally on campus, I think to push, if I remember correctly, it was to encourage Connecticut, where Yale is, to have a nondiscrimination law, to adopt a nondiscrimination law. And the small gay group on campus, which I had

heard of but had never been part of, I think called on people to wear pink triangles for the day, and there was a pink triangle rally and so on. And one of my roommates, not gay but always very progressive and liberal, really at the cutting edge, still one of my best friends, was very, “Solidarity! Solidarity!” Although very clear that he himself was a non-practicing bisexual, which was our joke, and he truly wasn’t gay. But he had a consistent worldview that was progressive and supportive, even though he himself may not have been even fully comfortable.

So he was, “We’re gonna go, we’re gonna go.” So I went to check it out and to see it, but I don’t think I wore the pink triangle. I can’t even remember, which is kind of telling. And I certainly didn’t get involved. But it was at that rally that I saw one of the speakers, who was our mutual friend George Chauncey. I admired him for being out and speaking and made a note, and a couple of years later, after graduating college and moving to New York, we bumped into each other at a Yale party, and I went up to him and said how much I admired him for having done that, and how I wish I had had more awareness and so on to do that myself. And we became close friends from that point on, and remain friends to this day.

01-0:58:52

Meeker:

He was there basically at the same time you were?

01-0:58:54

Wolfson:

He was, I think, either a year or two older than I was. I can’t remember, either a year or two ahead of me. But he was one of the speakers; that’s when I first saw him, and then years later met him.

01-0:59:09

Meeker:

Did you know the origin of the pink triangle at that point?

01-0:59:14

Wolfson:

We probably learned it at that point in the—and maybe even in the context of that discussion, I don’t remember for sure. And that would’ve been interesting to me, it would’ve been important. But I don’t remember—again, I don’t remember taking up—taking it as a call to action for myself. It was something I was aware of. I only really decided to do something about it myself when I left college, but I’m getting ahead of the story.

01-0:59:46

Meeker:

There are a few other things I’d like to ask you about as far as your undergraduate years, and that is you started to volunteer—

01-0:59:54

Wolfson:

Let me just say that during college, just to round out, I had girlfriends, but I knew I was gay. But I was able to enjoy having girlfriends. I certainly liked the people, the women as friends, and, at least initially, sex was sex and it was good, but I knew that that was not really who I was, and knew that I was going to need to do something about it. And again, I was sort of hoping that

something would happen, that some gay person would come into my life and help me move. But that didn't happen.

01-1:00:33

Meeker:

Did you ever come across any of the literature, you know, Gore Vidal or James Baldwin or anything like that?

01-1:00:39

Wolfson:

I absolutely read Gore Vidal. I loved *Julian* in particular, was one of my favorite, still is one of my favorite books. And Gore Vidal came to speak, and I went up to him to talk with him about *Julian*. I don't know if you've read the book. It's a brilliant, wonderful historical novel, one of his greatest books, about the emperor Julian. And there's a scene in it in which, essentially it's an orgy, but it's written a little bit elliptically, not all that elliptically but a little bit. So I asked Vidal about that scene, and partly I was kind of fishing, and he gave me such a dismissive snide, "Well, what do you *think* it's about? What do you think I meant?" Thanks a lot.

But I was certainly aware of it, read it, read literature about that, had another kind of encounter like that, although not as nasty, with Harlan Ellison, who was a science fiction writer who I had really loved and read a lot about. And again, as one of the officials in the political union, I would sometimes escort these people and so on, and I wound up in a conversation with him in a somewhat intimate setting, although we weren't having sex, but there was clearly something in the air. And that was both exciting, but also I didn't know what to do, and he either wasn't really interested or wasn't willing or whatever. So he didn't take the lead, so I didn't take the lead.

So there were definitely moments like that, and in terms of history or learning or reading and so on, yeah, obviously the more it went along, the more I was learning and aware. It's not like I didn't know, it's just I didn't know what to do. Nor was I sitting around miserable, either.

01-1:02:39

Meeker:

It sounds like this kind of period of study, almost.

01-1:02:44

Wolfson:

Study—I think I was very—I really enjoyed the friendships and the intensity of the atmosphere, of engaging, of being involved politically, of reading, of thinking. There was an energy to it that could easily have become sexual energy, but it didn't. And I was a little used to that, because that was similar to my high school experience.

Again, in high school I was aware I was gay. I was aware that I was attracted to boys. I was aware that there were girls who were interested in me. And I was also aware that my close friends, and I did have close friends, were beginning to date and make out and so on, and they kind of were wanting me to double date. And I was also aware, though I didn't use these words, that I

was sublimating my sexual experience into my leadership drive to be the head of the student U.N., and to be this figure of charisma and leadership, which I was within these circles, who somehow was therefore not having partners, because he was dedicated to the work. I was aware of—nobody ever said it in exactly those terms, but all of those tropes I was aware of.

I mean, again, without the same articulation of it, it wasn't—the experience of not having overt sex and overt dating was not a new experience to me, and I was more ready for it, but not having it, I moved forward.

01-1:04:25

Meeker:

People would say, “Oh, Evan’s too busy to have a girlfriend,” or something.

01-1:04:29

Wolfson:

I don't know if they would actually say that, but in my mind they might say that. Or they just might see me as, “Wow, he’s really driven.”

01-1:04:36

Meeker:

Or maybe they knew you were gay.

01-1:04:38

Wolfson:

Yeah, or maybe they knew I was gay, exactly. Which would have made it a lot easier, if they just had said so. Although I will just say, I don't actually think they knew I was gay, because a few years later—although they could have, and I agree, the point of what you're saying is true, and maybe some of them did. But when I did wind up coming out to people, the overriding response was not, “What took you so long,” or, “Why haven't you told us,” which it could've been. Though it was very supportive. But it was surprise.

01-1:05:18

Meeker:

Let's talk about those political campaigns. I guess you were a legislative intern for Joe Biden, who was a young senator at that point, and then you worked on the Carter-Mondale campaign, both in '76 and 1980. How did you get to be an intern with Biden?

01-1:05:40

Wolfson:

He came to speak at Yale, and I wound up chatting with one of his key staffers, I don't remember what title he held, a guy named Roger Harrison, and we clicked. And he said, “Oh, you really should apply for an internship.” And through him, I did, and they took me in. So that's how that happened.

01-1:06:15

Meeker:

What did a legislative intern do?

01-1:06:17

Wolfson:

Wrote memos on some of the legislation either in front of the Senate or that the senator was thinking of pursuing or considering. I remember digging deep into the AWACS [Airborne Warning and Control System] sale, that was a big issue when I was there. That's actually the one subject I really remember. I'm sure I worked on other things, but I do remember that one.

01-1:06:40

Meeker: AWACS sale to allies, or—

01-1:06:42

Wolfson: To Saudi Arabia. There was a big controversy at that point. I remember reading the news every day and writing maybe—I probably was writing digests of some of the news articles. But other than that, I don't remember specific legislative projects. We also got to do sort of interesting fun things. Got to go to hearings and take notes in different—the Judiciary Committee, the Foreign Affairs Committee, Foreign Relations Committee.

I remember the Magna Carta came to the Capitol, so I got to attend the unveiling of the Magna Carta in the Rotunda; that was really neat. It was the bicentennial summer, so there was a lot of great stuff to do for somebody who loves history.

01-1:07:29

Meeker: And it was a summer internship, right?

01-1:07:30

Wolfson: It was a summer internship.

01-1:07:31

Meeker: And you lived in D.C. the whole time?

01-1:07:32

Wolfson: Lived in D.C. with some of these same friends, with the non-practicing bisexual friend and a couple of others, and we slept in a crummy apartment that we rented on Capitol Hill. It was great.

01-1:07:46

Meeker: I assume you would have met the senator at some points?

01-1:07:49

Wolfson: Oh yeah, I met him repeatedly. We were never close friends or anything, but I certainly knew him, and he knew me at the time. I don't think he actually really would remember who I was from just that one internship. But he was friendly, and it was exciting whenever you got to deal with the senator, and occasionally you'd get to go into a meeting or you'd get to do this, but mostly you're dealing with the staff.

But I did meet him repeatedly, met Jill, who he was then dating, if I remember correctly; he hadn't yet married her. Of course they have the horrible story of his wife and kid. And I met the two boys, Beau and Hunter. We all went to Rehoboth Beach one outing—not just us, but the office—and I remember I sort of wound up babysitting the two boys for part of the time, and then visiting with Jill a little bit. So they were very nice. It was an exciting experience for somebody who, even in elementary school, could have recited all 100 senators and had read *Advise and Consent* forty million times and loved all those books and all that.

01-1:08:59

Meeker: Interesting. I mean, *Advise and Consent*, of course, has a pretty serious gay undertone to it, right?

01-1:09:05

Wolfson: Yes, totally. And that was my favorite book, and expressly so as a kid.

01-1:09:11

Meeker: That's something I was actually going to ask you about, as far as working for that summer in D.C., apropos of what happens in *Advise and Consent*. There's a sordid underbelly to what happens in politics; it's not all idealism, it's not all idealism making its way into policy. How did you deal with that? I mean, were you aware of the sordid side, and what did you think of that? Did you think that that was overblown in the accounts, that is was really good people doing good work? How did you address the discrepancy between the ideals and the realities?

01-1:09:55

Wolfson: I think at that point I would have thought that it was more most people are good people, serious people, trying to achieve what they believe in, even if I don't agree with some of what they believe in. I would have thought they were retrograde awful politics, but that the people themselves were serious and that the process was serious. I think that's how I would've seen it at the time.

And I would add one other thing, which is that, relevant to my current incarnation, I'm a big believer in—believer, but even more, I think, temperamentally, I see the path to what I want. I don't allow myself or spend time or dwell on all the horrible cataloguing of all the ways in which it's not good or not doable or not bad. Now, you can do that to an extent that it becomes just completely disconnected from reality and useless. But I think if you avoid that and come in here, not at that level of idealism, it's a much more effective way of moving through life, and it's a much more effective way of getting things done.

So I, by temperament and by belief and certainly as a kid and as a young person coming to Washington to work for the first time, would have been much inclined to look at things in a positive way and to take them at their—to give them the benefit of the doubt and to aim high, even if there'd be an instance or an example or an issue that would've tarnished that. Rather than dwelling on, Oh, they're all idiots, or they're all this, or you can't do anything. That just isn't the way I approach it, temperamentally or, now, philosophically.

01-1:12:00

Meeker: This might be tricky, but are there any examples you could pull out from your high school or college years when you activated that, when you were maybe confronted with some difficulties and you figured out a way to keep your eyes on the prize, if you will?

01-1:12:21

Wolfson:

This was never articulated to myself, but even what we were talking about earlier, the being gay, the too busy to have girlfriends, I never looked at any of that as a handicap or as a limitation or something wrong with me. Again, I always saw it as, “I’m going to go for what I want. I’m going to present myself. And other people may experience that as somewhat mysterious or weird or not normal or not usual or whatever, but they’ll adapt, if I sell it with conviction and force.” And again, it wasn’t like, “Okay, now I’m going to manipulatively sell this.” It was just the way I presented it.

But my own thinking about it was, “I’m going to be what I want to be, I’m going to do what I want to do, I’m going to put myself out on my own terms. I’m not going to fake this or do that or worry that I can’t.” And that worked in high school, and it worked in rising through student U.N., and it worked in navigating the sexual politics of high school and so on. And likewise in college. Again, I don’t think I took from that a specific lesson that I then applied to—I think more that same approach to life is what you can see in my approach to the work. I really believe people spend too much time cataloguing all the reasons they can’t have what they want. “Well, why don’t you focus on how you can have what you want, how you can get something done, how you can make it better.”

01-1:13:59

Meeker:

Tell me about your work on the Carter-Mondale campaign, ’76. Were you a Carter supporter from the get-go?

01-1:14:08

Wolfson:

No, I had initially been a [Morris] Udall supporter, who was more left, but of course Carter won in the primaries, and I therefore became a strong Carter supporter as a Democrat, and compared to [President Gerald] Ford and Watergate and all of that. So I became a volunteer and got involved in the campaign, and then became a deputy registrar of voters, my first and only public office. Sworn in to register voters in New Haven, to do student voter registration drives.

01-1:14:45

Meeker:

Were you living in New Haven this whole time?

01-1:14:47

Wolfson:

Mm-hmm. I was living in the dorms, in the colleges.

01-1:14:50

Meeker:

What college were you in?

01-1:14:51

Wolfson:

Silliman College.

01-1:14:55

Meeker:

I don’t know the colleges all that well, but I think it’s probably important that I get that recorded. Come around to 1980, I know this is after you’ve left Yale,



Kennedy ran a primary campaign from the left against Carter. What did you think of that?

01-1:15:12

Wolfson:

I spent the last two years of the Carter administration out of the country, in the Peace Corps, so I was not as deeply following all the rhythm of the Carter presidency in the way that people who lived here were. I thought Carter did a good job, and I thought Carter was clearly better than the alternative, meaning Reagan. So I supported Carter.

01-1:15:42

Meeker:

Let's talk about your Peace Corps years; 1978 to 1980 you were in West Africa, you taught English, you supervised a development program, you taught philosophy, health and sex education, and I also read that this was kind of the place and time of your sexual awakening. First of all, why the Peace Corps, and why West Africa?

01-1:16:06

Wolfson:

Peace Corps because, again, I always loved foreign travel, I always loved international affairs and foreign relations, I always loved history and other cultures, and I thought it would be a wonderful experience and a chance to do some good while also having this great experience. So it was an opportunity to do service that I thought would also be really exciting and very close to my interests.

West Africa really because that's what Peace Corps offered me. They take your skills and your attributes and your experience and so on—and I was twenty-one, so I didn't have a lot of skills, attributes, and experience, and I was the youngest one in my cohort—and then they match you with different countries. It wasn't like I had said from the beginning, "Oh, I really want to go to West Africa." Certainly my life could have perhaps been very different had I wound up getting a different assignment.

01-1:17:09

Meeker:

Was it your language skills that sent you there?

01-1:17:10

Wolfson:

I think in part, yes, because I had said I had French, which I did, after four years of high school and one and a half in college. Though I vividly remember the moment on the flight over the Atlantic from—we staged in Philadelphia for a few days of assembly, then we bused to JFK and flew. And I remember flying from JFK over to Dakar, Senegal, thinking in midair, "Why did I tell them I could speak French?" But, as it turned out, my French actually was relatively good and I got, I can't remember now what the number system was, but I got some relatively decent proficiency level.

And through immersion in the village where I lived, which was a very small remote village about an hour off the paved road, French was the language that I spoke day-to-day. Although I also started studying the local language,

Kabiye. But French was my language, and I was speaking in French, dreaming in French, and managed very well in French.

01-1:18:14

Meeker:

Tell me about your work there and what it was like to go from New Haven, Connecticut, to a small village in West Africa.

01-1:18:36

Wolfson:

Well, it was thrilling. It was wonderful. I remember that very first day, June 16 was my first full day, and there's a picture of me sitting on the sidewalk, essentially, on a dirt road but on the side of the road, with a little kid, who always would be attaching themselves to you and wanting to speak and wanting to play and just fascinated by you, and chatting with him, and I'm holding a Coke bottle, because we'd had this debate—I'd had this debate with my parents about what was I going to do without having soda there, and here I was like—but it was just wonderful to be in this obviously very different, very foreign, but very friendly, beautiful in its own way experience, and I loved it. I absolutely loved it.

I think it's a pretty typical pattern for successful volunteers that you have a few months where you love everything, then everything sucks. Suddenly this is hard, this is boring, this is a drag, this is never going to work, and it's just frustrating. And then if you survive that period, if you come out of that, you love it again, but you love it in a kind of more nuanced way, and that was my trajectory.

01-1:19:52

Meeker:

What were some of the challenges in that hard period of time?

01-1:19:54

Wolfson:

The challenges—I would say for me, but I think this is true for many people, the challenges are not what people imagine, at least for me. I think some people are turned off by not having electricity, not having the water, not having—constant heat. Those are the things you kind of put up with and you learn to cope with, and you sometimes even find it's almost fun in its own way to deal without.

01-1:20:18

Meeker:

It's like camping or something.

01-1:20:20

Wolfson:

Well, or you just realize what you don't need. So those things you get over. You get over never having a vegetable for four months, except onions and radishes. Or Brussels sprouts being a treat, or whatever. But what's hard is some degree of loneliness and being away from your family and friends. But I think even more difficult is when you have the recurrent experience for a while, until you eventually get through it, of you think you're on the same wavelength with people and therefore you think you're beginning to make friends and so on, but then you realize you're not, that there's this cultural gap

that you hadn't understood. Either they have another agenda or they just have different expectations, or whatever. So you think you're there and you're not there. You actually don't know what you're doing, or they don't know, or they're not sincere, or they're not on the same wavelength or whatever.

01-1:21:30

Meeker:

Is there an example of that that you can remember? I know it might seem petty now, but it might be helpful in explaining this.

01-1:21:39

Wolfson:

The easiest example is the frequency of times in which you would think you were with somebody because they liked being with you and they were your friend, but then you came to feel like they were with you because you could give them something, you could give them money, you could give them this, you could buy them this. I think it's a little nuanced, because you actually were wealthier than many of them, and in their culture it wasn't necessarily exploitative to expect that the more senior person, the richer person, would provide or at least be generous or whatever.

But there's also a degree to which it can become totally transactional and exploitative, and therefore it doesn't really feel like a real friendship. And whether in their terms it is a friendship and your terms it isn't, and it's just a difference of terms, or whether in fact it really was exploitative, objectively, you can't always separate that out in the beginning either, so that becomes hard, when it happens over and over and you just feel like you're still alone, you'll never connect, that kind of stuff. So that's the hard part. Is that clear?

01-1:22:53

Meeker:

Yes. Tell me about the work that you did. I'm particularly interested that you were teaching, and what kind of agenda were you bringing to it. I'm also wondering the context of it. You're working as a representative of the United States; what was the U.S. agenda vis-a-vis the agenda that you ended up enacting?

01-1:23:20

Wolfson:

Well, my primary job, my position was as a teacher in a junior high school–high school, which was the only junior high school–high school within whatever region it was. And the only reason it was in the village where I wound up being was because the minister of development was from that village; otherwise the village didn't have the population or the importance to support it, though it was extremely beautiful, it was like at the end of the earth. It had this beautiful remote savannah picturesque quality, and the people were very friendly and so on, but the students were coming from all different places. They had to rent little rooms or whatever in order to be taught there, and my job was officially to teach English as a foreign language, although as you mentioned, I wound up adding all these other extracurricular or additional subjects just on my own, as a favor to the school. And then in the second year they actually asked me to teach philosophy because it was a required course

for the seniors to study for the baccalaureate, and they had no other teacher to do it. So I said I could do it, make my way through it.

And I loved the teaching. I absolutely loved teaching. I was good at it, I was very engaged. Particularly in the English teaching, the idea was to try not to use French, to try not to use the other languages, and to teach in English to really immerse them and get them engaged. Certainly the good students were young and cute and smart and eager to learn, and they loved having an American at that point, it was a novelty and all that, and it was great. It was a wonderful experience.

I remember thinking for much of it, “I’m here on behalf of these students and on behalf of serving this country and helping them, rather than the Peace Corps or the U.S. government,” not because of some high political disagreements or anything, but because the bureaucracy was irritating, and so there was this feeling of, “They’re getting in my way, I’m really here to help these people and to be part of this community.”

There were different kinds of volunteers. There were some who would basically do their job, but then would get on their motorcycle or whatever and go to the nearest market town and assemble with the other volunteers and socialize with the other Americans or French volunteers or others, other expats, and would basically live from market day to market day and then do their job.

And then there were the others, who people tended to call the hermits, who would really burrow into their communities, into their small villages. Their friends would be the Togolese, and they would really be involved with that, and rarely would come to the market town or the big towns nearby, or the capital city, or hang out with other volunteers. I was much more the latter. I was more of a hermit in the community, friends with the Togolese and so on.

I also wound up, particularly over time, having some other friends among the other volunteers, and occasionally we’d get together for different—either because we all had to go for our health exams in the capital city, or once in a while there’d be a dinner and you’d go two hours to somebody else’s place. But mostly I was socializing and hanging out with my local friends.

01-1:26:57  
Meeker:

How many other volunteers were in that village?

01-1:26:59  
Wolfson:

Originally I think there were something like four, and they put three of us in one big house in the middle, right next to the chief’s compound, right in the middle of town. And the others all dropped out, leaving me alone in this giant house in the middle of the town. So it was almost like being on a stage in the middle of the town. People would literally come and watch me. We would joke about we’re their TV, because they would watch everything I would do.

So eventually I actually asked for another sweet little cute house that was just being built closer to my school, smaller, not in the middle of town, and they eventually agreed to give it to me, and I moved there and I was very happy there.

So three of the volunteers—two or three, I can't remember now, I think it was two of the four dropped out within the first three months, give or take, leaving me alone. Which I actually preferred. I never wanted to be living with other Americans, other whites. I wanted to have the experience. So that part I actually was happy with. But it was also kind of nice having the one other guy who was stationed in a different part of the village, and in a different program. He wasn't a teacher, he was an agriculture volunteer. So we would see each other occasionally, and if you just needed someone to vent with or to speak English with, there'd be that other person every few weeks. But we could easily go for weeks without ever crossing paths. So it was, in effect, being alone but having a support system. And we're still loosely in touch. We were never close friends, but we were friendly.

And then there were volunteers, I think it was half an hour or an hour away, in the nearest market town—a half hour away in the nearest market town, then another half hour on the paved road to the nearest big city, there were other volunteers there. And I had friends, then, throughout the country, because you'd met during the training, and you'd spent a few months in training before being sent to your various places. So a few of us stayed in contact, and a few of us then reconnected during the socializing that would happen over the two years.

01-1:29:11  
Meeker:

I read that—I think this was on your resume—that part of your job was doing sex education for the village.

01-1:29:19  
Wolfson:

No, not for the village, just in the school.

01-1:29:23  
Meeker:

In the school, okay.

01-1:29:22  
Wolfson:

It was like a health and sex ed class.

01-1:29:26  
Meeker:

What did that entail?

01-1:29:28  
Wolfson:

Very, very basic. Again, it was a requirement they had in their curriculum that somebody had to do. I did it with another teacher. It was just teaching the basics of—

01-1:29:43

Meeker:

Did it involve contraception teaching or anything along those lines, do you recall?

01-1:29:48

Wolfson:

I assume it did, but I don't have a specific memory of it. For me, this period was also the period, as you said, I wouldn't say so much sexual awakening; it was sexual doing. It was really the first time I began having sex with men.

01-1:30:11

Meeker:

How did that happen?

01-1:30:20

Wolfson:

I was constantly being attended to. I mean, there was just constant interest in what I was doing, who I was with, would I talk with so-and-so. People loved to hang out, students and then friends of students and so on. There was this one young man who was just hanging around a lot, and we chatted about this and that, and then eventually wound up able to start kissing, and one thing led to another. And it was obviously exhilarating, because I had never done it before.

Actually, even before that experience that I'm describing in my actual village, during training, there had again been this period where young people, teenagers and twenties and so on, would often hang around the volunteers, the teachers, and talk and chat and so on. Some of them were students in the training program, and some of them weren't, they were just peers, but they weren't students. I remember one rainy day during training there was this kid who had an umbrella, and it was pouring, so he said, "Do you want a ride? Do you want me to escort you back to your house in the rain?" And I did, and we were both soaking wet, and again, we started talking and one thing led to another, and we started making out. And again, that was just absolutely exciting. And we stayed friendly throughout the summer, essentially, until I went to my village. And there were a few other instances where flirtation or conversation led to seduction, led to sex.

01-1:32:14

Meeker:

Did you get a sense of what the society's approach to homosexuality was?

01-1:32:20

Wolfson:

Oh, it was absolutely forbidden. It was illegal, criminalized. And many would say things like, "We don't have that here, we don't have homosexuality here, this is a Western thing." And that was the idea that was put out by many, not all, but many. And what I discovered was what I often describe as one of the two major discoveries that later led to my writing my paper, which was that as I was having sex and becoming friendly and having real friendships with a large number of guys during these two years, many of the guys I had sex with were not, I would say, objectively gay. They were either curious or horny or accommodating, and we would have sex and they might enjoy it or they

might say, “Eh, well, it’s not really for me.” Or they were learning how to have sex with a girl, how to kiss well, how to do this, how to do that.

But they weren’t really gay, it wasn’t really what motivated them. They were either doing it for me or for curiosity or just for casual fun, and for them it didn’t have this intense charge, it just wasn’t their thing. But some of the guys that I had sex with, I think, and thought then, if they lived in a different society, would probably be gay. They would not just be homosexual, they would be gay. But instead, they were going to grow up to marry women and to have to lead a life of certain kinds of restraints and so on, never entirely fulfilled, probably not terrible but not great.

And so what that taught me as a twenty-one-year-old was, who you are is profoundly influenced by the choices your society gives you, and even the language your society gives you. And even on something as innate, as important as your sexual and romantic attractions, it can be shaped by society’s restrictions, society’s language, and so on. And that insight is something I then—it wasn’t a brilliant new discovery, but it was new to me as a twenty-one-year-old, and I think it was one of the major things that led me to write my paper later, when I wrote about the importance of claiming this language of marriage.

01-1:34:57

Meeker:

What was the language in Togo?

01-1:35:01

Wolfson:

Well, the national language was French. Is that what you mean?

01-1:35:06

Meeker:

But the language of homosexuality, actually.

01-1:35:08

Wolfson:

No, there was no language. It was never talked about. I remember one time walking to school, on the school bulletin board in the middle of the field, they had, for whatever reason, they had one of these—they would often have official announcements from the government with stamps and so on, and it was a dictatorship, and it was French colonial, so they were very into formalities and flowery language, lots of stamps. So there was one of these things, and it was the decree of such-and-such, and it was about homosexuality, and it was sort of restating that homosexuality is illegal and could be punishable by prison, dah-dah-dah. And just sort of out of nowhere, that was there one day. And I was terrified. It was a really scary thing.

And one of the things in the Peace Corps is, you tend—at least in those days; I think it’s different now—but you tend to read whatever you come across, whatever book you find, or somebody leaves you this and so on, so you’re reading this sort of random stream of things you acquire. So I went through this whole prison literature phase, because somehow Solzhenitsyn was there,

so I had this period where I was just scared to death that I was going to be thrown into prison.

011:36:27

Meeker: Because of the relationships you were having?

01-1:36:30

Wolfson: Right, because of having sex with men.

01-1:36:32

Meeker: But it didn't stop you.

01-1:36:34

Wolfson: It didn't stop me. Maybe one night here or there. There were some scary nights, where after somebody would leave, I would think, "Oh my god, what if somebody decides to report us, or what if they claim this or that, or whatever." But nothing ever happened.

01-1:36:49

Meeker: Were you getting a reputation?

01-1:36:50

Wolfson: Well, not that I'm aware of, but I wouldn't be surprised. Because it's a small village, and people are not stupid, and I imagine people talked more than I thought then. Then I was twenty-one, twenty-two, twenty-three, so a little bit naïve. Now, looking back on it, I can imagine that somebody must have talked to somebody, and people were probably not as oblivious as I might've thought.

01-1:37:19

Meeker: Did you ever get a sense of how they would've talked about it?

01-1:37:25

Wolfson: Well, you know, officially, as I said, officially it was illegal, and the general tone of the culture was, this is the way things are and therefore other ways are just ridiculous, or we don't have that, or whatever. That was the initial sort of tone. This is the way things are. Men do this, chiefs do that, animals do—it was just kind of this is the law of nature, this is the way it is. They'd never use that phrase, but—but then beneath that, people are people, so of course not everybody would think that way, and of course it wouldn't really operate that way, even if there might be, even on the tendency on the part of some people to know better, a willingness to say something dismissive like that as their first response, right? So all of that was there.

I guess the other factor, though, is they were very friendly. It was a very friendly country, it was a very friendly people, and a very friendly community, and I was helping and doing good things, and I think I was liked and respected. So it might have been just more like a puzzling, odd thing that some people might have noted and decided not to pay attention to, or didn't care, or it really didn't surprise them because that's what white do, some of them might think.



01-1:38:54

Meeker:

Did you ever talk about it with any people that you had sex with? Or was it sort of something that just would happen and wasn't really part of conversation?

01-1:39:08

Wolfson:

There was a little bit of conversation occasionally, but there was not a lot of meta conversation. I was young and into it, and they were mostly, most of them, into it in varying ways. We didn't have a whole political—I mean, maybe a little bit, I think a little bit. There would be occasional conversations. I'd be asked all the time, are you married? And I would answer no. Then there'd be, well, do you want to be, or things like that. And sometimes I would say something like, "I don't think that's really what's for me." I don't know that I would take it that much more in the conversation, but occasionally with some people I would probably say, "I'm going to have a boyfriend, I'm going to build a life together with a man." I think, again, some would think that was ridiculous, but they wouldn't feel a huge need to correct me, it would just be a "pfft," or that's what they do. But then others probably thought, well, good for him.

I stayed in touch with many of my former students and my friends for many years, and then of course that has trickled off, but I'm still loosely in touch, or occasionally in touch with one or the other, and with the advent of the internet there was a sort of new wave of being in touch with a few people in a way that we obviously never dreamed of back then. So there are many who know who I am now and what I've done since then, and there's never been one negative anything. Even when some of my former students or friends have written about their lives, and they've gotten married and they've done this and they've done that, there's never any, "What the hell are you doing," or "What are you thinking, or I can't believe you never blah-blah-blah." It's just kind of matter-of-fact and friendly, and more about the person, and that was my experience of them as well. It was more about the personal relationship.

But there was that overlay of fear, and that overlay of knowing it was not allowed, and that awareness that while I might have some freedom to navigate, and certainly a freedom to leave, they don't.

01-1:41:34

Meeker:

So when you were there, I imagine you were thinking about what was next for you, law school, and I imagine you applied to it from there, right?

01-1:41:43

Wolfson:

Right. Yeah, I actually needed assistance from the State Department, and actually when I got admitted, I found out from a cable I got signed by, I think it was Warren Christopher at the time, "Admitted to Harvard. Report in two weeks." It was very dramatic and funny and cool to get that through the Peace Corps diplomatic service.

But what I did do was, I had gotten—when I was in college, I had applied to law school, and again, I aimed high. I wanted to go to Harvard, and had applied to Harvard and to Yale and a few others, and I think this time I got waitlisted, if I remember correctly, at Yale, and got accepted at Harvard. So I wanted to go to Harvard, I wanted to have that change, and I wanted to finally get that Harvard degree, albeit with the wrong seal. I had asked them, would they defer for two years so I could go to the Peace Corps, and they said no. So then I turned Harvard down. So now we were even.

When the time came now in the Peace Corps to apply for law school, I thought, “Okay, I still want to go to law school,” but I also thought to myself, You know, if I am meant to be a lawyer, I will get in, and I’m going to only apply to Harvard, and presumably if they had taken me once before, I’m only a stronger candidate now. They should take me, and fate will decide. So I only applied to Harvard, and got in.

## Interview 2: September 22, 2015

02-0:00:19

Meeker:

Today is the 22<sup>nd</sup> of September 2015. This is Martin Meeker interviewing Evan Wolfson. This is interview session number 2, and we are at the offices of Freedom to Marry, and this is the Freedom to Marry Oral History Project. So I think I got everything down. Yesterday we got a bit about your family background, upbringing, education, time in the Peace Corps, and we were just on the verge of you entering Harvard School of Law. Why don't we start there. When you enrolled in Harvard—I know that you had applied before you got in the Peace Corps and then spent two years in the Peace Corps and then applied again and were readmitted—did you have a pretty clear idea of what you wanted to accomplish in law school upon enrolling?

02-0:01:10

Wolfson:

No, I would say not. I had a very naïve idea of what it was going to lead to, and again, the idea was always that—it wasn't so much that I was drawn to law, although I liked law, I watched legal shows, *Judd, for the Defense* and so on, on TV, and I read of Clarence Darrow and read different cases and stuff. But it was more as a stepping-stone toward public service, politics, government than practicing law itself. I didn't really have a clear idea of what law school would really be like.

Coming into law school from the Peace Corps, I think literally within two weeks I went from my small village in Africa where, as I said, you kind of read whatever floated your way, garbage books, ridiculous books, deep novels, philosophical, technical—but speaking French for two years and being really immersed in speaking French, dabbling in the indigenous language in my little village, which I learned enough to sort of go to the market and banter, to now reading this very technical, very heavy, very deep English law writing, and voluminously. And it was incredibly intense just to have that shift in two weeks. It just felt so thick and intense.

02-0:02:42

Meeker:

What did your first year of coursework entail?

02-0:02:47

Wolfson:

It's a very standard list of courses that they give: criminal law and procedure, contracts, torts, civil procedure, property is the basic—

02-0:03:02

Meeker:

Was there anything in particular about those courses that attracted you or was interesting, or did it seem kind of distant from the public policy, politics side of law?

02-0:03:16

Wolfson:

Well, it wasn't that I was particularly interested in any one of those areas, but the way in which they walk you through the material and encourage you to wrestle with the material and did the Socratic questioning, and new ideas that

I hadn't really thought about. For example, torts is an area that I'd never, ever thought about; it's basically wrongs and harms and how the law of negligence and the law of who's liable when what does what. There are all kinds of weird, wacky cases that you were reading, about the marimba player and the exploding suitcase and whatever, so it was entertaining, but it was also, Hmm, yes, you could argue this, or you could argue that. I did find that very interesting, although only up to a point.

As I said, I can be interested in it, but then eventually, if it doesn't lead somewhere more substantive or what I think of as really important in itself, not just important as sort of a theoretical construct, I'm not that interested, it becomes an intellectual parsing and gamesmanship that I'm limitedly interested in, although others are fascinated in. But it was certainly, for a period of time, quite interesting, and torts actually turned out to be my best subject in law school, something I had no interest in and never had thought about, never have done again. But I got an A+ in that.

But even more than just the legal reading, the wrestling with the ideas, the professors were mostly good to excellent, the atmosphere was very stimulating. I was now back in a dorm with other people; after two years in the Peace Corps, that was a different experience and an enjoyable one. And I knew now that I was gay, which I had known before, but I knew now that I was going to do something about it and I knew what to do about it. And I spent that first year particularly building a life, figuring out what it meant to be gay now in the United States.

So I think even maybe more than when I left off in college, although I had a very close group of friends, who remain my closest friends to this day, the roommates, we still get together, the roommates and the partners and the wives and the kids are all one big extended family now, so we have a very close relationship, but I hadn't been out to them then and now I started coming out.

So it was a good period for me, that first year of law school. Very intense, very thought-provoking, a deep immersion in something different, but I also knew I was on the path, without knowing where it was exactly going to go, the path that I wanted to be on.

02-0:06:04

Meeker:

How did you integrate being an out gay man into your life at that point?

02-0:06:09

Wolfson:

Well, I began figuring out how to meet other guys in the United States, and therefore people I could theoretically build a life with, unlike the friendships and the sex and the romance—not even romances, but crushes and so on that I was having in the Peace Corps, which were going to be limited by my being

there for two years and it being obviously a restrictive environment. Here, I could hope to have what I wanted to have, somebody in my life as a partner.

So I did the various ways of exploring how to meet people and so on that I could figure out, personal ads—this is all before the internet, so it was a very different world, going to my first gay bar, et cetera. Obviously in Cambridge in the eighties there was now much more visible, much more evident what to do, the thing I'd gotten stuck on back in college, and I myself was now ready and able to do it and knowing what I wanted. It was definitely I put a lot of time and energy into, and I would say that I put at least as much energy into that project of figuring out what my life was going to be as a gay person with love in my life as I put into my studies.

02-0:07:29

Meeker:

Did you find it easy or difficult to find dates and people to explore romance with?

02-0:07:35

Wolfson:

I think the constant challenge is it's easy to find people to have sex with, it's easy to find people to have a first date with, but it's always a challenge to find the one who you like who likes you and you're both in the right place at the right time to date. So it took a while before I was really dating, but certainly in the beginning it was fun to be exploring and to be meeting people and just to even have people who turned out not to be somebody you wanted to date but you could be friendly with.

02-0:08:07

Meeker:

You had said that bars weren't really your scene, and you said that you had tried personal ads. A lot of times people will go to organizations, and I imagine in Harvard and around Cambridge there were probably a plethora of social organizations and political organizations. Did you get involved in any of those?

02-0:08:25

Wolfson:

You know, there may have been, but I don't recall there being, and I wasn't particularly aware of them. I assume there was an undergraduate group, and I think they may have organized some dances or social events that I might have gone to occasionally. But the law school had a very low-key, very under-populated gay group, and it wasn't really until my third year that I really got involved with that group, and I have some friendships that still come from that period.

It varied from year to year as different waves of students came in, and the first two years there weren't that many who were openly gay and it wasn't a very active group. And I actually wasn't feeling the need for that at that point. I was, at that point, as I said, doing my own dating, my own exploring, my own having sex, et cetera. I was doing law school, I was teaching as a teaching assistant, teaching political philosophy, I was working in campaigns. And I

was coming out to my real friends, my already friends, and they all remain my friends, and I was coming out to my classmates, and I was coming out to my family. So there was plenty of activity and plenty to keep me busy.

02-0:09:49

Meeker:

In coming out, did you have a range of experiences? From the way that you talk, it sounds like it was all fairly positive for you.

02-0:09:56

Wolfson:

It was, yeah. I can't think off the top of my head of any bad experience. I know with one friend, a newer friend from law school—several of my college roommates had also wound up in Cambridge, either in law school or in the area, so I still had that circle of friends, and in my first year I was in the dorm, this little intense group of new people, but then in the second and third year I roomed with—took an apartment with one of my best friends from law school—sorry, from college, who now was also in law school, so he and I were rooming together with a new friend, who I'd met that first year of law school.

The new friend was from the Midwest, religious, and a wonderful person, but the whole idea of gay to him was a new thing. So I kind of broached the subject in this abstract, "So how would you feel if someone you knew was gay?" And he, "I couldn't be friends." And I kind of pushed him a little bit and was, "Well, but it's the same person you've been friends with all along, you're just learning something new." "Nah, I couldn't, I couldn't do it." So we let it sit for a little while, and then eventually I did come out to him while we were still rooming together, and of course, true to form, he's a wonderful person, and so he took it in and sat with it maybe a day at most, and was wonderful, and remains a close friend to this day.

So as far as I can recall, that was really like the worst experience I had. I mean, obviously it's not particularly bad, and I think it's reasonable to give people a little space, and no matter what they think they think, give them time to experience it and act right. No matter how they predict they're going to be, don't take that at face value.

02-0:11:58

Meeker:

I think that if one thing can characterize your career, and I suspect there are many of them, it strikes me that you are very good about studying what the right message is and then adhering to that with great discipline. It sounds to me like you almost kind of developed that approach or used that approach that you'd already developed in coming out to people in your life, that it wasn't just sort of an emotional outburst or revelation, but you thought about it in a very deliberate sense.

02-0:12:34

Wolfson:

Yeah, I think both deliberate in some ways and also intuitive. I think it is something I'm good at, is reading somebody and figuring out how to persuade

them, how to engage them. And that does have its roots, or at least an association with being gay. I mean, I remember explicitly in high school thinking of myself as being a good listener and good at reading people and good at just knowing, when I opened my mouth, what would be the right thing that would come out to engage that person, and be able to persuade them or get them to do what I want or help them clarify what they're going through. And they might describe, in some meandering, incoherent way, what they were thinking or feeling or going through, and I could, when I opened my mouth, the right thing would come out and crystallize everything they just said for them, let alone for the dynamic.

And being aware of that skill or quality in high school, and aware that it, in part, had to do with being gay, it had to do with I was thinking on several different levels already than they were, because I had to think about my relationship and who I was in a way that they weren't aware of, while also putting forward the qualities and things that they were attracted to in me.

So yes, I think that is something that I've had and been good at, and it's one of my qualities. And it does mean that, although occasionally, of course, I get grumpy or peevish or need to vent or whatever, I don't see that as what most of conversation is about. It's certainly not what really trying to move somebody is about. It's not just making yourself feel good, it's how do you get to where you want to go, and how do you help that person get there? You have to meet them where they are and read them and see their potential, even if they don't see their potential. As I said, you don't just take what they think they're going to think as the answer; you think about how they're likely to be able to get to a right place and how to help them. So yes, I think that is something I've been good at.

02-0:14:57

Meeker:

So the years 1980 to 1983 were a pivotal but terrifying period in gay history, because I think it was '81, July of '81, that the famous *New York Times* article first reports on a mysterious illness seen amongst gay men. What was your first awareness of what eventually became known as AIDS?

02-0:15:20

Wolfson:

It was definitely in that period, I don't remember the exact date. I don't know if I actually literally saw that *New York Times* article, but I certainly remember a cover story in *Newsweek* about it, I remember hearing about it, it was definitely in my consciousness if not the first year, although it might have been the first year, but certainly by the second year of law school, so in the '81-'82 period.

02-0:15:45

Meeker:

How did you respond?

02-0:15:46

Wolfson:

It was scary. It was really frightening. Now, you know, it was still a cloud on the horizon, it wasn't yet the cataclysm and all-consuming life-shaping environment that it became and was, for me, when I moved to New York in '83. But in law school, it was still kind of happening over there, but it was a cloud and it was a cloud that related to me. So it was scary.

02-0:16:13

Meeker:

Were your new gay friends and acquaintances talking about it? Was it something that was on the agenda?

02-0:16:23

Wolfson:

I think at that point it wasn't hugely talked about. It may have come up in a few sexual encounters, of, "Should we be doing this, or should we be careful with that," or whatever, but it certainly didn't prevent there from being a fair amount of sexual encounters available. It wasn't something we talked about all the time.

02-0:16:51

Meeker:

And this would've been—'83 would've been—

02-0:16:52

Wolfson:

And I think that has to do, in part, with we were in Cambridge, so we were isolated, we weren't in New York or San Francisco or one of the epicenters at that point. It hadn't yet gotten the degree of total national attention that it had a couple of years later with Rock Hudson and Reagan's adamancy, or obliviousness, and the real greater political battles that were still to come. There wasn't yet ACT UP [AIDS Coalition To Unleash Power], there had just begun to be GMHC [Gay Men's Health Crisis], but it wasn't yet a household name. So in part it just wasn't there yet, and in part we were physically removed. And we were students; we were in a bit of a bubble, even if we thought we were reading—well, we were reading the newspaper, and I was aware of it, but it wasn't what was shaping my day-to-day life at that point.

02-0:17:44

Meeker:

You said that you had engaged in some political campaigns during your time at Harvard. I know that you'd worked on Dukakis's 1982 gubernatorial campaign. Let's see, I guess that would've been a few years after Carter was defeated by Reagan, right when you first arrived at law school.

02-0:18:09

Wolfson:

Carter was defeated shortly after I started school.

02-0:18:11

Meeker:

Did you participate in that election at all?

02-0:18:13

Wolfson:

I think I had come back a little too late. Actually, am I right about that? No, actually I think I did. Is it not on the resume? I think I did work in—yeah, I think I did work in the campaign; I think I coordinated a few towns.



02-0:18:31

Meeker:

I mean, it is on there, so I don't know the extent—you would've just been starting law school.

02-0:18:38

Wolfson:

I had just started law school, but I did sign up to be a coordinator, and I ran a few towns, which meant organizing signs and people being out there visibly and making sure the voter registration was happening and so on. Yeah, Everett, Malden, Medford, I think, a few of the towns. Which then I applied in my Dukakis campaign a year later. So basically, while in law school I was doing everything but law school.

02-0:19:09

Meeker:

But still doing law school well.

02-0:19:12

Wolfson:

Well, I was doing well in school, but—I mean, literally, actually, it was sort of a standing joke amongst my friends, but in the second year, or at least one semester in the second year and possibly the entire second year, I never set foot in the library.

02-0:19:26

Meeker:

And you're proud of this. [Laughs]

02-0:19:26

Wolfson:

I wouldn't say that. Now I'm not. At the time it was an achievement.

02-0:19:36

Meeker:

Was there anything about these campaigns that you worked on, for instance, the Dukakis campaign, that stands out to you as being memorable or a teaching experience?

02-0:19:44

Wolfson:

Well, I met some really interesting people: John Sasso, who went on to be his campaign manager in the '88 campaign; Jack Corrigan was the field director, I believe, and we remain in touch loosely on Facebook. So I met interesting people. Again, it was a good experience in just the granular nuts and bolts of politics, and that was interesting.

It was painful when Carter lost, because I just never thought that was going to happen. I remember waking up the next day in Massachusetts, where Reagan narrowly won also, and going out in the street and just looking at people like, "Who are these people? Where did they come from?" As if the invasion of the pod people—it just had never occurred to me. Which was a good lesson in don't be in your own bubble and don't be so confident that just because something's right it's going to prevail, or that people see what you see. That was a good lesson.

And then, of course, when Dukakis won his comeback bid to again be governor, defeating the atrocious candidate who had defeated him a few years

earlier, that was the opposite. That was a resurgence of the liberal and very exciting. And I got to know him somewhat, I got to drive him around several times from event to event. It was, again, an interesting experience in the nuts and bolts of politics.

At the same time, I have to say I wasn't, obviously, drawn to doing more of it. So I don't remember making a conscious decision that this is not for me, or what have you, but it wasn't—the work I was doing then at the level of the field, at the level of an organizer, at the level of a volunteer, was not what I was drawn to, because I didn't come back to it.

02-0:21:49

Meeker: What were you drawn to, then?

02-0:21:51

Wolfson: Again, I think bigger ideas, how do we change society, thinking about what became my paper. [Evan Wolfson, "Same-sex Marriage and Morality: The Human Rights Vision of the Constitution," Harvard Law School, April 1983]

02-0:22:02

Meeker: Let's talk about that paper, because there's so much unique in it and a lot that I'd like to ask you about.

02-0:22:10

Wolfson: I should've re-read it.

02-0:22:14

Meeker: It's funny you say that. I realize that after many years, you look back at things you wrote and you say, "Wow, did I say that? What did I mean by that?" So if things are a little vague, then I can move on to the next question.

02-0:22:29

Wolfson: And I can do my homework for the next interview.

02-0:22:30

Meeker: Let me ask you about, first of all, this concept of "sexualism." First, do you recall it and can you define it for me?

02-0:22:40

Wolfson: I never liked the word homophobia, which would have been the word, and I always felt like I don't like the homo part, I don't like the segregation of homosexuality part, and I don't know that it's a phobia, really. So I just never liked that word, so I tried to think of a word that would be different, that would be better. What I was looking at was an analogy to discriminating against people on the basis of their race: discriminating against people on the basis of their sex, discriminating against people on the basis of their sexuality.

02-0:23:15

Meeker: Okay, that makes sense. That's what I figured it was. But there's also—let me quote one section of it, and this is from the very beginning. You say—this is

kind of defining why sexualism you see as a negative in society—“Such arbitrary confines on the free human personality treat individuals as less diverse and less infinite in their capacities than they are.” I think that this is interesting, because to me it seems quite apart from the reigning paradigm of the day, which was pretty strict identity politics. That liberation comes from closer attachment and affiliation with an established identity, whether it’s black or white, male or female, gay or straight, rather than sort of this more expansive liberatory approach that we’re releasing ourselves from these confines.

02-0:24:19

Wolfson:

I know. Many of my critics would be surprised to find a liberationist streak in me.

Well, there are a couple of things. Number one, I’ve never loved identity politics either. I think identity politics have their place, and identities are often shaped in defiance of, in resistance of, and people get dug in or need to affirm an identity even if it’s somewhat confining, in large part, I think, in resistance to pressures and discrimination and oppression from outward. So obviously it’d be better to not have the discrimination, the oppression, and the resistance so that people then don’t feel like they have to go to their battle stations in a way that may even be confining to them, but also they are entitled to want to affirm something, part of their identity.

So in that sense, I don’t want to start with a totally reactive, totally negative, totally confining, totally insufficient, but necessary identity politics. I’d rather start with an affirmation of freedom and the ability of each person to pursue happiness and shape his or her life. In which some degree of identity affirmation and some degree of ethnic pride or community solidarity are appropriate, but not as the be-all and end-all. That’s part of what’s in there.

Also, I do think people are individually more fluid than their identity or their community, even people who are very, very proud of whatever part of their identity it is. There’s more than one way to be gay. There’s more than one way to be not gay. There’s more than one way to be black. There’s more than one way to be Jewish. We all know that, but it gets denied in the fault lines of identity politics, and in the urgencies that lead to identity politics, the importance of affirming pride in that part of your identity, in that part of who you are, which I completely support.

02-0:26:44

Meeker:

It is interesting, because although you write in the late sixties, early seventies with the gay liberationist movement, there was a brief period of time where there was kind of smashing identity models and advocating for polymorphous perversity, that kind of thing. But by the time you get to the late seventies and early eighties, what was gay liberationist then was more kind of minoritizing, talking about gay identity as a quasi-ethnic or quasi-racial identity.

It's so interesting to me that this really does—it requires a little bit of that, particularly when you're talking about these issues of due process and strict scrutiny, which we can get into. To me it actually more anticipates what you do with Freedom to Marry, for instance. I mean, it's not gay marriage advocates, right, it is *freedom* to marry.

02-0:27:50

Wolfson:

Absolutely. And that is clear in the paper. I do use the term same-sex marriage, which is a term I would not use now. But the overall tone and most of the language of the paper is very universal and looking for the commonalities and the human rights and the connections, as opposed to going for segmenting and pitting one against the other.

I also talk about gay and non-gay throughout the paper. I don't believe that there is no identity or that everybody is just completely fluid and has no distinctions or fixed points or categories or so on. That doesn't make any sense either. I just don't believe we should exalt the identity or the category beyond its need and worth. Within the categories, there's fluidity and there's individuality and there's diversity, and the categories are not always as fixed as society pretends. And the meanings that are attached to the categories are certainly not fixed. Those are things we can change, and that's what the paper is about.

02-0:29:00

Meeker:

You just referenced human rights. I'm curious where this comes from, and let me give you a little bit of background. It might be too much background, but I've done, myself, some research on human rights commissions, which are sometimes very analogous to what your father served on as a human relations commission. One of my research questions that I never really answered was why were these not called civil rights commissions? Were people really thinking of something different than civil rights, by establishing human rights? Is there a major difference?

I guess maybe the way to ask the question—turn this into a question is, in writing your paper, why were you not drawing on a civil rights discourse and instead using a human rights discourse?

02-0:29:59

Wolfson:

I think I do, if I remember correctly, I think I do draw on some civil rights history and discourse, and by civil rights we tend to immediately think, then, of the fifties and the sixties and Thurgood Marshall and Martin Luther King and—

02-0:30:18

Meeker:

*Loving vs. Virginia.*

02-0:30:19

Wolfson:

Yeah, Fannie Lou Hamer, and that chapter in history. Although of course civil rights is a concept that is not confined to that cause and that chapter and those years and those people.

02-0:30:32

Meeker:

The Civil Rights Movement with a capital C would be that one.

02-0:30:35

Wolfson:

Exactly. And of course throughout the remainder of post paper, my work experience, there's been constant battling over whether we can call this, gay rights, civil rights, and how to talk about that. But that's another issue.

In the paper, though, I think two things. I think number one, to the extent I was making a conscious choice for this reason, civil rights, I think, really more appropriately is your relationship vis-a-vis the law and vis-a-vis the government, and voting, and perhaps nondiscrimination and these kinds of legal, political polity concerns. Very important.

Human rights, I think, embraces a broader range of rights, of aspirations, of the ability to have family, the ability to love, the ability to be supported, be fed, be accepted, et cetera. It's just a broader range of concerns, not to say one is more than the other. So I don't specifically remember that I sat down one day and thought about, Am I talking about civil rights or human rights, because they're also not antithetical, they overlap. But that would've been probably I was thinking more expansively.

02-0:32:06

Meeker:

I think you did say that human rights precede civil rights in many ways. Maybe it's the sort of life, liberty, and pursuit of happiness part.

02-0:32:16

Wolfson:

Yes, exactly. So there's that. And then, although again, I haven't re-read the paper in a little while, one of the big formative influences in the paper was a scholar named David Richards, who had written a fair amount about gay rights and its relationship to the Constitution, its relationship to human rights, et cetera. A broader understanding, a more affirmative understanding of the right to privacy as instead autonomy and liberty and so on. Then I had read other thinkers, Rawls and others, to beef up that part of my thinking and my writing, but it came out of the David Richards pieces, and if I remember correctly, he probably talked more about human rights than civil rights, so it probably was partly influenced by that.

02-0:33:06

Meeker:

I'm guessing, kind of going back to your high school years working in the model U.N., you probably at some time came across the U.N. Declaration of Human Rights from the late forties, I guess.

02-0:33:16

Wolfson: Oh, sure. Forty-eight, I believe.

02-0:33:21

Meeker: I think that's right.

02-0:33:23

Wolfson: Eleanor Roosevelt. Not only had I come across it, it meant a lot to me, because again, I was a huge Roosevelt person. No, and absolutely, that's human rights, not just civil and political rights.

02-0:33:42

Meeker: Did it feel like at the time that that was the next phase, that civil rights were all well and good, but maybe we had put the cart before the horse or something like that, and the real movement or the real political conception that people needed to reorient themselves to was in fact these basic human rights.

02-0:34:07

Wolfson: Well, I would say it a little differently. First of all, being denied the freedom to marry is being denied a civil right. I mean, this is the government as discriminator. So when there is a right that is regulated and implemented by the government, as in the issuance of marriage licenses, civil marriage licenses, and the government withholds them from people, that is the government discriminating, and therefore denying people their civil rights, their political rights, their legal rights.

So it's not just there's this airy-fairy let's get accepted thing versus this. And if you had that polarity, this is here, the freedom to marry is here. That said, as the whole paper is arguing, and as my life's work has been, I believe that part of the reason we needed to pursue the freedom to marry was of course because marriage was important, as I just said, as a civil right that is the gateway to a vast array of legal and economic tangible and intangible protections and responsibilities and meanings.

But also because it is this language of something even bigger than that. It's the language of love. It's the language of commitment. It's the language of family, of inclusion, of self-sacrifice, of connection. And by claiming that language, we would be claiming an engine of transformation that would help non-gay people better understand who we are.

That resonance, that power in marriage is even bigger than the legal and economic and technical and concrete specifics, important as they are. And that insight, that belief, was always something central to—that's what I'm writing about in the paper. So in that sense, if you want to think of civil rights as a subset of something even bigger, the whole human aspiration, the pursuit of happiness—happiness being in part grounded in law, but entirely, obviously—then yes, in that sense, marriage was here, not just here.

02-0:36:27

Meeker:

There was still a very central language of rights within the paper, though, and I think that focused a lot on the right to privacy, particularly as articulated in *Griswold* [*Griswold v. Connecticut*, 1965], but then by thinkers like [Louis] Brandeis even well before that. Did you have kind of, in law school or before, an evolving understanding of what privacy rights mean? I mean, in the paper you were kind of critical of *Griswold*, in that they put this out there but they were not very clear about it, right?

02-0:37:03

Wolfson:

Well, you know, it is kind of fashionable in law school to be critical of everybody else. So I apparently imbibed some of that, despite my shunning the library for a year. Part of the project of almost every law school paper or law review article is to trash what everybody else says, and then come up with your own. So I did have to take the small number of writings that drew on the much larger terrain of privacy, but that then previously had applied to homosexuality or to gay rights or to marriage. And I had to just explain which ones I agreed with, which ones I didn't, and why I was saying something beyond where they left off.

And in some ways, that wasn't that hard, because there wasn't that much there, but also because so many of them had gotten it either wrong or limitedly. Part of the mistake, I think, that many academics make today and that I thought they made then was being too narrowly doctrinal. They would ask: "Is this is a question of the right to privacy, or is this a question of equal protection? Is privacy 'privacy,' or is privacy something more expansive: liberty, autonomy?"

My own intuitions and perhaps not highly legal analysis was to not pit these things against each other, to not see these as either/ors and to pull them together and not get obsessively doctrinal about it, but instead call for what I thought was the right answer regardless of the doctrine, and then put out a road map for it, which was my view of how you should do the law.

It happens to actually be very close to the way Justice [Anthony] Kennedy approaches these questions. Not necessarily every question, but the questions of gay rights and, certainly now, the marriage case. Twinning liberty and equality in what I would call now a double helix, as opposed to having to choose, which so many of our colleagues and so many of our academics continue to chide him for not doing, or for not choosing right. And Justice Kennedy, of course, has reframed privacy as liberty, and has created what he would, I think, be most proud of, a jurisprudence of liberty. Whether you think he fully adheres to it or not, or whether you think he well explains it or not, that's what he would say about himself.

Well, all of that actually, it turns out, is what I was writing in this paper. Not that there's a cause and effect there, but it just meant that, happily, the way I

saw the law as part of a project turned out to resonate with the fifth vote we needed when we needed it.

02-0:40:06

Meeker:

That is so fascinating. I would love to read a broad analysis of Kennedy's philosophy of liberty. You can maybe write that.

02-0:40:17

Wolfson:

Some better scholar can write it. But the one thing I would say is that, despite everything I just said, I think the most important, or at least the most telling part of the paper was not so much the legal argument, which I just described, and which occupies actually a relatively small part of the paper. What was more important was, of course, the idea that we could win and we should be fighting for this, and we can, by fighting for marriage, claim this engine of transformation and move people on marriage, but even beyond marriage. That's the most important thing.

But what the paper really reflects is the approach that I then wound up applying to the rest of my work. Obviously I didn't know exactly then that this was what was going to happen, but that is to say, the paper spends at least as much time pulling from history and philosophy and popular culture and side-show analyses of feminism and *Tootsie* the movie, to gay history amongst the Greeks and Romans and Egyptians, much like the oral argument we saw a few months ago, to pull together from all these different arenas of life to make a larger case than just the legal case, and to situate the legal case within this larger case.

The argument of the paper is: you have to move people's hearts and minds in order to move the law. You have to get them to see. And that has turned out to be the central necessary dynamic of gay rights litigation ever since, not that I knew that then, and not that everybody has acknowledged it since, but a few years later, when I was volunteering at Lambda Legal and writing Lambda's brief in the *Hardwick* case, the biggest loss we ever had, *Bowers vs. Hardwick* (1986), which we lost five to four. I was in the court for that argument and was part of the legal team and so on, with my con[stitutional] law professor, from law school, leading the charge at that point, and we lost five to four. But in his dissent, Justice Blackmun writes about the willful blindness of the majority, who simply refuse to see the people standing in front of them, and therefore how the Constitution's command applies to them.

Well, my whole project in law, beginning in this paper, without even fully necessarily knowing where it was going to fit in, has been to get people to see what actually is there, as opposed to having to come up with some argument that didn't exist before. Or think that you solve the problem just by making the argument, or filing a case. If filing a case and having the argument were enough, we would've been done forty years ago. We had to get them to see, and that's what the paper is talking about and doing, and that's what really



was my approach to my work ever since, consciously and sometimes unconsciously.

02-0:43:31

Meeker:

I think one of the ways in which this is done, according to my read of the paper, is that you see so many times mentioned the words “love,” “lovers,” “gay love,” not to mention the word “marriage.” You know, I’ve read enough gay political literature from the late seventies and the eighties to know that these are not terms you see very often.

02-0:43:56

Wolfson:

Nor in the law.

02-0:43:58

Meeker:

Nor in the law, for that matter. Right. I’ve read probably less of the law. Exactly. Where does this come from? Do you have a sense about where you got the idea, or the gumption, or the courage, or the audacity to include language of love and marriage and relationships in this?

02-0:44:26

Wolfson:

Yeah. By the way, that, I think, more than anything, that combined with the sprawling, multidisciplinary nature of it, but I think the reducing it to love, the bringing it back to love, rather than being highly legal-sounding, legalistic—

02-0:44:42

Meeker:

Or minoritizing.

02-0:44:45

Wolfson:

I think that’s why I got a ‘B’ on the paper. I think the professor really didn’t know what to make of this sprawling, multidisciplinary, not particularly legalistic sounding legal argument.

Well, I think that there are two answers to your question. One, and probably most fundamentally, is it just was my intuition and my natural predisposition, again, to engage people in what was really at the emotional and authentic core of this, and to ask for what I wanted and to figure out a way to see the commonality of it and the power of it to move them, even if it was also highly resonant and charged and therefore difficult in the beginning. I was not daunted by difficulty. I’m not afraid of rejection. I mean, that’s just something I’ve been lucky about.

There are people who wake up every day and they look downward for fear of being disappointed. And there are others who will look up, and if the disappointment comes, they can take it. And I’m just, by luck, by temperament, that kind of person. So it really was just my own disposition to go for what I wanted and to see how that would resonate, and therefore be difficult, but also actually effective. The power of the language of love, the power of the common value of love and the connection. So that, I think, was probably the main source of it.

I had talked about the two formative experiences that led to ultimately my writing the paper, and one was my experience in the Peace Corps and seeing how the society's giving people choices, and even language, shapes who they are, even on something as central as one's own sexual identity, gender identity—not necessarily gender identity, but sexual identity: love interest, love attraction, sexual orientation.

The other formative experience was reading the book that changed my life, which was John Boswell's *Christianity, Social Tolerance, and Homosexuality* (1980). Boswell's massive, magisterial, award-winning treatment of 3,000 to 4,000 years of Western history, of course it was just something I completely adored because of my great passion for history. But here it was combining my great passion with my own personal journey and curiosity and experience by showing that the way societies have treated homosexuality and gay people throughout history has not always been the same, and certainly has not been the same as ours treats it today.

So that gave me the insight and the inspiration that if it had once been different, it could be different again. And so when I came to write the paper, I knew I wanted to write on something gay, and I wanted to write on how we change the way gay people are understood, I was thinking about, well, why are gay people discriminated against? What is it that we are denied for? What is it that we're denied for, what is it that we're harmed by—why are we seen as deniable?

And the answer is love. It's who we love. It's how we love. And so I then thought, "Okay, well, what's the preeminent language of love?" And the preeminent language of love, in this and every other society, of course, is marriage. So by claiming this language of marriage, we would be going to the heart of how it is we are denied and excluded and not understood. And by claiming it and helping people see it, we would be transforming who we are in the most profound way. And that's why I wanted to write about marriage, and that's why it so centers on love, because it is for our love that we are excluded, misunderstood, denied, feared.

02-0:48:55

Meeker:

Did you ever engage with Boswell about this?

02-0:48:57

Wolfson:

Oh yes, absolutely. Not at the time. I had written my paper, I finished it in April of '83, had exams and whatever, and then graduated on June 9 of '83. Shortly thereafter, I think actually the next day, I moved to New York. I loaded up my car and stuffed everything into this packed car and moved to this brownstone I had bought with my close friends—I think I mentioned that—and began living in New York, which had always been my dream. I'd always wanted to live in New York.

A couple of weeks later—this is early June, so end of June was gay pride, and this was my first gay pride, and it was certainly my first gay pride in New York, and it was my first gay pride parade. So I didn't really know anybody to hang out with or to march with there. So I figured I'd go with Yale, and there was a group that had just started called Yale GALA—Gay and Lesbian Association, I guess—and it was very new, and they had put out the word that they'd be assembling and marching, so I thought, "Okay, I'll march with them."

So I went, and it was a glorious sunny, beautiful day, and this was, again, my first gay pride parade; I'd never seen this many gay people, I'd never been part of something like this. We're starting to march down Fifth Avenue, and I look over and I see this face that I had previously seen on the back of the book jacket of the book that changed my life, and who I also thought was very cute, and obviously he had a tremendous impact on me. So I went over and introduced himself to me, we immediately clicked, and spent the whole march marching down this sunny, radiant, gorgeous, celebratory Fifth Avenue talking about my paper, his work—he was beginning work on what would soon turn out to be his last book—and we found we had—

02-0:51:02  
Meeker:

Same-sex marriage, or ceremonies.

02-0:51:03  
Wolfson:

Unions. *Same-Sex Unions in Pre-Modern Europe* (1994), or something like that. But he was telling me that he had just found the papers, documents showing that there'd been this church ceremony in whatever century, and so on. And he was fascinated to learn about my paper. So it was the complete coming together of all these parts of my life in the presence of my hero, who I also thought was extremely adorable, and was certainly warm and charming and very into me, and so on.

So it was just this high-point day that, of course, meant a lot. We remained friendly and in touch. We did a couple of other conferences together; we actually spoke together. When I was already starting to do the marriage work, and he was on the verge of coming out with the book, we did the two-team of the history and where we need to go from this history. So yeah, that meant a lot to me.

02-0:52:07  
Meeker:

Wow, that's kind of amazing how it all comes together on one day.

02-0:52:11  
Wolfson:

It was great.

02-0:52:12  
Meeker:

There's a few little things I'd like to follow up on about the paper. One is your brief discussion about how traditional marriage tended to be unduly confining.

I'm curious what you were thinking of at the time when you were talking about this, and how that has rolled out since.

02-0:52:43

Wolfson:

Just in the isolated way you're saying it, I'm not sure exactly what that would've referred to. I certainly spent a lot of space in the paper talking about the oppression of women and the subordination of women, and sex roles and so on.

02-0:52:56

Meeker:

That's kind of related to it. I mean, you also talk about the influence of expanding social androgyny. I think that probably what's happening here is that you're, in that part of the paper, responding to sort of the left critique of marriage in the seventies and eighties and advocating for marriage, but at the same time acknowledging that it can be transformed.

02-0:53:21

Wolfson:

Again, I have to look back, but I think that's probably not right. Because I think I wasn't really as focused on responding to the left critique of marriage and why gay people should fight for marriage. What I was more likely responding to was the subordination of women within marriage, not as a reason for why we shouldn't want marriage, which is the left's argument, or not *the* left's argument but it is that argument, but rather why marriage has changed before and therefore is appropriately changed in order to fulfill the true values without oppression or exclusion. That the way in which we change what was considered to be the intrinsic element of marriage, that was the subordination of women, and still have marriage, is an example of how we can change something that's considered to be intrinsic to marriage but actually isn't and still have marriage.

Years later, in my stump speech for many years I would talk about the four revolutions that have taken place in marriage in our lifetime, the first one being changing marriage from a union based on compulsion to a union based on choice, i.e., divorce, allowing people out of a failed, abusive, or violent marriage. That was considered to be absolutely redefining marriage and completely transforming it, but we changed it.

Then the second one was ending race restrictions on who could marry whom.

And then the third one was ending the idea that marriage was intrinsically procreative, and that people's personal choices with regard to when to have sex, whether to risk a pregnancy, and so on could be controlled as part of the law of marriage, and we changed that. *Griswold*.

And then the fourth big revolution in marriage very recently is ending the domination by men and the subordination of women, and the acquisition of women as chattel property as part of marriage, et cetera, which was part of the intrinsic definition of marriage, and we changed it.

And then in my stump speech, I would often say, And by the way, part of that intrinsic concept of marriage as being male dominant and women subordinating was what used to be called the marital rape exemption, where a man could not be prosecuted for raping his wife, and we changed that. Then I would go on to say, “By the way, we didn’t change that during the Civil War, we didn’t change that in the last vestige out in Alabama. That got changed in 1984 in a case in New York called *People v. Liberta* that I myself wrote the amicus brief on.” So this is not ancient history. We have changed things in marriage in order to reflect the deeper and true values of marriage as we in our modern constitutional society recognize them.

“And gay people stand today on that same battleground of marriage, marriage having always been a battleground of human rights and what kind of country we’re going to be, and it is fitting and proper that we stand on this battleground, and it is fitting and proper that we now claim, on this battleground of marriage, the America that we believe in.” That was my stump speech.

So I think what I was writing about there was much more the history there, as opposed to a push-back on the anti-marriage critique from within the community, that marriage is so patriarchal and flawed as a historical matter that we shouldn’t want to be part of it. I did push back on that in a later paper, the longest thing I’d ever written prior to my book, and that was a law review article called “Crossing the Threshold” that I wrote several years later.

02-0:57:42

Meeker:

Speaking of the response of the gay community to this issue, it makes sense that someone like John Boswell would find common cause with you, and you him. To what extent did this paper get circulated, to what extent did you get feedback from others about it?

02-0:57:58

Wolfson:

Before I answer that, I’ll just say that the part of the paper that more pushes back on what would become—or more foreshadows what would become my wrestling with a certain portion of the community and their critique and the so-called left critique, although I don’t think it’s really particularly left or right, is the part of the paper that rejects as a satisfactory solution some kind of lesser non-marriage marital status, what we now call domestic partnership or civil union; what, at the time, was, I think in the paper I called it a quasi-marital status, or quasi-marital alternative, something like that. Again, in the very small number of law reviews that I was engaging in this paper, there had been some proposals to go to the domestic partnership compromise, and I rejected that.

02-0:59:00

Meeker:

There was something that was referenced, maybe in Quebec, as early as ’82?

02-0:59:04

Wolfson:

Well, there had been, in Madison, Wisconsin, in, I believe, Berkeley, California, and maybe they were debating it then in Quebec, I don't remember, domestic partnership. We hadn't yet coined the term civil union. But this quasi-marital status, this non-marriage marital status parallel institution was not—it was beginning to be talked about, and it was out there in the period that I was writing the paper, and I said it wasn't good enough.

02-0:59:39

Meeker:

That is a pretty prescient part of your paper, the fact that, I mean, even before people coalesce around a term, you were already arguing against it.

02-0:59:53

Wolfson:

And to be clear, I always believed we should take it, I just didn't think we should ask for it or settle for it.

02-1:00:01

Meeker:

Okay, right. I mean, it was a way station on a longer road.

02-1:00:05

Wolfson:

At best it was a way station. But it was also a diversion, and for some it was a false goal, in my mind.

02-1:00:15

Meeker:

I mean, it wasn't too long ago, in fact, that friends of mine who are those, I don't know, left or whatever, but very strictly anti-marriage at whatever cost, they wanted to adopt the Rand Paul perspective and get rid of federal recognition of marriage overall and replace it with a broad domestic partner thing.

02-1:00:37

Wolfson:

Yeah, which was always a position that never made a lot of sense in terms of its own coherence, because what problem are actually trying to solve? If you literally recreate the exact thing but call it something else, why did you just do that exercise?

And if, on the other hand, you're trying to appeal to different ideological arguments, the thing will break down because different groups have different goals. There are some who don't want the full panoply of protections and responsibilities; they want a limited set of protections and a limited set of responsibilities. Shoving them into some new renamed but equally, from their point of view, overstated or oppressive thing is not what they're asking for when they're asking for domestic partnership. They're just asking for X and Y and Z, not A through Z. And therefore they don't want to pay A through Z in costs, obligations. They don't want to be liable for this or that in order to just be able to put their partner's name on the health care or whatever.

So if you're trying to solve that problem, but by doing that, by shoving them into a renamed marriage, that doesn't solve the problem, and so on and so on.

They're just different slices of argument about partnership versus marriage, this thing versus that.

What I do agree with is that, number one, everybody should have equal choice. So if you want lesser menu A, you should be able to have that whether you're gay or not gay. There shouldn't be marriage for some and partnership for others. And I actually believe there should be a menu of choices and options available to people. But again, you're also assuming that people are always making completely informed choices that when they're signing up for this one versus that one versus that one, they're knowing what the bundle of protections—most people are not really giving it that much thought, until later when there's a crisis and it turns out they needed that or they needed this.

But even more than all of that, I also believed that we needed to claim the vocabulary of marriage, not disclaim it. And the whole idea that we were going to embark on a project of taking away marriage from everyone in order to offer them what? It was just a political non-starter. It was never really going to happen. What it was was a diversion and an acquiescence in gay people being denied until we figure it out.

Rand Paul's not the first person to say it. Rand Paul's like the 80 millionth person to say it. This argument came up over and over and over; it was part of the gun-to-the-head effect, which is that as we put the gun to the head of actually winning marriage, people began offering things. How about reciprocal beneficiaries, in Hawaii? How about domestic partnership? How about civil union? How about we do away with marriage? All instead of just simply allowing gay people to share in the freedom to marry.

02-1:03:46

Meeker:

From this point in time it seems profoundly ridiculous, I mean, those kinds of arguments.

02-1:03:52

Wolfson:

There are things that are legitimate. Like it is legitimate that there should not be a one size fits all, you either get married or you have no recognition or respect or protections for your family, for your needs. I don't agree with that. I never believed in that. I believe in partnership. I believe in health care cafeteria plans where people can put different people on their employee benefits. I do believe the law should be respectful and reflective of various family needs and forms.

But that's a separate question, whether gay people should pay for the failure to get that sorted out by being the only ones excluded from the central social and legal institutions of our society.

02-1:04:40

Meeker:

Back to the question of to what extent was your paper circulated and did you get any response to it?

02-1:04:46

Wolfson:

After I had written it, there was interest in publishing it by a journal there at Harvard called the *Civil Rights - Civil Liberty* journal, which is a very respected, you would call left law review. But I had already moved on. I was ready to move to New York, I was ready to start my job, and the idea of revising this as a matter of scholarship just wasn't something I felt like I needed to do at that point. It probably was a mistake; I probably should have done it. I don't know what would have come of it, but that was probably being lazy and impatient.

02-1:05:29

Meeker:

So what you did then was, you accepted a position as assistant DA, Kings County District Attorney's office, Brooklyn. Tell me about that job search and the job itself.

02-1:05:43

Wolfson:

You had asked a while back about was law school what I expected, or did I know what I wanted to get out of it or something. Part of what I had not at all thought about or appreciated was how much of law school was about learning to be able to do what you need to do to get a job in a big firm. The whole big firm recruitment thing, the whole big firm emphasis, it just, I had not even thought about that. I always thought about you go to law school in order to become a politician. Or you go to law school in order to do public service. Or maybe to be *Judd, for the Defense* or to help people with their wills and their property transfers. It hadn't occurred to me that there was this whole other intermediate and very preoccupying enterprise of serving the big firms and feeding the big firms.

So you get caught up in that, and that becomes much of the recruitment process and much of the job search and so on. I went through that somewhat, but it never was what I wanted. You kind of get caught up in it—

02-1:06:58

Meeker:

You did do summer internships.

02-1:06:59

Wolfson:

I did do a summer internship, although I only did one summer internship that was sort of classic law firm, try it out. I went with a Pittsburgh firm, so that I could come back home to Pittsburgh and be with my family, and enjoyed it, but it was just not for me. I'm not interested in it. So that was that.

My second summer in law school, I took a job with a law firm, but it was a law firm that had offices in West Africa and Washington, D.C., and they offered to let me split my summer between Washington and Abidjan, in the Ivory Coast, which is two countries over from Togo. So it was a way to get back to Togo and return to my Peace Corps village. So again, I enjoyed it, but the idea of being a commercial lawyer, even one practicing in French in the Ivory Coast, was not what was going to be for me.



So I'm writing my paper and I'm thinking about what am I going to do next, and one of the things I thought about belatedly was clerking. In retrospect, and part of the advice I would give to law students today, is that actually would've been a good thing to do and I should've pursued it more seriously. Almost everyone who does it loves it and finds it a really rewarding year or two in their training and in their career trajectory. I didn't pursue it effectively enough and quickly enough, and with my full heart in it.

I remember one interview I had with one judge, who essentially asked me, "So, if I offer you this job, will you take it?" And of course there's only one right answer to that, and I didn't give it. [Laughs] Retrospect.

02-1:08:50

Meeker:

What did you say?

02-1:08:50

Wolfson:

I said I would take it very seriously and I would really give that a lot of thought, or something like that. Wrong. So I didn't get that clerkship, unsurprisingly, which, again, might have changed my life, because that was a clerkship in San Francisco, where I'd never lived before.

But instead I was looking for jobs that would be, again, in the public interest, in the public service, and one of the jobs that I hadn't really thought about but decided to go interview for was to be an assistant district attorney in Kings County. What drew me to that was not so much the public prosecutor part, although I thought the idea of getting trial experience and, again, being in public service was a good one, but it was that the then-DA was Elizabeth Holtzman, who had been a member of Congress during the Watergate hearings, which I had watched raptly and followed extremely closely as a senior in high school, campaigning for Nixon's impeachment and really following every bit of it and knowing every piece of Watergate trivia. And she had been one of the TV stars shown during the televised hearings, and she was a young member of Congress who had overturned one of the old guard and really just seemed to be this feminist, strong, liberal, fighting member of Congress who now had become district attorney.

So the idea of going to work in an office that had that political and historical connection and was public service was interesting. So I went to the interview, and in the interview—it was being conducted by the bureau chief of the appeals bureau and one of Holtzman's close partners in remaking the office and really raising the caliber from being kind of a run-of-the-mill line career type backwater office into being this cutting-edge, high-profile, Liz Holtzman-esque, smart, hard-driving, intellectual, blah-blah-blah, and Barbara Underwood, who was the appeals bureau chief, had been a Yale Law professor who'd come to take on this job with Liz Holtzman—she's now actually a solicitor general of New York State. She'd been the acting solicitor general of the United States, but I knew her when she'd just been a law

professor and starting working in the appeals bureau. She was remaking this to be this cutting-edge, smart team.

And so she liked me, and we connected in the interview, and we did a lot of bantering back and forth and pushing back and forth and debating and so on, but she, I think, clearly was drawn to the idea of having someone like me as part of this intellectual, articulate team that they were trying to create, Ivy League, et cetera.

So they recruited me hard, and I found it intriguing and appealing, and the idea of getting the trial experience and being part of this crack appellate team and really learning how to write and being able to do interesting things, it all sounded great. And it was New York, where I'd wanted to live. So I took that, and that's how I came to work there.

02-1:12:10  
Meeker:

You had, according to your CV, a lot of trial experience; you worked on prosecuting homicides, sex crimes, child abuse. Can you tell me about that trial work?

02-1:12:26  
Wolfson:

The trial work came a little later. I began in the appeals bureau, as I said—

02-1:12:33  
Meeker:

Do you want to talk about the appellate experience first?

02-1:12:38  
Wolfson:

Well, it was a great experience because, first of all it was a great team that Barbara was building, and it was a great work environment. People were friendly and into the work and into each other and had great morale, and people really wanted to be doing the right thing, and there was a spirit of We're going to be good and cutting-edge and all that.

The training was very stimulating, I mean, really focusing on how to write, how to shape a brief, lots of editing, lots of mooted, lots of revising and so on. Interesting writing assignments; learning the law through defending the cases below and being prepared to argue in court, the appellate courts.

But the other thing that happened during that period was, I decided, after having been there a couple of months, that I wanted to start, as I had planned to do when I left law school, volunteering at Lambda Legal, the then very, very, very small preeminent gay rights legal group in New York.

02-1:13:45  
Meeker:

Did they have any paid staff at that point?

02-1:13:46  
Wolfson:

They had one. Well, they had one paid attorney, and maybe one or two other staffers, but one paid attorney. Who I became, of course, friends with as I

began volunteering to work for her, and she was then the legal director. She and I are actually now being honored by the American Bar Association in February, we're both receiving the Stonewall Award together.

02-1:14:09

Meeker:

Who is it?

02-1:14:11

Wolfson:

Abby Rubinfeld. But the reason I mention all that is because in order to do this, in order to do pro bono work with Lambda, I needed to get permission. So I went to first my supervisor, and then, through him, up to Barbara, the appeals bureau chief—and everybody was very friendly, it wasn't terribly hierarchical, but I was a first few months assistant. They had never had somebody, an assistant DA, say they wanted to do pro bono work before, so it was a novel question, the whole idea of doing that. And it was gay rights, it was this very, at the time, controversial, cutting-edge, would this be too political, blah-blah-blah.

So the question eventually had to go all the way up through the hierarchy to Liz Holtzman herself, which essentially resulted, of course, in my coming out to the entire office and coming out in a political way. Which turned out to be a great thing, because they approved my doing the pro bono work in my free time, with certain restrictions, but legitimate restrictions. And they also kind of said to themselves, Liz and Barbara, I'm sure, they basically said, If this guy wants to do this foofy constitutional pro bono stuff for others, why don't we actually have him do it for us?

So they began giving me assignments that were outside the ordinary appeals bureau defend the normal cases track, which is how I wound up writing that amicus brief with Barbara on marital rape exemption, and then later did one on the race-based peremptory challenges, the use of race as a denial of jury service, in the U.S. Supreme Court, the *Batson* [1986] case, which remains in the news today. It was a career booster for me, as it turned out, to have come out.

I continued to do well and rise and shine and be popular and like everybody I was working with in the appeals bureau, but after a couple of years of doing that, I really felt like, well, here I am in a DA's office, I should really be getting trial experience and get in front of a jury and so on. So I asked for permission to transfer, and they reluctantly allowed me to do that, but again, I was now able to transfer. Having done the two years in the appeals bureau, instead of going in as a line assistant in the misdemeanor courts, I was given my choice of bureau, specialized bureau, and that's how I wound up in the sex crimes bureau, to really be doing felony trials of this very challenging, difficult, interesting front-line work, and again, a great team of people who had real camaraderie and real team spirit, and a willingness to train one

another and help one another. So I had two and a half years of trial experience, learning how to do that in really tough cases.

Then in my last few months, I was transferred to the homicide bureau and got to do a few homicides. It was interesting, because that was the first bureau headed by a man, not a woman, that I was in; it was probably the most old-guardish and most classic DA of the three that I had; and I fit in the least. Not that there was anything overtly bad or anything, but the bond, the camaraderie, the support I felt as a young openly gay person in these other teams and bureaus was less.

By then I was already beginning to feel like, okay, I've done this for a while, I need to start thinking about what next. But that probably also led me to decide it was time to move.

02-1:18:30  
Meeker:

I'm curious about the trial experience. There's such a performative art of it, and at the time you're kind of becoming more out, did you feel like there was a way in which you performed and negotiated that identity in the context of the courtroom for juries?

02-1:18:55  
Wolfson:

Being gay never really entered into it. I mean, I didn't think of that as relevant. I wasn't there to be myself, I was there to present the case on behalf of the people and to make an effective argument to a judge or to a jury. And it wasn't about being gay or homosexual or out. So no, I don't think there was that dimension that was relevant, or that mattered to me.

But I did love the performative aspects, and you totally thought of it as a performance. Particularly on a trial, it's a performance that you're not only performing, you're also writing and directing and the whole—producing. So it was very intense and very much to my strengths and very much something I really liked. I was good at it. I was good at making the argument, I was good at closing the deal with the jurors, I was good at cross-examination, I was good at thinking it through.

I think the parts I probably was least good at was the initial prep and some of the more mundane aspects of it, though I was good enough.

02-1:20:12  
Meeker:

Like case law research or—

02-1:20:14  
Wolfson:

Yeah, and even there, there's not even that much of that, as opposed to appeals, when you're on trial, it's more winging it and a few key cases and so on. There aren't that many cases that come up.

02-1:20:29

Meeker:

Looking back on your trial work, can you think of any examples of trials that you worked on that you felt like provided something for you later on that you were able to integrate into your work?

02-1:20:43

Wolfson:

Well, my first felony trial, they handed me a case that essentially, I think it was a retrial, and in retrospect, though this was never said, I think they kind of felt like it was a loser, and if the kid lost it, it wouldn't matter because it was probably going to go down anyway, so let him have the experience. And it was this horrible set of facts about a young woman, a girl, who claimed that she had been dragged up to the top of a building and thrown off the building by a man who lived in the building with a midget. So it had all these sort of New York humorous, ridiculous, crazy, horrible aspects. Very colorful.

So I wound up, in prepping for the case, actually going with the police department up in a police helicopter over the buildings of this brownstone row in Brooklyn so that I could take aerial photos to show the courtyard and how the— But as I interviewed her, her story wasn't the most convincing, and I kind of wondered. But I was young and new, and it had been tried before, so I kind of took the approach of we'll put it in front of the jury, and I'll make the best arguments I can make, and I won't say anything I don't believe, but I'll put it forward.

The defense attorney, who was kind of a colorful Brooklyn sleaze-ball type attorney, pulled me aside at one point and said, "You know, you really shouldn't be doing this. This doesn't add up," blah-blah-blah. I said, "Look, the jury will have to decide, and we're going to believe what this girl says," and so on. Well, he was acquitted. And afterwards he took me aside again, the attorney, and he said, "You know, you did a good job. You were fair, you were honorable. But you should always ask yourself, are you going to be proud of this? Is this something you're going to want to be able to tell your mother?"

At the time, I found that obviously condescending and annoying, but it has always stuck with me, because I, in retrospect now, look at this and think, maybe that shouldn't have gone to trial. Maybe it shouldn't have happened. Most likely she wasn't telling the truth, there was something else going on. The colorful aspects were entertaining, but these were real people, and they were put through something. So that really stuck with me.

I was lucky, because I was in an office where the ethos absolutely was, our job is to do justice, not our job is to win at every cost. And that really was conveyed throughout. So I never felt under pressure to cut corners or to do things that were wrong or to win at any cost. But I do think in that very first case, where I was new to it, I maybe could've made a different judgment or fought harder to not do something. I still don't know to this day whether, in

reality, it was the right thing or the wrong thing, but the importance of taking that seriously always stuck with me.

02-1:24:14

Meeker: Do you want to talk about the marital rape exemption appeal?

02-1:24:21

Wolfson: I don't have more to say about it, but if you—

02-1:24:23

Meeker: I mean, the reason I just brought it up again, I know that we talked about it a little bit, but given the fact that it's a case around marriage and the transformation of rights and responsibilities within, I thought you might—

02-1:24:39

Wolfson: Well, you know, it meant a lot to me to work on it because it was evocative of many of the things I'd read about and written about in my paper and so on, and it was exciting because it was a case to the New York Court of Appeals. It was an unusual argument for a prosecutor to make. Well, maybe that's not exactly true, but it was a tricky argument to make, because how do you argue that he ought to be able to be prosecuted for something that the law said he shouldn't be, and how do you make the case, and so on.

So it was an intense experience working closely with Barbara to get this constitutional argument right; it was outside of our ordinary terrain; and it might have been my first case in front of the New York Court of Appeals, I can't remember. And we won. And it was the right outcome.

02-1:25:38

Meeker: So getting the constitutional argument right, maybe we can talk about that process, because when you go back to your same-sex marriage paper at Harvard, you describe it being as a multidisciplinary, bringing in pop culture and literature and all this kind of stuff. I think in the constitutional argument you need to keep more close to the case law—

02-1:26:03

Wolfson: It's not so much in the constitutional argument, but in the brief and the briefing style of these practitioners, it was not going to be a sprawling multidisciplinary philosophical rumination. It was much more of a close constitutional doctrinal argument.

02-1:26:23

Meeker: Did that seem limiting to you? Did it seem like a more convincing argument would have brought—

02-1:26:30

Wolfson: Well, we won. Yeah, I don't remember it all that well, I don't remember the actual experience of spending a lot of time writing it. But I doubt I would've found it limiting. I think I would've found it stimulating and focused and learning how to really make a constitutional legal argument more closely. I

mean, again, I'd done that before in law school, but here I was working with Barbara Underwood, who's a real master, and serious professionals in a real case, not just a law review article. So yeah, I don't remember feeling it to be confining.

02-1:27:13

Meeker:

You then spent a year with the Office of Independent Counsel on the Iran-Contra scandal hearings. How did you get that job, and what kind of work did you do in that context?

02-1:27:26

Wolfson:

I really got that job by introduced to it through my close friend Bill Treanor, who is now dean of Georgetown Law School, but was my college and law school roommate, one of the two roommates I had mentioned earlier, and remains one of my closest friends. I was best man at his wedding.

He had gone to work for Lawrence Walsh, and he was working at the Office of Iran-Contra for maybe a year or two before, and as I was now getting ready to leave the DA's office and thinking about what next, he suggested, "Why don't you come and work here?" So I applied and was interviewed, and they hired me.

Lawrence Walsh was the independent counsel, and they were preparing to prosecute some of the Iran-Contra perpetrators. They were dealing with an issue of immunized testimony. Congress had allowed some of these people to testify in front of Congress in the investigation, the famous Oliver North testimony and so on, and as a result, the prosecution faced a real problem, that they couldn't use testimony that had been given under immunity, and in order to be protective they didn't even want to expose themselves to the testimony. So they shielded themselves from watching it, they shielded themselves from reading anything about it, and as they were preparing to prosecute those defendants, they also wanted to continue the investigation. So they wanted now to beef up the investigative team with people who could read the immunized testimony and who could read the—in order to figure out where should the investigation go beyond. So they had a bifurcated office with the tainted team and the untainted team, the people who had not seen the immunized testimony preparing to do the trials, while the rest of us, the tainted team, were going to keep going in the investigation. So I was brought in in essentially the second wave to be part of this tainted team.

Well, it was a good idea, and it was a very conscientious effort on the part of Walsh's team and Walsh to deal with the mess that Congress had created and the complexities of the law and the way in which the immunized testimony issue might be abused and so on. But it proved to be extremely difficult and created a very awkward, challenging work environment, into which I stepped, not knowing that, and it was not the most satisfying experience because there was always this problem of who could communicate with whom and being

isolated and really having to not talk about what you're doing and all that kind of stuff. So I was there for about ten months.

02-1:30:16

Meeker: It sounds like there were missed opportunities.

02-1:30:19

Wolfson: Yeah, well, there were missed opportunities, and there were mistakes that they made under tremendous pressure and because they were dealing with the effort of Reagan and then Bush, and their cohorts and so on, to really evade and flout the law. And it turns out they did evade and flout the law, and hid documents, and made legal arguments that made it just harder and harder to drag it out, and then attacked them for taking a long time when they were the ones who had dragged it out and run up the bills. So yes, there were definitely challenges that made it a difficult work environment.

02-1:30:54

Meeker: Do you have a sense that, given a better environment and these kinds of rules that were imposed, what could have been achieved as far as prosecution? In other words, what had people done wrong?

02-1:31:13

Wolfson: I think they would say now that if they had moved quicker on some of the early prosecutions, not gone for the grand prosecution of North and that cohort that they eventually put together under the pressures of this immunized testimony, but instead had begun flipping some of the lower-level isolated pieces, they might have built a case quicker against some of the big ones. There was always this difficulty of, do you go after North and his part in this criminal conspiracy, or do you really keep your eyes on the prize and go after Reagan and Meese and the others, who truly masterminded and led this, North being in part the implementer, in part a diversion, and in part a rogue actor, in part. Of course they didn't know all of that, so they were trying to figure it out. Had they made some different choices, it might've played out differently.

But the real relevance here is that, in order to have this job, I had to get a security clearance. So I of course, again, came out as being gay and was very up-front about it, and then the question is, would the powers that be give me a security clearance, the CIA and others. And the FBI conducted extensive interviews of my friends and family, and went around the country talking to people, and to their credit, Walsh and his team never wavered, they were going to back me and they wanted this and so on. And it took a while, but I did wind up getting the highest level of security clearance, SCI, sensitive compartmented information clearance, as an openly gay man, which not that long before would not have happened.

02-1:33:09

Meeker: Not that long before it would've been impossible, given federal law. So you left there after 10 months.



02-1:33:19

Wolfson:

The roommate I mentioned to you, who had said he wouldn't be friends with a gay person then immediately was friends with a gay person, as I mentioned, he lived in the Midwest, he lived in Wisconsin. He told me about his interview with the FBI, where they had come and really grilled him on, "Did you know he was gay?" My friend said, "Yeah, of course, everybody knows, he's been out, he's comfortable, he's great." And then this is the friend who said he could never handle it, now he's—and then in Wisconsin, the FBI agents said, "Well, he also told us he doesn't drink. Is that possible?" Because in the Wisconsin field office, apparently that was something they couldn't take at face value. My friend thought that was very funny.

02-1:34:10

Meeker:

So after ten months you decided that this was not the best use of your time, and then moved to Lambda.

02-1:34:21

Wolfson:

Well, I had tried to get a full-time job. I had been doing pro bono work at Lambda, had written many of their most important briefs, because they were a small organization and here was somebody coming in who was willing to do it; I was part of their legal committee. I wound up having a much bigger role than my age or experience ordinarily would have suggested, but it was a small group of people doing this at that point. I had become a key part of the legal committee and the pro bono help, until I went to Iran-Contra.

And during that period, when Lambda had eventually decided, Okay, we're going to hire another attorney, we're going to have another—I had applied for full-time jobs there and had been denied. But I kept doing the pro bono work. Eventually Abby, the then legal director, had left and the lawyer who had gotten the job I had wanted had become the legal director, and we'd been friendly. She called me up and asked me would I just come full time. So I didn't apply, I didn't interview, she asked would I come to Lambda full time. And that is something I had always wanted to do, and I was also ready to leave Iran-Contra because, as I said, it wasn't working out that well. Although I'm still friendly with many of the people, there have been many reunions that we've had until Walsh died at 102 a year or two ago, and we went. And the camaraderie actually was much better after it was over and people came to understand what the difficulties had been and how we had been navigating it. So at the time it wasn't that great an experience, but actually since then it's been a good network and a good sense of people having tried to do the right thing and having been up against more than any of us had necessarily understood at the time.

02-1:36:15

Meeker:

Before we get to the staff attorney work, which looks like you started in 1989, I do want to ask you about *Bowers v. Hardwick*, the 1986 decision that upheld anti-sodomy laws in the U.S. This is actually something that you were writing

about in your Harvard paper, anticipating that hopefully before too long this would come before the Supreme Court.

02-1:36:42

Wolfson: Be careful what you ask for.

02-1:36:44

Meeker: But there was a real, I don't want to say expectation, but in that paper you seemed very optimistic that even at that point in time, 1983, that it was reasonable to expect the Supreme Court would strike down sodomy laws.

02-1:37:02

Wolfson: Well, it was reasonable to expect that. As I then moved to New York, as I said, I began almost immediately volunteering with Lambda Legal and became connected with what was called at the time the ad hoc roundtable or ad hoc task force on sodomy reform, which was essentially the little group of the then-paid attorneys from the small little band of gay rights groups, so there were maybe ten people, that included these paid full-time attorneys in the gay rights movement plus people like me, the quote super-volunteers, including somebody like me who had just been one year out of law school.

So we were part of what's called the roundtable, which, as an institution, actually continues to this day, and now has become this nearly 100-person gathering every six months of the now-paid staff of all the four major legal groups, which didn't all exist at the time, plus law professors, plus others who are significant pro bono attorneys and so on. So it's now this massive gathering. But at the time it was a much smaller gathering, and I was admitted to that really pretty early on.

The immediate first project was figuring out a strategy for undoing the so-called sodomy laws, which then were in existence in most of the states. I can't remember, by the time we eventually did succeed in striking it down, I think we were down to sixteen or something like that, but I don't remember exactly.

02-1:38:39

Meeker: What was the strategy that was developed?

02-1:38:43

Wolfson: Well, the goal was to have a good case come up before the Supreme Court and it would ideally be a case that would present real facts, so we needed someone to actually be arrested and actually be prosecuted. And the challenge was that by that point, the laws were rarely enforced directly; in other words, people were not by the thousands being hauled out of their bedrooms in chains. But what was happening was the law sat on the books as a stigma and a license to discriminate against gay people in every other context. Gay people were presumptively criminal. So even without people being arrested, they were this terrible burden and badge of dishonor and stigma on gay people that was used to, as I said, license all kinds of other discrimination in housing, in employment, in government benefits and government respect. How can gay

people be allowed to marry? Their consummation would be a crime. That kind of argument.

So we were talking about figuring it out, and basically it was the luck of having somebody get arrested and prosecuted that would then allow people to spring into action and prosecute and challenge the law. Well, there had been other cases, but Hardwick, Michael Hardwick was arrested in his bedroom by a police officer who had followed him there—well, he had given him a ticket a couple of days earlier for, I think, alcohol in public, for not having his drink wrapped up. Michael had gone and paid the fine, but the system had not recorded that, and so the ticket was shown as in default, or whatever.

So this officer, who clearly had some other agenda and some other axe to grind, went to Michael's house at whatever it was, five in the morning, I don't remember exactly, but something unheard-of for a drinking in public violation ticket, not a crime, and I think he either knocked on the door and the roommate answered, and he said, "Is Michael Hardwick here?" And the roommate said, "He's in there." So the officer walks into Hardwick's bedroom and finds him having sex and arrests him. And of course the great line that we all had was, the question is not what was Michael Hardwick doing in his bedroom, the question is what was the officer doing in his bedroom?

But that then was a real case. And I think what happened, if I remember correctly, was the court eventually threw it out, because it turned out he had actually paid the fine, and why was the officer there. But meanwhile, it now presented a real case of somebody really being arrested in his own home for private consensual sex with another adult. So it was the right facts.

So the ACLU and local attorneys jumped on it, and once that was happening, this small team of experts and colleagues began mobilizing for the case as it made its way up. And we won in the appellate court, and now the question is, was the Supreme Court going to take it, then the Supreme Court took it. So all of this was building up. It hadn't quite started when I started volunteering, but it happened as I had just been volunteering.

Actually, in a case before that, one of the briefs I wrote for Lambda as a young attorney was in a case called *Dronenberg* [*Dronenberg v. Zech*, 1984], which involved a Navy officer who was kicked out of the Navy for violating the quote sodomy law in the Navy, and that case had gone to the D.C. Circuit and had a terrible anti-gay horrible decision written by then-Judge Scalia on the D.C. Circuit. So I had dealt with the sodomy law arguments before, and the privacy and equal protection arguments, as I had written about them in regard to an earlier case that had happened in the seventies when I was writing my paper in '83. So now here we were in '85, '86 heading to the Supreme Court with these very strong facts.

In the roundtable, in this little working group of groups, the big debate was who should argue the case, who should be the lead attorney. And they wrestled with whether to go with an insider or an outsider, but decided, as often people do, that you really want to have the biggest name, Supreme Court expert, and so on, and the person they chose was my Harvard law professor Larry Tribe, who had been my professor and I had been friendly with him, but I also was very close with one of his research assistants, one of his lead assistants, who had been my classmate and who had been, along with me, one of the members of that nascent gay group at Harvard, even though he himself was not gay. He had actually been the most vocal and visible member, in part because he wasn't gay. And we're still friends to this day as well.

So through him, I began getting much more involved in the case, even as I was also doing the pro bono work on the case for Lambda as we wrote our friend of the court brief and prepared to go before the Supreme Court. I could tell more about it, but—

02-1:44:07

Meeker: Tell more about it.

02-1:44:08

Wolfson: So what was exciting about it was, of course, we believed we were right, we believed we were going to win, we believed the idea that in America the government can't be telling people who they can have sex with and what their intimate dreams and aspirations and activities should be. This was just an obvious violation of the Constitution.

02-1:44:32

Meeker: This was in private. I mean, that's a very key thing too.

02-1:44:34

Wolfson: Yeah, in his home, in his home. So through my friend, I was part of the brainstorming with Tribe and his team, the lead team, as well as writing the brief with Abby and some other volunteer attorneys for Lambda Legal, and submitted that brief to the court. I wanted to go to the argument, of course, which I had never been to before, and through my friend Brian, who was Tribe's assistant, he arranged through one of the law clerks to Justice Blackmun to get seats for us to sit in, and arranged it so that I was actually sitting with Michael Hardwick.

We met for breakfast that morning in the Supreme Court cafeteria, and that was, of course, extremely exciting. I had never done anything like that. I'm sitting here with Larry Tribe and the team getting ready to go for the argument, and over there is Justice Blackmun sitting with his team, and over there is Justice—so that was all really, really exciting. And as we're talking and getting ready and just looking around, I see this absolutely gorgeous guy come in the door, and I was immediately attentive. And he begins walking over, and it's Michael Hardwick, whom I had never met before, who was this very

handsome blonde bartender who was now at the center of this case. Friendly, et cetera.

He sits down, we begin chatting and so on, and as I said, it wound up that now we go to line up to go for the argument, and I'm with Michael. So we go into the court and the two of us are sitting together in the audience, in the courtroom, in Justice Blackmun's seats as the court argument begins. And throughout the argument, we were sitting there alternately horrified and exhilarated, depending on who was saying what. And I can remember to this day with clarity Chief Justice Burger, in his booming voice, saying, "But Mr. Tribe, didn't they used to put people to death for this?"

And what's very odd is that years later I went back to look at the transcript, and it wasn't in the transcript. And yet I have this absolute present memory of him saying that. So I really was wondering, did they take it out of the transcript? Did I just imagine it? How did this possibly happen? And to my delight, I actually read a history recently in which this person talks about, again, the history of the gay rights movement and quotes that passage. So I know that somewhere out there there is a transcript that shows it, even though I myself have not been able to find the transcript. But I remember to this day sitting there, and Michael and I squeezing each other's knees as these kinds of things are being said, or looking and saying, "That's good."

02-1:47:34  
Meeker:

Perhaps a journalistic account of it or something.

02-1:47:38  
Wolfson:

No. Well, there is apparently some transcript that's being quoted, I just can't find it for whatever reason. But I know it happened, because I heard it.

Anyway, so we come out of the argument and we all go to lunch afterward, Tribe and Abby Rubinfeld from Lambda Legal and Brian Koukoutchos, my friend, Tribe's assistant, and Kathleen Sullivan, who was working with Larry on the case, and Michael, and me, and a couple of others. We're sitting at a table in what was then called the American Cafe, I don't think it exists anymore, and we're speculating, "How did it go?" And we all agreed we were going to win. Tribe, of all of us, was the most nervous, but definitely five-four, six-three, even some were saying maybe even seven-two. And Tribe went, "Really?" But we were very, very hopeful.

And as this lunch was going on, I'm sitting across from Michael, we're looking at each other, looking at each other, and eventually we said, "We're going to go for a walk." And we excused ourselves, to the dismay and/or amusement of the varied people of the table, and went out for a walk. And it was an absolutely spectacularly beautiful Washington spring day. I believe it was March—it was either March 13 or 31, I can't remember. And the cherry blossoms were out, and it was the first time I'd ever seen the cherry blossoms.

So we went for a walk, walked around the Tidal Basin with the cherry blossoms on this gorgeous spring day. I was with this absolutely beautiful blonde guy who was the center of everything I'd been writing about and working on for all these years, and we walked in front of the White House, we kissed in front of the White House. It was just such a rooftop, again, experience of what this all would be about. We flirted a little, he then had to get a cab to the airport, which he did. And I went back to believing we had won.

He and I stayed in touch and so on, but it was on June 30, a few months later, that I got a phone call, and my friend told me we had lost, five to four. And it was such a blow. And I really spent a couple of days really wrestling with do I even want to be an attorney, do I really believe we can do this anymore, is this the right way to do it. How could they do this? But eventually decided that we would win and they were wrong, and we'd find a way forward, and got over that. But it was definitely one of the really most painful moments of just disbelief that this could happen.

02-1:50:32

Meeker:

I wonder, you know, today there's such division on the Supreme Court, and it's very clear that particularly when it comes to gay-related court cases, Justice Kennedy is usually the swing vote, as well as in many other kinds of cases he's the swing vote. So there's a lot of times that attorneys are thinking about him in particular, understanding that Scalia and Thomas are only going to vote one way, and that Kagan and those perhaps more liberal justices are going to vote in another way, and that there isn't much—maybe one swing vote. Perhaps maybe Roberts of somebody like that could also be thrown into the swing vote category.

When you're looking at 1986, did you have that same kind of strategy where you were thinking about arguments that would appeal to specific justices? Did you feel like there were votes that you could really count on and votes that you couldn't count on, and that you were focused on those justices kind of in the middle?

02-1:51:53

Wolfson:

Well, I think Tribe certainly was, and was writing for Powell, who was then the quote swing vote, and probably more focusing on him than any other. I, at that point, was not. I was, again, more naïve. I was writing more the right answer. I wasn't necessarily thinking about Powell versus Blackmun. But of course one does have to take that into consideration. Although it gets a little overstated, because, for example, in Lawrence we actually won by six to three, so it wasn't only Kennedy, even though Kennedy wrote the decision. We did bring along O'Connor with a concurrence.

But certainly that is something you do need to think about, and that we do think about and prepare for. I, in my first round, wasn't that savvy, and also

that wasn't really our role. We still should've done it and taken it more seriously, but it wouldn't necessarily have changed anything, because the arguments we were making were the arguments we needed to make in that amicus brief, supplementing the core arguments and the core tailoring that Larry Tribe, in the main brief, would've been doing.

And of course the history is that we did persuade the swing vote in *Hardwick*. We did persuade Justice Powell until he changed his mind. He famously changed his mind, and the majority opinion that Blackmun was writing became the magnificent dissent in that, became the five-to-four loss instead of the five-to-four win that Blackmun was preparing, and that dissent was actually written by Pam Karlan for Blackmun, the clerk who had gotten me my seats with Michael Hardwick, who has remained a friend and who has been part of the legal team in the cases we've done, in the Windsor case and in 2015, in the victory.

02-1:54:03  
Meeker:

What was your response to Thurgood Marshall's vote? How did you feel about his vote?

02-1:54:18  
Wolfson:

Well, he voted well. He voted right. So I felt very gratified. Not surprised, gratified. Brennan and Marshall were certainly people we counted on.

02-1:54:31  
Meeker:

Then what about the Powell vote?

02-1:54:33  
Wolfson:

It was horrible. It was terribly disappointing. Of course we didn't know all the history at that point; we didn't know that he had changed his mind until later, but that came out relatively soon after, but not immediately. But again, the whole idea that we would lose five to four was just shocking.

A few years later, Powell gave an interview, I think he was asked at NYU by a student if there was any vote he regretted, and he said he now regretted that he'd changed his mind and that he believes he got that one wrong. But he had some dismissive phrase. He said something like, "But it wasn't all that important." He didn't say frivolous, but it wasn't that important a case. He presented it as it was sort of a fake case, that he didn't really go to jail, he didn't really—so it wasn't that serious. So he admitted he had made a mistake, but he also still clearly didn't really get it.

02-1:55:39  
Meeker:

After this decision comes down, I imagine there was a meeting of this roundtable before too long. Was there a sense about where the gay movement should go when it comes to its legal strategy?

02-1:55:53

Wolfson:

Well, remember, of course, as you know, while all of this was going on, AIDS was becoming the full-fledged cataclysm that it remained for a decade or more, and we were now just at the beginning of the absolute worst period. So the movement, which was a small beleaguered band who had now just been handed the worst legal defeat we'd ever had, was also dealing with the absolute overwhelming tide of blood and suffering and death, under assault from the then most hostile administration we'd ever had. So that's what was happening. So people were, of course, reeling from the real-life horrors of AIDS and then dealing with legal discrimination and an enemy in the White House and an enemy in the courts and so on.

But what did come as a bit of a hopeful response was a tremendous reaction against the *Hardwick* decision. It did spark a real fury and determination to push back, and how could the court do this. The American people did not agree with it, the majority, and certainly the gay movement and new waves of non-gay people who were shocked into awareness; if they hadn't already been with AIDS yet, they now could see the double blow and the double unfairness. And more and more stepped up, and all the groups actually grew and got stronger and were able to begin more effectively responding to the legal crisis, but even more to the life-and-death crisis of AIDS. So that's what was going on at the time.

02-1:57:42

Meeker:

So Lambda moved from basically being a one attorney, one staff person organization to expanding to the point that—

02-1:57:50

Wolfson:

Right, to a few, and then a couple of years later, right, I'm able to come join as a full-time staff attorney. I don't remember exactly how many went from one to three to five, but I'm sure they all did at that point. And people got more mobilized. It awakened consciousness and political organizing as AIDS was also, and that period of the eighties, it kind of went from what was still, in my memory, a relatively celebratory pride march in '83, the one where I spent my time with Boswell and it was this gorgeous day, and I'm sure we talked about AIDS, I'm sure there were signs and contingents around AIDS, but the overriding tone was still we're making our case, we're moving forward, we're pushing back on Reagan, we're going to keep rising, the more the continued liberations way. By '85, '86, the tone is much more about determination and defiance and need to organize and the crisis, and we have to fight.

02-1:59:10

Meeker:

Let's stop there. Good point to stop for today.



## Interview 3: November 10, 2015

03-00:00:00

Meeker:

Today is the 10<sup>th</sup> of November, 2015. This is Martin Meeker interviewing Evan Wolfson, and this is interview session number 3 for the Freedom to Marry Oral History Project, and we are here at the Freedom to Marry offices in New York City. Last time we got up to just when you were about to start working for Lambda Legal as a senior staff attorney. We covered a lot of ground, but we hadn't really gotten into your legal work on the issue up to that point in time. You were, I believe, working for the counsel around Iran-Contra.

03-0:00:51

Wolfson:

Right. After graduating law school, I worked for the Brooklyn district attorney's office for five years, and then for about a year, little less than a year, I worked for the Iran-Contra investigation, the Office of Independent Counsel, Lawrence Walsh.

03-0:01:05

Meeker:

So, 1989, why don't you just take me back there and tell me how it was that you learned of this position, if you applied for it, what were the circumstances for you being hired as a senior staff attorney at Lambda?

03-0:01:20

Wolfson:

Well, by 1989, I was already quite involved with Lambda. I'd been a pro bono attorney for at least five years, I had written some of the most important briefs that Lambda had, particularly in the *Hardwick* case, but several others. I was on the legal committee, which in those days was volunteer attorneys who were assisting the very small staff, and in those days staff was very small and it was much more of a collaborative effort. Now, of course, it's a much more professional and bigger thing in-house. But in those days, the volunteer cadre was more involved and more significant, and I was one of the young but still quite engaged people there.

So I'd already been involved with Lambda for several years pretty significantly, and I'd already applied for, I think it was two jobs there, as they had slowly begun coming open. At that time, when I started, it was one attorney, then it went to two, then by the time I actually came on board, I think it was four, give or take. But most of the time that I had been, up to 1989, it was one attorney, and then very late became two. And so I had applied for several jobs, and had never gotten a job there.

So in 1989, I had stepped back from my volunteering because of my work with the independent counsel, the federal prosecution, after having been a volunteer for five years, but was still loosely connected, and friends with the people there. And what happened there was, I didn't apply that time, which maybe was the key to getting the job, but instead the then legal director, the new legal director, Paula Ettelbrick, had called and asked if I would come and work full time. Not even apply, just come and be hired. I had long wanted to

do that, and even though I had only been at Iran-Contra about a year, that prosecution also had structural problems because of the issue of having to separate out the “tainted team” from the “untainted team,” those who’d been exposed to immunized testimony versus those—and it was a difficult office. So even though I was enjoying what I was doing and very proud of what they were doing, it was a good time to be able to leave and come back to New York and take this job that I’d always wanted, working at Lambda.

03-0:03:43  
Meeker:

Did Lambda have in mind for you a particular portfolio of litigation for you?

03-0:03:47  
Wolfson:

Yeah. In the beginning I was hired with an emphasis on AIDS and HIV/AIDS work. The HIV/AIDS attorney then had just left, and that’s why Paula was eager to fill the position. Although I made clear from the get-go that my real passion was the gay rights work, and that I’d rather be considered to be a generalist doing a variety of things, but that I was willing to dig into the AIDS work as well, because of course that was very urgent, particularly at that point, and take it on, but I didn’t want to be limited to that. And that was fine, so that was the agreement.

03-0:04:19  
Meeker:

What were some of the early cases that you worked on?

03-0:04:23  
Wolfson:

While an attorney at Lambda in those several early years, I worked on the range of cases, certainly the HIV/AIDS cases. A few of the ones that were important were, we sued the Job Corps on behalf of a young candidate who’d been kicked out for being openly gay and openly HIV positive. We represented a health care worker who was sued by a patient for not disclosing her HIV status. I represented a guy who was denied coverage by an insurance company in Indiana.

03-0:05:20  
Meeker:

Were there any consistent themes or legal issues that ran across this sort of portfolio of HIV/AIDS cases that you were focused on?

03-0:05:33  
Wolfson:

Well, the terrible fear, the terrible shame that people were subjected—were forced to have, or that they were expected to have, and when they didn’t, they were—the rare individuals were able to stand up and fight back the terrible discrimination, just the absolute not only lack of compassion, but the refusal to treat people in any kind of normal, let alone humane, way. And then depriving them of important things, including access to health care.

I represented a teacher who was a twin brother, had a twin brother, and he needed, for his HIV treatment, what was deemed by the insurance company

experimental treatment in the HIV context, even though it had been successful in other contexts, a bone marrow transplant. And so he wanted to get that transplant from his brother, and the insurance company refused to cover him. So we fought on behalf of the two brothers, and the reason it stands out is because, I mean, they were lovely people, both of them, the two brothers, and a great compelling story. It was Lambda's first ever *People* magazine story, a case that was just so compelling and personal, with the twins and so on. And the teachers, and the way the community rallied around them once they came out, which they were forced to come out because of the HIV challenge of one of the brothers.

Then we fought the insurance company and won, but the length of time it took to fight was so long, even though it actually went pretty quickly, it was just a few months, but it took long enough that he had come down with an infection and was no longer eligible for the treatment, and he later died. As I said, it was the first *People* magazine heart-tugging story that Lambda had as one of our cases. And it was later made into a made-for-TV movie starting John Lithgow, who played the two twins, who I met years later. He was also really just a beautiful, lovely guy, really committed and very passionate about it.

03-0:07:46

Meeker:

Was the legal team represented in that movie?

03-0:07:48

Wolfson:

Yeah. My character was sort of smushed together with our cooperating attorney character, so there was a character that was me, and I always forget the name of the actor who played him. Richard Masur. So alas, it wasn't Brad Pitt, but on the other hand it wasn't Danny DeVito, so I sort of felt like I had come out okay.

03-0:08:09

Meeker:

I think Brad Pitt would've been about twelve at the time.

03-0:08:12

Wolfson:

Thank you. I was young then too.

So it was a range of really compelling, deeply moving cases, and of course this was at a time when the atmosphere, it was like living through a war. It was just, people were dying and suffering, and the administration, far from being supportive, was the most hostile, and often leading the charge in baiting and discrimination and contempt. There was just a sense of being completely under siege.

And while doing this and handling the bulk of the AIDS portfolio for Lambda in that period on staff, although we still relied heavily on really valuable contributions from great pro bono attorneys. I was also taking on gay rights cases and doing some of the gay rights cases that were even more my real passion.

03-0:09:07

Meeker: So, for example, some of those would've been?

03-0:09:10

Wolfson: Working on custody cases, visitation cases, because HIV and AIDS was one area where gay people were under assault; custody and visitation was another, where we were just threatened with the loss of our kids, all across the country, or almost all across the country. So I did a number of those cases, a case in Iowa I remember. I also worked on the military cases, on employment cases. I led the charge against New York City, which was refusing to provide partnership benefits to the gay teachers association, ultimately brought in to all city workers, and won that case.

And I represented a Florida deputy sheriff who had been fired for being gay. We went to trial in what became Lambda's first ever jury trial, in Orlando, Florida, against the sheriff there, the elected sheriff I actually was just thinking about that the other day, because I actually was back in Orlando giving a speech last week, speaking to the Florida Democrats. And I told the story of this case, which was one of two times that in one of my cases there's been KKK protests and picketing, and where in the courtroom, this Southern courtroom in Florida, not only was I gay baited, representing this deputy sheriff, but I was Jew baited, where the local Florida attorney representing the sheriff turned to the jury, our first jury trial, and said, "Now, Mr. Wolfstein has come down here from New York City to tell us how we should be thinking," blah blah blah. But we won.

03-0:10:55

Meeker: You won.

03-0:10:56

Wolfson: We won.

03-0:10:58

Meeker: In this sort of diverse panoply of cases, were there any kind of abiding legal issues? I mean, when we get to the marriage cases, due process is kind of the centerpiece of a lot of these. Were there any kind of overriding appeals to the constitution that were made?

03-0:11:19

Wolfson: First of all, not all these cases were constitutional cases, although most of the cases were, but not all. The core arguments, that have always been the core arguments, are what you're calling due process, which I prefer to think of as liberty and substantive rights, including the freedom to marry.

03-0:11:38

Meeker: The fifth and fourteenth amendment kind of—

03-0:11:40

Wolfson: That's where they're parked, generally, although they also draw on other constitutional provisions. But yes, due process meaning your rights: liberty,

freedom, the ability to do equally what others do, and so on. And then equal protection is the other big category of constitutional protection and doctrine that we tend to draw on, and also first amendment. So some of the other cases during that period involved the First Amendment, involved being able to march in a parade, being able to make statements and so on, being able to form a student club, a student association.

Of course the other big case I took during that time, other than the marriage cases, was the Boy Scout case [*Boy Scouts of America v. Dale*, 2000], where we challenged the Boy Scouts for expelling my client, James Dale, who had spent more than half of his life as a scout, and then they discovered he was gay and they kicked him out.

03-0:12:37  
Meeker:

Were you keeping a running tab on your wins and losses, and how did you feel, say, through the late eighties and through the nineties, I guess, up to the Dale case—that was what, 2000?

03-0:12:52  
Wolfson:

Dale began in, I think it was 1990, actually. It ended in 2000, because it was a ten-year litigation.

03-0:13:00  
Meeker:

Right. So what was the record that you were coming up with?

03-0:13:04  
Wolfson:

My record?

03-0:13:05  
Meeker:

Not to really test you personally, but to get a sense of how gay rights, and by extension HIV, cases were faring in the courts, whether they were jury trials or whether they were—

03-0:13:18  
Wolfson:

We had a pretty good track record. I mean, we certainly had our losses, and we certainly had very difficult periods where we'd go in to court and judges would spin in their chair and turn away from us and treat us with contempt, and where we might win in a trial, but then the appellate courts, which tended to be packed at that point by Reagan appointees and conservatives, would throw out clearly well-reasoned, clearly right decisions and just institute anti-gay attitudes, often drawing on the *Hardwick* case, which I had worked on earlier, and we talked about earlier.

But despite that, my memory of it is that we did pretty well. I did have a list at one point, I don't even think I have this anymore, of all the cases I was involved in, and we had certainly won more of them than lost. Although my joke, with its great grain of truth in it, for many of my years afterwards was that I'm most famous for the cases I've lost. And that is also true. I mean, the Hawaii marriage case [*Baehr v. Miike*, 1996, 1999], which launched this

ongoing global movement, and I think truly was the turning point, if you had to pick one, in our struggle for the freedom to marry over four decades. Ultimately we lost. We won the trial, and then it was taken away, politically.

The Boy Scout case, ten years, transformed America's understanding of who gay people are, planted the idea that there is such a thing as gay young people, which changes all your premises and really changes the dynamic that has allowed us to continue building and winning. We won the unanimous ruling in the New Jersey Supreme Court, also won in the court below; lost in the trial court with a very hostile judge, but we won the two appellate decisions. And then it went to the Supreme Court, where we lost 5-4. So my biggest cases, the cases I'm most identified with as a lawyer, are the cases I lost.

03-0:15:23  
Meeker:

At this point in time, were you starting to develop an understanding of the relationship between, in essence, public opinion outside of the courtroom and what happens inside of the courtroom?

03-0:15:36  
Wolfson:

I actually had always had that. I think that is one of the insights that does stand out, even going back to my third-year paper, my thesis at Harvard, that I was just always aware that just being right legally, just having the legal arguments, just going to court, was not enough. That's what permeates that paper, it's certainly what defines my work ever since, and it also defined my style as an attorney.

Because I'm a lawyer, people will often treat me as though everything I'm saying is somehow a legal something, and they'll talk about the legal strategist, but the legal part was a very defined and limited part of what we did to win the freedom to marry and what my work has been. I get pigeonholed or identified or heard as a lawyer, but to me it's always been about engaging the culture, engaging the people, engaging the hearts and minds, in order to create the climate in which the litigation tool could succeed and we could get the law where it needs to be, knowing that getting the law where it needs to be, in turn, is still only part of what we want to achieve. We want to move hearts and minds. We want to change people's lived experience, their lives, not just the laws.

03-0:16:56  
Meeker:

For example, with the case that you mentioned that was covered by *People* magazine, was that coverage prior to the decision coming down in favor of—

03-0:17:07  
Wolfson:

I'm pretty sure. I don't remember exactly. I'm pretty sure, though, it would have been while we were in the trial court, not with the trial, not with the trial decision. But it's conceivable it was after the trial decision.

03-0:17:20

Meeker:

Did you and/or Lambda make an effort to publicize this, to get the public engaged in this particular case?

03-0:17:24

Wolfson:

Yes. Now, Lambda—this is not something I invented. Lambda, from its get-go was styled the Lambda Legal Defense *and Education Fund*. And in part that's because Lambda, like many of the others, modeled themselves after the original version of this kind of public interest advocacy arm, which was the NAACP Legal Defense and Educational Fund. There was always an awareness that education and engaging the public was an important part of the work.

But, because of limited resources and the dire situation and the desperate need to engage the law, the emphasis was always on the litigation, always on the law, and that was Lambda's niche and its strength, and then, when there began to have the other groups that became part of the movement's legal arm, they all talked about and sometimes did public education, but always their bread and butter, their heart, their core, their default first-line commitment of resources, was to the litigation, as was right.

I was a little different, though. When I came in, I always saw, and was interested in, the engagement of the public, the engagement of the culture, the engagement of the climate, not just the litigation, not just the law. And so, again, even though I'm treated as a lawyer and famous as a lawyer and so on, I don't think of myself actually as a lawyer's lawyer. I think of some of my other colleagues as being much more solid and smart and committed to doing a very detailed, deep legal analysis. I'm much more, how do we do this to do that, how do we get this to get that.

03-0:19:08

Meeker:

Were you developing a particular methodology then that linked the legal litigation issues with the influencing hearts and minds much more broadly?

03-0:19:18

Wolfson:

Yeah, I think always wanting to be able to tell our story, tell the story of the case, tell the story of the client, and do it in very non-legalistic terms, and not really talking primarily as a lawyer. When I talk about the law, I don't usually use—you're the one that used the phrase "due process." I would never have used that phrase. It just wouldn't have come to me to talk about it that way. I try to talk in real people's language, not lawyer language.

03-0:19:44

Meeker:

I was trying to impress you.

03-0:19:46

Wolfson:

Yes, well, thank you. Well, it is good to know. And see, if you want a lawyer, you want someone who's going to be able to do that when you write the brief and so on. I'm much more getting you to agree rather than litigating. The

litigation then follows. Because to me, judges are human beings, and the hard part is not writing the legal argument; the hard part is getting the decision maker, whether it be a judge or a legislator or the public, the voter, to want to agree with you. Then you'll give them the road map.

And I remember thinking that way even as a law student. I mean, that was clear to me even as a law student, the most important part wasn't writing the road map. The most important part was getting them to want to follow your road map.

03-0:20:35

Meeker:

And you do that through storytelling?

03-0:20:36

Wolfson:

You do that through storytelling, you do that through conversation, you do that through answering questions, you do that through clear explanation. You can do that through humor. Really just the engaging of the heart and mind, the connection on values, not just legal proofs. Just having the legal text and pointing to it isn't enough.

And it's funny, because as a kid, I was always very argumentative. I was the kind of kid that people said, "You should be a lawyer," because I would argue and I believed in reason. And I still believe in reasoning and persuading, but I remember learning—I remember reading a book in the Peace Corps, and I think it was Andre Gide, but I'm not 100 percent sure. You read anything you could get your hands on as books floated through your village and so on. I remember there was a passage in one book that went something like, "He consoled himself by being right." And the point of it was that it wasn't enough to be right. Yeah, okay, he was right, but it didn't get what he wanted. But he consoled himself by being right. That's not even the exact line, but it's something along those lines. And I remember that sticking with me, and I wrote it in my diary at the time.<sup>1</sup>

So as a young person, and as somebody coming of age, and even my own temperament, there is this idea of being right and that the world should bend to the rightness and other people should listen. But fortunately, as an advocate and in my work, even more successfully than perhaps in my own personal innate temperament, I've actually been able to approach it the other way, that it's not enough to just be right. You have to actually find where the other person is and help them move. And that came to me certainly in law school, and has been the defining characteristic of my advocacy ever since.

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<sup>1</sup> In review, Wolfson added, "I absolutely stand by the point I was making... but actually, I completely misremembered the quote and its relevance. The quote I loved from Gide was something else entirely: 'You have to let other people be right' was his answer to their insults. 'It consoles them for not being anything else.' André Gide, *The Immoralist*."



My advocacy has often taken the form of lawyering, but for the last fifteen years, though I'm still a lawyer, I can still write briefs, I can still kibitz on the cases, I can still help shape legal strategy, I can still ask good questions when I'm kicking things around with my colleagues. I haven't really been a lawyer. I haven't really been litigating, I've been shaping this campaign to shape the climate to move the hearts and minds, so that our litigation could succeed.

03-0:23:15

Meeker:

So I want to get into some of the cases in a few minutes. But first I want to get your sense on, during this period of time that you were at Lambda, what was your interaction with other gay rights organizations?

03-0:23:33

Wolfson:

In those years, when I was full time at Lambda, was '89 through 2001, so essentially the nineties.

03-0:23:42

Meeker:

And then from '94 on, you were heading up the—

03-0:23:45

Wolfson:

The freedom to marry work, the Marriage Project. But I was still litigating a little bit, I was still at Lambda. So I was at Lambda for twelve years, from '89 to 2001. During that period, the movement's legal arm got stronger and stronger, Lambda got bigger and bigger, began opening regional offices under the good leadership of Kevin Cathcart, who had been my friend when he was executive director at GLAD in Massachusetts, and then came to head Lambda.

Each of the legal groups got stronger and grew, except for a couple that went out of existence, so it changed a little bit, but the core groups, the four big groups, Lambda, GLAD in Massachusetts, National Center for Lesbian Rights based in San Francisco, and the ACLU's Lesbian and Gay Rights Project, got stronger and more professional, and worked closely together. And throughout that period, we would formally meet as the four groups plus some other pro bono advisors and professors and so on, in the way that I had been as a pro bono person. We'd meet every six months in what was called the Roundtable; still is called the roundtable.

And it's really kind of been the most successful institution within our movement, because it has brought these groups together and helped them forge a pretty common strategic understanding of what needs to be done and what each of them will do and how to do it. It wasn't decisional, it wasn't assigning tasks, but it was a relationship builder and a strategy sharer mechanism that enabled the legal arm to function with a greater degree of cohesion and effectiveness than the rest of the movement. Which is why, at a certain point, I felt the need to create Freedom to Marry in order to make sure that the political organizing and public education pieces of the work were in alignment with the litigation part.

So we all worked pretty closely together. We were all in touch with each other. There were turf issues and the occasional elbow and so on, but mostly we got to know each other and work together, and it was like a family. You might quarrel, you might be annoyed, but you knew the other person, you trusted him, you had a level of respect and affection for your colleagues. So that was something we all shaped during that period in the legal groups and in the community that was supporting these legal groups.

The relationships with the political groups and with other groups and with the nascent state groups that were beginning to develop and beginning to grow, but still pretty small and pretty ragtag, for the most part, doing, in many cases, good work, but with one person, two people, much less resources, much less structure, was more mixed. There were certainly some good relationships and some real respect and affection. I got to know Matt Foreman, for example, who now is at Haas Jr. Fund, but for many years headed up the [National Gay and Lesbian] Task Force, before that headed up the Pride Agenda in New York. I knew him when he was a local advocate at the anti-violence project, and we became friends. I was a Lambda staff attorney in New York, he was this local organization, a New York City based organization; we've been friends now for twenty-plus years.

I mean, there are lots of stories like that, where we've worked together and grown together, as people rose through the movement. But institutionally, there were much greater challenges trying to find partners of the same kind of focus and tenacity and nonreactive, affirmative strategy outside of the legal groups. That's just not how those other groups existed, it's not how they were funded, it's not how they thought. And so that, again, was one of the challenges that I was trying to cure when I created Freedom to Marry.

03-0:27:50

Meeker:

Can you tell me a little bit more about these different sort of approaches to social change that were being pursued by Lambda and the Roundtable, and then the political groups? I mean, I'd like you to just kind of unpack a bit more of what you were just describing.

03-0:28:07

Wolfson:

So first of all, litigation, obviously, is a clear methodology. It has its rules, it has its imperatives, people can figure out what it needs. Some, for example, like me, definitely saw that the litigation wasn't only about what we did in the courtroom, it was about how we shaped the climate around us. But it was still grounded in, "We're going to have to do this, and we're going to have to do this in order to get to that, and that's how we're going to get to that."

When you're outside of that kind of clear methodology, you don't have the same rules and structures guiding you, so you are improvising more. And usually when you're improvising, you're also reacting, because you're dealing with the threats, the challenges, the obstacles, the limitations, et cetera. As

well as maybe a point of opportunity, where you try to pounce, because this opened up or some politician said, “I’ll do this,” or whatever. But it doesn’t have the same strategic drive and clarity and focus when it’s not grounded in a methodology or even in a clear goal, that I’m going to work to this goal, thick or thin. If you’re just about, how can I defend against what the opposition does, how can I opportunistically seize on the moment, you might get some things done, you might block some bad things from happening, but you’re not driving where you’re going.

And most of the other organizations that we tried to work with, particularly the significant political ones, didn’t have that clarity of methodology and didn’t have that clarity of goal, so they were more reactive, more opportunistic, therefore not as in alignment with the strategic needs as I would have thought they needed to be. I’m talking about groups like HRC, the Human Rights Campaign, to some extent the National Gay and Lesbian Task Force, to some extent the Gay and Lesbian Alliance Against Defamation, GLAAD, whose board I served on twice at different points during the late eighties and early nineties.

And so, though the relationships were friendly, usually, at the personal level—again, if you were around long enough, you got to know people, you worked with them and so on—the style of work and the commitment to a strategic objective and the willingness to work on something even when it wasn’t glamorous was very, very different and caused real problems as the stakes got bigger and bigger, particularly once we won in Hawaii in 1993 and now the world moved and we were going to have to deal with not just a case, but this entire marriage conversation. And none of these groups thought in those ways, thought about pursuing a heavy goal for years to an end, had the capacity or the experience to do it. And they didn’t even particularly want to do it, because it was inconvenient. It wasn’t suited to their funding style, their activism style, their need to report wins in order to keep growing. And so it created challenges as the marriage work took hold.

03-0:31:19

Meeker:

What about the perhaps unaffiliated activist class? I mean, every city has their gay and lesbian activists.

03-0:31:29

Wolfson:

During certainly the late eighties, early nineties, much of that energy was going into AIDS and HIV. So there were almost just parallel tracks. We weren’t at odds, but we weren’t banging on each other trying to say, “You have to do this, or you have to do this, or you have to do it my way.” I was limitedly involved with AIDS activism. I went to several ACT-UP meetings and certainly worked with GMHC [Gay Men’s Health Crisis] and others, the AIDS Action Council, which was formed in order to try to pull together a voice for the various GMHC-type groups around the country in advocating in Washington.

I had friends in the more establishment part of that so-called, the movement organizations like GMHC and others. I had friends in the more grassroots activist self-styled groups. And respected, actually, both of those contributions but wasn't a significant player, really, in either of them. I was, by that point, much more focused on my own gay rights work, while still doing AIDS and gay cases, but I was particularly beginning to get focused on the marriage work and how to shape a campaign out of that.

So I would say most of the grassroots energy was going into the AIDS and HIV work. Some was going into resistance to the discrimination that was just being thrown at us by the religious right and the Reagan administration and hostile legislators. But a lot of that was also wrapped up, still, in AIDS. So that's where that was.

Into all this came the marriage case and the marriage cause, which created an opportunity for an affirmative grassroots effort of personal conversations and persuasion and organizing to build the state-by-state capacity that was needed, and to help drive the national conversation, all propelled by, at that point, the trajectory of the Hawaii case. And as I wanted that to happen, I began identifying grassroots groups, but even more significantly, individuals who could come together and form new groups to organize and do marriage work in Massachusetts, in California, in New York, and so on.

And some of them banded together and created organizations like the Legal Marriage Alliance of Washington State, that became, for a period during the nineties, the largest group in Washington State. And they became that because we tapped into this grassroots desire to be doing affirmative work and to claim this marriage vocabulary and engine, which we now made seem possible with the Hawaii case. And the local group, the existing state group, didn't want to do that. That was too hard, it was too big a leap for them. They didn't believe that we should be fighting for marriage right away.

These energized activists did believe it, and so they created their own group. And we saw similar kinds of energy, and I began organizing that energy. In the mid-nineties, I reached out to—I was still at Lambda, but I was now director of the Marriage Project and given this portfolio of organizing alongside the litigating of the case and public education. This was a new thing for Lambda, not in Lambda's sweet spot, to do this kind of organizing. So I reached out to people at the task force and GLAD, and HRC, and asked them at one point, would they help organize the existing state groups to pull them together so that we could create a coalition and work together and share tools and so on, and they literally said to me, We've never done that, we don't have that. But if you'll do it, we'd like to be part of it.

So from Lambda Legal, I had to take on this work of building a national infrastructure of state organizations and state groups in order to have, on the organizing side, what we needed alongside the litigation side that we were

already doing. That became the nucleus of what is now, today, the Equality Federation, because we created those lists and those identities and turned it over to the task force, which then helped build this network of state groups. And it also helped, of course, seed the energy and support the energy at the grassroots level that often, then, became significant players within the states and have created the state infrastructure that we have in some parts of the country to this day, although the state infrastructure has always still been weaker than the national infrastructure.

At the national level, it was always a challenge getting the national groups to consistently engage in this affirmative, sustained effort to win marriage. They would come in and out. GLAAD did some good work, Task Force did some good work, both with us. HRC, to some extent, did some work, but mostly didn't really want to deal with it except when it was so in the news or so hot or there was so much grassroots excitement that they wanted to be seen as being part of it.

03-0:36:56

Meeker:

I want to back up a little bit and ask you about the Roundtable during this period of time. The marriage issue is definitely percolating. I think the original Hawaii case is filed in what, '91 or something like that, and then through '96 it's moving toward some sort of resolution. The Roundtable meets, sounds like kind of a loosely affiliated group of people and colleagues and friends. Was there a pretty clear agenda of what was on their agenda at that point in time?

03-0:37:39

Wolfson:

Well, the agenda was put together collaboratively, usually by the legal directors of, now it's four legal groups, it varied a little bit, but essentially those groups. But anybody could actually propose anything for the agenda, could propose discussion. And in those days, unlike today, it was a relatively small, relatively clear group of people. You knew who was going to be there each time, you all pretty much knew each other, and you also knew what the issues were. I was actually just, at one of the talks I was giving over this last week traveling around the country, I was visiting with a friend who made the comment, which I completely related to, that that was in the day when, he said, I—and it's true for me, too—could literally name every gay case. There was a time when we knew every case. We knew every case that had been decided, we knew every case that was pending, we knew what our friends were doing through this network and through following it, and we just knew the whole body.

Then, of course, with AIDS, there came these two major areas we had to know, and then each one grew and grew and grew, and now, to this point, this is what I said to my friend, I don't even necessarily know all the marriage stuff that exactly is happening. I mean, I'm generally aware of it, but I can't necessarily name the details of every Louisiana case versus the Arkansas case

versus—nor am I doing every marriage thing, which of course at one point I was, either doing it or making it happen, let alone all the gay stuff, let alone all the gay and AIDS stuff, and the trans stuff.

But there was a time when we did know all of that, and it wasn't that long ago. It was twenty years ago. We knew what everybody was doing, we knew what the issues were, and we would set the discussions based on either problems that were having to be resolved or brainstormed through, how to deal with the first amendment challenge here, how to deal with the reticence of the courts to address this question or that question, et cetera. And there were certain topics that pretty much were on every single time, because we were disagreeing over them and we fought over them again and again and again, marriage being the number one.

03-0:39:53

Meeker:

Where were the areas of agreement? Where were the areas that there was clear work that needed to be done and that each organization was going to be pursuing a legal agenda vis-a-vis that issue?

03-0:40:10

Wolfson:

There were far more areas of agreement than disagreement. I mean, lawyers can argue over the details or here's a way to do this versus that, and brainstorm. That was part of the point of the meeting. But we were all substantively in agreement on what we wanted and where we were going on almost everything, marriage being the big outlier exception, and to some extent the boundaries of the First Amendment being the other one.

So, areas of agreement: employment, custody, visitation, housing, doing more AIDS work, how to do AIDS work, pushing back on discrimination, how to invoke the limited federal protections that existed and then build on them, particularly with regard to AIDS. At that point we were steering clear of the courts federally with regard to gay because of the *Hardwick* case, with the exception of the First Amendment. Yeah, agreement was the general rule.

03-0:41:14

Meeker:

Was there conversation at this point in time about when it was appropriate to bring sodomy back into the mix as far as litigation?

03-0:41:22

Wolfson:

It was clear that it was not going to be appropriate to bring sodomy back into the federal courts for quite some time. That was agreed to. And what people began doing was taking it to state court and winning under state constitutional rulings.

03-0:41:46

Meeker:

Starting on marriage and family law and domestic partner and all that kind of stuff, can you tell me about the 1989 Andrew Sullivan article in the *New Republic*, "Here Comes the Groom"? Did you read it when it first came out? What did you think of it?

03-0:42:07

Wolfson:

Well, I got to know Andrew when he was writing that article. So he called me because he had been told that there was this one advocate who actually believed we should be fighting for the freedom to marry. So we actually spent a fair amount of time on the phone before we actually physically met, as he was writing the piece. I thought it was great. I welcomed having somebody else come into the arena, and of course he did a great job, and it was the cover of the *New Republic*, so it was a compelling addition to the intellectual debate and to getting the conversation to a higher level. So we bonded over that.

Now, as we've been friends for twenty-whatever years, there are so many things we disagree on, but there are some very big things we do agree on, marriage being one of them, and the importance of persuasion, the importance of making the case and making it not only in legal terms, but in emotional terms. And Andrew has been just such an incredibly effective voice in making the emotional and familial personal case in a way that really has moved many people who would otherwise not have agreed. So he just proved to be an incredibly important ally, and we bonded pretty much right away and fought, bickered, argued over the things we disagreed on, but really connected on the things we agreed on, and admired each other's commitment and intellect, but also commitment and passion and willingness to do the work.

We wound up becoming friends, really, because we would find ourselves speaking in the same city or figuring out a way to make this case or that case, and he remained a really important intellectual voice, even as he, of course, developed his own identity and became a much more significant public intellectual in the United States.

[pause in recording; background noise]

03-0:44:33

Meeker:

Right, so I read the article for the first time last night in probably decades, and it really is quite fascinating, very forceful. You know, it's interesting that he's not trying to convince those who would be opposed to it outright. He's trying to work this middle, which is the readership of the *New Republic*, but also I think that he's addressing it towards gay and lesbian people who, you know, this is a new idea to, and for a variety of reasons they may not yet be engaged with this idea of marriage, so to speak. And one of the things that the argument argues against, or the article argues against is this notion of domestic partnership that was, at that point in time, kind of on the vanguard. It had been adopted in Berkeley and San Francisco, I think—

03-0:45:49

Wolfson:

Madison.

03-0:45:50

Meeker:

Madison and—I don't think New York had yet done it. And one of the interesting things about his argument against domestic partnership is that it

actually would sort of enshrine entitlements that were entitlements typically reserved for married couples, into this other sort of category, marriage-like category. I thought that was interesting, that he would use that as an argument against it. Was that, or was there anything else in the article particularly novel to you at the time?

03-0:46:34

Wolfson:

Well, first of all, one of the things we had to do in those days was persuade the most likely people to support, let alone the middle, let alone the real opposition. So Andrew, like me, was making the case primarily to, quote, us as to why we should fight for this, gay and non-gay people who were on our side. The battles of persuading the middle and fighting the hardcore opposition would come, but you had to get your base. And it's certainly within the tradition of the kind of "Letter from a Birmingham Jail" [1963] that Martin Luther King Jr. wrote, which was not addressed to the bigots and not even addressed to the waverers, it was addressed to, quote, the liberals, those on our side who were falling short and weren't fighting for it enough. So that wasn't novel, but it was very well done, and an important piece. That definitely had an effect on many non-gay people and may gay people, who should have been there already, quote-unquote.

The domestic partnership argument—of course I haven't read the article in quite a while, but we both always felt that we don't want something else, we want marriage. We don't want gay marriage, we don't want same-sex marriage, we don't want some other thing, civil union or partnership, being gay marriage. We want marriage. And part of the important claim was the claim to full and equal participation, not a handful of benefits dressed up as a consolation prize for being excluded from something else.

That said, I believe, I don't remember if he did in this piece, but certainly part of Andrew's emphasis, which was always speaking more as a conservative, which I was not doing, would have been to also make an argument about shoring up marriage by not creating a competing non-marital marriage status, and maybe that's what you're alluding to. I would've referenced that argument, I would've been happy to invoke it, for those to whom it would matter, but it wouldn't have been my argument, because that wasn't my goal. My goal is not to enforce a conservative vision of what marriage is. Rather, it was to make the conservative case as well as the liberal case, both, for the right answer, which was ending exclusion from marriage.

03-0:49:15

Meeker:

Did you have any misgivings about the fact that this kind of opening salvo in the debate, very high profile, was circulated, I think, quite widely, beyond the usual readership of the *New Republic*, was in fact kind of cast as a conservative argument on behalf of marriage?



03-0:49:38

Wolfson:

No. First of all, I didn't think of it as an opening salvo. And remember, gay people had been wrestling over this question for more than twenty years, so it wasn't an opening salvo, it was a new salvo, and a good one, and an important one that did have the effect of getting a lot of people thinking and talking, which is what we needed to do. And it was authentic, it was authentic to what Andrew believed. And I think making your authentic case, not everyone's going to agree with every element of your case, but they don't have to agree with every element, and no one messenger is going to be the right messenger for everybody.

So no, I didn't have that concern, and I don't have any problem being aligned with somebody and saying we agree on 90 percent or 80 percent, and I don't agree with this and that, but they're still entitled to their view, and there will be people who will agree with that, and this is going to help bring people in. I think it was a really important contribution and Andrew's voice consistently, while not one that everybody would respond to well, was a hugely important one and a very effective and eloquent one.

The argument that got added in as we went along that was part of the, quote, conservative case for the freedom to marry was sometimes expressed as this notion that part of what marriage does is civilize people, or tame men, and so on. Of all the arguments, that argument was the one that I was least personally comfortable with. It wasn't my argument, and it wasn't something I would've wanted people to have assumed I subscribed to even as I was being put in the bundle and the category of people like these who are making the case for marriage. I think most people paid attention, understood there were gradations of difference in different viewpoints and so on that people on the pro-marriage side had, just as there were differences on the resistance side. But not everybody. So the one you mentioned was not one that I would've felt, "Oh my god, I'd better make sure nobody thinks I think that." The language of taming and civilizing would not have been my language.

03-0:51:55

Meeker:

Did you ever have to differentiate yourself or explain that that wasn't your argument on behalf of marriage?

03-0:52:06

Wolfson:

No, I didn't really have to do that, as you put it, and I didn't feel like I needed to do it. There were conversations with important players who we were also trying to bring around from other points of the spectrum, where I was pleased that they noted that there were distinctions in the argument. So it's not that it never came up, but it's not something I was going out of my way to do.

To the extent I had to do anything like that with my friend Andrew was more on some of the other things we disagreed on, where I wanted to be clear that we're friends, I think he's forceful and effective and persuasive and eloquent and passionate, and creative. He's created a whole kind of advocacy, blogging

and public intellectual from an idiosyncratic conservative voice that's gay, all of which were hugely important, and hugely resented by other people who envied his success. And so I always was proud to be and happy to be identified as his friend, and as a partner in the work of advocating for marriage, and for a period of time it was really the two of us more than anybody else anywhere.

But what I didn't want to be associated with, as he knew, was some of his other views on other things that I didn't agree with, and in fact completely disagree with. And we would often publicly joke about the fact that I'm a liberal, he's a conservative, he thinks the government should get out of this, I think the government should be working as a force for good on that, et cetera, et cetera. Some of the positions he took were polemical and extreme on different things. But others were effective and important. I have no problem disagreeing with somebody, but there were things I wouldn't have wanted to be identified with, not with regard to marriage but with regard to other things that he believed in. And he knew that. And we would just agree to disagree, and neither one of us was bothered by it.

03-0:54:10  
Meeker:

An essay that he wrote just a little bit later, I think in '96, called "Liberation"—I'm not expecting you to remember this—but this is where he's invoking Hannah Arendt and her perspective on marriage, which, if you remember, I'd love for you to comment on, because the thing that I found to be very interesting is that in this—she's talking about the context of race and ending anti-miscegenation laws—that it's first and foremost important to end those, even before talking about something like school desegregation or nondiscrimination ordinances, because this is about, in essence, human rights, which I think dovetails with what you were talking about in your Harvard school paper.

03-0:55:00  
Wolfson:

I certainly remember what you're talking about. Andrew is very fond of that, he would quote that often in different writings and so on. I think it's a very effective quote. His zeal for it, as opposed to taking it as one good statement, came from one of the things we disagreed on, which is the importance of nondiscrimination laws and the role of government with regard to assuring equality of opportunity in housing and employment and public accommodations and so on, he being much more skeptical, resistant, ambivalent about that, not always consistent but certainly having a very different position from me. That was just one of the many things on which we would disagree.

I liked the Arendt quote and I understood, and as you said, in my own paper the version of the argument I made was about the claiming the freedom to marry as a language of resonance on values and emotion, even before you get to the legal incidents. In other words, the protections and responsibility, the

legal, the tangible, the economic consequences of marriage, while important, weren't the most important part of our case. The most important part of our case was the human, the connection, the love, the commitment, the values. Andrew wrote eloquently about that, and effectively. That was a huge part of the work that I did in my paper, and also in the Freedom to Marry campaign over the last decades. That's what we agreed on.

What we didn't agree on was the idea that nondiscrimination laws or some of the other work was important. And Andrew being a polemicist sometimes, being that kind of provocative writer, he would sometimes write things like, "The marriage and the military are the only things we need to be fighting on, and once we've won them, we're done." I don't know if he literally said exactly that, but he certainly said things that could be characterized as saying that, and flirted with it sometimes. Well, I never believed that, and didn't agree with it, and wouldn't have wanted to have that be understood as what the marriage case was.

03-0:57:06

Meeker:

At this time, kind of in your early years at Lambda and just as the Hawaii case is percolating up, you'd mentioned you were working on other gay rights cases, some dealing with custody and family issues. Did you see these cases as being necessary precursors to an ultimate pro-marriage, say, Supreme Court decision somewhere down the road?

03-0:57:38

Wolfson:

Well, first of all, they were necessary in their own right, because people were experiencing this discrimination on something that really mattered to them, number one. Number two, they were the ground on which we could hope to fight and win. Even before we could maybe win marriage, we could win fair rules with regard to custody, with regard to visitation, with regard to parenting, and so on. Third, they were building blocks, they were educational building blocks helping people understand who gay people are, the fitness of gay parents, the way in which our kids are helped and not hurt by nondiscrimination, that respects their families and enables their parents to care for them, including marriage. So I saw it as all of those things, and therefore worth working on in its own right and worth working on as building blocks, as elements of making the case, as filling out the picture.

But I also just want to be clear. I never believed that winning marriage is the only thing that matters. So even without regard to the way in which it connected to the marriage work, we should have legal protections, we should have economic opportunities, we should have personal opportunities, we should have acceptance and dignity and equal treatment in every area of life, even if it has no connection, and even if it doesn't advance the marriage cause. Central and important as marriage was in my thinking and as the work was, it certainly wasn't the only thing that mattered, nor was it going to be the only thing we needed to win.

03-0:59:10

Meeker:

Something later on that very clearly develops is the road map. Is that the same thing as the 10-10-10-20 plan?

03-0:59:19

Wolfson:

Well, the national strategy for winning marriage pretty much all along was that we were going to win through litigation in the Supreme Court. The Supreme Court was going to bring the country to national resolution. But we also understood that in order to get the Supreme Court to do that, we needed to create the climate in which they would do it. Remember, we had brought cases as a movement, one of which had reached the Supreme Court in 1972, and the Supreme Court had gotten it wrong. So just having a legal argument clearly wasn't enough.

The question is, how do you get the Supreme Court to do what it refused to do in 1972? And the answer to that was the strategy of creating a critical mass of states and a critical mass of public support, tackling federal discrimination, all of which would create this climate that would enable the Supreme Court and encourage the Supreme Court to see the legal argument correctly and do the right thing. That was always the strategy.

In various ways, we put that strategy out there. I preached it constantly during the nineties and in different meetings. When I created Freedom to Marry, I laid it out in writings and in my [The Advocate – Sept 2001] blueprint article and so on. Eventually we had it on our website as the Roadmap to Victory, and we branded it as the Roadmap, and we showed these three tracks of work. First we said building; and then once we built a majority, it was then growing a majority, public opinion, critical mass of public opinion; winning states, critical mass of states; tackling federal discrimination, bringing down DOMA. And we talked about these three tracks on the Roadmap as all of what was going to create this climate that would allow the litigation to succeed and bring it down through the Supreme Court. That's what Freedom to Marry was created as a campaign to do, was to drive that three-track strategy and make sure all these pieces happened.

As we engaged with the movement, and as we engaged with the public, and as we did the work, and as events happened, part of what was necessary was constantly re-articulating the strategy and getting more of this to happen, more of this to happen, more of this to happen. It didn't change the strategy, but it changed how we did it and what was needed and who was doing what.

One of the crucial moments, and now we're going to jump ahead a little bit, came in 2004, when Karl Rove, as part of the Bush campaign's strategy, put on the ballot thirteen—eleven on Election Day, two others—thirteen, during 2004, anti-gay, anti-marriage constitutional amendments in thirteen states that added discrimination on top of the discrimination that already existed in all those states. They already had anti-gay, anti-marriage laws that were mostly

passed during the nineties; now they came back and said, “Okay, now we’re going to put it in the state constitutions.” And they developed the strategy of pushing these anti-gay amendments, which they believed was going to drive turnout and bring them the election.

It later was shown that actually that isn’t what happened, but that stuck for a while. So not only did we lose these thirteen ballot measures, but we also got blamed for [George W.] Bush’s election, unfairly as it turned out. So when it comes Election Day, November of 2004, and we lose on one day eleven ballot measures, thirteen total for the year. So there was, of course, a great deal of misery and pain and angst and wavering and fear in the movement, and a lot of punditry on the outside blaming us, saying this showed that we couldn’t win, et cetera, et cetera. And within the movement there were key voices, HRC, Hilary Rosen, some of the other leadership there, saying we needed to pull back from marriage, and they were quoted in the mainstream press, I think it was either the *Washington Post* or the *Boston Globe* and others, saying marriage is just asking for too much, we should be hunkering down, looking for partnership, seeing what we could do. We can’t have losses like this, et cetera.

I argued that any year in which you lose thirteen ballot measures but win marriage, which we had done in May of 2004 [in Massachusetts], when couples began getting married, any year in which you lose thirteen ballot measures but win marriage is actually a winning year, because the power of the win, the power of couples now being able to marry for the first time ever on U.S. soil, and for people getting that chance to see families helped and no one hurt, the power of that win, if we kept doing the work, would allow us to grow support and fulfill our strategy and overturn the losses. I argued that wins trump losses, and that we should see this as a winning year, even though it hurt, of course, to have more discrimination. But this discrimination was just discrimination on top of already existing discrimination. So we hadn’t actually lost anything, we just endured more attacks.

Well, that was my view, and I wanted to be clear that that was my view and I wasn’t just spinning. So I actually made a point of delivering that analysis in a speech before the election, October of 2004, in a speech I entitled “Marriage Equality and Lessons for the Scary Work of Winning.” And I drew from civil rights lessons, and it became actually my most anthologized speech, it was published and so on, it was on our website. But, of course, there was a lot of disagreement, as I said.

So the movement funders, some of the movement funders, particularly the Gill Foundation and the Haas Jr. Fund, pulled together a group of the leaders to figure out where are we going, what are we doing, what is our movement going to do? Bush has just come and been elected, he’s been trying to push a constitutional amendment attacking us, Karl Rove’s strategy had seemingly worked. We certainly had lost thirteen public votes. We were being blamed,

we were being attacked, our own movement was fractured. And so in that gathering of meetings, basically it was agreed that a group of us should lock ourselves in a hotel room for a couple of days and hammer out a strategy and come back to the rest of the movement leaders for discussion.

So, to make a long story short, a group of us did that. And what we were able to do in that room was agree that what we wanted to do was to recommit the movement to the strategy for winning marriage, but that we were going to amplify it and articulate it in a stronger, clearer, more concrete way in writing and put it out there. And Matt Coles, my friend and colleague from the ACLU, agreed to take the lead as the primary drafter, and with my involvement and ideas and contributions from people like Mary Bonauto and people from HRC and from the Task Force and some of the other key groups, we hammered out a document that we called a concept paper. It was actually titled “Winning Marriage.”

It wasn't a plan, but it was a vision as to how we should move forward to win marriage. And it re-articulated this central strategy that I just talked about of, we're going to win through the Supreme Court, we're going to only be able to that, however, once we've created a critical mass of states and a critical mass of support, and at the right time we're going to fold in an assault on DOMA, either through litigation or through legislation. We wound up trying both. And it called for a much more robust public education campaign, and everything that I had been urging and preaching we do, it laid out in this paper. And it also articulated, in a way that people were able to hear, that working to win civil union, working to win partnership, instead of being seen as an alternative to winning the freedom to marry, should be understood as a building block strategy that we can use in this effort to win more states.

So Matt did a very good job of synthesizing all these different pieces, and because Matt consciously was not me, it was a different voice who was now, once again, articulating this strategy, that was what we planned to do. It drew out of one of my favorite Broadway musicals, in “1776,” where John Adams is cajoling his colleagues as to who's going to write the Declaration of Independence, and he says, “It can't be me,” John Adams, the lead advocate for independence, “because I'm, quote, obnoxious and disliked. You need to write it, Roger Sherman. You need to write it, Robert Livingston. You need to write it,” and eventually he settles on Thomas Jefferson, who, because he's a different voice, he's not John Adams, can be the effective one to write it.

So, in the paper, and in this discussion in this hotel room as we were wrestling with how to re-articulate this and get people to recommit to the strategy that we believed was going to win, we came up with what we called at the time a thought picture, or we had some clumsy phrase like that. It was a gimmick, as to how to get people to understand that this was doable. And what we said was, “Okay, you think winning marriage by the year 2020, fifteen years from now,” so a long horizon, “you think that's difficult. But ask yourself this: could you

imagine that by the year 2020 we could win ten states with marriage? We could win ten states with civil union or partnership or some other significant state-level non-marriage marital protection? We could win ten states with significant other statewide achievement, nondiscrimination and so on, and that even in the other twenty, we may not be able to win at the state level, but we could make progress, that we could do this 10-10-10-20. Could you imagine that?"

And once it was framed that way, pretty much everybody said "Yes, that seems doable." So in the paper, we gave examples of, here are ten states where maybe we could do this, and here are ten states—now, again, it wasn't a plan. It wasn't the plan to win marriage. It was a re-articulation of the strategy. But because it had that concreteness and this new kind of gimmick of getting people to think in the steps that it would take, people rallied and people came back to it, and it allowed key movement organizations, key activists, and key funders to once again recommit to the central strategy that was going to be the strategy for winning, what we called the Roadmap to Victory.

03-1:10:46

Meeker:

What I'd like to do now is kind of a creative exercise, in the sense of taking this back to, say, 1992, 1993, when there was no Freedom to Marry organization, there was no marriage in Massachusetts, there was no marriage anywhere. I don't know what the national polling, if it had been done, where it was at at that point in time. What were you thinking? What were you thinking the agenda should have been at that point in time? What was the time range to achieving marriage nationwide through the Supreme Court?

03-1:11:33

Wolfson:

If you're asking in '92, I thought, at that point, what we should be doing was making the case for the freedom to marry, not necessarily yet through litigation, but through organizing. We should be talking about marriage. We should be talking about our families. We should be reaching out to non-gay neighbors. We should be asking the question why not? We should be getting people to put the words gay and marriage in a sentence, to create a climate—and we should be mapping out where there might be states where we could secure a beachhead, where we could perhaps move.

And in that period, of course, was when I was asked to do the Hawaii case and would have done it, but for Lambda and all the other legal groups saying no, which then led people to Dan Foley. Have we talked about this already?

03-1:12:21

Meeker:

No, we'll talk about—yeah.

03-1:12:21

Wolfson:

So that's how the Hawaii case, the second wave of marriage litigation, got started. Remember, there was the first wave in the seventies, all of which lost.

I wrote about it in the eighties, was advocating internally that we needed to take it up again. In the very late eighties, early nineties, another wave of couples, another wave of litigation begins. At this point [in the 1990s] I'm now known as an advocate, so I'm asked to be part of it. My organization, Lambda Legal, says no, as did all the other legal groups. This leads them to local attorneys.

So that's what was happening at that period. At that time, I don't think I had a clear idea of how long it would take. As I have often said since, I certainly understood it was not going to happen overnight, it was going to require this groundwork, public education, all that kind of stuff. And I would be telling people, it's not going to happen quickly, it's going to take a long time. But when you're younger, your idea of long is shorter, so did I sit there thinking it was going to take another twenty-five years? Probably not, because when you're young, your idea of long is ten years. But I knew it wasn't going to happen right away, it was going to take groundwork, it was going to take these pieces, it was going to take this kind of creating a climate in order to be able to win.

What changed everything was the Hawaii Supreme Court [*Baehr v. Lewin* 1993] ruling. So even though I'd love to say it was my brilliant advocating or my clear analysis or my persistent nagging of my colleagues or my paper in 1983 that moved everybody to understand why we needed to do this, actually what changed things was, we won in the Hawaii Supreme Court on May 5, 1993, and that was the day I said the earth moved.

Because no matter what you thought before, ideologically, strategically, in terms of timing, in terms of priority, we now were getting our day in court, something we'd sought for twenty years. And once we had a day in court, I argued, we were going to be able to win. And we were going to be able to win not just in the court of law, but now we were going to have that engine in the court of public opinion, and we needed to seize it and be ready for not just this case, but this extraordinary cultural, political, social movement that was going to be required to deal with the national, indeed global, debate.

So if you're asking me what I thought in '92, none of that had happened yet. It's what I was wanting to have, but I didn't know it was going to happen. In '93, though, once we won in the Hawaii Supreme Court, I saw again, with more clarity, we were now going to have our day in court. We needed to mobilize to make the legal case in court. We needed to do the political organizing and public education. We needed to build a coalition. We needed to build a sustained campaign. And we would get there.

Again, the timeline wasn't exactly clear, but what I thought at that point was likely to happen was we would be able to win in Hawaii, and once we would win, couples would be able to be married, and then their marriages would be respected elsewhere, even in places we hadn't yet won, and would be an



additional engine of change. And that was the vision of change. At that point, of course, it then got deeper and more complicated and bigger, and the needs became, again, clearer and sharper and bigger. But that all was ahead.

03-1:15:49

Meeker:

That's very helpful, thank you for indulging me in that. So, it's 1991. These three couples in Hawaii seek marriage licenses. Did you know anything about this in advance? Walk me through the process about how you learned about this.

03-1:16:05

Wolfson:

So, first of all, as we discussed, there was this first wave in the seventies. By the late eighties, early nineties, it's almost twenty years later, we've now been going through AIDS, we've been going through these battles, we've had these movement visions about whether we should fight for the freedom to marry. I was sort of the outlier voice in favor; many of my colleagues, for these different reasons, ideological and strategic, didn't think we should do it. Much of the movement was, of course, consumed with the onslaught of AIDS and the Reagan administration and discrimination and attacks. And so there wasn't the same marriage discussion, or the discussion about whether to have a marriage discussion, as there had been in the seventies and even into the early eighties. By the late eighties, this was now old history.

But there are always new people, and there's always new energy, and once again a new wave of people, gay couples, wanted to get married. They didn't necessarily know any of that history. They didn't know the activists' strategies or the divisions or the debates, they didn't know the timetables, they wanted to get married. And the most important of these was in Hawaii, where some local activists thought, "This is something we should be organizing," and they worked to find local plaintiffs, couples, who were real couples, not particularly activists, who wanted to get married. There was a guy named Bill Woods, who was a local advocate, and a couple of others who pulled together a little project to try to organize this thing in Hawaii.

By luck, one of the couples they came to, the woman, Ninia Baehr, who became actually the named plaintiff in the case, the *Baehr* case, had a friend who was my friend and had been my intern and then become my colleague as a pro bono volunteer attorney at Lambda in the eighties. He'd worked for me on some of the briefs we'd done, and we'd become good friends. And she, Ninia, and Jim Hough, this friend, were friends. So through Jim, Ninia reached out to me and asked me if I, who she had come to understand was the leading voice within the movement, which of course was not a huge honor, because there was only one voice and it was a small movement, but the leading voice in favor of the freedom to marry, would I be interested in taking the case, would Lambda come in. And they were also approaching the ACLU and others.

So I was interested, and I brought it to Lambda, and Lambda was in this divided gridlock of ideological and strategic resistance and divisions that I talked about, and said no. As did the other groups, the ACLU, what became the National Center for Lesbian Rights, a group that no longer exists called National Gay Rights Advocates. All said no, for all those reasons. So I was not allowed to take the case that I probably would've wanted to take and chosen to take, even though I thought it was early, there hadn't yet been this groundwork and so on, but I thought it would be a galvanizer and I believed there might be a pathway in Hawaii for political and constitutional doctrinal reasons, but I hadn't yet done a deep analysis of the courts. But it seemed like a favorable place to consider bringing the case.

Nevertheless, Lambda said no. So that turned out to be probably the luckiest day our movement ever had, because the fact that I and Lambda didn't take the case forced those couples to go in a different direction, and they wound up going to a non-gay local attorney named Dan Foley, who agreed to take the case and who brought a degree of savvy awareness and understanding of Hawaii politics and real credibility in the Hawaii courts, and an ability to navigate what was needed on the ground there, in addition to doing the good lawyering on the case, that we would never, as outsiders, have been able to do.

Fortunately, Lambda had said that, although I couldn't take the case, I could be of assistance behind the scenes, as we often did in a lot of cases around the country.

03-1:20:24

Meeker:

How did you respond to the leadership of Lambda, given this decision?

03-1:20:29

Wolfson:

Oh, it was a bitter, terrible time. It was a hugely contentious, quarrelsome time. Lambda was in really disarray, partly over marriage, but partly over just personalities and growing pains and so on. It was a terrible time. It was lots of dysfunction and debate. And marriage was the articulable fault line, although it also had other dynamics contributing to it. And it was just very hostile and difficult, and got ugly and nasty and personal. At one point actually I was fired, then there was a huge staff and board and community protest against that, which prompted my un-firing, which led to the executive director quitting and the then legal director, who had been my friend but whom I was now battling with, being estranged. All of which then kind of quieted down over the next year and a half as the new ED, Kevin, Cathcart, came in, who was pro-marriage but also just committed to really resolving this dysfunction, and he helped resolve it in a way that worked for me and for the marriage work in the case, and quieted the staff, and it all came back together. And eventually all became friends again and worked through all this, it really was ancient history. But it was a terrible time. It was a very ugly time.

And actually, during that period of great dysfunction, I began thinking about maybe I should get out, maybe I should find another job. And I actually decided maybe I'll look at the teaching market, and I put some resumes out, and one of the interviews I got was actually the University of Hawaii. So they flew me out for my first time in Hawaii to give a job talk, which I did on the marriage case, which at that point was a loser. We had lost in the trial court, Dan had lost. I hadn't yet met him, we'd only communicated but we had never actually met. And had I been offered a job in Hawaii, I would've taken it.

But I didn't get the job, and I think the reason I didn't get the job was not because I was gay, but because I was too gay. I was too advocacy oriented, too militant, which of course then turned out to be a good thing, because it meant that I stayed at Lambda, we got through all the garbage and came back together, and I linked up with Dan and became part of the co-counsel on the Hawaii case, and it turned out that was what I should've done with Hawaii, instead of going to live there and teach. But it could easily have gone in a different direction.

03-1:23:05

Meeker:

At the time at Lambda, when you say that marriage was one of the issues around which a lot of this debate was percolating, how were people lining up? What were the positions that people were espousing vis-a-vis marriage?

03-1:23:20

Wolfson:

With regard to marriage, Tom Stoddard, who was then the executive director, supported the idea that we should have the freedom to marry and that we should, in theory, fight for it, but didn't agree to fight for it. What he wanted to do was have a discussion about it. But he was on the pro-marriage side.

Paula Ettelbrick was the then legal director, she's the one who had actually hired me for Lambda and we had been friends, and became friends again later, but during that period became estranged, she was the leading, or certainly one of the leading voices in the movement opposing fighting for the freedom to marry. Most of the staff, there were some who were slightly leaning more toward the let's not do marriage camp, and there were some who were leaning more, but it also got mixed up a little bit in the personalities, because the bulk of the staff actually wound up siding with me. I think most people became either supportive or at least acquiescent in the fight for the freedom to marry, and some really believed we should do it, but that wasn't what was really particularly necessarily driving them in the debate.

The one who was really debating it was me. And having that battle similarly within the constellation of groups that Lambda was part of, this roundtable, there were a few people who were more on the pro-marriage camp, there were many more people on the strategically resistant camp, and then there were a few prominent voices on the ideologically resistance camp.

03-1:24:52

Meeker:

With Paula, what was the basis of her opposition?

03-1:24:57

Wolfson:

She believed that marriage had a history of patriarchy and oppression and therefore was a flawed institution that we shouldn't be seeking. And she would also sometimes go with the other kind of ideological strand, which was that we should not be emulating heterosexuals, we should be creating our own family forms and, quote, redefining the family, and so on. And both of those views were views that a number of other people shared. Those views were disproportionately represented amongst the elite, the more prominent advocates, the more prominent members of the academy and so on, than I believe they were amongst the general gay and lesbian population, but they were significant real voices that were out there.

I, of course, strongly disagreed with them, though I understood them. I wrote the longest thing I'd written—I always say that, but maybe my third-year paper was longer—one of the longest things I'd written before I wrote my book was an article called "Crossing the Threshold," that was a law review article I wrote for the NYU Review of Law and Social Change, which took on the intra-community debate. And because I was working with Paula at that time, I didn't want to use her as my foil, because that would've just been seen as an attack, and this was this very difficult, fraught time, so I used a colleague of ours who was also part of this roundtable, a professor who was a respected professor, Nancy Polikoff, and I used her writings and her advocacy and her strong anti-marriage position, which Paula was aligned with and which often was voiced at the roundtable, as the foil that I took on and dismantled and showed why I didn't agree with that and why we should be fighting for the freedom to marry.

03-1:26:46

Meeker:

Interesting. Is there any more you'd like to say about those kinds of debates and the "Crossing the Threshold" article, and the kind of arguments that you were marshaling against that particular strain?

03-1:27:00

Wolfson:

Well, what I have to say about it is expressed in those articles and in the many, many, many debates we had. I mean, it was definitely a huge, roiling, difficult, often personal and sometimes really ugly set of divisions and debates, anomalously so within the movement. I always believed they were wrong. I understood what they were saying, but I believed they were wrong. I believed they were imposing their own ideological views on the majority of gay people, who should have the freedom to choose. And ultimately I believe that even if you don't think there's substantive value, which I don't agree with, but even if that's what you think, the idea that we would acquiesce in the government's denying something so important and central and meaningful, not to mention desired by the majority, on the basis of sexual orientation was just—and sex,

was unacceptable. It just, it's not the way our American constitutional values should operate.

And although every kind of discrimination is wrong, the worst kind is when it's practiced by the government against a group of people. So I didn't think they were speaking for the majority, I didn't think they were being accurate in their understanding of history and the power of activism. I think they were missing an understanding of how this activism would be effective and how marriage would be an engine that would move our cause forward by claiming this vocabulary of transformation and connection that would help non-gay people understand who we are in a way that would allow us to win all kinds of things other than just marriage, and that marriage itself was important and that in some sense being excluded from marriage was the central discrimination, because what is the core of why we're discriminated against? It's our love. What is the preeminent language of love? It's marriage. So by claiming this language of love, we would be transforming people's understanding of who we are in the heart of the discrimination, and flipping it, changing it, helping them evolve.

And they just didn't agree with that, and they didn't seem to understand it, and they were imposing their own values in a way that I didn't think was appropriate. So it was a tough set of debates. And of course it hasn't totally gone away. There are still some people who continue to take that position or who just couldn't be happier that it's over, that we won, and just they can now get away from it because they never liked it in the first place. But I think the vast majority of gay people, it turns out, did want the freedom to marry and do want the freedom to marry, and the vast majority of non-gay people, once engaged, it did work as an engine of transformation that advanced us profoundly across a range of things, including marriage, in a way that no other thing would have, and that their kind of activism would not have.

And therefore I think the track record is very clear, and several of those opponents have now gotten married. Because it's powerful and it's real and it's important.

03-1:30:13  
Meeker:

Something that is here, I think, are differing understandings of social change. Having spent a few years in the academy myself, a lot of what I see is based on is this fascination and idolization of revolutionary change, kind of "to the barricades" fighting, "we're going to completely change society from the bottom up." And I think this comes a lot from the 1960s and borrowing from the rhetoric of the Black Power movement and the rhetoric that comes out of lesbian feminism and gay liberation, that's like a particular understanding of social change. It's a kind of social change that doesn't really happen in the United States, though.

03-1:31:11

Wolfson:

Well, not only that. I mean, these are people who are railing against privilege from their positions of immense, almost singular privilege. I mean, what is more privileged than a job in the academy?

03-1:31:24

Meeker:

Right. I mean, if you're fighting against the institution of marriage because you're anti-institutional—

03-1:31:31

Wolfson:

And yet here you're in an institution [the academy] that has a history of patriarchy and exclusion and so on. So it's so, I just don't think it's a strong, authentic, good argument, even though I understand people are sincere about it. People would often make this argument, these are the same people who believe everything is socially constructed, but the one thing they essentialize is marriage. Marriage is only what its history has been, it cannot be changed, it cannot be claimed. The fact that it may have functioned in one way but that we claim that it might function in a different way is just an argument they will not tolerate. And yet on everything else there's no essential anything, it's social construction, dah-dah-dah.

Again, it's just this complete inconsistency in their position. Again, some of these people were and are my friends. I know that many people I like and respect who have done good work have some version or another of some of this. But I always believed they were wrong.

03-1:32:37

Meeker:

Also another thing is that I think you were offering a different version of social change as well, that I think will come out very clearly, and I think you've already articulated quite a bit. But it was sort of a different version of social change than was being promoted in the academy at the time.

03-1:32:59

Wolfson:

Well, I mean, the funny thing is, I would be slammed one minute for seeking something that was too big, too revolutionary, too radical, too liberal, too unattainable, et cetera. And then the next minute would be slammed for seeking something that's too conservative, too emulating of the worst, too locked into existing structures, insufficiently bold, et cetera. I mean, I was getting both of that.

The "Crossing the Threshold" piece is the piece in which I looked at theories of social change and talked about the difference between, I think I described it as, rhetoric and reality. You know, you can have a rhetoric of redefining the family, but what does that actually mean? Especially if you don't achieve any of it. If, by contrast, you win marriage and two women are now upheld as being whole, even though there's not a man in their life, and entitled to full dignity and respect and equality under the law, which is the greater

transformation? Is it the rhetoric or is the reality? That was what that piece was all about.

But I will say that, though I had to deal with that argument and the set of resistances and arguments, and I did my share of writing and advocacy and debating along these lines, and along the lines you mentioned earlier with regard to when you were talking about Andrew [Sullivan], I pretty early on also said to myself, and said then constantly to everybody who asked me about this, you know, for every gay person who is resisting, there are five to ten non-gay people, to twenty, depending on what you think our percentage is, non-gay people who are gettable. And go out and get the ones you can get. Don't spend your time trying to get every last living resistant gay person. It's a free country. People are entitled to disagree. Go get the people you can get.

03-1:35:05

Meeker:

So, *Baehr vs. Lewin*, decided in 1993, basically the decision was that denying same-sex couples the right to marriage constituted discrimination, and it was remanded to a lower trial court. This was when you got involved, right?

03-1:35:22

Wolfson:

No, I was already involved. Dan and I were already talking and strategizing from the 1991 loss and my pitching, doing my job talk in my law school interviews on. And as I said, we began talking and communicating, and Lambda allowed me, and particularly once Kevin came on as executive director in early '92, I was now able to help and be engaged. I wound up writing a friend of the court brief in the Hawaii case, and also in the D.C. case that was going on, on behalf of Lambda. That was Lambda's and the movement's first official filing during the second wave. There had been filings in the seventies. And was strategizing closely with Dan as we built toward what we hoped was going to be the ruling of the Hawaii Supreme Court, which on May 5, 1993, came down, as you described, and I worked again with Dan and I asked him would it be okay if we put out a press release to shape the national discussion, and he said yes, and then he was, I think, again appreciative and took note of the fact that I included him in the press release and talked about this in a way that was consistent with our partnership, and that, I think, helped, again, further his willingness to say, "Now will you come back in," and invited me to come back, once again to come into the case, this time as co-counsel with him, and this time Lambda said yes.

So then I became co-counsel on the case for the first time, but I had already been involved with the case.

03-1:37:04

Meeker:

What does it mean to be co-counsel when this happens?

03-1:37:06

Wolfson:

It means you're also one of the attorneys on the case. And Dan and my understanding, based on obviously just the logic as well as our own working

partnership already, was that he would be the lead with regard to Hawaii and the case, and I would be the lead on everything else that was going to flow from this case, and Dan didn't get—Dan wasn't gay, Dan wasn't a gay rights leader, he wasn't on the mainland and so on. We understood that it was about mobilizing and engaging and so on, and that I was going to leverage this case and use my credential as co-counsel on this case to help build a movement while helping on the case, and he, meanwhile, would be the lead navigator when it came to the Hawaii politics, the Hawaii law, and the courtroom.

Ultimately, once we wound up going to trial on the case and had the world's first-ever trial, the literal day in court, thanks to that ruling in '93, which set the stage for the trial in 1996, Dan and I agreed on divvying up—we agreed that he would do the opening, because again, the local attorney and somebody who knew the judge and the judge knew him and he had immense credibility. I would take the lead on identifying and presenting our national witnesses, which were going to be the bulk of the case, as well as cross-examining the Hawaii expert witnesses, the state's experts. And Dan would take the lead on a couple of local witnesses. So I kind of got the bulk of the witness work, particularly with regard to experts.

We had originally planned that I would do the closing. As we got to the end of the trial, we talked and we agreed that actually, again, it would be more effective if Dan, the local attorney, would be looking the judge, the local judge, in the eye and do the closing. So he wound up doing the closing. And so that was how we worked.

Technically, had we disagreed on that, he would've been lead attorney and he would've gotten to make the call. It never came to that, because we really bonded incredibly well and really worked extremely closely together, and remain very close to this day. But that's what co-counsel means.

03-1:39:22

Meeker:

Can you tell me about the strategy that was employed in advance of the trial?

03-1:39:28

Wolfson:

Well, partly it was pushing for the trial. The courts really dragged their feet. It took a long time. We won the case in the Hawaii Supreme Court in May of 1993. We wanted to get Hawaii into court and have our day in court as quickly as we could and put together a trial. It wasn't until, eventually, September of 1996 that we were able to force the state and the court to set a date to agree. There was a lot of back and forth and battling within the legislature during that period. We were trying to fend off a constitutional amendment. We were trying to fend off a, quote, compromise, which they passed, essentially, anyway.

They passed reciprocal beneficiary. Hawaii became the first state in the world, first state certainly in the United States, to create a state-level recognition of



gay and lesbian families. It was less than civil union, less than partnership, but it was the first we had, ever, and it was called reciprocal beneficiary. We were pushing against that because they wanted to use that as the excuse to pass a constitutional amendment, which we strongly resisted and we succeed in killing, but we didn't succeed in blocking off reciprocal beneficiary.

There was a Hawaii state commission that was created by the legislature to study the question. We worked hard on that commission and got it, eventually, to actually recommend marriage as the answer, not some lesser alternative status. And we were working to create climate within Hawaii in order to maximize our chances of winning. But meanwhile, what I was mostly doing through all of that period was trying to build an affirmative campaign here in the mainland, across the country, to shape a national conversation around the freedom to marry and to use that to galvanize local organizing in various states.

That got even more pointed as we began dealing with a wave of anti-gay, anti-marriage legislative attacks that began in, if I remember correctly, '94, and built year by year thereafter, culminating, in some respects, in the '96 onslaught at the federal level with the so-called Defense of Marriage Act. So I was trying to organize, to build, to deal with defeating those attacks and using them as the opportunity to have further conversation and create the climate in favor of the freedom to marry nationwide.

03-1:41:50

Meeker:

And this was done under the auspices of the Marriage Project at Lambda.

03-1:41:55

Wolfson:

Right. Lambda—as I became co-counsel with Dan and this time Lambda said yes, you can do it, Lambda came on alongside me. Lambda also took the step of freeing me from all my other normal case responsibilities. Remember, I had started as primarily an AIDS attorney, that had morphed pretty quickly into a generalist, then it had morphed into mostly doing gay, with some AIDS, but I was still doing trials, I was still doing cases and so on, as well as doing the marriage work. With this momentous step of the Hawaii Supreme Court and this earth moved, tectonic shift moment, Lambda finally agreed, Okay, we really need to step up and create this kind of campaign you've been talking about, and because we couldn't get the political organizations and others to do this kind of sustained, affirmative organizing, Lambda took it on. So Lambda relieved me of all my other case duties except for one [the Boy Scouts case]. I had my Hawaii case and I got to keep one other case, and then became director of this new marriage project, the goal of which was to organize and pull people together and create what became the national Freedom to Marry Coalition, which was the precursor to this actual campaign organization of Freedom to Marry. And that was what we had during the nineties to try to get the different groups, gay and non-gay, some labor unions, the National Organization for Women, the American Psychological Association, and others,

to come to the table alongside the existing gay groups and the state groups we were trying to cultivate, to build this effort of generating conversations and shaping the climate and then pushing back against the anti-gay attacks that began in '94, '95, '96.

And meanwhile I was criss-crossing the country. I was called in one of the papers “the Paul Revere of marriage” at that point, because I was going around the country saying, “Marriage is coming, marriage is coming.” We have this case in Hawaii, this is going to happen, we need to be ready, we need to organize. And during that phase, actually one of the panels I did amongst tens and tens and tens, if not hundreds, across the countries over those years, I spoke in Iowa at a conference at Drake University, and on the panel with me was a Mormon professor named Lynn Wardle, who heard me say, “This is what’s happening, we have this case in Hawaii, we need to be organizing and shaping a public dialogue and really engaging hearts and minds in order to create climate, and meanwhile we’re going to move forward in this Hawaii case and we’re going to get our day in court and we’re going to win, because there is no good reason. We’re going to be able to show that, and it’s going to have these repercussions.”

Well, he went back to Salt Lake and the Mormon headquarters and got to work leading this effort that was fueled by the Mormon hierarchy and ultimately also the Catholic hierarchy, behind the scenes, to push these anti-gay legislative measures that we began combating in '94, '95, '96, et cetera, push DOMA, push the Hawaii constitutional amendment and funded that Hawaii constitutional amendment that blocked the case we were winning in the courts in Hawaii in the nineties, and that of course later got exposed yet again as being behind Proposition 8 in California, which is where it eventually came crashing down, because though they succeeded in their effort in California, the public attention to it was so hot and so real that they began having to second guess and pull back. The Mormon hierarchy didn’t want to get caught, particularly as they were teeing up Mitt Romney’s campaign.

Meanwhile, the Catholic hierarchy continued to get more and more extreme and more of a concern, and put more and more money, to the point where they are now the number one opponent in the country. Fortunately, however, they are way out of step, not only with the American people, they’re out of step with the majority of American Catholics, 63 percent.

03-1:46:01

Meeker:

And possibly the Pope.

03-1:46:03

Wolfson:

Possibly. Certainly his tone, if not his doctrine. Sixty-three percent of American Catholics support the freedom to marry. So we won Catholics, but the Catholic hierarchy, in collusion with the Mormon hierarchy, was our most determined opponent in that period, the nineties and even through the 2000s.

## Interview 4: November 11, 2015

04-00:00:00

Meeker: Today is the 11<sup>th</sup> of November, 2015. This is Martin Meeker interviewing Evan Wolfson for the Freedom to Marry Oral History Project, and this is interview session number four. Let's get started.

We were talking around what was happening in Hawaii last time, and some larger contextual issues around that, and you had described the working relationship between you and Dan Foley on the Hawaii case, describing that you were doing a lot of the witness work, expert testimony work, and he was doing opening and closing arguments and the specific work to Hawaii.

04-0:00:54

Wolfson: And local—yeah, the local witnesses. That was during the trial. I mean, obviously our working relationship for most of the time was not confined in those roles, it was a whole bunch of other stuff. But during the trial, that was how we divvied it up.

04-0:01:08

Meeker: You know, I do want to go back to the trial and get your first-person account of what that trial was like, what was going through your head, to the extent you can remember, as the trial was progressing. I mean, this is really the first time that an issue that you'd been working on for many years at this point in time, you know, is before a judge and is going through a trial, and the ideas that you have been playing around with and floating for a long time are now actually getting tested in a court of law.

04-0:01:46

Wolfson: Right. Well, this was what we had worked for. This was what I had called for ten years earlier, give or take, really thirteen years earlier in my 1983 paper, but even more importantly, it was what the movement had been working for for more than twenty years, a day in court when, for once, the discrimination, the denial of marriage, would not just be rubber-stamped but instead, the state would have to come in and show a reason, and that we would get to test that reason and we would get to present the harms and injustice from our side of being denied the freedom to marry in front of a judge who was actually a respected, promising judge, because he was younger and intelligent and had great respect in Hawaii. I didn't know him, but Dan did.

So it was very exciting. It was going to be everything we had worked for and everything we had wanted, and I always believed that if we could have the fair shot at really making the case in every way, not just the legal case but the emotional case, the personal case, the testimonial case, the political case, et cetera, if we could do that, we would win. And so here we were doing it.

And of course it also came after several years of building momentum and organizing and crisscrossing the country to get people ready for this, that Paul

Revere “marriage is coming” thing. And fighting against anti-gay, anti-marriage measures that the right wing had begun introducing in the state legislatures, and that had begun already in ’94 and ’95, and then in ’96, I think it was in May, we got the news that the anti-gay side was going to push this federal anti-marriage law, the so-called Defense of Marriage Act, and the national debate was at fever pitch, it was a presidential election year, and marriage was figuring in the presidential election cycle. One of the right wing tactics was to create this marriage protection pledge, or something like that, that they demanded that all the Republican candidates sign in Iowa as part of the Iowa caucuses.

I had been trying for years just to get people to put the words gay and marriage in the same sentence. I kept in my office these binders of any time I could get anyone to talk about the freedom to marry. And now it was everywhere. Now the country was talking about it. Grassroots organizing was happening, and we were managing that at Lambda and stoking it. People were coming to hear me speak as I crisscrossed the country and laid the groundwork. Now it was being talked about in the presidential debates, and it was part of the presidential campaign, and it was now being pushed in Congress, albeit in a horrible way. They actually had on the floor of the Congress easels with my memos describing how the Hawaii case was launching this national conversation and what our strategy was and that we—this was exhibit A for the anti-gay side as to why they were going to pass this anti-gay radical measure. And of course we were struggling with the administration to get them to—

So all of this was huge. What had begun as this little teeny marriage conversation—at first it was this big national debate that went away in the early seventies, and then it was my paper, and then there was a little bit of conversation that people like me and Andrew Sullivan and others were having, not that many of those people. And then it was this organizing and building. And now it was here, it was everything. And so Court TV then was preparing to cover the trial of the century, and they were flying to Hawaii to film the whole trial and to put it on national television. Of course the movement was all engaged in talking about it. And meanwhile, Congress was passing the so-called Defense of Marriage Act. So it was huge. It was a huge moment.

And I, at the time actually, moved to my new apartment, the apartment I still live in now, which I finally moved to Manhattan, and I literally had time only to get into the apartment, drop my bags off, not even unpack, and fly from New York to Hawaii to begin this trial in September.

So I get to Hawaii—now, this is only the second time I’ve ever actually met Dan Foley. We had been corresponding for years by phone, by fax. There was no internet at that point. We’d become very close, we’d been working hand-in-glove through all the maneuverings and ups and downs of trying to block a constitutional amendment in Hawaii, which up to that point we did; trying to

get a commission to report in favor of the freedom to marry, which we did; trying to forestall the use of so-called reciprocal beneficiary as a way of getting a trade to vote the barrier to marriage; trying to build public support; and prepare for this trial.

But this was literally only the second we'd ever actually met. We had once shared a stage at a speaking engagement about a year or so earlier, again, three or four years after we'd already been working together. So it was huge. And Lambda, which still was relatively small, this was a big deal for them, sending an attorney to Hawaii for three weeks, and I was going to be in a hotel, that was going to cost money, and all this kind of stuff. It was just a very big deal.

04-0:07:28

Meeker:

I want to get to some of the specifics about the trial. But even before the trial happened, as you mentioned, DOMA passes in advance of the '96 election, and sure enough, Bill Clinton signs it. I think he's maybe holding his nose when he does so.

04-0:07:48

Wolfson:

He signed it as I was in Hawaii working with Dan, during the trial. Congress passed it, and he signed it into law. So they didn't even wait for the court to do its job of sifting the evidence and looking at the arguments and seeing if there was a reason. Congress just passed this discriminatory law and the president signed it.

04-0:08:09

Meeker:

You know, in the early years as you're advocating this, did you have a sense about how strong and resounding the anti-gay movement would have been in response to marriage? Or did you have a sense that they would see it perhaps in a conservative light, you know, "Oh, gays actually want to leave their 1970s lifestyles behind."

04-0:08:38

Wolfson:

No, I always believed there would be opposition. I always believed that the opposition, the problem they had really was not marriage, it was gay. And so marriage was the battleground, marriage was the terrain, but rather than embracing the desire of gay people to participate and take on responsibilities and respecting the call for limited government and all these things they professed as their values, all of that wouldn't matter because it was gay, and they were anti-gay. We're talking about the opposition, not the people who weren't with us, but the hardcore opposition.

The hardcore opposition talked about marriage, but it was really motivated by gay. So no, I didn't think they were going to now move—now, in the public there certainly were people who, again, the engagement around marriage, with all the different meanings and values it had for various people, did help them detoxify on the gay. It helped them come to understand gay better and move them over. They were the ones who were not hardcore anti-gay. They might

have been a little bit anti-gay or a little bit fearful, a little bit prejudiced, a little bit ignorant, a little bit unaware and bombarded by decades of stereotypes and so on, but the ones who were fair-minded enough to be able to open their hearts and engage, marriage was this engine that helped them move on the gay. But for those who were deeply motivated on the gay, marriage was just yet another terrain of battle. Previously it was AIDS, before that it was pick your thing, it didn't matter.

04-0:10:11

Meeker: Teachers.

04-0:10:13

Wolfson: Right, exactly. So I didn't anticipate that everybody was just going to move over and embrace the conservative values or whatever and move. Some people did, and in fact a majority did. But the hardcore opposition didn't. So I wasn't wrong about that part.

The thing I didn't anticipate was the use of state constitutional amendments. Anti-gay legislation, yes. Anti-gay attacks, yes. Even the congressional action. I thought we could've fought it, and we certainly could've fought it better than we did, and I wasn't sure that was going to happen, but it wasn't a total shock, either. The use of the constitutional amendments later, in the 2000s, that was a level of recklessness and radical disdain for our constitution that I didn't anticipate.

04-0:11:15

Meeker: Not to mention the flirting with a U.S. constitutional amendment.

04-0:11:19

Wolfson: No, exactly. Right. Except that never really was going to pass. I wasn't really worried about that. We had to deal with it, it certainly showed their contempt and their recklessness, but that was not as significant a threat. The state constitutional amendments were a threat. They did actually add debris in our path that we had to overcome.

04-0:11:41

Meeker: You know, when *Windsor* gets to the Supreme Court, a big question that comes up is, were the congressmen motivated by animus, or was there what, you know, ended up being kind of argued otherwise, which is they had yet to evolve, I think, was kind of the narrative.

04-0:12:06

Wolfson: All those things are true. As was pointed out in the argument, animus doesn't have to mean foaming-at-the-mouth rabid hatred. Animus can mean fear of the unknown; animus can mean fear of the other; it can mean not fully understanding and being willing to subordinate the other. It doesn't have to be the most rabid, most extreme. It can simply be not enough to stand up against wrong action. That said, there was a lot of animus. There was a lot of that

animus and that animus, and there was also political cravenness, people who knew better but didn't do the right thing.

04-0:12:56

Meeker:

Was it to be expected that Clinton was going to sign it, just because of the realities of the election?

04-0:13:00

Wolfson:

No, I don't believe so. It wasn't shocking, but I believe that we could've made a much stronger case and could've fought harder and could've put more pressure on him, and he could've been stronger and had more integrity and done the right thing. He could have vetoed this bill, the so-called Defense of Marriage Act, saying it was a radical bill, that even though he doesn't support the freedom to marry, if that's what he wanted to say, we don't discriminate in America, and we stay true to our words about federalism, and we don't pass a law that is just aimed at fencing out a group of people in defiance of the normal way in which we treat marriages and respect and so on.

04-0:13:44

Meeker:

I think one of the surprising things is the Justice Department came out and said that it passed muster as far as constitutionality.

04-0:13:51

Wolfson:

Yeah. It wasn't just surprising, it was also contemptible. It was literally trying to pull the rug out from under us before we could even try to mobilize a defense. It left the potential supporters we might have had in Congress without any cover as their own leader fled to the arms of the opposition, while purporting not to support it. He said, "This is a mean-spirited bill, I don't think it's the right thing, but I'm going to sign it." And they completely cut the rug out from under us with a ridiculous constitutional analysis that obviously the Supreme Court later proved wrong.

04-0:14:29

Meeker:

What about the movement and their efforts to forestall this from passing? Was it in this context that you kind of started to realize that working in the litigation context in Lambda was not nearly enough, that it needed to be a multidisciplinary program?

04-0:14:47

Wolfson:

Well, no. I already knew that. But Lambda was what Lambda was, and was able to do what it was able to do, and wasn't able to do things it wasn't able to do, including political activity and lobbying and so on, and was relying on others in the movement stepping up, most importantly for this purpose, HRC. And HRC basically gave up the fight before it even began. I mean, I remember to this day opening the paper and reading a quote upon the introduction of DOMA from one of their lead strategists and spokespeople, basically the number two programmatically there, David Smith, on behalf of the organization saying, "This is an unstoppable freight train coming down the track." I was like, well, that's how you rally people to fight. Begin by telling

them it's unstoppable. And that characterized the way in which they approached this.

Now, they put on a show, they went through the motions, I'm sure some of them in their heart wished it could be otherwise. But they never, never organized to go to the mat, to really squeeze, to push our Democratic friends to stand up and fight back. They essentially played the role of enabler.

04-0:16:10  
Meeker:

So now take me to the trial itself. At the same time that, as you mentioned, Clinton signed this piece of legislation into law, you're arguing this before the court in Hawaii. How did you set up the case? What was the narrative that you presented to the judge?

04-0:16:31  
Wolfson:

That the freedom to marry is a protected constitutional freedom and a precious one, and that gay people share in the same desire to get married, for the same mix of reasons, was our phrase, and that there was no good reason for denying us the freedom to marry, and in fact the denial harmed us while helping no one. So that was the gist of the argument. And we prepared to make that by calling expert witnesses as well as some local individuals and so on. And we had an expert witness who testified about marriage as an institution and the way in which different groups of people approach love, approach family, and approach marriage: gay men, lesbian women, non-gay married couples, and non-gay cohabiting couples. And she presented the existing sociological and psychological and other research.

We had an expert on adoption who testified, who also testified, actually, recently in the Michigan marriage trial, David Brodzinsky, who we called because the state had made its defense—the cornerstone of their defense then, as in almost all the marriage battles before and since, and I can almost get the quote exactly right, it was, All things being equal, they said, the optimal family structure for raising children is a married heterosexual couple—married different-sex couple raising their biological children.

And our argument, I used to say, was SW squared. It was, “Says who and so what?” The “says who” was: where's your evidence for that? And again, we put on all this evidence, psychological, et cetera, APA, child welfare experts, we had an amicus brief from five of the leading national experts, including ones that the state had quoted in their papers, who now said, “That's not what our research shows, basically showing that gay people are fit and loving parents, that the children we are raising grow up healthy and happy and well-adjusted and just as gay or non-gay as children being raised by non-gay parents, that the denial of the freedom to marry is actually harmful to the family, it's benefiting no one,” et cetera.



So we took it on, head-on, with “Says who?” Where’s your evidence? And we had the evidence, including expertise on adoption showing that actually biology is not central to the optimal structure for raising kids, it’s the quality of the parenting: love, commitment, connection, self-sacrifice, dedication, discipline, partnership, having two parents, generally speaking, is stronger than one, if they’re not dysfunctional, because they can relieve each other, they can help each other, and so on. So the structure of the family in terms of two versus one might be a factor that makes a difference, but who those parents are in terms of their sexual orientation or sex is not, and there is no evidence to show that. So we showed all of that based on the existing evidence.

We had an expert in gay parenting, Charlotte Patterson, testify. The sociologist I mentioned earlier was named Pepper Schwartz. And then we had some local, we had a local psychologist, I believe it was, or maybe a pediatrician, I can’t remember now, who treated many families in Hawaii, and that was one of Dan’s witnesses. I think we also put in evidence about refuting some of the economic arguments and so on.

But the core of this was this dealing with this optimal thing. And again, so SW2, says who, all the evidence is on our side. And we showed that through our affirmative evidence and also through cross-examining their evidence. We actually broke witnesses on the stand who they brought in to testify on their behalf. A guy named Kyle Pruitt from Yale, a child psychologist, who, as we questioned and pushed, eventually began testifying for us.

And then SW2, the other one is “so what?” So the “so what” argument is: even if it’s true that the optimal family is this biological heterosexual married, dah-dah-dah, so what? It’s not like we’re going to run out of marriage licenses. Why would you punish children being raised by the non-optimal parents for having the wrong kind of parents and deprive them of the protections and security and meaning that comes with marriage? Shouldn’t those be the ones who get the extra solicitude of the state? So even if it were true, you still would not deny people the freedom to marry, because you’d be punishing kids. And, of course, many people get married who don’t want to have kids, or who don’t have kids. It’s not all about kids. So that’s also not relevant to the question of why are gay people being denied the freedom to marry.

So these were the arguments of the trial, they were the arguments that were set up by the filings in advance of the case. They shaped who we called and who they called as witnesses, and they shaped the judge’s ultimate opinion, and they have been the defining the battle lines again and again and again throughout marriage cases ever since.

04-0:22:05

Meeker:

It's interesting, you're really trafficking here and arguments around logic and around sociological research, but was issues around rational basis versus heightened scrutiny, were these part of the argument as well?

04-0:22:22

Wolfson:

Well, those are legal arguments that would define what the legal analysis the judge has to apply. But the trial, when you're actually in the courtroom, the focus of the trial is the facts. Later you deal with the law, and you argue what the right legal standard should be and how the judge should approach this and that and so on. Now, the Hawaii Supreme Court had already ruled in May of 1993 that the denial of marriage is presumptively unconstitutional, because it is discriminatory, something we'd been unable to get a court to say up until then. Finally we got a court to say that.

But they said it was presumptively unconstitutional, meaning that although it is clearly discriminatory, it could be constitutional if the state has a sufficient reason. So in that legal structure, they made clear that the denial of marriage is a form of sex discrimination, that was the doctrinal theory they applied, and therefore triggers heightened scrutiny, and therefore the state must show a true legitimate reason that is closely tailored enough and substantial enough to override this discrimination. So that was already the standard the judge was going to have to apply. He wasn't free to decide a new standard, that was the standard, because it was sex discrimination, the court had already said. His question was, is there a good enough reason.

04-0:23:58

Meeker:

Hence the trial.

04-0:24:00

Wolfson:

Hence the trial.

04-0:24:01

Meeker:

And so the outcome of the trial, 1996, comes out pretty quickly, right?

04-0:24:05

Wolfson:

December 3, 1996, the judge rules that there is no good reason for denying gay people the freedom to marry, and he issues a long findings of fact, findings of law, et cetera, and rules in favor of the freedom to marry. He says we have the freedom to marry and the state must stop denying marriage licenses, because it had failed to show a sufficient and legitimate reason to do so.

On that very first day, he didn't stay his opinion. So in theory we had just one, and in theory they should have been able to get married. But everybody, of course, was so awestruck by the full first-ever victory. But, and I assume he himself was aware of how momentous this was, so the state went in the next day, pretty quickly, and said we want a stay, and he did grant a stay, as we had assumed he would.

04-0:25:02

Meeker: So conceivably, couples could've gotten married that afternoon.

04-0:25:03

Wolfson: Conceivably, right, exactly.

04-0:25:08

Meeker: Would've been an interesting transition in the whole thing. So a stay was granted, and then I guess it was, what year was amendment 2 passed?

04-0:25:20

Wolfson: Amendment 2, that's the Hawaii amendment? I don't remember the number. The amendment itself—well, the legislature took it up and voted it, I assume, in '97, it would've been, putting on the ballot for ratification in 1998. So it actually was ratified in November of 1998. So we spent December of '96 through to November '98, number one, urging the Supreme Court to rule, and at least, if it's going to go to the voters, give the voters an informed choice, let them actually see couples married, and then decide whether they want to amend the constitution. But the court essentially chickened out and sat on it until after the vote.

And we also spent the time trying to block the legislature's passage of a constitutional amendment, and this was my biggest battle with HRC. And we also then tried to mobilize and prepare for the vote. The biggest battle with HRC came because I was begging them to provide the money that would show the legislators that we will be there and defend them if they vote no, and block a constitutional amendment. And I remember the word I was using at the time was brandish. I said to them, You don't even need to spend this money, just brandish it, just come there and show them that we have the muscle and the determination to stand up for them in their campaigns if they will block this constitutional amendment.

But they wouldn't, and they didn't, and it was very short-sighted, because the amendment did ultimately pass the Hawaii legislature, which had gotten spooked by this torrent of right wing opposition and a relatively low degree of organizing and activism on our side, and they passed the amendment and put it on the ballot, whereupon HRC and others were forced to come in and defend the ballot at a much higher price tag than could've been spent trying to block the amendment.

04-0:27:30

Meeker: Was HRC the only game in town as far as lobbying legislators?

04-0:27:34

Wolfson: Well, Hawaii had its own very, very small local infrastructure, most importantly the ACLU, and they did what they can, but they were operating on this level. This was now a national crucible. I mean, the Mormon Church threw its Hawaii personnel and Hawaii base, but it was the national central effort of the Mormon Church, and the Catholic hierarchy, again, through their

local infrastructure, both infrastructures locally being bigger than our local infrastructure. But it was this national right wing assault, including from groups like Focus on the Family and Family Research Council and the whole right wing apparatus. The only movement entity that we had at that point, at that level, was HRC.

Now, HRC had never operated fully at that level either. They would've had to step up. And they did step up, from their point of view, to put money into the constitutional amendment battle, and they sent personnel, the same David Smith came to run the campaign. But of course David, who I like, actually, and he's very talented as a communications strategist and so on, but he's not a campaign manager, and he was the one they sent to Hawaii to run the campaign. And they ran what became the prototype of the wrong kind of campaign that we had to keep fighting with different states and different campaigns for years after to not run it that way, which was trying to avoid marriage and talk about fairness, talk about the constitution. The name of the campaign was Protect Our Constitution.

Well, everybody's for protecting our constitution, except when their heart is tugged by something that actually grabs them emotionally, like gay and marriage, which is what this was about. They didn't want to talk about that. That was a mistake. But they spent more than a million dollars not talking about the thing the campaign was around, was about, instead of spending what I was begging at the time, \$50,000, to show the lawmakers that they could vote the right way, block the amendment, and there would be campaign support for them.

04-0:29:39  
Meeker:

So the idea was really presenting them, the lawmakers, that is, presenting them with the idea that HRC would either help or hinder their reelection battles based on their vote.

04-0:29:52  
Wolfson:

Correct. HRC or the local coalition with HRC.

04-0:29:59  
Meeker:

So there just was no appeal made on those grounds, really, whatsoever.

04-0:30:06  
Wolfson:

Appeal?

04-0:30:07  
Meeker:

Appeal to the legislators.

04-0:30:10  
Wolfson:

I don't know if there was no appeal, but it wasn't backed up by money, it wasn't backed up by muscle. No, we certainly lobbied and urged the legislators to do the right thing, to hold firm, to not vote wrong. But there had been an election, and some of the good guys had lost, and that spooked the

remaining leaders, who had said ten minutes earlier, “We’ll always be there for you, this will pass over my dead body.”

04-0:30:44

Meeker:

Those friends who had lost, was there any sense about if there was a relationship between their stance on marriage—

04-0:30:52

Wolfson:

Yeah, the perception clearly was that they had taken a too pro-gay stand, they had been targeted. It wasn’t that many, but there were one or two. I don’t remember all the details anymore, but it’s researchable.

04-0:31:03

Meeker:

Sure, sure. So, 1999, I guess that’s when the state constitutional amendment passed.

04-0:31:14

Wolfson:

No, ’98. November ’98.

04-0:31:15

Meeker:

Okay. Oh, then it was ’99 that the Supreme Court came back and said—

04-0:31:20

Wolfson:

Correct. So November ’98, election night, we’re watching the results. I’m in New York, Dan’s in Hawaii, of course. At that time of year, I think it’s a five-hour time difference. So I got calls from him at midnight, one in the morning, three in the morning. And I remember the three in the morning, we lost, it’s a blowout, we lost. And I remember typing an open letter to our movement that was really intended to say we will rebound from this, we will keep going, we have the right vision, we have the right goal, they can’t stop us, we’re going to win. And I was very proud of that piece, actually, which of course in those days we didn’t have the internet, again, so I had to get it published in gay press, and it was pretty widely distributed in those days.

But obviously it was a very painful night, and of course ten years later, election night was—we saw the same thing with California. Prop 8 was ten years, 1998, 2008 election night, the win we’d had snatched away. So by the time Prop 8 happened, I was already prepared.

04-0:32:37

Meeker:

You know, one thing we didn’t talk about was something positive that happened in 1996 and that was *Romer v. Evans*. You know, and it seemed like the strategy of the radical right wing in the late eighties, early nineties was to repeal nondiscrimination ordinances in the state, or basically say that it was—

04-0:32:56

Wolfson:

Block them, right. Preempt them.

04-0:32:58

Meeker:

Block them. Preempt them, I guess, right. And this is, I think, the first [Justice] Anthony Kennedy decision on behalf of gay rights, if you will, that comes down and was pretty momentous and not entirely expected, because he didn't have a track record at that point in time. Give me your read on it.

04-0:33:22

Wolfson:

Yeah, I think that's a bit overstated. You never know for sure, but we were actually pretty hopeful. We went into *Romer* pretty hopeful, and the argument, I was there, I remember vividly, he had the first question right out of the box to the state, and it was something like, "Have we ever seen a law like this?" And now you can't tell from argument, you always have to be careful, but I remember turning to my friend and saying, "We should stop right now." Like don't even argue, just sit down, we're done, we're going to win.

04-0:33:53

Meeker:

No further questions for the witness.

04-0:33:54

Wolfson:

Yeah, exactly. "Thank you, your honor, we rest our case." And we won. So it was momentous, it was important, and it was helpful, but it wasn't shocking. But it was great, and obviously put Kennedy on the path that he has excelled at ever since. And shortly after that, I wrote a memo basically saying *Romer* shows why DOMA, then pending, is unconstitutional, and we will, if Congress passes it, no matter what the Department of Justice says, it will be held unconstitutional.

04-0:34:35

Meeker:

So that actually really provides a framework, *Romer* does, that hadn't previously existed in constitutional law specific to sexual orientation.

04-0:34:43

Wolfson:

It provided an additional argument and the clarity that the Supreme Court agreed with the argument. I don't know that I would say a whole framework, but it definitely made a strong case against DOMA's radical, unusual, sweeping exclusion and treating people, in a phrase of *Romer*'s, as strangers to the law.

04-0:35:09

Meeker:

And this is precisely ten years after *Bowers*. So a nice turnaround, and in some ways, I imagine, it's probably at that point vindicating your longer-term strategy, recognizing that the Supreme Court might in fact be the location that national marriage is—

04-0:35:27

Wolfson:

Yeah, I mean, we never doubted that, because we had no other choice. I mean, it's going to have to be the Supreme Court. The question was how do we get it to be the Supreme Court, not whether it should be the Supreme Court. But yes, it certainly showed that even a Reagan appointee could rule right, given enough time and the right case and the momentum and so on, absolutely.

You know, we keep talking about ten years, ten years, and there was always lots of that kind of symmetry. I mean, one that I was very fond of talking about was from 1969, Stonewall, until 1986, the *Hardwick* case, seventeen years, from the *Hardwick* case, which we lost, our biggest loss ever, 5-4, I was there with Michael Hardwick, till *Lawrence v. Texas*, the case in which we overturned *Hardwick*, seventeen years. So why was this seventeen years different from this seventeen years? Well, the answer is, because in *Hardwick*, the court said the idea that our precedents regarding procreation and family and marriage, on the one hand, and homosexuality on the other have anything in common is facetious. That's what they said in 1986.

In the next seventeen years, we showed the country and the court that in fact there's every connection between procreation and family and, yes, marriage and gay people. And as the marriage conversation changed people's understanding and framed the momentum we began building and winning, we changed the climate and the understanding such that, by 2003, even though it wasn't yet officially a marriage case, the country was looking at gay people and gay love and gay relationships in a very different way, as was the court. So there was that seventeen-year, seventeen-year arc.

04-0:37:37

Meeker:

Seventeen years beyond that to get to 2020.

04-0:37:39

Wolfson:

Exactly. Well, seventeen years from, I'm trying to remember what the other one was. No, I had another parallel. I was just struck by this the other day.

04-0:37:59

Meeker:

If you add seventeen to 2003, you get to 2020, which was the—

04-0:38:02

Wolfson:

The target goal. Yes, although—I mean, that was the target goal. The thing is, we were obviously making that up, we didn't have any idea, and that's what the world looked like from 2005, which was when we'd written it. Certainly had we been writing that paper in 2010 or certainly 2013, I don't think we would've necessarily pushed it that far out. We had much greater momentum. We didn't know, but we—from the world where it was in 2005, fifteen years seemed like a reasonable horizon. Now it's going to bug me what that other construct was.

Oh, I know what it was. It was from 1996, the Hawaii trial, when we first won the freedom to marry, first ruling, to winning the freedom to marry nationwide this year, is nineteen years. The first court ruling ever striking down race discrimination in marriage came in 1948. From 1776 till 1948, no court had the courage to do it. Finally, in 1948, one court goes first, California Supreme Court. Nineteen years later, *Loving versus Virginia*. So it was the same nineteen years: first victory, national victory. Ours, first victory, national victory. People are going to think this is sort of a Louis Farrakhan—

04-0:39:49

Meeker: There's like numerology going on here.

04-0:39:51

Wolfson: Right, numerology, exactly.

04-0:39:54

Meeker: Let's talk about the late 1990s, because there are these historic achievements, but also broader setbacks, and I know that you've talked about losing forward and such. But Vermont happens, Baker versus the State of Vermont decision comes down in 1999. This was a case brought by GLAD, so Mary Bonauto. I think this was her first foray into it on a state level?

04-0:40:27

Wolfson: Yeah, probably it was the first marriage case that she did. She did it together with Beth Robinson and Susan Murray, who were the local Vermont attorneys. This was part of something we all were working on together as to figuring out when it made sense to open what we were calling internally as second front. And for a while we held off on filing the case. I urged them to hold off, and they held off. Because my view, and they agreed, was that we should do it right, in a way that we hadn't done it in Hawaii.

Hawaii came about because local activists and local couples wanted to get married and filed a case. There was no infrastructure, there was no preparation, there was no being ready to defeat the kinds of things we had in the legislature, so that Dan and I wound up constantly having to improvise, and surviving by the skin of our teeth, and then ultimately being overwhelmed by the anti-gay forces and not being able to control the politics.

The goal was in Vermont to first lay a foundation of public education and political organizing and prep the political allies and so on, so that when the court case began moving forward, a) there'd be a climate that would be favorable to it, which we didn't always have in Hawaii, and b) there would be the political capacity to defeat the attacks. So Mary and Beth and Susan very wisely agreed with that urging, and did the state-of-the-art job up to that point of organizing a state and building a freedom to marry task force, the Vermont freedom to marry task force, and going around the state in the way that I'd been going around the country, holding town halls and meeting with people and working with the local politicians and trying to a) create public understanding of who gay couples are and why marriage matters in Vermont, so that the court would have an easier task and be building political capital and capacity in order to defend against the attack.

So after the Hawaii Supreme Court was dawdling—we had won in the trial, now the state had appealed—we wanted a quick ruling, let's win the freedom to marry, go ahead and affirm. And everyone in the country believed they were going to affirm. The assumption was they had sent it back—we had already won the big victory from them in 1993, they'd send it back for a trial,



the trial we hadn't won, and had ruled in favor, they would ratify it on appeal. But they got cold feet and they began dragging it out and dragging it out. At first the thinking was, with the national turbulence that we were dealing with, we didn't need another court case. We needed more political organizing and public education, and the resources and attention should go to that, DOMA and so on, and these waves of anti-gay laws that were then being passed prior to the constitutional amendments.

But as they were dragging and dragging and dragging, I came to feel that maybe it would help them if there were another case and they weren't the only one, and maybe it would also excite a little bit of their competitive juices that somebody else might wind up being the first, and maybe they would realize they want to finish their legacy and do it. So I talked with Mary and Beth and Susan, and we agreed it was now time to go forward in Vermont, because they had built the foundation we'd urged and wanted, and had agreed on, and because vis-a-vis Hawaii now, there was a logic to opening the second front. And so they did. But of course, as it worked out, we lost in Hawaii. We then argued, Dan and I, that the Hawaii Supreme Court should still go ahead and affirm the trial court, that whatever the constitution said going forward, it didn't change what it had said before. But they were so fearful at this point that they just wanted to get rid of it, and they mooted the case out, essentially.

Fortunately, however, we had Vermont, and the case was, of course, brilliantly argued by the team, and we had created this climate that was still a hopeful climate, although Hawaii didn't help in that period. And nevertheless, the Vermont—and so, what happened was, we get to the Vermont Supreme Court and they rule that yes, gay people should be treated equally, but they left it to the legislature to figure out how to treat gay people equally. My statement at the time was, they got the what right, equal, but they got the how wrong. Because there's only one way to be equal, it's equal, it's called marriage. And Mary and Beth and Susan and I and the Vermont team were then scrambling as to a) what to make of this, and b) what to do with it. And I remember vividly the call I had with Mary, where she was, I don't want to say distraught, but she was very unhappy, she was very upset. To her, this was a loss. And I said to her that we needed to actually treat it as a glass half empty. We needed to—

04-0:45:34

Meeker:

Or glass half full.

04-0:45:36

Wolfson:

I'm sorry, yes. Well, it was a glass half empty, but we needed to treat it as a glass half full, that we needed to actually put the emphasis on they got the equality right, they said we need this, and the legislature needs to do marriage. We tried that, and that was almost immediately shot down by our political friends at the time, [Governor] Howard Dean and others, who decided they were only going to go for non-marriage marital status, equal by another name.

04-0:46:06

Meeker: Was Dean governor at that point?

04-0:46:07

Wolfson:

Yes. So we decided that what we would do is, if we couldn't get them to do marriage, and we wrestled with should we not take it, should we basically say blow it up, basically say we won't settle for anything less and dah-dah-dah and try to get our friends to stand up for that and get the legislature to deadlock, and then go back to the court and say, You told the legislature they had to do something, but they didn't, so you have to order marriage.

But we felt, and Beth and Susan's assessment was, that the court just didn't have the courage to do it. And that was the repercussions of that day, of the moment. We had built the momentum to this point, but not to that point. And so then it became a choice of do we take nothing, or do we try to go for what we can get. And so what we decided was, let's make it as parallel as possible. Let's load it on. And I think I'm the one who coined it civil union, who came up with the idea of calling it civil union, because I felt like that had more dignity, it had more gravitas, it was more marital than partnership.

04-0:47:20

Meeker:

Is that the other term that was being floated? Like in domestic partnership?

04-0:47:22

Wolfson:

Well, that was the only thing we'd had up to that point. That was the only thing that there'd ever been, other than reciprocal beneficiary, which is a ridiculous term, which we didn't coin because we didn't want it. So we pushed for that, and that fit with what Governor Dean and our Democratic friends wanted to do.

Our thinking then was, Okay, it's not everything we wanted, but we'll claim it as a victory and not enough, and we will rely on the power of the dignity of treating gay people with this kind of respect and the sweep of legal protections, and the absurdity of having two identical, parallel statuses that would then collapse, eventually, into one, that people would see it didn't make sense. That we would take the power of the affirmation and then argue the absurdity of two lines at the clerk's office.

04-0:48:23

Meeker:

Well, I mean, that's an interesting political and legal strategy, in fact creating a separate but unequal status, because the Supreme Court had, in a rather famous case, ruled on that in 1954. So rather than take nothing, it might make sense to actually—

04-0:48:44

Wolfson:

Right. Well, we wrestled with it, because there were pros to doing it and there was a pathway from it toward marriage, but there were plenty of cons, which is there were plenty of people who thought it was good enough, and it was a comfortable placeholder. If we had made it clearly unequal, not as packaged

so nicely, maybe it would have been easier to actually show that it wasn't equal sooner. Civil union became a placeholder part of the conversation and a diversion for several years. It took Vermont another nine years until we got to marriage.

04-0:49:18

Meeker:

So was there strategy about that? Did you have those conversations?

04-0:49:22

Wolfson:

Yeah, this is what we were debating and wrestling with, and of course this was the first time, so we didn't know. So we went with the strategy of, let's make it as parallel as possible so that the absurdity of having two identical things would be what people would eventually move beyond. And meanwhile, it would be the affirmation of the dignity, and remember, gay people hadn't yet had that. And it would actually still further marriage momentum, because the state is essentially treating people as married. It's gay marriage. Civil union is gay marriage.

So for that bundle, we decided to go with that strategy as opposed to the "let's make it crummy and then say it's crummy" strategy. And, you know, we didn't know which one was going to play out which way. And of course we had to deal with the fact that there were many in our movement who were more than happy enough to settle for anything we would win, let alone something pretty good that we were able to win, record-breaking good at that point. That was good enough for them. So they truly considered it a victory, even though we, the ones who had won it, didn't consider it a full victory.

04-0:50:38

Meeker:

How was that decision made? Was there a vote or was there kind of going to a consensus amongst the people involved, who was at the table, that kind of thing?

04-0:50:45

Wolfson:

Yeah, ultimately the decision was made by Beth, Susan, and Mary on behalf of their clients, but I imagine it was made by Beth, Susan, and Mary, probably in that order, but collaboratively. And I was obviously a very respected and—we were friends, and so on, and so I wasn't at the table but I was giving significant input, which I'm sure was taken very seriously. So I would say I helped shaped the decision and they made the decision. And they wrestled with it. Because as I said, Mary's initial reaction was great disappointment.

And Beth and Susan were the ones who were—in the same way Dan was doing in Hawaii, they were the ones who knew the legislators, they were the ones who Governor Dean knew. They were the ones who were front line. So they had to deal with the pressures from our friends and their own ability to assess better than I was able to assess what actually was doable. It's easy for me to say, tell them we're not going to take anything less than marriage. But

I'm not the one that Governor Dean was calling at two in the morning, or whatever.

04-0:51:57

Meeker:

You know, Howard Dean was recognized then, as today, on the more progressive side, if you will, of the Democratic Party. Was this a great surprise that he was unwilling to—

04-0:52:07

Wolfson:

No, because that's where our friends were, mostly, at that point. That was—he was a friend, and he did want to do the right thing, he just didn't have the courage, and from his perspective sitting there that day, he didn't think he could do the right thing. And I think he partly or fully didn't have the courage, and he may not have had the deep passionate understanding of why it was the wrong thing to do civil union. I mean, getting non-gay people to support the freedom to marry, the idea of marriage for gay people, was not something they all immediately embraced, even those who were truly good and truly on our side. Nor did all gay people at that point. It was still a new thing.

04-0:52:56

Meeker:

Is there any more emerged about how the Vermont Supreme Court came to this decision and arrived at this peculiar separate but equal response?

04-0:53:09

Wolfson:

I think it's pretty clear they just didn't have the full courage to go all the way, and no one else had ever gone all the way at the appellate level. I mean, remember, at that point still, there was no marriage anywhere in the world. And the one that had launched this movement, the Hawaii case, had very recently failed, and been repudiated by the popular vote. So that was the political climate in which they were acting.

I mean, I still believe they should've fought, and I still believe they should've held out and should've done the right thing, but they wouldn't. And then the question is, what do you do at that point, and this is what we chose to do. And there's no way to know, historically, if we had done the other strategy of making it crappy or blocking it and not getting anything and gone back to the court, would the court have had the courage to do the right thing at that point? Probably not, but we don't know for sure.

What would the momentum of the next ten years have looked like without that placeholder of civil union in the mix? Maybe enough people actually needed that placeholder as a stepping stone, that even though it was a problem, it was also a stepping stone. It was always both. And we were aware it was both. And it's hard to know whether we could've done without it. It's hard to know whether we could've done without it in terms of the national momentum. We did do without it in some of our state work. We worked very hard to make sure the we didn't follow that path, the Vermont path, in every single state, whether some through litigation, where we argued civil union is not equal and

not good enough and you, the court, should not do what the Vermont Supreme Court did, and that was the winning argument that GLAD and Mary and Ben and the GLAD team made in Connecticut, which became ultimately our second state after—went from third to second when we lost California. It was the argument we had to make in California, civil union is not enough. And we won. The argument we had to make in Iowa. And, politically, it was immensely important when we won the freedom to marry in New York a few years later, without a civil union stepping stone. Meanwhile, on the other hand, New Hampshire and Vermont and, there are other states at this point. California did have domestic partnership, which was akin to—they did go with a stepping stone and eventually got there as well.

04-0:55:59

Meeker:

One thing that's central to this whole story is narrative and storytelling and allowing people to place themselves somewhere within the narrative, understanding that there's a beginning point, which is, "Wow, this is totally unknown and foreign to me and I never thought about this possibility, too. Yes, I support the freedom to marry for all couples." A narrative requires not just a beginning and end, but also a middle, so we have civil union or domestic partnership, commitment ceremonies on a more personal level that people can kind of walk through. And you see the President doing that, you know. Who knows where he actually started, but he went through the civil union phase.

04-0:56:47

Wolfson:

We know where he started. Yes, that is totally true. And again, if you hadn't legitimated it by having it, would that have helped or would that have hurt? It's very hard to know. Because I think in my mind it clearly both helped and hurt us. Civil union did move a lot of people on a two-step process. But it also created a place where people that ultimately we did find were gettable, languished for a period of time. And what we eventually wound up doing was moving the civil union people to marriage, and that's how we got to our majority for marriage. And then we had to get them even more solidly, to the point where civil union just fell out of the discourse.

And that happened relatively quickly, but not when you were living it day-to-day and not knowing what the end was. And meanwhile, the pressures—it created—shouldn't say created, it exacerbated and legitimated divisions and fissures within the movement, because there were, again, plenty of players who were more than happy to just take civil union. And even worse, were more than happy to just ask for civil union, not even to aim for marriage and get civil union. And much of the argument of the 2000s was trying to get people to understand that even if you only want civil union, the better way to get it is by asking for marriage. We won civil union by asking for marriage.

04-0:58:18

Meeker:

The first time I personally got involved in any of this was the "No on Knight" campaign in California in 2000. I guess the vote actually happened in March

2000, so it was at the time of the presidential primary. Sixty-one percent to 39 percent. As a historian, I was invited to go speak at some retreat for half an hour about the history of it, and I probably wasted their time, to be honest, but it was very clear just at that gathering of the statewide leaders of the campaign, it was probably sometime that fall, that they felt like they were just going through the motions, that this was an exercise. There was no real widespread belief that we could actually do this.

I'm just trying to figure out how to turn that into a question, except that, you know, when you encountered people like that, when you encountered that attitude, how did you respond? How did you communicate with those people?

04-0:59:30

Wolfson:

By really trying to show people we could win, and that the only way to win is by putting it forward and evincing a confidence that they could rise to fairness and that we could answer their questions, or we could show them the right way. And I used to say to audiences all the time, "You can't get non-gay people to care if you begin by saying you don't care." If you begin by saying, "I don't care what it's called as long as I get my health benefits," as long as blah-blah-blah. Well, then why should they care?

That is not effective, I would argue, because, again, the way we got even the health coverage, reciprocal beneficiary, the way we got civil union was not by asking for civil union, it's by engaging around marriage, this powerful, resonant, mind-changing, heart-opening engine. And so even if that's all you want, you need to talk about it this way, you need to make the case this way. And by the way, we can win. People will move on this, because it is—I mean, I would just over and over and over and over tell people this, show people this, urge this, push strategies, try to develop programs and examples and ways of talking about it, writing my book, writing articles, giving speeches, doing these rolling seminars with movement colleagues.

You can tell me if this is true in your experience, but many, many, many gay people will come up to me and say, "Oh, I heard you say this in 2000, I heard you say this in 1998, I thought you were crazy," blah-blah-blah. Well, thousands and thousands and thousands, if not tens of thousands of gay people and non-gay people heard me say this at some point, because we were just constantly putting it out there. And of course other colleagues came into it and began doing the same thing, as I described Beth, Susan, and Mary organizing in Vermont, to saturate that state and to do it—and we tried to seed similar kinds of efforts, as I described earlier, to do that kind of foundational mind-changing, creating a sense that we could do this.

And as the Hawaii case had moved forward, and then as the Vermont case moved forward, and also as the right wing's attacks came, and that woke some people up, there was tremendous grassroots energy. And even though many people were skeptical or resistant or whatever, there were plenty of others

who weren't and were moving. And we ended the nineties with the public opinion polls, I think I talked about this already—public opinion polls said, reported in the end of the nineties that two-thirds of Americans now believed that gay people would win the freedom to marry.

We had begun the decade with something that they dismissed as an oxymoron, that they'd literally given no thought to in twenty years, that the movement had essentially decided it was not going to happen and we weren't going to fight for it, that most activists in their sophistication thought we weren't going to do—and that the right wing then laughed at when we put it forward. There are interviews of me, of Andrew, of others, and the response is, this is the craziest idea I've ever heard. And that was all they needed to say. But by the end of the nineties, the debate had changed and the understanding had changed and people had moved. They didn't yet support it, but two-thirds believed it was going to happen. And that shift amongst non-gay people was also reflected in a shift amongst most gay people. Not all, but most.

04-1:03:09

Meeker:

When did you start drafting a proposal for the Freedom to Marry organization?

04-1:03:16

Wolfson:

So on April 26, 2000, I was at Lambda Legal, we had now lost the Hawaii case, we had now won-lost the Vermont marriage case. And on April 26 I was standing in front of the Supreme Court arguing my Boy Scout case, the one other case, other than the Hawaii case, that I had kept during my Marriage Project organizing days. And I did the argument, and it was a glorious experience, a glorious day. We eventually all got back on the bus that Lambda had chartered and we schlepped back up to New York from Washington, and as I was sitting on the bus, my cellphone rang. I answered, and I was told that then Governor Dean had just signed into law the civil union bill.

So literally on that very same day, these two more than ten-year pieces of my work, the Boy Scout case that had just culminated in the Supreme Court argument, and the marriage work that had gone through Hawaii to Vermont to now delivering not yet marriage, but civil union. Literally on the same day this happened. So I sort of said to myself, "Okay, this is kind of a sign. I need to think about what's next. Do I keep doing what I'm doing? Do I want to keep working at Lambda? Do I want to keep working in the gay movement? Do I want to keep working on marriage? Or is this it, have I completed my chapter and need to find something else?"

And Lambda was very supportive. They said, "Take time, do your work, but feel free to explore and think about what's right for you, we'll talk about what's right for the movement," blah blah blah. And so I went through this several-month process of thinking about what else I might want to do, how else might I want to do it, what made sense, should we keep fighting for marriage, is it too soon, et cetera.

04-1:05:22

Meeker:

There were no other pending marriage cases at this point?

04-1:05:24

Wolfson:

That was it. Vermont had ended in civil union, Hawaii had ended, having transformed the landscape and launched a global movement, but failed. And the others, Alaska and others, had all lost. Some of the abortive earlier ones that other people tried had lost. So I was really wrestling with this, and eventually realized I was still passionate about winning the freedom to marry, and I still believed we could do it, and we just needed to build the right kind of campaign, and we needed to create the climate in which the next litigation could succeed, and that if we could get a court, like in Vermont, to come that close, we could create the political climate and the cultural engagement and so on to get all the way.

I, during this period, was—well, just to make a long story short, I received a letter—I haven't told you this story yet, have I? So I received a letter that was sent to many movement leaders at the time, and it was from the Haas Jr. Fund, the Evelyn and Walter Haas Jr. Fund, which is a foundation in San Francisco, a non-gay foundation, progressive, done good-guy stuff, not particularly affiliated with the gay movement and so on. And they said they were looking to create a gay project as part of their giving, and they would welcome candidates for a program officer that they were now going to be hiring.

So I actually walked to a colleague at Lambda, Beatrice Dohrn, the legal director then, who's a friend of mine, and said, "You actually ought to apply for this. You ought to start your next chapter," and blah-blah-blah. And she said, "No, you ought to apply for this." And I was like, "I've never thought about doing philanthropy." She said, "Well, you should go talk to them."

So I called them and I said, "Look, I'm not applying for this job, but I am going to be in San Francisco," I had a speech or something, "and if you'd like, outside of the employment process, I'd be happy to come and chat with you and just talk more about it." And they said, "Absolutely, come in." So we made a date, and I came, and I met with the president of the foundation, Ira Hirschfeld, and Sylvia Yee, the vice president, and we began what turned into a months-long round of conversations in which, because I wasn't trying to get the job and they certainly weren't sure I was the right person for the job, we were being very direct with each other and very expansive.

And I would be saying things to them like, look, if you just want to sprinkle some money around and do some ordinary building programs and helping people, I'm not the right person for you. And if you want to stay in your work up till now, which has been primarily in the Bay Area, and certainly only in California, not nationally, I'm definitely not the right guy for you. But if you really want to make a difference, what you really ought to do is support a campaign to win the freedom to marry. They went, "Marry?" "Yes, marriage.



Marriage is the engine of change, marriage is what we're going to have to be fighting for. You can do good work this way, but if you want to be transformational, you need to do this."

And they were intrigued, puzzled, surprised, and tested it and pushed it, and they kept inviting me back over the next several months. And eventually they turned to me and they said, "Okay, you've sold us. We actually believe in this vision."

04-1:09:12  
Meeker:

When they're testing it with you and questioning, what kind of things are they bringing up? What are their doubts?

04-1:09:16  
Wolfson:

How do you win this? Why doesn't anybody else think we should do this? Is this more important than just funding good piecemeal work in a variety of things? Is there something else that could be an engine? Is this premature? Didn't you just lose? All these kinds of very legitimate questions.

So eventually, as I said, they said, "You've sold us. We believe in what you're saying, and we will make the case to the trustees, and you'll sit and you can meet with them, and we want to find a way to do this. So we're going to give you a choice." And they said, "The choice is, you can come here and take this program officer job and build this program and push your vision, and we will back it, but we have to warn you, philanthropy moves slowly and if you're here, you're going to have to build support and you're going to have to get it going, then you're going to have to work within the philanthropic framework, and so on. But if you want to do that, we'd love to have you."

"But here's your other choice. You can stay the activist and let us fund you. You can build this and be the activist and let us support this vision, because we believe in it." So I wrestled for a day and a half, because obviously taking the job of giving away money is a much easier job to sign on to than the job of, even while receiving money, trying to build this whole campaign. But obviously you can't say no when someone says they believe in your vision and wants to support it.

So I agreed, and that's how I secured what was at the time the largest grant ever made to the gay movement. And it was a grant being made by a non-gay foundation that previously had not done national work, to support a gay national campaign to win the freedom to marry. And it was being given not to an organization, but to just a guy with an idea. And they took that leap, and I decided of course I couldn't say no.

And that's how Freedom to Marry was born, and that's what set the stage for mapping out a way of building a campaign that would, unlike what we'd done in the nineties, really be able to take it to the next level of having a central campaign entity that would galvanize what I used to call the four multis, and I

talked about the need for a campaign that had the four multis. It needed to be multi-year, it had to have support from funders and buy-in from activists and work over several years, because we weren't going to be able to win marriage in one year. It had to be multi-state, because I didn't want a repeat of what we had in the nineties, where we moved forward in Hawaii only to have it snatched away. We opened in Vermont only to have it snatched away, left with nothing and having to start up again.

So it needed to be multi-year, multi-state, multi-partner, because on the resource level we were talking about, even at the new level of generosity that Haas was committing to, no one organization was going to be able to do it all. So it needed to be a mechanism, a way of getting organizations to bring their pieces in a way that I had tried to do while perched at Lambda in the nineties through the national Freedom to Marry Coalition, but had reached these limitations and challenges created by the ownership dynamic of if one organization owns it, then the other organizations are less likely to work on it, and if it was being driven by a legal group, would it really get what was needed in terms of the political work, and all that kind of stuff.

So we needed to create a mechanism that would be multi-partner, and it needed to be multi-methodology. And I took that phrase, methodologies of social change, from some writings of Martin Luther King, where he talked about the need to bring together litigation, legislation, public education, direct action, organizing, and ultimately we realized also electoral work, and of course fundraising. So what I wanted to build, and what Haas agreed to back, was a campaign that would have these four multis and be able to follow and propel a national strategy to a clear single goal, through all the thicks and thins and ups and downs and challenges. And that was the genesis of Freedom to Marry.

04-1:13:48

Meeker:

What was the funding level that they agreed to in the beginning?

04-1:13:50

Wolfson:

They made a commitment of \$2.5 million out of a \$10 million goal, so they committed to a quarter of the goal that we wanted to raise, which was to try to raise 410 million to launch this campaign.

04-1:14:03

Meeker:

And that was over how long would that \$2.5 million—

04-1:14:06

Wolfson:

I think the idea was, I'm tempted to say three years, but I'm not even sure that's right. I don't remember anymore, I'd have to look. But what we were trying to do was actually raise it all up front and get going, that was the original model. The idea was, they were going to have this splashy unprecedentedly large challenge on the table from a non-gay foundation, and other funders, including gay funders, would be so motivated and moved and

inspired that they would step up with a comparable amount—it might have been for four years, but I can remember what the original vision was.

And it was all a little bit arbitrary, because the idea was, we would get started at this very high level, and of course that would be an engine that would be bringing in more, and so on. And they also committed to all the seed money, so the ability to have me leave Lambda, let go of all that other work, focus on building this—they were going to pay for all the expenses and support—and then make the \$2.5 million commitment once I raised the remainder of the \$10 million. So they were paying all the expenses, and then there was going to be the war chest, essentially.

So I got to work, and left Lambda on May 1, 2001, launched Freedom to Marry. So the set of conversations that had begun, I had been inspired to thinking about my next chapter on April 26, 2000, when I argued the Supreme Court, here it was a year later, May 1, that I had had these conversations with Haas and figured out the priorities and the desire to keep working on marriage, but to come at it from a new angle. Leaving Lambda, not out of any negative thing about Lambda, but just more in order to create this four multi campaign that would help Lambda and help the others to do their litigation piece in order to create the climate so that the litigation could succeed in a way that we'd had these frustrations in the Supreme Court in the seventies, in Hawaii in the nineties, in Vermont in the nineties. It had always been close, but not what we needed, so the idea was to try to get it right in the next round.

And meanwhile my friends and colleagues at Lambda, and at GLAD, would be doing the next set of marriage cases in which climate, that I would create, we would be able to succeed. And Mary began working on what became the Massachusetts case, which of course then became the case that did deliver the breakthrough we finally—that we had been working for.

04-1:16:52  
Meeker:

You know, we haven't really at all touched on your personal life since the time that you'd come out in grad school, or before then actually. Because I know that you're married now, and I don't know when you met your spouse. Was he involved at this point in time? Were you dating? Where does marriage sit in your own personal life at this point in time, I guess is the question.

04-1:17:19  
Wolfson:

Everything we've just described was all pre my husband. I met him in January of 2002. So everything so far has been prior to that. And for much of this time that I was leading the marriage fight and building all these different models and trying to get this to happen and that to happen and winning Hawaii then losing—through all of that, for all but three and a half years and a few months here and there, what I used to describe as whinily single. I was always in this position of fighting for marriage but unable to have one. And I used to always

be joking to people that I'm closer to winning marriage for gay people than I am to having one myself.

Or I would say things like, "Those who can't do, litigate." And people would laugh. And in part, it was useful, because, not that I wouldn't have traded it in a second, and not that I didn't try, but I was never motivated by my own personal circumstances or by my own desire to marry. It just wasn't about that for me. It was about that for many, many people, and the power of that personal desire and aspiration to love and commitment was certainly central to the case for the freedom to marry, and it was something I talked about a lot. But it wasn't what motivated me. What motivated me was this vision of history and vision of justice and what was the right thing to do, and my belief that claiming marriage would be this engine of transformation. That's what motivated me. That's what excited me. It wasn't, I want to get married, therefore I'm going to fight for the freedom to marry. Let alone I was in love, and therefore I wanted to fight for the freedom to marry.

And I remember, actually, one of several times, but one in particular stands out when a movement colleague who I'd been cajoling and pushing to try and get more engaged in the public education groundwork of this Paul Revere phase and organizing and getting out there, and a movement leader, head of an organization, came to me at one point, after we'd known each other for a couple of years, and he said, "You know what? I'm with you now. I really get what you're talking about, and I'm going to really step up and our organization is going to do this, because I'm in love." He said, "I met someone and now I'm in love." And I was, "Congratulations, that's wonderful." But privately I was thinking, that's terrible. Really? You call yourself a leader and you don't support this, you don't understand it, you don't dedicate yourself to it until you yourself want it? Now, I took it. It is what motivates a lot of people. It is powerful, and it is real, and it's legitimate. But it's not good enough, and I didn't respect it. I didn't think that was the right way a leader or a strategist should look at the work.

So anyway, that was where I was. So to me it was never my own unhappiness at not having a boyfriend, was not because of my work. The two were never connected in that way, except to the extent people would keep pointing out the irony of Mr. Marriage being whinily single. But I will say that once I did meet the love of my life, the guy I'm now married to and feel very lucky about—

04-1:20:41

Meeker:

What's his name?

04-1:20:41

Wolfson:

His name is Cheng. Cheng He. It definitely made my life so much better. It made my activism so much better. It gave me so much support and comfort and joy. And it didn't, obviously, change my commitment to winning marriage, but the fact that I was able to get married to the person I love and to

have the power of the wedding and the power of that celebration, and now to be able to talk about it in these personal terms, even though they weren't really what motivated me, but they certainly are effective, people like to hear it, people want to hear it. So now I had that, and it definitely added something to the case, even though it wasn't really what had driven me. But I certainly saw the power of it in a way that I had preached but now could actually experience.

04-1:21:35

Meeker:

Let's go back to the establishment of Freedom to Marry. I always wrestle with, particularly in these early years, can we call it an organization, were you calling it a campaign that early on? What kind of language were you using? Was it kind of like a social movement organization way in which—

04-1:21:58

Wolfson:

I mean, I tried to talk about it as a campaign, because that was the model I was trying to apply, the idea that, unlike other what I thought of as pillar organizations like Lambda Legal or GLAD, who needed to be there and upon whom we could rely as we built this multi-partner, multi-methodology drawing on them, Freedom to Marry didn't have to litigate, because we had core litigation institutions that we could pull in. Freedom to Marry was not supposed to be that. Freedom to Marry was intended to not displace or duplicate what anyone else was doing, it was to just drive a strategy to a goal, and that's more a campaign.

But of course it also was, and still is for the moment, an organization. I mean, it still had to bring people together, it had to raise money, it had to have systems, it had to support them, it had to take care. So there was a little bit of—dissonance is too strong, but there was always this, we are a campaign, but we also are an organization, and eventually we learned how to do both right. But I would say the most important presentation to the public was that this is a campaign.

04-1:23:05

Meeker:

Was there precedent for this? I mean, not just in the gay movement, but more broadly where, in essence—I mean, there is this interesting combination that it is both a social movement organization and a campaign at the same time, whereas before, I think, you know, I can't think of any examples off the top of my head—

04-1:23:27

Wolfson:

I don't think there were any examples in the movement, certainly none that I could think of. The closest was, there was a very last-minute, very short-lived campaign for military service that was created really, as I said, at the last minute to try to defeat the so-called Don't Ask, Don't Tell measure in Congress, Sam Nunn's bill that Clinton eventually signed. And we pulled together a campaign that wasn't an organization, but it was a campaign to try to drive the effort to defeat that. Then, of course, there are issue campaigns all

the time in terms of on the electoral cycle. I don't have an immediate example of a campaign that didn't have that kind of finite, clearly defined ballot cycle structure, but was working with single focus to one goal, pulling in these different methodologies and so on. Certainly our movement didn't have that, and there really weren't that many other examples, or any other examples I could think of.

04-1:24:36

Meeker:

It's a pretty interesting innovation, then.

04-1:24:37

Wolfson:

Yeah, and I think it was an important new model that took a while for people to fully appreciate and understand and buy into, and they might've bought into part and part and part, but some never fully got, and others took a long time to really get all the implications of a central campaign driving a strategy, leveraging a movement of many players and parts, all toward this one goal.

04-1:25:02

Meeker:

In the first couple of weeks and months, what were the main things that you were doing to really establish the viability of this campaign organization?

04-1:25:10

Wolfson:

I spent a fair amount of time going around to my colleagues, starting with the legal groups, because they were the most likely to be supportive and to get it, as we had seen in the nineties with Hawaii, and then working my way outward through other movement colleagues and circles, and then allies, to try to build support for the concept, for the strategy, for the entity and the process. And at that point, even though the idea was to build this central campaign, it was a central campaign that, as I said with the four multis, was going to cobble together, was going to pull together, was going to shepherd the multiple contributions of different players. It wasn't going to do everything.

Eight years later, we realized the limitations of that model, and morphed Freedom to Marry into much more of the true, central campaign that still didn't do everything, but did much more of much, and had much more in-house and much more capacity and much more central expertise and much more central programming and fundraising and so on. That wasn't where we started. We started with more an internal movement strategy center and catalyst with my public voice and leadership and credibility that would get others to contribute their parts to the shared strategy.

04-1:26:30

Meeker:

So what fell outside of that model of being an internal strategy center?

04-1:26:35

Wolfson:

Well, not only did we not litigate, which obviously was a central strategic element from the very beginning, at that point Freedom to Marry was only a c(3) entity, a tax-deductible public education 501(c)(3) organization taking that kind of money, and therefore not able to lobby.

04-1:26:54

Meeker:

It wasn't even that, because you were—we'll talk about that.

04-1:26:59

Wolfson:

Right, I mean, structurally we weren't even a real organization. But de facto we were an organization, and we raised c(3) public education money. But we didn't do the lobbying. So as with Hawaii in the nineties, if we really wanted to win a state through the legislature, or defeat an anti-gay attack through the legislature, or later through the ballot, we totally were reliant on cajoling and coaxing and assisting others to come to that table. That's what we shifted beyond in 2010 and said we're just going to have this capacity ourselves. But it took a long while to get there.

04-1:27:37

Meeker:

What about establishing the actual basis for which you could bring money? So you became a sponsored project of the Astraea Foundation.

04-1:27:47

Wolfson:

Right. In order to keep it just very, this is a campaign just to do what we need to do, we're not trying to empire build, I'm not trying to displace anybody, one of the things I thought was, we don't need to have all the rigmarole of a whole organization, because we're not trying to build a membership base, we're not trying to build a classic tier of fundraising, we just want a handful of funders who back an entity that has the right capacity and the right relationships to drive a strategy.

So we didn't even launch as an independent organization. We launched as a project housed at the Astraea Foundation, which was the lesbian foundation, and I chose that because I wanted to show that even parts of the movement that some thought were not in support were in support, and bring resources to them and engage them and their contacts and their connections in the legitimating of this new campaign. And part of the consequences of being there was, I didn't even have a real board. I created a non-board board that we called the steering committee, that played the role of a board in terms of giving me someone to report to and to use as sounding boards and advisers and sometimes ambassadors or helpers, but they didn't have technical fiduciary responsibility, they didn't have fundraising responsibility, and they didn't have governing authority.

Astraea's board nominally was my board, but I never dealt with them. So what it did mean was, on the one hand, I didn't have the infrastructural support that a well-functioning board can often provide, of other people who are doing fundraising, other people who are making contacts, and so on. I had these volunteers, who were very helpful but limited. But on the other hand, I also had pretty free rein to shape this and drive this and build it as I wanted. And was envied by my executive director friends, who felt like that was a trade-off they would gladly have made.

04-1:29:54

Meeker:

So the role that Astraea played, in essence, they handled your books, I would guess, they handled—

04-1:30:00

Wolfson:

Right. Payroll—

04-1:30:02

Meeker:

Payroll, human resources. What kind of internal capabilities did you have, say, in the first year or two working under Astraea that they didn't take on? What kind of infrastructure did you realize was necessary even as a project?

04-1:30:21

Wolfson:

Well, we had to get our own offices, so we had to find our offices. We had to have an office manager type person and somebody to handle the interface with Astraea and the HR and the payroll and all that kind of stuff, to serve as an administrative assistant, an administrative backup, and so on. So we needed all of that. And we also made a commitment early on in Freedom to Marry's model that we were going to be a funding engine for this marriage field that we were going to create. And obviously we tried to raise money for marriage work that didn't necessarily come through my watering can, but as long as it watered the marriage field, it was great.

But to the extent we could bring money in through this watering can, we were committed to putting a quarter of what we raised into the work of other organizations and partners who were working in furtherance of our strategy. So we needed to manage that, and Astraea provided some of the administrative interface of that, but not the substantive, not going over with people about the grants we were giving the, whether their strategy made sense, and did they have the capacity. Astraea was much more the financial and technical aspects of grant management.

04-1:31:39

Meeker:

Actually, I do want to hear a little bit more about the steering committee. What were your goals in selecting individuals to serve on that?

04-1:31:50

Wolfson:

One goal was people who got who I was and got this vision and weren't going to be a problem, weren't going to second-guess it in terms of the vision and could always debate good ideas, but were committed fully to the strategy and the vision and to my leadership and so on. That was one criterion. A second was people who could assist in some way, whether through providing some legal advice where needed, or providing communications advice, or contacts to important communities that we were trying to bring in, religious or African American or Latino or labor, et cetera.

04-1:32:31

Meeker:

Are there any particular steering committee members in the first couple of years that you'd like to talk about and the contributions they made?



04-1:32:39

Wolfson:

Actually, I was very lucky. I had terrific people right from the beginning, some of whom have stayed right through to the end, others of whom served significant periods of time before eventually stepping back. Certainly Barb Cox, who was the first person I turned to to chair the steering committee, who now chairs our c(3) board as we changed from steering committees to boards in 2010 as part of the morph. John Buehrens, who was the head of the Unitarians and who came on board and became ultimately eventually vice chair, but also was a very valued board member right from the get-go.

I had people like Jordan Roth, who, when I met him, was a young, wealthy player in the theater world, but young, he had just graduated college a few years earlier, and he's now the head of Jujamcyn Theaters and has been a significant financial contributor to Freedom to Marry, as it turned out, but also brought his talent and his savvy on marketing and on reaching audiences and so on. That was a very, very helpful contribution, and I'm sure he never expected when he started with Freedom to Marry that he'd still be here by the end, but he stuck with it.

I think of other people, like people I'd worked with at the task force when I was at Lambda Legal. Tracy Conaty was a communications director there, she came on the board. Mandy Carter, who had been somebody I'd worked with in organizing in the South, a very important African American activist, she was actually the first person I engaged and the first person I hired to do some consulting work, and then she eventually went on the steering committee. Trying to think of who were in the very first wave. I'm sure there are others.

04-1:34:31

Meeker:

Did the role that the steering committee played, say, between 2001 and 2010 not change, or did it evolve in meaningful ways during that period of time?

04-1:34:53

Wolfson:

Well, that actually reminded me, probably the most important person who I left out, just because he's such an omnipresence in all of it, but Tim Sweeney also came on the steering committee. Tim had always been my right-hand person in building Freedom to Marry. He was the person I first conceived of it when I took him to lunch, as he was leaving his job in New York and moving to San Francisco. He'd already been a movement hero, a movement giant. He'd already been the head of Lambda Legal, when I first met him, the head of Gay Men's Health Crisis, had been at the Pride Agenda when we won nondiscrimination. Just a towering figure in the movement, and a friend. As I said, when I took him out to lunch to thank him for all that work and to wish him well as he now was moving to California after this whole chapter of New York activism, we just began kicking around this idea of, What if there were this marriage campaign? So when I started building Freedom to Marry, he was the first person I pulled in, first person I used as a sounding board, my consistent sounding board from that day forward to today. I actually had dinner with him last night.

He came on the steering committee, and the point at which he came on the steering committee, he was now the program officer at the Haas Jr. Fund, where I had gotten the seed grant. And after they had said to me, given me that choice of you can either come here and work here or we'll fund you and you do it, and I had chosen to take the money and build Freedom to Marry, they said there's one condition. The condition is, you have to find us somebody for this job. And I said, knowing that it was cutting off my right arm, I actually have the perfect person for you. I had wanted Tim to be with me in building Freedom to Marry.

04-1:36:42

Meeker:

As an employee?

04-1:36:43

Wolfson:

Well, as a partner. But he was just so perfect for the philanthropic role, and he was in San Francisco, and he was looking for a job. So I described him to them, I said this is the guy, you absolutely have to hire him. They thought he sounded great, they literally brought him in that day. He came in, interviewed, we all had lunch, the deal was all set, and so on, and he became program officer at Haas, meaning I lost my day-to-day partner in building this new thing that I didn't really know how to build, but I gained, obviously, this incredible rock at Haas who would then also prove to be this extraordinarily important leader in helping bring more philanthropy into Freedom to Marry, and always being there as a sounding board. So he was on the steering committee as well.

04-1:37:37

Meeker:

I was just asking about the transformation of the steering committee over those first—

04-1:37:40

Wolfson:

I would say basically no. I mean, the steering committee always remained a sounding board, the non-board board. They were always aware there were limitations on it, that it was always a strong leader model that they weren't micromanaging or interfering. But they got much more steeped in it, of course, and much more able to ask good questions and to really be partners, not just in responding things I might ask for, but in putting forward ideas and so on. And as the organization became more of an organization and we actually hired staff, and then we began going through staff and had different successes and failures, and all the struggles that any organization has, they got more engaged in it, to a certain extent. But always mindful of the boundary that they were a steering committee, not a board.

It really changed once we made it a real board, and particularly looked to that board to help with fundraising, because of the much-increased demands for fundraising that we had once we entered into this new phase of being an actual campaign. And then some of those players came on without the organizational history and the full immersion in how Evan built this from scratch, but

wanting to be part of what they saw as already a successful machine that was more like an organization and had to find their way and also we needed more things from them. So that's when it became a little more of a board—technically it became a board, but it also became more of a board with actual, not struggles, but actual discussions about who's getting to decide what and so on. All very successfully and very well. I was very lucky.

04-1:39:32

Meeker:

We'll get to that. Tell me about hiring staff. When did the first staff person come on board and what were you looking for?

04-1:39:44

Wolfson:

Pretty early on—well, I said I launched, I began it on May 1, 2001, and the first part of beginning it was, as I described, getting the buy-in from my colleagues, from other stakeholders, and so on, and also trying to raise money. So together with Tim Sweeney and Haas and Ira at Haas, depending on whom we were approaching, we were trying to raise the rest of that \$10 million in addition to laying out a vision and writing concept papers about what the first few hires should look like, and what the if you build it, they will come version of this was, and what the full-fledged version was, and what the needs of the strategy were. Lots of writing, lots of persuading, lots of laying it out for different organizations and for different potential funders and so on.

But the most important tasks were getting buy-in from the movement colleagues and getting the funding. Well, we spent a year and got a pretty good degree of buy-in, although still somewhat skeptical and still also somewhat skeptical on whether we were going to be able to raise this kind of money, because nobody had ever raised this kind of money in the movement before.

But there was also great difficulty and resistance in raising the money. We got some money, but the idea that other funders were going to be inspired by Haas's extraordinary leap of leadership and generosity turned out to be not true. After about a year, so this was May 1, 2001, by 2002-ish we were really getting impatient. It's like, where's the rest of this money going to come from? How are we going to do this? How are we going to get going?

I was already helping with the colleagues in the movement and trying to encourage people to think about the next steps in the strategy, and Mary was beginning to tee up what became the Massachusetts case, and I was being supportive of her, and we needed to do this, and I was encouraging Lambda to look at its map and where might it want to bring a marriage case, and Lambda started looking at that. But we weren't able to raise the money.

So after about a year or a little more, we eventually said, you know what, we're going to have to throw this fundraising model out. I had been working with fundraising consultants and Tim was very helpful and so on, and I

remember, did I describe my, what I call my Cher moment to you? So one of the people that I had brought in to help with figuring out the strategy and taking it from an idea to an organization and raising the money was a guy named Mickey McIntire, who had been the development director at the task force and now was a consultant and skilled in training people on board development and on fundraising and so on, all new things to me. And so I was at one point complaining to him about, You know, I've written this, I've written this, it's the right idea, it's the right vision, I've made this case, I've said it. If they don't want to fund it, maybe—the hell with it. I can just go do something else.

And he, metaphorically speaking, did the Cher thing of “Snap out of it!” and said to me, “You have to understand that fundraising is activism. Fundraising is as important as your making the case for why we should have the freedom to marry. You can't just take an attitude of, ‘I've put it in front of you and if you don't get it, it's shame on you.’ You have to use every resource, every piece of your persuasiveness, your emotion, your involvement, your energy in making the case for why people should give money, as you do for why people should be in support.” And it was a very powerful moment that got me understanding it differently and approaching it differently.

So we basically retooled and decided, you know what, if we can't raise the full \$10 million, if we can't raise the whole thing, if I can't have launch with eight staff or twelve staff or ten states or whatever the thing was at the time, we'll launch with enough that it shows the elements of what I'm talking about so that people will see it, and if we build it, they will come. Revamped that and was able to secure enough funding to get that initial launch. Jordan Roth actually was the person who gave me the last \$40,000 I needed to get to the target number to be able to launch. So on January 1, 2003, I officially launched Freedom to Marry, which had now been in gestation already and doing the groundwork and the buy-in work for more than a year.

04-1:44:49

Meeker:

In those early years, were you getting an opportunity to engage in person with the foundations?

04-1:44:55

Wolfson:

Oh yeah, absolutely. I mean, I was all there was. This was Freedom to Marry.

04-1:45:01

Meeker:

I don't know if they were just, you were submitting letters of inquiry and that kind of stuff, or there were—

04-1:45:05

Wolfson:

Maybe with a couple. It's not like there were that many. But really to persuade people to buy in to this kind of thing, we needed to sit down and they needed to have the full force of my persuasion and my energy and my inspiration, and

they needed to take my measure and so on. And even then, of course, several didn't come in at that point, but enough did.

04-1:45:28

Meeker:

Well, was their reluctance based on this massive \$10 million goal, or was it based on, you know, the strategy and/or reluctance around the—

04-1:45:38

Wolfson:

I think it was a combination, sure. Marriage still seemed far-fetched and difficult, and maybe not even the right goal, to some. The newness of the model. The idea of this kind multi-year lift on something that seemed so remote at this point. The scale that we were urging that it be done, and that we were being honest in saying it was going to take. It's not just like I made up a \$10 million figure. Ten million is nothing, actually. We spent, in the movement, easily more than \$160 million, probably more. Ten million was starter money. But at that time it seemed like an enormous leap.

And of course I was one person, not yet an organization. I'm not Lambda, I'm not a familiar organization, I'm not the ACLU. So it was all those different things. But I think more than any single thing, it was the marriage. It was marriage. But enough got excited, either about the marriage strategy or about the energy of the model that they were willing to give it a try.

04-1:46:50

Meeker:

You know, you had mentioned that Mary was taking this case in Massachusetts. To what extent was this known, to the funder community at least, recognizing that, you know, it wasn't going to stop with civil unions in Vermont?

04-1:47:07

Wolfson:

Well, I think it was known in that I'm sure I would've said it, and obviously some of them funded GLAD, some of them funded Lambda, and the legal groups were not saying we're not going to go forward, it was the political groups that were wavering. But on the other hand, it's not like everybody was sitting around confident that it was now going to go forward. Freedom to Marry was what basically forced the funders and forced the discussion and kept it as a really front burner piece of work, even though GLAD and Lambda and others would have pursued their own pieces of it, but not with the same kind of forcefulness and boldness of call to action and try to raise this money and take it as a campaign and talk about the multifaceted pieces of a national movement. I mean, that just wasn't how they talked about it, and it probably wasn't even how they fully conceived of it at that point. And they certainly didn't have the capacity to do that.

04-1:48:11

Meeker:

So, I think it was November of 2002 that you at least communicate to your steering committee that this is when you're going to start looking for employees, and I think a development person and a senior program officer

were amongst your first, I don't know, hires or that's what you were looking for. Tell me about, you know, your goals based on a more limited model of building out Freedom to Marry after its launch in January 2003. Who first comes on and what kind of qualities are you hoping that they bring to the organization?

04-1:48:47

Wolfson:

Well, I mean, I really needed a strong program person, and years later I said to him, Harry [Knox], that I realized how much insanely I was asking of this position that I didn't fully appreciate. But I needed someone who had credibility in the states where we were going to be doing the sort of foundational work. I needed someone who could maybe bring in constituencies, whether it be people of faith or labor. I needed someone who could manage as a deputy some of the programs slash organizational work. I needed someone who got who I was and who could complement it. It didn't have to replicate what I was doing, but had to be able to complement it, and where I would be able to blaze a path and get in the door and get somebody thinking and so on, I needed someone who could then write the plan or hold the hand or do it and have those personal skills.

So I actually found someone who was pretty strong at many of those things and who turned out to be a very good hire, and that was Harry Knox, who had been previously the executive director of Georgia Equality, the nascent, small little state group there, and who also had a theological background. He had been training for his divinity degree and then had gotten kicked out, but always kind of wanted to get back to it. And he was southern, from Georgia, so he had a lot of other boxes that complemented mine very, very well and that would speak well to different movement constituencies who I still needed to bring into this work, and understood how to run a state group, which was an important piece of—one of the first priorities, which was figuring out how to win the states.

So he turned out to be a great hire and he was with me for a couple of years. And then the rest of the team was pretty much admin related, development and admin. I had a development director, I had an administrative assistant, I think that might have been it at first.

04-1:50:53

Meeker:

You know, New York, obviously, is not a very easy place to live, it's not affordable, and a small nonprofit is at a disadvantage in bringing people in.

04-1:51:06

Wolfson:

Yeah, and that was one of the challenges we encountered, and that was something I had no idea about. It never had occurred to me that people might not want to live in New York because they can't afford it, or because it's too big or it's too different or whatever. I thought, who wouldn't want to live in New York? So that was one of many, many, many, many first learning lessons.

04-1:51:26

Meeker:

How did you manage that? How did you decide what a reasonable salary, for instance, for a small organization to pay, yet would allow somebody to actually move and live—

04-1:51:38

Wolfson:

In the early days, I was very reliant on my experience at Lambda, which was one of my only three jobs up to that point, and the one I'd held the longest, and my principal movement work. And Lambda had always—I shouldn't say had always, but certainly under Kevin's leadership, which was most of the time I was there, had always been very—had been, under Kevin, very committed to supporting people and to paying decently and to providing benefits and to trying to help do the kinds of things that make life affordable and livable and retain good talent and so on. Kevin was always very good about that, and he was a good mentor to me on that. So I had the Lambda model, and I had Tim Sweeney as my coach, and Tim also, obviously, had led, as I said, several organizations and is an extraordinarily humane person and very attuned to people's needs and helping people and mentoring, which were things I had to learn and absorb. So those were probably the two biggest influences.

04-1:52:47

Meeker:

You know, I've read some of the early documentation, and it's clear that one thing that you were interested in and recognized as essential in both the short and the long term is building out a workforce that reflects the diversity of, you know, the larger population. What were some of the opportunities and challenges in the first couple of years when you were hiring your initial staff in that regard?

04-1:53:12

Wolfson:

Let me just add one, and that was Barb Cox, was also a very good mentor. She, as a professor and then ultimately spent a lot of time as a dean and as a vice dean within her school, Cal Western, she had a lot of good wisdom on how to treat people and so on, so she was a good sounding board for that as well.

Well, I was really committed to trying to bring the movement into this work, and mindful of the fact that you need different messengers to speak to different people and different people bring different experiences and so. So I did work hard in the early years to really have racial diversity and certainly to have men and women, and to some extent geographic diversity, and certainly skill diversity. And at various points was actually extremely successful at that, at other points less so.

There was one point where I was literally the only white person on Freedom to Marry staff. It was a brief moment, but it was there. On the other hand, we did have, during the early years, some degree of turnover, because people either weren't fully able to do the jobs that were needed, or it was such a pace and such an intensity and not everybody wanted to do all of that. Or people

would be with us and they got snatched away, that was the other thing. We did hire some really good people and have really great work happening, and they got plucked by other movements, including Harry, for example.

So I do remember actually one conversation that I had with my support team, as it were, at Astraea, which was the HR backup, where they said, “You actually seem to have fired a large number of people of color.” And I said, “I guess that’s true, but I also hired a lot of people of color.” I mean, most of the people I was hiring were people of color, so it’s not surprising that, of that turnover, that there’d be a disproportionate number of people of color. But there was that real struggle of trying to bring in as many talented diverse people as possible while at the same time operating at this enormously high standard of performance and excellence and keeping everybody happy and so on.

So it was the struggle that it is, but we had some really terrific people and we’ve had some great alumni who I still think very warmly of their time here, either because it became a foundation for what they did next or because it showed them that actually the pathway they thought they wanted wasn’t the right pathway. So for example, I’ve had two different people who’ve worked for me who essentially decided they wanted to go on to become ministers, go into the clergy. You could say either I’ve driven people into monasteries and, you know, put on the hair shirt, or it clarified for them that this is as good as activism gets and they’d rather do something else. So we’ve had experiences like that as well.

04-1:56:18

Meeker:

I think it’s a common struggle within social movement organizations that you want to model the social movement, right, within the organization. So you want to encourage a diverse workforce, you want to try to pursue somewhat of a non-hierarchical model or at least sort of a kind and learning workplace. Yet at the same time, there’s not a lot of money to do that. You have a goal in mind, and so you do need to hire the best and the brightest. There’s not a lot of opportunity to train people, because you don’t have a lot of time, because you don’t have the resources. And so unfortunately, people like to think that that is not—those are not in conflict, but they often, in reality, are in conflict. How did you deal with that?

04-1:57:11

Wolfson:

Well, I think all those things are true, and I was aware of them, and I’d had the experiences at Lambda, good and bad experiences, and good leadership at Lambda and bad leadership, and had tried to learn from those experiences. But I would say that also, for much of the early part, I would have said, and did say to steering committee members or colleagues or so on, you know, I think I’m a good leader, but I’m not a good manager. I know how to lead, I know how to hold people to a high standard, call people to a high standard, inspire people to a high standard. I know how to put forward a strategy, I know how



to stick through difficult times, I know how to bring people in and so on. But I'm not that good, I haven't done this, and I'm not that good or that patient with some of the work of managing and stewarding and mentoring and personnel adjusting and so on.

It was tough. That was something I felt I wasn't doing as well as I wanted to be doing, and I kept trying to do it better. I took advice and I tried to hear what people were saying in critique and do better at it. But I also think it got better partly as I did get better at some of that, but also as we found the right ways of doing things. I think part of the challenge was, I was trying to, in some cases, fit some people into jobs that they just weren't ready for or right for, or that were just extremely high-level, high-functioning jobs consistent with what we were trying to do and consistent with my standards and my focus and drive, which are not like everybody else's.

So I got better at doing some of that and I also eventually found some of the right people who then themselves were contributing to the dynamic that enabled us to become, by the last four or five years, an extremely effective high-level amazingly talented team, and a pretty well-managed organization. And I think part of what helped make that happen—we're kind of jumping ahead—was, because of the roles I was playing and my own temperament and skills, managing staff was not the strongest, best use of my time or the thing I was best suited for. It was tough finding a strong enough deputy, or being able to afford, in the early days, a whole deputy other position. So as we were able to get that strengthened and beefed up, and as I found the right program people for the right positions, and also probably conceived and integrated those program positions better, didn't just sort of leave it to people to, "Okay, here's what we need to do, let's figure out how to do it," but we had a clear idea of how to do it and what we needed done, and so we could hire to the position. As we got better at all of those things, and as I got better at my pieces of those things, it got better and better. And by the end, I think everybody would say, certainly in the last five years or so, this was an incredibly well run, extremely effective organization with an exceptional team that felt exceptionally high morale and well supported and so on. But it took many trials and errors and stumbles to get there, no question about it.

04-2:00:47

Meeker:

And I'm guessing a lot of those people are the people I'm going to be interviewing, or I've already started interviewing, right?

04-2:00:53

Wolfson:

Well, you're mostly speaking to the people who've been here in the last five years, so they're certainly more likely to be the happy people, that's true. But I actually think there aren't—even the people who may have—were at the time we struggled, it wasn't just I struggled or they struggled, we struggled. I think there are only probably two or three people in all the people who have worked here, and I actually have the list, we did this little celebratory

memento that we sent to everybody, including the people who were fired or who didn't work out, because they tried and they were part of it and part of the story, so I wanted them to have a piece of it, and I heard from a number of them, but not all of them. I would say there are probably, my guess is three people, maybe four, who probably don't have good feelings and so on. And I think the others would probably say yeah, there were difficulties, or this didn't work out, or this could've been better, or Evan this, or that. But, on the other hand, I also needed to blah-blah-blah, and I now realize dah-dah-dah. I think most people would be where I am on that, with a handful of exceptions. And of course then the majority of people, I think, would be admiring and proud and happy and satisfied.

04-2:02:11

Meeker:

What was the cumulative head count?

04-2:02:15

Wolfson:

I don't remember. I can get that. I have it in my office. Over the years, probably total maybe in the fifty range, fifty-five, something like that.

04-2:02:31

Meeker:

So before we wrap up today, I just want to ask you, back to the funding question and, you know, in addition to the Haas Jr. Fund, then you do get to the point where you got enough funding to launch, and I know, and hopefully this is not all—hopefully some of this—we can seal or delete part of it if it's not appropriate, but, you know, I know that some of the places that were regular funders of gay work, the Bohnett Foundation, Arcus, didn't come on, much to, I think, the surprise of the organization—

04-2:03:13

Wolfson:

Well, Arcus didn't—I think it technically existed, but we didn't go to Arcus right away. Arcus was later. It was later that Arcus disappointed us. And then turned around and came through. But that disappointment came later. Bohnett took a little while to come on board, and that was frustrating, because I kept being told this is the number-one thing David Bohnett cares about, this is the number-one thing we're passionate about and so on. I shouldn't say never, but they took a long while to support it.

04-2:03:45

Meeker:

Well, you were asked to apply a couple of times, I think, right?

04-2:03:48

Wolfson:

Yeah. And then even later, even after we'd been supported we would sometimes be asked to apply and kind of strung along a little. So that was not the best of experiences. Although, you know, to their credit, they did fund us some, and they certainly funded our Civil Marriage Collaborative team that we had built to raise money, funder-to-funder, for the state work in support of the freedom to marry, and they were a player in that for a while, and that was helpful. And they funded some of the California campaigns as well. But yeah, it was not the best funder relationship.

The one that was the biggest disappointment early on, although they certainly made up for it over time, was Gill. And Haas was very respectful of Gill, and in taking this big step and self-consciously saying, We're late to this field but we're going to come in and we're going to use our cachet as a non-gay entity to really show we're here and we're stepping up, in hopes that it would help encourage and support Gill, whom they totally respected and looked to as the leaders in this to also be part of it, and Gill refused for several years.

04-2:05:03

Meeker:

Did you ever get a sense about what their reluctance was based on?

04-2:05:06

Wolfson:

I think it was predominantly resistance to marriage, not from Tim Gill, but from the people around him. That said, I now know that Tim calls the shots there, no matter who the ED is, and so I don't fully know why, whether it didn't fully get to him and wasn't fully presented in this way, or wasn't yet a strategy—not a cause, but a strategy that he was ready to support, or the model may not have been something either was fully explained to him or that he fully agreed with. I haven't actually asked him why, in the early years, he didn't come in, because he was there earlier. He had been there in Hawaii. That's how I had met him. And certainly we had known of each other through the *Romer* work and as he built it. But it took him a while, or it took the foundation a while to come in, I think because of the existing executive directors, but I can't be sure of that.

04-2:06:09

Meeker:

It's so interesting how mysterious foundations are. You know, I mean, there is Bohnett, where you were asked to apply and then when it comes back, it's denied, and there's not really any substantial explanation. I mean, these are—they're almost like, you know, CIA kind of organizations.

04-2:06:28

Wolfson:

Well, in fairness, I will say, I often took the attitude of: Look, take the meeting, be willing to talk to me. I can take it if you say no. And on their part, there's often a protective attitude of, we're not going to give people false hope, we're not going to take the meeting, because we know they're going to then expect and—so in fairness, I feel like you can't really blame them if they take the meeting, listen to you, hear you out, give you the shot, and then say no, because that was the deal. That said, there were occasions where it did go beyond that and there was every indication that they were going to do something, and they didn't do it, and it happened more than once, and it was frustrating.

04-2:07:18

Meeker:

In those cases, I mean, did you ever get a sense, was there ever any communication?

04-2:07:23

Wolfson:

Not an answer that really made sense.

04-2:07:25

Meeker:

Well then, early on, in addition to the Haas Jr. Fund, who were the pivotal sponsors?

04-2:07:33

Wolfson:

So the second funder to come in was a cousin foundation of the Haas Jr. Fund, the Columbia Foundation, who had a reputation already, unlike Haas, of being more cutting-edge, more progressive, more willing to take chances, get in early, build a field, et cetera. So they were a logical candidate to go to, of course also because of the Haas connection. And Haas was very, very eager to have Columbia's partnership and a little bit of an endorsement.

04-2:08:03

Meeker:

It was literally a cousin.

04-2:08:05

Wolfson:

Yeah, it's part of the family, it's just a different branch of the family. And Columbia is much smaller and wasn't able to fund at the level of Haas, but the fact that they came in was very reassuring, and it was my second funder and it was great and so on. The next really important one is an anonymous funder who I went and met with and laid this out, and they have been an extremely important funder of the LGBT movement, of the freedom to marry work, of Freedom to Marry. They probably are historically now certainly one of, if not the number-one funder over time, because they came in early and stayed with me long and funded generously. But they're anonymous.

04-2:08:57

Meeker:

What was their reason for being anonymous? Did you ever get a sense of that?

04-2:09:00

Wolfson:

They just didn't want their personal lives to get enmeshed with their philanthropy. They believed in Maimonidean principles of the highest level of philanthropy is philanthropy—the second highest level is giving anonymously. The highest level is giving anonymously to an anonymous recipient. It's Maimonides's ladder of charity, and they believed in that, as it was explained to me. But they wanted to raise their kids and have their lives and not be treated as these rich blah-blah-blah. So they worked very hard to protect their identity.

04-2:09:42

Meeker:

With these early funders, did you get a sense of what they were expecting from you in the short term so that they would continue to be interested in funding this work? In the relatively short term, you know—

04-2:09:58

Wolfson:

When you say what they expected from me in terms of big accomplishments or in terms of like day-to-day reporting? Which kind of thing are you asking about?

04-2:10:05

Meeker: Probably all of the above.

04-2:10:09

Wolfson:

Well, I think they were sold on the strategy, but I very much personified the strategy of the synergy amongst national, federal, and state, and shaping the climate in order to be able to win at the Supreme Court, so therefore balancing litigation with all these other methodologies and making this happen, and winning a critical mass of states and a critical mass of support, and then eventually figuring out a federal strategy—in the beginning that was down the road. So I think they were looking for indicia of progress on any number of those, though not necessarily all of them at every moment, and were trusting me but also wanted to see it verified by showing buy-in, showing others moving forward, showing the filing of the case in Massachusetts. To be able to see that the things were happening consistent with the strategy and that I was able to play a central role that had credible relationships and so on, and constantly articulating smart next steps.

So for example, I did this whole process of what we called the matrix, where we, in order to further this work of winning a critical mass of states and also to play my role as principal advisor to the civil marriage collaborative, which was the pot of money that a set of the funders set up for themselves to manage in furtherance of the freedom to marry strategy but didn't put it through Freedom to Marry, I was the advisor. So the question is, where do they put that money, in which states? Our strategy calls for winning more states, what states are we trying to win?

In order to show my work, quote unquote, in order to have an explanation for why we were doing what we were doing in which states, teeing up a litigation strategy in X, Y, and Z state, creating public education campaigns in X, Y, and Z plus A and B in order to soften them up and be able to move forward, whether through litigation or legislation two years from now, I needed to look like that wasn't a purely arbitrary or purely opportunistic selection. So I created something called the matrix, which was this set of factors, like composition of the courts, existing case law, political climate, presence of Democrats, presence of Republicans, strong infrastructure, and then the fifty states, and I graded the states on these factors, and I invited, and Harry Knox helped supervise this, and then his successors helped supervise it, I invited other movement colleagues to be part of this matrix grading of the states, so that when we then came out and said, "Okay, here are our top eight target states, here are our next three, here's the two we should really"—it wasn't just me saying it, it had some degree of science and some degree of stakeholder involvement and credibility buy-in that helped assure the funders, but also helped actually educate the movement team.

04-2:13:29

Meeker:

Were you including relative ease of amending state constitutions in that?

04-2:13:32

Wolfson:

Yes, absolutely, right, exactly. And not everybody might necessarily weigh all the factors exactly the same, but the beauty of the matrix was, it was transparent. You could see how the state got its points, and if you thought this factor should have two points instead of three, you could do your matrix and your count might be sixteen instead of fourteen, or whatever. So obviously it was a little bit gimmicky, but it was also a good process structure that helped the funders buy in deeper to the strategy and to see that there was a role being played of leadership that was also collaborative. And those were the things they were looking for. They were looking for the right mix of leadership and partnership.

04-2:14:26

Meeker:

What about more mundane things, like reporting and milestones, that kind of stuff?

04-2:14:33

Wolfson:

In the beginning, I had my principal funders on a Freedom to Marry committee, I think we called it the re-granting committee, and I brought to them my plans to re-grant the quarter of the money Freedom to Marry was raising and have them vet and—I don't remember if they formally voted on them, but they certainly were vetting them, and they might have been actually asked to approve them. I would recommend and they would approve, at least in the early days. That changed, but in the early days. So that was another way of getting them involved a little bit more micro in the work that this intermediate vehicle of Freedom to Marry was doing. They didn't want to run states, they didn't want to run a campaign, they didn't know how to. They didn't want to fund individually seed funding for a black alliance in Maryland or a clergy roundtable or whatever. But they wanted to know it was happening, and they wanted to hear the strategy for it, and it helped educate them on where this fit into the strategy of growing a majority, winning more states, et cetera. So that was another way I had them engage and would report to them that way.

I also began, very early on, having each of my principal staff members, and eventually everybody on staff, through their chain of command, through their supervisors, do a monthly report, and that would come and we'd pull it together and package it, and then I would synthesize it all, and on a monthly basis was sending a report to the steering committee, and then the board, on what we were doing. And we eventually then morphed that into a dashboard with a cover memo, and the dashboard listed the, you know, our goals, and where we were in meeting those goals and so on, and we did that monthly also. So we now have this month-by-month record of what Freedom to Marry has done and the problems we're facing and so on, and that was a reporting system that went to the board and, at least in the early days, went to some of those key funders.

04-2:16:41

Meeker: Let's stop there for today. Is that good?

04-2:16:44

Wolfson: Okay.

## Interview 5: April 13, 2016

05-00:00:00:20

Meeker: Today is the 13<sup>th</sup> of April, 2016. This is Martin Meeker interviewing Evan Wolfson for the Freedom to Marry project. We are here at your current offices, at Dentons, and this is session number five. We wrapped up last time, and this was about six months ago now.

05-00:00:40

Wolfson: Really? Wow.

05-00:00:41

Meeker: Yeah, it was in November, right.

05-00:00:43

Wolfson: Seems like a while ago.

05-00:00:44

Meeker: Yeah, it was a while ago. Talking about the establishment of Freedom to Marry, the organization. We talked about hiring your first staff, forming your first steering committee, raising the initial funds to get the organization off the ground and launched, and it was launched officially in 2003. You know, in advance of the launch, I imagine that you were having conversations with leaders of state and national organizations, because I'm sure they were curious what you were up to, and perhaps a little concerned that another player was about to move onto the scene. Can you tell me about some of these conversations that you would've had with, you know, key people and leaders of these organizations?

05-00:01:33

Wolfson: Yeah. Primarily the ones I remember, specifically, were with the groups that I thought of my most important initial partners, who were the legal groups, the groups that I had been part of, and now I was leaving Lambda to start Freedom to Marry, what became Freedom to Marry, and I really wanted the buy-in particularly of my friends and colleagues in the four pillar legal organizations, Lambda Legal, where I was, the ACLU's LGBT rights project, GLAD in Massachusetts, and NCLR, National Center for Lesbian Rights, in San Francisco.

These were the organizations I'd worked the closest with over the years, they were the central committed organizations to the marriage work in a way that the more political organizations and the smaller band of state organizations were not as consistently. Some would come in, some responded to my call. Ad hoc groups sprung up, I think we may have talked about that last time, that even pushed past the existing state groups and so on, excited by the marriage vision, and they became large groups within given states: the Legal Marriage Alliance of Washington, Marriage Equality California, Marriage Equality New York—



05-00:02:53

Meeker: Love Makes a Family.

05-00:02:55

Wolfson:

Love Makes a Family came a little later, but yeah. Freedom to Marry Coalition in Massachusetts, what became the Vermont Freedom to Marry Task Force. These were groups of activists excited by this vision, in many cases my own intercession with them, who stepped up in a way that the existing groups didn't, or were balking at, or were inconsistent. Similarly, the legal groups, though initially hesitant about doing the marriage work, with the advent of the Hawaii case they came into it in a real way, they got it, they understood it, and we worked enormously closely together. Of course I was at Lambda throughout that entire period of the nineties, so now leaving Lambda to start this new iteration of a campaign, my first goal in terms of buy-in was to get the buy-in from these key partners.

So I particularly remember conversations with Kevin Cathcart, my friend, and executive director at Lambda Legal, where I was just leaving, and with Gary Buseck and Mary Bonauto at GLAD—all friends, all colleagues for a very long time. And with Kevin, I remember he understood what I wanted to do, and having supported my doing it from Lambda, from the platform at Lambda—remember, during the nineties, once the marriage—once Hawaii began in earnest with the Hawaii Supreme Court ruling, Kevin essentially not only authorized me to do marriage, which Lambda had been hesitant about before, and authorized me accepting Dan Foley's renewed invitation to come in as co-counsel on the case, which brought Lambda into the marriage case as well, but he also supported my letting go of most of my normal casework, which up till then had been the range of LGBT—well, not T at that point, but LGB concerns, as well as AIDS. I had worked on a whole variety of all kinds of different cases.

Starting in '94 with post-Hawaii Supreme Court ruling, Kevin allowed me to let go of most of my caseload and focus on my role as co-counsel in the Hawaii case, and as this new thing for Lambda, which was essentially an organizer—I was called director of the marriage project—who would go around the country mobilizing the movement and building a national Freedom to Marry coalition, which was the first iteration of the kind of campaign I'd always said was needed to go beyond litigation to create the holistic multimethodology, multiyear, multistate, multipartner campaign. Kevin had authorized that and backed me on that, and—

05-00:05:50

Meeker:

Had Lambda ever done anything like that with any other issues?

05-00:05:51

Wolfson:

No. I mean, no, just never had. Lambda had done some public education, it was called Lambda Legal Defense and Education Fund, but that was very much the tiny tail on the big dog of impact litigation. I shifted that balance in

the marriage work, with Kevin's support. And also the whole idea of doing it in a granular way around the country, cajoling organizations, building coalitions, driving toward a goal that wasn't immediate. Not just public education around a case, the story of the plaintiff, the story of the injustice in the case, in the venue, but here to envision a broad national sustained campaign and public education effort. Lambda had never done that, and this was all huge new work that I think we may have talked about what some of that looked like at Lambda. Anyway, so I was doing all of that, the one case I kept, other than the Hawaii case and this new portfolio, was the Boy Scout case, which went on.

So Kevin understood what I envisioned as what was needed and what I brought to it and what I wanted to make happen, and had been supportive of doing it from Lambda. And also I think he understood the limitations of doing it at Lambda. And so I had, after arguing in the Supreme Court, I think I may have described how I had basically said to Lambda, I need some space to decide whether I'm going to stay at Lambda, and whether I'm going to stay in the movement, and whether I'm going to keep working or not, and Kevin had been very supportive of my taking the time to really think all that through, including to think through whether it made sense to stay at Lambda, whether that was the right thing.

So he was far from being sort of territorial and, you know, Lambda defensive, he was supportive of my thinking about what the right trajectory was, not just for me but really for the work and the movement, though obviously he was a vigilant defender of Lambda's interests. So he got it. His one concern was that it might be competitive as far as fundraising, and we talked through what that was going to look like, how I envisioned doing some of that, where I saw the money coming from, and what I said to him was, I really want to show that we can bring in new money, and I'm not just going to now start going to all the Lambda donors I had known over the past twelve years of being full time at Lambda, but rather I want to show that we can bring in new money, and in particular I want to show that we can bring in non-gay money.

And of course I met that goal. I brought in new money, and the initial money was from the Haas Jr. Fund, and it was a bigger grant than had ever been given to the movement before, from a non-gay foundation that previously had not funded outside of California.

05-00:08:51

Meeker:

Early on, did you have any notion whether you were going to pursue litigation or not? Or was this always going to be run as a campaign, not as litigation—

05-00:09:01

Wolfson:

No, the idea was always that I was creating something that would not displace or duplicate what others were doing, and so given that, the one thing I could count on was a solid good team of friends and colleagues doing litigation, the

strongest arm of our movement, that Freedom to Marry did not need to litigate. I was not trying to create another litigation organization. I was trying to create an organization that would spur the everything else that would allow litigation, as in Hawaii, and as in Vermont, to succeed.

I mean, the lesson of the nineties was that we could do this, we could actually move things forward in the court of public opinion, and in the court of law, but in Hawaii what we won in court was taken away. In Vermont, the progress we made resulted in the court having the courage to step in the right direction but not go all the way, and then there was this tremendous legislative response that we weren't fully prepared to handle, we as a movement, and that we couldn't be just from Lambda, or just from a litigation perch. So the idea was to create this multi-methodology, broader campaign, and the one methodology I didn't have to worry about was litigation.

So that assurance was clear as well, though I needed to reiterate it in conversations with Kevin, and even more so in conversations with Mary and Gary at GLAD. So I think—so Kevin was supportive. The one set of issues that we talked through and that he was concerned, not in a horrible way but in a protective way, was what would this mean for fundraising? And as I said, I said my goal was to show new money, non-gay money, and that is exactly what happened.

With GLAD, I think it was a little more tricky. GLAD was very committed to the marriage work, coming off of Vermont now. Mary really wanted to try again and was thinking about how we could prepare a case and move forward now in Massachusetts, and what the politics of that would look like and so on. GLAD had a smaller space in which to play, so the idea that somebody else would be taking marriage in a different direction or owning marriage or blah-blah-blah was a challenge to the proportionally large amount of resources that GLAD was increasingly dedicating to marriage in the cradle area where we hoped to see it happen first.

05-00:11:38

Meeker:

We're talking about roughly '99-2000 at this point?

05-00:11:41

Wolfson:

No, we're talking about late 2000, 2001. After the Supreme Court ruling in *Dale*, which was June 29, 2000, and after Vermont, civil union. So we're talking about the second half of 2000, when I begin building Freedom—when I agree with Haas that I'm going to do this—when I'm discussing it with Haas, and then agreed that I'm going to do it, and early 2001, when I'm preparing to leave Lambda and begin creating what became Freedom to Marry.

And so, you know, I had several conversations with Gary and Mary as well, and I was explaining to them, as I had with Kevin, and engaging them in the conversation, and they of course understood as well, Mary having been side-

by-side with me through these battles of the nineties as I tried to create this national Freedom to Marry coalition, and tried to get the Human Rights Campaign and the task force and GLAD and other organizations, and the funders, to buy in to a bigger vision that wasn't just transactional or opportunistic or occasional. And Mary understood the value of that and the importance of that, and she'd seen the role that I'd played in that.

And I think they were also happy that I wasn't planning to create another litigation group. But at the same time, GLAD, though committed to public education and good at doing it on the ground in the states where they were, is also sort of characteristically a very thorough, very careful, very methodical organization around the litigation and around the cases and around protecting the work they were doing.

So it took a fair amount of, also, conversation and assurance that this was going to be a gain, not a loss, so it was going to not take away, it was going to support, it was going to enhance, it was going to bring them resources, and as they moved forward with what we hoped would be the next engine case, what became the Massachusetts case, that this wasn't going to be competing with that, this was going to be enabling that, this was going to help bring funders, bring resources, bring movement buy-in, bring support, back up the negotiations they need to do within Massachusetts to build the kind of coalition that ultimately became urgently necessary and that became formalized later, and GLAD again had to surrender a little bit to have it not be centered at GLAD but to become Mass Equality.

All these things, they were still in the future at that point, but these were the kinds of things GLAD had to work through and learn how to let go some in order to get the actual power and strength they needed to do their incredibly important ice-breaking leadership work.

05-00:14:30  
Meeker:

So you're talking about the legislative work.

05-00:14:31  
Wolfson:

Yeah, the legislative work, political work, and the fundraising, and the national engagement that goes alongside, backing all that. And these were the things I was going to try to help bring and help elevate, in partnership with them. So, unsurprisingly, there was some resistance, some uncertainty, some cautiousness that was just characteristic, but there was also trust and friendship and smarts on the part of GLAD to know that even if they kind of were nervous about it and kind of maybe wished it wouldn't happen and that they could just do it, they also kind of knew they couldn't, and that this was going to be value-add, and they couldn't stop it. So we went ahead, and went ahead with buy-in.

05-00:15:16

Meeker:

Did you have any conversations along these lines with the Task Force or with HRC?

05-00:15:22

Wolfson:

You know, I assume I had conversations, but I don't actually specifically remember them, and I think the reason would be because that was not as important, you know—they wouldn't have cared as much about it, because, I mean, they might've wished it would just go away, and they might not have gotten why do we need it and actually, in a way, they would have been more likely—they should have been more likely to see this as a reflection on them than it was actually on the legal groups. In the legal groups, it was just an acknowledgment that this is not essentially what the legal groups really did, and it was bringing something that the legal groups needed to happen in a new form that we, as colleagues, counting myself as sort of an alumnus of the legal world, would want to round out our ability to deliver what ultimately the strategy said would ultimately be delivered through litigation.

What all of that meant in English was the litigation part was under control, it was the political organizing and public education work, and then eventually the fundraising and the electoral work, that weren't keeping pace with the litigation work. That reflected on organizations like HRC and the Task Force. But for the very reason it reflected on their not doing that work, they also weren't paying enough attention and didn't really care enough consistently to really register any kind of real objection, nor would that have stopped it.

So I'm sure I had conversations, because even though what I'm saying now sounds a little snarky and negative, and there were certainly negative elements to the relationship, we basically liked each other personally and had a degree of knowing how to work together and do business, so that even if we were fighting, and even if we were pushing, and even if I was dissatisfied, it wasn't a personal thing. So I'm sure we would've talked, I just don't remember it, because it didn't loom as large in my thinking, because that was in fact the problem I was trying to solve.

05-00:17:34

Meeker:

What about then the statewide campaigns that you had mentioned?

05-00:17:35

Wolfson:

Well, there weren't very many state organizations at that point. There were a handful. And you may remember, I think I told this story of how, when I initially wanted to enlist state action and get more conversations and energy happening, not necessarily battles yet, because it was the Hawaii case and then ultimately the Hawaii and Vermont one-two punch that Mary and I were working on, that was going to drive the actual legal and political work. What we wanted was more public education and organizing in the different states, and so I reached out—I wanted to reach out to whatever state infrastructure our movement had, and I had asked the Task Force and HRC to help with that,

and they both said, “You do it, and we’d like to be part of it. When you make those calls or develop that list, we’d like you to share it,” which was an indicator again of how the movement was not functioning with regard to these methodologies.

So I would have been in touch and would have talked with and shared the idea of a Freedom to Marry to take this piece of it to a higher level with the organizations that I had helped seed and was coordinating with, and in some cases was the main moral backer of, like these ad hoc groups in the different states who had sprung up in part over the objection of the local existing organization that didn’t want to do marriage. I’m sure I would’ve talked with them, and they would’ve been excited and pleased, but they also were more volunteers and more focused on their local work. They weren’t sort of movement national dynamic players in that way.

And then there were just a very small number of actual formal state organizations, like the Pride Agenda in New York or what became Equality California. In those days it wasn’t, I think it was Life Lobby or had some other name even before that. So they were also not major players at that point in this movement terrain that I was negotiating to get a Freedom to Marry into the mix.

05-00:19:45

Meeker:

So you publicly launched 2003. When in 2003, do you recall?

05-00:19:49

Wolfson:

January 1.

05-00:19:50

Meeker:

January 1, that’s right. Very early.

05-00:19:52

Wolfson:

Because I left Lambda on May 1, 2001, and began building, and the goal was to have it up and running and to take this powerful Haas match and this clear vision of what we wanted and just raise the rest of the money, \$10 million, and get going and show from the get-go that we were operating here and not here and that it’s a whole new day. Well, that didn’t work. It didn’t work because other funders, others didn’t immediately respond at the level of enthusiasm and full two-scale commitment of Haas, and so we had to regroup and do this much longer buy-in process and this “if you build it, they will come” model, and fundraising to get a version of it launched as opposed to the full two-scale version and bring in others, and that took ultimately from May of 2001 through till January 1, 2003, before—and plus hiring staff and so on.

05-00:20:56

Meeker:

Tell me maybe about getting additional funders on. I mean, it sounds like this was a tricky task, perhaps a little more difficult than originally anticipated to get to that match. I know that you would’ve reached out to a whole wide variety of different funders, including people who had funded in the gay

community for a while, David Bohnett, Arcus Foundation, Gill. Eventually some of those become important funders, some of them do not.

05-00:21:29  
Wolfson:

Well, some of them didn't exist exactly. Like Arcus, I think Arcus technically existed, but it was not what the Arcus of today is like. It was a smaller discreet foundation based in Michigan. There was no national presence, there was no New York base, etc., etc. Jon Stryker, I don't think, had moved in the kind of money that he has so generously moved in since.

Gill was the big player as far as the gay funders, and Gill Foundation refused to support it in the beginning. It was Haas's grant that got it going, and that the idea that we hoped would be the catalyst to other stepping up. Haas was then—we were then able to go to one of the cousin foundations of the Haas Jr. Fund, it was called the Columbia Foundation, it's since gone out of—it has spent out, but they were the second to come in, and that really was primarily, I think, on the strength of the Haas connection, but also Columbia even more than Haas had had an ethos of funding new cutting-edge things that others wouldn't fund, a thing that Haas admired, and in some sense Haas was now consciously trying to emulate its smaller cousin foundation and made the introduction, and I then made the sell, and they came in as the second.

The third, then, was an anonymous funder that remains anonymous, but is one of the major funders of the LGBT movement and is really one of the big and best funders, biggest and best funders that we have in the movement, but anonymous. And I had to go and pitch to them, and sold them on this vision as well, and that was a huge validator, and also a huge chunk of money. And they ultimately became, because they were in it the longest after Haas, and were funding at a good level, they became the single largest funder over time.

05-00:23:44  
Meeker:

Did you ever get a sense of why Gill didn't step up right away?

05-00:23:48  
Wolfson:

I think it was a combination of Tim, I think, felt disappointed by how his early funding, to his credit, back in the 1990s in Hawaii, of HRC, had been bungled, and he didn't yet at that early point see the strategy unfolding the way I saw it unfolding—so I think there was some of that, but I think also the people he had around him at that point in the foundation were not particularly engaged and supportive. Now, what degree it was them versus Tim's own position, I don't actually know and haven't really actually pressed him in all the years, because after a couple of years the Gill Foundation turned around and did come in, and became a very generous and important funder, but also a very important partner in the work. We worked very closely not just on the money side, but on movement building and strategizing and propagating the strategy and so on, and they came in to not just support Freedom to Marry, but the civil marriage collaborative of funders that we, Haas, Gill, and others and I, created to have a funder mechanism that would also support the state work in

furtherance of the Freedom to Marry strategy. So it didn't really matter at that point why they hadn't come in a couple of years earlier, though it did matter during those couple of years.

05-00:25:22

Meeker:

When you launch at the beginning of 2003, what kind of response do you get? I mean, obviously, you know, the movement organizations, the legal organizations know, but is there any kind of public response?

05-00:25:39

Wolfson:

I don't remember any specific thing. I had published in the *Advocate* what I called the blueprint, it was an article called "All Together Now," but I thought of it, and I think I referred to it in the subtext, as the blueprint that mapped out the strategy and that—I think the opening line was something like "We can win the freedom to marry in at least one breakthrough state within five years." I actually published this in late 2001, as I was building. Then I talked about what the elements of a campaign would look like and why we needed to take this to a different level and how the movement should think about it, and it didn't matter that we had lost in Hawaii and Vermont, here's where we could go, and dah-dah-dah.

That got a lot of conversation and response, and what I was trying to do in laying out this five-year time frame was to choose a horizon that was far enough away that it would seem attainable, it would seem realistic, without being so far away that it would seem non-urgent and un compelling. So I settled on five years, which at the time, I think, most people's reaction was, this is a good idea, the strategy, the way Evan's talking about doing it makes sense, but it's too ambitious, it won't happen that quickly, and it's going to be really hard, etc. And those are the kind ways of saying it. Some people would say they thought I was crazy. But I think people didn't object to the idea of how to do it, it was more this is just too hard, it's too big, it's going to take much longer than that, and so on, and therefore we shouldn't work on it.

Well, of course, as it turned out, I gave us five years in which to make that happen. If you count Canada, where we were actually pretty involved, we had that breakthrough in mid-2003, actually on June 10, 2003, Judy Garland's birthday. And then of course we won in Mary's case in Massachusetts here in the United States in November of 2003, and actually had couples getting married in 2004. So the five-year horizon, far from being crazy or too ambitious, was actually quite comfortable and actually we beat that deadline.

05-00:28:14

Meeker:

Well, you just brought up Canada. The first marriages happened there, like you said, in June 2003; by 2005 it's a nationwide thing. There's a national law that's passed, right? The Marriage Act, or something like that. What was the involvement of Freedom to Marry in Canada on this issue?



05-00:28:35  
Wolfson:

Well, I was very involved with Canada. I had gone to Canada even before starting Freedom to Marry, when doing the Hawaii case, and had gone up and done a series of speeches and panels and events, and the way my Canadian friends will tell it is, they thought I was crazy, because they had their own strategy and it involved essentially more of a partnership route, and they were thinking who the hell is this American to come up here and tell us what to do. And I was going up there, in my thinking I was trying to a) let them know that this Hawaii case was happening, and that there was going to be this rolling battle and rolling opportunity, and my thinking was that if they could be engaging their government to be ready to say it will honor the lawful marriages from the U.S., even apart from whether Canada itself moved to marriage, that that would be helpful to our cause in advancing the conversation in the U.S.

So going, I was thinking, I'm going to try to get their help. And upon having this set of reactions and the debates and people's excitement, but also some resistance, I kind of came back thinking, well, I went there to get them to help us, but actually I think I was helping them, because I was saying, You need to put this on the table. And now they would tell that story the way my colleagues who became close friends in Canada would tell it, is we were both right, that they were right that my idea of how they should do this and how they should talk about it in Canada wasn't the right way to do it in Canada, that their building-block strategy was the right thing to do, but that I was right, they would say, because I made them understand that the building block was not enough, that they had to have marriage in the mix and be building toward marriage, and that they could attain it, so that we each gained something.

And we wound up, despite this resistance and being heckled and pushed back, but also heckled in a nice, polite Canadian way, we stayed in touch and became friends, and then as they began absorbing a) what was happening in the U.S., b) the progress they were making in Canada, and c) the need to integrate it with a marriage strategy, we came much more in close touch, and I was invited several times up there to then strategize with the groups, to map out what their campaign should look like, to explain what I saw as some of the elements of success and things they needed to be wary of, what I thought the opposition was likely to do, and I became what they called the wing man to the Canadian effort. Of course, that being a sports metaphor, I had no idea what a wing man was, but it sounded good.

So I was actually part of the team that ultimately delivered marriage first through the courts, and then, as you said, through a political process. My husband actually being Canadian, it had that additional special resonance, and we were invited to come, after we had won, and be part of the celebration, the victory celebration, which was this beautiful ceremony at Gay Pride in Toronto one year, I think it was 2005, probably, where they had several of the political leaders, as well as the activist leaders, and my colleagues who had

been part of this, in this park and it was a beautiful day, and they began playing the song “Aquarius,” and I’m just thinking, “Oh my god, this is so wonderful, this is what the world should be like, this is what we should have in the United States,” and it was here in my husband’s country of Canada with these friends that I had been part of, who had been so resistant but then had turned around and done it right, and now we in the United States needed to catch up. And sure enough, we did.

05-00:32:41

Meeker:

Who were some of the key players in organizations in Canada that you worked with?

05-00:32:44

Wolfson:

The key organization was a group called Egale Canada, which was essentially the combination of Lambda but also HRC and so on, sort of the national legal and political organization. But there was also a British Columbia–based group that I don’t remember the exact name of, but they were an important player, and they were one of the centers of action and litigation, but also political mobilizing. There were a couple of other groups in Quebec, and so on, I don’t remember all the names. The one that was sort of my home base organization, as it were, was Egale in Canada, in Toronto. But I worked with all of them, and we would periodically convene the various groups, and there were also some lawyers’ networks, and then there were some church groups, allied church groups, and bar associations and so on, who were part of this coalition that met and did the work.

05-00:33:47

Meeker:

Were there any lessons, perhaps, that you learned in the Canadian context that you decided were applicable to your work here in the United States?

05-00:33:56

Wolfson:

I would say that it was more Canada reaffirmed the strategies and lessons that we were already developing in the United States. One of the central themes of this work is that every state here in the U.S., every country, begins by telling you how different they are. It’s one of the things they all have in common, is they’re different.

Of course it turns out, you know, there are differences, and there are nuances, and messengers matter—it’s better if a Canadian is saying it than an American, it’s better if a person speaking to the people who need to be heard is saying it rather than some complete outsider. And yet the elements of social change, the elements of what’s needed, the elements of resistance are very similar, and often the same. And so, while there are differences, and there are certainly cultural approaches that need to be respected, the core elements are pretty much the same in different states, in different countries, and so on.

So that was good to have affirmed, and a good lesson for going forward, as we had to keep listing more and more people to bring their part to the work and

try to elevate voices and leaders and organizations, but to have them operating on the shared strategy and using the same shared capacities and lessons and methodologies and tactics that we could develop centrally, and that then could be adapted with the local nuancing and veneer, and massaging so that it would be different, but draw on what was similar.

05-00:35:52

Meeker:

We didn't discuss Holland, the Netherlands, in 2000. Did you have any engagement with the people—

05-00:36:12

Wolfson:

I did. Not to the same extent as Canada, but throughout the late nineties we would gather, those of us who were working on marriage. First there was a conference organized by a former cooperating attorney of mine at Lambda who had then moved to Britain and become a professor there, a guy named Rob Wintemute. He organized the first international conference, it had some long clunky name, but it was essentially of people working on marriage and partnership and family, blah-blah-blah. So it was actually a great gathering that allowed many of us in different countries who were doing this work to meet for the first time, and to begin a relationship that mostly was sustained on e-mail, but also through periodic subsequent conferences that one of the Canadians, Doug Elliott, and others helped lead for the next several years, probably the next decade or so, we had these different gatherings, including in 2005 in Canada.

So I remember in the conference that Rob organized, which I'm pretty sure was 199—it was either 8 or 9, probably 8, we could look that up. But it was either '98 or '99, I think '98, in London. And all of us were together, we got to know each other and so on, we heard what was happening in the different countries, and I remember there was a panel on marriage, and of course I was there on the momentum of this Hawaii case, so it probably still was the nineties—still '98. Because we had a panel with representatives from Holland, who became friends also, Kees Waldyjk and others, and us in the U.S., and I think that might've been it, it might've just been moderated by Rob. There might've been another country, but I'm not sure there was. Conceivably Spain.

And the whole thing was, who was going to get there first, and it was this friendly competition. And at that point it had been the United States that had been driving this marriage strategy, whereas the Europeans, and to some extent the Canadians still, at that point, were much more into either the building block strategy or the non-marriage partnership strategy. At that point, I think Kees, who had been a building block kind of guy, was now agreeing with the idea that marriage should be on the agenda as well, and was talking about how Holland might get there. And there was, again, this sort of friendly rivalry over, well, Holland may now try to get into that game, but we are moving it in the United States and we've been the ones driving, and we'd had this Hawaii case that had really launched this ongoing global marriage

conversation, introducing it in some places where they would rather have kept to the building block or to the partner strategy, but Hawaii did prompt and force that conversation, and it looked like we were going to win.

So there was that session of friendly rivalry, as I said. And of course, what ultimately happened is, the victory we had within our reach and that we had been driving as this engine was snatched away in the United States, whereas Holland, within two years of that, two or three years of that conference, was able to go on to the world's first victory, in April of 2001, for marriage.

05-00:39:46

Meeker:

Was that something you were able to leverage here in the United States, that somewhere in the world this is actually happening?

05-00:39:51

Wolfson:

Yeah, even earlier than that, when Denmark became the first country to create a state-level family recognition for same-sex couples that wasn't marriage, though now they like to talk about it as if they were the first to do marriage, but actually they did partnership. But in its time, it was hugely significant and a further indicator that governments could and should acknowledge same-sex couples at a state, meaning at a national, level, and provide them the protections and responsibilities that we associate with marriage.

So even with Denmark, I remember there was a Wall Street Journal article that talked about how a year after the attainment of partnership in Denmark, even opponents now were saying it's working out well, it's a good idea. And I would cite that article at every speech and shove it in people's face and Xerox it and pass it around, and was always referring to that as an example of how this was going to go, and how we could get people to understand by seeing, etc., etc., etc.

And then, of course, once the Netherlands became the first to make it real, marriage, to make marriage real, it was another example of the power and the possibility of doing it, that we can do it, and that it will work, and that people will accept it, and it's a norm now that we need to match, and so on. So absolutely.

And with each country we then went on to win, I would find a way of talking about Netherlands, the nation's oldest ally, the country that helped fund the revolution through a loan to John Adams, they were there with us from the beginning, they have done this. The pluralism that Amsterdam represents that came to New Amsterdam, New York, these are the American values. We share our values, we should do what they've now done, etc. And then when it was Britain, it was the mother country, blah-blah. When it was Canada, it was, Our biggest trading partner with the world's longest peaceful border, and right across the river, why shouldn't we have in Niagara Falls, New York, what we have now in Niagara Falls, Canada?

Every country gave an opportunity to try to talk about the values, the lessons, the feasibility, and the way in which the United States could do this and the sky wouldn't fall, because in countries as normal and benign and civilized and stable as Canada and the Netherlands, they have done this and the sky hasn't fallen. So yeah, this was all part of the mix.

Now, on the other hand, Americans tend not to pay a lot of attention to what happens in other countries, and so was this the most powerful argument, the most important argument? No. But it was something to put into the mix.

05-00:42:50

Meeker:

There's at least one American who reputedly pays a lot of attention to what's happening in the global arena, and he sits on the Supreme Court.

05-00:42:57

Wolfson:

Well, at that point he was silent on this question. Though by 2003, the conversation had certainly, of course, reached the court.

05-00:43:07

Meeker:

Right, and that's a great segue. So talk to me about *Lawrence v. Texas*. I've heard you describe this as sort of the *Brown versus Board of Education* of the gay movement. Is that a correct attribution from you?

05-00:43:22

Wolfson:

I think it's fair. I mean, it was hugely important, both in striking down the so-called sodomy laws, which were the front line of government discrimination and subordination of gay people, but also had been this tool of oppression beyond so-called sodomy laws. I mean, they were used far more to justify discrimination in every other arena of life than they were actually for arresting people for what they were ostensibly about, private sex.

05-00:43:54

Meeker:

Can you explain how it works?

05-00:43:55

Wolfson:

Yeah. They would say, "Well, look, if these people can be made illegal, which of course is not exactly right, but that's the way it was used, if the behavior that defines the class is a criminal, then how can discrimination against them be unconstitutional? How can denying them benefits or opportunities based on that criminal status be a problem under the constitution?" So it became this free-floating license to discriminate against gay people, because the behavior that defines the class, quote-unquote, is itself unprotected.

05-00:44:36

Meeker:

Felons lose the right to vote. That kind of thing, right?

05-00:44:39

Wolfson:

Yeah, yeah. I mean, you're—what you're doing is criminal, so it can't be—discrimination on the basis of a criminal status defined by conduct, and they kept playing the status conduct game, can't be unconstitutional, because you

can even be thrown in jail for it, so how can it be unconstitutional to simply say we're not going to protect you against job discrimination, or we're not going to give you special protections when it comes to hiring or firing. I mean, there was always just—or with regard to parenting, or your kids. If this is immoral behavior that can be criminalized because of its immorality, how can you then have a right to foist this immoral behavior on children?

I mean, it was all these kinds of arguments that society was making, that institutions were making, and that the courts were making and upholding, particularly during the Reagan era, which is when this came down.

05-00:45:37

Meeker:

Tell me about what you thought of the decision when it comes down and the opinion authored by Kennedy.

05-00:45:46

Wolfson:

Well, it was absolutely thrilling. It was something we'd worked for for a very long time. I had worked as a younger attorney on the *Hardwick* case, the 1986 case that we lost 5-to-4, that *Lawrence* was now overturning. And Kennedy went out of his way in words that I really do believe brought a tear to all the advocates of my generation, which really had only been seventeen years earlier, where he said, "*Bowers v. Hardwick* was wrong then and is wrong now." Which is as close as the court ever comes to apologizing. He didn't just say we now understand better, so we overrule it. He was like, it was wrong then.

And so all these years of cascading discrimination that had been built upon this flawed foundation that we had been dealing with as advocates was now repudiated. And he went on to, in his style, to evoke the moral worth of gay people, the moral worth of our love, of our intimacy, the way in which sex is part of something bigger than sex, though it's also sex, and he also, of course, affirmed the right of all Americans to have freedom when it came to sex and intimate conduct and everything that flowed from that. So that we as gay people were now winning something for Americans, though obviously it mattered most in this context to us, because the law was directly singling out us.

But actually it was a freedom decision for all Americans, not just a gay decision, and that meant something to me, because that's my style of advocacy, going back to my 1983 paper, going back to the way I talked about marriage, and going back to the way we ultimately then won in the Supreme Court last year, sort of my idea of how to frame and think about what we as gay people are about.

05-00:47:55

Meeker:

Meaning as freedom or—

05-00:47:55  
Wolfson:

Yeah, as about the shared values and the shared rights of human beings, of Americans, not just equalizing for gay, but affirming the core values for all, and that we deserve to participate in.

I also, when I talked about *Lawrence*, I would point out two things. One was that it had taken—the first half of the movement we had gone from Stonewall, 1969, to *Hardwick*, was seventeen years. The next chapter is from *Hardwick* to *Lawrence*, also seventeen years. So there were these two equal halves of our movement’s history marked by the loss in *Hardwick* and the work that followed to overturn it, which had culminated in exactly even, the same amount of time with the *Lawrence* case. I talked about how in *Hardwick*, the 1986 case, we had lost, the Georgia case, where a guy was arrested in his own bedroom, a guy that was my friend, because I was a junior attorney working on the case and we actually got to know each other through the case, we sat together in the Supreme Court in 1986, we had a little tryst walking through Washington afterwards, under the cherry blossoms. But I digress.

In *Hardwick*, the Supreme Court had said, the famous line was, Byron White wrote that any—“the idea that there is any connection between this court’s precedence on child rearing, procreation, family, and marriage on the one hand, and homosexuality on the other, is facetious,” is his famous stinging word, and that was his repudiation of our advocacy that the court’s precedence on the freedom to shape one’s own life with regard to important personal choices, regarding parenting and procreation and family and child raising and marriage, led to a freedom of intimate conduct that included gay people, facetious. And what I would then go around saying is that we spent the next seventeen years showing the country and ultimately, now, the court that in fact there’s every connection between parenting and family and, yes, marriage and gay people. And the court, by 2003, like the country, had now begun to see that, in part through this powerful claiming of the vocabulary of marriage. And that was what had helped us to overturn this decision that was based on not seeing the connection, now five justices of the court were able to begin seeing a connection. And even though there’s language in the decision that, understandably, specifically says we’re not reaching the question of marriage in this case, because this case is not about the right to get married, it is about the right to have private consensual sex, personal intimacy, Justice Scalia in his dissent pointed out that Justice Kennedy’s language and logic, despite his boilerplate disclaimer, in Scalia’s words, quote, “left the denial of marriage on very shaky ground.”

And then I would point out that I rarely agree with Justice Scalia, but when he’s right, he’s right. The language and logic of our victory in *Lawrence*, and its evocation of the values that do in fact lead to marriage, though not in this case, in fact left the denial of marriage on very shaky ground. There was no longer a sustainable argument, legally. Now we just had to keep making it in the court of public opinion and we would come back in the court of law.

And of course, a few weeks before the ruling in *Lawrence*, we had racked up that first crucial win in Canada, June 10. We won in Lawrence on June 26. A few months later, we went on to win this next, and what turned out to be the breakthrough, ruling in Massachusetts, on November 18, 2003, and couples began marrying six months later.

05-00:52:50

Meeker:

I always wondered if Scalia regretted adding that to his dissent.

05-00:52:54

Wolfson:

I tend to think he didn't because it was his style to do this, and he did it repeatedly. He did us the favor of, in dissent, pointing out how much he had lost, and he seemed unable to help himself or not caring. He did it again and again.

05-00:53:14

Meeker:

Let's talk about *Goodridge*. You know, obviously you were in the mix and I'm sure, you know, tell me about the conversations that you were having with Mary and GLAD in preparation to bring this before the Massachusetts Supreme Court.

05-00:53:33

Wolfson:

So Mary and I, by this point of course, had become very close. We had worked together for many years, really since the first day she came to the roundtable as a new GLAD attorney just a few months after I had started as a new Lambda attorney, and we had bonded right away. In part we had bonded personally, but in part we had bonded over our shared vision of wanting to advance marriage. And Mary, of course, was the powerhouse litigator that I was not working particularly hard to be, and by then had let go of, knowing that I had people like Mary to really count on. But Mary also completely understood the need for strategy and public education and the rounded multi-methodological campaign that I was trying to build, and as the months had gone on, had increasingly seen the value of what Freedom to Marry, this new model, was going to be able to bring to the work that she was spearheading in Massachusetts, where she had seen that the time was right and we could do it without some of the complications and ups and downs that she, of course, had also been very involved with and I had been second-hand involved with in Vermont.

So Mary now was leading this effort to shape a case and to navigate the politics in Massachusetts. I was just trying to provide whatever assistance I could to her, while actually still focused on trying to shape the national climate and bring in more funding and get people to talk about the freedom to marry in various states and other places, and seed other efforts knowing that Massachusetts would soon become, under Mary's leadership, the new engine in the way that Hawaii had been, and then Vermont had succeeded during the nineties.



So we were closely in touch. Mary certainly really didn't need my help when it came to shaping litigation, though we did kick around ideas and so on. But where we were really give-and-taking more was on where this fit in the broader strategy and what the—how to navigate the Massachusetts politics and how could I help with this one, and how could I lean on this funder or engage this person, or even to some extent, in some ways, be bad cop to Mary's good local cop. I was the one who could keep the pressure on some of the recalcitrant Massachusetts players in a way that Mary had to be a little more diplomatic, because it was her state, her universe, and she could be the quiet force moving forward, benefiting from this, quote, outside pressure. So we played that dynamic in some instances, but mostly we were just bouncing ideas off of one another and giving moral support to one another.

05-00:56:21

Meeker:

Was it clear as this litigation was progressing that if a positive decision did come down, there would be an attempt to overturn it through a constitutional convention?

05-00:56:33

Wolfson:

Yeah, yeah. I mean, we certainly were aware that that could happen, and it was just an unfortunate circumstance that the state where we now felt we could most likely prevail next was one of the states that had this mechanism that allowed it. As we then moved forward, we looked as much as we could to move and build and launch efforts in the states where we could avoid that dynamic, but we couldn't always avoid it, and Massachusetts was too good an opportunity to win to let go because of the problem of the potential take-away.

05-00:57:14

Meeker:

Well, it was also a longer, more complex process in Massachusetts than, say, it was in California.

05-00:57:20

Wolfson:

Yes, and ultimately we were able to prevail in Massachusetts in a way that we were not able to block it in California. Though that also, arguably, could have been avoided had our movement rallied and worked more effectively. Not every loss that we took was inevitable, though some losses were probably unavoidable.

05-00:57:47

Meeker:

Why don't you tell me about the decision when it comes down, what you think of, you know, the arguments were made of it and how those arguments then were articulated in the decision itself.

05-00:58:02

Wolfson:

So the decision itself didn't break new ground in terms of a legal or a political argument. In fact, none of the cases really, other than having, in some instances, some beautiful language and some great ways of putting things, and in some cases some very sharp and very funny ripostes, as in Posner's opinion, but they mostly plowed the same ground and evoked the same legal principles.

Some were more substantive due process-slash-freedom to marry-ish, some were more equal protection-ish, some would include equal protection guarantees against sex discrimination, others stayed with sexual orientation discrimination, others went only with one—but none of them was shockingly different from the others, and Massachusetts was not dramatically different, but it was beautifully written, did a very strong case, as had the Hawaii case, on the impact on children and the importance for families and the basic values, and had some beautiful passages that I read at my wedding and that many others read at their weddings years later.

And of course most importantly, it was a state Supreme Court ruling that we won, which, up to that point, we had not yet had. We had had the victories in Hawaii, but the state Supreme Court ruling that we'd had in Hawaii had been the preliminary ruling, followed by the world's first ever trial victory, a milestone in its day, but before we could get that trial affirmed in the state Supreme Court, the case was blocked by this political attack a la Prop 8 ten years later.

In Vermont, we won a state Supreme Court ruling, but they punted on the marriage decision. They got, as I said at the time, they got the what right but they didn't get the how right. They got right that denying gay people the protections and responsibilities and dignity was unacceptable, and they ordered an end to that, but they got the how wrong. They didn't order marriage. They said the legislature needs to figure out how to do that, as if there was more than one way to treat people equally. Massachusetts now went all the way, and at the state Supreme Court level, not just at the trial level, as in Hawaii.

05-01:00:34

Meeker:

They had the option also to do that middle level, right? The civil union—

05-01:00:37

Wolfson:

No, they didn't. The legislature decided that maybe they did, and asked the court, filed a motion, basically, asking the court, "Did you mean that it would be okay to do civil union a la Vermont instead of marriage?" And that led to the second *Goodridge* decision, and I'm pretty sure it was February 4, 2004, a couple months—a few months later, after the November 18 ruling, because that was my birthday, and it was a very firm and strong no, equal means equal, marriage is marriage. And from that point on, we were on a countdown to a) the date they had ordered the marriage licenses to issue, which would mean that couples would begin getting married, and b) we were on this countdown of the political attack led by [Governor Mitt] Romney and others in the state, and by [President George W.] Bush and [Pope] John Paul II in the national conversation, and Bush came out calling for a constitutional amendment to the U.S. Constitution, and Romney began calling for a constitutional amendment in Massachusetts to block the court's ruling, which they proved unable to do before couples began getting married, but led to a multiyear battle that we had

to wage to defend the victory we had won in Massachusetts in a way that we had been unable to defend the victory we were winning in Hawaii. That's the next few years.

If you say in 2004, we got the second *Goodridge* ruling that Mary again won, saying marriage is marriage and that's what it has to be. And on May 17, 2004, same-sex couple began getting married in the United States for the first time. And as I pointed out then, it was civil rights karma, because May 17, 2004, was also the 50<sup>th</sup> anniversary of *Brown versus Board of Education*. So this day that we had achieved this breakthrough that I and others had aspired to for so many years was also a civil rights milestone in its own right.

05-01:02:47

Meeker:

Were you surprised at all that President Bush decided to take time out of his State of the Union address, in the midst of the Iraq war, no less, to call for a federal constitutional amendment?

05-01:03:01

Wolfson:

Yeah, of course, it was appalling and shocking that a president would play with fire near our most precious document. And it was of a piece with the strategy that the right wing had already begun pursuing, that Karl Rove then mounted throughout the year, of taking the radical step of not just having discrimination in the, quote, ordinary processes that could then be battled out in the courts and the legislatures and so on, but actually cementing discrimination in these charters of freedom and self-government that should be the most, quote, sacred thing that we as Americans have.

So yes, it was appalling and shocking to me that they would stoop so low and play so dangerously and do something so un-American. And it was also galling to me, and still infuriating, that it was just sort of accepted as a normal anti-gay battle line, just sort of became part of the universe we had to deal with of discrimination, as opposed to being seen as something completely beyond the pale, a degradation of bedrock American values, a line that ought not to be crossed by anyone. And it still, actually, infuriates me that that just got absorbed, even though we learned how to deal with it and ultimately overcame it.

But it ought to have been beyond the pale in a way that—you know, you could say reasonable people might disagree about whether the statutes this or the laws that and we needed to do our work and we needed to do our activism in the courts, we needed to explain, we needed to go to the legislatures, we needed to help people understand why the existing discrimination was wrong. But to go the step of taking a group of Americans and fencing them out altogether so they can't even go to court, they can't even go to the legislature, by putting that discrimination into the constitution, that ought to have been unacceptable.

05-01:05:08

Meeker:

I mean, it's interesting, it's, you know, it's not just sort of your typical federalist argument that, you know, let's leave this to the states, right, you know? Marriage has traditionally been adjudicated in the states and decided there, let's just leave it there.

05-01:05:22

Wolfson:

Well, it was an assault on the courts, an assault on the idea of constitutionalism, really. They dressed it up as, "Well, it's reinforcing the supreme will of the majority," etc., etc., but of course constitutions are not only supposed to be majoritarian, they're supposed to embody bedrock individual rights and principles and allow for the democratic process to proceed in a republican democratic form, not just a transient enshrinement of prejudice. It was appalling. And of course it was doubly appalling because it was also being done clearly as a political tactic.

05-01:06:05

Meeker:

Were you looking at the map at that point, to try to figure out if Republicans had an avenue, had—

05-01:06:14

Wolfson:

To pass a constitutional amendment? The federal constitution? Yeah, sure, of course we looked at it. I actually never worried very much. I mean, we had to do the work, so I don't mean to say it was nothing, but I never really thought that was going to pass. I thought it was never going to go that far. It was something we needed to engage in and so on, but it wasn't the titanic battle of all time.

The titanic battle of all time was advancing the freedom to marry, pushing back on as many of these state constitutional attacks as we could, which in the beginning we were not very good at pushing back on. Some we had no chance in some of the places, and some we could've done a better job and it took us a long while to get there, and we lost thirty-some battles before we began winning. In 2004, Karl Rove threw thirteen at us, and we lost all thirteen, eleven on election day itself.

It wasn't until 2012, after losing about thirty, that we figured out how to win and how to do that. So that was the titanic battle, the federal constitutional amendment proposal that was introduced in Congress and Bush pushed it and so on, and we had to take seriously in mobilizing Congress and so on, but I never thought it was going to pass. I was never really worried about it. It was the state battle that was the worry.

05-01:08:00

Meeker:

Just a few weeks after Bush's State of the Union address, there was kind of a curveball thrown particularly in a couple of spots in the country, but Gavin Newsom in the city of San Francisco decides to start offering marriage licenses. You know, I spoke with Kate Kendell about this, and she tells the

story about, I think it was Friday afternoon, getting a call from Newsom's chief of staff saying, "We're going to start doing this." Her response is, "Well, let's talk about it, you know, it's maybe not the right time." And his response is, "I just want to let you know we're going to start doing this." She eventually got him to delay a few days, sort of sample some talking points and everything—

05-01:08:50

Wolfson:

And to make sure that Del [Martin] and Phyllis [Lyon] would be the first.

05-01:08:53

Meeker:

Right, Del and Phyllis would be the first. So I guess it's on Thursday, February 12—

05-01:08:59

Wolfson:

Freedom to Marry day.

05-01:09:00

Meeker:

Freedom to Marry day, right. Tell me about when you first learned about—

05-01:09:04

Wolfson:

Kate called me to tell me that this was happening, and I had a different reaction. You know, one of the things I've told people is, my general approach that has sustained me through thirty-two years of battling for the freedom to marry and being in the movement and taking the punches and so on, my general approach was to not worry about the things I couldn't control, and instead to focus on pushing the things I really could try to do something about. And I'm much better at doing that in my professional life than in my personal life, but professionally I'm actually relatively good at it.

Upon being told it was going to happen and there was no talking them out of it, then I kind of, "Okay, well, what can we make of this, where do we go with this?" And I saw it as a powerful public education moment in two ways. Number one, it showed political commitment to stand up and do the right thing, and number two, it showed the country, and I wrote about this and talked about this a lot at the time, it showed these couples lining up in the rain by the hundreds, waiting for hours in the rain, it was a crummy kind of rainy period in San Francisco, because they wanted to get married, and this is how hungry people were, gay people were, for the freedom to marry. So I felt like we needed to talk about that and show those images and get people to understand that.

I tried to push back on when it was described, either by the press or even to some extent by Mayor Newsom and by others who were then criticizing him, as an act of civil disobedience, and I said, "This is not civil disobedience, it's constitutional obedience." His argument is not the law doesn't allow me to do this, but I'm going to do it anyway. His argument was that I have taken an oath to the constitution, the California statutes are silent or are superseded by the constitutional command, I have the authority to do this, and I will do it.

Ultimately that went to court, and the California Supreme Court said that's wrong, you don't have the authority to do it. And he stopped. He didn't do it in defiance of the courts. So my view was the proper way to do it is to have a court ruling and abide by that court ruling, and he did abide by the court ruling. In the meantime, what he was doing was upholding what he understood as the constitutional guarantees, until a court told him otherwise.

So it was important to me that we justify it not in terms of lawlessness or defiance, but rather in terms of living up to the constitution, and meanwhile look at these people. And I saw it as a wonderful push-back to Bush, and as part of the gathering momentum that we were having in 2004, even as I knew we were heading to a painful period with the Karl Rove ballot measures that were coming our way. Not everybody saw it that way, but that's how I saw it, and in part I chose to see it that way because I couldn't control it otherwise, I couldn't shape a different mix. So work with what you have.

05-01:12:43  
Meeker:

Certainly the way in which Newsom talked about it was in fact, you know, I'm obedient to the constitution of the state of California and the United States. I don't, you know, maybe vaguely remember some conversation around civil disobedience, particularly perhaps from some people who were getting married—

05-01:13:00  
Wolfson:

I think he may have used that phrase sometimes, getting caught up, as you were saying earlier when we were talking about it, in this civil rights imagery of the sixties. But he also embodies the principles I talked about and embraced those, and hopefully took some messaging cues as he went along. But it wasn't really just about him, it was about how others were talking about it, and there was a lot of piling on, in part by friends and Democrats and even movement people who were concerned about the election and other factors, and were willing to subordinate what we were doing, and some of them may not have liked Newsom to begin with, so there was that.

But anyway, to me it was never just about Newsom, and again, within California, people tended to look at it with a California lens. If you were thinking about it nationally, you looked at how this was contributing to a national conversation that we needed to be having around marriage, and no one thing is going to decide everything, but it's all part of this broader connected to the strategy, keep moving, particularly if you can't control. Bring it in, keep moving, work with what you have, and go out and get more. So that's how I looked at it.

05-01:14:14  
Meeker:

Did you have conversations with him or his team during that period of time?

05-01:14:16  
Wolfson:

I had conversations with the team, but mostly I was dealing with Kate, and particularly given that Kate and I totally agreed on the images we wanted to see come out of this—I loved the idea of Del and Phyllis, and of course that turned out to be an absolutely gorgeous picture and story that was wonderful to work with, and that Kate organized, not me, but also the image, as I said, of the couples lining up, the joy and the families and the people serving them doughnuts and coffee, the non-gay people who were there to celebrate them and non-gay couples who had gone to the marriage license bureau but couldn't get a license because there were so many gay couples, and having those stories, all of that was unfolding, from my point of view, really well, so I didn't have to be involved with that, I could just use that.

05-01:15:07  
Meeker:

And plus, by the end of this period of time, you know, the six weeks or whatever, I can't remember exactly how long, that licenses were being issued, all of a sudden what you end up with is a serious constituency of people who don't just support the freedom to marry in abstract or in hope, but rather in quite reality.

05-01:15:33  
Wolfson:

Yeah, I mean, to this day, you know, I will meet people who tell me they were part of that first wave, or their friends were part of that first wave, and it definitely underscored for a lot of gay people, and non-gay people who connected with or knew those gay people, the unfairness, and the fact that you have to work for it, and people went—might have gone thinking, “Wow, I can't believe this opened up, I'll go, great,” well, but when it was taken away, then it became, “How dare they take something like this away?” And of course it always should've been how dare they deny me in the first place. But it's easier to get people to how dare they take it away. And so it was an important wake-up moment for a lot of gay and non-gay people.

05-01:16:15  
Meeker:

Yeah, I mean, I think that there is this extremely important aspect of it that, you know, if you are raised and you grow up and it was never a possibility for you, that to actually see that it could be a possibility for you, you actually get to decide for yourself whether it's something you want or not.

05-01:16:35  
Wolfson:

Right. Well, going back to Hawaii, so even ten years now before what we're talking about, my argument had always been that when we first make it real, once it becomes tangible and real and shifts from being an abstract question to about real people and a real opportunity, and even a tangible real denial, it will galvanize people, that our first task is to make it real, make people believe it can be real and then make it real. That was the strategy of the nineties, it was the strategy of the 2000s, and this was another iteration of that happening.

And of course, as you pointed out earlier, it also sparked copycats, it sparked some other mayors to take action. One state, Oregon, for a period of time took action. And all of that, though they all, quote, failed in that wave, ultimately, they were all part of this new level of national conversation and sense of momentum and it feeling very real now and within reach that woke up a lot of gay and non-gay people that we needed to have, because in a sense we needed to draw on that bank of momentum capital when the Karl Rove anti-gay, anti-marriage wave hit on November 4, or whatever election day was that year, November of 2004, when we got slammed with those eleven on one day constitutional amendments, and Bush got elected, and we got blamed for the election, even though it turned out that wasn't true.

So that's what the arc of 2004 looked like, and it included this making it real aspect that was sort of encapsulated in the Newsom episode, that was necessary to keep the strategy, to keep the work going and that we drew on, and then when I wrote my book that year as well, I told the story of all of this and spoke very glowingly of this San Francisco chapter, and then the others in other parts of the country, New York, Oregon, who also made it real for a period of time in a way that of course Massachusetts more enduringly made it real that year.

And as we came to the end of the year, 2004, with the losses, the ballot measure losses in Bush's election, there was a huge amount of consternation and anger and angst and fear in the movement leadership, as in the country generally, and there were many of the key organizations and leaders, and even funders, who said, "We need to stop doing this, we need to abandon this marriage strategy, it's too hard, it's dangerous, it's not doable, it's costing us, we should regroup and go lower and do something different." And some of the key voices who had been—who I constantly had been trying to cajole and bring in and get buy-in from, now began peeling away again, and there was really a moment of great fear and trauma.

You had people like Hilary Rosen, the then interim head of HRC, in the press saying we should step back from marriage, this was a mistake, too much. You had some of the movement funders, as I said, and Gill Foundation convened an emergency gathering of the movement leaders, different organizations, and some of the other key funders to analyze and talk about what do we do now post-2004, and we convened in early 2005, I believe.

I argued that any year in which you lose thirteen ballot measures but win marriage, as we had in Massachusetts, is actually a winning year, and that painful and fearful as it may feel right now, the power of the win, if we kept doing the work, if we kept with the strategy, if we stuck with it, would actually allow us to overcome the losses, that lesson one from history is that wins trump losses, and that if we kept working it, we would come back and get rid of these barriers. But meanwhile, the public education effect, the making it real effect, the galvanizing effect of couples getting married in



Massachusetts, touching hearts and minds, showing the sky didn't fall, giving people something to hope for and organize around as we kept building a national campaign with this breakthrough, that that was actually going to allow us to come back and overcome even these barriers, which by the way, painful and disgraceful as these attacks had been, they were all in states where we didn't have the freedom to marry anyway, where we already discriminated against, it was just adding another layer of discrimination on top of the discrimination we already had. Whereas this was a breakthrough, the thing that was going to drive us forward.

So that argument I made with my colleagues, and there were others who embraced that, but there still was great division. And what happened was, basically people agreed that eight of us should be locked in a room, and we locked ourselves in a hotel room for two days, to wrestle through a proposal to the group of leaders, funders and leaders, and we essentially wrote what we called a concept paper that we dubbed "The 2020 Vision." It was called "Winning Marriage," but I called it "The 2020 Vision," because I wanted to be able to invoke the year 2020 and this vision for how we could win by 2020.

We re-articulated the freedom to marry strategy and this time we enlisted a different drafter, my friend and colleague Matt Coles, because on the principle from the play "1776," where John Adams, the chief advocate for independence, eventually says, "Let's have Jefferson write the Declaration," because Adams is obnoxious and disliked. Better to have it come from a different voice to bring people around. I felt that Matt, having somebody as smart and good at synergizing—synthesizing arguments would be a new way of articulating the case that I'd already been making over and over and over and over. And we all came up with, I think, a very strong and smart re-articulation of the case for fighting for marriage, what the campaign should look like, how incremental steps, such as civil union and partnership, fit into a marriage strategy as opposed to being alternatives, the need for public education, the need for more resources, and the need for sticking with it.

And ultimately that call to action, that concept paper, not a plan but a call to action, really succeeded in rallying the critical mass of organizations and funders to stay the course and not peel off, as some of the organizations had advocated. In that paper, we had a gimmick, really, what I called a thought picture, that was a way of getting people to see how attainable this strategy was. What we said was, the goal here is to figure out a way to win the freedom to marry by 2020, if not sooner. Some of us thought it could be sooner, some of us didn't. So by 2020. And some people might say, Wow, I don't think we could do that, in the same way when I had originally said we could win the first state within five years, some people said we can't do it. Maybe we can do it someday, but not within five years.

So we said, okay, well, ask yourself this question. Do you think that by the year 2020, which is fifteen years from now, fifteen years from 2005, fifteen

years from this period where we had just lost thirteen ballot measures, Bush was President, Rove was still instigating, a difficult horrible time, we hadn't even yet gotten our second state, we hadn't even yet definitively held Massachusetts, but nevertheless, despite all those challenges, could you imagine by the year 2020 that we could have ten states with marriage, ten states with, if not marriage, state-level civil union or partnership, ten states with, if not state-level partnership protection, at least a state-level gain, such as nondiscrimination or something significant at the state level, and even in the other twenty states, even if we couldn't win at the state level, we could make local progress, we could make public opinion progress, we could gain ground, could you imagine that ten-ten-ten-twenty playing out this way by the year 2020.

And everybody had this light bulb moment of, "Yeah, well, that's doable. We could get to these ten, we could get to this, we could get to that." And the argument was, well, that's the critical mass that the strategy calls for that will then set the stage for the Supreme Court to rule in our favor, so let's get to work, and here's what the work should look like. And that was the turning point for many of the funders and for many of the organizations.

It then took another five years to actually get the act together and build and do the kind of campaign that was mapped out in that concept paper, but as far as committing and re-articulating—re-articulating the strategy and committing a group who stayed with that strategy, that 2004–2005 shock and pathway were how many of them would describe their committing to this for good and sticking with it.

05-01:27:04  
Meeker:

Can we get into the weeds a little bit on the drafting of this? Because, you know, obviously it makes a lot of sense and I think it's very much in line with what you've been talking about for a long time, with the possible exception of sort of actually publicly recognizing that domestic partner and civil unions is part of the broader strategy, because you had been very insistent that let's not do that. So there is this kind of tricky thing to say as not that, but we—

05-01:27:37  
Wolfson:

Well, not exactly. I mean, people would hear me as saying, as, quote, being against civil union, because I was always clear we should not be asking for civil union. Our goal should be marriage. We shouldn't be disclaiming the resonant vocabulary that is actually going to pull everything forward, including civil union. We didn't win civil union in Vermont by asking for civil union. We won by asking for marriage.

So even if your goal is civil union, I would argue, you should be asking for marriage. That's the powerhouse. And it's the right goal. But even if you don't agree it's the right goal, my way is the way to get your goal, is what I would argue. But at every key point, I actually always took civil union, I

never walked away. I believed we should take, we just shouldn't ask for it. And so I never saw civil union as necessarily incompatible with a marriage strategy. It depended on how you would do it. If you went in lowballing yourself, bargaining against yourself, only asking for civil union, or saying civil union's good enough, then you were subverting not just the marriage strategy, you were subverting even the mechanism for gaining civil union.

But if you took civil union along the way, then you were following my model, going back to Vermont, when, in the immediate hours after the ruling in Vermont from the state Supreme Court, I was on the phone with Mary and eventually Mary and Beth and Susan, and I advocated from the get-go. If we cannot get Howard Dean and the legislature to consider a marriage bill, and I was relying on Beth and Susan in particular, and Mary channeling them, to determine whether we could actually push that in any way, and their answer was almost from the get-go they won't budge, we cannot do this, it's all or nothing. It's like we take civil union or nothing. Then my answer was, we take civil union and we make it work. And we say it's not good enough.

05-01:29:44

Meeker:

It's going back a little bit, but I never asked, where did this idea of civil union come from? I mean, domestic partner had existed in the language—

05-01:29:53

Wolfson:

My memory of it is, I actually coined the phrase civil union. I wanted to call it civil union, because at that time our thinking was, again, if we couldn't get them to do marriage, which was the first push, and it came back no, then what we should do is go to plan B, and plan B would be, okay, let's make them give us everything and create an entirely parallel system that would be commensurate in dignity and respect and acknowledgment of same-sex couples and their families and provide, quote, all the protections and responsibilities, theoretically, and have these absolutely two parallel statuses so that we would, number one, be able to show the power of the marriage cause in winning huge things that the movement had never previously won, number two, we would be affirming gay relationships from a state at the highest level with dignity and honor and respect, and number three, the absurdity of having two completely identical systems would relatively soon become apparent and we would then be able to move it to let's just have one system for everybody.

05-01:31:11

Meeker:

Not just the absurdity, I mean, it resonates with separate but equal.

05-01:31:15

Wolfson:

Well, no, clearly—and we argued all of that, but people didn't agree with that. So okay, then do the two things, and then eventually you yourself will see, why do we have two. If they're equal, why do you need two, right? So that was the thinking then, and that's why I thought we should call it civil union, not just partnership. It should be noble, it should be something dignified.

Well, it turned out that, upon reflection, and as we experienced the civil union dynamic, as you and I have discussed, civil union was a two-edged sword. On the one hand, it did all the good things I just described. It met the needs of what some people wanted. It kept people in the game. It could be a building block. It affirmed gay relationships. It meant we won something instead of nothing. It showed the power of marriage, etc., etc. But it also provided a placeholder that all too many people were willing to languish in for a while, including many gay advocates, and it therefore became also an impediment. It was a two-edged sword.

And upon reflection, with a few years of experience in it, I actually came to believe that the idea of making them—of making it sound good, civil union as opposed to partnership, was a bad idea, and that it would be better to actually do the same thing, but not make it sound as good. Call it partnership, and make it sound more legal and economic and bloodless, so that nobody could turn around and say to us, Well, you know, you have marriage, you have gay marriage, it's called civil union. What difference does it make? Partnership, people could understand. Well, actually, a set of legal and economic benefits, while a good thing, is not the same as marriage. Civil union kind of was sounding too much, quote, the same, even though it obviously wasn't the same.

So after a few years, I actually reversed and felt like we should be encouraging people who are doing that kind of staged battle to not call it civil union, they should call it partnership. And some of the states that then enacted, California for example, that enacted statewide non-marriage marital statuses called it partnership, because we were saying the civil union thing was a mistake. Others, however, had already learned the earlier lessons and didn't learn the later lessons, so they still called it civil union when they moved forward, because nobody controls everything. But I myself changed on what I thought was the right thing to do.

And remember, all of this was in the context of you only are asking for this when you have no other choice, and when it's being pushed upon you and then you're taking it. You're never initiating the ask for it. It's not where we should start.

So, going back to the 2005 paper, I was always being true to where I thought the, quote, civil union piece fit in. I always saw it as potentially a building block and something to be taken where given. I used to say it's a little bit like, you know, in a Russian movie, where the wolves are running after the sled and you start throwing things off the sled. Well, you know, sure, they're going to start throwing things off the sled, of course we want those things, but what we really want is everything.

05-01:34:38  
Wolfson:

Yeah, we want to be on that sled. We want marriage. And so the articulation we did in the paper was not anything different from what I had been saying and felt, but what it did do was allow people who were more civil union oriented to see how their work could fit into the marriage strategy, and it allowed us to reconcile these different pushes in a way that was helpful. And Matt Coles did a really good job of that synthesizing, and he and I were on the phone constantly, but the fact that he was the author, not me, also helped, because it made it more neutral, in a way, that different factions could see it clearly in a way that if I was saying it, they might just be accustomed to hearing or seeing one particular thing.

05-01:35:39  
Meeker:

A bit before this concept paper happens, you know, you had mentioned in passing that you published your book, “Why Marriage Matters,” in the second half of 2004. You know, reading through the notes of Freedom to Marry, this was a big moment in public education, and this was a big moment in kind of getting your vision out, not just to the movement, to the broader community. I mean, it had a pretty big initial print run. Did you get a sense of what kind of impact it had, who was reading it, you know, was it people who were already converted or, you know, was it getting a wider distribution and really starting to—

05-01:36:22  
Wolfson:

I think it’s a little hard to know, but I think it was primarily read, or at least I primarily got feedback from people who, I don’t know if I would say they were already converted, but who were already the predictably reachable, gay people, gay advocates, family members, non-gay people disposed, but I would get a lot of feedback from those kinds of people over many years, including even recently. I’ve sort of stopped talking about my book. Other things have happened, I’ve moved on, and so on. People will still come up to me and ask me to sign the book, or tell me they read my book, etc.

And what they’re usually talking about is either they didn’t believe it, they didn’t think it was the right goal, or they thought it was unattainable, or they didn’t know how to make the case, and those sort of categories are the categories of people I hear from who then read the book and it influenced them because it either made them believe this was important in a way that they hadn’t understood before, made them believe it was attainable in a way they hadn’t believed before, and made them understand how to make the case in a way that they didn’t feel empowered to do before. Those are the categories of people I hear from.

Now, it may also be that there’s a whole swath of non-gay, truly neutral people who read the book and I just don’t encounter them, or haven’t encountered them, but those are the ones I hear from. But I do hear from them a lot, actually, the categories I talked about, in the same way that I will often

hear from people who will say some version of “I heard you speak about this in 1995 and I thought you were crazy.” I hear that a lot.

05-01:38:10

Meeker:

Did the book achieve the kind of distribution you’d hoped?

05-01:38:13

Wolfson:

No, I don’t think any author other than the very, you know, the top five of the year ever feels that it’s ever publicized enough, that there’s enough of an educational campaign, that there’s enough sales, or whatever. So no. I mean, obviously it was my first and only book, so I didn’t have much to compare it to, but, you know, you sort of dream of it’ll be in every bookstore in the country and dah-dah-dah, and then you’re excited when you begin seeing it on the list in libraries, in the catalogue, you’re excited when you see it on Amazon or Barnes and Noble and so on. But there was no real campaign.

In fact, years later, when my friend and colleague Marc Solomon wrote his book, I had learned from my own experience, and also was now much more comfortable with my own leadership powers, to invest a lot more in promoting his book than I ever had done for my own, which in retrospect we should have done for mine, but I just didn’t know enough and didn’t feel like I had that kind of legitimate authority to do. By the time it was Marc’s book, I had the authority and knew that that’s what we needed to do promote his book, and we worked hard to promote that book because it should be out there and people should read it, and it doesn’t just happen by magic. Somebody has to promote it.

05-01:39:34

Meeker:

You know, there were other books published around that time on the issue, advocating for it from various different angles, and I’m afraid that I don’t have a list of those books, so I’m kind of testing you here, but—

05-01:39:45

Wolfson:

Jonathan Rausch had a book, I think it was called “Gay Marriage,” and another colleague in the movement, Davina Kotulski, had a book, “Why You Should Give a Damn About Gay Marriage,” I think it was called. And Andrew Sullivan had had a book I think a little earlier, and then our mutual friend George Chauncey a few months later did a book, and he had called me to ask would I mind if he did a book, and I said of course not, you should do it. I think his was—mine was called “Why Marriage Matters,” and his was “Why Marriage,” I think. So yeah, there were a bunch of those.

05-01:40:19

Meeker:

What did you think of the arguments being made in these other books?

05-01:40:24

Wolfson:

Well, first of all, in general, the more the better, and different voices, different arguments resonate with different people. I’m not a believer in one voice, one argument, and so on, you know. You go make your argument, and hopefully

it'll move those people, and meanwhile just the additional number of arguments, the better. I didn't fully agree with some of the emphases of some of the books, and so on, but I didn't care about that, that's fine.

05-01:40:58

Meeker: Okay, so just more voices, better?

05-01:41:02

Wolfson: Yeah. Well, I mean, for example, Jonathan's book is more overtly from a, quote, conservative perspective, and I think that's an important argument and an effective one for a lot of people we needed to reach, so I was happy to have it, but as is often the case with academics and authors, he kind of went out of his way sometimes to disclaim other arguments and other parts of the broader range of arguments in order to emphasize his. So I didn't have any problem with his emphasizing his, even if it may not be the most resonant for me, because I felt like it would resonate with some people.

But what I tend to not like is when academics or advocates on our side, and this is a quarrel I've had with academics throughout my time in the movement, they not only make their argument, but they first lay waste to all the other arguments in order to have some nugget of thing they come forward with. I don't think that's a helpful thing, because just as their nuggets might be of use in a way, whether I like it or not, those other things they're discarding or trashing may also be of use and resonate for some people, so why trash them. But it's the way academics tend to approach these things.

05-01:42:13

Meeker: It's the business of academia, actually.

05-01:42:14

Wolfson: Exactly. So I've never liked that dynamic.

05-01:42:19

Meeker: You know, something else as far as getting the story out there at this point in time, I mean, the Freedom to Marry organization is pursuing this thing called Voices of Equality, there's something called the Story Center. Can you talk a little bit about the strategy, the early strategy, trying to get these voices out there, trying to get these stories out there? Was there a particular narrative at this point in time that you're supposing is going to be more effective, perhaps, than something else?

05-01:42:54

Wolfson: So the strategy, or I would say the chief tactic here was that we believed that conversation was going to be the major engine of change, and the more we could get more people to talk more about putting the words "gay" and "marriage" in the same sentence and why they should support it, and hearing stories, and hearing from people that might matter to them, etc., the better off we were. The more we had people talking about marriage and gay people, the more we would move hearts and minds and create the climate that we needed

and our strategy talked about critical mass of states and critical mass of support in anything federal. We needed to build that critical mass of support, and the chief engine for doing that was going to be conversation.

So a multiplicity of messages, messengers, and message delivery were the key to making that happen, to sparking these conversations, to echoing them, to giving them a frame in which they could reverberate and so on. So we were doing everything we could in all kinds of different programs, and through enlisting all kinds of messengers, and having to have more voices and letting Mayor Newsom add his part, not that we could control anyway, but all of these things in general were good things.

Even the opposition, even the attacks sparked conversation. So in some sense, we were—and I was very conscious of this, that even where I was not able to make this a national debate, somebody would come along and help me by being awful and ratchet up the debate and attack and so on. We paid a price for it, but what we got for that price was more debate, and my view was, the more conversation, the more we're winning, that we would win. Maybe not on this time frame, but on this time frame.

So Freedom to Marry, to the extent we could, ourselves and through our partners, also tried to come up with as many gimmicks, mechanisms, vehicles, programs, partnerships that would put forward more voices, making more of the case in their own ways to reach the audiences they could reach.

Now, in this period of, we're talking about the nineties and the 2000s, essentially, we were still short of a majority. We were far short of a majority. We were at 27 percent in 1996. So one of our three track goals in our strategy was to, we called it at that point, build a majority. We later turned it into grow the majority, because we got a majority, but for the first period we had to build a majority, we had to get up from 27 percent to a majority. And there were, as I just said, a mix of voices, a mix of messages, a mix of cases to be made. There were the personal stories, there was the talking about love and dignity, there were the hardship stories. There were the credentialer stories, you know, business and labor and clergy and child welfare experts and teachers and neighbors who could talk about why they supported the gay people they knew and what they were like, and why they supported marriage for gay people, why marriage mattered.

And there were, as you alluded to earlier, the journey stories, the people who didn't support it, were not sure, but here's how they resolved their conflict. And my whole book was written, though it was written as a tool for people on our side to be able to make the case, the book was written as a discussion with the person who had not yet made up their mind, who was somewhat resistant, who wasn't yet reached but could be reached, and it took their uncertainty, their questions, their fears seriously and engaged them. Each of the chapters was a question that people would ask, and then it was coming at that question



with a whole variety of stories and voices and anecdotes and evidence. It wasn't a particularly legalistic book, though it made some basic legal points and some abstract points, but it was also very personal and very anecdotal, because the idea was to really engage with the person who truly had that question, whether I thought that was a good question or not, and thereby to role model, and essentially script, for the activist reading the book how to have that conversation, how to make that case with the reachable but not yet reached person.

So the book itself was a reflection of what we saw as the chief task. It was engaging in a serious way, through a multiplicity of messages and messengers and message delivery means, stories, examples, evidence, pictures, blah-blah-blah, how to move people, how to have those conversations, how to get the people who weren't yet with us. So everything we were doing in that period, or I should say the primary thing we were doing in that period on the public education side was aimed at sparking those conversations, shaping those conversations, empowering those conversations, and helping to create a movement of advocates who would be delivering in a way that one organization or one person or one voice or one face or one style could not deliver everyone.

All of that, plus the political and legal battles that were also a huge part of the work—you know, remember, it's not just building public support, it's building a critical mass of states. So the actual concrete battles, the political and legal struggles, the litigation, the losses, the wins, the legislative advances, etc., all of those together, as well as global developments, together with this public education work that I described earlier, these were the ways in which we were going to move forward. And all of that together, even during the very difficult years of 2005 through to 2010, which in many ways were our low point, our most painful moments, where we kept losing, where it didn't look like we were winning, although I always believed we were winning, because this total was going up, even though we hadn't yet cracked the barrier of the political wind, or the legal wind during that period, the movement organizations had committed to the strategy but they hadn't yet built, hadn't yet built the campaign. They hadn't yet followed through on the plan of action during those five years. So it was a very difficult period.

But nevertheless, during that period, the totality of everything I just described grew public support from the 27 percent baseline we'd had when I first had a baseline, during the Hawaii trial—it might've bumped up a little in the Massachusetts period by then, but it was still in the, let's say, 27 percent, 30 percent, etc.—by the end of that period, 2010, we had grown from 27 percent to now a fragile majority. We hit our majority probably in 2010, maybe late 9, certainly 10. So that was obviously a huge achievement, and what it meant was, we were doing something right, you know, we were making the case, through all these different pieces that I just described.

But at the same time, what was also clear, and now we're sort of moving further ahead, but we can come back, what was also clear was that that fragile majority we had attained wasn't good enough, because it could be eroded in a crucible moment, like Proposition 8 in 2008, like Maine the next year, in 2009. When there was an actual ballot vote, we couldn't always hold that majority, it could be peeled away, it could be eroded. So we needed to grow that majority. Getting the majority was not enough, now we had built a majority and we needed to turn our goal into growing a majority, which we did on our road map strategy.

And part of that was figuring out, if this had all worked to get us to this point, but wasn't working now to get us to this point, what did we need to adapt in order to get from this point to this point? So we did a very intentional deep dive and led a research and evaluation process that my colleague Thalia Zepatos, Freedom to Marry's director of research and messaging, shepherded to pull together movement knowledge, movement data—eighty-five different datasets from more than five years of campaigning, our experiences in those campaigns, so it wasn't just the numbers, it was also what had we seen, what had worked, what hadn't—and to really think about what do we need to do in order to reach the reachable but not yet reached who had not yet joined this majority. This had worked for these people, but it wasn't working for these people, so what did we need to change in order to now be able to reach these people?

And to make a long story short, what we found was that one portion of this authentic case we were making, the portion that was centered in the constitution and justice and civil rights and abstractions of these kinds of bedrock values, and rights and benefits and legal and economic consequences, like health coverage and immigration rights and parenting, that that collection of authentic and real legal and abstract arguments was getting in the way of the other part of the case we were also making about the personal, about values, shared values, of respect for love, of the golden rule, of treating others as you'd want to be treated, the emotional connection, the personal, the local, the authentic stories.

We had been doing both, but this one was now starting to get in the way of this one, which is what these people, as opposed to those people, needed to hear. So we recalibrate and worked hard to get ourselves, our movement colleagues, the media, political and other leaders, and even eventually the courts to be talking in the way in which this swath of people needed to hear it. It's not that we'd been doing something wrong, it's not that it hadn't worked, it's that we needed to shift the balance in order to reach this audience that we needed to reach. And as we succeeded, led by Freedom to Marry, in getting the movement to reemphasize the case, talk with front-loading this part of the authentic case, public opinion again began growing, and we went from this fragile majority of 50 percent in 2010 to, by the time we stood in front of the Supreme Court in 2015, we were at 63 percent.

So it wasn't so much that, you know, that we weren't doing this or dah-dah-dah, it was more we needed to do a different mix of things and we needed to propagate that and then repeat it and bring it to scale and sustain it, and as we succeeded in figuring out how to do that through different programs, through different kinds of leadership, through creating tools that got others to speak in a certain way and gave them templates as we built, at Freedom to Marry, the Digital Action Center, this extraordinary online team that became the back end of most of the state campaigns from 2010–15, we were literally shaping and running the web presence that had the local faces in states like New Jersey and New Mexico and Ohio, etc., Freedom to Marry centralized that and gave support to the locals, channeling this central body of knowledge and template for how to talk about marriage most effectively to reach the people we needed to reach—as we did all that kind of work, we saw the majority grow and diversity and get to this critical mass of support we needed to have.

05-01:55:25

Meeker:

In this earlier period of time, in the 2004, 2005, 2006 period of time, before Thalia comes along and you start to bring together these eighty-five different studies and they start to do the deep dive—

05-01:55:39

Wolfson:

Right, which was, that was in the 2010-11 period.

05-01:55:42

Meeker:

Right, sort of in the five years before then, when you're pursuing your messaging, is this messaging based on any polling? I mean, what's the data?

05-01:55:52

Wolfson:

Yeah. So remember, so in 2005, the movement groups, some reluctantly, some with relief, recommit to the strategy, funders recommit, and we come up with this other mechanism for trying to improvise the campaign that I'm calling for forever, and that this paper now re-articulates the call for. But what doesn't happen is the creation of the actual campaign housed in Freedom to Marry. We didn't yet have the mandate for that. We couldn't yet get the full buy-in. And instead, what we came up with was this loose new way of working together that we dubbed the National Collaborative, that was really this sort of transactional arrangement amongst the groups and funders to commit to seven goals, most of which were marriage goals, and to ad hoc move toward all of them. So there was no, yet, central entity who had the power and the mandate and the resources to do central polling and to really crack this code and so on, which was something we eventually did get to be and do in 2010.

05-01:57:03

Meeker:

The National Collaborative, just to clarify, is not the Civil Marriage Collaborative.

05-01:57:07

Wolfson:

Correct, different thing.

05-01:57:08

Meeker:

Okay, different things. Can you describe what the National Collaborative was?

05-01:57:11

Wolfson:

It was a group of organizations, sort of the successor to this convening that had led to the writing of the concept paper, now having committed to the concept paper, these groups plus the funders came together and said, "Okay, we called for a campaign that would be able to do public education, it would build on these sort of ten-ten-ten-twenty kinds of ways toward a critical mass of states and a critical mass of support and dah-dah-dah, and this is what it's supposed to look like, so who's going to do that, how are we going to do it?"

And instead of just doing it, instead of saying Freedom to Marry, you spearhead it, or we're all going to commit, you know, \$100,000 toward blah-blah-blah, instead of that we agreed, okay, we'll identify seven goals, and we sort of negotiated and had this transactional arrangement about seven goals: holding marriage in Massachusetts, winning and holding marriage in California, winning marriage, I think, I can't remember, but in Maryland, in Rhode Island, winning nondiscrimination in Iowa. There were these seven goals, and we agreed that—

05-01:58:13

Meeker:

Very specific.

05-01:58:14

Wolfson:

Yeah, very specific. And the idea was that sort of as a pilot project, we would work together on these seven goals in a concerted team effort way, close to the kind of campaign that was called for, as a way of sort of getting ourselves accustomed to working together and getting closer to this kind of integrated campaign that we already had called for, and that the marriage work required. It was a totally imperfect "Articles of Confederation"-type solution to a constitutional problem of building a campaign, but this was the best we could get to with this mix of players and funders.

So we then got to work and so on. But as a consequence, no one had the true charge and mandate and power and money to do the kind of deep dive, crack the code, convene the entire movement, crunch eighty-five datasets, put the funding, do new testing, dah-dah-dah, that we eventually did do five years later when we abandoned this national collaborative and just said Freedom to Marry is going to be that campaign. But that comes later.

05-01:59:27

Meeker:

Well, I'm curious, I'd like more about the National Collaborative, because, because—

05-01:59:30

Wolfson:

So that's what comes later. That's what was needed but didn't happen. The National Collaborative is this group of organizations and funders who committed to these seven goals, and then spent the next five years jockeying

one another to, well, you said you were committed to this goal, what are you going to put into it? And, you know, can we have this money to do that, and who's going to do this part? It just was this endless set of transactions that got more out of everyone than it would've had it not existed, but was not cohesive and strategic and eyes on the prize affirmative. It was always transactional at every step of the way. Massachusetts needs this, California now we need to try to do that.

So an example is that one of the lessons that was already apparent was that in order to win in a state, like California, where you couldn't insulate against a constitutional amendment, right, as you had asked earlier about Massachusetts, right? There are some states we could win that we wouldn't have a constitutional amendment. They didn't allow for it. Those were priority states. But there were other states that were priority states where there was a constitutional amendment aspect. Massachusetts had been one of them. California was another. These were states we could hopefully win, but unfortunately they came with the problem of it wasn't enough to win, we had to hold.

And so one of the lessons from Hawaii, from other battles where we had been losing these constitutional amendments, was the way we would win was not just by going to court, we had to build a majority and be able to build a campaign infrastructure to defend against a constitutional amendment with a majority that couldn't be eroded and so on.

So in California, for example, one of the lessons some of us took was, we should get to work in California now with an affirmative soft sell, public education effort, storytelling, non-gay validators, explaining who gay people are, why marriage matters, so that we could build what was becoming a majority of support in California into a 55 percent majority, not a 50 percent majority, so that when the inevitable constitutional amendment was thrown at us after we someday win marriage, and at that point we were still trying to win in the legislature. You may remember California became the first legislature to pass a marriage bill. It was vetoed twice by Schwarzenegger in that period. But we were able to pass it in the legislature, something that previously had seemed unattainable and was a big step forward. But we knew all the time that we were at risk of getting a constitutional amendment attack, as we had in California in 2000 with Prop 22.

So what we were calling for was an affirmative public education inoculation building of a majority campaign that would be ready when the political attack came. It proved impossible to get enough buy-in from activists, and particularly from funders, to really invest in what was needed in a two-scale affirmative public education effort, even in California, where of course there is money and there was momentum and action.

05-02:02:51

Meeker:

Or perhaps especially in California, because California is extraordinarily expensive to run a campaign like that.

05-02:02:56

Wolfson:

But it's less expensive to do a public education campaign than it is to mount, ultimately, a ballot measure challenge. Remember, we were scrounging to raise a few million dollars for a public education effort that we called Let California Ring, and we had a website and we had a campaign and we developed ads and templates and materials, and we got it out there, but we just couldn't get the funders, and to some extent the activists, but mostly the funders to back it to make it to scale, and instead we wound up doing essentially two pilot projects, where we ran it to scale in two different counties in California, and plus had some general materials and so on, and this was in 2006–2007, getting into 2008.

Flash forward, Proposition 8 is in 2008, the one county we won in southern California in in Proposition 8 was the county in which we had done the two-scale public education inoculation efforts, Santa Barbara, where we'd had enough money for that county to show what a campaign would look like. That was the only one we won.

05-02:04:02

Meeker:

That was where the “garden wedding” ad showed.

05-02:04:03

Wolfson:

The garden wedding ad, and the organizing, and the building in the center, and doing fundraising. I mean, everything that a campaign should look like, we were only able to do it in one county in southern California.

05-02:04:14

Meeker:

What was the other county?

05-02:04:14

Wolfson:

I forget what it was. It was in northern California. But anyway, that's flashing ahead. The point is that under the “National Collaborative” model of running a campaign, nobody had the full mandate or the full resources or the sustained engagement, because it was always transactional, you know. You promised you would do this, so can we have a check for that? And that proved to ultimately not be a very satisfying model for running a campaign, which is why, by 2010, a critical mass, not everybody, of activists and funders had had enough of that and came to me and said, If we're going to have a campaign, you need to become it, and Freedom to Marry needs to morph, and that's when Freedom to Marry became the full-fledged Freedom to Marry, the campaign, that we then were for the next several years.

So it was yet another moment like going from Lambda to founding Freedom to Marry, now going from Freedom to Marry 1.0 to Freedom to Marry 2.0, that took the campaign vision and model to a whole other level. But all of this

is relevant because you were asking about, you know, who was doing what during that period, particularly in terms of message.

During the 2005–2010 period, though some of us had the belief that the way in which we were talking about marriage was not the most effective way, given where we were now in the growth of support and in the limits, and particularly when it came to a challenge, and therefore we needed to begin running these ballot measures on a much more value-laden storytelling overt engagement of marriage as well as some gay, we were not able to get the actual campaign teams to take that advice, because they would always be told, in these ballot measures, these thirty ballot measures we were losing, they would always start from scratch, hire a consultant, hire pollsters. They would all come in, they may be good pollsters, but they weren't steeped in the marriage work, they hadn't had the lived experience, they hadn't looked at the datasets and all that, and we had never tried what we believed was the winning recipe, because people were always wanting to try the wrong recipe. So they'd always try some version of what I used to call a diversion strategy, you know, they'd try to talk about something other than marriage or gay, even though the battle was over gay and marriage. So they would always try to talk about fairness or the constitution or it's not necessary or collateral damage to others or the impact that many of these marriage amendments, so-called, were not just marriage amendments, they were also anti-partnership and anti-civil union amendments. So they would say, "Well, let's talk about that, it's going to deny partnership."

05-02:07:18

Meeker:

It's going too far.

05-02:07:19

Wolfson:

It's going too far, exactly. And campaign after campaign, state after state, effort after effort, that's what the deciders would go with, even though those of us who were living in this every day were saying this isn't working, it's not the right way to do it. But we, number one, had no power to enforce that. We didn't have enough resources to really supply the alternative. Nor could we point to definitive polling, let alone a definitive example, where ours worked, because it hadn't yet been tried.

05-02:07:53

Meeker:

So are there examples of, you know, ads coming in that you're seeing and, you know, in some of these state campaigns that you're just kind of like, wring your hands and—

05-02:08:04

Wolfson:

Yeah, saying it's the wrong approach, absolutely. If you look at that speech that I alluded to in 2004, probably my single most important speech, the lessons from the scary work of winning speech, where I talk about these lessons, and lesson one is wins trump losses. Lesson two is losing forward. Lesson three and four, if I remember correctly, had to do with the wrong way

these ballot measures were being conducted on our side, and what the right messaging and the right strategy would be to begin winning some of these, first public education battles, and then political battles, because I think lesson three, if I remember correctly, was tell the truth. Don't run away from the fact that this is about marriage. Talk about marriage. You need to engage in it, and yes, you might not be able to win on the enemy's time frame, but at least you will grow support and be able to come back. Whereas if you just try the avoidance strategies, you're just going to lose and you won't have gained any ground either, you know.

So we were making that case over and over and over, but we had no structural or resource capacity to do more than exhort, whereas, as we eventually got to Freedom to Marry 2.0, we were able to really deliver it and to some degree enforce compliance, or at least encourage compliance, plus people had, after thirty losses, kind of decided maybe we should try something else.

05-02:09:29  
Meeker:

Well, the Arizona example, I think, is really instructive in that regard, right? Because, you know, yes, this was like the first victory at the polls, right? Because it, if I remember correctly, they were using the, "Oh, this goes too far" tactic, in fact heterosexual domestic partners would get, you know, wrapped up in it, and sure enough it's defeated, there's a bit of celebration, but then of course they come right back and, you know, do one that—

05-02:09:57  
Wolfson:

Right, exactly. And, I mean, there were two prongs with Arizona. Number one was, it's debatable whether that, quote-unquote, message is actually why we won in Arizona. There were other dynamics, and we did try some of what I would call the right messaging out of Tucson, but the campaign that Phoenix was doing, the "it goes too far" message, and they're the ones who sort of claimed the victory, and maybe that did indeed rack up the victory, maybe it certainly contributed to the victory. It's hard to know any of that. But something worked in that campaign, and that is a good thing.

The problem was, number one, we didn't know exactly which elements were the ones that really gave us that one victory, and there was no plan, no buy-in, and nobody, no campaign to actually be ready for the inevitable second attack that just came right back with a refined and better version, from the anti-gay side's point of view, and won, in the same way that they had won all the other attacks, making the Arizona victory for our side a blip. So again, during that five-year period there was just no true campaign that could run things and make sure that the movement as a whole was doing what it needed to do.

05-02:11:21  
Meeker:

You know, during this five-year period of time, I wonder if you can talk about sort of the art and science of polling, and why it was that during this period of time they weren't able to crack the code, you know.



05-02:11:34  
 Wolfson:

Yeah, there are a few things. Number one, polling can be valuable if done right in helping you understand how to do something, but it's not really the right way to decide what to do. And that always frustrated me, because, you know, my point of view is, I want to get to where I want to get to, not where poll tells me I can get to. So if the poll is telling you that talking about gay is difficult, well, duh. Talking about marriage is hard, yeah. That's why we need to talk about marriage, you know?

And so part of the problem was, even when people began asking the question, it was too often already too late, because they were asking at the point where they had no way of winning within the time frame, whereas in California, had we started when we wanted to start, we would've had three years, maybe, to mount the kind of campaign of gay and marriage that would've put us in a place for when the attack came, we would have more options in the polling. By the time you're polling, typically, or at least in this period of the movement where there were limited resources, limited attention spans, most players were being reactive, and they were reacting to the enemy's time frame, by the time they're already polling, they're already under the gun and it's arguably too late to educate and to build support and to go from where they were to where they could win.

So not surprisingly, the polling would then tend to tell them: Avoid, avoid, avoid, avoid. And the problem with that is, a) it didn't work, and b) it cost us the opportunity to actually lose forward. Nobody wanted to hear a lose forward, they just wanted to hear win. So if the pollster who, you know, were good people, they were political experts, many of them, I'm sure, were good pollsters, were coming in, their sole focus is, in a typical race, usually they have no gay experience, no marriage experience, etc., in a typical race, what would I go with based on my polling, and the polling would always tell them go with the avoidance thing, don't do the lifting, don't talk about gay, don't show gay people, don't use marriage, don't, you know, dah-dah-dah.

Well, a) we knew from ten, twenty, thirty losses that that didn't work, and b) it didn't help. But the state leaders or the constellation of leaders and national enablers and funders and so on who might come together in the last two months or six months or whatever of a particular battle, they just wanted to hear what's our best shot of winning. They didn't want to hear lose forward, they didn't want to hear it may look like this thing is going to win, but it isn't, so try something different even if we can't prove it. They didn't want to hear that. And nobody had the power to make them hear it. So again and again and again we would get these polling data that would say don't talk about gay, don't talk about marriage, don't talk about collateral damage, talk about whatever.

05-02:14:39

Meeker:

What was it in the data that was telling them that? I mean, was it, like, was it framed by certain questions that they were asking?

05-02:14:44

Wolfson:

You know, people, yeah, sure, people would be asked things like, “How do you feel about gay people getting married?” And the answer would be 30 percent. But then they’d be asked something like, “Do you think it’s fair that blah-blah-blah,” and they would, “No, that’s not fair,” or whatever. So, you know, oh, well, that looks good.

05-02:14:59

Meeker:

Should gay people be able to have visitation rights in the hospital?

05-02:15:02

Wolfson:

Yeah, or if you knew that this measure, if this measure took away firefighters’ safety net, would you vote for that? No. And so then they would argue, “Oh, well, this took away firefighters’ safety net.”

And I remember one episode in one of the many battles in which we were having these arguments and losing, in Michigan I remember they had run an ad, actually, featuring a real couple who talked about how they were going to lose their health coverage if this amendment were to pass, or something like that, which was completely true. I mean, it was just completely, undeniably, factually true, a real couple, not an actor, etc. But afterwards, when they did polling afterwards, people said they didn’t believe the ad, they just didn’t believe it, just because it just was, it was unfair and it wouldn’t happen, it just wouldn’t happen. So it’s not that they thought it should happen, they just didn’t buy the argument, because it wasn’t about what this thing really was about. This was about marriage, quote-unquote, in their eyes.

And so I would go around the country, again, arguing with people and making the case that these amendments during that period are what I called M plus X amendments, meaning that the amendments are—you know, have the famous first sentence and second sentence. The first sentence would say, Marriage in this state is only a man and a woman. That was M, marriage. The second sentence, which is what they usually wanted to run on, our side, was, And by the way, partnership or anything like marriage is also banned. So it was an M plus X amendment, and our side would always say, these advocates usually coached by their political experts and pollsters, who would be coming in in what Thalia called a groundhog day of every campaign started from scratch, we had the same arguments as if, you know, we hadn’t just lost twenty-five before. It would always be, “Well, but in this state we’re going to try this,” and it was like, “We tried that in twenty-five states.” Groundhog day. But they would go with X, they would go with, Well, X is going too far, denying partnership, denying blah-blah-blah, denying to firefighters, denying to widows, denying to dah-dah. Let’s not talk about M.

And I would say this won't work. It won't work for several reasons. Number one, it won't work because the media is always going to call it the marriage amendment. The right wing calls it the marriage amendment. So you're going to be talking about something, but people are going to be going to the polls to vote on the marriage amendment. How can you not talk about marriage?

Number two, yes, X is true, but so is M. So both sides are being disingenuous. The right wing is being disingenuous, smuggling in X when they're only talking about M. But you're being disingenuous, because you're trying to only talk about X when it is also about M. And the problem is, M is more powerful than X. M is more resonant than X. It's what people think of it as being about. And they're right, it is what it's about. So you're the one that are going to lose. Your strategy is not going to work. And of course that's what kept happening.

But again, during that period, we had no power, we had no money, we had no central capacity, we hadn't yet done this research deep dive to crack the code and to show an alternative, and we hadn't yet persuaded a critical mass of players to invest sufficiently in concerted preemptive public education efforts that would put us in a better position for even the pollsters when the time came. We only eventually learned to get there by 2011, 2012, in this morphed Freedom to Marry work.

05-02:19:08

Meeker:

You know, I mean, the way you're describing it, it sounds like during this period of time you have a clear experiential but also maybe a somewhat intuitive understanding of what needs to be addressed here, but you're kind of forced on the sidelines, or you're sort of sitting up in the balcony while this is actually happening on stage.

05-02:19:26

Wolfson:

I would say that's exactly right. Well, I mean, I would say that was right with regard to the ballot measures. Remember, there were other arenas in which we were battling, you know, supporting legislative wins, supporting court cases, doing the enlisting of Voices for Equality, the engaging of the national dialogue, all these other elements, there we were front and center and able to do it. But when it came to a given state is now under attack, their local leadership, together with whatever funders they're able to pull together, together with whatever national group will cater to or enable them, we, Freedom to Marry, and even we the concerted team, such as it was, the so-called national collaborative, had no power and not enough money and so on to take over that or to redirect it. We were at the mercy of that constellation in each given battle.

And I would say you're exactly right, that I actually did have the intuitive sense of what the messaging needed to be and had been beating that drum for a very long time. My book, back in 2004, was called "Why Marriage Matters." It's full of stories, it's full of the personal, it's not very legalistic. It talks about

health and economic coverage, you know, health benefits and legal and economic consequences, but it also talks about love and dignity and dah-dah-dah. It talks about answering people's questions, really engaging them. But I had no proof that that would work in a given crucible campaign, other than if you looked at where we had gone from 1996 to 2004, to 2005, to 2006, I could show we had made progress, and I would argue that that was what I'm advocating doing.

But the savvy political types would say, "Well, that's not good enough. You need a poll, you need a this, you need proof," and then they would revert back to what their polling was showing them. And we had this argument again and again and again. And it was really only after I said, after a cumulative pile of losses, that even those political types began saying maybe we need to take a fresh look and try something different. And once we started testing and trying that, quote, something different, we did some on-the-ground testing in states like Oregon, Basic Rights Oregon, our state partner there, became Freedom to Marry's key laboratory leader of testing on door knocking and personal conversations, some degree of polling, the recalibrated message that we were talking about, and it began showing the results, so we had that to point to.

We, with the pain of the loss in California and then again in Maine, there was much more willingness on the part of funders and others to say, "All right, you know what? Have it your way. Try something different." And we were able, with Thalia leading that process, to reexamine and test and focus group and so on and come up with the recommendations to try a different approach, including investing in the soft sell public education, which, you know, you may remember in Maine, as opposed to taking the no as a loss and walking away, we were able to fund and engage and work with the local leaders there and build a campaign, and GLAD and Mary Bonauto and others very much at the center of all that, and spent 2010-11-12 knocking on doors, going to people with this new emphasis on the personal, the engagement, the values, and so on, and then won in Maine, as we did in the three other ballot measures.

05-02:23:11

Meeker:

Just three years later.

05-02:23:12

Wolfson:

Just three years later, exactly. So it was in that period that we finally got the mandate, got the buy-in, got the desperate we'll try anything Hail Mary, got the funding, and created the staff and the team. I hired people like Thalia, like Marc Solomon, like my digital team, beefed up and so on, and became the campaign that hadn't yet existed in all these different iterations, and were able to either impose this in some places, but more usually able to engage a good team now of local and national partners to create the kind of campaign that would take these lessons voluntarily and draw on the central capacities and resources as we then began working in the next wave of states. But all of that,

which we were able to create and make work in 2010-15, we just hadn't yet built in 2005 to 2010.

05-02:24:16

Meeker:

In the last ten minutes, I'd like to just kind of finish up the conversation around California and Prop 8. The California State Supreme Court decision comes down in, I think, May of 2008, marriages start, something like 20,000 people get married, I think, over the course of that summer.

05-02:24:33

Wolfson:

Eighteen.

05-02:24:34

Meeker:

Eighteen thousand. Individuals, not couples, right?

05-02:24:39

Wolfson:

I think it was 18,000 couples, but I may be wrong.

05-02:24:44

Meeker:

You know, this is a momentous year, you know, Barack Obama gets the nomination, there's a lot of excitement and energy, particularly on the left, about this. It feels like a historic moment. You know, there are couples getting married, there's a lot of, obviously, publicity about this in California. Clearly a lot of heterosexual people are being invited to these weddings and being witness to it, literally. The public polling is showing that Prop 8 will not pass. Where were you in all of this? Were you feeling good about it throughout that summer, or were you more concerned?

05-02:25:29

Wolfson:

You left out, because you focused on 2008, but the year before we had also finally beaten back the attack in Massachusetts definitively, which was a huge win, and a true accomplishment even of this imperfect national collaborative effort. We had to win—in order to block this, we had to win three-quarters of the legislature, like a three-quarter super-majority, in order to deny them the one-quarter vote that would've put the amendment on the ballot. So it was, you know, a huge win against the odds, against Mitt Romney and others, that our team, led by my eventual national campaign director, Marc Solomon, and with a lot of—

05-02:26:09

Meeker:

And you're getting a lot of Republican votes in that.

05-02:26:12

Wolfson:

Yeah, absolutely. Republican, Catholic, other supposedly resistant voices, we were able to bring over and enlist, and then deploy. And meanwhile we're winning—passing marriage bills in California, even though Schwarzenegger's vetoing them. We're passing marriage legislation in legislative chambers in states like New York. Things that had seemed unattainable just, you know, five minutes earlier. All of this rebounding from some very painful losses, including several major court losses in 2006 and so on.

So we were feeling like we were hitting our stride. We'd been getting a torrent of criticism. When we lost those court cases in key states in 2006, there was a lot of punditry, and again some movement trepidation about maybe the litigation strategy is not a good idea, maybe it won't work, the courts won't have the courage, then we win in California, a resounding court victory, and everybody's now, "Oh, of course you won." It's like, five minutes ago you said we weren't going to win. And we're going forward, and yes, so we were feeling very good about it, but it soon became clear that the scale of the attack we were facing in California, led by this collusion of the Mormon hierarchy and the Catholic hierarchy—not Catholics, but Catholic hierarchy—and particularly the Mormons, who threw ultimately millions and millions and millions of dollars and troops into the fight, was going to dwarf anything we had anticipated, even though some of us had anticipated the battle and had said we need to mount this affirmative let California ring public education preemptive building of a majority campaign in order to be ready for this kind of attack, even so, we did not anticipate that scale of attack.

What was exciting was, it turned out that the movement was capable, actually, of meeting that attack, raising money to a hitherto absolutely unpredicted degree. I mean, the idea of raising \$10 million had seemed insurmountable, and before we knew it, we were raising \$40 million. The problem was, most of that money came in when it was now already too late, and partly because it took a while to get the campaign organized and on stride, partly because there was continuing to be this divide over how best to make the case, and partly because the money came in late and even the call to action to raise that money was made late.

As a result, at a crucial moment we had lost command of the narrative. The other side was focused, well organized, and hit with their wedge attack ad strategy that was aimed at peeling away, eroding our majority by coming at it from the side, from these unintended consequences of the princess ad and the impact on children and dah-dah-dah, and at the very crucial moment when we should have been able to respond to that, return to driving our core messaging, which was winning, and countering to the degree necessary this attack, at that absolute moment we were in the worst disarray, the campaign was the least prepared, and we had the least money. So it was, you know, a confluence of bad luck.

05-02:29:34  
Meeker:

So was that August-September period of time, roughly?

05-02:29:37  
Wolfson:

I can't remember exactly. That sounds right.

05-02:29:40  
Meeker:

You know, what did you think when you first saw that princess ad?

05-02:29:45  
Wolfson:

Actually there was another ad before the princess ad that actually I misjudged, that I thought was terrible. It was an ad where there was a professor, he was like, “Do you think such-and-such is going to happen? You think such-and-such won’t happen? Think again.” And it was some, I thought, unconvincing, unimpressive professor, literally dubbed the professor, who was basically trying a grab-bag of arguments, and I thought it was so grab-bag that it was not effective and not good.

Well, I assume what they were doing was testing a variety of their different things, and then they pulled out the one that hit the hardest for the slice of people they needed to peel away, which turned out to be the princess ad, and that seemed like an effective ad, but also an answerable ad, particularly if you’re not just trying to answer it, but you are pivoting back to your core successful narrative. But again, all of that came to a head at the moment when we had the most disarray, the least money, and had lost command of the narrative, and we never regained command of the narrative throughout that entire campaign. So that even by the time the money came in in the last two weeks of the campaign, it was already now too late.

05-02:31:06  
Meeker:

When you say disarray in the campaign, can you describe that to me from your vantage point, what was going on?

05-02:31:09  
Wolfson:

Well again, nobody is totally in charge, so what happened was, you had a lot of good people who stepped up to build the kind of campaign needed, people like Geoff Kors of Equality California, Kate Kendell of the National Center for Lesbian Rights, Lorri Jean of the L.A. center, and others whose names you don’t remember because as soon as it got hot, they quietly distanced themselves from the thing they themselves had been part of. But this cohort of people, good people, many of whom had done good work up till then, many of them good close friends, working 110 percent, were working to run a campaign, and they hired campaign team and strategists and professionals and so on, but they also were having the same arguments with these new good strategists who had no experience with gay, no experience with marriage, everything we talked about earlier.

So do they defer to that person, do they not defer to that person? Who gets to decide that? What if half the movement people on the board, or steering committee, whatever it was, want to back this person and the other half don’t? Who gets to decide that? What if the funders think that—and so there was lots of room for uncertainty, for not knowing who exactly is going to get to decide this, what if you disagree, what is the right answer to begin with, people like Evan and others are saying this is the right answer but they have no proof, you know, all that kind of stuff.

So it was disarray in the sense that there wasn't a clear command structure, that command structure didn't have the full knowledge that ideally it should've been able to have, because of all these failures leading up to that point. It's California, so it's a big state with lots of big people with lots of big money and big ideas. There were a lot of good people in the mix, you know, doing their very, very best, but also trying to keep it together, and they were running out of money, and they didn't—when they really needed to pull it all together, they were most preoccupied with trying to get the money needed that funders failed to deliver on time, and that they didn't put a call to action out to the community to raise in enough time.

It turned out we were actually able to do all of that, to everybody's surprise. I mean, the movement had never done anything like this, raise \$40 million dollars in a few months? Nobody even had thought we were going to need \$40 million, let alone that we could raise it. But for the reason I just said, it didn't matter. Eventually they were able to raise it, because it came in too late, and then there was an effort to rescue, and then there were people distancing themselves from the rescue, or alienated from the rescue, and it was disarray.

So part of it was about the campaign structure and some of the lessons we hadn't yet learned but needed to learn, and that we got better at as we went forward in other campaigns—

05-02:34:05  
Meeker:

Well, what was the lesson around the campaign structure?

05-02:34:07  
Wolfson:

Well, some of the lessons were, you need a strong campaign manager, you need a clearer plan, you need to start earlier, you need to not rely on what uninformed, albeit expert, pollsters might say, you needed to be saturated in this, which goes along with starting earlier and giving yourself the margin on gay, on marriage—

05-02:34:33  
Meeker:

Hence the success of someone like Amy Simon later on, or—

05-02:34:37  
Wolfson:

Well, Amy Simon's polling was part of the mix of that, but that was, again, only part of the mix. Again, we had that intuition, but what Amy did was confirm the intuition in a helpful way, as did some other pollsters, Lisa Grove and others, and that was part of the synthesis that Thalia was able to do. But again, it wasn't just about message, it was also about structure of the campaign. It was also about delivery of the message. It was about building the kind of field and drumbeat over enough period of time to deliver the message and persuade enough people. It was about understanding better the scale of the opposition, you know, the degree to which they were going to be able to turn people out to an unprecedented degree, and that they were going to throw



kinds of resources that they had never previously thrown at this kind of attack before.

We didn't know that the Mormons were going to step up in that way, to that degree. We knew the Mormons would be involved. They had been involved and been our key enemy, along with the Catholic hierarchy, in Hawaii. But they exceeded their own standards in California.

05-02:35:49  
Meeker:

You know, I've heard it described that there was actually a reasonable response to the princess ad, but the October surprise happened when that lesbian couple brought their second-grade class to—

05-02:36:02  
Wolfson:

Yeah, I mean, there were a number of unfortunate things that happened, which probably happen in most campaigns. You sort of have to be prepared for them. There was that, there was the unfortunate quote from Gavin Newsom that could get replayed over and over.

05-02:36:18  
Meeker:

What was that quote again?

05-02:36:19  
Wolfson:

“Marriage is coming, like it or not.” Well, people didn't like being told “like it or not.”

Yes, to what you just said. But all of that had to do, in my mind, with the larger problem of having lost command of the narrative. If we had had command of the narrative, number one, through a sustained driving of our own core persuasion, not responsive to the enemy's attack but what was moving people in our direction, we'd be better able to withstand the attack. And then secondly, while having the capacity to drive in a sustained way our core narrative, to be able to respond and pivot back to the core narrative in a smart, strategic way.

What happened instead was, we sort of flailed, in part because we didn't have the money, in part because we hadn't fully prepared it, in part because the command decisions were not coordinated or sustained, because of the disarray in the campaign structure. Sometimes we were responding, sometimes we were doing this, when the response was—as soon as we had said the response, something happened that undermined the response and there was no response to that, you know. But none of that would've necessarily mattered if the campaign weren't being waged here, if it were being waged here. And partly that had to do with the structural stuff, but partly it had to do with the failure of funders and the failure of the leaders to engage the base enough to raise the money, which turned out to be something we could do, but we didn't do it in until it was too late.

05-02:38:00

Meeker:

Were you surprised that, you know, obviously it passes, the same night that Barack Obama wins the presidency. I remember, you know, going to San Francisco, I was living in Oakland, and in anticipation of the celebration of Barack Obama's win, and then, there I am in the Castro and the mood just changes a hundred percent. It was a hard night but the response to it nationwide was pretty strong and transformative, perhaps. Did you anticipate something like that would've happened?

05-02:38:42

Wolfson:

Yeah. I mean, because I had already lived through this, you know. In part, one of the virtues of having been Mr. Marriage for as long as I've been, I mean, I've lived through most of this stuff before, so what happened in California on election night 2008 was to me a reprise of what had happened in Hawaii literally ten years earlier, in 1998, and I never took any loss as being fatal or the end. It's painful, nobody likes to lose, it's hurtful, it's unfair, but I knew that there's such a thing as losing forward, and that this would shock the conscience of fair-minded people, which it did, and that it would awaken a lot of heretofore complacent gay people, which it did.

And we picked ourselves up in the new hopeful era of Barack Obama, which was the good thing we got that day, and continued working our strategy and moving forward, and went on in 2009 to the winningest year we'd ever had up till then. With the pain of California still stinging, we went on to win several more states, solidified a majority, kept working the strategy, began thinking about how do we take this to a higher level and push forward.

Unfortunately, the pain in California was compounded by a high degree of acting out on the part of much of the movement leadership and many of the funders and many others who had not been particularly present or helpful during the campaign, but now were second-guessing and excoriating and attacking some of the very good people who had made some mistakes, but who also had been the ones who'd been willing to step up and manage the thing at a time when others were not stepping up.

So some of the solid best leaders were consumed with this post-traumatic stress disorder dysfunction, intra-movement fighting that went on for about a year and a half in California, taking out a lot of the really good people and good partners and engines in the movement because they were either trying to apologize or cope with or navigate through the loss and figure out a pathway forward, dealing with horrible bitter personal attacks, ferocious assaults, people who should've shared in taking responsibility stepping away, people who could've contributed positive energy to moving forward instead devoting their time to trying to tear others down. And that took California out for a while.

And in classic human fashion, but also classic California fashion, the fact that actually the rest of the country was moving forward and that the strategy was still actually working and that yes, it was painful in California, but we were still, as a movement, winning was kind of lost on a lot of people in California who focused on all this negative intra-community attack and a lot of anger and a lot of self-expression in the form of protests and so on, which they then lauded as the leadership that was needed. So there was a lot of that going on.

Fortunately, painful as all of that was, it again was not representative of actually where we were as a movement and where we were going on the strategy and where this Freedom to Marry campaign was going and succeeding. And it actually, in some ways, did help accelerate the momentum, because it was a powerful wake-up call to a lot of people, non-gay as well as gay.

## Interview 6: April 14, 2016

06-00:00:07

Meeker:

Today is the 14<sup>th</sup> of April, 2016. This is Martin Meeker interviewing Evan Wolfson for the Freedom to Marry oral history project, and we are now in session number six. You know, we were talking about the passage of Prop 8 and some of the initial response to it as we finished up yesterday. This was all happening in the context of the election of Barack Obama to the presidency, and his election to the presidency was happening in the context of the great recession, as it came to be called, a major financial crisis that certainly was felt pretty strongly here in New York because of the finance industry.

What impact did that have on your work as far as fundraising and working with donors, and then combine that with the loss of Prop 8.

06-00:01:07

Wolfson:

Well, certainly I was aware of it, first of all because it affected my staff and our ability to give raises and stuff like that, so people were very mindful of it and very, obviously, concerned about it, and we had to basically freeze spending. We didn't lay anyone off or anything, but we had to go into a bit of a cautious pattern.

Also, and probably its number one effect, was not so much on the direct fundraising, but on my concern that when there's that kind of scare in the country, when there's that kind of economic challenge, people are less generous, people are less willing to give something to others. They see everything as a threat, as a concern, as change, as part of the fear in the area. So it just was on my mind that this may not be our best period of time for advancing on the freedom to marry and for being able to reach people as we had been doing so successfully. So that was something in my mind at the time.

At the same time, while Prop 8 was painful, as I was saying yesterday, we had a pretty strong work plan and pretty strong hopes for 2009 and continuing the trajectory that we had been on other than Prop 8, and were pretty hopeful that we were going to have a good year, which we turned out to have; 2009 turned out to be a great year of accomplishment for the freedom to marry strategy and for our campaign.

And as that moved forward, it kept us in a good frame of mind, but many of our colleagues, many of our movement colleagues were having challenges with fundraising and were having the kinds of pressures I described, so it just made it more difficult to work with people somewhat. But as I said, all in all, for us it was still a very successful period. And the election of Obama, I felt, was going to be a huge important lift for us, despite the blow of it coming the day we lost Prop 8, at that same conjunction, it signaled a very hopeful era for America and for our cause, even though Obama at that point was not yet where he needed to be, but I felt we could do business with this administration,

and it certainly wouldn't be the enemy that the previous administration had been.

06-00:03:41

Meeker:

Why don't we talk about Obama for a little bit. Certainly in ramping up to his evolution when it completes in 2012, were there doors opened to you already? Were you in conversation with some of his team at this point in time? Can you talk about that sort of behind-the-scenes lobbying?

06-00:04:06

Wolfson:

Right. Well, first of all, one of the differences between Freedom to Marry and some of the other political organizations, who we in fact were created to kind of push and spur and were necessary supplant, because they weren't doing what they were doing, is we weren't based in D.C. And even before that, I had been based in New York, here at Lambda Legal, rather than being based in D.C. So we were never part of the great game of Washington, D.C., which is obviously an important terrain for moving things forward, but also becomes a culture of self-dealing and back-scratching and enabling and climbing that really undermines some of the efforts to just push for an actual goal.

The world in D.C., for many of the players, becomes its own ecosystem, and you need to be in that ecosystem, because there are important players, there are people who are trying to do good, there are really key allies, there are key partners and colleagues in the work, as well as the decision-makers. But many of them get bought into a lowest common denominator, trading favors for today with backing off in order to accomplish for tomorrow kinds of dynamics. And so as outsiders to that, though seeking to figure out ways to work it, we were able to keep our eyes on the prize and to keep the bar high and to say we want this, we're not just trading this for that and that for that, for our own well-being and to get along and to get people to come to our dinners, or what have you.

So that was a big advantage. The disadvantage is we didn't have, and I didn't have, an immediate plugged-in network with the Obama team or the power structure or whatever, but had to find our way there and find the people and colleagues in that world who could help and who opened those doors. So my initial relation—although I had actually heard of Obama when he was a state senator and not a big name, from when I was doing work with colleagues pushing in Illinois, and on one of my trips there I remember early on, before he even ran for the Senate, he was a state senator, people saying this guy is somebody to keep your eye on, and I was, where is he on marriage? And I'd been told he actually is for it, but then he sort of has been not as—he's moved to civil union kind of position.

So actually, I had, number one, when he first came, really burst forth on the national stage, I had already heard of him from my work in Illinois and had heard impressive and smart characterizations and so on of him, but also had a

bit of a feeling like he wasn't doing what he needed to do already. So that was my backdrop on him. Then obviously, of course, during the campaign Freedom to Marry was a nonpartisan organization, never endorsed candidates, criticized or cheer-led for anybody, Democrat, Republican, any person. If they were doing the right thing, we pushed them and applauded them and worked to help them, and if they were doing the wrong thing, we criticized them and called them out no matter what the party and so on. We really played it nonpartisan.

At the same time, of course, personally I have my own personal views and my own personal political positions, and I was an early Obama supporter in 2008—personally, not as Freedom to Marry—even though most of my friends and most of the world, the gay world here in New York, were for Clinton, but I actually was for Obama.

So when he came into office, I didn't have a direct pipeline to the highest levels. I was good friends with and had been working already for a long time with his gay, essentially his gay liaison, Tobias Wolff, so I had that access. And of course I knew people who knew this and knew that, and as names began coming out, but I had no direct contact with Valerie Jarrett, for example, or David Axelrod or David Plouffe or some of the early leaders, or the Obamas personally. Nevertheless, well, even before they took office, when he was president-elect, I was invited as one of a number of movement leaders to write an open letter to the president about what he should do, and I did. And I laid out how significant his election had been, the dawn of this era of hope, which I truly believed, and he and I shared a very express affinity for Lincoln, whom I had written about before and had written about what would Lincoln do on the freedom to marry, and I sort of repeated some of those themes in characterizing what I thought the new president should do to be Lincolnian in his leadership, and that was a theme I actually returned to several times.

So that was what I laid out there, even before I took office. Shortly after he took office, they began reaching out to movement leaders through the office of public engagement, which Valerie Jarrett headed but Tina Chen was the main point person at the juncture. And I was invited onto several calls and to some meetings, and from the get-go I laid out what I believed he needed to do, and I was always putting it in terms of, "We believe you that you want to do the right thing, we believe we share the values, we believe you're going to do good things, as you keep telling us you're going to do them. You will never get full credit, however, for any of the things you do until you come out for the freedom to marry. Everything will be seen as inadequate, a half measure, a step forward, okay but what about. So why not just do what you need to do?"

And I laid that out consistently in a variety of ways in those first meetings and phone calls. And the other point I began pressing early on was that what we need is for them to be able to help us help them help us. So in other words, we needed them to take certain steps that would give us more to work with that

we could then create more space so that they could come and do the right thing, which would be of benefit to us and to everybody. That there was a way in which we still needed them to do things in order to get where we—in order for us to be able to do effectively what we could do that would then help them help us.

06-00:11:16

Meeker:

Can you describe that a little bit?

06-00:11:17

Wolfson:

So for example, the best example was that early on I became one of the most focused and clear voices from our movement, both within movement discussion circles about what we should ask for, and in my own direct to then pressing the case with the White House, which again, usually came a little obliquely to where most of the movement leadership—most of the movement leadership was in D.C., and they were meeting with them and having conversations with them sort of on this track in D.C., in the day-to-day kind of dealings. My dealings were coming in from the outside more, and not as part of that routine engagement with the White House. It was always a bit of a more can I talk with you, or them reaching out and including me on something. So there was always a bit of a more distinct track that I was on, a separate track.

06-00:12:11

Meeker:

So that routine engagement, is that largely around HRC and their building in D.C.?

06-00:12:17

Wolfson:

HRC, the Task Force, National Center for Transgender Equality—the D.C.-based organizations—the ACLU, our colleagues in the women’s movement, in the racial justice movement, the Leadership Conference on Civil and Human Rights. You know, there’s sort of a constellation of the Beltway, and I don’t mean this pejoratively, establishment of our movement, in alignment with other progressive movements. CAP, the Center for American Progress, Third Way was sometimes in the mix, another Washington think tank organization. And this is the milieu they swim in. They go to Capitol Hill, they go to the White House, they go to the administration, they meet with the agencies, they lobby, they go to the same parties, and so on. And I don’t mean anything negative about that. That’s the way they do their work, that’s the field of their work. I was brought in to some of those things, I knew many of those people and could work with them. I would occasionally come down to D.C. or be there for it. But I was really more on my own track, in alignment with particularly the legal groups, who would also be somewhat on a separate track, except for the ACLU, which was also, which sort of had a foot in both camps because they were in D.C. And in alignment sometimes with the political groups. But Freedom to Marry mostly had its own voice and its own cause, particularly in the earlier days.

So an example of the help us help you help us dynamic was, one of the things I began pressing early, and urged my movement colleagues to press, was for the administration to adopt the position that sexual orientation discrimination warranted heightened scrutiny, and that in reviewing laws like so-called DOMA, the so-called Defense of Marriage Act, which we were early on planning to challenge, led by Mary Bonauto, that at least the administration should adopt that appropriate standard, whether or not they were willing to have the courage to come out in support of the freedom to marry. Whether or not, or even before, they were willing to come out against DOMA, they ought to at least agree to the right standard and press for that in court, which would be helping us then helping them, because then we could bring down DOMA under the right standard, which in turn would help them get to the right place, which would help us.

So there was an example of them being able to take a step that they ought to take, on principle, and that was the right thing to do, that even if they didn't yet have the courage or the political will or believe that the timing was right to come out fully in support, would help them get there and would help us help them get there. So that's probably the cleanest, best example of something I pressed very early on as a movement priority, and as our own putting it on the table. And it was on my list of the things I was asking for the administration, which then always began and ended with, And by the way, no matter what you do, you're never going to get full credit, you're never going to maximize, and you're never going to be where you need to be until you come out in support of the freedom to marry, which will make everything else easier for you no matter what you think. And I was a clear voice pressing that.

So in the beginning, of course, that was a minority voice. It was certainly not the predominant ask of most of the movement, and it wasn't even on the top list of priorities. But I pushed particularly the heightened scrutiny from the very beginning, early on, and of course the administration, to its immense credit, did not only adopt the heightened scrutiny position, but went even further than I specifically asked for them by closing the loop on that and saying, "And therefore we cannot defend DOMA." I didn't even ask for that in that taxonomy. I asked for the heightened scrutiny, I asked for basically the moral advocacy and support of freedom to marry, and I asked for their support on our legislative bill to overturn DOMA, the Respect for Marriage Act, which they also did. But they not only gave me what I wanted on the first and most important, quote, incremental step, but they closed the loop on it in a very principled way.

06-00:17:08

Meeker:

Can you explain for me how you actually get to heightened scrutiny? Because I understand that the federal courts, the standard was rational basis review, right? So there was understood to be a rational basis for some discrimination, largely based on child rearing, that kind of stuff. How is it, then, that—and this is the Justice Department I imagine you're talking about—how is it, then,



that the Justice Department can, in the face of what their overlords, the federal justice system, the federal courts, are saying it's rational basis, on what basis can they go forward and say it's our determination that it needs to be reviewed under heightened scrutiny?

06-00:17:52

Wolfson:

Well, first of all, not every circuit—you know, the United States courts, the federal courts, are in different circuits based on the regions of the country.

06-00:18:02

Meeker:

Thirteen circuits.

06-00:18:03

Wolfson:

In some of the circuits, the federal appellate court had made a determination—by the way, always based on a flawed foundation, not just that they got it wrong, but they were basing it on *Bowers vs. Hardwick*, which had been overturned. So the rationale for the wrong standard that some of the circuits adopted no longer existed. But in some of the circuits, the appellate court had spoken. In those, the best the Justice Department could do would be to advocate that this ought to be reconsidered and they should go to the right standard, but the lower courts would be bound, and then the circuit court could theoretically revisit the question. But there were other circuits where it hadn't yet been settled at the appellate level, and therefore the argument for what level of standard applied was still very much an open argument.

06-00:18:58

Meeker:

Well, then, how was it that the Justice Department can sort of enter into the fray and make a proactive judgment—

06-00:19:06

Wolfson:

Okay, so we, let's say Mary Bonauto, as she did, brings the first challenge to the so-called Defense of Marriage Act after the Obama election and files a case and so on. The Justice Department is now tasked with defending this federal statute. One of the threshold questions is, if there's an equal protection or a fundamental rights challenge to the discrimination, one of the threshold questions is what level of review applies. And so the Justice Department has the opportunity to concede that the appropriate standard of review is heightened scrutiny, because of the factors for determining what level of scrutiny applies.

Now, all of this is the classic approach to equal protection and fundamental rights jurisprudence. So even within that, they could do what I just said. In addition, my view, and I've had this battle with friends in the academy for twenty to thirty years, is the court has kind of moved away from even this kind of express, formal, tiers and factors analysis on determining heightened scrutiny, and that's a source of frustration to many of the academics who, like me, learned it all in law school and always are looking for the buzzwords and

complaining whenever a justice doesn't exactly follow the taxonomy that we all learned.

Whereas my argument is, they don't do that anymore—that's not what heightened scrutiny is anymore. Heightened scrutiny now looks like this, like what they're doing, particularly Justice Kennedy, and we ought to just call that heightened scrutiny and use it. Basically, heightened scrutiny boils down to who bears the presumption of showing that a law is constitutional or unconstitutional, and who gets the benefit of the doubt, essentially. Who has to show more, and how much more?

And so what heightened scrutiny is in its essence is a presumption of unconstitutionality that is triggered by certain suspicious factors or suspicious classifications, or sometimes we say suspect classes. I prefer to think in terms of classifications. In other words, if the government is discriminating on the basis of race, that immediately raises a red flag. Well, it should raise a red flag also if the government's discriminating on the basis of sex, or sexual orientation, because that classification is presumptively dubious. There's presumptively not a good reason for it, would be the argument, and therefore it should warrant heightened scrutiny. The government should have to show more in order to justify that discrimination. It should have to show a true reason for the discrimination, not just some made-up rational basis, well, as long as you can imagine anything, even if it's not the reason, if you can imagine it's a reason, it's good enough.

So number one, even within the normal way of doing heightened scrutiny analysis, the argument was the Justice Department, the administration, should urge the courts to adopt the right standard. And number two, I would argue further, we didn't get into this right away when we were having these discussions, but as the years went on, my view is also heightened scrutiny is not as formal and tiered and buzzwordy as it used to be anyway, so it's even easier to argue for a presumption of unconstitutionality. And ultimately the administration did do the right thing.

And by the way, just to clear up a point, the legal groups, the colleagues I was working closest with, were the primary advocates with the Justice Department in making, eventually, the same case, and I, obviously, was coordinating with them and aware of those conversations. My conversations, my direct involvement, were more with the White House and with the various executive agencies, not the Justice Department. I left that to the lawyers.

06-00:23:21  
Meeker:

Well, I'm curious about those interactions, and sort of framing it a bit. You know, there has been more than one candidate for higher office whose political ambitions were jettisoned, were destroyed by the accusation of flip-flopping; we just go back to candidate Kerry, with "I was for it before I was against it," or something like that. I mean, that kind of thing says to the

American public that this candidate is phony, and therefore you can't really trust them. I mean, there's a long history of this, where candidates are stuck, they're not allowed to change their minds. You know, in 2008, when Obama was running for president, and he sits down with Rick Warren, a mega-church pastor, and says, "Well, for me, with marriage God is in the mix, and for me personally it's between a man and woman. Yes I think that civil unions or whatever are an important solution, but marriage is reserved for a man and a woman." You know, he really does put himself into a box. How do you and your colleagues in the freedom to marry movement help him out of that box?

06-00:24:39  
Wolfson:

Well, in, both by pushing and by working to create space for him to, in his words, evolve. I called him out, and to their face called him out, on what I'd always described, I always used the phrase, the one jarring false note from President Obama is this position, that nobody believes it's his real position. It can't be his real position, because he's too smart to have the position that there's no constitutional command here, there's no—that even if you had these religious values and views, that somehow that would trump the constitution. That's now how the law works. That's not how marriage works under the law. And he obviously has to know that. Therefore no one can believe it's his real position.

And he therefore loses, a) because he's not where the people who want to be with him want him to be, he's not on the right side with the people who support him, and b) even those who don't agree with marriage don't like inauthenticity. I actually don't think the issue people have is with, quote-unquote, flip-flopping or changing your mind when the facts warrant it, or when circumstances change. I think the American people can totally understand that. What people don't like is inauthenticity cowardice or manipulateness or deceitfulness. And in this instance, contrary to his brand, contrary to one of the things people liked most about him, he was being inauthentic, and I made that case consistently to their face. It would always be the most awkward part of the conversations.

06-00:26:30  
Meeker:

Can you give me a description of one of these interactions?

06-00:26:32  
Wolfson:

Well, the primary person I wound up dealing with through my direct involvement with the administration, as opposed to the messengers I would help send in or be part of the vectors of communicating with the White House, which, again, there were many colleagues, many organizations, including some of the ones I described as the D.C. base, who eventually we were working on the same path and trying to convey the same asks and the same messages and coordinating—not in the early days of the administration, because everybody had their own different idea of what those asks should be and where marriage fit in, but when it got to the right point, we were, through multiple vectors, coming in, and I was part of that, whether the direct front-

facing engager or the colleague working on the engagement. My direct engagement with the administration face-to-face overwhelmingly was with Valerie Jarrett, and I would meet with her and talk with her and send messages through her team and e-mails and so on.

So Valerie, of course, is a very close friend of the president's, certainly has his ear, his trust, his heart. She 100 percent has him as her top priority, and his well-being and the success of his administration. And she would bristle when there was any suggestion, no matter how diplomatically put, that he personally was being inauthentic or that there was something wrong that he was doing. She could certainly live with the idea that we don't like where they are at the moment and so on, that was obviously why we were there.

We pretty early on, I think, really clicked and were able to have direct conversations with one another, and I think she was very direct and honest with me in trusting that I wasn't there to embarrass them, that I was being very direct about how I was going to push them or criticize them, which I then would go out, if appropriate, and do, but that I wasn't going to sandbag, I wasn't going to cheat. And so we were able to have a real relationship where we could say things to each other and communicate things to each other, knowing that this part of the conversation is here, and now I'm going to criticize you for your public position and not for the degree in which you let down your guard and we talked some.

So once we obviously established that trust, we had a very productive ability to have real conversations with each other, and the one part where she would really get her back up would be where there was any hint of a personal criticism, personal in a professional way, of the president, which there was that one element that was a personal criticism, that he was being inauthentic. And then of course we would get past that moment of bristling and go to the political point I was making about that, that it was going to hurt him, that we could help him, that he could help us help him by being more authentic, and that actually doing the right thing would be doing the right thing politically.

So a lot of the engagement we did have with them, directly and through our best avenues, was to show, and also to help build, the political climate that he would benefit from by doing the right thing. So one of our primary avenues in, and I worked closely with him as well, was the president's pollster, Joel Benenson, and he proved to be an extraordinarily helpful ally, whom I also worked with and talked with a lot and delivered messages through, and asked him to help us obviously on his own professional side, verify the intuitions or the points we were making by showing the power of the president's doing the right thing with the people who wanted to be with him, and that he wouldn't really lose anything by being in the right place, because he would never be anti-gay enough to satisfy the others, was always my argument.

So we were making a combination of certainly the moral exhortation, but we mostly didn't have to do that. I certainly didn't spend a lot of time doing that with Valerie, because I actually believed they did want to be there. I believed she was an advocate and that I really also believed that's what the president really believed, even though officially the line was, he's where he is and maybe he's going to be able to evolve, and meanwhile he wants to help with this, he wants to help with that, he had the courage to do this, he had the courage to do that, all of which was true, and everything he did that was courageous and right I would appreciate sincerely and say this is a further reason why you now need to be where you need to be, and by the way, you're not going to get credit for this until you do that. So that was the dynamic of the conversation. But we didn't have to spend a lot of time on the moral exhortation for it. What we were spending more time on was how could he do it, how could we help him, how could he help us help him. By saying this, it gives us this, and then we can show that. And we marshaled a political case and a set of advice on how to present the evolution to the American people.

And so, for example, we were saying to him often—we would describe the messaging research we had done and had helped shepherd through, that we talked about earlier, the importance of, for the people we needed to reach—his base was already there. Seventy percent of Democrats, young people, Independents, gay people obviously, so he was not going to have any problem, really, politically with all of those. The question was, how could he explain it, his evolution, and how could he do it in a way that would not hurt him with that last tier of people, the reachable but not yet reached, the soft Democrats, soft Independents, etc., whom he didn't want to lose.

Now, they never said to me, "Show us a raw political case." To be fair, I want to be clear, it was never in a transactional kind of discussion. We were discussing it on the presumption the conversation would proceed, the conversations would proceed with the artifice that politics don't matter, polling doesn't matter, the political cost doesn't matter, we're talking about the merits. And so we would both have that conversation, but at the same time, knowing how things work, I was working hard to convey to them and to reinforce for them the politics, and that they work in our favor, they work in favor of him doing the right thing.

Valerie never said something like, "Well, we can't do this unless you show us blah-blah-blah." It was never said like that, and it was never framed like that. But you want to be sure to cover all the bases, and so you want to be able to show them that not only should they do this, they can do it, and here's why, and by the way, maybe even they have to do it. If the 2012 election was about ginning up your base and showing authenticity so that even people who disagree with you are still respecting you and willing to stand with you, particularly in contrast to a true flip-flopper, and if you want to have the biggest turnout and the biggest excitement and recapture the Obama magic of 2008 in 2012, you need to end this jarring false note, and here's the best way

you can do it. These are the kinds of conversations, without specifically transactionally talking about politics, that we were having both directly and through people like Joel Benenson and other messengers getting through to Axelrod and Messina and Plouffe and so on.

So we would be sharing with them not just what they should do, but how they should do it. And I remember saying at one point, “Look, I would love it if you would call me in to the Oval Office as the president of Freedom to Marry and make a statement, or if you would come to an event, and by the way we don’t have events, but we’ll have one for Freedom to Marry and let the president come and speak there and talk about why he now supported the freedom to marry and all that, but that would be the wrong thing to do. You shouldn’t do it that way.”

“What you should do is have a conversation with a reporter that’s an interview, not a press conference, that’s more conversational, where you can talk in a human way about these human values with those kinds of storytelling, emotional, authentic connections that we had begun ourselves propagating to reach the not yet reached segment.” I said preferably make it a woman reporter .We went through this, and we delivered that message to them directly, but also through other messengers, including, for example, Ken Mehlman and Joel, and then other people who would get to Axelrod and Plouffe and so on.

So ultimately, of course, when the president came out in support of the freedom to marry on May 9, 2012, he did exactly what we had encouraged, and he did it the right way, and he talked primarily not as a lawyer, not as the commander-in-chief, not as the president, but as a father and as a person who had thought about his values and who had heard from his daughters about their values and their experiences, and if he wanted to teach those values to his kids, he would have to live up to them. And he also talked about the staffers he knew and watched them raising their kids and caring for one another through life. It was exactly the way we had found that the not yet convinced could move.

And sure enough, when he showed that moral leadership—and by the way, we were getting lots of pressure from within the movement, that whole D.C. group, as well as some journalists, to not push for this before the election, that Freedom to Marry was making a mistake in forcing him to come out in support of the freedom to marry before the election. And by the way, we had mapped that out as one of our top goals for 2012 and had mounted, in particular, a program that we can talk about in a minute or two, which was we launched a push for the Democratic Party to enact a freedom to marry plank, an explicit freedom to marry position, in the Democratic Party platform.

06-00:38:06  
Wolfson:

Right, that was the name of the campaign, but it was to get this plank, and the idea was, we could bang away at that and build support that would create space for him, but would also put pressure on him, and it was a way we could bang away at him without banging away at him. And again, we told them we were going to do this. None of this was sandbagging—you know, “I’m coming in to meet with you, I want to talk about dah-dah-dah, and by the way, you need to know we’re going to be announcing blah-blah-blah.”

And we squeezed them, we squeezed them, and they knew we were squeezing them. So all of that was going on, but when he did it, he did it so well and with such courage, again, over the objections we had been getting from our own colleagues not to push for this before the election. Well, he had the courage to do it before the election. And of course we had made the case that this would actually help you. It would certainly help us, but it would also help you, that it would mobilize your base and remove this one false note and be embraced by the American people, and that even people who disagreed, this is not what they were going to vote on, they would live with it, and the ones who didn’t like it were not going to vote for you anyway. We made all these cases to him, and they went ahead and did the right thing, took that leap, and of course it did prove to be a tremendous galvanizer for him and for us. It was an extremely important permission giver that gave millions of Americans, I truly believe, the encouragement to think anew, and it created space for other important voices who had been foot-dragging to come on board. The NAACP, whom we had been working with and on and in for several years to move things forward, and had a very supportive leadership under Julian Bond and Ben Jealous, but the organization itself had taken positions against discrimination but not yet willing to expressly come out for. After President Obama did, so did they, and several others came on board as well, and pretty much every senator, every Democratic senator, literally, I think, all but one or two, eventually cascaded in support.

And we saw support grow amongst parts of the public. African-American support strengthened, and that proved dispositive in at least one of our four ballot measure races. It’s why, I believe, we won in Maryland. We won four for four, which was our other big goal of the year. And I do think without the president’s leadership, we might not have won Maryland.

06-00:40:56  
Meeker:

You know, I think that the way you describe flip-flopping makes a lot of sense, and I think you’re right, that it’s not about the act of changing of your mind, it’s about being authentic.

06-00:41:07  
Wolfson:

When I testified in Congress one time, Dick Durbin, the other senator from Illinois who had served with Obama in the Senate, was on the dais and he was speaking, and one of the witnesses basically called out the members of Congress, saying, “You know, some of you voted for DOMA.” We were now

testifying for the repeal of DOMA, essentially. And they were saying, “Well, you voted the wrong way.” And Dick Durbin said, “I think often of one of my fellow state political leaders, Abe Lincoln, who said, a propos of changing your mind, ‘I’d rather be right some of the time than wrong all of the time.’” And I always loved that line. Yeah just because you were wrong before is not a reason to cling to being wrong.

06-00:41:58

Meeker:

But to change your mind, it takes some time, and I think that another way of being inauthentic is just going as the wind blows and changing your mind in a way that seems not deliberate, or too quickly, opportunistically. And so it was almost like this sort of four-year-long or three-year-long drama that was playing out, whereby, I don’t know if it was hints that were dropped, I don’t know how well choreographed it was, but there is a point in time, and I can’t remember what year it was, he does come out and says that, “Well, I’m evolving on the topic.” And, like, that was enough to know the trajectory, that his mind was changing and that it prepared, it inoculated him against charges of inauthenticity because—

06-00:42:49

Wolfson:

Yes. He stopped saying bad things, which was one of our early asks: “Stop saying this religion stuff, which you know is not true and doesn’t work and is insulting. Evolve. If you can’t evolve, start talking about evolving.” And I agree with you, he did that, and of course he took these other steps, each one of which then made it harder—it made his other position more untenable, but also moved the ball forward. All good.

What I would say about that—over time, I got a better appreciation of their, his style of leadership and how he approached things. I didn’t fully agree with all of it, but I could understand it and respect it and work with it. And certainly he did many admirable things along the way to the admirable thing. But he and Roosevelt both had this—and Johnson has a quote along these lines as well. It’s essentially the kind of, the presidential school of make me do it. “I agree with you, you now go make me do it.” And I think President Obama really believed that whether you want to call it leading from behind or FDR—King George of Britain at the time once wrote a letter to FDR basically saying, “I so admire how you have led public opinion by letting it get ahead of you.” And there was this dynamic where Roosevelt would do enough to get people germinating and thinking, and the pressure would build, and he would then go where he wanted to go, but wouldn’t do it until he thought the American people were ready to be there.

I think Obama has that same leadership style, which he would characterize in Lincolnian terms, of President Lincoln obviously believed that slavery was wrong, but wasn’t aligned with the most radical of abolitionists, didn’t take immediate all-out steps that, in Lincoln’s mind, and I’m sure Obama’s mind, would’ve actually been counterproductive at that point, because the public



opinion and the times were not ready, and so on. And I think that is how President Obama thinks about it.

I actually admire that and appreciate that and share that historical understanding and respect. My difference with the president on this point, which ultimately then got resolved, was that I sketched out a piece where I basically said, "It's true that Lincoln didn't do everything right away, but he put the moral lodestar out there and never wavered from it. He never, he never didn't say that slavery was wrong. He may not have acted immediately in every instance to take the most radical steps to quickly dismantle slavery and then possibly have it blow up or lose Kentucky to the Confederate side or whatever. He maneuvered cautiously toward the goal, but he was always clear about the goal. And you are not yet where you need to be on that, was the point I would be making, even within the leadership approach that I think he has."

06-00:46:12  
Meeker:

What kind of interactions were you having with the vice president and his team?

06-00:46:16  
Wolfson:

Again, some, some, through channels, not face-to-face. I interned for him when I was in college. I was a summer intern when he was a senator, back in 1976. But my primary dealings were with the White House.

06-00:46:36  
Meeker:

Did you have any sense, I mean, was that truly a misspeak on his part? [When he proclaimed his support of the freedom to marry in advance of President Obama.]

06-00:46:47  
Wolfson:

What I believe happened, and again, I don't 100 percent know, I know what they've all said and I know what was happening, so I would say that what happened was that the president had made the determination that he was going to come out in support of the freedom to marry and was looking for and positioning for the right time and place in which to do that, as we were talking about earlier. And the vice president may well have been part of those conversations and certainly would've known of it and probably was advocating for the right thing as well, because I think he too was ready to be in the right place. And I think what happened was, he wound up getting invited on the TV show at this point where he knew where it was going to go, and he didn't want to be the last one saying the wrong thing. I don't believe he did it in order to, quote, force the president's hand or to cause a problem or something. I think he did it in an authentic way, because that's what he believed, and he knew it was consistent with where they were going to be, and he may not have fully anticipated that it would be received the way it was received, as creating an awkward moment and so on, which of course it did, and which we of course pounced on, and I remember saying at the time no

matter how difficult they may think it is for the president to evolve and come out in support, he certainly doesn't want another day like the one he had today. And two days later or whatever it was, they called the interview and did the right thing.

06-00:48:27

Meeker:

But you know, I think actually I was speaking with Sean [Eldridge] about this in our interview, and if you go back and actually read the transcript or watch that segment of the interview, he doesn't—you know where he's going with it, but he's not so forceful, right?

06-00:48:45

Wolfson:

The president.

06-00:48:46

Meeker:

No, the vice president.

06-00:48:47

Wolfson:

Oh. Well, see, again, I don't think he went on intending to announce. I think he was asked the question and it was kind of like, well, how do I answer this in a way that's true to what I believe and where we are, the administration, where we're going to be, and I think he just said it the way he said it, you know. That's why I don't think he went on there to try to force the president's hand or to break the news. I think he was genuinely trying to answer the question in the right way.

06-00:49:19

Meeker:

But then if you look at the way in which Freedom to Marry spun it, it seems like you guys really did turn it into something that perhaps it, not only was it not intended to be, but perhaps—

06-00:49:31

Wolfson:

Wasn't 100 percent.

06-00:49:32

Meeker:

Yeah.

06-00:49:33

Wolfson:

Well, I think it's fair to do the math when these guys say something, and not just the president and the vice president, but when a politician says something we're not idiots. If they're not against this and they're not against this, well then, they're for that, you know. It's just, I think it's fair to say that.

06-00:49:54

Meeker:

So let's talk a bit about the sort of quickening of the legal work that's being done.

06-00:50:02

Wolfson:

Well, I'll give you another example of that, by the way. George H.W. Bush George Bush I, was a witness at the marriage ceremony of one of his, I think,

former staffers, possibly current staffer, to her wife. They got married, and the Bushes went, George and Barbara, but not only attended the wedding, but signed the license the certificate as a witness. I call that supporting the freedom to marry. If he had just gone to the wedding, I think it is sort of showing support. It's certainly refusing to condemn. But you could debate whether someone could not really support it but be there for their friend, be there for loving them. But if he's going to sign as a witness the legal document, I'm sorry, that is supporting the freedom to marry, and we called it what it is. So that's an example of how I would look at it.

06-00:51:07

Meeker: Did their camp respond to that?

06-00:51:08

Wolfson: No.

06-00:51:09

Meeker: They just let it go.

06-00:51:10

Wolfson: Because I don't think it's debatable.

06-00:51:14

Meeker: So, as I was saying, the quickening of legal work, you know. Iowa falls in 2009, there are a whole host of other—

06-00:51:25

Wolfson: Iowa rises in 2009.

06-00:51:28

Meeker: Yes, Iowa rises in 2009, and there are a whole host of other litigation that's happening around the country Lambda, ACLU, GLAD, etc. And I'm wondering if you can tell me a little bit about your work alongside the legal groups at this next stage, where you're really going out and proactively, or the legal groups are really going out proactively into states.

06-00:52:00

Wolfson: Yeah. Well, there's a little bit of a faulty premise there, because the legal groups were already doing that even before, in the prior period. Remember, for example, in 2006, I told you, was the horrible month because we lost several cases. Well, they were the ones doing these cases. So post Massachusetts, we were all working to get the second, and the third and the fourth and the fifth and the sixth, states, and of course when I say we were all working, the litigation groups were doing the litigation and some public education, and Freedom to Marry was working to create this national climate and move on the three tracks that we always moved, in order to create climate for the litigation to succeed. And we were also looking at and working with other partners, as well as them, on where we could maybe begin racking up legislative wins and so on.

So remember, the strategy was to win in the Supreme Court, having created the critical mass of states, the critical mass of support, and at the appropriate moment tackling and ending federal discrimination. So from 2005 till 2010, we were doing all of that, and they were doing those cases as well, it's just that we didn't win many of the cases we had hoped we would win, until finally in 2008 we then won, after Massachusetts, the next one, which was California Supreme Court, but we had already then risen through and lost in the New York court of appeals, the high court of New York, we had risen through and lost in Maryland, we had risen through and lost in Washington State, and we had risen through and we then debated, do we call it a win or call it a loss when the unanimous New Jersey Supreme Court ruled, much like Vermont, that the state must treat gay couples equally, and then the question was how.

And with New Jersey, because we had had so many losses, I think it was the fourth that came in after this horrible period of losses, I really struggled with do we need a win now and call it a win, or do we call it a loss. So I came up with the catchphrase which played well, which was "Happy, not satisfied." And we hailed it as a step forward, but still need to keep going. But the legal groups were working very, very hard during all that period. So what you begin seeing in late 2008, where we win, first we win in California then that's taken away, and we win in Connecticut, so by the time 2008 comes to an end, we still have won our second state.

06-00:54:38  
Meeker:

There's this algorithm that's going on here that's a bit mind-boggling, actually, and that is I think really when the history of this is written, it's not just Windsor or it's not just *Obergefell*, it's not just *Perry* and not just *Goodridge*, it's really hundreds of cases that go up to a certain point, sometimes they're knocked down, sometimes they're combined with other named cases, and I think that there is really a lack of public understanding about how many cases there are. So then how do you—

06-00:55:14  
Wolfson:

And not just cases. Remember, also during that time we were fighting in legislatures, and we began winning in legislatures. You know, for example, what set the stage for the wins of 2013, where we won, brought down DOMA, the heart of DOMA, was, first of all, several cases against DOMA that we won in lower courts before that, starting with Mary's case, and then everybody began getting into the act and everybody—when there were like eight or nine or ten and we won, I think, all of them, just by luck of the draw, the Windsor case is the one that went to the Supreme Court, but during that period also, we won in Vermont through the legislature. We won in—

06-00:55:54  
Meeker:

Maine.

06-00:55:54  
Wolfson:

—New Hampshire. Well, we won in Maine and it was taken away, and then we had to win it at the ballot, right? We won three other ballot measures, which I think more than any one single thing was the political center of gravity shifter in late 2012. But another huge political center of gravity shifter that helped set the stage for that was winning legislatively here in New York. That wasn't a court case at all. We had already lost the court case, so we had to learn how to do it in the legislature, which we tried and failed, and then tried and succeeded.

So, I mean, that's what was going on during this period. The idea that the, sort of the summit of a *Windsor*, the summit of an Obergefell the attempted summit of a *Perry*, was sort of the magic thing that won everything, is wrong even because those didn't come out of nowhere, and those didn't win out of nowhere. They won as the culmination of this broad multifaceted, multi-methodology, multi-front campaign.

06-00:57:00  
Meeker:

I guess what I'm getting at, though, is, in view of this desire to have a broad multifaceted multicapacity campaign, it's like the legal cases, and to a lesser extent the legislation, in the legislatures, is moving forward at such a pace, how then do you, running, in essence, the public education campaign, attempt to keep up with the quick progress and the exponential expansion of the number of battlefronts across the country? I mean, it seems to me it's sort of like all this stuff is happening at once. How do you heading up Freedom to Marry, with expanding resources but still limited resources, decide what fronts you're going to join the battle on in recognition that there's legislation here and that there are legal cases going forward here, and the legal cases like in Iowa, would have legislative or referendum in California, implications.

06-00:58:13  
Wolfson:

Well, first of all, Freedom to Marry wasn't only a public education campaign. Freedom to Marry was an engine and a partner in driving the political organizing that was necessary, both at the national level and at the state level, as well as also, when we started pushing in Congress, at the federal level. We hired lobbyists, we worked with campaign teams that we would help build on the ground in key states where we were pushing for legislation.

06-00:58:42  
Meeker:

Well, you become a c(4) too.

06-00:58:43  
Wolfson:

We became a c(4) in order to raise and channel that money and in order to hire that kind of staff and hire lobbyists and so on, something we weren't able to do in the beginning directly, we had to do through others, but that wasn't working, so we morphed in order to be able to do that. So all of that, that's political organizing and lobbying, not just public education. We deepened and broadened our public education effort. We created this whole digital program

that was better than anyone else's in the movement, in order to provide the back end of the multifaceted national and state campaign battles.

We worked hard to raise a lot more money, both directly and into the field, whether it went through my watering can or not, as long as it was coming into the field and we could champion and advise. So we were immersed and connected to enough of the battles that we could be counseling funders and prospective donors where they should invest and why they should invest more, whether, again, through us or through our partners or through the new campaigns we were building as we learned how to build these team campaigns, New Yorkers United for Marriage, New Jersey United for Marriage, New Mexico United for Marriage, Why Marriage Matters Ohio, Why Marriage Matters Oregon, I think, and a whole bunch of others. We had fifteen or sixteen or—I lost track now of how many of these state team campaigns that we built and shepherded with other partners.

And, of course, I was deeply connected to, though not directly doing, the litigation. Now, I didn't have to read the briefs in every single case. We knew what the legal arguments were. I mean, it's a lot of work and it was in good hands, and the legal groups were champions and worked really hard. Cases we lost, we didn't lose because they weren't litigated well. And then, of course, some of the cases we won. They didn't need me as another set of eyes on the brief most of the time. Sometimes we'd kick around an argument.

More often, Freedom to Marry's role with regard to litigation would be to help enlist amici friends of the court to work, to use our on the ground organizers or our connections with the state partners whom we were building and working, or our public education left, to try to bring in more signers on a friend of the court brief, or more messengers in the media in that state that would help be shaping the climate so that that state's litigation had a better chance of succeeding. Those are the kinds of ways in which we were working.

And we were all about one thing. Our one thing was driving this multifaceted strategy, the road map to victory, to marriage. So it was our job to be not just aware of everything that was happening, but to actually be helping it. Now, in some cases, helping it meant doing it. In some cases, helping it meant assisting those who were doing it, or bringing them together and trying to enforce a bit of collegial sharing that could—in some cases it meant it was mostly going pretty well, and they just needed some advice or some shared expertise or lessons learned from others, or money. And in some cases it just meant knowing it was happening and it was in good hands and it was going. But it was our job to have all of that.

06-01:02:20  
Meeker:

Could we walk through some of those examples? Maybe Iowa's kind of an early one, and I guess what is the nature of the interaction between you and, was that a—was that Lambda? Which one—

06-01:02:35  
Wolfson:

Yeah, Lambda brought the case in Iowa. But even before the case, we had done taxonomy, we had done what we called, I think we called it the matrix of analysis of all the states based on a number of factors, and this was a mechanism I had created and that my colleagues at Freedom to Marry shepherded, in part to guide and assist and assuage the funders who were part of the Civil Marriage Collaborative. By having this matrix, we could be showing them this was, there were metrics and there was a way of looking at this that they could make scientific decisions about where to invest. And it was in part also to show them that there was buy-in. So the matrix consisted of a number of factors that a team of activists agreed on. Things like what's the composition of the court, what's the power structure of the state, the governor, the legislature. Is there a constitutional amendment process that could overturn this? What's the polling in the state? What's the state of the gay infrastructure? Where are our allies in the state? And we'd have all that.

And then we would, in a team of organizations, invite buy-in, and Freedom to Marry would shepherd this, to grade the states on each of these factors. And so people who knew more about Iowa would give information about Iowa. People who knew more about Oregon, including the leading state group in Oregon, one of our major partners, Basic Rights Oregon, and so on, would answer some of those questions. And we would then discuss them and we'd have these rankings, and then we would assign points based on those qualities, those attributes, which would then give the state a point a set of, a number of points. So everybody could look at this shared body of information and understand why the argument was we should invest in these five states as the most likely states where we could win in one year, two years, three years, whatever. And different people might have different ideas about what the respective grades ought to be. So they might say, well, this factor should get three points instead of two points, and they could adjust accordingly. But everybody could see where it was. So this was a mechanism we used in the first several years to show that there was a method to it, that there was buy-in on the elements and the information, and that we were working collaboratively to share this information.

And then, based on that, it was pretty clear what the first states of opportunity were. Now, if we had had unlimited resources and if I'd been king of the world, we would've been working in many states to tee them up along the way. But if you had to prioritize, here are the three, here are the five where we can most likely win the soonest by doing X, Y, and Z. So Iowa was one of those, because we thought the court composition was good, it had a good constitutional jurisprudence, it had a good history, contrary to what people might've thought, of being willing to do things early in moving toward equal rights and so on, etc., etc., etc.

So there was a push to try to get support and effort into Iowa, and I was able to bring the CMC, the Civil Marriage Collaborative, and those funders who

were working to fund the state strategy of Freedom to Marry into early and pretty much sustained support for building public education, and then eventually a strong apparatus alongside the case that Lambda had not yet brought but was willing to, and then did bring, and the idea was to start public education, then to do public education in alignment with the case, to give Lambda some resources, but also to have separate resources, to really build up and support a local organization, which became One Iowa, and be able to also then do the political defense, which CMC didn't fund but others could.

And this is where I want to give a shout-out to Gill Action, because the Gill world, Tim Gill, recognizing that one of the deficits in the movement was a political arm that could go in and do electoral work and intense lobbying, created their own shop called Gill Action, and this was at a point where Freedom to Marry was not yet a c(4), so we needed a partner to do that, and in the places where we could not cajole HRC into doing it, which were many, we would sometimes be able to rely on the ACLU, which also had political capacity, but usually that was small and it was not always up to the full weight needed, although they usually did their best, so we would sometimes need to create and find others, and Freedom to Marry could not at that point, because we were a c(3), not a c(4), do it directly. So happily, Gill world stepped up and created Gill Action, which became one of our closest partners, until eventually there came this point where Freedom to Marry morphed and, with the blessing of Gill world and Gill Action, kind of took on much of that responsibility, and they kind of turned it over to us to do that piece of the movement work. But that came years later.

So in Iowa, there was a real effort to invest in Iowa, not because Lambda brought a case, but in order for Lambda to bring a case, and for that case to then be successful. And then, as we saw a point of political opportunity to win in Iowa not only marriage, but also nondiscrimination, Gill, and this was Gill much more than Freedom to Marry, led an effort to flip the legislature to get a Democratic legislature elected, and then to defend that and hold it, and we held it literally by a one-vote razor-thin margin for several years, and again, that was primarily Gill Action, and then to some degree the local political infrastructure we collectively built there, but really mostly Gill Action, while we were investing and channeling public education resources into what then became the win that Lambda racked up in 2009, the winningest year ever that we had. Iowa became the third state, pretty remarkably, because then we had lost California, so we managed to enter 2009 still with two, because we had brought a spare, Connecticut, so we had Massachusetts, California, then we lost it, kept Connecticut, and now entered number three, and Iowa became the third, and then Vermont the fourth, and then New Hampshire the fifth.

06-01:09:50  
Meeker:

Did you start to develop an idea of, vis-a-vis public education, how these campaigns should be run differently when you're dealing with legislative change, litigation, and referendum?



06-01:10:03  
Wolfson:

Yeah. So, put referendum aside for a minute, the ballot measure aside. The general point was that the broader public education was essentially, that was needed was the same, but it took us a while to agree on that. It was the same because what we needed to do was create a climate of support, which meant we had to be explaining who gay people are and why marriage matters, and as I described earlier, we learned how to do that with the right mix and evolve that mix of messaging and stories and messengers and so on. With legislative, you also have to, of course, make sure that your engagement, the message delivery of the public education, is not only going to the public at large, but is also being heard directly by the legislators.

So the dimension of public education, which then eventually crosses over to lobbying, is that we need to make sure that we are specifically making sure that these 150 or however many lawmakers there are hearing this, not just through the ether of the public, but directly in meetings with constituents, being shown pictures of families, hearing from business leaders in their district, etc., etc., etc. So it's not the message that per se changes, it's the modalities and targeting of the message delivery that might get sharpened. But usually I would say that has to be in addition to the broader outside public education that's still happening.

Similarly with ballot measures, you want to look at who's making your decision. Of course that's the electorate. So the kinds of nuanced arguments you might make in a quiet conversation or a multitude of conversations with a lawmaker across her desk, you have to think of how do you make the analogous but not necessarily identical kinds of arguments through the door knocking and the media, you know. Door knocking can more closely replicate that, but through the media you're not going to be able to have a twenty-minute nuanced conversation. So it shifts in those ways. But what we were battling over was not so much any of that, it was, number one, getting people to—meaning both advocates and funders, as I said yesterday—to invest in soft-sell affirmative public education, as opposed to reactive. It was very hard to get people to invest in that, and yet it was the thing that was needed, number one.

Number two, the good thing that began happening was as I described. We began getting stronger and better in developing capacity in the lobbying c(4) political arena with Gill Action, with the creation of some of these state groups, and then eventually with Freedom to Marry being able to do it directly and coming in full-fledged, and other partners like HRC, like Lambda, like the task force, where they could eventually committing to that more and doing it more sustainably, but that came later.

The good news was, we began developing that political capacity. The bad news was, the tendency on the part of those who developed political capacity, the local state group, Gill Action, HRC, whoever it was at that point, the

ACLU sometimes, they tended to be, in my experience, very, very focused on that and not appreciate the significance and need for the outside game. They were doing the inside game, which was important and missing, and thanks to them we began having, but then they would only focus on that. And what we would often be struggling on during those sort of early and middle years was how to balance, how to do both, the importance of both, and it took a while before the full range of players truly appreciated the ways in which both parts were needed and what resources they needed and how to align them and how to make use of both.

06-01:14:15  
Meeker:

Is Maine an example of a place where, in 2009, this was out of alignment, where the people on the ground in the state were able to get marriage passed legislatively, but then they just didn't have the apparatus, they didn't have the public education campaign, that when the expected voters, what they call voters veto, comes about, the public opinion is not in the right place?

06-01:14:40  
Wolfson:

Yeah. No, no, actually, I would not say that was an example of what I was just describing. What happened in Maine was, our people on the ground were actually thinking ahead and were prepared for the veto, and they did actually build a good campaign that took lessons from the pros and cons of how Prop 8 had gone the year before, and the campaign there, and they tried to avoid some of the disarray and challenges and the money drop and the lack of command of the narrative and the not anticipating the opponent. They took a lot of good lessons from what we'd all gone through a year earlier.

The biggest problem in Maine was, they were primarily running a turnout strategy in the election, believing that if we could just succeed in making sure we maximized our vote based on projections and analyses of what was needed and turned out our target, we would win. And what happened was, we did actually turn out. They ran a good campaign in that sense. They did turn out their target, I think they even exceeded their target. The problem was the opposition more exceeded its target, and the turnout projection turned out not to be enough. Which meant that the decision to emphasize turnout, a turnout strategy in our campaign and not put enough resources as well as successful do what was needed to persuade and move some others over, cost us, and we spent the next three years persuading. And so, by the time we then went to the ballot again in Maine in 2012, number one, we were in an election where turnout was going to be good, where we would have to worry less about that, and number two, we'd spent three years and they'd done incredibly good work, state-of-the-art work, persuading, and we had persuaded people.

06-01:16:46  
Meeker:

Producing some of maybe the most iconic commercials of the freedom to marry campaign in the process.

06-01:16:53  
Wolfson:

Well, by 2012, I really believe, we didn't know this going into '12, we hoped it, 2012 then confirmed it, we had learned how to do this, these things. By 2012, all the errors, all the failures, all the missed opportunities, all the insufficiency of Freedom to Marry, of our partners, all the timidity, by the end of 2012 it was clear we had overcome all those things and learned how to do the things we had needed to learn how to do. That wasn't clear even during 2012. There was still plenty of trepidation and fighting and missed opportunities and disappointments and so on, but it turned out that you could see that by the end of 2012, this campaign had hit its stride, and all those losses had taught us collectively a lot.

06-01:17:47  
Meeker:

You know, back to what you were talking about as far as the campaigns in which there was lack of alignment, can you give me an example of one where—

06-01:17:56  
Wolfson:

Well, I mean, for example, in Iowa we battled constantly, as friends, with Gill Action, and when Iowa was sort of in the middle, because it was, we were both sort of the patrons of this local infrastructure we had built, and then Lambda was on the side doing the case. But we would battle as friends over the messaging. Should we be doing the more cautious messaging that we talked about, or should we be doing the heavy lifting, let's persuade more people, but it may be hard in the beginning, talk about gay, talk about marriage? That was something I wrestled with, again, always as friends and respectfully, with Bill Smith and others in that sort of side of camp. And we needed them, because we were not on the ground, we didn't hire lobbyists, we weren't in the legislative battle, we didn't have the c(4), we didn't have the money they had.

But they also needed us, because we were shaping this national climate. Iowa was part of it. I was an advocate at the Civil Marriage Collaborative delivering resources into the public education. I was the leader. And we were also working in other states, and we needed to win other states in alignment with. So we would butt heads and jockey, and then sort of compromise and think, "Okay, let's try this and let's try that." And meanwhile we were doing tests of what I was advocating for and eventually my team, Thalia and Marc, were advocating for with our friends at Gill Action.

We were doing tests on the ground in Oregon, where we had a laboratory state willing to do these things. We were beginning to do these tests and have the experiences in Maine with the door-knocking and so on. We were building together in New York, where we were working closely with Gill Action and were in alignment. And so, through a combination of all of that, we eventually got to a point where they too realized that the messaging constellation, the values case, was an important piece and that there was room for this public

education engagement and the delivery of the values piece going beyond the fairness, the technical, the constitutional, the easy.

06-01:20:25

Meeker: The rights.

06-01:20:26

Wolfson: The rights. And they, like everyone, moved.

06-01:21:07

Meeker: You know, let's talk about 2010 and the launching of Freedom to Marry 2.0, and a big part of this is, I think, moving out of Astraea, establishing an independent c(3) and c(4), but it's also about the people, and you bringing on what more than one person has described as kind of a dream team. I mean, Thalia Zepatos, Marc Solomon, Michael Crawford, who had done some good work down in D.C., Sean Eldridge, who brings in an interesting network, many other people as well. I want to hear about the decision to bring those people in and what different skill sets they were bringing in, but I also, first maybe talk about you sort of really ruling the roost, this is your small organization you have a healthy ego and the idea to kind of open your doors to some other alpha dogs, if you will. What was that like for you? Was that something that you had to struggle with? How did you decide it was time to do that, and recognize what you would have to do in order to allow that to be successful?

06-01:22:32

Wolfson: Right. Well, first of all, as we've discussed, I was always advocating for what I would call a true campaign. I would usually use the phrase "I want an affirmative, sustained campaign that can drive a strategy to a goal, and that campaign should have the four multis." I would talk about it. It should be able to be multi-year, it should be multi-state, it should be multi-partner, and multi-methodology, and therefore we'd need, had to do all these things, or at least know how to make all those things happen.

I knew that I did not know—I knew what was needed, I could recognize a good idea when I saw it, I could listen carefully, I could ask questions, I could urge, but I'm not the one who knows how to do X or Y or Z or whatever. So I, with my healthy ego, never had any problem acknowledging that I'm really good at this and this and this, and I don't know how to do that and that and that, and because I want that and that to happen, it's in my interest, it's in our interest to not just rely on me. I never saw it as any challenge to my ego to be able to say I need a good campaign operative, I need a good coordinator, I need a good manager, I need a good—you know, all the things I'm not good at, or not best used for, but often just not good at. And so the healthiness of my ego was such that I felt very confident about what I brought, and I knew what I didn't bring, and it didn't—seemed to me it benefited me, it made me look better to have better things happening, even if I wasn't the best one to be

able to do it. And I, of course, wanted to win. By then it was decades of working to make this happen, and I wanted to get this done.

The greater frustration, the greater concern was not how would I manage a bunch of other strong egos and letting go of certain things, it was more the frustration of not getting the buy-in, the mandate, the resources, from my colleagues, in the activist side and in the funding side, to just go ahead and do this, and we spent, as we've described, several years of different iterations of putting together the campaign that everybody nominally by that point had agreed to, but wouldn't commit to. And finally, after the loss not just of California, but of Maine at the end of 2009, a number of movement colleagues and funders quietly came to me in the context of this national collaborative transactional make-it-up kind of campaign thing, to say, "You're right, this isn't working. We need a campaign, and if you, Evan Wolfson, don't do it, if you don't make it happen, no one else is going to make it happen." They may say they're going to do this or that, but they won't fully do it, because they don't work that way.

Freedom to Marry was the only entity, not the only entity working on marriage, but the only entity that was only working on marriage and that was only concerned about driving this strategy—everyone else may have cared about this, cared about that, brought this piece, brought that piece, done great work, essential partners, we weren't even litigating because we needed the litigators to be litigating and we could count on them, but they weren't driving the strategy, they all had other things to do, they were all going to be pulled in different directions. So finally, with all the pain and loss of these missed opportunities and this slow eking out of a second state, and then the third, fourth, and fifth state, it was clear to enough people that whether it was their first choice or not, that I was their best vehicle, and that Freedom to Marry was the right one. And again, these are all friends, so even during the point where I was disappointed in how they were behaving or not giving me the mandate or not giving me money or whatever, we still were friends. We were at this point kind of a family, and you sort of learn to live with your family whether you agree with them or like everything they do or not.

But people like Kate Kendell, people like Katherine Peck at the Gill Foundation, people like Matt Coles at the ACLU, and a number of others, Kevin Cathcart at Lambda, would be quietly saying to me, "Just do it. Go ahead and do it. Push, do it." And so I a little bit wrestled with this question of having already been fighting for so many years, wrangling with these people as well as with the whole public, did I have it in me to take on the burden of all the work it was going to take to get to that higher level. It was not fear of hiring talented people, it was the challenge of building the full big thing that was going to be needed, and then despite this sort of encouragement, knowing there still was going to be resistance and all that kind of stuff, but of course I was very committed to winning the freedom to marry, and just as I had taken that leap in shifting from Lambda to creating Freedom to Marry, I now took

the opportunity to morph Freedom to Marry 1.0 to Freedom to Marry 2.0. And it began by reaching out to hire a few key people.

One of the people you didn't mention in your question, who was essential to all of this, was somebody I had actually hired a little before, and that was part of what enabled me to do this, and that's Scott Davenport. Recognizing one of my deficits earlier on, I had long been looking for a strong inside number two, a strong manager who could be the strong manager to my strong leader, and was lucky enough to find Scott, and Scott came to me. He and I had known each other a little and had worked together a teeny bit earlier on around gay parenting and stuff, but at just the right moment when I was looking for taking it up, he happened to be looking for a job, we clicked, we connected, brought him. And I think he had been with me, I think it was two years at that point—

06-01:29:03

Meeker:

I think it was January 2008.

06-01:29:05

Wolfson:

Yeah, so he had already now been with me two years, we had gone through some of these ups and downs and battles the difficulty of the Prop 8 era, but also the high of some of the accomplishments of 2008, the high of the wins of 2009, and then the pain of Maine. And so it was with Scott that I really kicked around, okay, what are we going to need to do to meet this opportunity and morph Freedom to Marry, and having him as a strong inside base who could make me confident that we could build the kind of organization, including shifting from, as you described earlier, the technical project we had merely been at Astraea, with only c(3), no real governance structure, with all the pros and cons that that entailed, to now being a full-fledged organization with a c(3) arm, a c(4) arm, therefore a c(3) board, a c(4) board, having to negotiate all of that, becoming not just a leader but now a real ED with real—executive director with real—

You know, Scott was the partner I could rely on with HR, going from a staff of eventually whittled it down to four, in order to be able to grow to what we needed to become, which eventually became thirty, with multiple consultants and field—having Scott as the backbone I could rely on managerially, again, acknowledging one of my weaknesses, made me able to feel like I could do that. So with Scott, I mapped out what it was going to take to do it, and I began reaching out to the people I had worked with, and I wanted the best. I wanted to really create, as you said, the dream team of people who would bring the capacities that we needed that no one else in the movement had consistently stepped up to deliver the strong, clear campaign operatives and people who could mentor and teach and create campaigns as well as guide them. Strong, clear communications skills, who could not only create a communication shop, but could actually get other communication shops in alignment. To invent and build a state-of-the-art digital mobilizing team, which no one in the movement had yet had, and keep going right down the list.

So I began reaching out, and as you mentioned, I think the first person I brought on board was Thalia, whom I had worked with closely, increasingly closely over the previous three or four years, and I had the opportunity to consider hiring Marc, whom I'd worked closely with when he was at Mass Equality, and then he'd gone out to California, but the California thing was being stymied because of the developments there, so my friend Geoff Kors and my friend Marc Solomon approached me and basically said, "Is there room for Marc, is there a role for Marc?" And I decided there absolutely was, that I needed a strong number two programmatically, and that Marc and I had always worked together and I respected what he had done in Massachusetts, and we had several really direct conversations about what would it mean, what would it mean for him to be coming in as the number two when he had been a number one leader in Mass Equality, and that's a dynamic that's a challenge. And on the other hand, what would it mean for me to have a strong number two and to want to be able to empower that number two and make room for him to get the ego and acknowledgment and power and authority he needed, and happily we—the conversations we had were very constructive, very direct, very reassuring for both of us, and then we both decided, okay, we'll take this leap and we totally made it work, and it was absolutely a brilliant decision.

06-01:33:03

Meeker:

Can you give me more detail on that? I think this something, some texture or detail that people later on will be interested in, as your relationship and these initial conversations and some of the details of the relationship that you worked out at that point in time.

06-01:33:23

Wolfson:

Well, for example, Marc was a very skilled campaign operative who knew how to build and run a campaign. I wanted a campaign. But one issue was, he knew how to build and run a campaign, for example, in Massachusetts, or he was building until the rug got pulled out from under them in California. That's one set of skills and tasks that I wanted on board, but even more important was being able to build and instigate and guide and keep cohesive multiple campaigns in a national campaign. So we had to thrash through what did that mean in terms of his skill set, and then what would that mean in terms of what he would need from me, and what would my role be in that, as opposed to what would be his role in that, and then what would we need to staff it and resources and so on. So we had to talk through some of that and make sure we were—we didn't know all the answers, but that we were in alignment with what we thought that was going to look like. So that was one example.

Another example was, I was the voice of advocating for marriage. If Marc was going to come on board and go to some of the meetings and be jockeying with some of the players we needed to pull along now with greater force as the actual campaign, not just as a cajoler, and also leverage his relationships with some of those same people and so on, well, where was I, where was he?

When would he be the one doing that, when would I be the one doing that. How would we make sure we were in alignment, how would we make sure that when he was out there in the world doing this stuff, he could speak with authority and clarity but not get ahead of where I was or not marginalize me or not risk being inconsistent with me, not put me in an awkward position, and not make me not eliminate me either. And conversely, how could I be out in the world pushing and cajoling and leading and engaging without trivializing or reducing him.

So and we were both wanting to do both. I mean, he wanted his space, but he also wanted to be respectful of my space, and I had the same thing. So what does that look like? How do you do that? And can you talk about it? And I think it was as important was making sure that we could really communicate about these things and work them as we go as much as knowing the exact answer to everything, that we could trust each other and feel like we each had each other's back in that relationship. So we had to ascertain that.

06-01:36:20

Meeker:

Can you tell me about the funding piece? Because in order to bring Thalia on, in order to bring Marc on and really launch 2.0, you're probably going to need to have all the infrastructure, the financial infrastructure lined up in advance. Or some of it, at least, right?

06-01:36:42

Wolfson:

Some of it, yeah. We had to see a pathway to it. I mean, one of the things I had learned, and this was part of my education in this whole fifteen years or so of work, was, much as it ought to work that you put together your funding based on the vision and the strategy, and then you do the work, you have to, sometimes, if you build it, they will come. And so what you need to do is get enough funding to build enough of it that they can get it, and then go. So a little bit I took some leap on the theory that if I have people like Thalia, like Michael, like Sean, like Marc on board, the money will come, because people will see it. They won't just hear the idea, they'll see it.

06-01:37:33

Meeker:

Well, there's risk-taking in there. I mean, there's like risk investment.

06-01:37:36

Wolfson:

Yeah, it was risk-taking. I was always pretty confident, maybe this is the healthy ego thing, but I always believed that we could get people to see it.

06-01:37:48

Meeker:

Because I imagine with someone like Thalia, with Marc they recognize what it's going to cost for them to be successful in their jobs, because they're not just there serving you—I mean, to be honest, they're there serving the movement, but they're also there recognizing they have their own reputation, and they want to be successful, so—



06-01:38:09  
Wolfson:

Yes, yes, but each of these people, like me, have obviously chosen a mission in life that we don't so much worry about that. It's part of the: we want to do this work so we're going to find a way to make it happen. So yes, of course, I don't think any of them would've joined if they didn't believe that both because of me, but also because of them, and because of what we were going to build together, we could make it work. I think, obviously I had a track record, and I had a track record with each one of those people before they came on board, and we collectively had a track record, and then each individually had a track record. So we all knew we were dealing with people we could all bet on.

06-01:39:02  
Meeker:

So obviously Haas Jr. continues—

06-01:39:05  
Wolfson:

I just want to say one other thing. This is a little bit a parenthetical, but I think one of the things that really has made our movement successful has been that at the center of so much of the progress is a group of people who have worked together and known each other, and sometimes battled, for decades. I mean, I have people in this movement that I have worked with and been friends with and fought with for decades, and you just, you develop certain knowledge of people, you develop relationships, you develop a baseline of trust and connection, that even if there's crap and frustration and the occasional—you still have something to draw on with most of those people.

So obviously there are always new people coming in, it was always important to bring new people in and to welcome talent and to welcome new voices and to live with the fact that you can't control who all comes in and nobody owns anything, but there always has been, at least in my experience, a core of people who, over the years, have built something together that we could all draw on, and that helped a lot at crucial points, at least for me, as somebody with longevity now in this work. It wasn't just everything was a new day and a new argument and a new random leap and so on, there was something you were drawing on even as you kept pushing. Sometimes that's also baggage that you have to overcome, or leave behind, but all in all, at least for me, it was a big part of what I consider success in this movement, that there's just a core of people who, over the years, and years and years and years, knew me, I knew them, we could draw on each other.

06-01:40:51  
Meeker:

So I was going to ask about funding The Haas Jr. Fund continues, your anonymous donor continues, they're perpetual, but in order for 2.0 to work, you need to bring in many more. Gill was there, which also stepped up, I believe, right?

06-01:41:07  
Wolfson:

Right.

06-01:41:08

Meeker:

Can you tell me about the underlying finances and how you were actually—

06-01:41:13

Wolfson:

So, I mean, the short answer, and I don't even remember all the details, but we could go back and look at the numbers, but the short answer was, by 2010, enough of the players, as I described earlier, had had it, really, with the improvisational, transactional, insufficient "National Collaborative" futzing around, that had followed the ostensible committing to a campaign. And they were ready now to take the lead, or they believed deeply, some more than others, that the freedom to marry approach, my idea of how we should go forward, was the right one, and they were willing to invest in it.

So I think all the funders you just mentioned, and others, actually stepped up, because what we said, "We can't do this at this. We need to start doing this." And in fairness to them, up to that point Freedom to Marry had not been trying to raise billions of dollars. We had a model, we had a role, I sometimes wanted that role to be bigger, but it was what it was. We were working then within this collaborative. I said earlier, whether it comes through my watering can, as long as the field was getting watered. But once we took the decision that we're going to try to be the campaign that we had long been preaching was needed, it was clear you can't be the campaign, you can't hire people like the ones we were just talking about, you can't give them program money and resources and allies and partners and consultants and all the things it would take on this budget.

And so, if I remember correctly, we literally in one year doubled our budget, Freedom to Marry. And again, we had not tried to double the budget until we then tried, and immediately then succeeded, and then the next year I think we doubled, or more, it again and then the next year I think we doubled it or more again, you know. So the if you build it, they will come, and the having the great people on board, and having a clear program and a very ambitious set of objectives, and being able to show results which each of those years we did. In 2010 we crested a majority, we built this great team, we became a real organization, we began building this digital apparatus that no one else had, that immediately began showing its value.

And we partnered closely with Gill Action and some of the other new players, and welcomed them in and developed the best working relationship with them, even though we jockeyed from time to time, but we had a really strong, good partnership of trust. Then we had other groups whom we had less of a partnership or trust, but still could work with. In 2011, we go on and set very ambitious goals, and win New York, and that's a huge victory that really more than doubles the number of people living in a marriage state and shows the political half we win with Republican support, we win in the legislature that we had previously lost in, and it's New York.

We go into 2012, we set these big goals. Getting the president, over the objections of many, we do. Getting the platform plan, we do. Winning a ballot measure or more, we win four out of four. A lot of trepidation around that. Obama gets reelected, which I breathe a sigh of relief on, since I had been the one saying this won't hurt you, this will help you, and then it was like, "Oh my god, what if it doesn't?" And it did help, and he gets reelected, affirming the freedom to marry in the most beautiful terms, including in the inaugural address. We set the stage for going to the Supreme Court in 2013 with the movement-centered DOMA case as well as the *Perry* challenge to Proposition 8. We win the DOMA case, we get California back. I mean, it just, we were building, building, and everything was working.

06-01:45:05  
Meeker:

You know, this period is kind of one of the hardest for me to ask about, because there is so much happening on so many different fronts, and everything seems to be clicking. It's a lot easier to sort of get lessons learned from things that weren't working, and then how you retool. But let me actually, you did refer to the *Perry* case, and I know that that was a moment of consternation for the movement, for people who'd been working on this for many years, and especially for the legal groups, for NCLR, for ACLU, Lambda and also for people like Marc, who was starting the on the ground battle to maybe in 2012 or 2014 bring an initiative back to California. You know, or some people were saying 2010.

06-01:45:58  
Wolfson:

The debate was '10 or '12. It was never '12 or '14. Our goal was '12.

06-01:46:03  
Meeker:

Okay. Right, so can you tell me about the moment at which you hear there is this sort of wildcat effort, Rob Reiner and Chad Griffin sitting over cocktails in the backyard in southern California and charting the future of the gay movement, as it was talked about in Jo Becker's book [*Forcing the Spring*]. I know that I can see you sort of roll your eyes, but yeah, so tell me about when did you first hear that there was this kind of wildcat legal effort that they were going to try to force a federal resolution of the whole marriage issue as early as 2010, 2011.

06-01:46:53  
Wolfson:

I had heard rumblings, I don't remember the dates, but I probably a few months before they eventually wound up announcing I'd heard rumblings from some of my legal group colleagues, and sometimes it seemed like this is really going to happen, sometimes it seemed like, well, they're talking about it but maybe it won't. And I think in retrospect maybe they had been a little—the legal groups had been a little misled about whether this was a done deal or whether they were really in conversation or whether people were taking in the advice, or whatever. So I was, of course, again, one step removed. I was not formally contacted by the AFER people, that were the organization created to support the case, until what was supposedly the day before the filing, which

turned out to not even be true, because actually they had gone ahead and filed it either that day or the day prior to my call, but at the time, in the call I was told this is going to happen, and it actually turned it had already happened. So that was when I was first formally asked to give my advice by AFER, but previously I'd been hearing from the legal groups bits and pieces of some of the negotiations and some of the discussions about it.

And like the legal groups, I thought the things they were saying they were going to do were potentially catastrophic, because what they were saying at the time, and what people were reacting to at the time, was not just that they were going to bring a case, but that they were going to try to rush that case to the Supreme Court, and that they wanted to get there ideally, if they could, in a matter of months. They were going to try to breeze through the lower court with whatever happened happening, they were going to try to push as quickly as they could through the appellate court and get to the Supreme Court. And that was a bad idea.

The Supreme Court, of course, was always the forum in which our strategy had always said we were going to prevail, that the strategy was always we're going to persuade the Supreme Court to bring the country to national resolution. But the lessons of history are that the way you do that is by creating the right climate, not just by rushing to the Supreme Court. In fact, our movement had already been to the Supreme Court on marriage. So our movement had already reached the Supreme Court on marriage cases as early as 1972, which had just blown it out, as had the other early courts, so the issue was not coming up with the idea of, "Oh, you know what? Let's go to the Supreme Court." It's not like nobody had ever thought of that before. It was that in order to win in the Supreme Court, we truly believed we needed to build a critical mass of states and a critical mass of public support, and be working on this track of tackling federal discrimination and ideally overturn or gut DOMA, and that was the three-track strategy that we had laid out and that we were driving, and that was working despite the pain of Prop 8, despite whatever trauma it had caused, understandably, people in California including Rob Reiner or Chad Griffin or anybody else, totally understandable that people would be outraged and upset. But despite that, we went on to keep working the strategy and had an extraordinarily successful 2009 and it was working and moving forward, and Prop 8, as you noted, had also been a wake-up call and had helped, actually, if anything it helped galvanize the rest of the country, bitter and disappointing though it was in California, and to the rest of us.

So the idea of rushing to the Supreme Court, let alone having a group of people who had no real depth or experience in the area, but that I felt like, "Okay, they can overcome that, and they will." But the idea of rushing to the Supreme Court was a bad idea, and I think it was compounded, for the legal groups face-to-face and for me as I was hearing this, by some of the arrogance and eventually nastiness that pretty quickly bubbled up in the way the AFER

team carried themselves, going to war with the legal groups, smearing the legal groups, attacking, and arrogantly sort of swaggering around that they were here as the saviors, and as they later wound up writing, as they were always sort of saying and suggesting, here to save the day when nobody was doing anything and when everything was just sort of languishing, and all that, which of course wasn't the case at all. We had gone, we were growing public support, we were winning marriage, we had made a movement and believed in it, I mean, all these things had happened and it was as if they believed the world began the day they woke up and stepped out into the case.

So that's a hard pill to swallow when you've been working on this, and particularly when the people coming in with a bright new idea have a terrible idea. Had they instead said, "We really want to bring our resources to this battle. We have really strong lawyers, we have the incredibly powerful messenger of Ted Olson, we have Hollywood resources that we should've been bringing to the fight earlier, but now we're ready, can we help." It would've played a lot differently, but of course that wasn't the presentation made. So there was, as you said, a lot of consternation, a lot of bad feeling, a lot of unnecessary hostility, and a lot of very unnecessary arrogance and posturing. All that said, it didn't play out the way they expected, mostly because the judge, Judge Walker, refused to play their game, and basically said, "No, we're going to have a trial and we're going to do this right, we're going to take our time." And it was over their fierce objection, but he ordered the trial.

The legal groups, whom they had snubbed and smeared and attacked, offered their help. First they wanted to be involved formally. They got a lot of vicious push-back against that. But then, despite all of that, they agreed to provide the legal team with their resources, their knowledge, their expertise, help point them to witnesses, and so on, and gave them a ton of expertise and materials and knowledge, which the legal team used very well, and obviously they were massively resourcing the case, and put together a good trial, and that trial that Judge Walker led and conducted was a good teaching moment, and then they leveraged that teaching moment with this, the Hollywood apparatus and some real talent from people like Lance Black and so on, that even tough, again, there was a degree of hype and self-promotion and overstatement and disparaging of the others doing the work, still did contribute some teaching moment to the work we were all doing, and added to the overall national conversation that was already happening and that we were already succeeding with.

The trial, and the buildup to the trial, and then the appeals process, and then the procedural problems they wound up having because of the way in which they had structured the case, and because of the fact that the California leaders had conceded that this discrimination was wrong, creating a standing problem. All of that together wound up dragging that case out for several years, during which time we kept working our strategy, the campaign kept chugging on

exactly the track that we had laid out, we racked up these wins in the three states in 2009, we solidified a majority, we began growing and diversifying that majority, we won New York, we paved the pathway for the president, we got to be on the Democratic Party platform, we won, we figured out how to, we resourced, we built campaigns, and we won four out of four ballot measures, and meanwhile Mary's DOMA case had won and had replicated itself with others who then came into it, including what became the Windsor case, with Robbie Kaplan representing Edie Windsor and the ACLU as co-counsel on that case.

Through the luck of the draw, that case became the one that was chosen in front of the Supreme Court, but it could've been any number of them. We won them all in the lower courts, and we would've won any, no matter which one it had been by the time we got there. And so by the time we get to the Supreme Court in 2013, and they get to the Supreme Court in 2013, despite all the consternation, despite all the bad feeling, despite all the unnecessary hostility, and despite the recklessness and arrogance and so on, by 2013 so much had happened, so much progress had been made in building toward this critical mass of states and critical mass of support, that we could actually hope that we might even win, that maybe we had enough by 2013 in a way we clearly had not when they filed the case.

06-01:56:57

Meeker:

When you say when, you mean the national resolution—

06-01:56:58

Wolfson:

In the Supreme Court, when the full national resolution. And that even if we didn't win the full national resolution, I said at the time, that I now felt like it would look bad—it would be—it would reflect worse on the Supreme Court than it would on us. It wouldn't hurt us, it wouldn't slow us down. I mean, it would slow us down in the sense that we wouldn't win in 2013, we'd have to keep winning, but it wouldn't have been a catastrophe, it just would've been a not yet. And so by 2013, we were feeling very hopeful based on the extraordinary momentum and the great achievements, and the building and fulfilling of the strategy that had already happened regardless of the *Perry* case.

As it turned out, of course, we did win on the movement strategy case, the challenge to the Defense of Marriage Act—

06-01:57:51

Meeker:

*Windsor*.

06-01:57:52

Wolfson:

*Windsor*, bringing down the heart of DOMA, furthering our momentum, one of the three tracks of the road map. And we did not win in the Supreme Court on the *Perry* case, but the ruling left standing their lower court win, which

restored California, which of course was a big win, and a wonderful thing to happen, and added to our momentum going forward.

So the consternation of the early days was based on what they were saying and what they wanted to do in the early days, not on how it eventually postured by the time it was 2013, and the prediction that the Supreme Court wasn't ready actually still turned out to be true even in 2013, even with all the progress, but there had been enough progress that it didn't turn out badly, it turned out well. That's the way history works.

06-01:58:48

Meeker:

Right, so *Perry* was decided more or less on a technicality, the jurisdictional question.

06-01:58:52

Wolfson:

In the Supreme Court it was decided, exactly, that the victory below was left standing on technical grounds. Now different people will disagree. Some people will say, "Well, actually, had there not been the standing prong, the Supreme Court would've voted perhaps five-to-four in our favor, and we would've won what we won in 2015 in 2013 through *Perry*." Others say, "No, they had the opportunity to duck and punt and they took it." We will actually not know for sure which is the truth until papers are revealed thirty years from now, fifty years from now, whatever.

I think if you look at the history, though, you can see that what the Perry team initially was saying that triggered such a fearful reaction was not what happened. What they wanted to do, they didn't get to do, and as a result, we had the time to keep doing the things we wanted to do and put ourselves in a place where, by 2013 and certainly by 2015, we were hopeful of a good result.

06-02:00:01

Meeker:

So kind of to wrap up the AFER story, this book authored by a journalist, Jo Becker, comes out that perhaps rewrites history a bit.

06-02:00:16

Wolfson:

Perhaps?

06-02:00:17

Meeker:

And I'm trying to be generous. Can you tell me, did you know this was happening and did you actually sit down and read the thing? How do you respond to it? I mean, on the one hand everything's moving in the right direction this is just one book, but on the other hand you have been working on this the better part of your adult life, and it begs for a response.

06-02:00:52

Wolfson:

So, I worked very hard to not respond to the book when it came out and avoided public comment, and even when asked on the air, on at least one TV show [Ronan Farrow] I remember very pointedly I avoided commenting, and never made a public comment about it. And I did that because it had the

potential to just be this enormous ugly battle over credit at a time when we hadn't yet won. But of course it was incredibly hurtful and incredibly frustrating to read the smears and the omissions of that book, and the deliberate effort to falsify the history.

It was so contemptuous of the movement, not just of me, but of Mary Bonauto and the ACLU and Lambda Legal and the others who had done so much, and who were winning, in an effort to displace all of us and put in place some other supposed hero of the story and teach just a terribly wrong lesson as to how social change happens, the notion of lawyers waving a magic wand and filing a case, and one case changing everything, and magically winning in the Supreme Court because they were good lawyers backed by a political team or a Hollywood crowd. Even as much as the personal dissing that was in the book, teaching that as the lesson of history, the lesson of social change, was so infuriating, and yet I really felt to engage it at the time would be distracting and would be undermining of the movement I had worked so hard to support and guide and build, and this campaign, and it would get into an us-versus-them, it would be divisive at a time when we just needed to keep eyes on the prize, keep winning. So I kept my mouth shut, and it wasn't easy.

06-02:03:01

Meeker:

But now you can talk about it a bit, because you have won.

06-02:03:02

Wolfson:

Here.

06-02:03:03

Meeker:

Remind me, I mean, that actually kind of reminds me a lot of a history book written about the early gay movement that I think does something very similar.

06-02:03:17

Wolfson:

What I did appreciate was that there were a number of extremely thoughtful articles written by a variety of people. Andrew Sullivan was the first one out of the gate, and he went at it with his smart and polemical style, which some people really got the point and other people began then ascribing it to his motives and his desire for his place in history, which was exactly what I had hoped to avoid in this kind of thing. But the points Andrew made were absolutely valid and real, and people then got sidetracked, or didn't, by whether they felt about him or whatever.

But others immediately followed with extremely thoughtful analyses that took many of the same points Andrew made, but now different messengers with different layers of history and so on were putting forward, and people like Chris Geidner and Nathaniel Frank, Kevin Jennings wrote something, I said Josh Seitz, his piece, right? Did I mention that? Josh Seitz wrote a really deep, thoughtful analysis of what was wrong in this analysis of how history works, let alone of the true credit that's deserved.



And many others, and sort of the upshot of the whole episode was that it blew up in the face of those who were trying to rewrite history and make themselves the heroes of a story that they had come in late to, and it actually, I think, wound up promoting conversation and bringing attention to actually the credit due to those of us who'd been shepherding this strategy for a much longer time, and I think that conversation began happening as a result of their effort much earlier than it might have happened had we just been doing the work, and then eventually won, and then people might've begun asking the question of how did this happen and who deserves credit and so on. I think they forced a credit conversation and they wound up losing.

06-02:05:29

Meeker:

I know that we have talked about 2012 in passing, but I do want to talk about your thoughts on the messaging that's starting to come out at that point in time, these building on a lot of the work that Thalia was doing in Oregon, and then that spreading across the country, particularly to Minnesota, Maine, and other places, you really start to get some, I mean, we're just looking at television advertising, you're really starting to get some transformational ads that are speaking to a population and changing their minds, I think in a way that hadn't yet been cracked, and there's progress being made. So you've got the journey narrative combined with the unexpected messengers talking about marriage and love and commitment. It's kind of this sort of triangle of factors.

06-02:06:47

Wolfson:

And non-gay validators.

06-02:06:48

Meeker:

And non-gay validators, and unexpected messengers is kind of part of it.

06-02:06:51

Wolfson:

And conservative messengers, that goes to your unexpected, but themes of freedom, using veterans, using military personnel once—under President Obama's leadership we had ended the military discrimination, now we could make military voices powerful messengers for us.

06-02:07:11

Meeker:

Do you remember, perhaps, one of the first of these ads that you actually saw that you kind of leaned back and you'd say, "Wow, I think we really got it with this one?" I mean, was there any particular one that stands out in your mind? Because I imagine you're seeing these before they're going out.

06-02:07:30

Wolfson:

Oh yeah, sure. No, of course. I'm either seeing them or we're doing them. I remember some of the family ads we ran in Minnesota—we, the bigger we, although the campaign manager, Richard Carlbom, then came to work for Freedom to Marry as our director of state campaigns, because we had had such a strong, close, good working relationship, but there were grandparents and so on walking in the woods and talking about their family and talking about how they had evolved. I think we did an ad in which a guy had spoken

on the floor of the legislature about his military service, and somebody else who had served with him who was killed, but was gay, and he now understands and dah-dah-dah. That was a great ad.

We had an ad in Utah, this was a little later, where we had basically the patriarch and matriarch of this giant Utah family, so grandparents, I think they had seventy-something relatives. But they talked about their family, and they talked about their gay children as well as their non-gay children and what they wanted, and they're good Mormons but they have come to understand the values of love and so on. And it was just great, and these great messengers. What I also then remember about that was, they were then very worried about how they would be received in their community, and we did follow-up where they later were telling us how actually, again, they had gotten wonderful response from people. People had really resonate with their standing up for their family and their values of love and commitment and agreed with them, or at least supported them. So that was really great.

The ad we did with Alan Simpson was, I thought, just a huge hit ad that I was very proud of, and I thought it looked beautiful, and it totally worked as a Republican, as a conservative, "If you want to get married, get married."

06-02:09:32  
Meeker:

This real libertarian westerner, right?

06-02:09:35  
Wolfson:

Yeah, totally. And beautiful shots of Wyoming, and the fact that we were having this conversation in Wyoming, and it was the front page of the Wyoming papers, and we had put a campaign operative on the ground in Wyoming, which was also a big step for Freedom to Marry, because in that last stretch the 2013-15 stretch, we were now working in the front-line states of, states where weren't going to win, most likely, within the four corners of the state. We were no longer working in the win states, we were working in what I called the progress states, as a way of moving hearts and minds there in order to add to the national narrative in order that we could win at the national level. We were no longer just doing the building of the states and support here, so it was another stage in this coming closer to victory campaign.

Another campaign ad that we did that I was really proud of, and that Marc actually played the lead role in helping shape, was we found a member of the military, he was a doctor who was serving in, I think it was Afghanistan, who had just come home to Tennessee, where he and his partner lived, and now can't marry his partner. So here he is fighting for the U.S., fighting for people, serving the public, he's a doctor, and yet he can't get married. And Tennessee, of course, was one of the states that, by the end, was in the thirteen states we hadn't yet won, and then was in the four states where we were going to the Supreme Court. So it was just such a home run of an ad it was the absolute front-runner, front-line, us being able to the Supreme Court, "You can't leave

these people out, it's not done yet, it's not okay to say it's drifting along, let's see how it goes, this is really hurting real people, military serving the public, a doctor." I mean, it was just such a great home run ad.

There were great ads in Maine, as you and I were talking about. Matt McTighe put together some really terrific ones, the firefighter ad and so on. I mean, those are the ones that stand out. I guess another one that stands out for me is, we did an ad where we showed how the political leadership of the country across the political spectrum were moving in our direction, and we included not just President Obama, it ended with his second inaugural address, in which he extolled the freedom to marry, which was a real high point and very moving and very beautiful shot. But before that, it showed Dick Cheney, Colin Powell, and Laura Bush, and it was very effective. It was really great, and had that great mix of people who don't agree on anything else, but who agree on this, and then Laura Bush, through her people, said she wanted her picture taken out of the ad.

So we had these like two days of wrestling with what do we do about this, because she couldn't deny her public statement, I mean, this was her position. She's a public figure, we're certainly entitled to—we didn't say she endorsed this ad, we just said this is what Laura Bush has said. But we ultimately decided that we would respect her wishes and stop the ad. But it got a lot of play and made its point and was very effective, and it was this moment where we had to decide do we go with this kind of approach, or do we go with this kind of approach. Do we go for the controversy, getting more attention to the discussion approach, or do we go with our general welcoming people in, raising their voices, working together, we're all in this together kind of thing.

[short break in audio]

06-02:13:28  
Meeker:

Did you attend the Perry or the Windsor oral arguments?

06-02:13:44  
Wolfson:

Yeah, I was at both.

06-02:13:47  
Meeker:

And you had obviously been at the Supreme Court a handful of times before.

06-02:13:51  
Wolfson:

I'm very lucky. I've been, I was at the Supreme Court for the *Hardwick* argument, where I sat with Michael Hardwick, and I was at the *Hurley* argument, I was at the—

06-02:14:02  
Meeker:

*Dale.*

06-02:14:04  
Wolfson:

Yeah, well, I'm getting to *Dale*, but there was another one before, *Romer*. I was at *Dale*, of course, and *Lawrence* and *Windsor* and *Perry* and *Obergefell*. So I've been lucky in being able to be there.

06-02:14:20  
Meeker:

What was the atmosphere at *Windsor* and *Perry*?

06-02:14:23  
Wolfson:

Going into the court, it was enormously joyful and optimistic, and as I was describing earlier, we really felt that despite everything, despite the battles over *Perry*, despite the losses along the way over the years, that by 2013 we had hit our stride, we had irrefutable momentum, was the phrase I kept using at the time, we had solidified a majority, we had won the ballot measures, we had the president, I mean, we were winning, and clearly winning, and the country was ready, and it was time, and we all just felt that everybody could feel it and that the court would feel it, and that we had made the court feel it, which was always our goal, was to create this climate, and that we weren't sure that the court was ready to finish the job, to bring us the national resolution, but we didn't rule it out either, in a way that even just a few years earlier was clear we weren't ready and the court wasn't ready.

But by 2013 we were hoping that maybe it could be there in the *Perry* case, but that at the least, as I said earlier, it would not be a terrible ruling, it would be maybe not everything, but it would be something. And we all believed, and I think everybody believed, we were going to win on the DOMA case, and we had made the case and had built the political support and had won in the lower courts, and the legal strategy and the political strategy around the legal strategy had succeeded.

So going into the court, there was this feeling of history and momentum and winning and joy. And what was interesting was that in the courtroom, both days, there was this feeling that the only people in the court who hadn't gotten the message were the justices. Not because they were necessarily going to do the wrong thing. It's not like we came out thinking we were going to lose, and I'm saying we, I mean, I'm obviously really talking for myself, but I think my view was shared by a lot of people.

It's not like we came out of court thinking, Oh my god, we're going to lose, but there was a feeling of everybody else was here, in the media, in the country, amongst the politicians. Senators, in the weeks leading up to this, were rushing to sign on in support of our positions, after years of trying to get them there. Business leaders, we had record numbers of business leaders, all this stuff. And we just, everybody could feel the momentum. It was clear we were winning, the irrefutable momentum.

And yet in the courtroom, it was this almost cranky, dour technical, or not even technical so much, but just dry level of questions that occasionally had

moments of color and moments of interest, but it clearly did not have the energy and the feel of history, even, that we had surrounded the court with, and that everybody was feeling, and I mean everybody, not just our side, but the opposition. Everybody could feel it.

And the one place you didn't feel it was up there on that bench, and that was just sort of striking. Not—it didn't cause fear. I still came out thinking we were going to win, but it was a bit of an anti-climax in a way.

06-02:17:54

Meeker:

Was there anything particularly obviously apropos of what you just said, anything particularly surprising, any questions surprising asked by the justices?

06-02:18:12

Wolfson:

You know, one, quote, surprise, which wasn't totally a surprise, but it was a little surprising, it was a surprise to some people, was [Chief Justice John] Roberts's hostility, because there had been this whole school of punditry and guessing that maybe he was going to go along because he could see the handwriting on the wall, and he would understand why DOMA at least was radical and unacceptable, and he would care for the legitimacy of the court and would rather have a six-to-three than a five-to-four, I mean, all this stuff, combined with also supposedly he had a gay cousin who was attending the court session, and he had given her the seat she was sitting in his seats, reserved seats, so maybe that signified that he was better than we all thought.

06-02:18:58

Meeker:

He had adopted children.

06-02:19:00

Wolfson:

He had adopted children, exactly. He has adopted children. And his questioning was horrible, and it was clear, to the extent you can tell from argument, which we always say you can't, but then you always start acting as if you can, it was clear we weren't going to get him. I thought there were some striking moments and there were some very good questions from some of the justices. Sotomayor had a great question, where she asked, other than marriage, is there any area where discrimination against gay people is constitutional and dah-dah-dah, and the attorney kind of bobbled and had to concede he couldn't defend any of that, and I thought that was a really smart, different, great question that was very helpful in general and augured well for us.

06-02:19:47

Meeker:

And for which the attorneys had probably not prepared for.

06-02:19:47

Wolfson:

It seemed, right, it seemed like it wasn't prepared. Kagan had a great question that basically allowed the attorney to spin out all this junk about ostensible justifications that Congress might have had for blah-blah-blah, and then she

read from the legislative history as to exactly the anti-gay purpose, of course, behind the anti-marriage—

06-02:20:15

Meeker: The animus question.

06-02:20:15

Wolfson: —so-called Defense of Marriage Act. And Ginsburg had her beautiful metaphorical point the skim milk marriage, and so on.

So all that was great. I wouldn't say surprising, but it was very, very good. Some people felt the solicitor general did not do a good job. I actually thought he did do a good job, and I thought he gave us what we needed. I thought arguing for the government was Sri Srinivasan, who's now on the court and was one of the people being talked about as a potential Supreme Court nominee. I remember thinking, this guy's really good. I'd never seen him argue before, and I just thought, wow, he did a great argument.

But my general view is that, though it's dramatic, though it's historic and cool to be in the courtroom and it's this quintessential moment, argument's not that important. And so at the end of the day, I felt like we had come into court with this incredible momentum, we had made the case to the court and to the country, and we were leaving with momentum and having made the case, and so on, and despite the vagaries of the argument and the somewhat anticlimactic dryness, ambivalence, of some of its moments, we were likely to win.

06-02:21:44

Meeker: Where were you when the decision comes down that June?

06-02:21:50

Wolfson: For that year—trying to keep the two years straight—I was actually on the set at MSNBC. They had me there to live react and live comment.

06-02:22:03

Meeker: And did you have particular talking points in mind? I mean, did you, like Oscar speeches, prepare your consolation speech or your—

06-02:22:12

Wolfson: Well by this point I know what I have to say and what I want to say. What I asked for was that they not go immediately to me, but that I have a moment to, if not read the entire opinion, because obviously you can't read two giant opinions, to really be sure of the nuances of what had happened. They said yes, they would do that, but they didn't. But it turned out not to matter, because the way it worked out, we obviously won big in *Windsor*, and then we had to infer from some of the comments in the *Windsor* ruling what the ruling was in *Perry*, but it became clear that the court had essentially punted, and even though there were opinions written, they didn't matter in terms of what we

had won that day, which was a) no bad result on the national, and we would keep fighting, and b) restoring California.

So the arguments over standing and over the nuances and tea leaves there could be for another day. The main points were that we had restored California, no harm had been done, and most importantly, we had overturned the so-called Defense of Marriage Act, and much of the work we had been doing, together with the legal groups and others, building toward what we hoped would be the DOMA ruling, the DOMA victory, had been with the administration to prepare them and to encourage them, and then to assist them, in being ready to implement the decision as swiftly and as across the board, throughout the federal government, as possible, so that we would now be having the federal government respecting the lawful marriages and therefore being an engine of support for people and another reason why people should get married, even if they lived in a discriminating state, because at least they would be accessing the federal protections and responsibilities of marriage, which are huge, and they would be in the state, even if their marriage was disrespected in the state for a time, they'd be married and they therefore could be a messenger and an ambassador and an engine of change and a further reason why we needed to finish the job.

So we wanted to be as ready as quickly as possible to as smoothly and as swiftly and as pervasively put the federal government now on the right side, which the Obama administration made a commitment to and worked really hard to, and quickly, by their standards, to achieve, and mostly did achieve, and that gave us a lot to work with in the succeeding two years.

06-02:24:50

Meeker:

There was some concern that Kennedy might have ruled to strike down DOMA based on federalism grounds. Were you worried that that might happen based on his questioning or anything?

06-02:25:06

Wolfson:

No. You know, again, no one ever knows. But no, I thought most of that was just bullshit punditry, people just talking about things that nobody knew and not particularly—certainly not based on anything, and not particularly helpful or particularly useful.

06-02:25:27

Meeker:

I mean, that would've been an indication about how far the court would've been willing to go on a national resolution.

06-02:25:32

Wolfson:

Yeah, for what it was worth, which wasn't very much, that's not what I thought was going to happen. I thought Kennedy has a jurisprudence, Kennedy has a view of the constitution that he gets and understands with regard to gay people, which lamentably he doesn't seem able to apply to other people in other contexts, race, choice, and so on, even though one could apply

and should. But he does, happily, get it with regard to gay people, and he had already now, in two major decisions, *Windsor* then becomes the third, and now going into *Obergefell* we had three, and I was hoping for four, and then we got four, where his jurisprudence, his vision of the constitution, his what I call double-helix of constitutional power, liberty, the freedom to marry, and equality. Liberty, the freedom to shape your own destiny, the freedom to have sexual intimacy, etc., and equality, you can't have laws that segment out one group from the other and dah-dah-dah without a good enough reason. When it comes to gay people, he has now, he has understood that and has applied this, in my mind, very understandable and very correct interpretation of the constitution, and it actually is very much what I wrote back as a law student in 1983, not because I'm that brilliant, but just because I think it's the right answer, and it doesn't get all hung up on some of the this or that dichotomizing between liberty and equality that some of the academics do and so on.

So I thought a lot of that punditry was not appreciating Kennedy's vision of the constitution, which is the right one, when he rightly applies it, which is not always, but he does when it comes to gay people. And sure enough, again, he did. He wrote an opinion that, although it incorporates federalism as part of the analysis of what was at stake and of how novel and radical and therefore presumptively dubious DOMA was, he's clear to say it's not a federalism decision, it's a liberty and equality decision.

Now, Roberts and Scalia both react to the decision. Roberts manipulatively tries to cabin and limit what Kennedy wrote and characterize it as a federalism decision. He says it's a federalism, but he's dissenting and he's wrong. Scalia, dissenting in Scalia fashion, is not playing that game. He says that's it, the jig is up. If you take the Kennedy decision, remove the word "federal," DOMA, and put the word "state" in, you have the blueprint, you have the word-for-word language that will strike down state discrimination, that will bring the freedom to marry. He literally does what I call the strike and replace section, where he shows the page with words underlined and struck out in order to show how the exact decision, through Kennedy's jurisprudence, the correct jurisprudence, will bring down marriage discrimination soon, and it turned out to be in two years.

So there are those two dissents, and one is deceptive and an attempt to make it a federalism decision, and the other is calling it what it is, even though he doesn't like it.

06-02:29:20  
Meeker:

Yeah, James Esseks mentioned that on Tuesday when I spoke with him about the many times that Scalia has very clearly described how he lost, and thus actually in many ways helping.



06-02:29:33

Wolfson:

Helped, yeah. Well, I told you my line was always when he's right, he's right.

06-02:29:39

Meeker:

So, when these decisions come down June 2013, how does this impact the work at Freedom to Marry?

06-02:29:48

Wolfson:

Oh, it of course underscores this irrefutable momentum, it gives us the clear signal that it's time now to double down on the work and the strategy, and to focus on driving the message that America is ready and to push now to get back to the Supreme Court as quickly as possible, to bring down as many of these laws, to have the cases, and to go forward.

What wasn't clear literally on day one after Windsor was how quickly the courts across the country would embrace the signal and go forward. So in the beginning, we still thought that—we knew we had this momentum, we knew it was huge, we now had the federal government on our side, that was going to be another engine of change, it was going to enhance our storytelling, more couples in more parts of the country. We began moving, as I said earlier, our organizing and our on the ground state work. We began shifting that from just the states where we could win to now the states that were left out in order to bring in content that we could feed into our story and media amplification work and be creating this national climate that would allow a quicker return to the court.

The degree to which that was working and the swift agreement of the courts that it was time, the lower courts, really was surprising to everybody. I don't think anybody expected it to go quite that quickly. We knew it was a possibility, but it became clear within a matter of months that we're on this is it, now we're going, it's the race. And it became clear to us, and it was easy for us to accept at Freedom to Marry because we were not a litigation group, we weren't going to be able to control it. There were now, people believed in it, people wanted to part of it, everybody wanted into the act, everybody wanted to either be the hero, or wanted an end to this discrimination in their state, or wanted to get married no matter where they lived, and they were not going to pace and be strategic and let this one go first and build a precedent and so on. It was on. And the courts were essentially signaling, come on in.

So we were relatively quickly able to say, "You know what? We're not going to worry about who's doing which case and how many cases there are and which one ideally would go ahead of the other." We still were working with some more than others. We built a whole apparatus around the cases coming in the tenth circuit, particularly the Utah case, which we saw as one that would be a national signifier, and if the tenth circuit would go our way it would be really powerful, because it wasn't, quote, a liberal circuit and it was something that would signal to the Supreme Court that it's time and so on. So we did put sort of more resources into some than others.

When people would call me and ask, “Should I bring a case right now in Alabama? Should I bring a case right now in Michigan? Should I bring a case right now?” I would generally give them advice like—and Utah, for that matter—I would say things like, “Well it would be good if we could get some wins quicker and get those out front. Are you sure that yours is the one that’s likely to be an immediate win, and if not maybe let’s let some others go” and dah-dah-dah. But I didn’t get emotionally invested in it, and when people mostly went forward anyway, no matter what I or anybody else was saying, worked with them, moved forward, drove story around them, drove story around the aggregate in order to create this sense that all of America’s ready, there’s urgency, you can’t leave anyone out, and of course not only did we see cases being filed, but we were winning them.

So in the two years between *Windsor* and our victory in the Supreme Court in June of 2015, we won more than seventy court rulings. Federal and state, trial and appellate, Democratic appointees as well as Republican appointees. We won more than seventy. We only lost, I think, three, or something like that, one of which was the sixth circuit that went to the Supreme Court, not just *Obergefell* but the constellation of cases that the sixth—the four cases.

So what changed in our work was, we shifted from putting big resources into teeing up more states we could win, which would’ve taken a few years of ground work to finally win a Michigan or what have you. One of the scenarios that had been was that we were going to have to go to the ballot in some of these states and overturn a constitutional amendment by ballot, that we would have to show we could do that. That was like the remaining barrier. So we were putting resources into Ohio, into Michigan, some other state where we were looking at doing that.

Once we moved into this last period, we sort of said, “You know what? Let’s put that on hold and let’s focus instead on this driving the story, creating the narrative, creating the climate around this now cascade of cases that were moving forward.” So that was one change in the final run-up.

The other change was, when all of that progress, all of those cases, all of this now, all fifty all the remaining states had cases, period, lawyers were jumping in, nobody was listening, nobody was taking, prioritizing lessons from anybody else, it was just like, let’s go—as all of that was happening, we did eventually reach the Supreme Court in October, with the tenth circuit case around which we had built this whole apparatus and were ready to drive and so on, and Utah and all of that, and we had good relationships with everybody, and people were working together, and we’d done these great briefs and dah-dah-dah, and then the Supreme Court refused to take the case.

That October moment was another jolt, totally a surprise to everybody, and the question was what to do about that. And so for a brief period, I think it was like six weeks, we had to face the possibility that, contrary to the whole

strategy we had been working, that the way this was going to end, the way we're going to win, was not by having the Supreme Court bring the country to national resolution, but possibly having to go, not state by state, but circuit by circuit. And we'd already won, I think it was five circuits, and then the question was what was going to happen with the next one, the sixth circuit, which literally was the sixth circuit, and the question was would we then have to win in the fifth circuit in the South, win in the eleventh circuit, dah-dah-dah.

And so for that six-week period we began adapting our strategy and our work plan and thinking about what was that going to look like. But then, of course, after just a few weeks of that, the sixth circuit ruled against us and then the goal became, okay, back to work pushing the Supreme Court now to take the case, and unequivocally pressing for the court to take the case, in a way that, again, just a few years earlier we'd been afraid of.

06-02:37:29

Meeker:

How do you unequivocally press the court to take a case?

06-02:37:32

Wolfson:

We, in all our messaging, we would be aiming to drive two themes: "All of America is ready for the freedom to marry," and "It's time." All of America ready is a signal to the Supreme Court you can do this. It's time, there's urgency, it's unfair, people are hurting, is a signal to the justices you have to do this. And so we had organizers on the ground, as I said, in the states pulling out stories, stories of loving and committed couples in Alabama, in Mississippi, in Tennessee, the doctor ad that I told you about. And all of that is basically, number one, showing there's more support in these parts of the country than you think. You can do it, the South will not rise up in rebellion.

And on the other hand, it's not okay to say thirty-seven states have it, so we'll let another ten years go by. What about these families in these thirteen states? We told the stories of families, we told hardship stories. So number one, showing support, including unexpected support. We worked on drumming out polling in the South. Freedom to Marry did the first ever poll of states that didn't yet have marriage in the new kind of marriage universe, and we showed there was majority support even in those states. And then, I think even just a week later, AP or somebody did a poll of the South and of—actually, I think they did different regions, but including the South and the Midwest, where there wasn't, where there's still some of the recalcitrant states, and they showed majority, they confirmed majority support in the South.

So we were amplifying that, doing everything we could to get that into every story, get that out there and known. We did, again, I don't think we did an ad specifically on that, but we wove it into stories and viral digital stuff we were doing, in order to underscore that you can do this and you need to do it.

06-02:39:33

Meeker:

There is so much media coverage at this point in time, so you're getting earned media. You're not actually having to put the ads out, although you are.

06-02:39:41

Wolfson:

Right, well, but sometimes you get earned media. In other words, part of our machine was getting earned media, you know. It's not just producing ads, it's pitching, it's cultivating stories that somebody will want to write about, you know. They don't just magically happen. A huge part of the communications work was not the communications apparatus alone, it was actually our depth on the ground and our relationships and our partners being able to find something for them to write about. Families in Alabama, journey stories, people who used to be against now are for, politicians who—mayors for the freedom to marry, to get more voices coming out of the South, that kind of thing. We had a whole program, Southerners for the Freedom to Marry, and the aim was to highlight there's more support in the South than you think.

06-02:40:28

Meeker:

It's this idea that you're not trying to influence the electorate to vote in a certain way, you're not trying to influence state legislators to vote in a certain way. You are recognizing that this is almost certainly going to happen within a relatively short period of time. It's kind of like preparing the population.

06-02:40:52

Wolfson:

Well, what I would say is that in this phase that we're talking about, 2013 to 2015, but particularly 2014 to '15, once the court didn't take the case and then the sixth circuit essentially gave them the opportunity to take the case, we shifted all our resources out of let's win more states, i.e., how do we persuade politicians, how do we persuade legislators, how do we build support in the electorate in those states, we shifted out of that, which we had been doing on the possibility that we were going to have to win more states, including difficult ones, at the ballot, like Ohio, like Michigan, like Nevada, etc., we pulled those resources in this phase and put it all into climate creation around the court, around the courts, but particularly around the Supreme Court.

And that is, again, a different kind of public education messaging and urgency messaging. It's didn't matter whether we built more support per se in Mississippi, because we weren't trying to win within the four corners of Mississippi, but what we wanted to show was what was in Mississippi that could be added to the national climate.

06-02:42:08

Meeker:

You know, so, it's kind of sort of dual, right? On the one hand you want to bring the campaign to the states that previously hadn't been reachable, so they start hearing these messages that had only been heard in in Minnesota and Washington and Maine. You want to get the journey stories and unexpected messengers out there to speak on your behalf.

06-02:42:31

Wolfson:

Which, to your point, does create more space for more voices to move even in Mississippi, and more support and so on. But whether we got from forty to forty-five or forty-five to forty-eight or forty-nine in Mississippi didn't matter right then. What mattered was, we could show growing support and add it into the national storytelling, because the decision makers were not going to be the lawmakers in Jackson. They were going to be the U.S. Supreme Court.

06-02:43:04

Meeker:

Well, you say decision makers, but it's probably just a singular as opposed to a plural. I mean, how do you—what do you think about that? I mean, do you think the campaign was not just about reaching Anthony Kennedy?

06-02:43:19

Wolfson:

No, I don't think it was just about reaching Anthony Kennedy. It was about actually solidifying the support and willingness to act of Justice Kennedy and some of the others, including Justice Ginsburg. I mean obviously we believed we had her heart, we believed she would want to vote with us, but Justice Ginsburg publicly, almost too much, was making comments about only at the right time, not too soon, not ready, got to get the country ready first, and we took that seriously. I always felt like if push came to shove, she's not going to vote against us, but she's not necessarily pushing to vote for us either. So, and the Supreme Court did not take the case in October of 2014. It only takes four justices to take a case. So somebody on our side, presumably at least two somebodies on our side, were not ready or didn't think it was a good idea yet to take it. So it was not just about Justice Kennedy, though it was about five that you can pretty well easily name.

06-02:44:40

Meeker:

So they do take the case a year later, October 2015.

06-02:44:45

Wolfson:

Not a year later, October 2014.

06-02:44:54

Meeker:

And there you are again.

06-02:44:57

Wolfson:

Right, back on track.

06-02:44:58

Meeker:

Back on track, and you are witnessing oral arguments before the Supreme Court. Was the atmosphere in that hearing any different?

06-02:45:10

Wolfson:

You know, again, outside the court there was certainly a sense of excitement and momentum and we're likely to win. I think it was a little bit less so than in—less momentous in 2013, because I think really everybody believed we were going to win, and we'd now gone through it and we just had now been on this extraordinary tide of winning more than seventy court cases.

Remember, we used to lose all the cases in the seventies and the eighties and the nineties, even in the 2000s. If you add them up, we probably lost more than we won.

Now we, in two years, had won more than seventy cases, every kind of court, and we were now up to thirty-seven states with the freedom to marry, we had the federal government on our side now, solidly, for two years. The Supreme Court had refused to stop it just a few months earlier. Polling continued to improve with each victory. It had used to be the pattern that a victory would be followed by a short-term drop-off, a little bit of regression, and then would resume its climb. People would have a “urgh” moment. Now we didn’t even have that anymore. Victory, growing support.

The Williams Institute did a study, and we publicized the hell out of it, that in every state where we had won the freedom to marry, including states like Utah and the states where, quote-unquote, it had been imposed on the people, support had gone up. So that old factor from ten minutes earlier of regression wasn’t even happening anymore. The American people were ready. Orrin Hatch had given an interview in which he had said essentially, “Anybody who doesn’t think it’s over already is not paying attention. Of course the courts going to blah-blah-blah.” We publicized the hell out of that. We just kept pushing—there were polls showing a majority of the American people, I think it was 60-some percent, wanted the Supreme Court to rule and believed it was a federal question, a national constitutional question, it shouldn’t be left to the states, a change from what they were answering ten years earlier.

So really everything at that point was clearly clicking and clearly we had succeeded, and we really could believe we had conveyed these themes of America’s ready, all of America’s ready, it’s time, and you can do it, and built the critical mass of states in support. You know, we really just believed it was there, and not only did we believe it, everybody believed it.

So going into the court, it was exciting, it was momentous, we all knew it was going to be important, but there was a feeling of it’s done, it’s going to happen. And we worked hard to push against that, you know. On the one hand, we wanted to convey the sense of you can do this, reassurance, the country’s ready, and so on, and we also wanted to my other taglines were it’s not a done deal until it’s done, and winning is not won. We have to keep fighting, and we wanted to keep driving and pushing and doing everything we could until we won. But it was hard not to feel, as everybody felt, that we had won.

06-02:48:37  
Meeker:

Was there anything in oral arguments that made you—

06-02:48:41  
Wolfson:

Well, before I do oral arguments, I would say one of the most beautiful moments for me in this whole work was the night before oral arguments.

Freedom to Marry hosted a reception for all the marriage plaintiffs that we could find, that we could track down, going back more than four decades. So we wound up ultimately having, I can check my speech, it was something like eighty, more than eighty plaintiffs from more than thirty states over, from more than four decades. And we had them all in this huge room, and we had prepared a beautiful graphic that listed all the names of all the—which had never existed before, we had to put that together. You know, everybody had their case and their law firm and their—but we put together this story of just how long and how pervasively and how—our movement had been fighting for this, and how many people had sacrificed and worked and been out there.

We had Tony Sullivan, who had been, had filed with his then husband, the first federal marriage challenge, which was in an immigration context, and unfortunately Richard had died, Richard Adams, but they had fought throughout the eighties to be respected so that Tony, an Australian, could get his visa and stay in the United States. And they had lost. The very last decision, as it had gone back up and down and back up and down through the courts, the INS, through the courts, the INS, back up to the courts, back up to the federal courts, the very last decision rebuffing this couple in the first ever federal marriage challenge in 1985 was written by then Judge Anthony Kennedy, who thirty years later, of course—

06-02:50:45

Meeker:

I didn't know that.

06-02:50:46

Wolfson:

Yeah. So he was in the room. We had my Hawaii plaintiffs in the room. We had the Massachusetts plaintiffs in the room. And then from the succeeding many, many, many, many, many years, including this huge volume of plaintiffs who were current plaintiffs in this wave of however many cases it was plus the plaintiffs who were now going before the Supreme Court the next day. So it was an absolutely just thrilling evening, and we really worked hard not to make it about Freedom to Marry and dah-dah-dah. It was about our movement and about this team.

06-02:51:23

Meeker:

Where was this held?

06-02:51:25

Wolfson:

We held it at the law firm office overlooking the White House a really cool space, of our Republican-leaning law firm who lobbied for Freedom to Marry to bring down DOMA and to make the case on the Hill, from the Republican side.

06-02:51:40

Meeker:

What firm was that?

06-02:51:41

Wolfson:

It's called Holland and Knight.

06-02:51:44

Meeker:

And so it was a reception. Was there a program?

06-02:51:47

Wolfson:

So we didn't want to have a huge program, so the program basically was, I spoke to explain what, who was here and the moment we were in, that the next day we were all going before the Supreme Court, but this didn't come out of nowhere, it wasn't just one case, it wasn't just one plaintiff, it wasn't just one attorney, it wasn't just one person, one organization, it was a movement with a strategy and a campaign to get this job done over four decades, and saluting everybody, including the lawyers as well as the plaintiffs, and the activists as well as the lawyers, for all this work that had made this collective presentation to the country and tomorrow to the Supreme Court.

And then I introduced our special guest for the evening, who was Valerie Jarrett, who came with a message from the president and saluted everybody and talked about how grateful they are to have been part of this with us and to have seen the country transformed and believe that we'll now go forward and prevail in front of the Supreme Court, and it's a testament, she said, more than anything to the power of love. So it was an absolutely beautiful moment, and it, to me, just felt like such a right way for Freedom to Marry to mark this moment that we're saluting lawyers, we're saluting plaintiffs, but we're also telling a story of how we all got to this moment. Yes, it's in court, but it's not in court as some magic thing that just somebody did because they're a good lawyer or a determined plaintiff. It's in court now, with the hope of winning, because we all had done all of this to get here.

06-02:53:36

Meeker:

Was there a photograph of the litigants taken?

06-02:53:38

Wolfson:

Yeah, there's photos—well, it's too big. There's a video. We did a little video, it's like a four- or six-minute video of the evening, and you can see that online.

06-02:53:50

Meeker:

Probably there were a few moments where there weren't a lot of dry eyes in the house, I would guess.

06-02:53:54

Wolfson:

Oh yeah. I mean, people, everybody was very emotional. Very joyous, very emotional, very grateful to get to meet their counterparts. And that was part of what was interesting, too. You know, you asked earlier how did I keep track of everything, and even I couldn't keep track of every detail of everything. I couldn't name all the cases and so on, I had a great team helping me to do that. But I was aware of everything, and one way or the other had known or met or heard of almost everybody.

But a lot of these cases were in their own world, they were in their own silo. They didn't know they were part of a whole campaign, or the whole campaign



hadn't happened yet, or they were really focused on what they were doing in Florida, but they weren't so much aware of what was happening in Michigan or Utah or any of that. So having the chance for these lawyers and plaintiffs just to be together and put a face to the name and so on, it did mean a lot to a lot of people, and because we were all marking it together. It was also a way of saying these plaintiffs and these lawyers may be the ones in front of the court tomorrow, but we're all in front of the court tomorrow.

06-02:55:06

Meeker:

So, at the hearing, at the oral arguments, was there anything that you heard that was surprising?

06-02:55:17

Wolfson:

You know, it's always a little surprising when somebody you assume is going to vote with you asks one of these annoying problematic hypotheticals, or long tortured just-get-to-it question, or a question that you're just basically going to say, in effect you're going to say that's not relevant, although you say it in a nice way. So again, it was a little bit of a, there was a chunk of that that was kind of frustrating.

06-02:55:48

Meeker:

Coming from—

06-02:55:49

Wolfson:

Coming from Kennedy, coming from Breyer, as usual, coming from, I think predominantly those. You know, you expect Scalia and Alito and maybe Roberts to ask hostile questions. Scalia was actually even a little off his game. His hostile question was not even a good hostile question, it was just this tortured thing, but the answer was no, that's not going to happen. You know, it was about forcing ministers to perform. It was just like of all the nitpicky problematic things he could've gone for, that was the wrong one, so he was like off his game.

But there was a fair amount of belaboring this question of the millennia and how can we change the millennia, and what about other civilizations and dah-dah-dah. And it was sort of the roughest patch of the argument, and it was rough for Mary, because she kept trying to, of course, bring it back to something of relevance, i.e., the constitution, and the real people involved, and she did do a good job of getting it back to that point, with some really good help from Justice Ginsburg in particular, who asked a couple, again, really moment-piercing questions.

So there was that rough patch, but Mary brought it through, and Doug did a very good job, and the solicitor general in particular I thought did a very good job. So all together, they did what we needed and brought us where we needed to be. And again, it kind of doesn't really matter, because at the end of the day, argument is not what decides these things. And if anything, whatever fears, concerns, nervousness, any of that might have provoked, and it really didn't

actually make me nervous, because I believed we were going to win, based on the collective presentation that was already there, but what really, I thought, shone through was no matter what this rough patch or this hypothetical or this whatever, the state, the government had nothing. They just had nothing. We had so exposed that there was no good reason for this discrimination.

And then, the one slightly surprising thing was, the states' attorneys doubled down on the worst possible argument, which in a sense was all they had, but they didn't try to dress it up in any way. They actually doubled down on this centralist argument about the essence of marriage and biology and—

06-02:58:20

Meeker:

Child rearing.

06-02:58:21

Wolfson:

They didn't even so much argue the child rearing. It was, well, I guess child rearing—I guess child raising. But it was this basic argument about complementarity of men and women. And it just like, if you don't already believe that, which a minority of Americans now believe it it's not persuasive, and it's not a good reason. And even if it were true, it's not a good reason. I mean, even if you believe the best possible home for a child is a man and a woman biologically producing the child in marriage, etc., which ask Justice Roberts, Chief Justice Roberts, if that's true for his kids and so on, but even if you believe that that is true, it still doesn't get you to why gay people should be denied the freedom to marry, because when gay people can marry, it doesn't prevent those couples from getting married, it doesn't prevent those children from having their parents. But what discrimination against gay people does is harm the kids they're raising. So it doesn't answer the question. And this is again the same argument we dealt with in Hawaii, so they had not advanced the ball at all on their argument, and instead we had refuted every element of it, including having all the leading child welfare experts in the country, as well as now seventy-plus courts, reviewing the evidence of the arguments to show that that argument didn't work and that we're right, etc.

So it was just such a striking moment that whatever the difficulty of answering some hypotheticals we might have if you really push a tortured this or that, there's nothing on the other side, nothing. And that, I thought, was the bottom line clear take-away from the argument, as we would've expected. So I left, again, feeling very hopeful and believing that we had delivered what we needed through the collective presentation, through Mary, Doug, and the solicitor general, and that we were going to win.

06-03:00:24

Meeker:

And, in fact, that's what happened. June 2015, *Obergefell* is decided five-four. Where were you when the decision came down and what was your initial response and experience of it?

06-03:00:37  
Wolfson:

Right. So, as you know, you start getting decision days from the Supreme Court, and it starts with Mondays, and then they start adding Thursdays, and then it's Monday and Thursday, and if they want to add another day, they add another day. So as June moves forward and it's toward the end of the term, which usually is the end of June, they start adding more and more dates and so on. So you're—beginning in June, you're kind of—I mean, theoretically they could've decided the next week or whatever, but you kind of assume with a big case it's not going to happen until June, and then later in June, and then later in June and later.

But nevertheless, we would start gathering the Freedom to Marry staff around the conference table in our headquarters in New York—half of our organization was in other states, in other parts of the country, but about half were based in New York, and so every Monday, and then every Monday and Thursday, we would start gathering. And we would kind of go through the drill of does everyone know what they're going to do if we win, if we lose, if we get a mixed decision, etc., etc. You know, pushing out talking points, answering requests for guidance from advocates and partner organizations and so on, fielding media, evaluating what the decision meant, rolling out consequences, etc. And we made sure everybody knew what they were going to do and be able to hit their battle stations and so on.

And then we would all be in the conference room, and as the clock got closer to 10, everybody is on their little device, or many of my younger team would have their laptops and they'd all be looking, and day after day we'd go through this, and each time it didn't happen, or we'd get the Obamacare decision, or we'd get the decision on housing.

So finally we were coming toward the last week, and I think they set it down for Friday, June 26, and there were now only two more days left on which, unless something extraordinary happened, they were going to rule. It was either going to be this Friday or Monday. And even though I had been resisting and actually disparaging the constant asking of is it going to be today, is it going to be tomorrow, is it going to be—which you would get all the time, I mean, I would get this question hundreds of times a day, people would be asking me, When is it gonna be? I don't know. What do you think's gonna happen? I don't know. And it just went on and on. I even wrote a haiku about it, which wound up getting published in the *Wall Street Journal*, about no one knows, and yet there'd be endless punditry and endless questioning, and it was incredibly infuriating, although you understood why people were asking, but it was just so—it only added to the tension without accomplishing anything.

But, so, despite all that and despite having written the definitive haiku on the subject, that nobody knows and stop asking and just do the work, I felt that Friday, June 26, was going to be the day. Part of it was because I kind of thought if they added on Friday, they want to get out of town, maybe they

want to wrap up and be done. Part of it was that June 26 had been the date on which we had won two of the other major gay rights rulings, *Lawrence* and *Windsor*. Not that that's a real reason, but it just felt like kind of a good karma reason why it may very well be that they chose this day. Maybe Kennedy wanted that date. Or just he was ready or what have you.

So for no rock-solid reason, I kind of felt going in it's going to be today. Nevertheless, nobody knows. So we get there, we're all gathered around the table again. As 10:00 comes near, I basically just made a statement to my team at this point we didn't need to roll through the checklist anymore because we'd now gone through the fire drill several days in a row, but I just, I said to them that I just really wanted to thank everybody for being such a great team, and I didn't know when I would ever have such a great team again, and that no matter what happens today, if it happens today, we should all feel proud of what we've done, and if necessary we'll keep doing more of it, but they've done everything they could've done and we should all just be grateful for having been a team and all that, and that I appreciated it.

And then it's 10:00, okay, let's go, everybody's picking up their devices and looking. And even though I had this amazing digital team, all these young hotshots who were the cutting edge, I was the one that saw it first, and I just said, "Oh my god, we won." And then I was immediately anxious, because when I say it, people are going to take it seriously, and I wasn't sure I just saw the first report. So I we kept looking, but then everybody started, through their various sources, seeing it. And so of course there was this huge explosion of cheers and people started crying, and it was very emotional, and unlike the first couple of days, this time we were ready with champagne, so we quickly popped the champagne, poured glasses. We all did a toast, standing up in that conference room. People crying—and then everybody ran to their battle stations to do the work, obviously incredibly happy.

Well, my job was, being the only attorney and obviously one of the lead people to speak on the subject, was to read the decision and to be ready to analyze and discuss it. So I went to my office and sat in front of my computer on my desk and started scrolling through the decision. And as I was reading the decision on the screen, really with each paragraph I would find myself tearing up or crying. At first I thought the reason I was crying was that each paragraph, each passage, each argument would bring back a memory or an association with something, either an argument we had made or a debate we had had or a fight that we'd had with some colleague or some senator or some politician or whatever, or some movement person or funder. Or it would make me think of the plaintiffs I had just been in such close touch with all these years, including some who I'd been in touch with many years earlier, who hadn't lived to see it, and I would think about that, or I'd think about, god, that was an argument we had in California in 1995, or whatever.

Or I thought about my paper that I had written in 1983 and some of Justice Kennedy's jurisprudence typically sounded a lot like arguments I'd made. And so each thing would just make me tear up, and I would just say, oh, that's so beautiful, or yes, that's it, or whatever. And it wasn't really until two days later, over the weekend, thinking more about it, that I realized that the reason I was crying was not just that there were so many memories in this beautiful opinion, though that was there, but that I was also feeling relief. That all these years and years I had been we can do this, we can win, and I really always believed it. It wasn't spin. I truly was lucky enough to have the kind of temperament or healthy ego, as you put it, that believed we would win. And I even believed that if we didn't win that day, that we would have kept working our strategy, we would have been ready to keep going, and we would have won.

But it was such a relief not to have to keep fighting, that we didn't have to keep doing it anymore, I didn't have to muster the optimism and can-do to push for another round of battling, that the battling was now done with regard to the freedom to marry. We had won.

And I even then reflected that the fact that it took me two days to even realize that I was feeling relief was just a reflection of how in role, how hardened I had been in this work, that it had been an absolute honor and a privilege and a joy to do the work and to live to see it, but that was the toll it had taken, that I was even so disconnected with myself that it took me two days to even realize wow, I'm feeling some relief. So it was just a very interesting few-day absorption of this victory. And then, of course, all the work, all the leveraging of the victory, all the celebrating of the victory, all the explaining and sharing and capitalizing unfolded, as well as the beginning of the new work of closing down Freedom to Marry.

06-03:10:15  
Meeker:

There's a lot to follow up on there, but I do want to give you a chance to talk about some of the lessons of this, and maybe kind of the biggest question in many ways—are we running out of time?

06-03:10:26  
Wolfson:

Yeah, actually, I think we should stop maybe here, because I have a call in a few minutes. And if we want to do one little wrap-up section, if it fits at some point, we can do a little thing.

## Interview 7: December 13, 2016

07-00:00:00

Meeker:

Today is the 13<sup>th</sup> of December 2016. This is Martin Meeker interviewing Evan Wolfson for the Freedom to Marry Oral History Project and this is interview session number seven. So thank you very much for giving me some more time and I look forward to wrapping up this interview today. I noticed in reviewing the transcript that we spent virtually no time talking about the Boy Scouts case, *Boy Scouts of America vs. Dale*. A case that was argued before and decided by the Supreme Court in 2000 and for which you served as head legal counsel. Can you give me a little bit of background about how this particular case came to you? I assume it was when you were at Lambda Legal.

07-00:00:55

Wolfson:

Yeah. So I was at Lambda Legal. I was an attorney at Lambda Legal for several years. And there had already been several cases against the Boy Scouts policies, including one led by my good friend, Jon Davidson, who's now the legal director of Lambda, still. They had all lost but there had been a many year fight against the Boy Scouts hierarchies' imposition – and really even a smuggling in – of a discriminatory policy against gay people that was nowhere to be found in the Boy Scouts charters, in their materials, in their membership applications. It was not really widely known to the members. It was certainly not part of anything they were instructing or teaching, but it was a policy of discrimination enforced by the central hierarchy, even over the objection of many of the chartered entities and members. So there had been waves of challenge.

One of those then came to me at Lambda in my office in New York in the form of James Dale, who was a young man who had spent more than half of his life in the Scouts, had become one of their literal poster boys. They literally had him on posters. He had won almost every award they had: Eagle Scout but also the merits and they'd been touting him and using him as a spokesperson and role model, etc. He'd been just an outstanding Scout and had founded a very important part of his life and cared a lot about it. And to make a long story short, when he was in college, he had now risen through the ranks in scouting. When you turn age eighteen you're no longer a youth member of scouting, you're invited to become a leader, an assistant scout leader, etc., and then you rise through the ranks kind of as a volunteer adult, although literally it's from eighteen to eighteen-and-a-day you become in this other category. So he was now still active with the Scouts as an assistant scout leader, not quite as intensely involved as he was when he was a youth member.

He was at college and he took part in college in a seminar on the needs of gay youth. He had recently come out to himself and then to his circle and he was now taking part in the seminar on the isolation, the discrimination, the burden that gay youth feel. This had nothing to do with scouting. He wasn't doing it as a scout or representing scouting or as a scoutmaster in any respect. He was

doing it as a college kid. It got covered in the local newspaper, the New Jersey *Star-Ledger* and shortly thereafter he received in the mail this very cold, very hostile letter basically expelling him from the Boy Scouts for—and I don't remember the phrase but it was some kind of disreputable conduct or some phrase like that.

07-00:04:05

Meeker:

Where did it come from? Did it come from the national headquarters of scouting?

07-00:04:09

Wolfson:

If I remember correctly, it came from the Monmouth [New Jersey] Council, which is the regional, but I'm not 100 percent sure about that. But it certainly was coming on the orders of the national pursuant to this policy that James had no knowledge of. So he was shocked, mortified, hurt, betrayed, because this organization that he really thought of as a parent, in a sense, had now turned on him and in this very snarky, hostile, cold way. And he decided that that was wrong and one of the things he had learned in Boy Scouts is you should stand up for yourself and if something happens that's wrong you should fight back and you should be honest and true to yourself. And so he decided he would fight back. So he began contacting Lambda and the ACLU and he met with both organizations about if there was a way to fight back.

When he came to Lambda he happened to come into my office. And I can still remember that day, twenty – gosh, what is it? It was 1990, I think. So it's twenty-six years ago. So he was young but very poised and very hurt and very determined that right should be done. So we began talking and he ultimately decided to go with me, to go with Lambda Legal, and we began the process of figuring out how to represent him. And we knew it was going to be a mighty challenge, because to take on the Boy Scouts was a big deal. All the cases so far had lost. They had huge legal representation, big firms, big resources. Obviously it's an iconic institution, national institution. This was tiny little Lambda in the period still of fighting against the AIDS assault on our lives, fighting against discrimination. It was during the Bush Administration, Bush I, so it was a hostile administration, although not the most hostile we'd ever had or will have. And we knew it was going to be a big deal. And so there was some division within Lambda about whether to take the case, but ultimately we decided we were going to take the case and I was going to represent him, and I began the work of trying to find the resources that would enable Lambda to represent him. That ultimately took, to make a long story short, several years, of finding a firm that would work with Lambda. Because in those days, unlike the case now, even law firms were reluctant to get involved with the gay rights movement, even organizations as respectable as Lambda.

07-00:06:53

Meeker:

What kind of resources did the private firms typically provide?

07-00:07:07  
Wolfson:

Well, they can throw thousands of person hours, of young attorneys and some senior engagement, senior review to draft, to research, to write memos, to prep. They can pay the costs of litigation, which include fees, etc. But mostly attorney time. But also paralegal time and printing and all that kind of stuff. So, particularly in those days, but even today, when it's a big case like that you need to staff it and support it and the big law firms have those resources in a way that, certainly in those days, Lambda did not. There was round after round after round of research and memo writing and prepping and ultimately brief writing and then argument and then memo writing and then motion practice and dealing with the battling that goes on between opposing sides through motions that are made, etc. Then there are depositions, interrogating the witnesses, much like this [interview]. So Lambda definitely needed those resources.

And it took us a long while to find a firm that was willing to do it. And in part it was because of the skittishness and reluctance to get involved with a gay case. But even more it was compounded in this case by the relationships many of the firms had with the Boy Scouts, as well as their own PR concerns about taking on the Boy Scouts. So even when we found some firms that were willing to do some gay pro bono help alongside Lambda, they would then do a conflicts check or just check amongst their partners and would sort of be told, "We can't do this because we're involved with the Boy Scouts on this or that or that," or "We don't want to do this." So it took a long while to find a firm. And then we eventually found one and then after, I can't remember how long, but a few months, a year, whatever, they had to drop out and then we had to find another. Ultimately, through some friend relationships that I had, we found our way to a law firm called Cleary Gottlieb. And Cleary signed onto the case and then spent ten years working alongside me, or almost ten years, pouring literally millions of dollars' worth of attorney time and resources into the case. Hugely invested and contributing and generously giving of their time and talent to the case as a co-counsel in the work.

07-00:09:45  
Meeker:

So how did it work through the courts then? What was the process by which it gets to the Supreme Court?

07-00:09:51  
Wolfson:

Yeah. So we climbed our way through the New Jersey courts. We first filed a case. And I think we actually had to file twice. I can't remember. We amended the complaint, etc., because in the intervening time New Jersey actually passed a gay rights law. So we worked to figure out a way of incorporating that added protection for James into the case by talking about the denial of his participation as an ongoing violation of his legal rights, not just the expulsion in the first place, but their refusal to allow him to join. It was a continuing policy of discrimination, so it was a continuing harm to him.



07-00:10:27

Meeker: So you went back and tried to get him—

07-00:10:29

Wolfson:

We amended the complaint. Yeah. Again, I don't remember all the details but essentially that. So we were assigned to a judge. And we were assigned to an extremely hostile judge. Literally a rabid bigot. Somebody who literally, when we came into the courtroom, would spin in his chair and put his back to us. Who refused to allow an extension of time for one of the Cleary attorneys who was pregnant. Refused to allow her some extra time, I don't remember exactly why, but for some argument or some brief writing or something. Who refused to allow me, as a New York based attorney, to be admitted what's called *pro hac vice*, which is for the purposes of the case, which is a routine courtesy granted to out-of-state expert attorneys that a client wants. He made us go through all the hoops and drag it out for months and months and months, and ultimately wound up dragging out the trial stage of the case, there was no trial but it was a trial level case, for about three years, first torturing us through arguments and motions and dripping hostility and asking invasive questions and threatening to hold us and James in contempt if James didn't answer questions about his sex life, etc., none of which had anything to do with the case. He was kicked out because he took part in a seminar. Somebody in the Boy Scouts saw in the paper James Dale is gay. It didn't say anything about scouting but it said he was gay. But then said, "We don't want this gay in our counsel, in our scouting." So that's why he was kicked out. Nobody disputed that. Nobody said he was also doing this or that or he had engaged in bad behavior or anything like that. That's what it was. But this judge, out of his rabid anti-gay hostility that was just visible on his face—I'm sure my face is contorting right now because I can still picture—

07-00:12:30

Meeker: What was his name?

07-00:12:31

Wolfson:

McGann, Judge McGann, Patrick McGann. In any case, he then dragged it out for three years, even though we knew he was going to rule against us. It was sort of like just do it and let's go and we'll go up the appellate ladder and get this case moving. But he deliberately dragged it out for three years. So that's part of why this whole case took ten years. So that happened. And then eventually we lost under Judge McGann, as predicted, in a truly vicious, outstandingly bigoted and shockingly intemperate judicial opinion that was so bad that it got condemned by the New Jersey Bar Association committees. Again, I don't remember all the details but there was some process around whether he should be sanctioned, etc.

There were newspaper articles. I think there was an editorial condemning it, etc. Not even condemning the result, just condemning the clear bigotry that was going on in this case. Anyway, so that happened. We then appealed that to the intermediate appellate level in New Jersey. I think it was called the

appellate division, if I remember correctly. And had to do another round of briefs and another round of preparation and then argued the case. And I argued the case in the appellate court. I think the Cleary attorneys carried most of the argument time in the trial court, although I think I did some round of something, I don't remember now, but partly because he wouldn't allow me to fully participate for part of the process. And then I argued in the appellate division. We won in the appellate division and it was, if I remember correctly, the first time anybody had beaten the Boy Scouts in one of these cases, although it's conceivable that Jon had won at a lower level in one of the earlier cases he had advised.

And I should say, by the way, that Jon was pretty much the first person I called after James had come into my office. Jon at that point, I think, was still working at the ACLU. He later came to Lambda but we'd already been friends through the [LGBT litigators] roundtable and we'd get together every six months or so, he as an ACLU attorney in the movement, I as a new Lambda attorney. We really had always bonded and liked each other. I knew he had done a Boy Scout case so I called him. He was so exceptionally generous and basically did this giant not just brain dump but document dump of all the work he had done in laying the foundations for how to argue one of these cases from the ACLU to Lambda, which we then made use of in this case. So we then succeeded in winning, which, of course, we were all happy about, including him.

And at some point during this he then came over to Lambda. But the Boy Scouts appealed that decision. So we won in the appellate division. Now they appeal it to the New Jersey Supreme Court. So there's another round of process and time, etc. And eventually, I believe it was August of 1999, we won in the New Jersey Supreme Court. And it was a unanimous ruling of this very, very respected state court. The New Jersey State Supreme Court has historically been one of the most respected courts in the country for decades. Considered to have really outstanding judges. One of the courts that other courts look to, even if not bound by it. And it was unanimous. So it was very, very strong, written by the chief justice of the New Jersey Supreme Court.

Huge press, huge national discussion. James is now the poster boy for gay youth all throughout the country. The gay Boy Scout. His face is everywhere. We were on Larry King. We were on all these talk shows, etc., and there was this tremendous national discussion that accelerated and, of course, was fueled in addition by our winning. And really all of America was debating this question of whether the Boy Scouts should have a right to discriminate and whether it was right to discriminate.

07-00:16:44  
Meeker:

The New Jersey Supreme Court decision, what was the argument? What was the decision based on?

07-00:16:50  
Wolfson:

Well, the core of the case, and there were minor arguments or sub-arguments, etc., but the gist of the case was that New Jersey has a law against discrimination. The law says you may not discriminate on the basis of sexual orientation in public accommodations. So the threshold question is: is a membership organization like the Boy Scouts a public accommodation? And in this case we showed mountains of evidence that the Boy Scouts holds itself out publicly as “open to all boys”. It’s in its materials, it’s in *Boys Life* magazine, it’s on the website, etc. They state that they’re not some private little club meeting in a secret room that only five people can knock on the door to, that they want to welcome in everybody. And if you want to welcome in everybody you are then a place of public accommodation that then must not discriminate on the basis of race, sex, sexual orientation, etc., except where the law allows certain exceptions. For example, certain single-sex facilities are exempted in the law. But there was no exemption for, at this point, sexual orientation and we, of course, showed that the policy was an anti-gay policy that had nothing to do with anything any gay person said or did, was simply about being gay, the identity of being gay.

07-00:18:18  
Meeker:

Status rather than behavior. Yeah.

07-00:18:20  
Wolfson:

Exactly. So that’s the threshold question. Is this a public accommodation and, if so, did they discriminate. And we won those threshold questions. At that point then becomes really the biggest question in the case, which is does the First Amendment give organizations like the Boy Scouts a special shield against the ordinary operations of the law. Do they get a special license to discriminate under the First Amendment, either because of their right to expression or the right to association, which is part of the First Amendment right. And we won on that question, as well.

Now, to step back for a second, you and I have discussed how the single biggest thing that we at Lambda, as a little band of attorneys, and that we as the LGBT lawyers in the movement through the roundtable and other circles, the single biggest thing we had always fought about amongst ourselves, not just disagreed as lawyers, but actually fought over, was marriage. The second biggest thing that we had fought over, not with the same intensity or the same frequency as marriage, but a truly dividing question that people really did disagree over intensely and fell into different camps was essentially this question of the extent of the First Amendment protections in certain contexts, whether businesses in some cases or entities in some cases should have a First Amendment right to discriminate. It had mostly arisen in the context of parades and there had been a number of cases, culminating in a Supreme Court case, involving the Irish parade, St. Patrick’s parade, but also other parades. There was a parade in Chicago. I think it’s called the Bud Billiken parade that had resulted in a case. They’d refused to allow a gay contingent to

march and there was a lawsuit. And we had really argued over this at Lambda. And so—

07-00:20:28

Meeker: What was the nature of the argument?

07-00:20:31

Wolfson: Some people felt essentially that the compelling interest in eliminating discrimination overrode some marginal claim that might be made under the First Amendment. And others felt, no, the First Amendment claims are robust and real and even though we may not like it in this context we have to uphold it and the protections against discrimination takes second priority. In this case you have to allow discrimination in the bigger interest of expression, of protecting free expression.

07-00:21:03

Meeker: I mean, gays and lesbians have their own parades.

07-00:21:07

Wolfson: Right. And so then you get into those arguments. When is it acceptable for a gay business to say, “We’re going to serve gay clientele”? And those were the kinds of debates. A gay club or a non-gay club: Where do you draw the line? This is a fault line that is not just a gay thing. You see it in, although this doesn’t involve gays, but the attempts of religious organizations now to claim some kind of special license to be able to say, “We’re going to meet in the school or we’re going to get school funding even though we discriminate against gays.” And, of course, ten minutes earlier they were arguing, “Even though we want to discriminate against blacks.” And they’re also arguing, “Even though we want to discriminate against women.” So this is a very thorny, real question and we wrestled with it, as well. And I mention that because marriage was number one but this really was the number two fault line in which we actually would really fight with each other, not just have the typical ordinary lawyer, “I think we should do it this way kind of thing.”

07-00:22:07

Meeker: So I’m guessing you came down on the anti-discrimination side, not on the First Amendment side?

07-00:22:14

Wolfson: No, no. That’s the sweet irony here. I actually was on the side of essentially First Amendment absolutist. In the parade cases I disagreed with the decisions our organizations – Lambda, the ACLU, and GLAD – sometimes made to fight these parades. I disagreed with our position in the *Hurley* case, the case that went to the Supreme Court involving the St. Patrick’s case. I actually believed that the law against discrimination needed to yield in a case of true First Amendment rights. The difference here was that based on the evidence in this case, and the facts in this case, the question you need to ask is who has the First Amendment right here. And it’s clear under the case law and under the standard that the First Amendment law of an organization, an association

like the Boy Scouts, belongs to the members. And because the members had not come together around a purpose of expressing anti-gay ideology or even any awareness that there was an anti-gay principle or expression that the organization was about, that therefore they shouldn't be able to invoke a First Amendment shield against a secret policy just to discriminate. And the argument that I made based on the evidence was if an organization has a true anti-gay purpose then it has a real argument, which may or may not ultimately win because there are many parts to the test. But you at least make it in the door of arguing you have some First Amendment stake in protecting your anti-gay purpose and desire to express it. But if you don't have an anti-gay purpose that the members have come together around then how are you invoking the First Amendment? And given that no member was ever told, "Sign here. And, by the way, you're aware that this is an anti-gay organization." Given that it was never in any of the literature, never in any of the official resolutions, etc., etc., etc., the mere fact that they had a policy of discriminating wasn't enough to trigger the First Amendment. And so, for me, even as a First Amendment absolutist, this was not a First Amendment case and that was the argument I took forward.

And, by the way, I was so right on the case law and the legal standards that it won a unanimous ruling of the New Jersey Supreme Court. In the New Jersey Court's opinion they did not believe they were creating a new standard. They were applying the existing civil rights First Amendment balance in the case law to these pretty undisputed facts. It was the US Supreme Court, five-to-four, that basically threw out the standard and, for the purposes of the anti-gay discrimination, that five of those justices were willing to stand for, had a standard that actually cannot actually be taken literally because, as I argued in the Supreme Court, to say that just because an organization says it wants to discriminate, therefore it has a First Amendment right to discriminate, is an exception that would swallow all of civil rights law. If your defense to a civil rights law is, "I don't want to," and that's good enough and the courts will not even probe in the literature or how you're carrying out the policy or did the members really come together for this, etc., if the court's just going to say, "That's enough," well, then, you don't have a civil rights law anymore, which, of course, would have been perfectly fine with Rehnquist, who wrote the opinion.

07-00:26:14  
Meeker:

So from the New Jersey State Supreme Court does it go—

07-00:26:19  
Wolfson:

It goes to the US Supreme Court.

07-00:26:20  
Meeker:

It goes to the US Supreme Court at that point. Right.

07-00:26:22  
Wolfson:

So in August we win. I don't remember. Maybe August 3<sup>rd</sup>, I can't remember now. August 2<sup>nd</sup>, I think. Well, I don't remember. James' birthday is August 2<sup>nd</sup>. So we won in August of 1999 and then the question was—we knew the Boy Scouts were going to ask the Supreme Court to take it but it's up to the Supreme Court whether they're going to take it. It takes four justices to grant cert. So we were kind of on pins and needles. We had to write our opposition, one more round of brief writing and so on. But, meanwhile, we were basking in the glory and it was a huge national discussion. It was this unanimous, resounding, resonant win. It affirmed the principles that I talked about. But, even more, it did something that is part of why I always wanted to take this case in the first place, and it's what connected my Boy Scouts work, which was this ten-year piece of work, with my marriage work, which was already at that point twenty years or whatever. Which is that I always felt that while America is arguing over this question of whether they should have a right to discriminate, they were absorbing the premises of there is such a thing as gay youth. Gay youth look like this guy. He's so admirable. He's so well spoken. Who wouldn't want him as a son, a brother, and this is what a gay young person is. Gay people are not alien others. They are family. They're like this kid. And my view was whether or not we persuaded people on the First Amendment argument, absorbing that understanding was transformative.

07-00:28:02  
Meeker:

It's the public education component of the work that you were doing.

07-00:28:04  
Wolfson:

Correct. The public education and the reframing of who gay people are and what are the values at stake in opposing discrimination against gay people.

07-00:28:14  
Meeker:

In these earlier court decisions, including the New Jersey State Supreme Court, and certainly in the US Supreme Court, the way that the Boy Scouts were arguing on behalf of their approach—they were bringing in that “morally straight” clause that's part of the Boy Scout oath as evidence that this is a long-standing tradition, that it's at the core of what Boy Scouts were all about. Was that something that was used throughout the whole process?

07-00:28:52  
Wolfson:

Oh, absolutely.

07-00:28:54  
Meeker:

Appealing to it?

07-00:28:54  
Wolfson:

This debate about morally straight, this debate about presumptions, the insinuations that were never too far below the surface and sometimes boiled up about the need to protect kids. The Boy Scouts, to their credit, officially disclaimed and whenever it was pointedly asked they would say, “That's not why we have this policy. Gays are no more likely to molest or harass kids than

non-gay people. That's not what this is about." But they traded on that bigotry and that insinuation. Even though the phrase "morally straight," of course, had never been about gay and was not about straight in the gay/straight dichotomy, the fact that it was the word straight allowed them to trade on that and to trade on the residual, the subliminal, the default prejudice against gay people for those who wanted to truck in it. And so that was always part of it.

07-00:30:02

Meeker:

Well, that certainly happened in the US Supreme Court. It's very clear that they put it out there and they allowed the justices, Scalia and Rehnquist, to assume that "morally straight" meant that they could discriminate against gays because, one, they're not *straight*. Morally straight goes back probably before the term straight was applied to—

07-00:30:29

Wolfson:

Right, exactly. It had nothing to do with that.

07-00:30:31

Meeker:

—heterosexuals.

07-00:30:32

Wolfson:

Correct. And, of course, Boy Scouts was founded by a gay man. Lord Baden-Powell. And the British Boy Scouts, which was what he had originally founded that became this global behemoth, had already abandoned their anti-gay policy and made clear that they accepted gay people even before we got to the Supreme Court. As did the Girl Scouts and the 4-H clubs and the Campfire Boys and Girls, Boys and Girls Club of America, etc. But that was definitely in there. And, again, that's why this case was so, to me, important. It wasn't just a question of the First Amendment that we were fighting for. We were fighting to claim the space, first of all, for the existence of gay youth, which in turn is this absolute kind of world-changing understanding. If you understand that there is such a thing as gay young people, then gays are part of, not alien others. Major paradigm shift that we as a movement worked to achieve and that the Boy Scouts case really embodied and massively furthered. And, secondly, you claim the space for gay people to participate, to be morally straight, to be poster boys, Eagle Scouts, etc., etc.

07-00:31:54

Meeker:

Well, why don't you walk me through the arguments as far as you can remember them. Maybe I should bring up a few things that I thought to be kind of interesting. I listened to it recently. And I haven't listened to a million arguments before the Supreme Court but I've listened to a number of them. There you were arguing, fielding these questions. It must have been extraordinarily difficult and more pressure than I can imagine. But I also found this particular conversation, especially when you were testifying, to be of some substance. It seemed like some of the justices were really wrestling with the issues. They might have already had their minds made up but it did

seem like they were kind of wrestling with some issues. So let's see. Justice O'Connor brought up the question of the exclusion of girls—

07-00:32:52

Wolfson: First question.

07-00:32:53

Meeker: —from—yeah, I guess it was the first question. What were your thoughts on this? Was this an expected question?

07-00:33:00

Wolfson: No, it certainly was expected. What was challenging was to be bombarded in the first few minutes of the argument by a barrage of questions alternating from Justice O'Connor and Justice Ginsburg, the then two women on the court on a question that I actually don't defend. I don't defend the sex-based exclusion. But it also wasn't this case. The statute had its own exemption language about single sex facilities. Now, this case wasn't testing whether that applied or not or whether that was constitutional or sufficient. But it was there. So as a front-line initial matter that's different and that was, of course, the position I tried to articulate because I didn't want to get into a theoretical defense of excluding girls even though I do think it's different and I think one can make a distinction. And I did offer, under pressure, after several questions, trying to move it along, I did say, "Look, it is called the Boy Scouts of America. It is presumably deriving some single sex pedagogical methodologies and trainings. Whether that's sufficient enough some other case will decide. But that is stuff that exists in this case with regard to girls that does not exist with regard to gays. It's not called the Anti-Gay Scouts or the Non-Gay Scouts of America. There is no official anything. Nobody's told, whether as members or as leaders, here's the training, here's what we do. Here's the program. None of that existed." So it was different. And I was hoping that would be enough to avoid my having to take a position on single-sex.

07-00:34:54

Meeker: And I think that's probably about the time that this morally straight oath is brought into the conversation.

07-00:35:01

Wolfson: Yeah, I don't remember. It came up over and over because we kept going around and around and around on these questions. And one of the things I kept wanting to bring them back to is: "You are assuming for the purposes of many of your questions that the Boy Scouts has this anti-gay purpose. But, in fact, based on all these indicia, they do not have this anti-gay purpose. So that's not where we are. They have an anti-gay policy and you should be weighing that this way rather than that way." That was one line of argument that I was trying to make. Another argument was to say, "Even if you assume they do have an anti-gay purpose, you then have to go through the rest of the test," which is how do they carry it out, is it really consistently enforced, and



does it outweigh the compelling interest of the non-discrimination statute in this particular context. But it was very hard to, of course, get them to go through that orderly process of the test because on the one-hand you had the—ultimately turned out to be five—justices who just basically wanted to close the door right at the beginning and to the extent I was able to pull it over to this part of the test and this part of the test, you then get into the arguments with those parts and then it got pulled back to this. So as you saw, in the thirty-minute argument I was interrupted more than fifty times and trying to take the question respectfully, engage it, or pivot away from it respectfully and bring it back to the orderly sequence of the test when most of the justices really weren't happy to go there.

07-00:36:47

Meeker:

Can you tell me about that experience of actually arguing before the Supreme Court and perhaps in comparison to some of the other judicial bodies that you engaged with.

07-00:36:58

Wolfson:

So a little bit beforehand I had kind of been thinking, "I've argued in appellate courts many times. I'm actually good at arguing. I like arguing. I'm good on my feet, I'm articulate. It's engaging. It's actually kind of fun in a way that a lot of other law is not." And it really played to my strengths. I don't think it's just me saying that. I think that's what people would have thought, that that is what I'm good at as a lawyer. But it became clear very quickly that were the Supreme Court to take the case it's a whole other world. And it's a whole other world in two ways. Number one, because unlike any other court, the Supreme Court is not bound by its own precedents. And when they evaluate what should the standards of law be, number one, they're free to rewrite them, which lower courts, at least in theory, are not. And, number two, they are thinking about not just what will be the impact in this case or even in this body of law, but how does this affect this body of law and this body of law. So you really have to ideally master both the mindset and power that they're going to be bringing to bear and the doctrines across all these giant categories, not just your particular case or the immediate three precedents or whatever that you would typically mostly have to do in any other court. So there's that dimension that is different. And then, of course, it's the Supreme Court, with the massive political and cultural meaning of the moment and all the reverberations in society. And it has its own ecosystem. There is all these Supreme Court experts and law firms who specialize in this and academics who specialize in this and reporters who specialize in covering this, as well as just, of course, the country's attention. So it became clear that this was not just going to be like arguing in the New Jersey Supreme Court and then some. It was a qualitative different experience. So there was that.

James, my client, who had at that point been my client for I think roughly nine years and basically had grown up with me, almost in a brotherly relationship at that point, including pushing each other's buttons occasionally as friendly

kind of tussling and a little bit of sibling rivalry. He sometimes chafed under the, “This is the way we have to do this. You need to go on TV but you need to not say that,” etc., mostly did an amazingly great job and was truly a poster boy plaintiff and an extraordinarily effective champion of making this case about gay youth and fitness to serve in the Boy Scouts and quality of values and empathy and just being articulate and patient and persistent and focused in a way that was extraordinarily mature. But he had his moments of chafing at it and I was the one who would chafe. He wanted to go to the Supreme Court. He was thrilled with this unanimous victory in the New Jersey Supreme Court. He had now been vindicated. He had had a national impact. He was having an impact. He was a celebrity. And to now go to the Supreme Court was just going to be this extraordinarily exciting day in court, opportunity to make history and believed he would win and take it to that umpteenth higher level. I, of course, said to him over and over, not that it mattered, “We don’t want to go to the Supreme Court. We want to stick with our victory and we want the court to deny it and we are going to write as strong an argument about why they shouldn’t disturb this ruling as we can,” which, of course, we did, “and you should not be hoping for it.” And I said, “Look, it’s actually in my interest, if you want to talk about just sort of personal ambition, that it go to the Supreme Court. I’ll get to argue in the Supreme Court and it’ll be a big deal.” But we don’t want it. We don’t want it. So it didn’t matter. But these were the conversations we had.

07-00:41:29

Meeker:

Because of the composition of the court at that point?

07-00:41:29

Wolfson:

Yeah. Because, number one, you won so you don’t want to risk losing it. It’s not a good sign if they take it, although you still could win, but it’s not a good sign. And we had no guarantee in a conservative Supreme Court that we would win. I’m really just counting. We knew there were at least three hostile justices.

07-00:42:01

Meeker:

Rehnquist, Scalia, and Thomas.

07-00:42:02

Wolfson:

Yes. And we knew that O’Connor had taken a very narrow view of the public accommodation stature of certain kinds of membership organizations. She had voted on the right side but she had written separately and had her own sort of ideological framing, very narrow, that put a lot of emphasis on commercial identity, which was not going to be that helpful to us, although not preclusive. And Kennedy, this was going into the argument, I thought was our more likely swing. But he prided himself on being a First Amendment absolutist. And so, as I said, as a First Amendment absolutist I believe we win the First Amendment argument but who knew how he was going to approach it. Within five minutes of the argument it was totally clear to me that if we were going to get a swing vote it was going to have to be O’Connor, not Kennedy, at least to

the extent you can tell from argument, which isn't always the case. But you always tealeaf read anyway.

But anyway, in the post-August moments of writing the brief and sending it in and those few months through December, basically I was telling James, "We don't want this. We don't want it." But he wanted it. I understood why he wanted it. A moment of history and opportunity to do even a greater good. Of course, ultimately the Supreme Court granted cert, took the case. And from that moment on, and it was about four months from that point until the argument on April 26, 2000, I felt constant pressure. Not really being scared, not being nervous and all the other kinds of words you might think. Those weren't the predominant emotions. The feeling was pressure. I felt this tremendous weight on my shoulders that never lifted until about an hour after the argument. And that was the predominant feeling. And I spent those four months working closely with my colleagues, assembling this great Lambda team. Ruth Harlow, one of my legal colleagues at Lambda took on the lead role alongside me in writing our brief. David Buckel, another Lambda colleague, took on the lead role, alongside me, in shepherding the amici, the friends of the court. And at that point we became one of the cases that had the most friend of the court briefs ever in history during the Supreme Court case. That record has since been beaten but at the time it was. We were getting help from other organizations. I was getting flooded with advice from the experts, the academics, the constitutional law professor luminaries. I was talking to lots of people, getting all kinds of input, etc., had many moots, practice arguments and so on, endless drafts of briefs and so on, and my own total immersion in, as I said, not just the cases that were sort of the bibliography of our case but all these other related areas of law that theoretically might now get implicated that I should need to know how to talk about and at least be able to parry a question, etc., etc. Just constant pressure.

07-00:45:41  
Meeker:

So this pressure you're talking about, was it a pressure to absorb all of this universe of knowledge that you needed to master or was it more that the hopes and dreams of your community were kind of riding on you?

07-00:45:52  
Wolfson:

It was more of the latter but it was also the former. It was just a tremendous amount of work. But mostly the stakes and the learning curve and the responsibility to master this and master that and pull it together and then do a good job and so on. Again, it wasn't like I was sitting around worrying that I wouldn't do a good job. Almost didn't have time for that. It was just this tremendous body of stuff and responsibility and work, to the point where the first piece of advice I was given by another person who had argued in the Supreme Court was you should start taking sleeping pills, which I did for the first time ever in my life, and spent the next few months on Ambien, which I'd never even heard of before then. Because you're just always thinking, always thinking. And, again, it's not even worrying. It's just thinking,

thinking. So, of course, I'd never had an experience like that before. And so that made it a singular experience.

In addition, in the first part there were these debates that we had about whether I should argue the case or whether we should get some outside expert, some constitutional law giant or specialized law firm person in DC from a boutique Supreme Court law firm to argue it. And Lambda really wrestled with this. This was Lambda's first Supreme Court case. Not the first case we'd ever been on but the first one that we were the lead counsel and we were arguing. So it was a major gay rights moment in history and I was going to become the first Lambda attorney, if I wound up arguing, to argue in front of the Supreme Court.

07-00:47:43

Meeker:

Were you the first out gay man to argue before the Supreme Court?

07-00:47:45

Wolfson:

No, no. There had been other—the parade case. I don't remember the order. So John Ward had argued the *Hurley* case from GLAD. I believe Ben Klein had already argued the AIDS case that he argued and won. And there may have been someone else. So I wasn't the first openly gay man, nor was I the first openly gay person. Mary Dunlap had argued the Gay Olympics case before that. But there'd just been a handful. But I was the first Lambda attorney. Many of those other cases, although they were gay context cases, had some other thing in it. They were about First Amendment law, they were about AIDS, they were about Olympics proprietary commercial, copyright, blah, blah, blah. This was clearly a national gay rights case. So it wasn't the first of those but it may have been the first one that was argued by an openly gay person, because if you think back to the *Hardwick* case involving so-called sodomy laws, that was argued by my con law professor and now friend and mentor, Larry Tribe, a non-gay man. So here was a gay man arguing sort of the hot gay case of the year. But mostly I was more aware of it as this was the first Lambda case. So we really wrestled with it and we spent a few weeks debating whether somebody else should do it and so on. But ultimately they decided I had already now argued this case for nine years, had won in the lower court, had won in the New Jersey Supreme Court unanimously, was good at arguing and da-da-da. And what we argued on was that if we worked together as a team and pulled on Ruth's strength as a brilliant legal writer and the coordinating efforts of the team, including David, that that would allow me to bring my argument skills and so on. So all of this was going on also.

And then began this process of just constantly hearing from everybody. Larry Tribe had advice. This professor from Georgetown had advice and this professor from Columbia had advice and former clerks and da-da-da-da. So anyway, this was what was going on for four months.

Comes the day of the argument, April 26<sup>th</sup>. It's like a bar mitzvah. Everyone I know in the world is now in this relatively small Supreme Court chamber. Have you been in the Supreme Court?

07-00:50:30

Meeker:

No, I haven't. No.

07-00:50:31

Wolfson:

It's very beautiful. It's very impressive. But it's this combination of intimidating and intimate. It's really not that big. Big columns, red curtains, the bench and so on. But you're actually very, very close to the justices when you're arguing. You're almost as close as you and I are. Maybe two or three more feet. You're looking them in the eye, these people you've seen on TV, and da-da-da. And here you are. So the room is full of both a who's who of sort of the DC legal establishment and political establishment, because this is the big hot case of the term. If I remember correctly it was maybe the last major argument of the term. I'm not sure about that. But it was close. It was a big build-up. It was then full of the who's who of the LGBT movement, all the organization leaders, all the people. And then it was full of people who had camped out in front of the court overnight trying to get a space and so on. Plus the opposition. So it was really this very lively, intense room. I'm sitting at the table right there, almost ready to go on, and I get a tap on my shoulder and I turn around and it's Walter Dellinger, who was the then-solicitor general of the United States, the chief lawyer for the government. And he had been one of the people I'd reached out to and had sought advice from and he'd given me some suggestions and so on. And now he taps me on the shoulder and he says, literally right before the ten o'clock buzzer is about to ring, he says, "Just remember, you're arguing the hottest case of the year." Thank you, Walter. And then the buzzer sounds. We all rise, the justices come out.

And now the other side argues for thirty minutes and then we have my thirty minutes and I get up to the podium and it's one of these podiums where you press a button and you can adjust the height. And I remember pushing the button, because obviously I'm short and he was tall, putting it down, and it felt endless. It just felt like this suspended in time. I'm sure I didn't do this but it was like playing with the buzzer. I just felt like I was sort of almost floating in this moment. And Rehnquist says, "Mr. Wolfson, you may proceed." And then, as I said earlier, for the next thirty minutes I got out, I think, two-and-a-half sentences of my prepared opening and, as anticipated, they began with questions. And then the questions never stopped and it was just fielding the questions for the next thirty minutes. So all of that happens. It's over.

We go out. Then you walk down those massive beautiful stairs to the plaza where you then go over to the microphones and do the interviews with the press and so on and that's when America is covering the "how did the argument go?" with the backdrop of the Supreme Court and so on. And if you see the pictures of that day you'll see a picture of me coming down those

stairs and going like this because it was such a beautiful day. It was this gorgeous sunny day and it was the first time in four months that this physical weight actually begins to lift off. This weight that I had carried almost unknowingly, just because it became this state of nature for four months. This weight has lifted and now here we are in this day. It felt like, whether we won or lost the argument, it had been an important day and a successful day for the gay rights movement. The Supreme Court for the first time had really actually treated gay people with respect. They used the word gay, not homosexual. Unlike other arguments that I'd been in that courtroom listening to, including the *Hardwick* case, which we talked about, with Michael Hardwick and so on, they even used the words, and my colleagues tease me about this, the word that I keep using, which some of my colleagues have adopted and never like, non-gay. I never say straight. I say gay and non-gay. The Supreme Court even said non-gay. It felt like we had had a respectful hearing and even Scalia in his efforts to insinuate the morally not straight, the obviousness of an anti-gay position and so on, that I had been able to push back on that. Whether successfully or not we didn't know but in the courtroom there had been a pushback and it had been respectfully engaged.

07-00:55:23

Meeker:

Or Rehnquist comparing gays to ex-cons.

07-00:55:25

Wolfson:

Yeah, right. It felt to me, whether it felt to everybody this way or not, that it was Rehnquist who looked like he was over there, not we who looked like we were tarnished by that. That I was able to, at least in my mind, without obviously crossing any boundaries, position that as Rehnquist's anti-civil rights, not just anti-gay, agenda. I talked about if that's the standard this would be an exception that swallows civil rights law. I said that the First Amendment's right of association is actually an instrumental right in furtherance of these larger purposes. And he said, "Where does it say that?" And I was able to say, "In this case, this case, in this case." So to me it felt like we'd had an extremely successful day, though I wasn't at all sure we were going to win. But hopeful. And I think the general consensus was we'd had a tough day but that it was an open question how it was going to go. That it was not clear we were going to win but it wasn't foreordained we were going to lose.

07-00:56:36

Meeker:

Were you surprised at the extent of Souter's pushing the B'nai B'rith angle?

07-00:56:44

Wolfson:

That was more Breyer.

07-00:56:46

Meeker:

Oh, that's right. Breyer, not Souter.

07-00:56:47

Wolfson:

Yes.

07-00:56:49

Meeker: I should read my notes.

07-00:56:50

Wolfson: That's all right. Yes. I have to say, actually the hardest part of the argument for me was fielding Breyer's lifeline. It was very convoluted and difficult and sort of taking me away from where I wanted to be going and kind of belaboring a point that I didn't want to be making. And he does that. He actually did that also with Mary Bonauto in her argument last year. That was, for me, the least favorite part of the argument. And even though he, I think, was trying to help in his own style and, ultimately, of course, did vote with us fielding Rehnquist, fielding Scalia I did not find difficult.

07-00:57:35

Meeker: What did he do in the *Obergefell* case? Do you recall?

07-00:57:39

Wolfson: He resumed the sort of torturing of Mary on this question of the millennia. And he just kept going at it and forcing her to say it over and over when she'd already given the answer she had to give. And ultimately, I don't remember exactly if this was the immediate next moment, but I think so, but it was definitely what brought that part of the argument to an end, it was Ginsburg who jumps in and basically says, "If the millennia were the guide, without any intervening change in marriage, you wouldn't even be here." But because there has been a change in marriage, the degendering of the standards, the elimination of the sex discrimination that was an intrinsic part of marriage for the millennia, that's what enables you to be here, which is the right answer. It brings back we're not here to talk about the millennia, we're here to talk about the Constitution." And it was Ginsburg who really moved that along, kind of rescuing Mary and our argument from this torturing from the hard-right justices and even Breyer. And there was a similar moment for me, as well.

07-00:58:51

Meeker: Yeah. And which is the response that everyone wanted Mary to come up with on the moment.

07-00:58:57

Wolfson: Right. Yeah. Well, and she articulated some of it but Ginsburg really brought it in. Now, of course, it's a lot easier for a justice to interrupt another justice and just boom. You're always having to respect and pivot.

07-00:59:12

Meeker: Well, so tell me about the decision coming down and how you received that.

07-00:59:17

Wolfson: So we left this ruling, left the argument, had the beautiful sunshiny quotes on the plaza and, again, were able to affirm these bigger points about gay youth and gay participation and gay equality, etc., whether or not the Constitution, First Amendment, blah, blah, blah. Talked about gays as Boy Scouts, presented our Eagle Scout to America, even though we'd already done that for

several years. This is now this giant epicenter moment. And then we had a lunch at the National Press Club. And all of this was a big deal for Lambda. Lambda didn't spend money like this. Most of the staff had come down. Lambda had chartered a bus. We'd all come down together. We had this who's who of the establishment and the movement now having lunch at the National Press Club, made statements and so on. All of my college roommates actually came in to see it. My parents came. My sister came down. My brother and his new wife flew in from their honeymoon a day early in order to be at the—so it was a giant rooftop day.

And then after several hours of talking to the press, doing this, da-da-da, we got back on the bus and began schlepping back to New York. And I believe I've told you this story already, was that was the moment where I—well, first of all, I remember sitting in the front at one point of the bus, just sort of looking at the highway, trying to let this four months of pressure now completely flow off my shoulders. And my assistant came up and started chatting to me. What I remember from that chat was he basically asked me something like, "Is this the biggest moment of your life or is this what you're the most proud of?" or something along those lines. And I remember saying to him then that, "Actually, even though this is now what I'm most known for, and the Boy Scout case is now my most famous case because it had become the dominant story of the year and so on, that actually I thought the more important work was the marriage work and that that was what I was most proud of." It was almost a little odd to be kind of more known for something that, while important and something I cared about and had worked on for ten years, wasn't actually the thing I thought was the most important. So I remember having that conversation.

And then my phone rang, my cellphone rang. And, again, I think I've told you this story before. But I answered the phone and learned that on that very same day, April 26, 2000, as I had just finished this rooftop experience of arguing in the Supreme Court on this ten-year case and piece of work around the Boy Scouts, I learned that then Governor Howard Dean had just signed into law the civil union bill in Vermont. So at this very moment, right on that bus coming back from DC, on April 26<sup>th</sup>, these two more than ten-year pieces of my work, the two things I was most proud of, had come to some kind of culmination in that moment. So that was what that moment represented to me.

And then it became a matter of, for the next few weeks, basically waiting to see what was going to happen. How was the Court going to rule? And, again, nobody knew. We certainly were not confident but nor were we sure that we were going to lose. So there was this hopeful anticipation. So on June 29<sup>th</sup>, I think it was, we were told by the Court they were going to be announcing it. And we were told that we were going to be the first, or certainly one of the first, but I actually think the first, that was going to be notified electronically. That we were going to get an email as they released it, which they, up to that point, were not doing. So we were all gathered in our offices and I was in my



office at the computer hitting refresh, hitting refresh, hitting refresh and waiting and waiting and waiting. And then a colleague of mine comes into the office and says, "I just heard on the radio that we lost," and that was how I found out. So then we, of course, had to try to get the opinion, absorb it, have a press conference, frame it. And what I said at the press conference was that we may have lost the case five-to-four but we've won the cause because America has now come to understand that while the Boy Scouts may have a right to discriminate, it isn't right to discriminate. And parents are going to speak out. Young people are going to speak out. Businesses are going to speak out. And just as the Boy Scouts have invoked the right of association as a shield, we all have a right to disassociate ourselves from discrimination. And that is, of course, what then happened, culminating many years later in the Boy Scouts reversing almost entirely, though not yet entirely, the policy of discrimination, making huge changes and huge strides and basically abandoning any plausible defense for the shreds of the policy that still remain. But it's still not 100 percent but it's vastly better now than it was.

07-01:04:36

Meeker:

And you attribute that in large part to the disassociation of businesses and schools?

07-01:04:42

Wolfson:

Yes. Partly it's the evolution of society fueled by predominantly the marriage work but also all the other things that came along with it, including, for example, the evolution of the military. In our day, during the case, the Boy Scouts were citing the military, Don't Ask, Don't Tell. Even the military has a policy. Well, now the military doesn't discriminate, had repudiated discrimination, as have almost all other organizations and now, of course, we have the freedom to marry and so on. So it's partly that but I think even more than that it was the members who now challenge to take ownership of what has now been, by the Supreme Court, legitimated in their name as the policy of their organization, the purpose of their organization. Repudiated it. The chartering organizations, the business sponsors, the parents, the young people began moving away in torrents. I think mostly in response to that internal pressure and some in response to the external pressure, the Boy Scouts moved.

07-01:05:53

Meeker:

Did the membership decline during that?

07-01:05:56

Wolfson:

Oh, absolutely. Membership declined, revenue declined, number of organizations declined. The diversity of sponsors declined. When we were litigating, part of what we showed to the Supreme Court was, "Look, you have public schools who are sponsoring troops. They can't discriminate. So obviously they're not coming into this organization for a purpose of discrimination. You have these different churches, some of whom are anti-gay and discriminate, many of whom actually are welcoming institutions and organizations," and we invoked the Reform Judaism and the Presbyterians and

part of the Methodists and so on. That doesn't mean the others have to change their view but it's not what brought them together in this organization. These were the kinds of arguments we were making. The government has special relationships and gives money to the Boy Scouts and gives special fields and auditoriums and da-da-da. The government can't be doing that if it's a discriminatory entity. So that's clearly not what this organization's about. These were the arguments we made. And one of the things Scalia pressed me on was then aren't you basically saying, "If you succeed," he said, "what you're going to succeed in doing is making the Boy Scouts articulate more clearly their anti-gay position and become even more anti-gay?" And my final response, and I actually think it might have been the last thing or the second-to-last thing I wound up saying in the argument, was "Yeah, but Justice Scalia, there's a reason they don't do that. They don't do that because they don't want to lose all those members. They don't want to lose those organizations. They don't want to lose those sponsorships."

07-01:07:34  
Meeker:

Well, let's fast-forward fifteen years and talk about where we left off at our last interview, which I think was back in April. We had got to the point of you describing the winning, the national resolution, the *Obergefell* case. But we didn't ask about or talk about the lessons learned. And I know that that's a big part, obviously, of this project and I think it's covered in a lot of the interviews that I've done with your colleagues and employees. I could ask some specific questions about this but maybe I'll just sort of kind of put it on the table.

07-01:08:18  
Wolfson:

What are the lessons?

07-01:08:20  
Meeker:

Yeah.

07-01:08:21  
Wolfson:

So, obviously, as you know, what I'm doing now in this immediate post-victory transitional, presumably, chapter of my life is really responding to requests for advice and assistance from different movements, different causes, different countries who want to learn the lessons. So I've gotten a set of presentations and spiel and taxonomies and so on on how to think about the elements of success and the lessons that can be adapted and not cookie cutter copied. Adapted to different battles, different organizations, different causes, and even other parts of the LGBT movement which, of course, in some respects has not been as successful as the marriage piece. And I think there are reasons for that and that's a helpful way of also illustrating some of the elements of success and lessons. So I have a whole set of presentations and spiels. And rather than completely recapitulate them here, earlier, a few weeks ago, I gave the distinguished lecture, called the Hart Lecture, at Georgetown

Law<sup>2</sup> and it was videotaped and it's on the Freedom to Marry website now, I think, or at least it's Googleable. And there's a whole talking through the elements and so on. I have several pieces on the Freedom to Marry website,<sup>3</sup> a couple in journals, in different Columbia Law Journals talking about some of the lessons of success and so on.

07-01:09:50

Meeker: Well, we'll footnote those here.

07-01:09:52

Wolfson: Yeah. Right. No, I'll go into them because I'm going to talk through them quickly. I'm just going to say that's where people can see more fully some of these presentations and ideas.

07-01:10:02

Meeker: Well, maybe I can just ask you one question. This is something I've been wrestling with myself. Do you think what transpired in the Freedom to Marry movement should encourage or maybe even demand that people rethink their strategies for social change? And let me back this up a little bit. My sense, and this is from somebody who has been involved in various activist movements, usually as a worker bee, from the 1990s forward, is that we were taught, and whether this is an accurate lesson or a mistaken lesson, but we were taught that civil rights movement was the gold standard of how social change happens and the way that social change happened through the civil rights movement was: mass protest, civil disobedience, and direct action. This is how social change happens in the United States. It becomes this axiom. Whether that's an accurate description of what happened in the civil rights movement is a different matter. But that's what you're taught. That's what you're taught in college. You watch *Berkeley in the Sixties* [1990], at Berkeley, and there's this attempt to kind of inculcate young people who want to improve their society, that these are the things that you do. There's not much teaching about campaign work. There's not much teaching about field organizing. There's not much teaching about message research. There's not much teaching about trying to convince people who don't already agree with you or engage with people who might be opposed to you. It's really: "You have a moral high ground and you, with a flaming sword, bring it in and cut down your enemies with your moral high ground." My sense from doing all of these interviews is that those axioms, while we wouldn't want to jettison them all—obviously there's room for public protest—in this day and age they may not be as effective strategies as what we've been taught.

07-01:12:37

Wolfson: I hope that that's not the only way people think about the tremendous success of the African American Civil Rights Movement, particularly during its

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<sup>2</sup> <https://www.law.georgetown.edu/news/web-stories/evan-wolfson-delivers-2016-2017-hart-lecture-at-georgetown-law.cfm>

<sup>3</sup> <http://www.freedomtomarry.org/lessons-learned/other-lessons>

heyday period, even though I agree with you that is certainly one immensely important and very real and successful track of the work that happened. But I think most people who pay attention would understand that while that was all very much part of the success, so was the litigation strategy over many decades that we think of as with Thurgood Marshall, but they're Charles Houston and now they're going back for many decades. And then there's the track of legislative engagement and the insider work, spearheaded ultimately by President Kennedy, Bobby Kennedy, and even more so President Johnson, but also all the others who are part of that effort. And all of those were part of how America changed both hearts and minds and the law. I think that is the more accurate, and I hope somewhat more understood than the way you framed it, think. But you're absolutely right that we certainly give a lot of nobility to the protestor and the moral high ground and the direct action and the anger type stuff and so on. And, as you said, there is absolutely a role for that and it played an important part and it played an important part in our work. But it was a richer mix of methodologies that delivered the civil rights progress of the forties, fifties, sixties, and it was a richer mix of methodologies that delivered our victory over more than four decades in the freedom to marry work.

So I don't know that ours is a corrective to the civil rights paradigm but I think it's maybe an amplification, maybe we'd been more clear along the way to articulate it and maybe it's more visible because it isn't yet shrouded in the golden glow of inevitability that gets wrapped around figures like Martin Luther King, in part because of the assassination also, and in part because of the distance of time and in part because of their luminous nobility. Also I think the direct action component, while a significant part of the broader LGBT movement that we leveraged in the marriage campaign, was a smaller share of the marriage campaign than the civil rights movement or civil rights even campaign. And that gets me to the distinction between campaign and movement, which is part of the elements of success spiel, one of the spiels that I give when I'm talking to other causes now.

07-01:15:47

Meeker:

Hopefully in good university classes they're teaching about Thurgood Marshall, they're teaching about the legal strategy.

07-01:15:57

Wolfson:

Hopefully. Yeah.

07-01:15:58

Meeker:

They're teaching about what's happening in Congress. But that's not what Hollywood is doing, right? Hollywood is making really dramatic films and I think that whatever people might learn in college, what probably sticks with people is a more grandiose, moral driven—

07-01:16:26  
Wolfson:

Yeah. I understand what you're asking and I agree in the way I just said. But I want to push back a little bit. If you look around my office you'll see on the wall I have a picture of King. I don't have a picture of Thurgood Marshall. Now, is that because the litigation element of success was not important? Obviously not. Our whole strategy was centered on a final chapter delivered through litigation, winning in the Supreme Court. Litigation was a huge part, although not the only part, of the building blocks that enabled us to get to that victory. I myself was a lawyer. I myself was co-counsel in winning the first victory in the marriage realm, where we won the freedom to marry ruling in Hawaii that launched this ongoing movement. So clearly litigation is an important piece of the work and one that I respect and one that I dedicated a part of my life to and one where I still have the friends and colleagues who shouldered it as I tried to create the more multi-methodology campaign that would allow for the litigation to succeed.

But when I have King on my wall as opposed to Thurgood Marshall, it's actually not intended in any way to reflect on Thurgood Marshall. But the reason there's King is that to me King does not merely represent direct action as opposed to litigation. What King reflects is, number one, the evocation of the values and the ideals and the successful invocation of the Constitution and the system, even if you have to push the system and arguably step outside the system in order to work the system through direct action and so on. But it basically is the power of the ideals and the promise, number one. And, number two, the power of moral persuasion and the necessity of that as an ingredient in even a successful litigation strategy. So I think to just reduce it to direct action or a tone of anger that is somehow not reflecting the broader movement is not actually what I think for most people the King story and that stripe of the work reflects. I think King represents our power as Americans to invoke the shared values and ideals even in an imperfectly realized system and move hearts and minds in order to allow for the law to move, as well. And that, obviously, is what I think of as the central part of my work, even though I'm a lawyer, and that's why that's there. So I think the point of your critique is correct but the exact critique I think is not entirely correct. I think it's a little too dismissive of both direct action and what direct action and the King constellation signifies in the larger set of methodologies and engagement.

07-01:19:39  
Meeker:

I think I wasn't trying to be dismissive of direct action. I think what I was trying to say is that in the context of working on this project it became very clear to me that direct action, for it to have any impact, any positive impact, needs to sit within a larger constellation of activities. A larger constellation of activities that King and his movement employed.

07-01:20:03  
Wolfson:

That's right. You may remember there was this debate, I think it was in 2008, I think it was during the 2008 primary, and so it got a little enmeshed in the Clinton/Obama dynamics. But there was a debate over—nobody put it exactly

this way—who deserves more credit for achieving civil rights. Is it King or is it LBJ? And obviously they each needed each other and they both deserve credit. And without the “direct action” and the moral persuasion and the reframing of the moral narrative and the awakening of the moral conscience and all of the stuff that King signifies, there would have been no legislation. There would have been no significant civil rights. There would have been some but there wouldn’t have been what we achieved. And on the other hand, without figuring out how to get it through Congress, without having how to work the levers of power, how to bring business to the table, how to bring Republicans to the table, how to make this moral energy and vision into something political and ultimately legal, there wouldn’t have been legislation, there wouldn’t have been the victory either. So they go together. You need both.

07-01:21:27

Meeker:

Every successful movement requires a successful campaign and vice versa?

07-01:21:30

Wolfson:

As I said, I won’t go through the whole thing because people can now go to the website, can look at the Hart lecture, can read the articles and so on. But I’ll just reference them so we have them here. There are at least three different taxonomies I use when I am speaking to different organizations or different movements or different causes about the way to think about the lessons of success. So one is I’ll say in order for a movement to succeed you need three things: You need hope; you need clarity; and you need tenacity. I think one of the things we were really good at in the Freedom to Marry campaign was getting people to believe we could win. And it began with that belief. Until we could get people to stop hearing the no that not only society, not only the courts were giving us, but our own movement was giving us, and actually believe we could do this, we couldn’t awaken the energy and begin building the effort and pushing it forward. We couldn’t inspire non-gay people to open their hearts and rethink. We couldn’t get politicians to have to move or be willing to move. We couldn’t get courts to act. So you need hope. And we were good at conveying hope. You need clarity. And by clarity I mean a smart strategy, an effective strategy, a real thinking of how you’re going to get there. And I’ll come back to that. And I think this is something we were exceptionally good at, particularly Freedom to Marry, which was all built on strategy. And you need tenacity. It doesn’t happen overnight. It doesn’t happen without losses. And we’ve talked about the more than forty years of many, many, many, many, many losses and defeats. And there were many who took from that the lesson that we shouldn’t do this. But there were enough that were willing to say, “No, we can do it.” And, yeah, it’s true, most Americans don’t support us but we can move them and to keep going and to keep going and to keep going through the many, many, many stumbles. Missed opportunities, stumbles, outright defeats, tremendous opposition that was coming at us. So that’s one taxonomy. Hope, clarity, and tenacity. And I think we did well on those.

Another taxonomy that I often give to people is that for us to win in the forty-plus years struggle to achieve the freedom to marry we needed four things. First of all, we needed the Constitution. We needed America's commitment to liberty, equality, dignity. We needed the actual legal document, the Constitution, and we needed the system that the Constitution represents. We needed free speech. We needed the ability to go to the streets. We needed the ability to persuade our neighbors to go back to court even after losing. We needed the press. We needed the rule of law. All these things that as America we treasure and that are fragile, as we are about to see in the new era looming. But we needed that. And in America we're lucky to have that.

But, as we also know from history, the Constitution does not fulfill itself. So we actually needed three other things. We needed a movement, we needed a strategy, and we needed a campaign. Now, what do I mean by those? By a movement I mean that in order to fulfill the Constitution's promise we needed millions of conversations, millions of dollars raised and invested. We needed many organizations, many players, many battles, many years, in fact many decades. We needed many methodologies. I think I have talked to you before about my call expressly to my colleagues at repeated points to create a campaign that had the four multis, that could operate multi-year, that could engage the battle multi-state, not just one at a time, that would be multi-partner, that would allow many to bring their pieces and parts, and that would be multi-methodology. That would bring together litigation, yes, but litigation is not enough. That would bring litigation and legislation and public education and direct action and ultimately electoral work and fundraising. The many methodologies of activism, that we wouldn't pick one over the other or only succeed in one and neglect the others. We needed all of them. So it took this movement of multiplicity. And, of course, that means that no one person, no one organization, no one battle, no one decade, no one case, no one methodology, did the whole thing. It took that multiplicity, that movement. But, at the same time, the movement was not just a random set of actions. It wasn't just a multiplicity of whatever. There was also now a strategy. And we drove that strategy. We had a clarity of strategy. Now, not everybody knew there was a strategy. Not everybody was following the playbook of a strategy. There were millions of conversations, millions of donors, many battles, etc. Not everybody knew they were working off a script of a strategy. But a critical mass did and made sure that what the strategy said was needed was delivered and where it wasn't being delivered by the existing movement of players, we figured out how to fill the gaps. And the "we" in that sentence is the campaign. There was a campaign, Freedom to Marry.

Freedom to Marry didn't do everything. That took a movement. The legal groups, the religious groups, the politicians, the ordinary citizens who had conversations. The surprising messengers. The Republicans. Took a movement. But there was a campaign that was always looking at the strategy and was looking at that totality and saying, "Is it delivering what is needed and, if not, how do we make it happen?" If it is being delivered by somebody

we don't need to duplicate it. So Freedom to Marry was created expressly not to litigate, even though litigation was the central element of the closing end game. I didn't have to litigate because I could count on the movement of colleagues to supply the litigation piece. But we needed the everything else and we needed to make sure it happened and we needed to bring people into the place where they could contribute their work toward the strategy, driving the strategy, leveraging the movement to the goal. So it took these four things and we did a good job of making sure that all four of those things happened in a way that we haven't in other parts of the LGBT movement and in a way that many other movements have not fully done. They may be doing great work, they may have this piece, they may have that but they don't necessarily have this, or that, or that. So there is that taxonomy.

Final taxonomy: Again, when I'm sharing the lessons of the success I offer yet another taxonomy and this one I call the ladder of clarity. And the point I make is that in order to succeed you need to look at how you're doing on this ladder of clarity and Freedom to Marry did pretty well, with stumbles and missed opportunities and imperfections on this ladder of clarity. So the ladder of clarity begins with the top rung. It begins with where you want to go. Clarity of goal. We had a clear goal. Winning the freedom to marry nationwide. Now, what do you note about that goal? Well, one thing to note is it's not winning everything that the LGBT movement wants. It's big, it's bold. At the time it was considered crazily ambitious and wildly immense and almost impossible, if not impossible. But it's still not everything. So from the get-go you have to be willing to articulate a goal that isn't everything and that not everyone will agree should be the goal. And we were willing to do that with a lot of resistance and pressure and attacks and criticism and doubt. And you need to be able to articulate that goal clearly enough. It has to be clear and concrete enough that it's clear what winning is. How do you know when you've won? Because in order to bring people in, in order to inspire people to come into this cause you have to be able to say what it is, that winning is. And we were good at that.

So from clarity of goal you go to the next rung, which is clarity of strategy. What is the pathway to getting to your goal? What do you have to do in order to get to the goal? Who has to do what? What decision-maker, what body, what thing has to move? What has to come into place in order to get your goal to happen? And so, as you know, we had a very clear strategy and Freedom to Marry was all about the strategy. We articulated it constantly. I talked about it constantly. I've already said strategy several times in this answer. It was on our website. We wanted people to know what the strategy was so that they could always see that pathway and thereby be inspired and believe it could happen. You have to begin with hope, begin with belief. And they could bring their piece to it. Clarity of strategy.

From clarity of strategy comes the next rung on this ladder of clarity, which is clarity of what I call vehicles, which are the programs, the partnerships, the



resources, the structures that you have to align and build and develop in order to drive your strategy to the goal. If the strategy says, as ours did, “Build a critical mass of states, critical mass of support and tackle federal,” well, what are the programs you’re doing? How are you working to win a critical mass of states? Well, this campaign in this state, this targeted work in that, this one’s litigation, this one’s legislation, da-da. To move critical mass of public opinion. To go from 27 percent in 1996 to ultimately 63 percent in 2015. Young Conservatives for the Freedom to Marry, Mayors for the Freedom to Marry, Familia es Familia to bring in Latino voices, business alignment, persuasion, cracking the code. The values argument. Love, commitment, family, dignity, etc., the reframing of the case, the message delivery. All that work that was happening was all in furtherance of the strategy to get to the goal.

And, finally, the fourth rung, which is clarity of action steps. What are you giving people to do so that they can be part of this movement spearheaded by this campaign to fulfill the strategy to the goal? So that in a nutshell is the essential set of lessons that are not rocket science and yet are very distinctively the elements that we succeeded on and very distinctively elements that are sometimes lacking or insufficient in many, many, many, many, many other causes. And, by the way, I think many of these elements are not just political elements of a political movement like winning the freedom to marry or gun control or choice or the environment. I actually I think they’re secrets of success in life, many of them.

Then there were a bunch of other elements of how we succeeded that I’ll just tick off. We were consciously non-partisan. We were consciously multiply framed so that we didn’t pit one thing against the other. In other words, we worked at the federal, state, and national levels. We didn’t just do one or the other. It wasn’t just a state strategy. There was a state element but it was in synergy with the federal work and the national climate creation, climate engagement work. And where we got stuck on one we could work on the other and reinforce it. We had that three-track strategy, the roadmap to victory. We worked on multiple fronts in order to not get stuck, in order to be able to keep going forward and reinforce and build on our work. We were non-partisan. We truly worked to make space for conservatives, for Republicans, for people who had previously been opposed, for the surprising messengers, the journey stories. We worked hard to frame the narrative and to drive the narrative and to do so through ultimately storytelling and to spark conversations, the chief engine of change, and to make that happen and to have that resonate and to have an air cover of climate creation that would facilitate the ground game of personal persuasion and conversations. We worked to build a campaign model so that there would be this campaign driving both a directive and collaborative effort that allowed for sharing and engagement but also didn’t insist on consensus or everybody agreeing or random activity or deference to how some existing players might want to do the work or wait. Trying to think if there’s another element.

We worked hard to bring in fundraising and to fund the field, even if it wasn't all through the watering can of one organization, but to make sure that the field of the multiple organizations that were needed, doing the multiple methodologies in furtherance of the strategy were happening, and to find ways to bring in the funders and sustain the funders in the work of the activist led campaign. So those are the kinds of elements that I think we ultimately did well on, again, with many missed opportunities and many stumbles.

07-01:35:53

Meeker:

I know that you and Thalia and others have been speaking with representatives of other organizations, of movements. Have you been seeing any productive movement on the part of any of those groups?

07-01:36:06

Wolfson:

Yeah. I think there are definitely some elements of our success that others have been very hungry and quick to adapt, particularly things like thinking about what is the role of a campaign model within a broader constellation or movement, what is the role of storytelling, what is the role of driving the narrative? How do you crack the code on what the reachable middle needs persuading? And it's not like we invented all of these things but we just did a good job and articulated and stayed with that articulation and brought in others to our delivery of that on a success. I think the power of hope, the power of starting with yes we can and stop cataloguing all the problems and all the negatives and how terrible everything is for your cause, even if it is. We didn't sit around and say, "Oh, gays are a repressed and despised minority and they'll never give us marriage, they'll never acknowledge our love." To the contrary, we said, "The way we're being treated is wrong and the way they're treating us is wrong and they can do better and we're going to trust that they will rise to fairness and we're going to engage them with aspiration, with the values, with their own sense of self-worth to understand how we can do better as a country. And we're going to help them understand who gay people are in a real and rounded way using the shared language of marriage and this aspirational language of love and commitment and connection." I think there's a lot of attention to that. Now, whether everybody is immediately moved to adapt it, obviously that doesn't happen that quickly. But I think we're definitely seeing some progress.

There's definitely been an absorption of many of those lessons and an application of these lessons, for example, by the DREAMers movement, who expressly credit the marriage campaign and the LGBT movement even with—they use the terms of coming out and the storytelling and the capturing the narrative and the combining the moral persuasion with the legal and political work needed, although obviously now we have to take that to a much higher level. We're seeing that in the choice movement. There was a very conscious effort culminating in the Supreme Court ruling earlier this year, the first major choice victory in years, where they preceded that with a campaign very much framed on the model of the kind of climate creation campaign we did around

the Supreme Court, to tell the stories of women, to make it personal, to make it authentic, to talk about the number of women who had abortions and what that experience is really about and to engage it in a personal, an emotional way, not just in a technical way or in a constitutional legal argument way, important as those things are. It's not an either/or. And, by the way, no false either/ors has been a mantra of mine in activist struggles for decades. It's not this or that always. In fact, often it's not this or that. You have to engage both and find a way to get it and you're able to do that better and not just make it a meaningless everything with that clarity. If you know what your goal is and you know what the strategy is then you can take the elements that are not either/or and drive them synergistically without getting caught up in a, "I have to be about everything and I have to be doing everything."

07-01:39:37

Meeker:

The "happy but not satisfied" approach.

07-01:39:39

Wolfson:

There you go.

07-01:39:39

Meeker:

You're moving in the direction but we're not there yet.

07-01:39:42

Wolfson:

Yeah.

07-01:39:43

Meeker:

Can you tell me about some of the work that you've done since the Supreme Court victory? I know that you've been traveling around internationally. I see, I think it's very recently, the Cherokee Nation is going to—

07-01:39:59

Wolfson:

Yeah. I didn't have anything to do with that.

07-01:40:00

Meeker:

Oh, you didn't have anything to do with that?

07-01:40:01

Wolfson:

Well, organically, but no.

07-01:40:02

Meeker:

Well, when I was speaking with Amanda McLain-Snipes, she talked a lot about Native Americans in Oklahoma and how, being sovereign nations, they don't have to follow the US Supreme Court.

07-01:40:18

Wolfson:

Yeah. It's something we had talked about and engaged a little bit and I certainly had commented on the press in preceding rounds. But this happy announcement just the last day or two, I didn't have anything to do—that was now the organic movement of it building to the right result. We'd had other battles where I played a teeny bit more role, but even then not immensely. It

was more that I was part of the organic it coming to more and more communities. And you've heard me say before we should not say, "Okay, we won marriage. Check. Put it on a shelf. Let's 'pivot' to non-discrimination or transgender or whatever," that that to me is wrong and I've engaged my colleagues in the movement to not use the word pivot and to not talk about it that way. That, in fact, marriage remains a gift that will keep on giving. And we've won in the law but the conversation has only just arrived in more and more places. So, A, we need to keep engaging that conversation and using its power to solidify and expand the acceptance of marriage and everything it betokens and then harness that to the work on other fronts, such as nondiscrimination. The power of empathy, the power of the connection, the visibility of love and commitment and family is part of how we win gender identity rights and non-discrimination protections, etc. So it's not an either/or, it's not a pivot, it's a harness. And build on the momentum in this gift that keeps on giving of this extraordinarily powerful engine vocabulary of marriage.

07-01:41:57

Meeker:

How well does this translate overseas?

07-01:41:58

Wolfson:

Very well. Now, again, the exact strategy that you use varies from system. The pathway depends upon who are the political players, who are the legal entities, what is the system, the rule of law, what is the cultural framework within which you have to engage? Who do you need to move? There is no one cookie cutter strategy. But you have to have a strategy. So that remains a valuable lesson to be shared. You don't have to have the same strategy but what is your strategy? And if you can't articulate it you're not where you need to be yet. And while the strategy may differ, many of the elements of the strategy, the role of persuasion, the power of storytelling, the power of empathy, the emotional connection, the playbook of tactics that can be used to engage people, engage courts, engage political leaders, engage lawmakers, etc., those are sharable. The mix may vary but the elements are very adaptable.

07-01:43:06

Meeker:

Well, I know you've been spending some time in Taiwan, right?

07-01:43:09

Wolfson:

Taiwan, Japan, many countries. Yes. That's part of what I'm doing.

07-01:43:12

Meeker:

Well, maybe take an example or two and talk about the process of translating this matrix of social change.

07-01:43:23

Wolfson:

So one of the countries I'm spending a fair amount of time working with, not necessarily always in, is Japan. And in Japan we have looked at how do we win the freedom to marry in Japan by 2020. So I'm working with them to help them strengthen a group that ideally will be sort of the campaign engine

within a larger movement. We worked to develop a lawyers and allies legal network that can champion some of the legal pieces, both perhaps some days within the courts but more generally within society, including the Japanese Bar Association, as ways of educating and ultimately hopefully pushing and assisting Diet, the national congress. We have a set of playbooks, of tactics. They came up with the idea of filing a petition with the Japanese Bar Association on behalf of people denied the freedom to marry, asking the bar association to make a ruling that the denial of marriage is unconstitutional under the Japanese constitution, which can then be delivered to the Diet and hopefully create a legitimation and space and momentum for the political engagement. I've met with different mayors and what they call ward councils and so on, which are the equivalent of our Mayors for the Freedom to Marry and city and state building block strategy. They don't have what we have. They don't have the federal system that allows for winning marriage in X place, Y place, Z place before we get to the national resolution. Marriage is national in Japan. But they can do partnership registries. They can hold hearings. They can get local officials on record as talking about it. They can enlist businesses and so on. So we've been working on different strategies and approaches and I've helped with some of those rounds of engagement, which they have been leading and doing. And it's not like I invented them in Japan but I'm assisting them and helping them to see how that fits into a multi-track strategy to create momentum and climate around, in this case, the Diet, the national assembly, as opposed to here, the Supreme Court. Working to convey the importance of breaking the silence, telling stories, making it personal, enlisting business, as I said, and conveying a sense of "yes we can" and Japan needs to do this and the eyes of the world are on Japan, particularly with the Olympics coming in 2020, as opposed to a tone of, "Well, this will never happen," or "Here in Japan we don't rock the boat," or "It's totally up to the government and what can we do?" You have to convey the opposite. "Yes, you can. And, by the way, the government needs to do this and business is asking for this and you're already behind and the people of Japan are with us," etc., etc. And to marshal all of that. So those kinds of lessons and that kind of energy are some of what I'm sharing with colleagues on the ground now in Japan, as well as in other countries.

The number one battleground right now is, as you mentioned, Taiwan and there are terrific activists there leading this campaign, taking many of the lessons. Thalia and I are on the phone or on email with them almost constantly now, day-to-day, working to actually now—currently I'm working to try to engage some of the US businesses who we enlisted on the amicus brief in front of the Supreme Court in our case, 379 businesses in support of the freedom to marry. We're now going to some of those businesses who have a Taiwanese presence and saying, "You spoke out here. We need you now to speak out there." And that's the actual project underway today, in the last couple of days.

07-01:47:26

Meeker:

When you're doing this international work do you come across many unique challenges that really set their struggles apart from what you experienced here?

07-01:47:38

Wolfson:

Well, first of all, let's be clear. There's a whole set of countries and societies that don't even have the first of what I described in my taxonomy as the necessary elements, that don't have—

07-01:47:51

Meeker:

Hope.

07-01:47:51

Wolfson:

—the constitution. So they don't have the rule of law. They don't have free expression or they don't have the same degree of rule of law or free expression. And in some they literally have none. It's to the opposite. It's an oppressive, brutal, violent, thuggish, killer regime that they live under. In those categories of countries I think it's a whole different kind of—

07-01:48:15

Meeker:

Or a theocracy.

07-01:48:18

Wolfson:

Yeah. No, exactly. There's a whole category of those countries where a lot of what I'm saying may still actually apply but how you do it is a whole different thing. Those are not the ones I'm actually focusing on right at the moment, though that is what I hope to learn more about and think more about in my next chapter of life. But so far I've been more drawn into the [country's](#) where we really can, as I describe it to colleagues, go from B's to A's. The countries that do have rule of law systems, that do have many of the prerequisites that we have in the United States and had in the United States and aren't yet where they need to be. Countries like Japan and Taiwan and Germany and Italy and Czech Republic and Austria and some of the other democracies and rule of law systems that aren't yet where they need to be. And to my mind, one of the top priorities for the LGBT movement and the human rights movement in the world has to be to get the Bs to As, because the more you build a critical mass of countries where they ought to be, the more you have to work with in bringing the other countries over, though obviously it's not going to be easy, in the same way that it wasn't easy in the United States to go from winning in Massachusetts to winning in Mississippi. But because, A, we had a building block strategy and a tipping point strategy and a moral education based on legal and political beachheads strategy, and because we had an overarching system in which that could take effect, i.e., getting national resolution from the Supreme Court, we were able to make that happen. We don't yet have the exact obviously legal governance regime in the world where you get to a critical mass and everybody else has to follow. But you have moral persuasion, you have a global economy, you have the ability to leverage progress in critical masses towards tipping point in regions, in categories, and that may be the best you can do in creating more space in the

more dire countries. And so, at a minimum, we ought to do that, even if we also need other strategies in the more dire countries. So that's a lot of what I'm spending my time on. I would like to see us get that tipping point in Europe, where we bring over all of Europe. Right now more than half the countries in Europe have some form of legal recognition, national legal recognition for same-sex couples and their families. And of that, more than half—more than half—do so through marriage as opposed to partnership. Well, I think we need to get that more than half to a much larger number so that we then bring over, through the bigger more than half, all of Europe and then you have Europe alongside the United States and Canada and other beachheads in other parts of the world all creating momentum. Now, all of this, by the way, of course, is now under the cloud of the tremendous assault on liberal human rights, standards, and governments and the west and democracy that we're seeing, including here in the US. So it's going to be obviously a very challenging and important piece of work in the years ahead. But that's the vision that I think we have to bring to the work.

07-01:51:48

Meeker:

Well, I hate to end our conversations on a discussion of that but I think that it's necessary.

07-01:51:55

Wolfson:

Before we go there, let me just wrap-up one little piece of the question you asked, which is in addition to this global LGBT and global marriage work that is a part of what I'm doing now in my transitional chapter of life, which is at least a year or two, and then I have to figure out where I'm going in life because I only have generous funding to give me a visiting professorship that gives me a base for this transition through May of 2018 and after that I don't know. So I have this period of time to be helpful and also be learning and figuring out what am I going to do next. While I'm doing this global work another big part of what I've been doing is sharing these lessons with US organizations and funders and movements not LGBT. Some LGBT also. But in other words, I'm doing this global LGBT, global human rights work. I'm sharing lessons with others who want to think about how to move this to other parts of our LGBT movement, including my colleagues at Freedom for All Americans and the campaign that's been created as a freedom to marry for nondiscrimination, where most of my staff or the larger share of my staff went post Freedom to Marry.

But I'm also talking to many other movements that are not LGBT. Yesterday I spoke to a group of Latino leaders, Latino power strategy summit. I've spoken to the choice movement, the reproductive rights movement, gun control, environment, education reform, animal rights, juvenile defense, criminal justice, death penalty, and several others. So I have the opportunity to be sharing these lessons and trying to be helpful, in some degree, without being in charge of any next thing right away while I figure out what my next big thing is. So that is what I'm doing overall. So now the new era.

07-01:54:03

Meeker:

Well, the new era. And let's maybe start out by talking about the fate of marriage specifically. I believe Ivanka Trump has at least come out as supporting marriage for same-sex couples and the President-Elect has said that it's settled law. But, of course, the Justice Department that he's creating and the people who are on the short list for the Supreme Court could very well undo that. Would you peer into your crystal ball and let me know your deepest fears as well as your best hopes about what the fate of *Obergefell* might be in the next presidential administration?

07-01:54:57

Wolfson:

So before the election I wrote a piece and gave several statements saying that I regarded the threat posed by Trump as an existential threat. That it wasn't just different policies and bad stuff as we'd had with Bush and others. This was a potential threat to the bedrock elements of democratic government in the United States, a threat to our republic. Everything we've learned since I made that statement, and obviously I wasn't the only one or the first one to say those things, has only made it even more alarming. The Russian interference, the potential real Russian collusion, certainly the Russian entanglement and Russian debt that he has. He has complete disdain for any standards of not just transparency but protection against undue influence and abuse. His contempt for democracy, his contempt for free expression, his contempt for diversity, his contempt for human rights. Go right down the whole list. So, as I said before the election, and as I said actually the day after the election and then elaborated in a post and in an email to the Freedom to Marry list, even though Freedom to Marry is effectively closed,<sup>4</sup> I did want to reach out and address the question you're asking about specifically marriage but more generally—and I said, “Look, let's start by saying we're not going to sugarcoat this. This is a catastrophe. This is an existential threat to the United States. It's an existential threat to liberal democracy. The West is under assault.” And everything we've learned even since I wrote that has made it only worse. It's not just a Trump threat, it is a Putin/Trump threat. So obviously that's terrible and terrible or terrible remains to be seen. Here in the US and more narrowly, even within the policy realm, everybody he has talked about appointing, I think literally, without exception, is awful on everything I care about, LGBT and beyond. So we've got a world of awful coming toward us and much of the damage has already been done and much more to come.

In all of that awfulness, and nothing to be complacent about or sanguine about or happy about, with all of that, the threat to the freedom to marry is not high on the list. Not that there is no threat. Not that you can't imagine a scenario and a set of events that would put us in danger. But we're not in imminent danger on that in a way that we are on so many other things. I would say it is not the number one thing to be worrying about right now. Why is that? Well,

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<sup>4</sup> <http://www.freedomtomarry.org/blog/entry/freedom-to-marry-founder-evan-wolfson-on-results-of-2016-election>



first of all, as you said, you have the statement, for whatever it's worth, of Trump himself, as well as others, that he regards the freedom to marry as settled law. Now, whether he said that or not in a way doesn't matter because we don't live in a system where, if the president doesn't like something, he gets to change it. This is a constitutional right.

07-01:58:12  
Meeker:

Well, for now.

07-01:59:13  
Wolfson:

And a constitutional ruling. No, he does not get to wave a magic wand and change it. Well, unless there's an actual seizure of power and a complete overthrow of the constitutional system, which I don't think is something we can completely take for granted won't happen. But it hasn't happened yet. So, for whatever it's worth, which I think is not that much, he has said this is not what he's going after and that I kind of actually believe. But it doesn't matter because that's not how it actually works. The only real threat to overturn our win would be the appointment of multiple justices to the Supreme Court who then are willing to disregard precedent, to disregard public opinion, to disregard the *fait accompli* of already more than a million gay people who've gotten legally married in the US, and by that time it'll be even more. The complete acceptance of that by the vast majority, super-majority of the American people which will continue to grow. And literally overthrowing precedents. And they would need a case in which to do it. They don't just get to decide one day. So could that happen? Yes. But is it the most likely thing to happen? No. And is it the most imminent thing to happen? Definitely not. So it's not the thing to be worrying about right now. The thing to be worrying about are all the other things I just alluded to, which are enough to worry about right now.

I also more generally don't think it's that helpful to spend our time and energy simply wallowing in and cataloguing every bad element of this. There are going to be attacks coming fast enough that we're going to have to deal with. We're going to have to shape a strategy; we're going to have to engage. We don't have to spend our time and energy just listing all the horrible things. There'll be plenty of horrible. Let's start focusing on what are we going to do, what are the elements of pushing back, what are the elements of success, what are the building strategies we need to fight on a range of these fronts. Which will affect LGBT and marriage but are not limited to LGBT and marriage.

07-02:00:24  
Meeker:

Want to give me a hint of what that would look like?

07-02:00:26  
Wolfson:

Well, we don't fully know. I don't have a magic answer. First of all, we have to not allow the standards to be changed. This is America. America stands for certain things. He's abused them, he's violated them, he has traduced them, abetted by, apparently, Paul Ryan and Mitch McConnell and others. And we

have to call them out and we have to try to create space for a slice of Republicans with a conscience and a commitment to the Constitution to be able to stand up against that and join with and here we also have to stiffen the spine and create space for the Democrats. We have to make the case for the country. We have to remember the assets we have. A majority of people voted against this. That didn't go away. That's still there, however much they may try to obscure it. We have to mobilize that and invoke that and defend that. We have to create political power. We have to get into some of the states where the balance isn't where it needs to be at the local level, at the state level, and create that political power. In part there will be reaction to the awful things that'll happen. That is something to leverage and work with. We have to defend the press. We have to defend political engagement. All these immense pieces of work, some of which, as I said, are existential, have to happen. We have to have a robust civic engagement and we have to harness that to political power. We can't just retreat into civic space, abandoning politics to the enemy.

07-02:02:07

Meeker:

So with that said, you're a political strategist of some note. What advice would you give the Democratic Party on the direction in which they need to move?

07-02:02:19

Wolfson:

The Democratic Party needs to act as an opposition party, not a minority party. The Democratic Party won this presidential vote. Didn't win the election. Won the vote. They need to not collude in narratives that are debilitating and false and legitimating of this seizure of power that is happening under the most unfit, unworthy, and potentially unstable person ever to be nominated by a major party and now claim power. So the Democratic Party has to give voice to that and it has to match that not just with this air cover of driving a narrative but with the ground game of engagement. Have to get into these communities. We have to adapt the persuasive case and messengers to the people we're actually trying to reach but with the moral high ground and clarity of our truth, not colluding in a narrative that somehow the Democrats didn't speak to this or didn't do that. If 80,000 votes sprinkled over three states had shifted, as they supposedly and presumably would have had there not been the Russian interference and the FBI letter, the whole narrative would now be totally different. We would have won the popular vote and would have won the states and would have been entering in with a wholly different administration, would have been able to deliver on a whole different set of promises, would have made people's lives better. Well, that didn't go away just because of that 80,000 and change. We have to be true to that, not pretend that somehow the whole story is a completely different story. Beyond that, I think we're going to have to see how it evolves. But that's sort of the high-level moral frame that I would bring to the necessary political engagement and building that has to happen. We have to find a way to not give ground on important battles, many of which are coming. And part of the

challenge is there's a multiplicity of these battles coming and part of his brilliance is he's able to create such noise and distraction and perversion that it is actually a distraction and sucks the airtime away from the focus on this and this and this that might be necessary to win this, win that, win that. We have to figure out how to engage that, particularly in a world where message delivery is so fragmented and siloized and subverted by "fake news" and Russian influence and Trump's traveling circus. These are the challenges. And obviously I don't have all the answers either but I think those are the challenges that we need to be looking at.

07-02:05:22

Meeker:

Who would you like to see as the standard bearer or standard bearers for the Democratic Party?

07-02:05:25

Wolfson:

I think that remains to be seen.

07-02:05:35

Meeker:

You don't have an opinion on that at this point?

07-02:05:36

Wolfson:

No. I mean, I think there are a lot of effective, talented people. And, by the way, I think we have to not treat everything as it has to be a one size fits all magic wand national answer. Part of the way Freedom to Marry succeeded was by, within a national vision, national goal, a national strategy, having programs and partnerships and tracks that were state and local and community and methodology different and you don't have to win everything. You have to do some good work in Pennsylvania, you have to do some good work amongst businesses and labor and so on. You can't just say it's all about some magic wand, one size fits all national everything. That's not how we won. That isn't how you win. Even when we began sort of this section of the discussion and you and I had this conversation about King and Marshall and so on. It isn't one or the other.

07-02:06:37

Meeker:

This has been great. I know that we've been spending really this last hour summing up. Is there any final thing you'd like to add? Parting words that you'd want to leave us with?

07-02:06:53

Wolfson:

Well, this is the public speaking I've been doing since the election, where I knew I had to come to grips with what did I want to be saying, even if I didn't know all the answers or have all my own feelings fully settled in the wake of that extraordinarily painful election night. And I went back to that first taxonomy I began with you, where I said, "Look, the key elements of success for us were hope, clarity, and tenacity." With the advent of this existential threat and seizure of power by Trump and Putin and his enablers, particularly in the Republican Party, we're clearly going to need tenacity. We're going to have to defend what we've won. We're going to have to fight on so many

fronts. And the “we” is not just LGBT. It’s so many Americans who are now threatened, so many around the world who are threatened, including immigrants and Muslims and the working class and others—and LGBT and women and so on.

07-02:08:04

Meeker:

And freedom loving Americans.

07-02:08:07

Wolfson:

And freedom loving Americans and believers in human rights and believers in the West and believers in rejecting authoritarian incursion on countries, as we saw in the Ukraine. Yes, exactly. There’s a literal assault under way that we’re part of. And, of course, when the United States falls to that, as it has at least as regard to the White House, that’s a huge blow to the human rights vision of the world. And we are called to rise to that challenge, as other Americans have risen to existential challenge. So clearly tenacity is going to be needed because it’s not going to be fixed with one anything. So we need tenacity, as one does. We don’t yet have clarity. You and I have articulated a few things here but obviously I don’t have the magic answer to everything. We don’t even know the clear direction all the threats are coming in yet or the full depth and extent of the threats. We don’t know that we’re dealing with mere awfulness or catastrophic existential century defining battle. We don’t know that yet. So we don’t yet have clarity. But we will get clarity. We will get there. We will figure this out. We will pull together. And we have to. But we have to have hope. We have to have hope. We cannot do his work for him. In Nazi Germany they used to have an expression of “working toward the Führer.” And what that meant was it wasn’t only the directives being given by Hitler, by the party. It wasn’t just the work of the Gestapo. It wasn’t just what the henchmen and SS and evildoers were doing. Many parts of society gravitated in that direction, trying to anticipate, trying to figure out what they needed to do and anticipatorily do the evil work even before they necessarily were ordered, let alone forced to do it. We can’t do that. We have to have a vision of hope and a belief that we can uphold our values and our Constitution and what the majority of these people actually voted for and make it real, even in the face of this perilous, potentially existential assault. And I do have that hope.

07-02:10:45

Meeker:

Well, good. We end on a note of hope. Thank you very much.

[End of Interview]