

Originally published in the Diversity Committee Newsletter Vol. 2, No. 1/April 2016
A Conversation with Civil Rights Leader Evan Wolfson
by Shawn M. LaTourette

Evan Wolfson, a longtime civil rights leader, will be joining members of the New Jersey State Bar Association during the Annual Meeting and Convention on Thursday, May 19, 2016, to reflect on the case of *Boy Scouts of America v. James Dale*, a seminal lesbian, gay, bisexual, transgender (LGBT) rights case where Wolfson represented the plaintiff, a gay assistant scoutmaster from New Jersey. Wolfson will be joined by retired New Jersey Supreme Court Chief Justice Deborah Portiz and the plaintiff, James Dale.

In 1990, Dale was ousted from the Boy Scouts when he came out as gay. In a unanimous 1999 decision, the New Jersey Supreme Court ruled that the Boy Scouts violated the state law prohibiting discrimination on the basis of sexual orientation. In a 5-4 decision in 2000, the United States Supreme Court overturned the New Jersey ruling, finding that the right to freedom of association allowed the Boy Scouts, a private organization, to exclude Dale because the organization's opposition to homosexuality was part of its "expressive message."

Following the *Dale* case, Wolfson founded and led Freedom to Marry, the nationwide campaign for marriage equality. Wolfson is widely regarded as the architect of the strategy that won the freedom to marry in the United States, beginning with his 1983 Harvard Law thesis, "Same-sex Marriage and Morality: The Human Rights Vision of the Constitution."

Wolfson sat down for a brief discussion about his 32-year journey to win marriage equality, which culminated in the United States Supreme Court's landmark *Obergefell v. Hodges* decision in June 2015.

Q: *Nearly a year since marriage equality became the law of the land, you will be joining retired New Jersey Supreme Court Chief Justice Poritz, James Dale and New York Law School Professor Arthur Leonard on May 19 to discuss how far the U.S. Supreme Court has come in the 15 years since it ruled that the Boy Scouts had the right to expel Mr. Dale from scouting on the basis of his sexual orientation. What can we expect from this panel?*

A: Most importantly, we will celebrate people like James Dale and Chief Justice Poritz—and, in fact, the unanimous New Jersey Supreme Court—as well as the many organizations in New Jersey and nationwide, who stood up and pushed back on attempts to hijack the Boy Scouts in furtherance of a discriminatory agenda. We will celebrate the activism and advocacy in and outside the courts and across the country, activism and advocacy that have actually succeeded in undoing most of that discrimination and getting the Boy Scouts back on the right track.

Q: *In 2015, the Boy Scouts renounced its policy against gay members, which was the policy at issue in the Dale case. What do you believe brought about that change?*

A: First, although the Boy Scouts have renounced the national discriminatory policy, BSA still maintains a policy that allows for discrimination at the local level by religious participating entities. This is a major improvement over mandatory discrimination, but a policy that allows discrimination is still discriminatory. So there is still more work to be done. Still, the Boy Scouts have moved in the right direction and the improvement is reflective of the changes within the country and within the scouting movement. Much of the pressure for change came from within scouting itself—from youth, parents, supporting entities, and funders.

When we lost 5-4 before the Supreme Court in 2000 and saw our New Jersey victory overturned, I declared “We may have lost the case, but we are winning the cause,” because the *Dale* case awakened millions of Americans to this discrimination. Sure enough, what we saw in the 15 years that followed was people taking responsibility, getting engaged, and speaking up. We changed the hearts and minds of the American people about who gay people are and, particularly, who gay youth are. We advanced in cultural understanding and in legal and political battles over marriage as well as, notably, military discrimination of gays and lesbians. We overturned so-called ‘Don’t Ask, Don’t Tell,’ the policy the BSA pointed to as a model for its discriminatory policy.

The *Dale* case and its aftermath is a reminder that legal advocacy plays a role in spurring change, and that change outside the courtroom is often essential to winning in the courtroom.

Q: *Commentators often remark on how Americans seemed to have changed their minds about LGBT people in such a short period of time. Having researched and advocated LGBT rights issues for your entire career, what do you make of that commentary?*

A: I understand that people experience the transformation—both in the hearts and minds of Americans and in the law—as having been quick. In historical terms, the transformations we have achieved have been quick. Compared to other movements and struggles, we have made tremendous progress in a short period of time. And many people only remember the point at which they awoke to the discussion and became a part of it.

But the length of time it took to achieve some of these transformations is much longer than many people think. For example, the fight to win the freedom to marry did not just happen in the Supreme Court in 2015, or in the wave of cases leading up to that decision. In fact, gay people had been fighting for the freedom to marry for over four decades, going back to the immediate aftermath of Stonewall in 1969. Four decades is not a short time in our personal lives, but it is short time for a civil rights movement that has brought about an epic transformation. We have gone from outlaws and despised minorities to full participants in a central social and legal institution in our society. We have gone from having the basis of our identities—who we love—being the focus of discrimination against us to its being the central and successful claim for participation in this preeminent language and structure of love, marriage, and the full equality and inclusion that having the freedom to marry betokens.

Q: *Knowing that the work of ensuring equality is not done, how do you think we go about bringing more positive change to the lives of people in the LGBT community?*

A: Although we have won the freedom to marry, the marriage conversation has only just arrived in many parts of the country. We must continue to make use of the engine of transformation we created and help people to understand, in human terms, who LGBT people are and what our love, families, and aspirations are really about. The power of the marriage vocabulary is the gift that keeps on giving. We have the language, the greater visibility, that ‘detoxifies’ gay stereotypes and that we can and should harness for the remaining work ahead.

We still have a huge amount more to do. We do not have the kind of lived equality and dignity that everyone should have in all parts of the country. We still do not have sufficient non-discrimination measures at all local, state and federal levels. We need to secure express non-discrimination protections in employment, housing, public accommodations, education, and access to credit. In the same way that we have won express protection in the important arena of

marriage, we need to do the work through the courts and legislatures to achieve full equality in all spheres of life.

Q: *Outside of the legal framework that led us to marriage equality, how do we build upon the imperative for lived equality.*

A: Our goal is not just good laws, it's good lives. We want youth to feel protected no matter where they are growing up, and ensure that they not be exposed to bullying, isolation or harassment, including from their very own primary sources of support. Young people should feel safe and supported in every corner of the country no matter their church, their school, or their state. As we age, older LGBT people should not be forced back into the closet because we cannot find support or facilities that respect us for who we are and the lives we have built. It is not enough to win in the law and win politically, we have to make sure people's lived experience is whole, free, and hopeful, and that the cultural embrace is profound, real and universal.

Q: *What was your first reaction on the morning of June 26, 2015, when the Supreme Court made same-sex marriage the law of the land?*

A: Profound happiness and gratitude that I lived to see it—gratitude that we live in a country where, despite its imperfections, we can engage the system to treat people equally and change hearts and minds of people as well as the law. Every paragraph of that decision was a reminder of a battle that I had been through. I thought of the people who I have worked with who did not get to see this moment. I thought about the arguments over legal strategy, and my own decades of speaking and writing—and saw so much of that reflected in Justice Kennedy's opinion. There is a section in which he explains that this victory did not come out of nowhere, that there have been decades of battles where the American people have wrestled with this issue. I also realized that I was relieved. I always believed that we would win—if not last June, eventually—but the relief of not having to keep fighting, not having to keep conveying optimism, was a real burden lifted.

Q: *With your organization, Freedom to Marry, a success, what is next?*

Having achieved our goal, Freedom to Marry has shut down. Unlike many of the pillar organizations—organizations like Lambda Legal, the ACLU, and allies like Gibbons—who we count on and whose work must go on, Freedom to Marry was a campaign. It was not an institution. It was intended to drive a strategy and engage partners to reach a goal. We have done that. I will be spending my next life chapter—after 32 years, how great to have another one—advising and assisting others seeking to build on and adapt the lessons we learned to other causes and other countries. I have been responding to requests for advice from organizations that are eager to learn the lessons of this campaign and how it could be applied to their work, for example, in the area of global human rights. We have a lot of lessons to share from our stumbles as well as our successes.

Q: *We have experienced this transformation as you've explained, but how do we keep momentum? How do we encourage those who have realized the benefits of these positive changes to keep on fighting for other people?*

A: I believe that you are much more likely to rally people when you are positive, encouraging, and engaging, and put forward a clear goal and clear pathway forward—a strategy. There may be some people who have been inspired by the marriage goal who may step back with that goal

having been achieved. But, there are millions of people who were awakened to injustice and who care more now about LGBT people and causes than they ever did before. Many of those people are gay, but many are not. We need to engage those people, organizations, allies, and partners to build on our momentum. It is not as though everyone universally supported the freedom to marry as an achievable goal. We had to work hard to get people to believe in the ability to win the freedom to marry, the importance of winning, and the work needed to win. Part of activism is getting up and inspiring others to join you. For the work that lies ahead, we need to rally people to the cause, show them why it's important, and teach them what they can do to make change.

Q: *Since you're sharing advice, I would be eager to hear your thoughts on how our committee might further its goal of cultivating diversity as an institutional and education imperative within the bar association.*

A: I think that highlighting the contributions of people from different walks of life, the power of different messengers to reach different people, and the advantage of tapping a broader talent pool are ways in which to make space for more people to rise and contribute. Be aspirational: Show people the positive case for why making room for more voices helps everyone. It is in everyone's interest—in the interest of the legal community, the interest of different companies, the interest of our social system. Being able to spotlight examples of diverse contributions and listening carefully to people as they talk about their barriers, will help in the work of removing those barriers. It will not happen overnight, but it will build and accelerate. Shine the spotlight on the successes and give more people a chance to see the value through evidence and example. Electing Tom Prol as your next president is one example, one more step forward. Tom is going to help people to see with their own eyes the advantages of being open to diverse talent.

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