

TRANSCRIPT OF CLOSING REMARKS

*Roberta Kaplan**

Good evening. I have been spending a lot of time over the last five years or so speaking an awful lot about an incredible now-86-year-old-lady who lives across Washington Square Park, just a very short distance away from here, who I'm privileged enough to say was my client and is now a dear family friend, Edie Windsor. And, since writing a book about the *Windsor* case¹ I have spent a lot of time talking about myself. I'm not sick of talking about Edie Windsor, I *am* sick of talking about myself. [*Laughter from audience.*] So I'm going to talk about something else tonight. What I'd like to talk about is Tom Stoddard and the example that I think he set, not only for our movement, but for other movements going forward

I'm going to talk about a piece that appeared in "Talk of the Town" of the *New Yorker* on December 20th, 1993.² The panelist before me, [Peggy Cooper Davis,] mentioned it. I'm going to go into a little more detail.

The title of the piece, as you heard, is called "Tom and Walter Got Married," and it begins as follows:

Tom Stoddard and Walter Rieman went shopping at Tiffany's last month. The salesman was polite but distant. After asking him dozens of questions, after trying on this one and then that, they decided to buy what Tom had wanted from the start: two plain gold bands

One morning a week or so before the ceremony, we rang the bell of Tom and Walter's apartment. When the door opened, both Tom and Walter were there, looking flushed and concerned. "Walter's lost the seating chart," Tom said. "He's going off to work to search his desk."

"All right," Walter said, grabbing his coat. "I'm going." Walter, a thirty-eight-year-old trial lawyer, was recently elected to partnership at Paul, Weiss, Rifkind, Wharton & Garrison, the first

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1. Roberta Kaplan & Lisa Dickey, *Then Comes Marriage: United States v. Windsor and the Defeat of DOMA* (2015).

2. Richard Cohen, *Tom and Walter Got Married*, *New Yorker*, Dec. 20, 1993, at 55.

openly gay person to achieve this. His manner is solemn and intense, and he has a prodigious memory: he can retrieve childhood anecdotes, slights suffered long ago, the minutiae of legal decisions concerning people generations dead. Losing the seating chart for his wedding was not something that Walter took lightly.

After Walter left, Tom dropped onto an overstuffed couch and sighed. Tom met Walter at a fund-raiser on Fire Island five years ago, and they moved in together six months later, but the last few days, Tom told us, had been a whole new relationship. "A gay man getting married has so many things to worry about," he said, folding his arms. "Even the small things assume hidden meanings and are riddled with symbolism." Tom, who is forty-five years old, is a lawyer, too, but may be better known as an activist on behalf of gay rights. Last spring, before the big gay march in Washington, he met Bill Clinton at the White House to discuss, among other things, the Administration's position on gays in the military. For six years, Tom was the executive director of the Lambda Legal Defense and Education Fund, but he resigned the post in January of 1992, in part because he had recently been found to have AIDS. "Now I reserve strength for choice battles," he said.

The next big battle, Tom said, is gay marriage. "It's just so emotion-laden, so tangled with convention, that it is bound to test straight people more profoundly than any other gay issue," he said.

When we next spoke with Tom and Walter, a couple of days before the wedding, Walter had come down with a traditional case of the screaming meemies. He had found the seating chart by then, but he had begun to wonder if some hidden voice wasn't saying, "Don't commit." "For lesbians and gay men, marriage is scary," Tom told us. (Walter wasn't talking.) "After all, gay rights is about challenging tradition, and what's more traditional than a wedding?"

The wedding was held on a rainy Saturday afternoon at Chantrelle, in Tribeca. Walter's jitters were gone. He wore a gray suit and a red tie. Tom, too, was dressed in gray. During the cocktail hour, more than seventy people, including Walter's brother and two sisters, Tom's brother, and a New York Supreme Court justice, drank champagne and filled the room with stories about Tom and Walter.

My apologies, as I'm going to start to cry—

The two men then appeared in a clearing between tables. Facing each other, they exchanged vows ("I commit to you my life and my love for the rest of our days"), put on their gold rings, and were married.

Let's just take a moment—I think we all deserve a moment—to celebrate what our movement has achieved. I know, I'm not for a sec-

and suggesting there isn't much more to do. There is. There always is. There always will be. That's the struggle. That's what we are as human beings. That's our struggle to repair the world. But just imagine, back in 1993, when Tom and Walter were married—they weren't married, of course, they got a domestic partnership under New York City law—imagine the difference between 1993 and today. The culmination of so much of what Tom worked for so many years has been achieved in a matter of—in terms of human history—nanoseconds in this country. And while I'm fully committed, and I'm still litigating cases, to keep fighting the fight, I think we all deserve a moment to celebrate, to take a deep breath, and to pat ourselves on the back.

At the time that this *New Yorker* piece came out, I was a second-year litigation associate at Paul, Weiss. And of course, I knew who Walter was. While I didn't know Tom, I can tell you that the impact of that *New Yorker* piece on me was *enormous*. A piece in the *New Yorker* about a guy who had just been elected as a Paul, Weiss litigation partner getting married to another man? The fact that he was openly *gay* was written up in the *New Yorker*? I remember not having the courage at the time to speak to either Walter or Tom, but being so filled with both hope and courage and just plain old-fashioned pride at the idea that this could even happen, that it was even a possibility, in 1993.

There's a passage in my book where I talk about what I was like then. It was when my clerkship ended at the end of 1991, "I went to work full time at Paul, Weiss, Rifkind, Wharton & Garrison, the New York firm where I had been a summer associate. At Paul, Weiss, I knew I would finally get to fulfill my dream of litigating high-profile, cutting-edge, commercial cases. Yes, that was actually my dream. [*Laughter from audience.*] I settled into the usual routine of a first-year attorney in a big firm working ninety hours a week, and I loved it. Pretty soon, my girlfriend and I moved in together—not that I told anyone at work, of course. I was content being a closeted, New York corporate lawyer with a big, nineties haircut and an actual closet full of dark suits with padded shoulders."³

I really can't express to you all how much of an impact the bravery of people like Tom and Walter had on so many others, had on the movement, but also had on people like me. It's relatively easy to be out today. It wasn't easy to be out in 1993. It was incredibly hard, and without the efforts and the bravery of people like Tom and Walter to do what they did, we never would have achieved *Windsor*, we never

3. Kaplan & Dickey, *supra* note 1, at 31.

would have achieved *Obergefell*, we never would have had equality for gay people under the law.

What I would like to talk about more particularly is a series of discussions that Tom had about twenty five years ago today, with Paula Ettelbrick, a dear friend of mine who has also passed away, debating the issue of marriage equality and whether or not achieving marriage equality was a good thing for the movement. And there are a lot of arguments that can be made back and forth. You probably all know where I fall on that side of the debate.

I think it's important to realize what a live issue this was for gay people, not only because of the symbolic significance of marriage, or the concern about being wrapped up in a traditional societal structure, but frankly because of our own internalized homophobia as well. I'm going to read another passage from my book on this, and it talks about my wife Rachel Lavine's attitude about this when it first came up in our lives, many years after Tom and Walter got married:

The first time I asked Rachel if she wanted to get married to me, she responded with "don't be ridiculous." We had been domestic partners for a couple of years at that point, and although I had never been the type to fantasize about walking down the aisle in a frilly white dress, I was surprised that I had recently begun to think about actually getting married

At that time Rachel thought, "what's the point?" We could not have had the same rights as straight married couples, so it did not feel like an act of equality. It felt like begging for acceptance, as if we were trying to say, "We're normal." It felt like an act of conformity, not an act of affirmation. Rachel had been to a lot of straight weddings in her life, and even when she loved the bride and groom, she hated the weddings themselves, because they made her feel excluded. Once she started going to the weddings of our lesbian and gay friends, however, that changed. Those weddings

—as you heard in the *New Yorker* piece about Tom and Walter—were full of wondrous joy. Everyone there, not just the brides or the grooms, were filled with gratitude, love and awe. For the first time, Rachel felt not only included, but actually engaged in those weddings. She began to understand that marriage was not only a social construct or a legal partnership with rights and benefits, although it was, but a personal promise that is shared with the community.⁴

The aspect of the debate between Paula and Tom that I think is so important and that I think gets lost today was not the substance of what they debated, although that certainly is important, but *how* they

4. *Id.* at 57–58.

debated it. One of the most important things that Tom taught was that we can have disagreements. We can have discussions within our movement and we can discuss the issues civilly. We can discuss them in a way that respects the dignity of the person on the other side. And something that worries me very, very much today, because there are huge debates, as there always are, in our movement today about transgender issues, about economic issues, about First Amendment issues, etc.—is whether we’ve lost our ability to have those discussions and have them with the kind of civility, the kind of dignity, and the kind of integrity that Paula and Tom did.

To be honest, I don’t think that the Internet and social media are very helpful in this respect. In fact, I think it might be the opposite. Just the other day, I sent out a tweet criticizing the statement that Ben Carson made that Jews could have prevented the Holocaust had they had more guns. The number of hostile tweets I received in response was absolutely shocking to me.

And I do think that particularly the young people here have to be very concerned about the way that the anonymity of Twitter and Instagram and Facebook seems to give people a license to talk to each other in a way that I believe denies the dignity of others.

By the same token, I think that in our movement, there has been a tendency to lose the ability to disagree. I think because perhaps of our fear that when we talk to each other, people will take offense or people will get too overheated or people will not speak to each other with the civility that is required, there is an internalized suppression of disagreement and discussion that is healthy, important, and necessary, in my view. And I’m not going to talk about any details—you can read about one or two of them in my book—but I think that it’s important for us not only to speak to each other with civility, but rather than to suppress disagreement about strategy or goals, to be able to talk about them in the same way that Paula and Tom did more than twenty five years ago.

I recently had an experience that really reinforced these issues for me. A couple years ago I was invited to go down and give a speech down in Asheville, North Carolina. I kind of knew this but hadn’t fully realized that it appears the entire population of Asheville, North Carolina is comprised of lesbians. When I was down there giving that speech, I met a lot of lesbians and made some really good friends. And several months later, I got a call from some of the people I met down there asking me if I would bring a marriage equality case in Mississippi. My first reaction was “Mississippi, are you kidding me? I’m a Jewish lesbian from Cleveland, Ohio who lives in New York City,

perhaps I'm not the right person to bring a marriage equality case in Mississippi." But after thinking about it—and it was right after the Supreme Court had denied cert in the Fourth, Seventh and Tenth Circuit marriage equality cases, I was convinced that the time was right, and that we were ready to go down to Mississippi.⁵

We were expecting a deluge of protests, and resistance. When we got down to Mississippi, however, there wasn't a single protester on the other side. The community down there—or, as you might expect, the gay community down there—could not have been more supportive, more warm and more welcoming. . . .

And one of the things that I think I learned from being in the Deep South was that in order to achieve progress on these issues, not only do we have to be able to speak civilly to each other, not only do we have to be able to have disagreements with each other, and voice our disagreements in a way, again, that is civil and dignified, but we have to learn how to speak to the other side. We have to learn to be able to speak to people who come from backgrounds and have views and attitudes and experiences that are incredibly different from ours, many of which we might find offensive. But we're not going to achieve anything until we can talk to each other and until we can talk to the other side.

I'm going to end with one more story. I just got back from Mississippi yesterday, and after arguing the Mississippi adoption case in front of Judge Jordan in Jackson on Friday afternoon. I was invited by a gay friend who I met down there to go to Clarksdale, Mississippi, which is in the heart of the Delta, and to spend the weekend there with his two extremely religious parents. At one point we said to them, "What do you do down here?" They said, "We're very busy, we go out every night." So we asked, "Where do you go?" They answered, "We go to church events every single night during the week."

I'm first of all not someone who really likes staying in someone else's house, so already I was anxious. But the idea of spending a weekend in a house with these people was absolutely terrifying, and I went with my very strong-minded wife, Rachel Lavine, and my son. And it was one of the most eye-opening experiences I've ever had. Not only did we have a wonderful time—prodigious amounts of bourbon and Southern food probably helped with that—but I realized that

5. *Bostic v. Rainey*, 760 F.3d 352 (4th Cir. 2014), *cert. denied*, 135 S. Ct. 286 (2014); *Boskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014), *cert. denied*, 135 S. Ct. 316 (2014); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 265 (2014); *Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 271 (2014).

even with people who live in a world that is so different from mine, we were able to find so many points of commonality. I remember I was nervous at first; they talked about religion a lot so I kept trying talking about Judaism, which actually worked, and we talked about the differences in the Bibles, between the Christian Bible and the Jewish Bible. But then we went on to talk about our own lives and our backgrounds and our parents and our families.

My friend Harvey, who had invited us down, said that at one point early in the weekend, his father pulled him aside and said, “What’s the relationship with those two women?” He said, “I guess they’re together, they must be together, right?” [*Laughter from audience.*] Harvey said to his father, “Yes, dad not only are they together, they are married, and Jacob is their son.” Harvey told me that at the end of the weekend, his father pulled him aside again, just as he was about to drive back down to Jackson, and said, “Listen, Harvey, this was the most wonderful weekend I think we’ve ever had, it has been so wonderful, we have learned so much. It has been an incredible experience; we had just the most wonderful time I learned a true lesson about the meaning of tolerance, and about the meaning of understanding different people.”

So if there’s any lesson that I think Tom Stoddard taught me, and I think Tom should teach all of us, it is that we have to be able to talk to each other in a way that respects the value of tolerance within our movement, tolerance with [those] outside the movement, and tolerance with people who by all accounts—on Twitter or Facebook or Fox News—are incredibly different. But the only way to achieve progress is to make common ground with them and to be able to talk, even with people in the Mississippi Delta.

