



By **DOUG SHERWIN**, The Daily Transcript
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The trial over the constitutionality of Proposition 8 – California's voter-approved ban on same-sex marriage – drew so much interest that it was the focus of two re-enactments.

Former U.S. District Judge Vaughn Walker, who presided over the trial that overturned the ban, told a San Diego audience last week that he wasn't too happy with how he was portrayed in one of the productions, which cast "someone who looked rather like a department store Santa Claus."

Walker, however, did not have any such problems with the play created by Hollywood screenwriter Dustin Lance Black, the Oscar-winning writer of "Milk."

"The judge was played by Brad Pitt, casting I thought was far more appropriate," Vaughn said with a smile.

Walker, now retired, shared the funny anecdote to demonstrate that while people may have disparate talents, skills and looks, everyone should be treated equally under the law. That was the theme of his keynote address at the fifth annual reception of the American Constitution Society's San Diego chapter, held at California Western School of Law.

"An attempt to equate everyone in every way has always failed and, of course, it always will," he said. "The equality of which our Constitution provides is not this kind of equality, but it is an equality rooted in the notion that no group or individual should be deemed unequal because of the circumstances of his or her birth or of any other characteristics."

During the reception, the ACS San Diego chapter honored attorney Eric A. Isaacson with the Roberto Alvarez Award for his work in advancing the cause of civil rights and equal protection.

A partner with **Robbins Geller Rudman & Dowd LLP**, Isaacson helped represent hundreds of religious organizations and faith leaders who said civil marriage is a right the state can't withhold from same-sex couples.

Walker's decision in the Proposition 8 case was upheld by the U.S. Supreme Court in June 2013, paving the way for same-sex marriages to be held in California and marking a landmark decision in the history of gay rights.

Walker said it was important that the dispute over Proposition 8 was decided with the use of a trial.

"There's something about a trial which brings out facts and casts light that is never cast in quite the same fashion (otherwise)," he said.

"The initial case management statements of the lawyers in the Proposition 8 case had factual propositions that were at war with one another," he said. "And the way you go about proving fact

and factual propositions is by putting witnesses in the box, examining the witness, letting the witness be cross-examined and making a determination."

Walker said the styles of the two lawyers representing the plaintiffs in the case, Ted Olson and David Boies, were very different as they fought to overturn the voter-approved amendment.

Olson wanted a quick trial so as to get the case to the U.S. Supreme Court before liberal Justice John Paul Stevens retired while Boies took a more deliberate approach.

In an early case management conference, when Walker asked how long they would need for discovery, Olson said they didn't need any time.

"At which point Boies got up and almost put his hand over Olson's mouth and said, 'Your honor, we need at least six months,'" the judge recalled.

Although featuring different styles -- and having famously opposed each other in the court battle following the 2000 presidential election -- Olson and Boies turned out to be a formidable duo.

"Any trial lawyer knows that cases are won or lost generally on the facts, and together they did an outstanding job in presenting those facts and making the case for marriage equality," Walker said.

Walker told the ACS audience that the proponents of Proposition 8 saw the marriage between a man and a woman as somehow superior to the union of two members from the same gender.

"However strongly one might believe that proposition as a personal matter, the evidence in the trial showed that this belief had no legitimate place as a tenet in our state's fundamental law," Walker said. "That belief, even if sincerely held, was not a legitimate or reasonable basis for a limitation on civil marriage. It earned no more legitimacy because it was supported by a majority of California voters in 2008."

Walker said prejudice and bigotry of any kind tends to harm the perpetrator as well as the victim, recalling a story in which Nelson Mandela said his fight to end apartheid ended up liberating white South Africans.

"A social system which denies any person the chance to reach his or her own potential stifles both the individual and society," Walker said.