



Chris Dusseault '94

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Taking on Proposition 8

"I prepare people for depositions — it's what I do. But this was very different from a business dispute; here they were being deposed about who they are. 'Who are you, why are you this way, is it good or bad, could you change it if you love the person you love, couldn't you love someone else?'"



— Chris Dusseault '94

Chris Dusseault's Blackberry lit up just as soon as he and his wife had settled in at their table in a Nantucket restaurant on an August 2010 evening. He knew the simple message — "Perry, 09-2292, release set for tomorrow" — signaled an interruption to their long-delayed holiday.

Dusseault, an antitrust and complex commercial litigator and co-partner in charge of the Los Angeles and Century City offices of Gibson Dunn, had wrapped up the trial in *Perry v. Schwarzenegger* — the constitutional challenge to California's Proposition 8 — in January 2010, with closing arguments that spring. He had hoped the District Court would provide advance notice of when the decision would be released; he knew he would have to hustle up to San Francisco for the media frenzy sure to follow.

"For weeks, I'd been driving around Los Angeles with a packed suitcase in my car, waiting for that email," says Dusseault, a member of the Duke Law Board of Visitors.

Now he had 24 hours to hustle across the country.

The unlikely duo of Gibson Dunn's Ted Olson and David Boies of Boies Schiller led the team that brought the federal court challenge after the 2008 ballot initiative recognizing only marriage between a man and a woman was upheld by the California Supreme Court. Adversaries in *Bush v. Gore* — Olson subsequently served as solicitor general under President George W. Bush — the two filed a complaint in the U.S. District Court in San Francisco, claiming the law violated rights of equal protection and due process guaranteed under the Fourteenth Amendment.

Dusseault says he was honored to be brought into the case in its earliest stage by Olson and Gibson Dunn's Ted Boutros, with whom he worked on business cases. "I

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love my work, I love the business cases,” he says. “But we all knew what a huge deal this was and how important this could be for thousands of people.”

The team worked under the radar while drafting the complaint. “I had to keep things secret even from my wife for a few weeks, and I never keep anything secret from her,” Dusseault says. “When I told her about it, I remember her just very sweetly saying, ‘This is why you went to law school.’”

When the presiding judge expedited the case for a trial within six months, Dusseault became Gibson Dunn’s field marshal, coordinating the handling of multiple experts and witnesses for the three firm offices involved, along with counterparts at Boies Schiller and in the San Francisco City Attorney’s Office.

The expedited schedule had them working at a breakneck pace. “We had 45 days to identify and hire all of our experts and prepare and serve their reports on the other side,” he says. “And then three to four months to take and defend the depositions of some 25 witnesses.”

Though he was in his element organizing the case and running discovery, Dusseault was less familiar with the underlying civil rights law. Immersing himself in cases such as *Lawrence v. Texas* and *Loving v. Virginia* made it clear to him that his clients should win the challenge, he says. “We knew that this was a groundbreaking case because gay men and lesbians have historically been denied equal rights, but it was also fully supported by precedent. We really hammered on this at trial — that more than 14 times, the U.S. Supreme Court has recognized that the right to marry is a fundamental individual right. And there was really no question that Proposition 8 denies that right for gay and lesbian people.”

He found defending two of the plaintiffs for depositions particularly compelling. “I prepare people for depositions — it’s what I do,” Dusseault says. “But this was very different from a business dispute; here they were being deposed about who they are. ‘Who are you, why are you this way, is it good or bad, could you change it if you wanted to, why do love the person you love, couldn’t you love someone else?’ These are questions that are astonishing to think about, let alone have to answer under oath.

“In the weeks before trial it hit me what a powerful story this was going to be,” Dusseault adds. “I looked at the testimony of the four plaintiffs and the powerful things they had to say about discrimination, and then I turned to the experts. We had really the top scholars from throughout the world, who had spent their whole lives just studying specific fields — the study of relationships, the study of the history of marriage, the study of discrimination against gays and lesbians, the study of political power, all of which were relevant to the issues before the court — and it brought home to me what an educational moment this was.”

Dusseault says he found many poignant moments during the 12-day trial, in which he examined key expert witnesses and presented evidence from the Prop. 8 campaign. “Every day as we’d walk into court, people were lined up waiting for seats and they would shake our hands, saying ‘thank you for what you’re doing.’” He also reveled in the professional opportunity the case represented.

“Here I was trying a case with Ted Olson, who’s had just about as much experience in the U.S. Supreme Court as any lawyer of his time, and with David Boies, who I think is appropriately regarded as one of the greatest trial lawyers ever,” he says. “I had moments when I’d just step back and say, ‘Is this real’?”

“I don’t do this kind of thing, but if I’d gone to a fortune teller a year before who’d said ‘in the next year I see you trying a major civil rights case, advocating marriage equality, and you’d be trying the case with Ted Olson and David Boies,’ I would have said, ‘You need to find a new line of work.’”

Dusseault made it from Nantucket to San Francisco in time to sit with his team and read Judge Vaughn R. Walker's 136-page opinion, finding for the plaintiffs. He says watching their clients' reaction to the news was a career highlight.

"I don't know that I'll ever have another legal experience like this. It was amazing, but it can't replicate the impact on their lives. And to watch their tears of joy and excitement — the overwhelming emotion of it was incredible."

While all involved assumed the verdict meant the plaintiffs would be able to marry promptly, that has not happened. The U.S. Court of Appeals for the Ninth Circuit stayed the District Court's injunction against enforcement of Prop. 8 pending resolution of the appeal. The challenge is likely to eventually land before the Supreme Court. Dusseault remains involved in all aspects of the case

"I love the case, and I'm happy that I get to keep working on it," he says. "But the tragic part of it is, Judge Walker was right — you have fundamental rights being denied every single day that this law remains in effect. Hopefully the day will come soon that this case is concluded and our clients can finally exercise the right to marry that so many others take for granted."

— Sharon McCloskey

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