

you are cordially invited to

*Cocktails
With
David*

location
FOUR SEASONS

time
5:00 PM

host
KATRINA DEWEY



IT'S 4:58 WHEN DAVID BOIES WALKS

up the steps to the Four Seasons bar in Midtown Manhattan and orders a Screwdriver in a tall glass. It's a plush place and Boies' favorite watering hole, just steps from his firm's New York office.

As ever, he's juggling nine million things. Al Gore is on the phone, he's just returned from a trial over a \$400M real estate foreclosure in San Francisco, settled the Oracle-SAP case for \$306M, is taking on the federal government for wrongfully taking over AIG during the financial crisis and is preparing to celebrate his firm's 15th anniversary and its record ascent to the most elite ranks of U.S. law firms.

He's also looking forward to the next chapter of *Perry*, the seminal case that re-cast the issue of gay marriage. In 2009, he and Ted Olson signed on to not just overturn California's Proposition 8, but also to legalize gay marriage through a courtroom trial. They faced skepticism and criticism not just from those who opposed marriage equality, but also from leaders of the public interest community, who questioned the role of star private lawyers on the battlefield they had tended for so long.

Which is where vintage Boies comes in: when in doubt, hold a trial. And that's where the facts are parceled, tossed and challenged and the truth emerges.

Boies watched the civil rights movement from Southern California, where his parents had moved the family from Marengo, Ill., when he was 13. He attended junior high school in Compton, and was president of the University of Redlands Young Republicans Club while a married father of two children at 19-years old. Over the next decade, he would work a construction crew, teach journalism at Patton State Mental Hospital for the Criminally Insane, become a single dad of four children, and an attorney at Cravath.

He appreciated exquisitely the role law was beginning to play in changing lives, including his. That philosophy – of law as a tool to protect and better lives – has been the stream that flows through his career, whether representing civil rights volunteers in Mississippi or defending CBS and Mike Wallace over the Westmoreland case; the government in its efforts to contain Microsoft or the Democratic National Committee winning a permanent injunction against the Republican National Committee's

efforts to disenfranchise African-American voters.

And now *Perry* and the rights of everyone to marry. A doting father of six and married for 30 years to Mary, it took less than two seconds for him to sign on with Olson to represent Kris Perry in her lawsuit to wed Sandy Stier, her partner with whom she has four boys. Since they filed the suit in 2009, public support for gay marriage has ascended from 37 to 48 percent, with a corresponding drop in those opposed. And in the *Perry* case itself, the 9th U.S. Circuit Court of Appeals found that California could not deny same-sex couples the right to marry.

LAWDRAGON: And they said it couldn't be done.

DAVID BOIES: Well, we're not done yet. We're still waiting on the Supreme Court. But you're right. We've changed the lives of not just our clients, but of couples and individuals everywhere who deserve equal dignity in their personal choices.

LD: Beyond whether or not the U.S. Supreme Court takes the *Perry* case, there's been a huge shift in public opinion in favor of marriage equality of the type that makes the outcome simply a matter of when, not if.

DB: Well, you know, that's what a trial does. It exposes the truth. You can't hide from the truth on a witness stand. And when you put up a witness – who is really the only person opposing gay marriage at the trial – and ask him what is the harm from allowing gay couples to wed and he says, "I don't know," well, that exposes the truth.

LD: It was courageous of you and Ted to take on that case. You had to battle not just uninformed gay marriage opponents, but also much of the public interest community, which thought you were taking too big of a risk.

DB: Well, I'll say this. We have a lot of admiration for everyone who played a role in this. But what's important isn't who wins the battle, it's winning the war. It's ensuring that everyone has the right to marry the person they love.

LD: I'm curious how you became you. You're from Marengo, Illinois, which is a small farming community outside Chicago. Were your parents liberal? That would be unusual for those times and that area.

DB: I actually grew up a Republican. I was president of the University of Redlands Young Republican Club. My father was Republican. His grandfather had been the publisher of a newspaper in Sycamore, Illinois, called *The True Republican*. I was a Republican through college.

But I really changed with the civil rights movement, where, like a lot of people in those days, I grew up really naïve about race relations. As I began to confront the real extent of discrimination and became actively involved in the civil rights movement, what I found was that in those days – not all Republicans – but the Republican Party in general was on one side of that struggle. There were a lot of racist Democrats and there were a lot of Republicans who made enormous contributions to the



civil rights movement. But on the whole, the Democratic Party led the charge for civil rights and had begun to do so with Roosevelt and Truman. And the Republicans were fighting the rear guard.

LD: Why did you care?

DB: When my family left Illinois, before we moved to Fullerton, which is a fairly nice Orange County suburb, we moved to Compton. And I went to junior high school in Compton, California. That was a sea change.

LD: Were you in shock wondering what happened or did you embrace it?

DB: I embraced it. It was interesting. It was different. Compton at that point was a very racially integrated town and the relationships between races were not always smooth.

But there were things you learned when you grow up with

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people I think of any race, or any group of human beings. You realize how much they are like you and you are like them. And how really insignificant the differences are. And then you grow up playing, going to school with, fighting African-Americans, you just naturally accept their equality.

LD: Were there any specific instances that led to your awakening on the issue of civil rights?

DB: Sometimes things happen that you remember extremely well years later. I was on the debate team and we had a debate tournament. We drove 20,000 miles debating in two years, almost all of it by car. And at the school there were all races. And everyone was integrated, I don’t think anyone felt discriminated against. It was California, things were different.

And we were driving back from a debate tournament in Albuquerque, New Mexico. And we stopped to get something to eat in Arizona on old Route 66. And this café, we were walking up and they had in the window these red, white and blue posters extolling the spirit of ‘76, warning about the dangers of international Communism, and then you come to the door and over the door there’s a wooden sign that says “No colored trade solicited.”

LD: That must have come as a shock to you after your years in California.

DB: I knew that in the South things were still segregated, there was racial tension and racial discrimination. But I always associated that with the South. I didn’t associate that with the West. That was in the spring of 1962. And then that fall, I left to go to law school. I started law school at Northwestern.

I drove my wife and two children from Redlands to Chicago nonstop because we didn’t have enough money for a hotel room. And by the time we got to Chicago, we were a little disheveled. One of the professors who had interviewed me had arranged an apartment for me to rent at the Old Towns Gardens. So I went to the rental office, to sign the papers, and Caryl stayed in the car with the children because A, she didn’t want to wake the children, and B, she didn’t feel she looked all that presentable after 40 hours in the car.

So I went in and said I was there for the apartment. And the rental agent starts to talk and talk, asks if my wife is OK, I say, “She’s fine, she’s with the children.” They ask if she would like to come in for a cup of coffee. And it went on like that for eight or 10 minutes. “Would you like me to go out and see how she is?”

And, you know, I’m thinking I just need to get my kids to bed. So finally, she says, “I hate to have to ask this, and if it was just me I

wouldn’t ask, but I have to ask is your wife colored?”

And I said, “Why do you ask?” And she said, “I really need to ask.” And I said, “Does that mean if she is colored we can’t rent the apartment?” She replied, “I really need to ask if she’s colored or not.”

You sort of think about all sorts of responses, whether you want to stand on principle. I had two small children and a very tired wife, so I said, “No she’s not,” and they gave me the apartment.

That in combination with what had happened in the spring in New Mexico really got me thinking. This wasn’t even Arizona, this was in Illinois. I’d grown up in Illinois, the Land of Lincoln. I didn’t expect to find that. Now, once you learn more about the world you expect to find these things. But in those days I was naïve enough to think that kind of racism was limited to particular parts of America.

I began to get active in the civil rights movement when I was at Northwestern and continued at Yale. By the time I went down to Mississippi later in the ‘60s, I just didn’t feel comfortable in the Republican Party.

LD: During those years, there was an interesting transformation in the view of the role of law. I’m curious to hear about the development of your belief that you could use the law as a tool to bring about social change and better your

life. It sounds like that view – and your career – is very firmly rooted in the civil rights movement.

DB: It was a tool. It was something to use. Years ago someone was writing about me and managed to go back and get the Yale Law School to look at a copy of my application, and there was a question why I wanted to go to Yale Law School. And I said I want to go to law school because I want to be a lawyer and I can't be a lawyer unless I go to law school. And I want to be a lawyer because law is the way we change society. Law determines who you can marry, where you can live, what kind of jobs you can do. If you want to make changes there, you've got to be a lawyer.

I've always believed that one of the great things about being a lawyer is you have an opportunity to really make a very comfortable living. At the same time, it allows you to make a real contribution to society and really make change. The opportunity is there.

LD: Do you think that was a new perspective starting in the '60s or it became more heightened?

DB: It's become more heightened. There were always people who had that view, but I think it became more heightened. When I was growing up in the '50s, Perry Mason was a lawyer. You weren't doing social engineering. By the time I got out of law school I was very much committed to using the law, and it's proven to be a very powerful tool.

There were a lot of failures on the way, but civil rights could not have succeeded without law, without lawyers and the courts. In 1986, I sued the Republican National Committee on behalf of the DNC and got a permanent injunction against the RNC targeting minorities. Those things make a difference.

LD: You've done so much for a kid from Marengo because of your ability to understand the law and use it to shape change in the lives of people. Think of this: Gay marriage will be legal in our lifetime – and is now in a lot of places. And that is directly because of your willingness to challenge the government when appropriate and defend it when that's appropriate. You have created a broader definition of what it is the law is intended to do.

DB: I think that's right. It's very rewarding to see the lives of people that are changed. Sometimes like the Prop. 8 case, and the work in Mississippi, you see a real human face. Sometimes like with the injunction, you don't see the effect on an individual, but you see the ability to preserve fairness in the election process. Sometimes like in the case where we're suing the government on behalf of Starr International, a landmark case on behalf of Starr as a shareholder of AIG claiming the government wrongfully took over the company during the financial crisis, what we're really saying is the government is not above the law. That is a proposition that while you don't see a human face immediately, it affects the relationship of the government to all citizens. And it says every single citizen has the legal right to protect

their property. And no matter how well meaning, the government can't go around that.

In the *Westmoreland* case, we defended Mike Wallace and CBS against a libel claim from General Westmoreland who, their reporting showed, had not accurately reported the situation in Vietnam in order to maintain public support for the war. That was a case at the time it was brought that if you go back and look at the attacks on the media, the Accuracy in Media group had drawn a huge map on the media and funded all these lawsuits, libel lawsuits. And it all stopped after we won the *Westmoreland* case.

LD: That's similar to what we've seen with gay marriage.

DB: Well, a lawsuit can do that. It can pull something out, expose it. And it requires people to get up on the witness stand and be cross examined, calls them to account. Like David Blankenhorn, who was the only witness in support of Prop. 8, yet he couldn't even say what the harm was of allowing gay couples to marry. Did you read his op-ed in the New York Times? He wrote about how he now supports gay marriage and the good it can do.

LD: After you destroyed him on cross-examination.

DB: And that is a transformation. And it is going to affect people. The more people come out like that, the more other people begin to rethink their positions.

LD: Hopefully there will be far fewer instances of people asking if there's a man or woman waiting for you in the car.

DB: That's right. What's the sex, what's the race, what's the religion? All the kind of things that distinguish human beings, which do not affect or limit their humanity.

LD: One of the things that's so touching about you and your approach to the law: You always at the end of the day say lets bring this to court, put aside the craziness and let's talk about what this is really about.

DB: That's absolutely right. Particularly in the kind of cases that I bring. If I were a screamer kind of guy, it would be very hard to do what I have to do. What I have to do is change people's minds. You very rarely change people's minds yelling at them. You can excite your base by yelling. But you can't change people's minds. To change people's minds, you have to talk to them. That's one of the things I do, I talk to the jurors.

Adlai Stevenson, when he was running for president, said he was going to talk sense to the American people. That didn't work probably because he was against the most popular person in the country, but that has always been my goal: to talk sense to whoever you're talking to. And what you find is if you trust people., a remarkable number of them actually respond to you. People actually like to be treated like thinking adults, even people who start off very antagonistic, you talk sense to them. You can slowly – not always, it's not perfect, it's a process, but one that succeeds remarkably often.

LD: So much has been made of your command of working with judges and other lawyers. I remember talking to Mary

in the hallway during the *McCourt* divorce trial, about this respect or regard you give to others. You take everything down to a level where we're not talking about esoteric issues, we're talking about simple issues we can all resolve.

DB: If you just think about these issues, you can find common ground. If you really think through what you're trying to accomplish, think it through, and you find the ground that's sustainable, you can explain it.

One of the greatest cases I ever did was defend two Student Nonviolent Coordinating Committee workers. I got them off of a traffic offense and resisting arrest in Bolivar County, Mississippi. And it was before a judge that was a product of the system, very biased, very antagonistic to out of state Yankee lawyers who'd come down. Ultimately he declared the defendants not guilty. I lost a lot more of those cases than I won, but every once in a while you won one because you were able to make the judge see through prejudice and make a judgment that was more in keeping with the principles of the law. And you appeal to their principles.

I tell you, part of the way I got the acquittal was cross examining the arresting officer and making absolutely clear that he was lying. Judges don't like people who lie under oath even if they sympathize. It sort of stinks up their courtroom and that's a bad mistake.

LD: Where did you learn the ability to sit there and torture somebody?

DB: It's not that different from the Socratic dialogue.

LD: But it's very uncomfortable for a lot of people.

DB: Because I'm dyslexic, I grew up listening. And cross-examination is almost equal listening, because when you are listening, you're hearing little things. To ask whether he agrees that not allowing gays to marry while children are being raised by gays is not good for the children, that's a tricky question, because you narrow it down so that's the only thing he can say. But you have to listen. If you pick the questions right, the only way to answer the questions to support what you want in the case is to lie.

LD: You really enjoy that.

DB: Oh yeah. No question because that is the way you get at truth. Cross examination is probably the best way we have to really get at the truth. We put somebody on the witness stand, call them to answer questions and it takes an extraordinary person to be able to successfully lie without being tripped up.

LD: It amuses me that you've been at this for some time now, and you're not unclear about what it is you're doing. Some lawyers still ask how does he do this?

DB: Well, I will outwork the other side every single time. At the start of every trial, the other side starts out working as hard as I do. But at some point, they say, "I'm going to go out with my girlfriend," or spouse, go to the opera, go see the latest movie. And at every trial I've ever had, the other side stops working as hard as me – if they ever did, sometimes they never do.

The other thing is patience. I'm very patient. I will wait for the right opportunity. I don't try to make things happen or feel frustrated or impatient. Part of it is patience to develop your story in a way that maybe his is the most dramatic story in the beginning, but yours builds over time.

LD: You also have the confidence to extract that one thing about a case, which may seem odd or underplayed to a lawyer who wants to say there are 53 important things.

DB: Exactly. In *Microsoft*, general counsel Bill Neukom, who I like, would go out and say after court, "My witness made 48 points," and David Boies only attacked four of them. The problem was, those were the four important ones and when we attacked those four points, they had no credibility left. He was absolutely right – I had only four of his 48 points, but they were what mattered!

There was another case, a huge international arbitration. We defended Westinghouse against claims it bribed a henchman of Ferdinand Marcos to get a contract with the Phillipines' National Power Corporation. And they brought in an expert from General Electric to testify about the contract, and there are 100 things you could ask him about. So I asked him how many times he had read the contract. And he said he hadn't. And I said, "You didn't read the contract yourself?" He said no. And I said, "No further questions." We won the arbitration because of that and a lot of other things.

And that was something the arbitrator really appreciated and the other side just went berserk about. They said, "This is outrageous!" And I said, "Do I understand that counsel for the National Power Board is objecting that I did not ask more questions on cross examination?" Because people from time to time have objected that I ask too many questions on cross examination, but never too few.

When I tried the *Westmoreland* case, the lead lawyer on the other side was very well prepared and very tightly wound, while I was relaxed, and made mistakes. I showed a videotape and didn't operate it right. A lot of lawyers get very agitated and yell at the tech people. I'd just say my client is the expert in this, and I'm not. I would explain the case and if you do that, people react a lot better than they react to shouting.

LD: It's an extraordinary ability to go from being comfortable and confident one moment with the judge, to utterly destroying a witness within two sentences.

DB: Well, you've got to have both sides. Because people have both sides. If you're dealing with somebody sometimes you get mad at them. And what juries are looking for is authenticity, someone who is real. A jury is like 12 people who you lock into a boat in a storm and they have no idea how to get out. And then two people come along and one says I know the way, and the other says no, I know the way. If you understand your job is to be the one that the 12 jurors follow, then you can win your case. ■