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Gay judge never thought to drop marriage case

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By Dan Levine

SAN FRANCISCO (Reuters) - The U.S. judge who struck down California's gay marriage ban never considered his own homosexuality as a reason to recuse himself from the case, he said on Wednesday.

Former U.S. District Judge Vaughn Walker's comments were his first on what legal observers have been intensely -- but quietly -- discussing since the blockbuster case was filed. Some wondered whether his sexual orientation would affect his decision and how it would be received.

However the group defending California's gay marriage ban, Proposition 8, refrained from raising the issue in court. Walker eventually struck down Prop 8 as unconstitutional, and the case is currently on appeal.

The Republican-nominated judge, who had a stormy history with the local gay community, calmly controlled his courtroom during the trial, adding dollops of humor as well.

The case could set national policy if it reaches the U.S. Supreme Court and is being watched throughout the nation, where same-sex marriage is legal in only five of 50 states.

Gay rights advocates won a major victory late last year when a ban on gays serving in the U.S. military was overturned in Congress and signed into law by President Barack Obama.

Walker retired at the end of February, and he talked with a handful of reporters about issues like the Prop 8 case, cameras in the court, and his once-strained relationship with San Francisco's gay community.

It would not be appropriate for any judge's sexual orientation, ethnicity, national origin or gender to stop them from presiding over a case, he said. "That's a very slippery slope," Walker said.

Walker had never previously discussed his sexual orientation in the press, but on Wednesday said he was in a 10-year relationship with a physician.

A Midwesterner, Walker was born in 1944 in Watseka, Illinois, about 90 miles south of Chicago. He worked for years at one of San Francisco's top law firms before being nominated to the federal bench in 1989 by George H.W. Bush.

Seated at a table in a charcoal suit with a white handkerchief, Walker remembered how the gay community had once vilified his nomination to the federal bench.

As a lawyer, Walker represented the U.S. Olympic Committee in a bid to prevent a local gay group from calling itself the 'Gay Olympics.' Walker put a lien on the house of the founder of the group who was dying of AIDS. On Wednesday he said he had just tried to be a successful advocate for his client.

"I was the ogre of the gay community when I was nominated, and a hero when I leave," he said.

Walker made for an unpredictable jurist, ruling against the government in a widely watched state secrets case. In another matter that has become lore at the San Francisco federal courthouse, Walker sentenced a mail thief to stand outside a post office, carrying a sign with the words: "I stole mail. This is my punishment."

During the Prop 8 trial, one witness said an anti-gay marriage ad -- featuring a man, woman and child -- depicted a "heterosexual" couple. "How do you know they're heterosexual?" Walker deadpanned, prompting laughter in the courtroom.

Walker also tried to push the boundaries of courtroom protocol by permitting cameras, but the U.S. Supreme Court disallowed it.

"A pretty extraordinary decision," Walker said of the ruling, adding that cases like Prop 8 -- and the recent criminal perjury trial involving baseball home run king Barry Bonds -- should be available on video.

Walker served as chief judge in the Northern District of California for six years before retiring. He said he would open a law practice focusing on alternative dispute resolution and counseling clients on litigation risk.

As for the Prop 8 case, Walker said he had little regret.

"I'm glad that we had the trial," he said. "I think that was the way to air these issues and get them on the table."

(Reporting by Dan Levine; Editing by Peter Henderson, Sandra Maler and Eric Walsh)



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