

## Special Appeal

### Theodore Boutrous tackles highest-profile cases

By AMANDA BRONSTAD  
*Staff Reporter*

From a 47th floor downtown conference room, Theodore Boutrous reviews a stack of legal papers plopped in front of him by a fellow lawyer.

The day before, Boutrous, who represents 10 media organizations reporting on the criminal case against Michael Jackson, was accused by the pop star's defense team of seeking "wild rumors and salacious allegations" by requesting the Santa Barbara judge to unseal certain documents in the case. Jackson faces a 10-count indictment alleging, among other things, conspiracy to abduct a child and lewd acts upon a child.

"This is our response to the Jackson team's tirade against us," Boutrous explains. After signing the last page of the brief, he hands the pile back to the lawyer and smiles. "I think we're ready to launch."

Boutrous, who co-heads Los Angeles-based **Gibson Dunn & Crutcher LLP's** appellate and constitutional law practice, is among the nation's most prominent appellate attorneys. Companies or individuals hire him to overturn detrimental verdicts or rulings or reduce financially fatal awards of punitive damages.

Often, his job is to do what another law firm failed to do: Win one for the client.

Such was the case for **Wal-Mart Stores Inc.**, which hired him to appeal the class certification of at least 1.5 million female employees claiming company-wide sexual discrimination.

Boutrous is asking the 9th Circuit Court of Appeals to grant him the chance to overturn a federal judge's class certification of current and former female employees who claim the company systematically promotes fewer women and pays them less than men. Los Angeles attorneys at rival firm **Paul Hastings Janofsky & Walker LLP** handled the case until the certification, whose estimated punitive damages could reach billions of dollars.

In 2003, Boutrous persuaded the U.S. Supreme Court to reject the largest personal injury award ever affirmed on appeal – \$290 million against **Ford Motor Co.** for a crash that killed three members of the Romo family near Sacramento. A California

appellate court in Fresno later reduced the award to \$23 million.

He also helped overturn the largest libel verdict in U.S. history, a \$222 million award against the *Wall Street Journal* in 1997.

#### Calculated strategy

Unlike trial lawyers, who often make "snap judgments in the heat of the battle," Boutrous takes a more calculated approach. He finds the weak and strong points in a case before presenting an argument to the appellate court. Although he spends considerable time in the courtroom (Jackson's lawyers claim "they're tired of me," he says), most of his work is spent in the



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office drafting detailed legal briefs.

"It's not a situation where you're in the business of second-guessing what happened before," Boutrous says. "There's a special way to look at a case when you're an appellate lawyer. We tend to come at it with a fresh look at the case."

Boutrous' niche in appellate law began early in his career as an associate in Washington working under former U.S. Solicitor General Theodore Olson, a 33-year veteran of Gibson Dunn. Olson was named Solicitor General in 2001 after successfully representing President Bush in the Bush v. Gore litigation following the 2000 election.

Over the years, Boutrous helped Olson build the appellate practice. He moved to L.A. five years ago to expand the group to the West Coast. Now, Olson co-heads the firm's appellate and constitutional law practice, with Miguel Estrada. Estrada withdrew in

September from his nomination by Bush to the U.S. Court of Appeals for the District of Columbia Circuit following a highly charged Democratic filibuster. Estrada, a Washington partner, would have been the first Hispanic judge to serve on the federal bench.

Early on, Boutrous established a niche in reducing high-dollar punitive damages awards. "When I arrived in Washington on my first day of work, Ted Olson was about to argue the first constitutional challenge in a punitive damages case in the Supreme Court," he says. "My first assignment was to help in preparing and figuring out what all the justices might think about these issues as we prepare for arguments."

Adds Olson: "He has an affirmative outlook on dealing with problems. It's an enthusiastic perspective that allows his mind to say, 'Yes, we can do that,' and figure out how. That is an attitude, a characteristic in attorneys, that is overlooked by many people."

Boutrous' practice took a First Amendment bent after he worked with the firm's New York partner, Robert Sack, who is now a judge in the federal 2nd Circuit Court of Appeals. He represented major media organizations in their efforts to obtain judicial proceedings and records sealed by executive privilege during the grand jury investigation of President Bill Clinton by Independent Counsel Kenneth Starr.

In the Jackson case, the media list is "virtually identical" to what he called the "Clinton-Lewinsky team." Those in the Jackson case include Fox News Network, CNN, ABC, the Associated Press, The New York Times, the Los Angeles Times, USA Today and The Washington Post.

Back in the conference room, Boutrous claims the Santa Barbara trial judge's decision to seal many of the court documents violates the public's First Amendment privileges. In the legal briefs he filed later that day with the 2nd District Court of Appeals, he also referred to the defense team's attempts to stop the unsealing as a "misguided tirade."

"You do see more of the flash-and-burn style in the cases here," he says. "You saw the motion the Jackson team filed. They take a no-holds-barred approach because they think that'll help their client. That remains to be seen."