

THE 2020 FORECAST ■ OUTSOURCING: THE SILENT REVOLUTION ■ MOLDING MANAGERS

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BEST OF THE BEST

Gibson, Dunn & Crutcher is the
Litigation Department of the Year.

FROM LEFT: THEODORE J. BOUTROUS JR.,
MYLAN DENERSTEIN, RANDY MASTRO,
DEBRA WONG YANG AND ORIN SNYDER

An **ALM** Publication

Department
Size and
Revenue:

Partners 208
Associates 518
Other 29

Department
as Percentage
of Firm 56.8%

Percentage of
Firm Revenue,
2018 54.7%

BY DAVID BARIO

CHALLENGE ACCEPTED

When the stakes are highest and the spotlight is brightest, Gibson Dunn answers the call.

EVEN FOR A PRESIDENT WHO HAS MADE “FAKE NEWS” A rallying cry, Donald Trump’s Nov. 7, 2018, press conference was contentious. But his invective—calling CNN’s Jim Acosta a “terrible person” and attacking the media as “the enemy of the people”—was overshadowed when the White House revoked Acosta’s press pass the same day, falsely claiming he had “placed his hands” on an intern.

As media organizations absorbed the implications, Gibson, Dunn & Crutcher’s Theodore Boutrous and Theodore Olson leapt into action. Before the night was over, they hashed out a strategy with CNN and assembled a team to counter the White House on First Amendment grounds.

The case was quintessential Gibson Dunn: high-profile, high-impact and high-stakes.

“There was concern that, if you lose, there will be a bad precedent,” Boutrous recalls. “Our view was, well, if we don’t file a suit, if we’re not willing to defend the First Amendment, then who cares?”

The result was quintessential Gibson Dunn, too: a gigantic win, delivered under great pressure, with lasting significance. The firm sued, argued the case and secured an order restoring Acosta’s pass in nine days. It was no surprise that when the White House this year pulled the

credentials of Playboy’s Brian Karem, Boutrous got the assignment—and won again.

What’s the secret? Size doesn’t hurt, with more than 700 litigation partners and associates supplying more than half of the firm’s head count and revenue. The firm has superstars—including Olson and Boutrous—sprinkled across practices, time zones and borders. But other firms have hundreds of litigators, marquee advocates and far-flung offices. What sets Gibson Dunn apart is how its cases routinely check all those boxes: enormous financial stakes, unsettled legal questions and a nexus to major national issues.

Take the firm’s victories over the U.S. Securities and Exchange Commission, which had long been challenged, unsuccessfully, on the grounds that its administrative judges were unconstitutionally appointed.

In New York, litigation department co-chair Randy Mastro fended off a \$200 million case against Lynn Tilton of hedge fund Patriarch Partners after replacing another firm just weeks from trial. “No one gave us any odds on winning that case,” Mastro says, noting that a challenge to the SEC before one of its own judges was considered nearly unwinnable. But Mastro did win, persuading an SEC judge to reject the agency’s own case in September 2017.



FROM LEFT
Theodore
J. Boutrous
Jr., Mylan
Denerstein,
Randy Mastro,
Debra Wong
Yang and Orin
Snyder

An even bigger victory came nine months later, when partner Mark Perry persuaded the U.S. Supreme Court to rule that SEC administrative law judges are “officers of the United States” subject to the Appointments Clause. The opinion was not only a win for Gibson Dunn’s client; it tilted the balance of power away from the administrative state, with implications beyond the SEC. And it came on the heels of another successful agency challenge, when then-partner Eugene Scalia—now U.S. Secretary of Labor—persuaded the Fifth Circuit to strike down the Labor Department’s fiduciary rule, clearing a regulatory thicket for the investment industry.

Those were just two of the firm’s blockbuster appellate wins. In May 2018, Olson persuaded the Supreme Court to strike down a federal sports-betting ban, reshaping the economics of both professional athletics and online gambling. On the immigration front, Boutrous and partner Ethan Dettmer were part of the coalition that overturned the White House’s decision to rescind the Deferred Action for Childhood Arrivals program, paving the way for Olson to argue for the so-called Dreamers before the Supreme Court in November. (A decision is expected by summer.)

The firm’s trial court record was just as impressive. In the landmark AT&T-Time Warner merger case, Texas

partners Robert Walters and Michael Raiff, representing AT&T, helped to beat back the government’s antitrust challenge. In the fight over corporate responsibility for climate change, Boutrous helped persuade judges in New York and California to reject municipalities’ theories of liability against Chevron and other oil companies.

Chevron is a longtime Gibson Dunn client, but the firm has also made inroads with clients in younger industries, including Facebook, which is relying on Gibson Dunn in a tangle of privacy and data security cases. For Grubhub, partners Michele Maryott and Theane Evangelis defeated a bellwether employment case at trial after trimming away class action claims, drawing a roadmap for other gig economy defendants.

The firm’s combination of discipline and savvy keeps clients coming back. CNN general counsel David Vigilante, who worked with Boutrous and Olson on the Acosta case, says Gibson Dunn lawyers have the intellectual curiosity to come up with good ideas—and the skills to apply them.

“The biggest premium for me, other than are you smart and are you nice, is are you curious,” Vigilante says. “Some people just crackle. They seem to attract lawyers like that.” ■