

Daily Journal

JANUARY 20, 2021

TOP LAWYERS OF THE DECADE 2011-2020

Theodore J. Boutrous Jr.

At the intersection of law and national policy

Boutrous joined Gibson Dunn in 1987, straight out of the University of San Diego School of Law where he'd graduated summa cum laude. He was assigned first to work with the firm's new appellate group in Washington, D.C., launched by Theodore B. Olson, the future solicitor general.

"Right from the start we had a Supreme Court case, to do with punitive damages," Boutrous recalled. The high court and Olson would both figure prominently in Boutrous' career.

Boutrous' first argument before the justices came in 2011 in the massive potential workers' rights class action known as *Wal-Mart Stores Inc. v. Dukes*, in which some 1.5 million female employees sued the giant retailer. *Wal-Mart Stores Inc. v. Dukes*, 10-277 (S.Ct., op. filed June 20, 2011).

Boutrous' argument prevailed: The court voted 9-0 to reverse the 9th U.S. Circuit Court of Appeals and rule the women could not be certified as a plaintiff class on lack of commonality grounds. The case had been grinding its way through the appellate process since the Northern District

had granted certification in 2004.

"Winning my first Supreme Court argument in a significant case that I had worked on for years — that was a big highlight for me," Boutrous said. "It was the first time the Supreme Court had looked at class action law in years, and it proved significant for future cases by establishing fundamental class action principles of predominance and due process."

Even as the *Wal-Mart* case climaxed, Boutrous was becoming deeply involved with Olson in the litigation that would legalize gay marriage. What began as their lead roles in the effort to overturn California's gay marriage ban, Proposition 8, reached the high court as *Hollingsworth v. Perry*, where the vote in 2013 was 5-4 that gay marriage foes could not defend the ban. *Hollingsworth v. Perry*, 12-144 (S.Ct., op. filed June 26, 2013).

"Both Wal-Mart and Prop. 8 were erupting at the same time," recalled Boutrous, who served as a lead lawyer and architect of the legal strategy that led to the landmark gay rights advance. "It was a very exciting time in the realm of civil liberties and civil rights, in part because at the time we filed over Prop. 8, some felt it was too early to go to federal court on the issue. That upped the pressure. We knew we had to win. We went forward because we felt that the stars were aligned both legally and with the issue's public dialogue component."

From the time of the 2016 pres-



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idential campaign, Boutrous has emerged as a prominent and consistent opponent to Trump and his supporters' attempts to use the courts to squelch foes. When Trump threatened to sue his sexual assault accusers, Boutrous tweeted, "I will represent pro bono anyone #Trump sues for exercising their free speech rights."

Since then he has successfully defended members of the media against revocation of their White House press passes; MSNBC news host Rachel Maddow, targeted in a defamation suit over on-air comments; and Mary Trump in a suit seeking to halt publication of a tell-all memoir about her uncle. *CNN v. Trump*, 1:18-cv-02610 (D. D.C., filed Nov. 13, 2018); *Herring*

Networks Inc. v. Maddow, 19-cv-01713 (S.D. Cal., filed Sept. 9, 2019); *Robert S. Trump v. Mary L. Trump*, 2020-05027 (Dutchess Co. S.Ct. N.Y., filed June 26, 2020).

Boutrous pointed out that his earlier gay rights efforts and his free speech work, along with his current representation of Ashley Judd in her sexual harassment claims against Harvey Weinstein, have taken his career beyond legal victories. *Judd v. Weinstein*, 2020 DJDAR 7916 (9th Cir., filed May 2, 2019).

"The last decade for me has been very meaningful in that it involved the intersection of the law and national policy," Boutrous said.

— John Roemer