

Daily Journal

SEPTEMBER 15, 2021

TOP 100 2021

THEODORE J. BOUTROUS JR.

GIBSON, DUNN & CRUTCHER LLP
LOS ANGELES
LITIGATION

— TOP 100 —



Boutrous is a prominent Gibson Dunn litigator and a member of the firm's executive and management committees. His broad spectrum of cases involves those involving the media, crisis management, transnational matters and appeals—and it includes a recent successful foray into a celebrity defamation suit involving MSNBC host Rachel Maddow, then-President Trump and Russian propaganda.

In August, a 9th U.S. Circuit Court of Appeals panel in a published opinion unanimously affirmed dismissal of the suit filed by Herring Networks, the parent company of One America News. The suit accused Maddow and Comcast Corp. of defaming One America by calling it “paid Russian propaganda” after revelations that one of OAN’s contributors had written for Sputnik News, a Russian state-backed outlet. *Herring Networks Inc. v. Maddow*, 20-55579 (9th Cir., op. filed Aug. 17, 2021).

“We got a very nice win and a strong opinion from the 9th Circuit in the Rachel Maddow case,” Boutrous said.

From the first, Boutrous argued strenuously that Maddow’s 2019 reporting and commentary was true and regarded an important matter of public concern. He persuaded U.S. District Judge Cynthia A. Bashant of San Diego to grant his anti-SLAPP motion, contending the plaintiff had filed a legally baseless challenge to truthful speech about a public issue. When Herring Networks appealed, Boutrous retorted in court papers that no defamation was involved and that Maddow told viewers the truth in a segment titled, “Staffer on Trump-Favored Network Is On Propaganda Kremlin Payroll.”

Wrote Boutrous: “Ms. Maddow’s rhetorical flourish that One America News

Network ‘really literally is paid Russian propaganda’ was both true and, as the district court found, a classic example of hyperbole and non-actionable opinion based on truthful disclosed facts.”

In one of several previous media cases, Boutrous represented *The New York Times* in a dispute with the U.S. Department of Justice that culminated in the DOJ’s June 2021 announcement that it would stop going after journalists’ records in leak investigations, a significant policy change.

“We’re so glad they dropped the old policy,” he said. “It wasted everyone’s time and interfered with journalists’ ability to get information about the government,” Boutrous said.

In June, Boutrous secured an affirmance of a \$3 billion jury verdict for Hewlett-Packard Co. in a lengthy contract dispute with Oracle Corp. over Oracle’s move in 2011 to cease offering new versions of its software products to customers running HP’s Itanium servers. *Hewlett-Packard Co. v. Oracle Corp.*, H044371 (6th DCA, op. filed June 14, 2021).

“This was corporate intrigue involving a battle of Silicon Valley titans,” he said. “We argued and the jury agreed that Oracle’s pulling the plug was a bad faith breach of contract that, although there was a lot of drama, came down to hornbook contract law issues.”

— John Roemer