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Jeff Wall Talks Gibson Dunn, Appellate Strategy and the Emergency Docket

By Emily Saul

May 11, 2026

Jeff Wall, who served stints as the acting U.S. solicitor general and principal deputy solicitor general during the first Trump administration, was not always sure he wanted to be a lawyer. Early on, he taught sophomore English and coached sports at a high school in Detroit, Michigan, at Orchard Lake St. Mary's. But after going to law school, he joined **Sullivan & Cromwell** in 2013 and, barring stints in public service, worked there until earlier this year, when he joined **Gibson, Dunn & Crutcher**. At Gibson Dunn, Wall now co-chairs the firm's appellate and constitutional law practice, where appellate lawyers are intertwined in litigation from the get-go.

Wall didn't make the move alone. He calls **Morgan Ratner**, **Yaira Dubin** and **Judson Littleton**, who came to Gibson alongside him, "tremendously talented lawyers in their own right." "I'm super proud of these folks," he said in an interview with Litigation Daily. "They are the next generation, and I think they're the best lawyers in their generation in the country."

Wall sat for a conversation last week the day before he argued on behalf of Boeing in a securities class action in the U.S. Court of Appeals for the Fourth Circuit.

Courtesy photo

(l-r) Jeffrey Wall, Yaira Dubin, Judson Littleton, and Morgan Ratner of Gibson, Dunn & Crutcher.

The below has been lightly edited for length and clarity.

Lit Daily: You're one of the top appellate advocates in the world; you could have gone to any law firm. Why Gibson, Dunn & Crutcher?

Jeff Wall: When I was coming up through the ranks as a junior lawyer, Gibson Dunn was the preeminent appellate practice, and has been for as long as I've been practicing law. [Former U.S. Solicitor General and Gibson Dunn partner] **Ted Olson** was a family friend. I knew him for a long time as a friend and a mentor. So, the opportunity to be a part of that was really special for me. A part of it, too, is that I think in the appellate space,

we've trended towards spotlight practices: one headline lawyer, with a team beneath. I think what has always made Gibson so special is that it is a constellation of stars, right? It has all these terrific lawyers. It had Ted, **Ted Boutrous**, **Miguel Estrada**, **Tom Hungar**, **Helgi Walker**—on and on. I'm leaving plenty of people out. I was trying to build the same kind of team at S&C. I was trying to take first chair lawyers but convince them to be part of the team. Judd Littleton, Morgan Ratner, Yaira Dubin—these are all people who could lead their own practices at firms, but I was trying to create a team of all stars. I think Gibson's approach to the appellate space is that we're not going to have one headliner—it's not going to be Ted and everybody supporting him—but a constellation of stars. That is the mentality I have had, so I thought it was a good match.

It was interesting to me that the move was not just you, but a fairly large group of people, some of whom you mentioned, who came over with you. Was that an important part of the move for you?

It was. I love those folks and I think that it's an incredible team. And if we were going to move, I think we wanted to find a place where we could continue to practice together. So, for me, the fact that Gibson was interested in everyone on the team and loved that—that we were taking the same approach to team building that they had been taking to the appellate practice for a very long time—that was hugely important.

So, obviously, moving to a new firm, you know your clients will change. Does the move itself dramatically shift anything about the way that you approach your work? Are you thinking about the job differently now?

So, the clients will shift a little bit, but honestly, not a lot. A lot of the clients that we had that sought us out for issues and appeals matters are also clients of Gibson's. And so, a lot of the work will continue uninterrupted, but my hope is that we'll find new matters and new clients by virtue of the fact that Gibson has such a powerhouse litigation practice.

In terms of approach? No. I mean, I think that we built the practice by focusing on really trying to do the best work that we could. I'm really proud of every brief that we put our names on. I wanted to hit a certain quality standard, and Gibson's appellate practice is already doing that. In turn, hopefully, we can be a resource to the folks at Gibson. I am arguing this case tomorrow in the Fourth Circuit. And just, in putting together the moot courts or talking to people at the firm as I'm trying to get ready for the argument, the amount of appellate talent that surrounds me now—I can talk to **Gene Scalia**. I can talk to Miguel Estrada. I can walk down the hallway and talk to **Jonathan Bond** or **Amir Tayrani**. For someone who does what I do, it's just incredible. It's like a solicitor general's office in private practice. I don't think there's any other firm that has anything that remotely approaches the depth of this bench.

I was going to ask, but you sort of just answered this: Are you planning to take on any more administrative role? It sounds like you're still planning to argue cases, and we'll see you out there?

Look, I love to argue, and so I sure hope that you'll still see me get the lectern. But I have made a push in recent years to try to spread those arguments around the group. That's really important to me. It's the only way that you can attract people who are their own first chair lawyers. We had two cases in the [U.S. Supreme Court] this year before we came over to Gibson. One was for Exxon in February, and then the other was for AT&T and Verizon in April. Morgan Ratner argued the case in February, and I argued the one in April. I will have exactly the same approach now.

Which is to say, will you see me at the lectern? Sure, I hope you'll see me there some. But you should also see Morgan. You should also see Jonathan. You should also see Helgi. You should see Amir, Yaira, Judd and all the rest. That, I think, is the sign of a healthy practice. I wasn't trying to run a spotlight practice before, and I'm not trying to run one now.

Talking about strategy more broadly, how do you think about the work that you do? How do you decide what cases to take on, and which cases you're going to focus on?

One of the reasons that I became an appellate lawyer and have stuck with it all these years, and love it as much as I do, is that it's problem-solving. As a kid, I loved puzzles, riddles. Appellate law, at its purest form, is like that. You have a client, they have a problem—usually in litigation, not always, though. Sometimes it's a regulatory problem. Sometimes it's just a crisis at the company—and you're trying to unravel the knot and find a way out. Usually, it's a client who will approach us with a problem, an interesting question, and that's how I decide whether to take it on. Is this something where I think I can be helpful, and something that's interesting, where I can add real value? Over time, you develop relationships with these clients, right? They become more than clients, they become friends, and you want to try to help them solve their problems. I don't actually find that I spend a lot of time trying to figure out whether to take on cases or not. Once you have clients that you enjoy working for, and they call you with a problem, you want to try to help them solve that problem. I don't, honestly, find it's all that difficult to figure out what to take on.

One of the things that was really attractive to us about Gibson is that, the appellate practice, thanks to Ted Olson, is woven into the DNA of the firm. When these matters come in on the litigation side, it is typical, almost standard, that you would involve somebody from the appellate team in the matter from the very start. And that's unusual. That does not happen at most firms. At most places we tend to enter the picture later. Typically, once a matter has become more difficult or challenging. Everyone on the litigation side of Gibson Dunn thinks of appellate lawyers as people who can add value throughout the process of litigation. That's hugely attractive. You don't want to just get the call down the road once something has gone amiss, right? You want to be involved, often, from the beginning, to try to help keep it on the tracks from the start or to try to add some value or some arguments along the way, and to advise on strategy. So that was also a big piece of it.

It sounds like you think about your work as both proactive on the strategy side and then reactive on the individual client side. Would you say that that's accurate?

Absolutely. I mean, it's proactive and reactive on the client side, right? It depends. In the best of all possible worlds, you have clients who are forward-thinking, who involve you early. You're able to advise on strategy in the hope that you lessen the need to come in at the back end to try to turn around a bad outcome. But coming in on the back end is something that we do, too, because sometimes litigation moves in a really unpredictable way, or clients get a result that they couldn't have anticipated in advance. The Musk case in Delaware was a great example. The Chancery Court issued a couple of decisions that invalidated Musk's compensation plan and refused to give effect to the shareholder vote ratifying that compensation plan. I got involved on the back end to try to get a different result. We went to the Delaware Supreme Court, and we were able to get the Chancery Court reversed and the compensation package reinstated. The stakes were huge, you know, $60 billion, but again, it was a

really interesting question about, what should Delaware law be on this hugely important issue, and how can we try to get the Delaware Supreme Court to see it differently than the Chancery Court did? I love both.

Zooming out to the world of appellate litigation more broadly: Are there any shifts you've noticed in recent years, anything notable that you think is happening to the practice or changes that are making the way you work different?

I think there are a number. Because the Supreme Court has this shrinking docket, it's harder and harder to accumulate a substantial number of arguments in the court.

Because it's become more difficult to accumulate arguments in the court, we have shifted in the direction of more spotlight practices. If you think back to 15 or 20 years ago, there were a handful of firms that had really deep appellate benches. What I love about Gibson is, even as we've trended toward what I call the spotlight practices, they've maintained this really deep bench. And obviously, they've got a commitment to that going forward, and that was part of bringing over our team. I think that is one trend that we are cutting against. But I think it's the right bet, because I think that for clients, it is incredibly valuable to have a whole team of really talented appellate lawyers from all different perspectives, from all different ideologies, able to talk to and craft strategy for all different kinds of judges and justices.

Shifting gears, here. While at Sullivan & Cromwell, you represented President Trump as part of the efforts to remove his state criminal case to federal court. You personally argued the removal before the Second Circuit and the District Court. Are you going to be part of that continuing representation at all, or is that a case that you're leaving behind at Sullivan & Cromwell?

So, those cases have stayed at Sullivan & Cromwell by virtue of **Bob Giuffra**'s relationship with the President. But I have maintained a good relationship with the administration. I don't anticipate that I'll work on it going forward. But the move didn't have anything to do with our work on those cases. It was just a move for other professional reasons.

Is there anything else that you forecast for the coming year or next couple of years?

The emergency docket has become so hugely important. It's a major part of my practice, in a way that it was not 10 or 15 years ago. I mean, 10 years ago, if a client said they wanted to file a writ of mandamus, you would have to say, "I'm happy to do it for you, but you should know, it's probably not money well spent." And now, in the last few years, I've gotten mandamus multiple times from the courts of appeals. I've sought stays, in conjunction with some of our APA cases. We've been very creative in some of the briefing schedules that we've asked for.

For the courts of appeals there is a premium, now, not just on the ability to do emergency appeals, but on the ability to be creative as an appellate lawyer. I think, 10 or 15 years ago, it was just much more standard: File a Notice of Appeal, and wait for the briefing schedule, and then go file the briefs. We now do a lot that I think of as a more creative way to shift the timing on cases, to try to get particular decisions from courts, to put pressure on lower courts to decide issues, to try to position things, to get up to the Supreme Court or a Court of Appeals more quickly. That's a really interesting part of the practice. It's part of the chess game that was much less common 10 or 15 years ago.

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