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Lawyers in California 2016

LITIGATION

THEODORE J. BOUTROUS JR.

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SPECIALTY: APPELLATE & CONSTITUTIONAL LAW, ANTITRUST & COMPETITION

In March, Boutrous was holding moot court sessions for a Central District hearing over the government's bid to force client Apple Inc. to bypass security measures on the iPhone 5c belonging to one of the San Bernardino terrorists. Then a call came from the U.S. attorney. Agents had cracked the phone, dismissing the case.

Earlier, the FBI had obtained an ex parte court order under the All Writs Act of 1789 from U.S. Magistrate Judge Sheri Pym of Riverside demanding Apple create a new operating system to let authorities learn what the phone contained. Apple retained Boutrous and Gibson Dunn partner Theodore B. Olson, to challenge the order. *In the Matter of the Search of an Apple iPhone Seized During the Execution of Search Warrant on a Black Lexus IS300*, California License Plate 35KGD203, 5:16-cm-00010 (C.D. Cal. March 28, 2016).

Apple said the case would have set a dangerous precedent. Boutrous said he could not comment, due to further litigation over other phones seized in unrelated criminal investigations.

It's been a busy year for the lawyer who established Gibson Dunn's appellate practice in 1999. "From August 10 to September 29, I have six appellate arguments and one

court trial," Boutrous said. "Two were set on the same day before the state Supreme Court, but they graciously rescheduled one of them. It's not been a relaxing summer, but the issues are fascinating."

Boutrous led a team that won dismissal of a \$2.75 billion Racketeer Influenced and Corrupt Organizations Act claim against Yahoo Inc. and Yahoo Mexico based on alleged conduct in an underlying Mexican lawsuit over a contractual dispute. The plaintiffs claimed Yahoo and its trial attorneys at Baker & McKenzie LLP's Mexico office attempted to influence the judge and then reversed the judgment through bribery and extortion. "They had not come close to making valid RICO allegations," Boutrous said. "We pointed out that the real shenanigans were at the trial court." *Worldwide Directories SA de CV v. Yahoo Inc.*, 1:14-cv-07349 (S.D. N.Y. March 31, 2016).

Another RICO suit involving claims by a potential class of "comfort women" against client Toyota Motor Corp. and other defendants was on Boutrous' docket. Again, he won dismissal in June after arguing the case involved extraterritorial conduct and was barred by the political question doctrine, statutes of limitations, and an improper alter ego claim. "They really had no answer



to those arguments," he said. *You v. Japan*, 3:15-cv-03257 (N.D. Cal. June 21, 2016).

"These cases are part of a trend in which plaintiffs' lawyers try to use the U.S. court system to address social and political issues which emanate from another country," Boutrous said.

— John Roemer