

Daily Journal

JULY 20, 2016

California's Top Labor & Employment Lawyers for 2016

EDITOR'S NOTE

PAGA remained omnipresent in employment law this year. A record number of new lawsuits invoked the Private Attorney General Act of 2004 as employees pushed for civil penalties and to escape employers' binding arbitration clauses.

In this special issue, we honor some of the California lawyers involved in these and other cutting-edge employment and labor cases. They are brilliant, strategic and, most of all, agile, as they navigate a fast-moving and ever-changing legal landscape. Compiling this list, we often marveled at the performances of these lawyers. As you read through this issue, we think you'll be impressed, too.

Theodore J. Boutrous Jr.

FIRM: Gibson, Dunn & Crutcher LLP	CITY Los Angeles	SPECIALTY Appellate law, crisis management
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Since Boutrous established the appellate practice at Gibson Dunn's office in 1999, he has argued more than 80 appeals in such venues as the U.S. Supreme Court, all eleven U.S. Circuit Courts of Appeals and eight state Supreme Courts.

His appeals have covered a broad range of issues, but he says that "from Day One, many of the most significant cases have been high-stakes employment disputes."

To the employment bar, Boutrous is probably best known for defending Wal-Mart Stores Inc. against what could have turned into the largest class action in history. Filed by Wal-Mart worker Betty Dukes, the suit accused the company of discriminating against women in salaries and promotions. It quickly morphed into a class action representing 1.6 million current and former workers.

After a federal judge certified the class, Wal-Mart tapped Boutrous to decertify it on appeal. He narrowly failed three times in the 9th Circuit but fared better in the Supreme Court, which had not clarified the rules of class actions for nearly a decade.

"It was like painting on a blank canvas, or at least a canvas with unconnected splotches," Boutrous said. "We had to develop theories that hadn't previously been established by the courts, based on two first principles of class actions: commonality among the plaintiffs and due process for the defendants."

In 2011, the Supreme Court unanimously found that the class in *Wal-Mart Stores Inc. v. Dukes* was far too broad to go forward in its existing form. A 5-4 ruling by the late Justice Antonin Scalia went further, saying such a diverse group of plaintiffs could not fit into a class action format and requiring plaintiffs to do prove that their claims share common questions of law or fact before the class action is filed.

In another recent case, Boutrous won a California Court of Appeal decision last year overturning a \$94 million verdict against ABM Security Services Inc. ABM's security guards accused the company of violating state law by requiring that they remain on call during rest breaks. But the appellate court said even though state law bans employers



from requiring employees to work through their breaks, it does not free the workers from all their duties.

"It involves an area of the law that is subject to a lot of confusion, but our arguments were very clear," Boutrous said.

The case is currently in the hands of the California Supreme Court, which should soon resolve any lingering confusion.

— Dean Calbreath