

# Daily Journal

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## TOP 100 LAWYERS IN CALIFORNIA

### EDITORS' NOTE

Every year, the editors of the Daily Journal look at the work of hundreds of California lawyers. We receive nominations from law firms and nonprofits and universities – and from clients. We also examine our archive of stories and talk to each reporter about the matters they've been covering. The point is to honor the attorneys whose work is having the widest impact, and not just on their career or their firm's bottom line. We seek to honor work that is changing an industry or the law or the society as a whole. And every year, we reach the difficult but exciting truth: There are far more than 100 leading lawyers in California. Deciding who won't make the list is our most difficult task.

We don't pretend that this list is scientific or encompassing; it is a snapshot of a moment in time. It is a representative sample of the tremendous legal talent that California offers. As you read, we hope you'll agree.

— David Houston, Editor



### THEODORE J. BOUTROUS Jr.

#### LITIGATION

GIBSON, DUNN & CRUTCHER LLP

LOS ANGELES

**SPECIALTIES:** Constitutional law, class actions, appellate matters

In March, the U.S. Supreme Court unanimously ruled that a putative class representative may not evade federal jurisdiction under the Class Action Fairness Act of 2005 by stipulating that the class won't seek to recover more than \$5 million.

"It was the first time the Supreme Court had ever interpreted the Class Action Fairness Act," said Boutrous, who argued the case in January. "It's a great example of the abuses that CAFA was enacted to eliminate. The court made it very clear that efforts to slice and dice large class actions to keep them out of federal court will not be successful." *Standard Fire Insurance Co. v. Knowles*, 11-1450 (U.S. 2013).

In the landmark Proposition 8 civil rights case, Boutrous was co-lead counsel for a team that fought to overturn the measure that banned same-sex marriage in California. *Perry v. Schwarzenegger*, C09-2292, 704 F. Supp. 2d 921 (N.D. Cal. 2010, filed May 22, 2009).

The U.S. Supreme Court issued a decision in June that left intact the district court's injunction against the enforcement of Prop. 8.

"It was a magnificent experience as a lawyer," Boutrous said. "I was involved from day one. I was the field general, working all the way up to the Supreme Court."

In another closely watched case, the U.S. District Court for the Northern District of California denied certification last month of a class of 150,000 current and former female Wal-Mart employees. *Dukes v. Wal-Mart Stores Inc.*, CV01-2252-CRB, 2013 WL 3993000 (N.D. Cal., filed Aug. 2, 2013).

In 2000, a gender discrimination class action was filed by 1.6 million female Wal-Mart employees.

Boutrous had successfully argued for Wal-Mart before the U.S. Supreme Court, which unanimously reversed certification in June 2011.

The latest case was an effort to revive the lawsuit on a smaller scale, Boutrous said.

"We argued that we agreed there should be no discrimination. There should be equality and fairness," said Boutrous, who serves as lead counsel in the case. "But when the class action is being misused, it is not good for anybody. It's not legally correct."

The plaintiffs now are seeking permission to appeal.

In another matter, Boutrous is serving as appellate counsel for Apple Inc. in what is being touted as among the biggest antitrust cases to be tried by the Department of Justice in the past decade.

He is defending Apple against allegations that the company conspired with five major book publishers to raise the price of e-books. *U.S. v. Apple Inc.*, CV12-2826 (S.D. N.Y., filed July 10, 2013).

At a recent hearing before U.S. District Judge Denise Cote, Boutrous argued for a narrowly tailored injunction, telling the court that he believes that Apple has strong arguments on appeal.

— Pat Broderick