

# EXTRA

Trials, transactions and the  
insider's guide to the  
practice of law.

Supplement to the Los Angeles Daily Journal  
and San Francisco Daily Journal

## LITIGATION FILES

# Jackson Case Stirs First Amendment Guru

By Stefanie Knapp

While Santa Barbara County District Attorney Thomas Sneddon earnestly pursues Michael Jackson on child-molestation charges, appellate and First Amendment lawyer Theodore Boutrous is working just as hard to keep the pop star's trial open to the public.

The Gibson, Dunn & Crutcher appellate guru, known for attacking large punitive-damages awards against corporate America, recently put on his other hat, defending the First Amendment.

Boutrous represents news organizations, including NBC, CBS, ABC, CNN, Fox, The New York Times, Los Angeles Times and the Associated Press, covering the Michael Jackson molestation case. The media, as with most high-profile cases, faces access challenges ranging from exorbitant parking fees to sealed documents.

And so far, Boutrous, 43, has been successful. He convinced a judge on Feb. 13 to release partially redacted documents related to the search of the King of Pop's home. The newly public materials are warrants to look through telephone records, computer hard drives and producer Mark Schaeffel's Calabasas home.

Boutrous persuaded the Santa Barbara County supervisors Feb. 10 not to charge television trucks to park outside the Santa Maria courthouse for the Feb. 13 hearing. Boutrous argued the \$250 fee per parking spot violated the First Amendment.

"[The imposition of fees] trammels on the First Amendment right to cover news events in a public forum," Boutrous says. Erwin Chemerinsky, University of Southern California law professor and First Amendment expert, agrees. Chemerinsky calls the fees "taxes on the media for covering the case."

"I think that [Boutrous has] been a very



Photo by Hugh Williams

**"The parties keep asking to file their motions, briefs and evidence under seal, so there are likely to be many battles to come as the case unfolds," lawyer Theodore Boutrous says.**

forceful advocate for the media in the Michael Jackson case," Chemerinsky says. The news organizations and the supervisors will meet to set up a fee schedule for other expenses, such as additional phone lines in the courthouse, according to Boutrous.

The previous week, Santa Barbara Superior Court Judge Rodney S. Melville made public redacted documents, including some of the search warrants for Jackson's Neverland Ranch, after Boutrous argued for their release. The documents were released Feb. 2.

"California's Penal Code requires that warrants and affidavits be filed with the court and be deemed judicial records and open to the public," Boutrous says.

Boutrous is working to unseal an affidavit in support of the first search of Jackson's Neverland Ranch, in November.

Key parts of the document remain secret, Boutrous says.

"The parties keep asking to file their motions, briefs and evidence under seal, so there are likely to be many battles to come as the case unfolds," Boutrous says.

Jackson's trial isn't the first high-profile case in which Boutrous has sought access to court records on behalf of the public. He also argued to open secret proceedings and documents of Independent Counsel Kenneth Starr's grand-jury investigation of President Clinton and Monica Lewinsky's relationship. Boutrous represented 13 networks and major papers in the matter.

"Ultimately, we were able to persuade the courts to release large quantities of documents," Boutrous says.

The court also opened some hearings to the public based on Boutrous' arguments.

With his work on the Jackson charges, Boutrous isn't taking sides in the case, which is a rare opportunity that he enjoys, Boutrous says.

"We're simply arguing for maximum access to the official proceedings," he says.

But Boutrous is certainly comfortable taking sides. He has racked up a number of big wins in the appellate courts, convincing panels to slash big punitive-damages awards.

Boutrous' wins include persuading the 5th District Court of Appeal to reduce a \$290 million verdict against Ford Motor Co. to \$23.7 million Nov. 25. The massive \$290 million award, which the panel previously upheld, had been the largest personal-injury verdict upheld by an appellate court nationwide. *Romo v. Ford Motor Co.*, 2003 DJDAR 12739 (Cal. App. 5th Dist. Nov. 25, 2003).

The reduction came after the U.S. Supreme Court decided in *State Farm v. Campbell*, 123 S.Ct. 1513 (2003), that the ratio between compensatory and punitive damages should be in the single digits.

Boutrous' other wins include persuading a federal District Court to vacate a \$222 million libel verdict, the largest in United States history, against the Wall Street Journal. A witness provided cassette tapes to Boutrous that proved what the paper had printed in a 1993 story was true.

Based on that evidence, the 5th Circuit sent the case back to the District Court, but before the witness could testify, he was killed in a mysterious plane crash in Belize, Boutrous says. Boutrous filed his motions with the District Court, which vacated the award because of the concealment of evidence.

The combination of Boutrous' regular appellate practice and his fight for media rights has made the past five months the

busiest he can recall, he says.

Boutrous argued to overturn two multimillion-dollar verdicts in October. And in November, Boutrous argued for Ford in both the *Romo* case and another suit, *Johnson v. Ford Motor Co.*, on the same day in front of the same panel.

"I argued the *Romo* case, and the *Romo* plaintiffs' lawyers left, and I just sort of stayed there and waited, and the other lawyers came up," Boutrous says.

The punitive-damages award in *Johnson*, a lemon law case, was \$10 million. Boutrous got it down to \$53,000.

Boutrous argued in the 1st District Court of Appeal Nov. 20 on behalf of PricewaterhouseCoopers in *Grafton Partners v. Superior Court, PricewaterhouseCoopers*. Boutrous is arguing in the closely watched case that contracts which include jury-trial waivers are constitutional.

The Court of Appeal agreed with the plaintiffs Feb. 6 and ordered a jury trial reinstated. PricewaterhouseCoopers is "contemplating its next steps," Boutrous says.

In December, Boutrous argued a malicious-prosecution case before the California Supreme Court and represented DaimlerChrysler before the Michigan Supreme Court. Daimler is trying to reduce a \$21 million sexual-harassment verdict. Boutrous came back to the Los Angeles Superior Court in Chatsworth to argue post-trial motions in *Karlsson v. Ford*. A jury had entered a \$45 million verdict in the personal-injury case, \$30 million of it against Ford.

In the new year, he began his work on the Michael Jackson trial's First Amendment issues.

Boutrous, a lawyer at Gibson Dunn since 1987, came to the firm for its

national appellate practice. Gibson Dunn had one of the few at the time, Boutrous says.

When he joined the firm, its appellate practice was centered in Washington, D.C., under Theodore Olson. Boutrous wasted no time in getting his feet wet.

"My first day on the job, my first assignment was from Ted Olson, and it was to research and help him get ready for an argument in the Supreme Court of the United States on the constitutionality of punitive damages," Boutrous says.

Boutrous continued to work with Olson on punitive-damages issues until Olson left the firm in the spring of 2001 to take his current post of United States solicitor general.

Olson says he saw early on that Boutrous had a way with people.

"He's got that kind of contagious enthusiasm that makes everyone want to work harder," Olson says.

Boutrous also built up his First Amendment practice while in Washington, D.C., working with New York partner Robert Sack, who now sits on the 2nd U.S. Circuit Court of Appeals.

Boutrous moved to the West Coast in 1999 to help the firm build its Los Angeles appellate practice.

His move has enabled the firm to expand its appellate focus across the country, according to Kenneth Doran, firmwide chair of Gibson Dunn.

"His enthusiasm is intoxicating," Doran says.

Boutrous was able to set up shop in Los Angeles while keeping all of his national clients, who have him traipsing all over the country. Colleagues say Boutrous doesn't let a verdict stand in his way.

"He simply knows that at the beginning we're going to figure out a way to prevail," Olson says.