Kendall Brill Kelly

Bert H. Deixler

Counsel

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In his more than 40-year career as an attorney and commercial litigator, Bert H. Deixler has tried scores of cases to verdict, litigated cases involving more than 25 reported decisions, and prevailed in appearances before the U.S. Supreme Court, including in the landmark case of *Johnson v. California*, which ruled unconstitutional the forced racial segregation of California's prison system. For his work on that case, *California Lawyer* magazine awarded him the prestigious *California Lawyer* Attorneys of the Year (CLAY) Award.

Mr. Deixler is widely known for his entertainment, media, and intellectual property experience. He has litigated on behalf of individuals and entities in a wide array of industries, including motion pictures, television, music, and new technologies. Mr. Deixler advises and resolves disputes pertaining to copyrights, trademarks, digital downloading, libel, and rights of privacy, as well as the full range of business torts claims. His clients include prominent artists in music, TV and new media, motion picture and TV studios, broadcast networks, and production and distribution companies.

A former Assistant U.S. Attorney in the Criminal Division, Mr. Deixler represents individual and corporate clients in the criminal, quasi-criminal, regulatory, and parallel proceedings litigation. This includes white-collar crime allegations and Securities and Exchange Commission (SEC) actions involving tax fraud, insider trading, backdating options, wire and mail fraud, internal investigations, and other investigations and proceedings.

He represents clients in a wide array of other commercial disputes, including wrongful termination and post-termination compensation entitlement disputes and allegations of professional malpractice. He is frequently called upon to advise professionals and Boards of Directors in disputes pertaining to duties, departures, and responsibilities.

In addition to his experience in commercial and media litigation, Mr. Deixler has a deep commitment to public service, including the fair administration of justice in California. He has served as a member or as counsel to numerous reform commissions including the Los Angeles Ethics Commission (Cowan Commission), the Independent Commission on the Los Angeles Police Department (Christopher Commission), the Rampart Independent Review Panel and the Citizen's Commission on Jail Violence. He has testified before the California Senate on constitutional issues related to racial segregation in prisons.

Mr. Deixler served as Special Counsel to the Los Angeles County Sheriff Civilian Oversight Commission, investigating and conducting a series of public hearings regarding the presence of gangs and cliques of deputy sheriffs in the Los Angeles County Sheriff's Department.

He played a founding role in establishing the Pro Se Clinic of the U.S. District Court for the Central District of California, an initiative to promote access to civil justice in conjunction with Public Counsel and the Judges of the District. He has also participated in initiating a pilot program in the U.S. District Court for the Central District of California that permits limited representation by attorneys of pro se litigants in pending Central District cases.

Education

Columbia University School of Law, J.D., 1976 •
Harlan Fiske Stone Scholar

George Washington University, B.A., 1973
• Phi Beta Kappa

Representative Matters

Media, Entertainment, and Intellectual Property

- Successfully defended Warner Communications, Inc. against a company holding certain rights to Tom Wait's music.
  Third Story Music, Inc. v. Waits, 41 Cal. App. 4th 798 (1995)
- Represented musician Jack White and The White Stripes in a copyright litigation against a music producer seeking ownership of copyright interest in The White Stripes' songs.
  Diamond v. Gillis, 357 F. Supp. 2d 1003 (E.D. Mich. 2005)
- Obtained summary judgment for the band Smashing Pumpkins in an action alleging copyright infringement and state law claims relating to production of a music video.
  Morrill v. Smashing Pumpkins, 157 F. Supp. 2d 120 (C.D. Cal. 2000)
- Represented the band No Doubt in its suit against Activision Publishing, Inc. over the use of its likeness in a video game.
  No Doubt v. Activision Publishing, Inc., 702 F. Supp. 2d 1139 (C.D. Cal. 2010)
  No Doubt v. Activision Publishing, Inc., 192 Cal. App 4th 1018 (2011)
- Successfully defended a record company and recording artist Anita Baker against a competitor's efforts to prevent the record label from signing Baker, who was formerly under contract with the competitor.
  Beverly Glen Music, Inc. v. Warner Communications, Inc., 178 Cal. App. 3d 1142 (1986)
- Represented a radio production company in litigation relating to a challenge to a Top 10 song countdown format. *Watermark, Inc. v. United Stations, Inc.*, 219 U.S.P.Q. 31 (C.D. Cal. 1982)
- Representing the 90s grunge band Nirvana against fashion house Marc Jacobs International Inc. for copyright and trademark infringement related to Nirvana's iconic "Smiley Face" design.
- Secured a favorable settlement for an international celebrity in a dispute with a former business manager who had sued over her dismissal.
- Represented the band Nirvana and Universal Music Group regarding the cover of the album Nevermind.
  Elden v. Nirvana, LLC, 802 F. Supp. 3d 1211 (C.D. Cal. 2022)
- Represented the estate of world-renowned singer and songwriter Jenni Rivera in $10 million litigation over her former business manager's breaches of his non- disclosure agreement by collaborating to produce an unauthorized television series exploiting the private details of Ms. Rivera's life that was eventually aired on Univision.
- Representing the Estate of Walter Becker, co-founder of the rock band, Steely Dan, regarding the rights of the members of the group.
- Representing an overseas film investor in an arbitration over the losses it incurred in its investment in an Oscar-nominated film.
- Representing and counseling a production company in a lawsuit brought against a sales agent relating to the critically acclaimed television series *Das Boot.*
- Representing a management company in litigation arising from a dispute among the heirs of an internationally known singer/songwriter.
- Representing Wasserman Media in a case brought by the founder of Papa John's pizza for claims that his business reputation was harmed by the public revelation of his having made racially insensitive statements in a business call with multiple participants.

Commercial Litigation and Appeals

- Represented an investment banking firm in litigation and appeal relating to licensing requirements for the sale of a business.
  All Points Traders, Inc. v. Barrington Associates, 211 Cal. App. 3d 723 (1989)
- Represented a real estate development company in an action against an international engineering and construction firm for damages for breach of contract to transfer real property.
  Ersa Grae Corp. v. Fluor Corp., 1 Cal. App. 4th 613 (1991)
- Represented judgment creditors in a bankruptcy proceeding and related appeals challenging claim as time barred.
  Classic Auto Refinishing Inc. v. Marino, 181 F.3d 1142 (1999)
- Represented a bank in an action on a promissory note.
  Lincoln Natl. Bank v. Dworsky, 218 Cal. App. 4d 852 (1990)

Appellate and Constitutional Litigation

- Represented a church in an employment dispute with a former minister.
  Headley v. Church of Scientology International, 687 F. 3d 1173 (9th Circ. 2012)
- Represented a concert promoter in a suit against the City of Burbank for denying access to public forum based on content of performers' expression, in violation of First Amendment.
  Cinevision Corp. v. City of Burbank, 745 F. 2d 560 (9th Cir. 1984)
- Represented the City of Simi Valley in connection with a defense of ordinances concerning adult businesses.
  Young v. City of Simi Valley, 216 F. 3d 807 (2000)
- Defended the City of Simi Valley against a legal suit brought by a developer who raised constitutional challenges to zoning and land use regulations as well as permit denial.
  Litton Intl. Dev. Corp. v. City of Simi Valley, 616 F. Supp. *275 (1985)*
- Represented a candidate for California Assembly in challenging an application of state unfair competition laws to political campaign messages.
  O'Connor v. Superior Court of Kern County, 177 Cal. App. 3d 1013 (1986)
- Represented parties who were seeking to maintain confidentiality of a search warrant and other pre-indictment investigation materials.
  Times Mirror Co. v. United States, 873 F.2d 1210 (9th Cir. 1989)
- Obtained a reversal of Section 1983 liability judgment for a city in an action brought by a ballot measure proponent in connection with police against the proponent.
  Sloman v. Tadlock, 21 F.3d 1462 (9th Cir. 1994)
- Represented the late Los Angeles Mayor Tom Bradley in a challenge to the enactment of a city ordinance
  Pulskamp v. Martinez, 2 Cal. App. 4th 854 (1992)
- Represented the band Nirvana and Universal Music Group on appeal regarding the cover of the album Nevermind.
  Elden v. Nirvana, LLC, 88 F.4th 1292 (9th Cir. 2023)

***Pro Bono* Litigation**

- In a landmark case, represented the petitioner in a U.S. Supreme Court action finding racial segregation in California's prison system was unconstitutional.
  Johnson v. California, 543 U.S. 499, 125 S. Ct. 1141 (2005)
- Negotiated a landmark settlement to end racial discrimination in housing and job assignments in Arizona's state-operated prisons.
- Submitted an *amicus* brief on behalf of the Brady Center to Prevent Gun Violence in the Supreme Court cases concerning Second Amendment challenges to firearms restrictions and criminal sanctions relating to firearms possession.
  District of Columbia v. Heller, 128 S. Ct. 2783 (2008)
  United States v. Hayes, 129 S. Ct. 1079 (2009)
- At the request of the California Supreme Court, represented an indigent death row defendant in appeal of his conviction and *habeas corpus* petition.
  People v. Williams, 44 Cal. 3d 1127, 751 P.2d 901 (1988)
  In re Williams, 7 Cal. 4th 572, 870 P.2d 1072 (1994)

Other Reported Decisions

- *United States v. Halbert*, 640 F.2d 100 (9th Cir. 1981)
- *United States v. Garder*, 611 F.2d 770 (9th Circ. 1980)
- *United States v. Vasquez*, 597 F.2d 192 (9th Circ. 1972)
- *United States v. General Dynamics Corp.*, 644 F. Supp. 1497 (1986)
- *United States v. Seide*, 492 F. Supp. 164 (1980)

Recognition and Affiliations

- *Chambers USA*,Top-ranked Litigatorin Entertainment and Media
- *California Lawyer* Attorney of the Year (CLAY) Award, *Pro Bono*, 2006
- *The Best Lawyers in America* "Lawyer of the Year," Bet-the-Company Litigation, 2021
- *Benchmark Litigation*, Litigation Star, 2021
- *The Best Lawyers in America*, Entertainment Law, 2007–present
- *The Best Lawyers in America*, Bet-the-Company and Commercial Litigation, 2000–present

- *Southern California Super Lawyer*, 2000–present
- California Supreme Court Historical Society, Board of Directors
- American Bar Foundation, Fellow
- Litigation Counsel of America, Fellow
- American Bar Association, Litigation Section
- Financial Institutions Fraud Sub-Committee, former Co-Chair
- Federal Civil Rights Panel, Central District of California, member
- LA County District Attorney, Task Force on Workers' Compensation Fraud, member
- Chancery Club, member
- Public Counsel, Board of Directors member
- Los Angeles Review of Books, Board member
- Los Angeles County Bar Association,Litigation Section
- State Bar of California
- Western Justice Center Foundation, former Board of Directors and Executive Committee member
- Legal Aid Foundation of Los Angeles, former Board of Directors member

Publications and Appearances

- "My Life in Prison: One Corporate Litigation Lawyer's Experiences with California Murderers and Their Constitutional Rights," University of California, Berkeley, CA.
- Visiting Professor, American Criminal Procedure, Berdyansk State Pedagogical University, Berdyansk, Ukraine
- Visiting Professor, American Criminal Procedure, Biznesa Augstskola Turiba Faculty of Law, Riga, Latvia
- Visiting Professor, American Criminal Procedure, University of East Sarajevo Faculty of Law, Bosnia and Herzegovia
- Visiting Professor, American Criminal Procedure, Wisdom University Faculty of Law, Tirana, Albania
- California Causes of Action, James Publishing, Editorial Advisory Board

Prior to Kendall Brill & Kelly

- **Proskauer Rose LLP, Los Angeles, 2004–2011**
  Partner, 2000-2011; Managing Partner, 2004–2009
- **McCambridge, Deixler, and Marmaro, 1984–2000**
  Founding Partner
- **U.S. Department of Justice, 1978–1981**
  Assistant U.S. Attorney, Los Angeles, 1978–1981
  Special Assistant to the U.S. Attorney for Central District of California, 1981

Bar and Court Admissions

- **California, 1976**
- **District of Columbia, 1982**
- **New York, 2008**
- **U.S. District Courts**
  Central, Eastern, Northern, and Southern Districts of California
  Eastern District of Michigan
  Southern District of New York
  District of Columbia
- **U.S. Court of Appeals for the Ninth Circuit**
- **U.S. Court of Appeals for the Tenth Circuit**
- **U.S. Court of Appeals for the District of Columbia Circuit**
- **U.S. Supreme Court**

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