

# The Metropolitan Corporate Counsel®

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Volume 14, No. 1

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January 2006

## California – Law Firms

### Practicing Law In California – The Other Dreamworks

*The Editor interviews Bert Deixler, Managing Partner of the Los Angeles Office of Proskauer Rose LLP.*

**Editor:** Please tell us about Proskauer's Los Angeles Office.

**Deixler:** Since July 1, 2005 I have been the managing partner of the Los Angeles office. We have approximately 65 lawyers who offer services in the full array of Proskauer's top practice areas, including corporate, tax, litigation, bankruptcy, employment, labor law and real estate.

**Editor:** What about private equity?

**Deixler:** We do an extraordinary amount of private equity work. Michael Woronoff in our office has led us into that area which is a great complement to the work we do in New York and Boston. It is wonderful to see how a national law firm hitting on all cylinders can succeed in an area that is a boom industry for law firms and business.

**Editor:** What are your plans for increasing the size of the office?

**Deixler:** We are actively searching for partners in various fields and are engaged in negotiations with some well known lawyers. We also want to grow in an organic fashion by hiring young lawyers and teaching them the Proskauer way so they can be successful. Our hope is that in three years we will have 100 or more lawyers in this office. We want to be careful, however, about preserving what we like about our culture. Large additions can be a jolt and we want to make sure that growth will enhance our own values.

**Editor:** Tell us about your practice as a litigator.



Bert Deixler

**Deixler:** I have had many cases as a general litigation lawyer. Being based in Los Angeles, one needs a lot of background and experience in the entertainment industry. That includes music, motion pictures and television because those are the most significant industries that exist in Los Angeles. Los Angeles does not have as large a base of indigenous business and industry clients as are found in major cities like New York and Chicago. Entertainment is a significant driver for our economy. My practice has involved the representation of just about every kind of individual or entity involved in any of those three areas. Recently, I have had a large caseload of music related issues. I have been involved in significant litigation for some well known musical groups, including White Stripes, whom I am representing in a federal court copyright action in Detroit. I just finished another case for a group called Puddle of Mudd in a copyright

case in federal court in New Orleans.

In the entertainment/labor area we are representing a number of talent agencies in a class action case brought to us by Tony Oncidi, the head of our labor group, who has asked me to help him. In that case, writers of a "certain age" allege they have not been hired because of age discrimination.

**Editor:** How much of the firm's practice has to do with intellectual property?

**Deixler:** It is hard to quantify. A significant amount of our practice is related to IP work, a substantial amount of which comes from Washington. We have a partner, Jon Baumgarten, who was the general counsel of the U.S. Copyright Office. As a result of his expertise, we are routinely engaged by studios and record companies to give super sophisticated intellectual property advice and that has led to our involvement in significant litigation on the West Coast. For example, Scott Cooper successfully handled the DeCSS case, a case tried in the Southern District of New York and appealed to the Second Circuit. Proskauer represented the Motion Picture Industry against people who were distributing the DeCSS System. That System allowed a defeat of the copyright protections found on DVDs. The case raised interesting questions about first amendment rights and the first-use doctrine and the Court sided fully with our clients.

For much of last year we had a number of lawyers working on the Replay TV case. Ron Rauchberg and Scott Cooper represented the major television networks and most of the major motion picture studios in a copyright infringement action against the manufacturers of the Replay TV digital records. It is similar to the TIVO system but includes automatic commercial skippers and Internet sharing of the recorded programs. The case was time-intensive, involved many lawyers, and was

*Please email the interviewee at [bdeixler@proskauer.com](mailto:bdeixler@proskauer.com) with questions about this interview.*

resolved. There is not a week where we are not involved in an entertainment dispute representing an entertainment company or high-end talent upset because their intellectual property rights are being infringed.

**Editor: What do you think that the demise of Grokster will do in terms of copyright protection?**

**Deixler:** I think that Grokster itself is not that important. There are other technologies that are emergent which will, if properly deployed, allow downloading of protected products. There will be and now are tracking devices that will allow owners of a copyright to track who is using it, thus allowing them to monetize or prevent uses as they choose. Grokster was one of those “flavors of the month” that was interesting to young people but its demise is not significant. Technology moves on. So do lawyers protecting intellectual property.

**Editor: The firm has had an outstanding labor and employment practice. What type of employment disputes does the office handle?**

**Deixler:** There are two aspects to that practice. One is a traditional, “pure” labor practice. My partner, Mark Theodore, was deeply involved for example in bringing to an end some long term strikes against hotels by hotel workers in California. Mark’s success is getting us involved in a similar matter in San Francisco. At this time the hot cases in the employment litigation area for which we have been retained are wage and hour class action cases involving claims that employees were entitled to get paid overtime for a number of years and were not. These are big dollar exposure matters requiring prompt legal assessment and careful management. A significant part of the employment practice also includes traditional single plaintiff wrongful termination cases where an employer fires an employee and single plaintiff sexual harassment or hostile work environment claims. We have been very active in successfully representing employers in those cases.

**Editor: How do you interface with the other Proskauer offices?**

**Deixler:** Because the firm is organized on a departmental basis with department chairs nationally and regionally, there is constant communication. For example, if I have a copyright question, I can call Bill Hart in New York for information or Jon Baumgarten in Washington. There is a constant communication through phone calls and emails. We operate as one firm practicing in different parts of the country with the ability to make our expertise available at a moment’s notice. When I first came to the firm, a client of mine was

involved in a dispute with a movie director who did not want to come to the U.S. to testify. An issue arose on the remedy my client would have if the case were pursued in France, where the director was located. I sent an email to the head of the litigation group in Paris and got an instant reply. I was able to initiate a conference call with the client and two partners in Paris who were able to immediately get on the case. I continue to think that this was the best example of the benefit of a major national/international law firm’s expertise. Instant expertise deployed despite time differences.

**Editor: In terms of pro bono work, Proskauer is among the leaders. Tell us about some of the fine work that is being done.**

**Deixler:** We are thrilled that Anthony Pacheco, a partner in our Los Angeles office, has been named by our new Mayor as one of the five police commissioners for the city of Los Angeles. This is one of the most important positions that someone can hold. The chief of police for Los Angeles reports to the police commission. Anthony is involved in deciding the policies that are followed by the police and whether individuals accused of violating the policy are to be disciplined for those violations.

I was fortunate to be appointed by the federal court to represent an inmate in the California prison named Garrison Johnson. He challenged the practice in California prisons of segregating new inmates on the basis of race. Whenever new prisoners were brought into a facility, they were paired with cellmates of the same race. I argued that case last November in the U.S. Supreme Court, winning the case in February of this year. California argued that the practice of segregation was necessary and reasonably related to the prevention of racial gang violence in prisons. Nevertheless, the Supreme Court agreed with our position that any policy based on racial classification is subject to a strict level of review. The case was remanded, and I am pleased to report that yesterday I was at the State Penitentiary getting Mr. Johnson’s signature on a settlement agreement we entered into which will desegregate California’s prisons.

We were assisted by many of our younger associates and summer associates on that case over a six year period. Chuck Sims, one of my partners in New York, sat with me at counsel’s table in the Supreme Court and Senior LA Associate Tanya Forsheit and LA Partner Lois Thompson helped prepare the briefs which produced the result. Overall it was a tremendous commitment of time, energy and resources and was thrilling for us all. It has become a significant case in constitutional law and was the most used hypothetical for moot courts in law schools last year.

**Editor: So as a group you work on many community service projects?**

**Deixler:** We handle a ton of these projects. It is one of the things that distinguishes Proskauer from other national firms. We now have a case which we filed in Ohio based on Ohio’s election laws which discourage voting by certain groups in the state. I am working with a group of attorneys from Washington, New York and Los Angeles. This is an important part of the Proskauer culture.

**Editor: What advantages does Los Angeles offer as a venue for practicing law?**

**Deixler:** There are multiple advantages. From the standpoint of a young lawyer the opportunity for significant hands-on responsibility is much more easily obtained in Los Angeles. Our cases are staffed more leanly. The amounts in controversy or in transactional matters are often not quite as large as they would be in New York so the number of lawyers on any matter is often smaller. As a result, rather than having a narrow focus on what a case or a deal is about, young lawyers are able to see the entire landscape – whether dealing with clients, judges, opposing counsel, underwriters or other interested parties. The consequence is that young lawyers find out quickly whether they like practicing law and whether they are good at it.

A second aspect of life in Los Angeles as a lawyer is that it is still true that the practice of law need not be as all consuming as it can become in New York. We do not regularly have lawyers here until midnight. We recognize the sanctity of vacations and personal lives. So in the sense of allowing a young professional to compose a life I think it is a great place to work.

Third, people in LA are generally more mellow toward one another than I see in practice in New York. We take it down two notches so that our day to day life is less confrontive than you often find in New York. The caliber of lawyers is the same, but we seem to value peaceful coexistence more.

**Editor: What future do you see for the growth of commerce and industry in California?**

**Deixler:** California is *the* place. As we see increased globalization, all roads are going to lead through California. We are conscious of the fact that we have to create an environment in California that will be receptive to business. We start with the extraordinary racial, cultural and ethnic diversity that gives California a head start in monopolizing business in the future. People hear languages they speak and see people who are familiar and comfortable with their cultures. We have all the elements aligned for a large boom in business in the state. To your readers I say, “Come and be part of the business center of the world!”