



## David L. Kirman

Partner

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David Kirman's combination of government and commercial experience—federal prosecutor, complex litigation counsel, first-chair trial lawyer, and boardroom advisor—makes him an in-demand lawyer for corporate boards, companies, and executives. David represents clients in litigation, internal investigations, government investigations, and often a mix of all three. David handles matters involving fraud, illegal sales practices, money laundering, kickbacks, the Foreign Corrupt Practices Act, the Bank Secrecy Act, OFAC, securities laws, RICO, the False Claims Act, and workplace misconduct.

While David's practice encompasses a wide range of industries, he is a recognized authority on fintech and life sciences. David's fintech clients include leading blockchain and digital currency companies, which rely on him to defend against government investigations and advise on evolving federal and state laws. David also has extensive experience in the health care and life sciences industries, where he frequently represents clients in internal investigations and government inquiries.

Before joining O'Melveny, David spent seven years at the US Attorney's Office in the Central District of California, where he was a member of the Major Frauds Section and a Criminal Healthcare Fraud Coordinator. He served as lead or co-lead trial counsel in jury trials, argued appeals before the Ninth Circuit, and directed complex grand jury and wiretap investigations.

David is a sought-after speaker on enforcement issues related to fintech and health care. He is also an adjunct professor at Loyola Law School, where he teaches a course on white-collar crime.

### Admissions

#### *Bar Admissions*

California

#### *Court Admissions*

US Court of Appeal for the Ninth Circuit

US District Court for the Central District of California

US District Court for the Southern District of California

### Education

University of California, Berkeley,  
J.D.: Managing Editor, *California Law Review*

United States Military Academy, B.S.

## Experience

### Investigations Experience

- Conducted board-driven independent investigation for a telecommunications giant into allegations that internet, cable television, and telephone customers around the country were overcharged for services they ordered or billed for services they never agreed to.
- Led defense of CEO of blockchain company in SEC investigation into alleged sales of unregistered securities.
- Led internal investigation for a fintech company related to potential violations of the FCPA.
- Led defense of multiple fintech companies in government investigations into potential violations of OFAC.
- Led internal investigation into life sciences company related to potential anti-kickback issues.
- Led internal investigation into health care providers related to potential violations of federal criminal laws.
- Represented pharmaceutical company in investigation related to patient assistance programs.
- Led internal investigation into pharmaceutical company related to off-label promotion.
- Serves as outside counsel to the leading enterprise blockchain solution for global payments on regulatory, corporate, and strategic legal matters.
- Conducted numerous board-level and company-level investigations into claims of sexual misconduct and harassment.
- Provided advice on federal and state anti-kickback (AKS) laws, the Foreign Corrupt Practices Act (FCPA), any willing provider (AWP) laws, freedom of choice (FOC) laws, generic drug substitution laws, the Affordable Care Act, the Sunshine Act and state spend laws, drug pricing, group purchasing organizations (GPO), pharmacy benefit managers (PBM), speaker programs, and the Sunshine Act.

### Complex Civil Litigation

- Led defense of leading pharmaceutical company in whistleblower claims related to kickbacks and off-label promotion.
- Obtained complete dismissal of False Claims Act complaint filed against a subsidiary of one of Korea's largest power corporations related to renewable energy projects in Oklahoma.
- Led defense of leading Hollywood executive accused of sexual misconduct.
- Led defense of national religious organization accused of wrongful hiring and inadequate supervision of employees and volunteers.
- Defend educational company in nationwide class actions alleging violations of civil-RICO and other consumer protection laws.
- Defend world-class boxer in contract dispute regarding rights assigned to publishing company.
- Served on trial team that defended former Enron CEO Jeffrey Skilling in four-month criminal trial.
- Served on trial team that represented a recreational vehicle manufacturer in a trial seeking damages from a manufacturer of composites used in RV fabrication.
- Represented boxing promoter in dispute with boxer who attempted to nullify a personal services contract through bankruptcy.
- Defended major oil company in multibillion-dollar lawsuit for environmental damages.

- Defended major oil company in oil spill matters.

## Public Sector Experience

### Healthcare

- Won convictions in numerous healthcare fraud and kickback trials, including the successful prosecution of a Los Angeles physician assistant in a \$18.9 million Medicare fraud scheme and prosecution of six individuals, including two notable Los Angeles pastors, engaged in a \$14 million Medicare fraud scheme.
- Prosecuted criminal violation of HIPAA.
- Conducted Food, Drug, and Cosmetic Act investigations.
- Conducted criminal–civil parallel investigations and evaluated False Claims Act complaints for allegations of criminal conduct.

### Financial Services

- Prosecuted two financial institutions, their owners, and a compliance officer on Bank Secrecy Act and anti-money laundering charges—one of the first criminal indictments for willful failure to maintain an effective AML program.
- Successfully tried as co-lead counsel high-profile defendant for violation of the Bank Secrecy Act.
- Prosecuted bank bribery scheme.

### Defense Industry

- Prosecuted five defendants, including a procurement officer of a major defense contractor, for their roles in a decade-long bribery scheme related to millions of dollars in subcontracts for the manufacturing of satellite parts.
- Prosecuted defense contractor for paying gratuities to government officials.

## Pro Bono and Community Service

David serves as *Pro Bono* Co-Chair in O'Melveny's Century City office and devotes a significant portion of his practice to *pro bono*. Representative matters include:

- Represented a high school coach after a school district fired him for raising concerns that women were not receiving the same athletic opportunities as men.
- Defended the Alzheimer's Association in a commercial dispute.
- Represented radio station KCRW in civil matter.

During his time as a federal prosecutor, David regularly taught students at an East LA elementary school techniques for resolving conflict, resisting peer pressure, promoting tolerance, and respecting diversity.

## Military Service

Before becoming a lawyer, David was an officer in the United States Army, where he held a number of leadership positions, including command of the Army's only amphibious landing craft unit. David also led a team of soldiers on a deployment to Central and South America, where they provided logistical support for an international peacekeeping mission and the United States' withdrawal from Panama. David was awarded the Meritorious Service Medal when he left the Army as a Captain.

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## Corporate & Government Experience

- Captain, U.S. Army (1996–2001)
- Assistant United States Attorney, Central District of California (2008-2015)

## Professional Activities

### Clerkships

- Honorable Robert J. Timlin, United States District Judge for the Central District of California (2004–2005)

### Adjunct Professor

- Loyola Law School (2015–)

### Memberships

- Board Member, U.S. Vets (2018–)
- Board Member, Karma Rescue (2017-2018)

### Speaker

- Paycheck Protection Program (PPP) Enforcement Trends (moderator) (Beverly Hills Bar Association Criminal Law Section, Mar. 2020)
- Initial Coin Offerings (American Bar Association's 2018 Blockchain Technology, Digital Currency and ICO National Institute, Apr. 2018)
- Blockchain Panel (2018 Southern District of California Judges Conference, Apr. 2018)
- Blockchain/Digital Currency Legal Issues Panel (Inns of Court, South Bay, Los Angeles, Apr. 2018)
- Senior Executives Under the Microscope: How to Protect and Defend Yourself During an FCPA Investigation (ACI's 9th West Coast FCPA Enforcement & Compliance Conference, San Francisco, Oct. 2016)
- Current Trends in FCPA and Patient Assistance Program (PAP) Enforcement (Association of Corporate Contributions Professionals [ACCP] 2016 Annual Meeting, New Brunswick, NJ)
- Current Off-label Enforcement Developments and the Impact of the Supreme Court's Decision in *McDonnell* on Pharmaceutical Companies (The Pharmaceutical Compliance Forum, Sept. 2016)
- Knowledge, Advice of Counsel, and Liability for Improper Claims to and Retention of Payment from Federal Health Care Programs (American Health Law Association, June 2016)
- The Sunshine Act for Corporate Contributions Professionals (ACCP, Webinar, Jan. 2016)
- 6th Annual West Coast Compliance Congress (CBI, San Francisco, Nov. 2015)
- 8th Annual Forum on Sunshine Act, Open Payments, and Aggregate Spend Compliance (ACI, New York, Oct. 2015)
- Off-Label Guidelines Summit (keynote panelist) (CBI, Philadelphia, June 2015)
- Fraud & Abuse in the Sales and Marketing of Drugs (ACI, March 2015)
- Sunshine Act, Open Payments, and Aggregate Spend Compliance Forum (ACI, New York, 2014)
- Transparency and Aggregate Spend Forum (CBI, Washington, D.C., 2014)
- West Coast Transparency and Aggregate Spend Forum (CBI, La Jolla, 2014)

- Los Angeles Consumer Protection Health Care Summit (2013)
- National Health Care Anti-Fraud Association Annual Meeting (2013)

#### **Guest Lecturer**

- Federal Criminal Law, University of Southern California School of Law (2015)

#### **Publications**

- “BitMEX Indictment Warns of New Department of Justice Approach on AML Program Failures,” *The Recorder* (Nov. 2020)
- “Resurrecting Time-Barred Crypto Claims Is An Uphill Struggle,” *Law360* (May 2020)
- “McDonnell’s impact on the evolution of the Anti-Kickback Statute,” *Compliance Today* (April 2017)
- “FDA changes regulations on what info manufacturers can share,” *Daily Journal* (Feb. 2017)
- “DPA, NPA Deals Are Not Up To the Judge,” *Daily Journal* (April 2016)
- “Companies Should Note Joint AKS, FCPA Action,” *Daily Journal* (March 2016)
- “Transparency comes with costs under the Sunshine Act,” *Daily Journal* (Jan. 2016)
- “Current trends in FCPA enforcement in the healthcare industry,” *Compliance Today* (Jan. 2016)
- “Anti-Kickback Statute Enforcement Trends,” *The Health Lawyer* (Dec. 2015)

#### **Client Alert**

- “FDA Takes Action to Allow Broader Manufacturer Communications” (Feb. 2017)
- “Joint Enforcement of the Anti-Kickback Statute and the Foreign Corrupt Practices Act” (April 2016)

#### **Honors & Awards**

- Recognized by *Best Lawyers*® in Criminal Defense: White Collar (2023)
- Recommended by *The Legal 500* in corporate investigations and white-collar criminal defense (2018)