

Kellen Dwyer

Partner

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Kellen Dwyer is co-leader of Alston & Bird’s National Security & Digital Crimes practice. He previously served in the Justice Department in several cyber and national security roles. As an assistant U.S. attorney in the Eastern District of Virginia, he obtained a computer hacking indictment against Julian Assange and represented the United States at Assange’s extradition hearings in London. He received the Attorney General’s Award for the trial of a Russian hacker who helped develop malware used in one of the largest data breaches in U.S. history. Kellen also prosecuted Aleksey Burkov, a Russian hacker whose arrest in Israel triggered a high-profile tug-of-war between the U.S. and Russia.

As deputy assistant attorney general in the National Security Division, Kellen led the department’s national security and cybersecurity policy on issues such as encryption, cryptocurrency, ransomware, GDPR/*Schrems II*, breach notification, supply-chain security, and foreign election interference. He testified before Congress, represented the DOJ on the National Security Council, advised Cyber Command, approved sanctions, and helped coordinate a whole-of-government response to major cyber incidents, including the SolarWinds breach. Kellen also oversaw the division’s appellate unit, which advised on sensitive investigations and litigated before the Supreme Court, the circuit courts, and the Foreign Intelligence Surveillance Court of Review.

Kellen teaches cyber-crime at George Mason Law School. He clerked on the Ninth Circuit and the Southern District of New York.

Representative Experience

Technology, Data Breach, and Privacy Litigation

- Represented one of the world’s largest social media companies and its officers and directors in multidistrict securities class actions and shareholder derivative suits in claims arising from its initial public offering.
- Represented a health care technology company in shareholder derivative suits and purported class actions arising from a data breach.
- Represented a Fortune 50 telecommunications company in complex litigation related to its services in New York City.
- Defending a major telecommunications company in multidistrict litigation arising from a data breach.
- Representing the founder of a blockchain cybersecurity company in litigation under the Computer Fraud and Abuse Act (CFAA).
- Advising a major technology company on a response to CFAA claims.
- Litigated dozens of CFAA cases as a federal prosecutor, including a successful CFAA jury trial concerning what was then the largest data breach in U.S. history.
- Litigated over a dozen intellectual property, trademark, and software piracy cases as a federal prosecutor, including a successful jury trial involving the counterfeiting of Apple and Samsung products.

- Oversaw, as deputy assistant attorney general for the National Security Division's appellate section, litigation defending executive order barring certain TikTok and WeChat transactions in the United States under the International Emergency Economic Powers Act (IEEPA).

White Collar Criminal Defense and Government Investigations

- Defending the founder of a digital printing startup in a federal criminal trial alleging hacking and theft of trade secrets.
- Representing a company in response to a federal grand jury subpoena in an investigation involving a U.S. Congressman.
- Represented a congressional staffer in responding to an investigation by federal law enforcement.
- Represented the chief financial officer of a Fortune 50 technology company in affirmative litigation against the SEC.
- Represented a major financial institution in investigations by the CFPB and several state attorneys general.
- Defended several large corporations in state attorney general investigations arising from cyber incidents.
- Obtained habeas relief in the U.S. Court of Appeals for the Sixth Circuit on behalf of a pro bono client in a murder case.

Cyber Incident and Ransomware Response

- Represented a major health care company in responding to a ransomware attack, requiring both a complex forensic investigation and extensive data review and restoration process.
- Assisted a major financial company in responding to a data extortion event affecting a foreign subsidiary, including managing extensive cooperation with the FBI and foreign law enforcement and overseeing negotiations with the threat actor.
- Represented an infrastructure company in a ransomware attack targeting a recently acquired company.
- Assisted a major financial company in freezing and recovering a fraudulent payment through cooperation with the FBI.

National Security, Sanctions Enforcement, and Cross-Border Asset Seizures and Extraditions

- Defending a foreign company and the U.S. subsidiary in responding to a DOJ investigation into alleged corruption and violations of Foreign Agents Registration Act (FARA).
- Advised a Fortune 500 company on FARA risk and compliance.
- Advised multiple U.S. companies in responding to FBI national security allegations concerning a foreign company. Matters involved coordinating with the FBI, including in a classified setting, and conducting an independent investigation into the allegations.
- Advised several companies in responding to national security surveillance concerns after *Schrems II*, including by providing opinions on whether the companies are covered by the Electronic Communications Privacy Act (ECPA) and Section 702 of the Foreign Intelligence Surveillance Act (FISA).
- Advised several companies on the potential Office of Foreign Assets Control (OFAC) sanctions risk of making payments to ransomware gangs.

- Oversaw, as a deputy assistant attorney general in the DOJ's National Security Division, legal policy on issues such as extraditions and mutual legal assistance, export control and sanctions enforcement, challenges to U.S. sanctions designations, seizures of assets frozen due to national security sanctions, and criminal and civil FARA cases.
- Litigated, as a federal prosecutor, some of the Justice Department's most contentious extraditions, including the four-year extradition of Russian hacker Aleksey Burkov from Israel, and ongoing extradition of Julian Assange from the United Kingdom.

Online Harassment, Defamation, and First Amendment

- Obtained decisions from Facebook, YouTube, Twitter, and Telegram taking down content on behalf of several corporations and individuals.
- Advised a journalist on responding to defamation claims.
- Represented the principal in a major investment firm in responding to online harassment.
- Represented an individual in a criminal investigation involving alleged online threats and First Amendment defenses.
- Litigated, as a federal prosecutor, several cases involving First Amendment defenses, including cases involving online threats and disclosures of classified information.

Publications & Presentations

Publications

- "How to Fight Foreign Hackers With Civil Litigation," *Lawfare*, May 13, 2022.
- "China's Regulatory Crackdown Is Increasing Securities Litigation Risk," *Bloomberg Law*, April 1, 2022.
- "The Best Way to Stop Ransomware Attacks: Be Proactive, Not Reactive," *The Wall Street Journal*, September 7, 2021.
- "How Tech Cos. Can Guard against DOJ Gag Orders," *Law360*, July 22, 2021.
- "It's Time to Surge Resources into Prosecuting Ransomware Gangs," *LawFare*, May 20, 2021.

Presentations

- "Policy Discussion: How to Stop the Ransomware Pandemic," Incident Response Forum Ransomware 2022, webinar, January 13, 2022.

Professional & Community Engagement

- *Yale Law Journal*, notes editor
- Morris Tyler Moot Court, board of directors

Court Admissions

- U.S. District Court for the Southern District of New York
- U.S. District Court for the Eastern District of Virginia
- U.S. Courts of Appeals for the First, Fourth, Sixth, and Ninth Circuits

Accolades

- Attorney General's Award for Distinguished Service (2019)
- Federal Bureau of Investigation – Washington Field Office, Public Service Award (2018)

- *Super Lawyer's* "Rising Star" in Securities Litigation (2014)

Education

- Yale University (J.D., 2009)
- Gettysburg College (B.A., 2006)

Admitted to Practice

- District of Columbia
- New York
- Virginia

Related Services

Litigation | Privacy, Cyber & Data Strategy | National Security & Digital Crimes | Crisis & Data Breach Response | White Collar, Government & Internal Investigations | Privacy & Cybersecurity Litigation | State Attorneys General Practice Team | Consumer Protection/FTC | Class Action & Multidistrict Litigation | Technology & Telecommunications Litigation | Appellate | Securities Litigation | Blockchain & Digital Assets