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#### **Related Practice Areas**

- Antisemitism and Anti-Terrorism
- Appellate
- Artificial Intelligence ("AI")
- Commercial Litigation
- Constitutional Law
- Foreign Agents Registration Act (FARA)
- Government, Congressional and Corporate Investigations
- Privacy Law

## **Kellen Dwyer**

### **Partner**

Kellen is an experienced trial and appellate lawyer who litigates criminal, civil, and regulatory cases in a variety of areas, including cybersecurity & privacy, constitutional law, complex fraud, and national security. In criminal matters, he has obtained declinations, dismissals, misdemeanor pleas, and presidential pardons for prominent individuals and companies facing federal investigations. In civil matters, he has successfully defended Fortune 500 companies in multidistrict litigation and brought affirmative litigation to challenge government overreach. Kellen has a perfect record in both jury trials and appellate arguments: he has twice obtained reversals of jury verdicts on appeal and he won every trial and appeal during his six years as a federal prosecutor.

As an Assistant U.S. Attorney in the Eastern District of Virginia, Kellen obtained a hacking indictment against Julian Assange and represented the United States at Assange's extradition hearings. He also received the Attorney General's Award for leading the trial and arguing the appeal in a case charging a malware-testing company with aiding and abetting the 2013 cyberattack on Target Stores. The case is now the lead precedent governing when tech companies can be held liable for crimes committed by their users. Kellen won convictions in dozens of cases involving hacking, wiretapping, complex fraud, conspiracy/RICO, public corruption, national security, and intellectual property.

Kellen was later promoted to Deputy Assistant Attorney General of DOJ's National Security Division (NSD), where he ran NSD's Appellate Unit, which represents the DOJ in civil and criminal appeals affecting national security and advises on sensitive prosecutions involving export controls/sanctions, trade secrets, and the Foreign Agents Registration Act (FARA). In that role, Kellen oversaw the defense of President Trump's TikTok and WeChat bans and successfully sought certiorari in civil cases interpreting the Foreign Intelligence Surveillance Act and the State Secrets doctrine.

#### **Education**

- Yale Law School, J.D.
  - *Yale Law Journal*, Notes Editor
  - Teaching Assistant for Akhil Amar, Constitutional Law
  - Moot Court, Semifinalist and Board Member
- Gettysburg College, B.A., *summa cum laude*
  - Phi Beta Kappa

#### **Bar & Court Admissions**

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

## **Clerkship/Government Experience**

- Deputy Assistant Attorney General, Department of Justice, National Security Division
- Assistant U.S. Attorney, Eastern District of Virginia
- Law Clerk, Hon. Diarmuid F. O'Scannlain (9th Circuit)
- Law Clerk, Hon. Kenneth M. Karas (S.D.N.Y.)

## **Representative Matters**

### **White Collar Criminal Defense & Government Enforcement Actions**

- Defended the founder of a tech startup against a four-felony federal indictment alleging violations of the Computer Fraud & Abuse Act (CFAA) and theft of trade secrets. DOJ agreed to a misdemeanor resolution on the eve of trial.
- Defended DC police officer charged with murder and obstruction of justice for pursuing a suspect who fled a lawful stop and was struck by a third party vehicle. Obtained presidential pardon.
- Defended commercial pilot against federal felony indictment for alleged threat made to co-pilot. Case was dismissed after exculpatory evidence was uncovered shortly before trial.
- Defending government contractor in an investigation by the DOJ's National Security Division and the Eastern District of Virginia into alleged violations of the CFAA and the Wiretap Act.
- Defending company in investigation by DOJ's National Security Division and Public Integrity Section into alleged public corruption and FARA violations. While investigation led to indictment of U.S. congressman and others, our client has faced no action.
- Defended multiple Fortune 500 companies in data security and privacy investigations by the Securities and Exchange Commission, Federal Communications Commission, state attorneys general, and N.Y. Division of Financial Services.
- Defended congressional staff member in responding to an investigation by federal law enforcement. The matter was closed with no action.
- Represented a major financial institution in investigations by the CFPB and several state attorneys general.
- Defended a London-based executive in a price-fixing investigation conducted by the DOJ's Antitrust Division.
- Led an internal investigation on behalf of multiple U.S. companies into FBI national security allegations concerning a foreign company. Matters involved coordinating with the FBI, including in a classified setting.
- Led an internal investigation, on behalf of a U.S. technology company, into suspected state-sponsored intellectual property theft.

### **Civil Litigation**

- Represented Facebook in multidistrict securities class actions and shareholder derivative suits in claims arising from its initial public offering.
- Defended a major insurance company in a putative wiretapping class action.
- Defended a major telecommunications company in multidistrict litigation arising from a data breach.

- Defended a former U.S. congressman in litigation in the Eastern District of Virginia. Obtained a favorable settlement after winning the preliminary injunction motion.
- Represented the founder of a blockchain cybersecurity company in litigation under the CFAA.
- Defending an individual in a Stored Communication Act suit in the Eastern District of New York.

### **Appellate Litigation & Regulatory Challenges**

- Successfully obtained vacatur of conviction in the D.C. Circuit on behalf of police officer convicted of second degree murder and obstruction of justice.
- Led the National Security Division's Appellate Section and had responsibility over all DOJ criminal and civil appeals involving national security issues, including in cases before the Supreme Court, the federal circuit courts, and the Foreign Intelligence Surveillance Court of Review.
- Successfully argued several cases in the U.S. Court of Appeals for the Fourth Circuit as a federal prosecutor, including precedent-setting cases regarding CFAA, liability for online platforms for conspiracy and aiding and abetting, the right to interlocutory appeals, and several evidentiary, jury instruction, and jurisdictional issues.
- Successfully argued in the U.S. Court of Appeals for the Sixth Circuit in a habeas case on behalf of pro bono client who was wrongfully convicted of manslaughter.
- Represented former CFO of Dell in affirmative challenge to SEC's Officer & Director Bar.
- Represented actor Don Johnson in defending the appeal of \$29.3 million jury verdict that Johnson obtained against his former production company over royalties from the show *Nash Bridges*.

### **News & Insights**

- Holtzman Vogel Expands Government Investigations and White-Collar Expertise with Addition of Former Deputy Assistant Attorney General and Assistant U.S Attorney Kellen Dwyer

### **Community Involvement**

- Criminal Justice Act Panel (Eastern District of Virginia)
- Morris Tyler Moot Court, Board of Directors

### **Awards & Honors**

- 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)

### **Publications/Articles**

#### **Selected Bylined Publications**

- "The Fallout from the First Trial of a Corporate Executive for Covering Up a Data Breach," *LAWFARE* (Oct. 22, 2022)
- "The Best Way To Stop Ransomware: Be Proactive, Not Reactive," *Wall Street Journal*. (Sept. 7, 2021)

- "How Tech Companies Can Guard Against DOJ Gag Orders," *LAW360* (July 22, 2021)
- "It's Time to Surge Resources into Prosecuting Ransomware Gangs," *LAWFARE* (May 20, 2021)

#### **Selected Media Quotes**

- "Tech CEO Charged with Fraud Over Security, Reliability Claims," *Wall Street Journal* (Oct. 18, 2024)
- "The Supreme Court Hunt for Who Leaked Draft Roe v. Wade Opinion Has No Road Map," *Wall Street Journal* (May 5, 2022)
- "Justice Department to Fine Contractors for Not Reporting Cyber Incidents," *Wall Street Journal* (Oct. 7, 2021)
- "Merrick Garland Restricts Federal Prosecutors from Seeking Reporters' Records," *Wall Street Journal* (July 19, 2021)
- "Biden Administration to Blame Hackers Tied to China for Microsoft Cyberattack Spree," *Wall Street Journal* (July 19, 2021)