

Alexander H. Southwell



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Alexander H. Southwell is a partner in Gibson, Dunn & Crutcher's New York office and is Co-Chair of Gibson Dunn's Privacy, Cybersecurity, and Consumer Protection Practice Group. His practice focuses on counseling a variety of clients on privacy, information technology, data breach, theft of trade secrets and intellectual property, computer fraud, national security, and network and data security issues, including handling investigations, enforcement defense, and litigation. In particular, Mr. Southwell regularly advises companies victimized by cyber-crimes and counsels on issues under the Computer Fraud and Abuse Act, the Economic Espionage Act, the Electronic Communications Privacy Act, and related federal and state statutes. Mr. Southwell additionally handles a range of white-collar criminal and regulatory enforcement defense, internal investigation, compliance, and complex civil litigation matters. An experienced trial and appellate attorney, prior to joining Gibson Dunn, Mr. Southwell served as an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York.

Mr. Southwell is also an Adjunct Professor of Law at Fordham University School of Law where he teaches a seminar on cyber-crimes, covering computer misuse crimes, intellectual property offenses, the Fourth Amendment in cyber-space, computer evidence at trial, data breach and privacy issues, and information security, among other areas.

Mr. Southwell earned his undergraduate degree, *magna cum laude*, from Princeton University and his Juris Doctor, *magna cum laude*, from New York University School of Law. Following law school, Mr. Southwell was a Law Clerk for the Honorable Naomi Reice Buchwald of the United States District Court for the Southern District of New York.

Mr. Southwell was named a *Law360* "MVP" in Privacy in both 2016 and 2015 – one of five "elite attorneys" recognized – for his "successes in high-stakes litigation." He is one of four attorneys ranked nationwide in Band 2 for Privacy & Data Security Litigation by *Chambers USA: America's Leading Lawyers for Business*. He is also ranked in White Collar Litigation by *Chambers*, which notes his "keen eye for attention to detail, client service and navigating a complex legal and regulatory landscape." Mr. Southwell was also selected as a Cybersecurity and Data Privacy Trailblazer by *The National Law Journal*, and has been recognized as one of the top 30 Data Protection Lawyers in Euromoney Expert Guides' *Best of the Best USA*, and named as one of the 30 best and brightest data breach response lawyers in *Cybersecurity Docket's* "Incident Response 30." In addition, he is recognized by *The Legal 500 United States, Benchmark Litigation* as a

“Litigation Star,” *The Best Lawyers in America*® as a leading lawyer in the area of Criminal Defense: White Collar, and *Who’s Who Legal: Investigations* as one of the world’s leading investigations lawyers.

Mr. Southwell serves on Gibson Dunn’s Technology Committee and Firmwide Diversity Committee and is active with the Federal Bar Council and the Association of the Bar of the City of New York, having previously served on the Committee on Information Technology Law, Professional Responsibility Committee and the Government Ethics Committee. In addition, Mr. Southwell serves on the Board of Advisors of the Center on Law and Information Policy at Fordham Law School, one of the nation’s leading academic centers contributing to the development of the law and policy in the area of information technology, and serves on the Advisory Board of the Cybersecurity Law Institute at Georgetown University Law Center and the Cybersecurity Research Institute at University of California, Irvine School of Law.

Recent significant engagements in the Privacy, Cybersecurity, and Consumer Protection area include:

- Facebook: Represents Facebook in wide-ranging and intense matters related to the aftermath of the widely reported Cambridge Analytica issues, including assisting with the numerous regulatory investigations and resolutions, nationwide consumer class actions and government enforcement actions, and leading complex and novel internal investigations related to data privacy risk from developer activity on the Facebook platform.
- Keypoint Government Solutions: Represents prominent federal contractor as lead counsel in MDL litigations related to alleged large-scale data breach of federal employee data. Also advised client related to potential breach issues, including guidance as to obligations under FIMSA and related federal regulations and contracting standards.
- Executive search firm: Represented an executive search firm in response to sophisticated cyber-attack including Advanced Persistent Threat intrusion and extensive exfiltration of sensitive databases. Counseled client on investigation of intrusion, including supervising digital forensics investigation and data security improvements, handled referral of incident to law enforcement and coordinated breach notification compliance, as well as public relations and SEC disclosure strategy.
- Major hardware provider: Represented major hardware provider in response to reports of security vulnerability in hardware firmware that security researchers reported could result in a widespread attack on computer networks using hardware. Successfully obtained a commitment from the academic security researchers to modify anticipated conference presentation where researchers had been planning on releasing research and tools resulting from their reverse engineering of firmware at a computer hacker’s conference.
- Facebook and Mark Zuckerberg: Represents Facebook and Mark Zuckerberg in a high-profile breach of contract action brought by Paul Ceglia in Federal Court in Buffalo, New York alleging an ownership interest in Facebook. Obtained expedited discovery against Plaintiff, developing evidence of spoliation of evidence and fraud concerning Plaintiff’s lawsuit, including Plaintiff’s doctoring the contract sued upon and manipulation of digital evidence. Successfully moved for dismissal of the case, which the Court dismissed as a fraud on the Court. Relatedly, represents Facebook and Zuckerberg as victims in the pending criminal prosecution of Plaintiff who was indicted on two felony counts for bringing the lawsuit.

- AlixPartners: Represented AlixPartners as one of the lead trial lawyers in a high-profile theft of trade secrets and breach of contract trial against two departing executives in Delaware Chancery Court related to their wrongful taking of AlixPartners trade secrets and other highly sensitive and confidential documents.
- DraftKings: Represents DraftKings in wide-ranging and high-profile internal investigation and defense of numerous criminal and regulatory investigations, as well as civil actions related to compliance with federal and state gaming laws. In particular, defended company in enforcement action brought by New York Attorney General seeking to enjoin DraftKings from ongoing operations.
- Facebook: Represents Facebook in relation to unprecedented set of 381 search warrants from the Manhattan District Attorney's Office in negotiating compliance with search warrants and appealing the constitutionality of the warrants in the New York State Supreme Court, Appellate Division.
- Facebook: Selected as part of an international Gibson Dunn team serving as global coordinating counsel defending Facebook in high-profile European privacy proceedings, including in the Court of First Instance of Brussels, where the Belgian Privacy Commission brought proceedings, on an emergency basis, alleging Facebook and its Belgian affiliate (Facebook Belgium SPRL) are subject to, and violating, Belgian privacy rules. Advises company on the larger movement by European data protection authorities to target Facebook's practices, focusing, in particular, on alleged tracking of non-users via social plug-ins and cookies.
- Register.com: Represented Register.com in civil litigation brought by a search engine customer concerning the domain hijacking of the customer's domain in a cyber-attack and in the related internal investigation. Successfully obtained dismissal of the majority of the novel causes of action.
- Engineering design firm: Represented one of the world's largest engineering design firms in response to network intrusion, involving significant employee data breach. Counseled client on investigation of incident, including supervising digital forensics investigation and data security improvements, coordinated breach notification compliance, public relations strategy, and law enforcement interaction.
- Healthcare system: Represented one of the nation's largest secular healthcare systems in response to data breach involving lost laptop with extensive database of research participants. Counseled client on investigation of incident, including supervising digital forensics investigation and data security improvements, coordinated breach notification compliance under HIPAA and state law, public relations strategy, and law enforcement interaction.
- American General Life Insurance Company: Currently defending American General, a subsidiary of AIG, in a \$5 billion lawsuit brought in the Southern District of New York by Bancorp Services and Addle Management, claiming that American General misappropriated trade secrets and breached a confidentiality agreement in connection with American General's development and marketing of a stable value protection wrap for bank-owned life insurance products.

- PayPal and eBay: Represented both PayPal and eBay in an investigation by the New York Attorney General into updates to the companies' user agreements and the obtaining of user consent for automated telephone calls and text messages in relation to compliance with the Telephone Consumer Protection Act and related laws. Successfully resolved both investigations without enforcement action.
- US-based on-line company: Represented a prominent US-based on-line company in its interactions with the United States Department of Justice related to automated attacks on the company's web site, which resulted in the indictment and conviction of the attackers.
- Financial Institution: In a potentially ground-breaking criminal and civil investigation at the confluence of cybersecurity, privacy, and the securities laws, represents a investment bank in handling a sensitive network security compromise and loss of data related to potential insider trading, including defending the bank in active DOJ, SEC, and FCA investigations.
- Adtech and big data company: Defending leading adtech and big data company in investigation related to COPPA compliance by the New York Attorney General's Office.
- Hospitality and resort company: Counseled leading hospitality and resort company on privacy and email marketing issues related to corporate transaction and in updating worldwide privacy policies and practices.
- Leading retailer: Counseled a leading retailer on implementation of a loyalty program and other state and federal privacy law issues related to their collection and use of customer data.
- Former high-ranking executive: Represented a former high-ranking executive under criminal investigation for theft of trade secrets in violation of the Economic Espionage Act and unauthorized computer access by the Southern District of New York United States Attorney's Office.
- Accuity: Represented Accuity in a putative class action for alleged violations of the Fair Credit Reporting Act related to reporting individuals apparently matching those on the Office of Foreign Asset Control's list of foreigners against whom economic sanctions have been imposed. Successfully obtained dismissal with prejudice prior to the start of discovery.
- Facebook: Represented Facebook in an investigation into its privacy and safety policies and procedures by the New York Attorney General's Office, which resulted in a groundbreaking settlement that has been hailed as a model of compliance.
- Provider of integrated technology solutions: Represents a leading provider of integrated technology solutions for satellite communications-interfaced systems concerning anonymous postings to an online bulletin board intended to damage the company's stock price.
- On-line company: Represented a company related to a criminal referral of two former employees who illegally accessed the company's computer systems and stole trade secrets. As a result of the representation, the Southern District of New York United States Attorney's Office brought criminal charges against the two former employees.

- Directory assistance provider: Represents directory assistance and enhanced information service provider with a prominent “daily deals” business on various privacy related issues.
- Resort company: Counseled a leading resort company concerning its corporate information security and social media policies, as well as network security and data breach incident response plan.
- Internet gaming executives: Represented a number of individuals in criminal investigations and civil litigation for role in internet gambling operations.
- On-line retailer: Represented an on-line retailer in responding to a data breach and coordinating with law enforcement concerning the security incident.
- Provider of data solutions: Counseled the leading provider of data solutions to financial institutions concerning the applicability of the Fair Credit Reporting Act to a business line in connection with the sale of the provider.
- Social networking site: Represents social networking site in criminal investigation related to application marketing.
- Non-profit digital library: Assists the leading non-profit digital library, on a pro bono basis, related to compliance with federal child exploitation law and law enforcement interactions.
- Hospitality company: Counseled a leading hospitality company concerning government inquiry related to computer network and related data security breach.
- Non-profit credit union: Counseled a non-profit credit union in relation to federal forfeiture and seizure warrants.
- Electro-mechanical components manufacturer: Counseled an electro-mechanical components manufacturer related to a criminal referral of a trade secret theft of engineering drawings and schematics.
- Independent school: Represented a prominent independent school in New York, in a pro bono basis, related to cyber-safety issues for students, faculty, and administration.

In addition to these specific engagements, Mr. Southwell regularly counsels companies from start-ups to Fortune 50 companies regarding policy development and updating, including privacy policies, Incident Response Plans, Acceptable Use Policies, social media, and terms of use. Mr. Southwell has also represented numerous companies and individuals combatting anonymous attack posts and emails, as well as counseled a number of prominent individuals concerning online reputation management and identity theft. In addition, Mr. Southwell has assisted on a number of corporate transactions, assisting with privacy due diligence and deal advice, and counseled numerous non-profit organizations on issues related to policies and compliance with the Children’s Online Privacy Protection Act, network security issues, and email and text marketing and interactions.

Prior to joining Gibson Dunn, Mr. Southwell served as an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York from 2001 through 2007. As a member of that office's CHIPs unit, Mr. Southwell investigated and prosecuted computer hacking and intrusion cases, intellectual property offenses – including matters arising under the DMCA, the Economic Espionage Act and the criminal copyright and trade secret statutes – as well as other high-technology offenses. Additionally, Mr. Southwell served as one of the District's resident technical advisors and legal counselors to prosecutors and agents on electronic search and seizures and technology issues and worked on outreach, training and prevention with law enforcement and the digital community. Mr. Southwell also focused on investigating and prosecuting cases under the federal securities laws, including accounting fraud, insider trading, fraudulent offering of securities and market manipulation. In addition, Mr. Southwell prosecuted a wide range of cases including wire and mail frauds, insurance fraud, public corruption, Foreign Corrupt Practices Act violations, bank secrecy act violations, identity theft, firearms crimes, tax offenses, child exploitation, and immigration crimes. As a federal prosecutor, Mr. Southwell tried a dozen felony cases and handled over a dozen appeals before the Second Circuit Court of Appeals.

Significant government investigations and prosecutions included:

- Investigated and successfully prosecuted computer hacker for unlawful distribution of trade secrets under the Economic Espionage Act for his possession and sale of a stolen copy of the source code for Microsoft Windows products with a significant reported decision interpreting the Act and with media coverage including in New York Times and on-line media.
- Investigated and successfully prosecuted a number of individuals on criminal copyright charges for manufacture and sale of pirated computer software, including one who trafficked in over \$1 million worth of counterfeit software and who was sentenced to over three years' imprisonment.
- Investigated and prosecuted individual who ran a sophisticated Internet image distribution system dedicated to the dissemination of child pornography, including successfully trying the nation's first jury trial of a child pornography "F-Server" case and successfully petitioning for mandamus during trial with extensive media coverage including in New York Times.
- Investigated and successfully prosecuted former IT consultant who hacked into client's computer systems in retaliation for fee dispute.
- Investigated a number of cyber-extortion attacks in the financial services industry, usually involving foreign nationals.
- Successfully prosecuted a voice and drama teacher for children for attempting to entice a minor to engage in sexual activity over the Internet and traveling from to to engage in sexual acts with a minor.
- Investigated telecommunications companies and individuals related to allegations of unlawful call routing with extensive media coverage including in Wall Street Journal, Washington Post, and New York Times.

Mr. Southwell is nationally recognized for his depth of experience in data and information security, digital privacy, and related areas. He regularly publishes articles and is asked to speak on the areas of his expertise. He is also regularly sought out for comment by national and international media on these areas.

Recent articles, lectures, and presentations include:

- Speaker on Responsibility and Liability on the Internet panel at the Tenth Law & Information Society Symposium, “Reflecting on the Past, Present, and Future of Law and the Information Society, Fordham Law School Center of Law and Information Policy, May 2016.
- Participant, Cyber Leaders Roundtable on Responsibility and Regulation In the Intelligence Age, NYU School of Law Center for Cybersecurity, May 2016.
- Speaker at seminar on Cybersecurity Law, Technology and Policy, Princeton University, April 2016.
- Speaker, “2016 Challenges in Compliance and Corporate Governance,” Gibson Dunn webcast, January 2016.
- Speaker, “Protecting Trade Secrets in a World of Cybercrime,” Trade Secret Institute Symposium, November 2015.
- Participant, Cybersecurity Roundtable on Law and Security in the Cloud, NYU School of Law Center on Law and Security, May 2015.
- Co-author, “Cyber-Attacks – The Global Response,” in *Risk, Governance & Compliance for Financial Institutions*, Financier Worldwide, 2015.
- Co-author, “Cybersecurity Sanctions: A Powerful New Tool,” *Law360*, April 2015.
- Co-author, “Lawsky Speech Portends Strict NY Cybersecurity Standards,” *Law360*, February 2015.
- Co-author, “Cybersecurity and Data Privacy Outlook and Review: 2015,” client alert, February 2015.
- Co-author, “SEC Cybersecurity Findings May Establish De Facto Standards,” *Law360*, February 2015.
- Co-author, “New FTC Report Sets Out Principles Likely to Influence Regulation of the “Internet of Things,” client alert, February 2015.
- Co-author, “U.S. President Obama Announces Renewed Focus on Security Cyberspace and Protecting Consumer Privacy,” in Bloomberg BNA’s *World Data Protection Report*, January 2015.
- Speaker, “Managing Threats to Corporate Cybersecurity”, Lowell Milken Institute for Business Law and Policy: Program on In-House Counsel: Conference on Navigating Modern Challenges and Responsibilities, January 2015.

- Co-author, "2014 Trade Secrets Litigation Round-Up," in BNA's *Patent, Trademark & Copyright Journal*, January 2015.
- Presenter, "Hot Issues in Trade Secret Litigation," American Intellectual Property Law Association 2014 Trade Secret Law Summit, December 2014.
- Speaker, "Translating Cybersecurity Into Action," NRS Technology and Communication Compliance Forum, November 2014.
- Co-author, "New York and Federal Regulators Increasingly Focus Attention on Cybersecurity in the Financial Sector," client alert, October 2014.
- Panelist, Sandpiper Law Firm Cyber Risk Conference, October 2014.
- Speaker, "Cybersecurity Risks in the Financial Industry," client presentation, March 2014.
- Co-author, "NIST Debuts Cybersecurity Framework," in ALM's *Law Technology News*, February 2014.
- Speaker, "Financial Institutions in the Crosshairs: The False Claims Act and FIRREA," Gibson Dunn webinar, October 2013.
- Presenter, "Recent Legal Developments in Marketing, Pricing, and Brand Protection," client presentation, September 2013.
- Speaker, "Social Media: The Legal Landscape and Developments," client presentation, August 2013.
- Presenter, "Antitrust and Privacy/Data Security," client presentation, June 2013.
- Speaker on Cyber-Security, Audit Committee Roundtable of Orange County, April 2013.
- Presenter, "Privacy and Digital Marketing," client presentation, April 2013.
- Speaker on Federal Statutes at Brooklyn Law School Trade Secrets Institute Symposium, "Keeping Your Secrets Safe," April 2013.
- Presenter, "The Omni-Channel Experience: Challenges, Strategies, and Risks," Acquity Group and Gibson Dunn webinar, March 2013.
- Speaker, "Creating a Culture of Compliance: Best Practices for Structuring and Implementing Internal Audits and Seamlessly Responding to a Government Inquiry," ACI National Forum on Fraud and Abuse in the Sale and Marketing of Drugs, March 2013.
- Co-author, "2012 Trade Secrets Litigation Round-Up," BNA's *Patent, Trademark & Copyright Journal*, January 2013.

- Speaker, “Fashion Law – the Global Challenge,” PLI webcast, December 2012.
- Presenter, “Acqui-hires: Key Issues and Considerations,” client webinar, December 2012.
- Speaker, “Online Security,” Federal Judicial Center and Center on Law and Information Policy’s Internet Technology Basics for Judges program, May 2012.
- Moderator, “The Ethics of Big Data Collection and Use,” Center on Law and Information Policy’s Sixth Law and Information Society Symposium on “Big Data, Big Issues,” March 2012.
- Presenter, “Data Breaches, Hacks and Vulnerabilities: Leading Strategies for Responding to a Data Breach,” Gibson Dunn webcast, February 2012.
- Co-author, “2011 Trade Secrets Litigation Round-Up,” *BNA’s Patent, Trademark & Copyright Journal*, January 2012.
- Co-author, “SEC issues interpretive guidance on cybersecurity disclosures under U.S. securities laws,” *Lexology*, October 2011.
- Presenter, “Current Issues and Challenges Related to Social Media in the Entertainment Industry,” client presentation, September 2011.
- Presenter, “Key Issues in E-Commerce M&A,” Thomson Reuters webcast, September 2011.
- Speaker, “Comprehensive National Cybersecurity Initiative,” Gibson Dunn presentation, March 2011.
- Panelist, “Critical Social Media Issues for Retail Companies,” Gibson Dunn webcast, January 2011.
- Presenter, “Practitioner’s Guide to Social Media,” Corporate Executive Board General Counsel Roundtable and Compliance and Ethics Leadership Council webcast, December 2010.
- Speaker, “Annual Review of Key Legal Developments: Trademarks, Copyright, and Trade Secrets,” ‘s Fourth Annual National Institute on Criminal Enforcement of Intellectual Property Rights, November 2010.
- Panelist, “The Evolution of Cybercrime and How to Combat It,” The Coalition Against Domain Name Abuse’s Online Brand Abuse and Internet Governance Forum, October 2010.
- Presenter, “Cyber Crimes: Phishing, Pharming and Beyond,” Lorman Educational Services webcast, September 2010.
- Presenter, “Recent Developments in Privacy and Data Security,” Education Finance Council/National Council of Higher Education Loan Programs 2010 Student Loan Finance and Legal Meeting, August 2010.

- Speaker, “Legal Responses to Current Cyber Security Threats,” International Conference on Cyber Security hosted by the FBI and , August 2010.
- Speaker, “Healthcare Privacy and Information Security,” Association for Healthcare Risk Management of Annual Conference, June 2010.
- Panelist, “Incident Response,” Cyber and Intellectual Property Crime Symposium, hosted by the U.S. Attorney’s Office for the District of New Jersey and Rutgers School of Law-Newark, June 2010.
- Guest Lecturer, “Advanced Persistent Threats and the Criminal Enforcement of Cyber Security,” for Cyber Security and Applications seminar at Fordham University Graduate School of Arts and Sciences, May 2010.
- Panelist, “Hot Topics in Cybercrime: Investigating and Responding To Source Code Thefts and Anonymous Attacks,” ’s 24th Annual National Institute on White Collar Crime, February 2010.
- Speaker, “Litigation Issues Under the Economic Espionage Act,” ’s Third Annual National Institute on Criminal Enforcement of Intellectual Property Rights, October 2009.
- Panelist, “Cyberspace–The Black Hole Where Ethics, Strategy, and Technology Collide,” ’s 2009 White Collar Seminar on Defending the White Collar Case, October 2009.
- Speaker, “Privacy in Litigation,” PLI’s Tenth Annual Institute on Privacy and Data Security, June 2009.
- Author, “A Sword of a Shield? The New Administration’s Approach to Cybercrime and Cybercrime Fighting,” The Champion, May 2009.
- Speaker, “Data Security 101: An Ounce of Prevention is Worth a Pound of Cure,” LegalTech , February 2009.
- Panelist, “Legal and Technical Policy Issues in Cyber Security,” International Conference on Cyber Security hosted by the FBI and Fordham University’s Department of Computer and Information Services, January 2009.
- “Data Security Breaches: Preparing for and Addressing the Enterprise-Threatening Risks” presentation to client, September 2008.
- Author, “Data Breaches: Expect A Rise in Litigation,” Law Journal: Investigations & Computer Forensics, May 2008.
- “Update on Federal and State Data Privacy Laws” presentation to Gibson, Dunn & Crutcher LLP Intellectual Property Institute, December 2007.
- “Trends in Cyber-crime and Information Security Enforcement” presentation to John Jay College of Criminal Justice Center for Cybercrime Studies, December 2007.

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- Speaker at New York University Journal of Legislation and Public Policy Symposium, “Leviathan’s Network: Municipal Wireless and Civil Liberties,” November 2007.
 - Panelist, “Protecting Borders in the Information Age – Balancing Data, Privacy, and National Security in North America,” Fordham Law School Center on Law and Information Policy/The Americas Society/North American Consortium on Legal Education Workshop, April 2007.