

Privacy MVP: Gibson Dunn's Alexander H. Southwell

By Allison Grande

Law360, New York (December 13, 2016, 1:48 PM EST) -- Gibson Dunn & Crutcher LLP partner Alexander H. Southwell has leveraged his experience as a former cybercrimes prosecutor to become a go-to attorney for companies such as Facebook and Apple in prominent high-stakes battles over law enforcement demands for access to user data, earning him a spot among Law360's 2016 Privacy MVPs.

Southwell, who leads Gibson Dunn's privacy, cybersecurity and consumer protection practice group, landed on the MVP list for the second year in a row in large part for his work in recent months on headline-grabbing legal entanglements that challenged how far the federal government is allowed to go to force service providers to aid officials in criminal and terrorism probes.

These matters include representing Facebook Inc. in an ongoing fight with New York prosecutors who are demanding the secret release of information on nearly 400 users in a sweeping disability fraud investigation; helping guide Apple Inc. through a closely watched dispute over the FBI's request for assistance in unlocking a confessed drug dealer's iPhone, which the government dropped in April after finding a way to break into the device on its own; and mobilizing a group of 18 constitutional and criminal law professors to lodge a brief in support of Microsoft Corp.'s challenge to gag orders that prevent service providers from telling customers about warrants to search and seize their data.

"What we've been seeing recently is a real push from tech companies to not just accept the way things have been done but to question and challenge in a respectful way and take a stand on the rule of law, and it's been a privilege to be involved in so many of these matters at the forefront of the law," Southwell told Law360.

In handling these actions, Southwell draws from his experience as a federal cybercrimes prosecutor. Before joining Gibson Dunn in 2007 and helping to build up a privacy practice that features six attorneys who also used to prosecute cybercrimes, Southwell was an assistant U.S. attorney in the Southern District of New York, where he handled a wide range of investigations and prosecutions involving computer hacking and intrusions as well as other high-technology offenses. Southwell said that his six-year stint at the U.S attorney's office allowed him to gain a unique



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Gibson Dunn

understanding for and appreciation of the competing interests between law enforcement and the tech community that are at the heart of the disputes that he now helps to handle.

"My background as a former cybercrimes prosecutor helps me to understand the challenges and desires of law enforcement, but also to recognize that there's a limit to what law enforcement can and should be able to do within the law," Southwell said. "That experience has allowed me to be a more effective advocate for my clients because it helps me to have the ability to have a dialogue and credibility with the other side and to delve into the legal issues and understand them, which is something that's hard to do without that type of background."

These skills have served him well in his long-running representation of Facebook, which in July 2013 moved to invalidate 381 search warrants issued by Manhattan's district attorney on the grounds that they violated users' Fourth Amendment rights. The warrants, which sought private messages and other personal account data, were related to a disability fraud investigation that included police officers and firefighters suspected of faking mental illnesses after the 9/11 terrorist attacks.

In July 2015, a New York appeals court upheld a lower court ruling that said Facebook has no right to challenge the warrants or an accompanying gag order preventing it from alerting the users, stating the company lacks standing to challenge the warrants under the Stored Communications Act. This led the social media giant to urge the state's high court to review the case, a bid that was granted last December.

"The high court accepts very few cases, so its decision to take up this case suggests that there is at least some interest in reviewing what the appellate court has done and helping to clarify an area where there is really little established law," Southwell said.

Southwell has also found himself on the amicus end of these types of disputes, having most recently organized a group of law professors who offered a historical context for the thorny Fourth and First Amendment issues raised by Microsoft in its pending challenge to gag orders issued under the Electronic Communications Privacy Act.

"These cases lend themselves to amicus support because the issues are really novel and groundbreaking," Southwell said, adding that the brief in the Microsoft case was intended to help highlight an issue that the tech giant couldn't thoroughly delve into on its own due to the limited space it had in its briefs.

Besides helping companies take on law enforcement data access demands, Southwell has also spent the past year helping MySpace avoid a full-fledged regulatory investigation for a data breach that compromised over 350 million user records, assisted a behavioral advertising firm in avoiding backlash from the New York attorney general in a probe over alleged violations of the Children's Online Privacy Protection Act, and advising on issues facing companies engaged in the emerging alternative data industry.

"As technology becomes more important in our daily lives, from connected cars to connected fridges, this practice area is just going to continue to grow and grow," Southwell said.

--Editing by Brian Baresch.