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LITIGATION, REGULATORY & ENFORCEMENT

Aravind Swaminathan arrived at cybersecurity law through an unusual path: a stint teaching high school math, science and computer science, followed by a federal prosecution career spent chasing down hackers and pursuing intellectual property criminals.

Now, a partner at Orrick, Herrington & Sutcliffe LLP and the firm's lead partner for regulatory enforcement, he has spent more than 23 years building one of the country's preeminent cyber litigation practices.

"On my way to becoming a cybersecurity and privacy litigator, two of my most formative experiences were being a high school STEM teacher — teaching kids and teens math, science and computer science — and then serving as a federal prosecutor, where I was one of a handful of dedicated computer hacking and intellectual property prosecutors, digging through forensic investigations and chasing down cybercriminals," Swaminathan said.

After returning to private practice, he channeled those experiences into a litigation-focused cyber practice. He credits two mentors — Orrick partner John Wolfe and patent litigator Bill Lee — with instilling the philosophy that has defined his approach to defense work.

"The most important lesson I learned from both — and in very different settings — was the need to see around corners, forecast what is coming next, and have a plan to attack it," he said. "You cannot just react to a situation."

That orientation toward anticipation over reaction has proven essential in a practice where Swaminathan almost always defends rather than prosecutes. Among the representations that have tested that principle is his work for Joseph Sullivan, the former Uber chief of security. *U.S. v. Sullivan*, 23-927 (9th Circ., filed May 15, 2023).

Sullivan became the first company officer charged and convicted of a crime in connection with a cybersecurity incident response, accused of failing to report a 2016 hacking incident to the government

while taking steps to secure the stolen data of 57 million Uber users.

After the Ninth Circuit panel ruled against Sullivan, Swaminathan is now pursuing review at the U.S. Supreme Court. "The prosecution unfairly shifts undue risk of criminal exposure onto those on the front lines whose very job it is to thwart cybercriminals and hackers and protect company data," he said.

Another centerpiece of his recent work has been advising Evolve Bank & Trust through compounding crises: the collapse of fintech partner Synapse and a subsequent data breach affecting more than 18 million individuals. Swaminathan's team negotiated a classwide MDL settlement of approximately \$12 million and has won two successive motions to dismiss in a related suit brought by fintech partner Yotta Technologies. In re: Evolve Bank & Trust Customer Data Security Breach Litigation, No. 2:24-md-03127 (D. Tenn.).

A broader challenge running through much of Swaminathan's practice is the collision between aging statutes and modern technology. He points to plaintiffs' lawyers wielding the California Invasion of Privacy Act — a 1967 law designed to protect telephone calls — to allege that standard server activity on websites constitutes illegal surveillance. His response in other recent cases has been to educate courts on how the technology actually works, while, where possible, pushing to update the statutes themselves.

"A key priority is to communicate clearly about the value and legality of our clients' technology," he said.