Cooley

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Commercial Litigation
Higher Education
White Collar Defense and Investigations
False Claims Act/Qui Tam/FIRREA
Communications
Class Action Litigation
Consumer Protection

Telecommunications and Wireless
Digital Media and Entertainment
Communications Regulatory
Financial Services Enforcement and Regulatory
CooleyREG
State Attorneys General

David focuses on federal trial and appellate work and government investigations. For more than 35 years, he has represented higher education institutions, communications and media companies, technology companies, financial services companies, airlines, and other businesses in complex commercial disputes, litigation involving federal agencies, antitrust cases, deceptive advertising, fiduciary duty and fraud cases, whistleblower actions, privacy and class action litigation, consumer protection, copyright and trademark disputes, and First Amendment cases.

As a former assistant US attorney, David also represents companies and individuals in civil and criminal investigations, congressional investigations, and grand jury proceedings.

David has represented clients in investigations conducted by the Department of Justice (DOJ), the Department of Education (ED), the Federal Communications Commission (FCC), the Federal Trade Commission (FTC), the Department of Homeland Security (DHS), various Offices of Inspectors General, the Department of Defense, the Department of the Treasury, the Veterans Administration (VA), the Securities and Exchange Commission (SEC), the National Association of Securities Dealers, and the FBI. He also has represented many individuals and businesses before Congress, including in an investigation by the Senate Whitewater Committee, among others.

David practices primarily in federal district and appellate courts across the US, and he handles federal agency adjudications and enforcement actions, as well as state court litigation. In addition to taking more than 50 cases to trial, he has argued numerous cases in federal circuit courts and state supreme courts. David has extensive experience in alternative dispute resolution and has represented clients in several dozen mediations and arbitrations in the US. He also is a recipient of the US Department of Justice Special Achievement Award.

David's representative matters include:

Higher education

- Representing DeVry University in:

    - An adversarial process brought by ED alleging misrepresentation in advertising in connection with thousands of claims under the federal Borrower Defense to Repayment Rule
    - A federal court action seeking injunctive relief against ED alleging the agency is exceeding its statutory and regulatory authority and violating the constitutional and statutory rights of the institution – *DeVry University v. Department of Education* (Northern District of Illinois, 2022)
- Defending a large consortium of proprietary law schools in a False Claims Act (qui tam) lawsuit alleging violations of multiple ED regulations and American Bar Association (ABA) accreditation standards – *United States ex rel. Lorona v. InfiLaw Corp.*, No. 3:15-cv-959-J-34PDB, 2019 WL 3778389, at *1 (Western District of Florida, 2019) (dismissed on merits)
- Defending proprietary law schools and a parent corporation in a False Claims Act (qui tam) lawsuit alleging violations of ED regulations and ABA accreditation standards – *United States ex rel. Bernier v. InfiLaw Corp.*, 311 F. Supp. 3d 1288 (Middle District of Florida, 2018) (dismissed on merits)
- Defending a proprietary law school and affiliates in a contested settlement of class action allegations; a federal district court approved the settlement, and the US Court of Appeals for the Fourth Circuit affirmed – *Herrera v. Charlotte School of Law* (Fourth Circuit, 2019)
- Representing the estate of a bankrupt proprietary higher education institution in federal court litigation and agency adjudications, including a suit against an accreditor for its false statements in connection with accreditation determination and a successful challenge to a government claim for reimbursement of more than $30 million in Title IV funds
- Representing a university in a dispute concerning the scope of statutory penalties imposed by ED under Title IV of the Higher Education Act for alleged failure to make certain disclosures

Media and communications litigation and appeals

- Representing the Competitive Carriers Association as amicus curiae, filing a brief in the US Court of Appeals for the Second Circuit challenging state regulation of interstate communications services – *New York State Telecommunications Association, Inc. et al. v. James* (Second Circuit, 2022)
- Representing Gray Broadcasting as amicus curiae, filing a brief in the US Supreme Court supporting the FCC's modernized television station ownership rules; the Supreme Court upheld the FCC's rules – *FCC v. Prometheus Radio Project et al.* and *National Association of Broadcasters et al. v. Prometheus Radio Project et al.* (Supreme Court Nos. 19-1231 and 19-1241, 2020)
- Representing a large TV broadcast group in a consolidated antitrust multidistrict litigation (MDL) class action alleging price fixing for local spot advertising and other anti-competitive conduct – *In re Local TV Advertisement Antitrust Litigation* (Northern District of Illinois, 2019)
- Representing a large publishing company in a class action lawsuit brought on behalf of magazine subscribers alleging breach of contract and related claims based on discontinuation of print magazines – *Rector v. Meredith* (District of Kansas, 2019)
- Defending a large media company in a contract dispute concerning technology and equipment – *AccuWeather v. Gray* (Southern District of New York, 2016)
- Defending a broadcaster in a First Amendment case alleging defamation concerning a report on exploding rifle targets – *Tannerite Sports LLC v. NBCUniversal* (Southern District of New York, 2016) (dismissed)
- Defending an investigative reporting media company in a First Amendment case based on an investigative series regarding offshore tax havens – *Brennerman v. Center for Public Integrity* (District of Delaware, 2015) (granting summary judgment); appeal dismissed (Third Circuit, 2016)
- Defending a cable operator against statutory claims of unlawful discrimination by a cable network; the claims were dismissed after trial and affirmed on appeal – *Herring Broadcasting, Inc. v. FCC*, No. 11-73134 (Ninth Circuit, 2013)
- Defending a telecommunications service provider in a purported class action challenging roaming fees; the class action was dismissed after certifying questions of law to (and holding oral argument in) the Florida Supreme Court – *Pendergast v. Sprint Solutions, Inc.*, 691 F.3d 1224 (Eleventh Circuit, 2012)
- Defending a telecommunications service provider in a purported class action challenging roaming fees; the class action was dismissed and affirmed on appeal – *Johnson v. Sprint Solutions, Inc.*, 08-CV-00054

(Western District of North Carolina), affirmed, No. 08-1948 (Fourth Circuit, 2009)
- Representing a cable operator in the Ninth Circuit and as a petitioner in the Supreme Court seeking to successfully uphold an FCC decision that cable modem service is an unregulated information service rather than a regulated telecommunications service; secured a significant Supreme Court precedent holding that the FCC interpretation of ambiguous statute was entitled to *Chevron* deference even over contrary circuit court decisions and earlier agency interpretations – *National Cable & Telecommunications Association v. Brand X Internet Services*, 545 US 967 (2005) (reversing Ninth Circuit at 345 F.3d 1120)

Privacy and data protection

- Representing a large technology company in an FTC investigation under the Restore Online Shoppers' Confidence Act (ROSCA) concerning subscription and cancellation activity (2023)
- Defending media and other companies in federal court actions alleging violations of the Video Privacy Protection Act (VPPA) and similar state statutes
- Representing a technology company offering a platform for gaming apps to provide rewards to consumers in an FTC investigation alleging misrepresentation of requirements to receive gaming rewards and related issues (2022)
- Representing a large technology company in an FTC investigation alleging deceptive advertising and false statements (2019)
- Defending a mobile cloud messaging services company in a purported class action on privacy claims under the Telephone Consumer Protection Act (TCPA) concerning the alleged use of customer information (2018)
- Representing a common carrier in purported class actions brought under a telecommunications statute (TCPA) prohibiting unsolicited advertisements to personal fax numbers and seeking more than $2 trillion in damages, resulting in securing trial court dismissals for both cases – *Redefining Progress v. Fax.com, Inc., et al*., Case No. C 02-4057 (Northern District of California, 2003); *David v. Fax.com, Inc., et al*., Case No. 2002063723 (California Superior Court, 2003)

Government and internal investigations and white-collar matters

- Representing a franchiser of educational centers in a government investigation alleging False Claims Act violations in connection with accounting for VA benefits (2021)
- Representing proprietary graduate schools in civil and criminal DOJ and ED investigations concerning alleged improper conduct under higher education regulations and federal statutes (2020)
- Representing a trade organization in connection with an investigation of computer hacking and related conduct (2019)
- Representing a large retail food chain in a DHS Immigration and Customs Enforcement investigation and audit (2018 – 2021)
- Representing a Fortune 500 company in connection with a grand jury investigation of money laundering and illegal online gambling
- Representing an independent committee of a board of directors for a Fortune 500 company in a dispute with a controlling shareholder concerning ownership of assets totaling approximately $700 million
- Representing a title boxer in connection with an investigation of alleged anti-doping violations
- Representing a foreign international air carrier in a DOJ investigation of allegations of criminal antitrust activities and price fixing
- Representing a Waco, Texas, newspaper and reporters in a grand jury investigation, civil suit, and subsequent congressional investigations alleging improper newsgathering activities in connection with reporting on a Bureau of Alcohol, Tobacco, and Firearms raid on the Branch Davidian compound
- Representing several individuals in connection with the independent counsel Whitewater investigation, including the executive assistant to Deputy White House Counsel Vince Foster

Civil rights, securities fraud, financial services and other complex litigation

- Representing individual victims of racially motivated harassment, intimidation and violence in Charlottesville, Virginia, alleging a conspiracy under civil rights laws, obtaining a $26 million jury verdict after a more than four-week trial against the white supremacists who organized and promoted the intimidation and violence in August 2017; defended verdict on appeal to the Fourth Circuit – *Sines v. Kessler* (Western District of Virginia, verdict 2021); appeal pending, (Fourth Circuit, 2024)
- Representing a technology company in a state attorney general enforcement action and in a private action alleging violations of consumer protection and related statutes (2024)
- Representing loanDepot in defending alleged discrimination under the Fair Housing Act –*Connolly v. loanDepot* (District of Maryland, 2022)
- Defending Meredith Corporation in a securities class action alleging fraud in connection with the purchase of Time Inc.; a district court dismissed, and the US Court of Appeals for the Eighth Circuit affirmed unanimously – *City of Plantation Police Officers Pension Fund v. Meredith Corporation* (Eighth Circuit, 2021)
- Representing an elderly widow in a suit for fraud, breach of fiduciary duty and malpractice against a longtime investment adviser and financial planner, as well as against investment firms
- Representing a large regional airline in a complex contract dispute and mediation with a supplier concerning a multimillion-dollar obligation to provide service and spare equipment
- Representing a Chinese medical device company and surgeon in a breach of contract suit in federal district court in Minneapolis

Intellectual property and trade secrets

- Representing companies seeking to protect proprietary and trade secret information disclosed in the course of doing business with government entities and requested under the Freedom of Information Act and similar state open records statutes
- Defending a large auto auction company in a suit alleging trademark infringement under the Lanham Act – *Off Lease Only, Inc. v. AutoTrader.com, Inc.*, Case. No. 12-80004-CIV (Southern District of Florida, 2012)
- Defending a large media company and obtaining a summary judgment for the publisher and owner of copyrights in an old radio series – "The Shadow" – in a case against an unauthorized and persistent internet publisher claiming ownership of copyrights by adverse possession – *Advance Magazine Pub. Inc. v. Leach*, 466 F. Supp. 2d 628 (District of Maryland, 2006)
- Representing a plaintiff publisher in a copyright infringement suit, successfully obtaining immediate seizure of computers and related equipment, and seeking permanent injunctive relief and damages – *Bureau of National Affairs v. Citation Publishing, et al.*, Case No. CV 04-2396-PHX-DGC (District of Arizona, 2006)
- Representing a successful appellant in the Fourth Circuit in a case of first impression regarding the statute of limitations for co-ownership claims under copyright law – *Davis v. Meridian Films, Inc.*, 2001 WL 758765, 14 Fed. Appx. 178 (Fourth Circuit, 2001)

Education

Duke University School of Law JD, with honors, 1985

Brandeis University BA, with honors, 1982

Admissions & Credentials

District of Columbia

Maryland

Court Admissions

US Supreme Court

US Court of Appeals for the Second Circuit

US Court of Appeals for the Third Circuit

US Court of Appeals for the Fourth Circuit

US Court of Appeals for the Fifth Circuit

US Court of Appeals for the Sixth Circuit

US Court of Appeals for the Ninth Circuit

US Court of Appeals for the Tenth Circuit

US Court of Appeals for the Eleventh Circuit

US Court of Appeals for the District of Columbia Circuit

US Court of Appeals for the Federal Circuit

US District Court for the District of Columbia

US District Court for the District of Maryland

US Court of Federal Claims

US Tax Court

Rankings & Accolades

Chambers USA: Litigation: General Commercial – District of Columbia (2026)

The Legal 500 US: General Commercial Disputes (2025)