

## Public gateway to private career path

Two former AUSAs switch sides, starting a new firm with focus on criminal defense

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For many assistant U.S. attorneys, it all comes down to one question.

"Am I a career prosecutor or not?" said Ty Kelly. "I have hit the eight-or nine-year mark. ... Really, I just literally had to look in the mirror one day and say, 'Is this what I'm going to do for 10 more years?'"

Kelly and Jonathan Biran have left the **U.S. Attorney's Office** in Baltimore to start their own firm in a move that other federal prosecutors say is unusual, but not unheard of.

"Assistant U.S. attorneys have had varied careers after they've left office and the thing is they've all done things they are really interested in and they have been able to accomplish what they wanted to do," said Court of Appeals Judge Lynne A. Battaglia, who was U.S. attorney for the District of Maryland before being appointed to the bench. "I think of the U.S. Attorney's Office as a gateway to a wonderful career."

Kelly and Biran spent their last day in the U.S. Attorney's Office on Friday and will open the doors to their new trial and appellate boutique law firm March 4.

### Precedent

They are far from the first to blaze that trail.

James M. Kramon and Andrew Jay Graham started **Kramon & Graham P.A.** in 1975, which has now grown to a well-known, 33-attorney Baltimore firm.

"We both figured if it didn't work out, we would get a job at a big firm and get back on the escalator," Graham said. "If it failed, you were not given the death penalty. You just had to go somewhere else to get a job. It seemed like a low-risk proposition."

While Kelly and Biran said it is rare for assistant U.S. attorneys to leave to start their own firm nowadays, Graham said it was even rarer 40 years ago.

Back then, "it was somewhat novel for two young kids basically to set up a firm and think they could succeed," Graham said.

He said when he and Kramon went out on their own, they were about 30 years old and, like Kelly and Biran, neither was interested in working at a big firm.

"I think it was just the desire for the freedom to do things the way you want to," Graham said.

Steven H. Levin and now-U.S. Magistrate Judge Stephanie A. Gallagher also started their own firm in 2008 straight out of the U.S. Attorney's Office. Gallagher was appointed to the bench in 2011 and Levin has since partnered with Charles N. Curlett Jr. to form **Levin & Curlett LLC**.

When he left, Levin said, many of his colleagues had been with the office for 10 years or more.

"If you stay in one job too long, you tend to lose perspective," Levin said. "I think it's true with a lot of government employees. ... You tend to view the world as all black and white. The fact is, there is a lot of gray."

### The build-up

Biran and Kelly each started in the U.S. Attorney's Office about the end of 2005 and were two of U.S. Attorney Rod J. Rosenstein's first hires. Kelly had been clerking in the **U.S. District Court** and Biran had been working at the U.S. Attorney's Office in



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Jonathan Biran and Ty Kelly, who left the U.S. Attorney's Office on Friday, walk past the location of their new two-lawyer firm, which will open March 4.

Connecticut for about six years before.

Kelly and Biran prosecuted Alan Fabian, a millionaire who went to jail for mail fraud and tax evasion in connection with stealing up to \$40 million through his own companies and a nonprofit, in what is considered one of the largest white-collar crime cases in Maryland.

"We worked so well together," Kelly said.

When Kelly wrapped up two big cases last year — the investigation into a towing extortion scheme by Baltimore police officers, and the prosecution of Rodney Hailey, who was sentenced Friday for selling \$9 million of fake biofuel credits — she started to think seriously about a change.

"This is really outside the box for me," Kelly said. "I had a rigid example of what I wanted my career to look like. This is never what I thought I would be my next move after the U.S. Attorney's Office."

However, both Kelly and Biran also have children and wanted more flexible schedules, one of the reasons, they said, that they eliminated the idea of moving to a large firm.

Also, "we wanted the autonomy of working for ourselves," Biran said. "Trying to build something from scratch is partly what was exciting to me, for better or worse — making decisions and being accountable to ourselves."

### Culture of change

Over the years, the culture of careers at and after the U.S. Attorney's Office has changed, several lawyers said.

In the 1970s, lawyers typically worked in the office for three to five years, gaining trial experience before going into private practice.

"It created a system or training ground for those who were qualified and fortunate enough to get the position," said Baltimore City State's Attorney Gregg L. Bernstein. "It allowed you to learn how to be a trial lawyer. Trial work is in a lot of ways like surgery. It's not something you learn about in a book."

Andrew Radding, now an attorney at **Adelberg,**

**Rudow, Dorf & Hendler LLC**, was an assistant attorney from 1972 to 1977 before leaving to join a firm with four other attorneys.

"At the end of the five years, you've got to make a decision," Radding said. "Are you going to move on or stay and become a career person? Virtually all [AUSAs] back then did move on into private practice."

Starting in the late 1980s and early 1990s, more attorneys began staying in the office longer, partially because there were also fewer job opportunities at the time, said Bernstein, who was an assistant U.S. attorney from 1987 to 1991.

Martin S. Himeles Jr. headed to his current firm, **Zuckerman Spaeder LLP** in Baltimore, after spending 1986 to 1990 in the U.S. Attorney's Office. He left because he was interested in working as a defense attorney, which he had never done before. Few lawyers left to start their own firms, he said. However, the market today makes it easier to do so, he added.

"There are fewer smaller firms that practice capably in the white-collar area now than there were 20 years ago," Himeles said. "I think there's a real opportunity to develop a practice that begins with matters that come from other lawyers who may have been past adversaries, or left the U.S. Attorney's Office and gone to bigger firms and also will refer matters."

Bernstein was part of the older school of thought and said he left the office for **Miles & Stockbridge P.C.** partly for new challenges and partly to make more money.

"For me, I wanted to take it to next level, so to speak, and develop the entrepreneurial side of the practice of law," Bernstein said. "I liked the thrill of the chase in terms of getting new business and new clients."

### Starting out

Biran and Kelly plan for the firm to focus on federal criminal defense work. Biran especially wants to concentrate on appellate work, which he has been doing the past couple years in the U.S. Attorney's



Office, but both plan to take on cases of all kinds.

Graham said he and Kramon also planned to focus on federal criminal cases, but accepted almost any client that came through their door, picking up divorce, personal injury, transactional work and more.

"We became generalists quickly because we had to pay the rent," Graham said. "We set about learning it in sort of a crash-course style."

The two started making a profit only a few months after opening, Graham said.

"The main challenge was keeping the lights on," Graham said. "That didn't end up being a big problem. We were able to pay all our expenses right off the bat, then began taking some money out."

Biran and Kelly are renting office space from **Silverman/Thompson/Slutkin/White** LLC, a connection they made through name partner Andrew C. White, another former AUSA. For now, Biran and Kelly have no plans to hire additional staff.

"The one thing we are really excited about with this sublease situation is we have [Silverman/Thompson] at our fingertips to get advice from and be collegial with, but also have our own space so that we are able to maintain our own independence and still be a small litigation firm," Kelly said.

They had not decided on their billing rates as of last week, but stressed flexibility.

"We are not married to a particular rate," Kelly said. "We are going to be able to take cases that we want to take that perhaps we believe in. Our billing rates will be consistent in the market but we will have flexibility to take cases at a lower rate for the right reasons."

### The business of business

The biggest challenge the two said they face is the business side of running a firm.

Since they were government employees until very recently, they couldn't legally recruit clients of their own until they left.

"Both of us are very experienced litigators, though I recognize working on the other side will present challenges," Biran said. "The law part of this doesn't really keep me up at night. It's running a business we don't have experience with — seeking advice and making sure we don't make any fatal errors. That is going to be the hardest thing, making wise business



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**Jonathan Biran and Ty Kelly pose in the lobby of their new office building, where they are renting space from an established firm.**

decisions."

The two have been marketing themselves. Over the last few months, they have been meeting with attorneys in and around Baltimore, especially the defense bar, and networking in the hope of getting business through referrals. "I'm most nervous about figuring out the business side and figuring out how to make sure people want to retain us and hire us, and how we will make sure we are making good sound

business decisions so that the firm financially succeeds," Kelly said.

Levin and Graham said their firms were able to attract clients through a similar plan — cultivating and maintaining relationships with other attorneys.

"We were very fortunate in that we had no book of business, but we had a book of friends and professional colleagues, and fortunately friends and colleagues thought of us when it came time to refer cases," Levin said.

### Eye-opening

Biran and Kelly have little experience in private practice. Biran spent a year at Skadden, Arps, Slate, Meagher & Flom LLP in Washington, D.C., and Kelly has only worked for the government.

Many former assistant U.S. attorneys said the office prepared them well for private practice, however, with trial experience and face-time with most judges.

Kelly said she thought she and Biran will have insight into how charging decisions are made and what types of facts the prosecution would present.

"We both have a very solid sense of what makes the Department of Justice and people in it tick," Biran said. "We have lived that. I think it helps our clients when they need someone to really make legal arguments having been on the other side of presentations. I think I have an idea of what is compelling to people I work with now down the hall and will soon be across the table from."

Being on the other side, however, can be eye-opening, Levin warned.

"I naively thought all AUSAs in every district would be as reasonable as I was when I was an AUSA," he said. "I assumed they all wanted to do the right thing and did the right thing and to my disappointment that has not always been the case."

Working to represent clients, not just the government, will also be a change, Biran said.

"It's a challenge as well because a new thing for me is to have to explain the law to that type of client," Biran said. "I'm excited about it. I think if you are a litigator, it's great to work for the government, but I don't think I will fully develop as a litigator until I actually represent citizens as well."

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