

**UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY**

**QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES**

**PUBLIC**

1. **Name**: State full name (include any former names used).

William Miller McSwain

2. **Position**: State the position for which you have been nominated.

United States Attorney for the Eastern District of Pennsylvania

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Drinker Biddle & Reath LLP  
One Logan Square, Suite 2000  
Philadelphia, PA 19103

I currently reside in West Chester, PA.

4. **Birthplace**: State date and place of birth.

1969; Philadelphia, PA

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Harvard Law School, September 1997 – June 2000, J.D., June 2000

Yale University, September 1987 – May 1991, B.A. in Economics, May 1991

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Drinker Biddle & Reath LLP  
One Logan Square, Suite 2000  
Philadelphia, PA 19101

Partner, 2009 – present  
Associate, 2006 – 2008

United States Attorney's Office for the Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106  
Assistant United States Attorney, Criminal Division, 2003 – 2006

Dechert LLP  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
Associate, 2001 – 2003

United States Court of Appeals for the Third Circuit  
United States Courthouse  
601 Market Street  
Philadelphia, PA 19016  
Judicial Law Clerk for the Honorable Marjorie O. Rendell, 2000 – 2001

United States Marine Corps  
1st Marine Division  
Camp Pendleton, CA  
Lieutenant, 1993 – 1997

Alex. Brown & Sons Incorporated (now Deutsche Bank)  
One South Street, Commerce Place  
Baltimore, MD 21202  
Investment Banking Financial Analyst, 1991 – 1993

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

Lieutenant, United States Marine Corps, 1993 – 1997  
Military Occupational Specialty (MOS): Infantry and Ground Intelligence  
Served as Scout/Sniper Platoon Commander for 1st Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA, 1995 – 1997

Honorable Discharge, 1997

I have registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other

special recognition for outstanding service or achievement.

Academic honors:

George S. Leisure Award for Excellence in Advocacy, given to the Best Oralist in Ames Moot Court Competition, Harvard Law School, 2000

Winner, Ames Moot Court Competition, Harvard Law School, 1999

Editor of *Harvard Law Review*, 1998 – 2000

Graduated with honors from Yale University, *cum laude*, 1991

Valedictorian of West Chester Henderson High School, 1987

Military honors:

Navy and Marine Corps Achievement Medal for service with the Scout/Sniper Platoon of the 13th Marine Expeditionary Unit, Special Operations Capable (13th MEU-SOC) in the country of Jordan, 1996

National Defense Service Medal, 1996

Armed Forces Expeditionary Medal, 1996

Navy Sea Service Deployment Ribbon, 1996

General William E. Potts Award as class honor graduate of the Military Intelligence Officer School, Fort Huachuca, AZ, 1995

Graduated with honors from The Basic School (TBS), United States Marine Corps, Quantico, VA, 1994

Graduated with honors from Officer Candidate School (OCS), United States Marine Corps, Quantico, VA, 1994

Professional honors:

Pennsylvania Super Lawyers Award, 2013 – 2017

Homeless Advocacy Project, Adopt-A-Shelter Award, 2016 (this was in recognition of my work with the Broad Street Ministry legal clinic, which I founded in 2013)

Core Class of Leadership Philadelphia, 2010

Harvard Law School Heyman Fellowship for federal government service, 2003 – 2006

Samuel E. Klein Pro Bono Award, 2003 (this was given for my pro bono work on the case of *Intel Corp. v. Hamidi*, 30 Cal. 4th 1342 (2003))

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Federal Bar Association, Eastern District of Pennsylvania chapter

President, 2014 – present

Vice President and President-Elect, 2013 – 2014

Member, 2012 – present

Pennsylvania Bar Association, 2002 – 2003, 2007 – 2014

Philadelphia Bar Association, 2002 – 2003, 2007 – 2014

Chester County, Pennsylvania Bar Association, 2007 – 2014

American Bar Association, 2002 – 2003, 2007 – present

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania, 2000 – present

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Pennsylvania State Courts, 2000 – present

United States District Court for the Eastern District of Pennsylvania, 2001 – present

United States District Court for the Middle District of Pennsylvania, 2012 – present

United States Court of Appeals for the Third Circuit, 2001 – present

United States Supreme Court, 2015 – present

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Harvard Law School Alumni Association of Greater Philadelphia, 2000 – present  
President, 2013 – 2016  
Vice President, 2016 – present  
Treasurer, 2007 – 2013

Yale Club of Philadelphia, 2000 – present

Yale Alumni Schools Committee, 2006 – present (interviewer of prospective Yale students)

Yale Club of New York City, 2014 – present

Board Member, Philadelphia Lawyers Chapter of the Federalist Society, 2011 – present

Broad Street Ministry, Hospitality & Corporate Council, 2015 – present

West Chester, PA Golf and Country Club, 2003 – present

Editorial Board Member, *The Legal Intelligencer*, 2014 – 2016

University of Pennsylvania Law School American Inn of Court, 2013 – 2016

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of these organizations discriminates or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

**12. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify all books, articles, reports, letters to the editor, editorial pieces and other published material, including a thorough review of my personal files, and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find, or remember. I have located the following:

Letter to the Editor, Daily Local News, "He Has the Right, But Is Wrong," August 31, 2016. Copy supplied.

Article, Law360, "Beware CFPB Scrutiny of Promotional Credit Card Offers," September 26, 2014. Copy supplied.

Article/Client Alert, "CFPB, DOJ Announce Largest Auto Loan Discrimination Settlement in History," December 23, 2013. Copy supplied.

Editorial, Wall Street Journal, "Misconceptions About the Interrogation Memos," April 28, 2009. Copy supplied.

Article, Directors & Boards Magazine, "Invitation to Mischief by Minority Shareholders," March 2009. Copy supplied.

Editorial, Daily Local News, "Fate of Chester County's Plaque," June 30, 2005. Copy supplied.

Article, Washington Legal Foundation, Legal Background, "Auctions for Lead Counsel in Securities Fraud Suits Ruled Improper," January 11, 2002. Copy supplied.

Article, Developments in the Law, The Law of Cyberspace – The Long Arm of Cyber-Reach, 112 Harvard Law Review 1610 (1999). Copy supplied.

Case Note, The Supreme Court, 1999 Term – Leading Cases: Criminal Law and Procedure, 113 Harvard Law Review 233 (1999). Copy supplied.

Article, Marine Corps Gazette, "Scout/Snipers on the Hunt in the Desert," June 1997. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association,

committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

In 2004, while working at the U.S. Attorney's Office, I was "detailed" to the Department of Defense to be the lead staff investigator and Executive Editor of the "Church Report," a worldwide examination of military interrogation techniques in the Global War on Terror that was commissioned by Secretary of Defense Donald Rumsfeld and chaired by Vice Admiral Albert Church. I have included a copy of the unclassified executive summary of the Church Report.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including a thorough review of my personal files and searches of publicly available electronic databases. I frequently speak without notes or speak from a handwritten outline, which I usually do not retain. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

Moderator of panel discussion, "Executive Power in the Age of Trump," co-sponsored by the Federal Bar Association and the Federalist Society, February 9, 2017, Philadelphia, PA. Copy not available, but copy of invitation supplied.

Opening remarks, "Supervision to Aid Reentry (STAR)," co-sponsored by the Federal Bar Association and the Hispanic Bar Association of Pennsylvania, July 26, 2016, Philadelphia, PA. Copy not available, but copy of invitation supplied.

Opening remarks, Reception for New Judges in the Eastern District of Pennsylvania, sponsored by the Federal Bar Association, March 10, 2015,

Philadelphia, PA. Copy not available, but copy of invitation supplied.

Panel discussion, “Lessons Learned – Philadelphia Traffic Court Victory,” discussion of the case of *U.S. v. Bruno, et al.*, sponsored by Federal Bar Association, Criminal Law Committee, Philadelphia Chapter, October 16, 2014, 1735 Market Street, 51st Floor, Philadelphia, PA 19103. Copy not available.

Drinker Biddle Webinar, “Whistleblowers: Recent Legislative, Regulatory and Litigation Activity,” December 5, 2012, Philadelphia, PA. Copy of slide presentation supplied.

Panel discussion, “Whistleblowers: A Survey of Rules and Recent Activity,” ACLI Compliance & Legal Sections Annual Meeting, July 18, 2012, Las Vegas, NV. Copy of subject matter summary supplied.

Panel discussion, “The Benefits and Hazards of Internal Investigations in a Highly Regulated Environment,” Association of Corporate Counsel Delaware Valley (DELVACCA) Chapter, April 7, 2011, Philadelphia, PA. Copy of slide presentation supplied.

CN8 program, It’s Your Call With Lynn Doyle, televised panel discussion regarding the Chester County, PA Ten Commandments case, *Chester County, PA v. Freethought Society, et al.*, July 7, 2003. Copy not available.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all interviews given, including a thorough review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

KYW News Radio, “Judge Orders City of Philadelphia to Repay \$877,000 in Legal Fees to Boy Scouts,” interview with Steve Tawa regarding case of *Cradle of Liberty Council, Boy Scouts of America v. City of Philadelphia*, March 21, 2012. Copy supplied.

Harvard Law Today, “Grasping Cyber-reach,” interview with Lewis Rice regarding case of *Intel Corp. v. Hamidi*, Spring 2004. Copy supplied.

New York Times, “Fighting for the Right to Communicate,” interview with Jill Andresky Fraser regarding case of *Intel Corp. v. Hamidi*, July 13, 2003. Copy supplied.



Wall Street Journal, "Court Rules Against Intel in Spam Suit," interview with Don Clark regarding case of *Intel Corp. v. Hamidi*, July 1, 2003. Copy supplied.

CNN's "Live From the Headlines With Anderson Cooper," televised interview with Mr. Cooper regarding case of *Intel Corp. v. Hamidi*, July 1, 2003. Copy not available.

Red Herring, "The Lone Ranger and the Chipmaker," interview with Allyce Bess regarding case of *Intel Corp. v. Hamidi*, September 2002. Copy supplied.

60 Minutes II, "Shadow Warriors," televised interview with Dan Rather regarding my participation in a military operation involving Navy SEALs and U.S. Marine Corps snipers in pursuit of the Lebanese terrorist, Imad Mugnyiah, May 1, 2002. Copy of program summary supplied.

**13. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Republican Committeeman, Borough of West Chester, PA, elected, 2003 – 2008

Board member, United States Senator Patrick J. Toomey's Military Academy Selection Board, 2012 – present, appointed by Senator Toomey

Board member, United States Representative Ryan A. Costello's Military Academy Selection Board, 2015 – present, appointed by Congressman Costello

Board member, Southeastern Pennsylvania Transportation Authority (SEPTA), 2015 – present, appointed by the Commissioners of Chester County, PA

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Member of Pennsylvania Commonwealth Club, 2013 – present

Assistant Solicitor, Republican Committee of Chester County (RCCC), 2010 – present, appointed by Joel L. Frank, Solicitor of the RCCC

Member of the Finance Committee for the RCCC, 2012 – present, appointed by

Valentino F. DiGiorgio III, Chairman of the RCCC

Member of Chairman's Club, RCCC, 2012 – present

Member of Executive Committee for Ryan A. Costello's election campaign for Congress (PA-6th District), 2014

Member of Executive Committee for Congressman Ryan A. Costello's re-election campaign, 2016

Member of Executive Committee for Richard B. Yoder's re-election campaign for Mayor of West Chester, PA, 2005

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I clerked for Judge Marjorie O. Rendell on the United States Court of Appeals for the Third Circuit in Philadelphia, 2000 – 2001.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Drinker Biddle & Reath LLP  
One Logan Square, Suite 2000  
Philadelphia, PA 19101  
Partner, 2009 – present  
Associate, 2006 – 2008

United States Attorney's Office for the Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106  
Assistant United States Attorney, Criminal Division, 2003 – 2006

Dechert LLP  
4000 Bell Atlantic Tower  
1717 Arch Street

Philadelphia, PA 19103  
Associate, 2001 – 2003

- iv. Whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I have had a “white collar” practice at Drinker Biddle ever since I left the U.S. Attorney’s Office in 2006. My law practice is focused on internal investigations, the defense of government investigations, and criminal trial work. I also do some civil work, but there is usually a “white collar” (*e.g.*, civil fraud, securities fraud or RICO) component to it.

At the U.S. Attorney’s Office from 2003-2006, I prosecuted a variety of federal criminal cases, including violent crime, drug offenses, corporate fraud, bank fraud, tax fraud, federal procurement fraud, embezzlement, money laundering, and computer network intrusion.

At Dechert from 2001-2003, prior to joining the U.S. Attorney’s Office, I worked on a variety of commercial litigation matters and also was introduced to defending white collar cases.

Throughout my career, I have had an active pro bono docket, usually focused on protecting the constitutional rights of underrepresented parties.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Typically in private practice, I represent corporations and individuals who face government allegations of wrongdoing, usually brought by various U.S. Attorneys’ Offices around the country or by the U.S. Securities and Exchange Commission (SEC). I also occasionally represent corporate clients in civil litigation. During my time in the U.S. Attorney’s Office, my sole client was the United States.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I do some client counseling, but the vast majority of my practice is and has been in litigation (over 90%). Included in this percentage is the work I do on internal investigations. I appear in federal court frequently and in state court occasionally. In the course of defending government investigations, I will occasionally appear in administrative proceedings. I also occasionally represent corporate clients in arbitrations.

i. Indicate the percentage of your practice in:

- |                             |     |
|-----------------------------|-----|
| 1. federal courts:          | 80% |
| 2. state courts of record:  | 10% |
| 3. other courts:            | 5%  |
| 4. administrative agencies: | 5%  |

ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 20% |
| 2. criminal proceedings: | 80% |

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Lead or co-lead counsel as an Assistant U.S. Attorney: 4 federal criminal trials to verdict

Lead or co-lead as criminal defense counsel: 3 federal criminal trials to verdict

Lead or co-lead as counsel in civil cases: 4 civil trials to verdict

i. What percentage of these trials were:

- |              |               |
|--------------|---------------|
| 1. jury:     | 8 of 11 = 73% |
| 2. non-jury: | 3 of 11 = 27% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I am admitted to the Supreme Court of the United States, but I have not had a case before it.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the

case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) *Federal Regulatory Energy Commission (FERC) v. Powhatan Energy Fund LLC*,  
3:15-cv-00452-MHL (E.D. Va.)  
Honorable M. Hannah Lauck  
U.S. District Court for the Eastern District of Virginia  
2011 – 2017

I am lead counsel for Powhatan Energy Fund, which is facing market manipulation allegations brought by FERC, a federal agency with relatively new authority under the Federal Power Act to police energy trading markets. FERC has pursued a wave of market manipulation investigations in the past few years; this case, which involves energy trading done in the summer of 2010, is one of the first to reach the federal courts.

Co-Counsel:  
Jonathan Lucier  
Williams Mullen  
200 South 10th Street, Suite 1600  
Richmond, VA 23219  
804-420-6606

Principal Opposing Counsel:  
Samuel Backfield  
Federal Energy Regulatory Commission  
Office of Enforcement, Division of Investigations  
888 First Street, N.E.  
Washington, D.C. 20426  
202-502-8100

(2) *U.S. v. Brett Lillemoe*, No. 3:15-cr-00025-JCH-1 (D. Ct.)  
Honorable Janet C. Hall  
U.S. District Court for the District of Connecticut  
2014 – 2017

I was lead trial counsel for Brett Lillemoe in a case alleging conspiracy, wire fraud, bank fraud and money laundering, stemming from Mr. Lillemoe's participation in a U.S. Department of Agriculture loan guarantee program. After a five-week trial in the fall of 2016 in New Haven, CT, the jury acquitted Mr. Lillemoe of 16 counts and found him

guilty on six counts. Mr. Lillemoe was sentenced to 15 months imprisonment, but the Court granted his motion for a stay of the sentence pending appeal.

Co-Counsel:

James Glasser  
Wiggin and Dana LLP  
One Century Tower  
265 Church Street, P.O. Box 1832  
New Haven, CT 06508  
203-498-4313

Principal Opposing Counsel:

Assistant U.S. Attorney John Durham  
U.S. Attorney's Office for the District of Connecticut  
157 Church Street, 25th Floor  
New Haven, CT 06510  
203-821-3735

(3) *U.S. v. Mark Bruno*, No. 2:13-cr-00039-LS-6 (E.D. Pa.)  
Honorable Lawrence F. Stengel  
U.S. District Court for the Eastern District of Pennsylvania  
2013 – 2014

I was co-lead counsel for Judge Mark Bruno with my colleague, Vince DiFabio. Judge Bruno was charged with conspiracy, wire fraud and mail fraud as part of the Philadelphia Traffic Court judicial corruption case brought by the U.S. Attorney's Office. After a two-month trial in the summer of 2014, the jury acquitted Judge Bruno of all charges.

Co-Counsel:

Vince DiFabio  
Platt, DiGiorgio & DiFabio  
1800 East Lancaster Avenue  
Paoli, PA 19301  
610-647-7500

Opposing Counsel:

Assistant U.S. Attorneys Denise Wolf and Tony Wzorek  
U.S. Attorney's Office for the Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106  
215-861-8200

(4) *U.S. v. Dorothy June Brown*, No. 2:12-cr-00367-RBS-1 (E.D. Pa.)  
Honorable R. Barclay Surrick  
U.S. District Court for the Eastern District of Pennsylvania  
2010 – 2014

I was co-lead counsel for Dr. Brown with my law partner, Greg Miller. Dr. Brown, a nationally renowned charter school educator in Philadelphia, was charged in a 67-count indictment alleging conspiracy, wire fraud, obstruction of justice and witness tampering, and the government was seeking millions in forfeiture. After a two-month trial in late 2013, the jury acquitted Dr. Brown on several counts and deadlocked on the others. The government eventually withdrew the deadlocked charges.

Co-Counsel:

Gregory Miller (retired from Drinker Biddle)  
Judicial Arbitration and Mediation Services, Inc. (JAMS)  
1717 Arch Street, Suite 3810  
Philadelphia, PA 19103  
215-246-9494

Opposing Counsel:

Assistant U.S. Attorneys Frank Costello and Joan Burnes  
U.S. Attorney's Office for the Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106  
215-861-8200

(5) *Cradle of Liberty Council, Boy Scouts of America v. City of Philadelphia*, No. 2:08-cv-02429-RB (E.D. Pa.)

Honorable Ronald L. Buckwalter  
U.S. District Court for the Eastern District of Pennsylvania  
2008 – 2010

I was co-lead counsel for Cradle of Liberty Council, Boy Scouts of America (Cradle of Liberty) with my law partner, Jason Gosselin. Facing eviction from its historic headquarters building in Philadelphia based on its membership policy for Scout leaders, Cradle of Liberty sued the City of Philadelphia, alleging a violation of its First Amendment rights. After a nationally publicized, three-week trial in the summer of 2010, the jury found in Cradle of Liberty's favor.

Co-Counsel:

Jason Gosselin  
Drinker Biddle & Reath LLP  
One Logan Square, Suite 2000  
Philadelphia, PA 19103  
215-988-3371

Opposing Counsel:

David Smith  
Schnader Harrison Segal & Lewis LLP  
1600 Market Street, Suite 1600

Philadelphia, PA 19103  
215-751-2190

(6) *U.S. v. George S. Smith, Jr.*, No. 2:07-cr-00069-LDD-1 (E.D. Pa.)  
Honorable Legrome D. Davis  
U.S. District Court for the Eastern District of Pennsylvania  
2005 – 2006

I was sole counsel for the United States during the investigative phase of this case; I then turned the case over to my colleague, Assistant U.S. Attorney Seth Weber, when I left the U.S. Attorney's Office in September 2006. Soon after I left the Office, Mr. Smith pled guilty to mail fraud, stemming from the use of unsafe and substandard construction materials by his company, Statewide Hi-Way Safety, Inc., on federally funded highway projects in Philadelphia, Montgomery and Chester Counties. Mr. Smith was sentenced to 27 months imprisonment.

Co-Counsel:  
Assistant U.S. Attorney Seth Weber (retired)  
DeSales University  
2755 Station Avenue  
Center Valley, PA 18034  
610-282-1100

Opposing Counsel:  
John P. Lacey  
Connell Foley, LLP  
One Newark Center  
1085 Raymond Boulevard, 19th Floor  
Newark, NJ 07102  
973-436-5800

(7) *U.S. v. Alvin Jerome Walton*, No. 2:04-cr-00508-JD-3 (E.D. Pa.)  
Honorable Jan E. DuBois  
U.S. District Court for the Eastern District of Pennsylvania  
2004 – 2006

I was sole counsel for the United States in this case in which Mr. Walton went to trial in April 2006 against charges of conspiracy to distribute cocaine and distribution of cocaine. Mr. Walton was a major drug dealer living in Texas who was distributing cocaine along the Eastern seaboard. The jury found him guilty of all counts, and he was sentenced to 180 months imprisonment.

Opposing Counsel:  
Paul J. Hetznecker  
1420 Walnut Street, Suite 911  
Philadelphia, PA 19102



215-893-9640

(8) *U.S. v. Gary McGahee*, No. 2:03-cr-00788-RB-1 (E.D. Pa.)  
Honorable Ronald L. Buckwalter  
U.S. District Court for the Eastern District of Pennsylvania  
2004 – 2005

I was co-lead counsel for the United States with my colleague, Assistant U.S. Attorney David Troyer. Mr. McGahee went to trial in July 2005 against charges of conspiracy to commit Hobbs Act robbery, attempt to possess with intent to distribute heroin, possession of a firearm in furtherance of a drug felony and possession of a firearm in furtherance of a violent crime, all stemming from a violent, gun point robbery in Philadelphia. The jury found Mr. McGahee guilty of conspiracy to commit Hobbs Act robbery and attempt to possess with intent to distribute heroin; he was sentenced to 65 months imprisonment.

Co-Counsel:  
Assistant U.S. Attorney David Troyer  
U.S. Attorney's Office for the Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106  
215-861-8200

Opposing Counsel:  
George Newman  
100 South Broad Street, Land Title Building, Suite 2126  
Philadelphia, PA 19110  
215-592-9400

(9) *Chester County, PA v. Freethought Society, et al.*, 334 F.3d 247 (3d Cir. 2003)  
Honorable Edward R. Becker, Maryanne Trump Barry and Myron Bright  
U.S. Court of Appeals for the Third Circuit  
2002 – 2003

This nationally publicized case involved the fate of an historic plaque of the Ten Commandments on the façade of the Chester County Courthouse. After Chester County lost a trial in the District Court, I became lead counsel for the County on the appeal. A unanimous Third Circuit panel ruled that the plaque was not an unconstitutional endorsement of religion, overturning the District Court decision.

Co-Counsel:  
Thomas C. Abrahamsen  
Office of the Chester County Solicitor  
313 W. Market Street, Suite 6702  
West Chester, PA 19380  
610-344-6195

Opposing Counsel:  
Stefan Presser, ACLU (deceased)

Peter Goldberger  
50 Rittenhouse Place  
Ardmore, PA 19003  
610-649-8200

(10) *Intel Corp. v. Hamidi*, 30 Cal.4th 1342 (2003)  
California Supreme Court Justices George, Brown, Kennard, Moreno, Mosk, Perren and Werdegar  
California Supreme Court  
2002 – 2003

I was lead counsel for petitioner Ken Hamidi in the California Supreme Court in this nationally publicized cyber-law case in which Mr. Hamidi, a former Intel employee, sought to overturn a lower court decision that had extended the “trespass to chattels” doctrine to emails that Mr. Hamidi had sent to Intel employees on their work computers, ruling that Mr. Hamidi’s emails had trespassed on Intel’s computers. The California Supreme Court reversed, finding in Mr. Hamidi’s favor, and thereby established the legal rules for electronic trespass on the Internet.

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16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In 2004, as noted above, I served as the lead staff investigator and Executive Editor of the “Church Report,” and worldwide examination of military interrogation techniques in the

Global War on Terror. This assignment was unique in my career in that it drew heavily upon both my legal and military backgrounds.

The most visible aspect of my practice involves litigation and public trials, but I also spend a significant amount of time performing internal investigations for my clients and then, where appropriate, using the information gleaned from such investigations to try to convince the government not to bring charges at all (or to bring minor charges). It is nice to win at trial, but success in my practice is also defined by convincing the government not to bring charges in the first place.

Due to confidentiality concerns, I cannot share all the details of these types of representations. There are a few examples, however, that stand out in my mind as particularly significant.

For example, in 2009-2010, as part of defending against an SEC investigation, I led a massive internal investigation for a public company client in the Fortune 100 that was facing allegations of insider trading brought by company employees against the CEO and the General Counsel. After making disclosures to the SEC, my colleagues at Drinker Biddle and I convinced the SEC to close their investigation with no charges.

Second, I spent several years defending a former senior executive at the French conglomerate, Alstom, in a Foreign Corrupt Practices Act (FCPA) investigation by the Fraud Section of the U.S. Department of Justice (DOJ). On December 22, 2014, DOJ announced that Alstom had agreed to plead guilty to a two-count criminal information and pay a record \$772 million criminal fine. DOJ appeared poised to charge several other individuals in short order, including my client. Nevertheless, I managed to convince DOJ to forego any charges against my client.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any full courses, but I have been an occasional guest lecturer at local law schools. For example, for the past few years, I have been a guest lecturer at Drexel Law School for a white collar seminar taught by David Caputo. Mr. Caputo and I worked together at the U.S. Attorney's Office, and he went on to become a partner at Kline & Specter and then founded his own firm, Youman & Caputo. I usually speak about white collar developments and defense strategies. I have supplied a handout that I have used in class, entitled "A Few Characteristics of Effective Criminal Defense Trial Lawyers."

On January 6, 2017, I was a guest lecturer at a trial skills workshop at the University of Pennsylvania Law School, together with Acting U.S. Attorney for the Eastern District of Pennsylvania, Lou Lappen. We spoke about trial closings. I have supplied a handout that I used in that class, entitled "A Few Effective Techniques to Employ During

Closings.”

18. **Deferred Income/Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

19. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

No.

20. **Sources of Income**: List sources of amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See my SF-278 as provided by the Office of Government Ethics.

21. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement.

22. **Potential Conflicts of Interest**:

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice’s designated agency ethics officer to identify potential conflicts of interest. Any potential conflict of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Department’s designated agency ethics official.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In the event of a potential conflict of interest, I will consult with the ethics officials in the Executive Office for United States Attorneys, Department of Justice.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional work load, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

While in private practice, I have always had an active pro bono docket. Some of the significant cases described above – the *Hamidi* case, the Ten Commandments case, and the Boy Scouts case – were pro bono, requiring many hundreds and even thousands of hours of my time.

I have also spent significant time devoted to pro bono prisoner civil rights cases in the Eastern District of Pennsylvania, sometimes taking the lead on such cases and at other times supervising younger attorneys at Drinker Biddle. One such case, in particular, left a large impression on me early in my legal career in 2002. I represented an inmate at Lehigh County Prison, Joel Yancey, in the case of *Yancey v. Milios, et al.*, 2:01-cv-01753-LDD (E.D. Pa.). The assigned judge was the Honorable Legrome D. Davis. It appeared that Mr. Yancey had been badly beaten on his way to the prison after being arrested. I deposed the officers and prison guards involved in the matter and worked my way up to deposing the Chief of the Allentown Police Department and even the Mayor of Allentown. Eventually, the City of Allentown paid my client \$160,000 and put the lead defendant police officer on permanent desk duty to prevent future excessive violence.

Finally, I have devoted significant time and effort to founding and maintaining the pro bono legal clinic at the Broad Street Ministry (BSM) in Philadelphia. Among other services, BSM regularly serves meals to the homeless. For the past four years, I have led a group of Drinker Biddle attorneys to BSM once a quarter during a nightly meal, and we address the guests' legal needs. For example, we help them obtain birth certificates, expunge criminal records where possible, and obtain disability benefits. Our work at the clinic is done in partnership with the Homeless Advocacy Project (HAP).

AFFIDAVIT

I, William M. McSwain, do swear  
that the information provided in this statement is, to the best  
of my knowledge, true and accurate.

12/22/17

(DATE)

William M. McSwain

(NAME)

Melissa D. Bronzini

(NOTARY)

**COMMONWEALTH OF PENNSYLVANIA**

**NOTARIAL SEAL**

**MELISSA D. BRONZINI, Notary Public**

**City of Philadelphia, Phila. County**

**My Commission Expires September 6, 2020**