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NOMINATIONS OF SHERRY M. TRAFFORD AND STEVEN M. WELLNER

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

NOMINATIONS OF SHERRY M. TRAFFORD AND STEVEN M. WELLNER TO BE ASSOCIATE JUDGES, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

MARCH 27, 2014

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NOMINATIONS OF SHERRY M. TRAFFORD AND STEVEN M. WELLNER

THURSDAY, MARCH 27, 2014

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:43 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Mark Begich, presiding.

Present: Senator Begich.

OPENING STATEMENT OF SENATOR BEGICH

Senator BEGICH. Thank you all very much for being here this afternoon. Let me first call this hearing to order, and again, I appreciate everyone being here.

Congresswoman, always good to see you. I will have a few comments and then I will turn to you for introduction, but let me say it is always a pleasure to have you here. You have become a regular, or we are having lots of meetings. I am not sure which it is. Hopefully, they are meetings with results, and so I want to thank you for being here.

Today, the Homeland Security and Governmental Affairs Committee meets to consider the nominations of Sherry Moore Trafford and Steven Wellner to be Associate Judges of the District of Columbia Superior Court, and again, welcome to both of you for being here.

I am also pleased, as I mentioned, to introduce and have here once again Congresswoman Norton. As always, we appreciate your representation for this District, but also to be here this afternoon.

I also would like to extend a warm welcome, because I know you cannot do these jobs without your family and friends, but your family, especially, because of the commitment you take on with these new positions that require at times unusual hours and stress in the family. So, again, to your families, thank you for being here.

This Committee consistently receives excellent candidates nominated by the President and recommended by the nonpartisan District of Columbia Judicial Nominations Commission. This process is critical to ensuring that we have candidates who are experienced and have the appropriate temperament for this position.

As we know, judges have critically important duties in our society. Judges must uphold and interpret the law, resolve disputes equitably, and protect the rights and liberties of our citizens. If con-

firmed, I trust you both will fulfill these responsibilities with respect, character, and deference befitting the court.

As many of you already know, Ms. Trafford currently serves as a Staff Attorney in the Mental Health Division of the Public Defender Service. For many years, she has devoted her time and effort to ensuring that some of our society's most vulnerable have adequate representation during important proceedings. For the past 10 years, Ms. Trafford has represented individuals in mental health proceedings, largely dealing with civil commitments. She first joined the Public Defenders Service in 1999, helping individuals facing juvenile delinquency charges receive the social service benefits they needed.

Ms. Trafford, I have reviewed your biographical questionnaire and look forward to discussing your qualifications to serve as an Associate Judge for the Superior Court for the District of Columbia.

Judge Wellner currently serves as Principal Administrative Law Judge for the Unemployment Insurance Jurisdiction of the District of Columbia, a position he has held since 2011. Judge Wellner was elevated to the bench in 2006 and has served with distinction since then. During his service, he has adjudicated more than 2,700 contested cases in a wide variety of areas, from unemployment eligibility to petitions and tax appeals. The bulk of his career has been in private practice at the distinguished firm of Kirkland and Ellis, where he became a partner in 1993. His practice focused on environmental counseling, handling diverse issues from permitting to hazardous materials management and corporate transactions. For 9 years, he directed his firm's pro bono program, ensuring access to justice for those who otherwise could not afford it.

Judge Wellner, I have also reviewed your biographical questionnaire and again am looking forward to discussing your nomination to become an Associate Judge for the Superior Court of the District of Columbia.

Mr. WELLNER. Thank you.

Senator BEGICH. You are welcome.

I look forward, again, to the testimony from both of you, and before I do that, let me turn to Congresswoman Norton. Again, as always, thank you for joining our Committee here, and once again, we have done it. We are close to on time. There are always votes—I do not know what it is. It is, like, 95 percent of the time when we have this hearing, somehow, we are having votes. But, we are honored to have you here. Please, if you have a few remarks, and then I will turn to the two nominees.

STATEMENT OF THE HONORABLE ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Ms. NORTON. Thank you very much, Senator Begich. Actually, I will give but a thumbnail sketch since you have laid out, I think quite well, the qualifications of these two quite able and experienced candidates to be Associate Judges of our D.C. Superior Court. May I thank you always and especially for the attention you have given to the District of Columbia. I know how busy you are, and here is some business that comes at you from the District of

Columbia, not alone these judgeships, but the other very important business that is before you.

Sherry Trafford, as you indicate, has served as a Staff Attorney for the Mental Health Division, and before that for the Civil Legal Services Division. This has given you a wide breadth of experience in dealing with many cases of the kind that she will get if she is confirmed. She served as Staff Attorney before that at the Bazelon Center for Mental Health. She is a graduate of Indiana University in Economics with honors and has her law degree from Yale Law School. She clerked for the Honorable William B. Bryant of the United States District Court for whom our Courthouse Annex is named.

Steven Wellner has been twice appointed an Administrative Law Judge (ALJ) and now is the Principal Administrative Law Judge with a team of 10 Administrative Law Judges serving under him. He was a partner in a distinguished law firm with a practice that was centered on counseling corporations and trade associations and other clients in corporate transactions. Before that, he worked for the U.S. Environmental Protection Agency (EPA) as an attorney advisor. Mr. Wellner is a graduate with high distinction from the University of Virginia and received his law degree from the University of Michigan.

Mr. Chairman, it is with great pleasure that I submit these two candidates to you with every confidence that they would serve very well and with the highest distinction on our Superior Court for the District of Columbia.

Senator BEGICH. Thank you very much, Congresswoman, and I know you would not be here otherwise. I appreciate you being here and introducing these two nominees to us. Thank you very much.

We have Committee rules that require that the witnesses at nominations hearings give their testimony under oath, so if I can have both nominees stand, if you do not mind, Ms. Trafford and Mr. Wellner, and would you both please raise your right hand.

Do you swear or affirm the testimony you are about to give to this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. TRAFFORD. I do.

Mr. WELLNER. I do.

Senator BEGICH. Great. Please have a seat. Thank you very much.

I also have three required questions which I would like to ask you both, and I will ask the question and then I will start with Ms. Trafford and then ask for each answer from both of you.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. TRAFFORD. No, sir.

Mr. WELLNER. No, sir.

Senator BEGICH. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have both been nominated?

Ms. TRAFFORD. No.

Mr. WELLNER. No.

Senator BEGICH. Do you know of any reason, personal or otherwise, that would in any way prevent you from serving the full term for the office to which you have been nominated?

Ms. TRAFFORD. No.

Mr. WELLNER. No.

Senator BEGICH. Very good. Again, thank you very much. Let us go ahead and start with your testimony, and Ms. Trafford, we will start with you and then we will go to Mr. Wellner. Please.

TESTIMONY OF SHERRY M. TRAFFORD,[1] NOMINATED TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. TRAFFORD. Thank you, Mr. Chairman and Members of the Committee. It is my honor to appear before you today as a nominee to be an Associate Judge of the Superior Court for the District of Columbia.

I would like to thank the District of Columbia Judicial Nominations Commission and especially its Chair, Judge Emmet Sullivan, who is here today, for forwarding my name for consideration by the White House, and President Barack Obama for nominating me to serve on the Superior Court, and thank you, Representative Eleanor Holmes Norton, for introducing me this afternoon and for your service to the citizens of the District of Columbia.

My daughter, Ann Elise Trafford, is a graduate of the District of Columbia Public Schools and she is now a student at the University of Wisconsin. She was not able to be here today for this hearing, but I am certain that she will get a full report later this evening. My mother, Ann Moore, and my brother, John Moore, traveled from Indiana to be here today. My brother followed in my father's footsteps as a public school teacher, and his spring break happened to coincide with this hearing, so I could not be more proud to have him and my mother here today. My father passed away 2½ years ago, but would have also been proud to be here, I know. My sister, Laura Sabatelli, is also a teacher, but more importantly, she manages a household of four children, three of whom are teenagers, and you can understand that she could not be here today. Members of my D.C. community who have made up my extended family here in this community are here today and I want to thank them, my former minister, John Wimberly, my role model and friend, Suzanne Wells, and my law school classmate and friend, Eric Angel, who continues to inspire me in his current work as the Director of the Legal Aid Society for the District of Columbia.

I come from a family of public school teachers and was inspired to go into public service over many dinner-time conversations about how to best inspire young people to reach their best potential. I also had the good fortune to cross paths and work for several people whom I consider to be giants in the law. When I was an undergrad at Indiana University, I was a teaching assistant for Thomas Ehrlich, who was the first Director of the Legal Services Corporation. After law school, I had the extraordinary opportunity to work as a law clerk for Judge William Bryant, who, as Delegate

[1] The prepared statement of Ms. Trafford appears in the Appendix on page 13.

Holmes Norton mentioned, his name now yields itself to our District of Columbia Federal Court Annex a few blocks away from here.

Inspired by those mentors and many other colleagues, I have spent my legal career in public service here in the District of Columbia. For the past 15 years, I have been an attorney for the Public Defenders Service for the District of Columbia, 10 of them working in the Mental Health Division. My work has provided me with a great appreciation for the vital role of Superior Court in the life of this city and the importance of having a judiciary that understands not only the law, but also how the law can impact the day-to-day lives of the citizens who appear before it.

It would be my honor to serve the people of this city as an Associate Judge of the Superior Court, and I would strive to honor the legacy of the people who have taught me so much, my colleagues, supervisors, judges, opposing counsel, as well as countless individual clients over the years.

I am happy to answer any questions that the Committee has.

Senator BEGICH. Thank you very much. Mr. Wellner.

TESTIMONY OF STEVEN M. WELLNER,[1] NOMINATED TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Mr. WELLNER. Thank you, Mr. Chairman, Members of the Committee. Thank you for the opportunity to appear before you today as a nominee for Associate Judge of the Superior Court of the District of Columbia.

I would also like to thank the District of Columbia Judicial Nomination Commission and its Chair, Judge Sullivan, who is in the back, for recommending me to the White House, and President Barack Obama for nominating me. I sincerely appreciate, also, Congresswoman Norton's kind introduction, and I am grateful to the Committee Members and staff for their attention and courtesy throughout the confirmation process.

I would like to introduce family members who are here with me today. My wife, Amy Saltzman, is behind me. My mother, Carole Wellner, my daughter, Rebecca Wellner, who is home from spring break, and my sister, Lisa Wack and her husband, Robert Wack. I also want to recognize friends and colleagues who are in attendance. My son, Jacob, was unable to make it back from the University of Michigan, but I know he would have enjoyed being here with us, too. I would not be here without the support and encouragement of everyone I have just mentioned.

I have lived and worked in the District of Columbia for nearly 30 years. I have spent most of my career as a lawyer in private practice, but for the last 8 years, I have served as an Administrative Law Judge with the D.C. Office of Administrative Hearings. I enjoy the day-to-day work of being a judge. In my current position, I rule on motions, conduct evidentiary hearings, and issue written decisions, simple and complex, on a broad range of subject areas, most of which were entirely new to me when I first became an ALJ in 2006. I deal with litigants of varying degrees of sophistication,

[1] The prepared statement of Mr. Wellner appears in the Appendix on page 14.

including many who are self-represented. As Principal Administrative Law Judge for Unemployment Appeals, I have successfully coordinated operations for a team that handles more than 2,000 contested cases a year and is subject to stringent Federal standards for timeliness and quality.

For me, the job of a judge is a perfect mix of public interaction, intellectual challenge, variety, and logistics. My work as an Administrative Law Judge complements a very different experience I had earlier in my career as a law firm associate and partner. I left private practice for my current position in 2006 because I wanted to be more directly involved in public service and, in particular, efforts to improve access to justice in the District of Columbia.

My work at the Office of Administrative Hearings has convinced me that being a judge is a good fit for my interests and my skills. It would be a privilege and an honor to continue my public service as an Associate Judge of the Superior Court.

Thank you for considering my nomination. I look forward to answering any questions.

Senator BEGICH. Thank you both very much. First off, you get extra credit because you did not consume your 5 minutes each. [Laughter.]

No disrespect to lawyers, usually, they consume it all, so that means you will have efficient courts, I can feel it.

Mr. WELLNER. That is a good sign.

Senator BEGICH. That is a good sign.

I have a couple of questions, if I can, Mr. Wellner. I know you mentioned your accomplishments as an Administrative Law Judge. The one thing you listed was how you were able to decrease your case log and make it more efficient. I have a feeling—you only used 60 percent of your 5 minutes, so I can get a sense already what happened here.

But, I am curious, what were you able to do there, and do you think that is something that can be transferrable to the Superior Court Judge system? As someone here in this position who sees a lot of folks both from homeland security and government services, but from the judicial end, is there something that you can translate over?

I would be very curious, because it is always a concern we hear from people, that the backlog is increasing. I know in my home State, some of the courts have increased so much, the judges that dealt with civil issues are now taking on criminal issues because the criminal caseloads are just overloading and more are picking trial than settlement, so——

Mr. WELLNER. All right. Sure. I think the strategies that we used in our context could translate to any other context, judicial or outside a judicial context. I think the Superior Court is currently, in fact, developing and implementing strategies to do just that. I think it is a matter of identifying and articulating goals, getting appropriate buy-in from everybody who is involved in executing whatever the plan is and participating in developing the plan. I think you have to have a way to measure steps toward the goal, as we did. It is important to work with clean data, to have some good way of calculating what the steps are toward the goal.

I think while we were doing that, and I think this also would translate, you have to look for new and innovative ways to do things more efficiently, in shorter time. And so we did that, and I think that is directly translatable to what could be done in Superior Court, and as I said, I think they are doing that.

Senator BEGICH. What do you think in the Superior Court—looking from the outside into it, is probably one of the bigger challenges that the Superior Court has right now? And I am not here to profess I know what those are. I am just curious from your perspective what they might be.

Mr. WELLNER. Well, I think scheduling always is, and I think that is, again, one of the issues that the Superior Court has dealt with directly over the past few years. How can you do a better job of predicting how long particular cases are going to take? When do you tell litigants to come in? When do you tell jurors to come in? And I think that is very tricky, but I think that can be done with better collection of information, and ultimately, you can predict better what those timings are. I think that is the biggest challenge, though.

Senator BEGICH. Let me ask you this. I say it is my last question, but I think it is, and I will ask probably both of you this same question. So, you have, let us say, you have a litigant confronting you. They are not using an attorney, and why I say this, I have been one of those that go in front of the courts. I had to do a lot of forcible entry and detainers (FEDs) in Alaska for buildings that I owned and operated. I give no disrespect to the attorneys, but I did not want to pay the fee, and so I represented myself, very successfully, I will say, but—— [Laughter.]

Some may come in front of you. When I would go in front of the judge and the folks that I was having to deal with, they should have representation. I am not there to tell them they should, but I watched sometimes how a judge handled that situation. I will ask both of you this same question, because I think it is an important question, because you will have people like that, they are in front of you, and you know as a judge they need some representation, but you cannot say it, how would you handle that?

Mr. WELLNER. Well, I mean, if they really need representation, you could suggest that.

Senator BEGICH. Right.

Mr. WELLNER. If you have——

Senator BEGICH. You cannot dictate it to them.

Mr. WELLNER. Right——

Senator BEGICH. That is what I should have said.

Mr. WELLNER. If they have decided they want to proceed without representation, or it does not seem like there is representation available, which certainly happens, then I think there are well-worn strategies that can be used to deal with that. I think it is the judge's responsibility to make sure that everything is explained clearly, that plain language is used not just by the judge, but by everybody, that the procedures are explained ahead of time very clearly, very carefully. The judge also has the ability during the—if it is a hearing where there is a taking of evidence—to ask certain kinds of neutral questions.

Senator BEGICH. Yes.

Mr. WELLNER. The judge has the ability to change the order in which evidence comes in to make it fit what is actually happening in real life. I think it is the judge's responsibility to then explain what happens if a decision is made right then and there. It is the judge's responsibility to explain that clearly and carefully, and then explain whatever the next steps are. So, I think it is a matter of using plain English, explaining things completely and carefully, things that benefit not just the litigant, but if there are members of the public in the room, they can follow better. It is all of these things, I think, that benefit not just the immediate parties, but everybody in the process.

Senator BEGICH. Very good. Ms. Trafford.

Ms. TRAFFORD. Thank you. I will add to the excellent suggestions that Judge Wellner just made by saying that my career has been devoted to working with individuals, and lots of times individuals who may not have the level of education or sophistication that attorneys bring into a courthouse. And so I do feel that one of the resources that I can bring to the court is an understanding of how to listen and the importance of listening to what people are trying to say. The challenge a judge faces in these circumstances is finding the balance between listening to what a person has to say and making sure that the proceedings are moving along, that the matter that the court is to resolve, or that is brought to the court, is actually what the focus of the proceedings is rather than issues that cannot really be resolved in the court.

I think that the other piece of insight that I would offer is that people's experience with the court often depends on how they are treated, whether they feel that they have been treated with respect, that they have had a fair opportunity to present their issues or their arguments, and to have explained to them what is going on so that they understand the proceedings. Oftentimes, the satisfaction with the judicial process and the interaction with the court depends less, in fact, on the outcome than on people's feelings about how they were treated during that process.

And I think that it is incumbent on a judge to make sure that individuals are all treated with fairness, that they feel that they have had an opportunity to make their case, to have their day in court, also to know that the judicial officers and the members of the court have heard what they are trying to say and have effectively tried to explain the decision that is made during the course of the proceedings.

Senator BEGICH. Very good. I have a couple questions. One, you started, and it leads me to my next question, but before I do that, I want to say that I was listening as you were describing, as your testimony submitted, also, on your background with your family of teachers.

Ms. TRAFFORD. Yes.

Senator BEGICH. My parents were teachers. My two sisters are teachers. My sister-in-law is a teacher. My two brothers worked in the school system. So, the public school system is an incredible opportunity for all of us——

Ms. TRAFFORD. It is good work.

Senator BEGICH [continuing]. And it gives you—and maybe public educators instill in all of us at some point in our life that public

service is part of the equation of what makes this country what it is, so I was just noting that, of your education background.

You started saying, and I want to just elaborate a little bit more—what is your unique experience, do you think, that really qualifies you for this position? You mentioned one I thought was interesting is your listening skills. I will say that in schools today, they spend a lot of time on communication skills, but they lack education on listening skills. It is actually very interesting. When you do communication, the majority of what people should be doing is listening, not speaking, but we teach speaking and less listening. It is the most amazing thing. I have always been astounded by it.

But you mentioned that, and I thought that was interesting. But what other of those unique skills that you think you bring into this role that you believe would be very beneficial for you, or for the court?

Ms. TRAFFORD. Sure. Thank you. In the course of my work over the last 15 years in D.C. Superior Court, working for Public Defender Service, first as a Civil Legal Services Attorney and then in the Mental Health Division, I have been fortunate to appear in almost every division of Superior Court. I have a broad experience with that courthouse as my place of work and I think that that is a valuable experience that I can bring to the bench, to this position.

I think, in addition, I have been in every part of this city in representing my clients. I have visited them in every ward of this city, in every type of situation or circumstances. I have visited individuals in shelters, in apartments, in group homes, in hospitals. I have a very broad knowledge of what it is like for people living in this city with their feet on the ground in the city and the day-to-day experiences that they have.

In addition, in my work in the Mental Health Division, I had the experience of working on a very regular basis with experts. Those experts in my context were psychiatric experts, psychologists, and psychiatrists. But I also have a good appreciation of the role of experts in court cases and in helping inform the judicial process and I am not intimidated by experts, which I think sometimes could be a concern. I can recognize the role of a judicial officer as compared to the witnesses who appear before the court and I can bring that knowledge and experience to this position.

Senator BEGICH. Very good. I just have two questions left for both of you, and these are kind of general ones I usually ask nominees and we will continue on this line. One is, what do you think will be the top legal issue you might end up dealing with as a judge, and we will go from one to one, and you may not know that answer, but I am just curious what people are thinking, whoever wants to answer first.

Mr. WELLNER. The question is the top—I did not hear the——

Senator BEGICH. The top legal issue you might find yourself embroiled in. Maybe it is nothing major. Maybe it is just normal course of business.

Ms. TRAFFORD. I think that the answer to that depends a lot on the calendar to which either of us would be appointed, and we do not know that in advance. And with respect to the question, I think that one of the jobs of a judicial officer is to treat every case as if

it could be the most important case that appears before the judge at any time, because certainly for the litigants, that often is the case.

Senator BEGICH. Good point.

Ms. TRAFFORD. I think this city is going through remarkable changes in a lot of different areas in terms of the growth of the city and the developments, and so it is hard to predict what may come in front of the court in coming years.

Mr. WELLNER. I agree completely with Ms. Trafford. I do not have much to add. I mean, I would say that from my own experience over the last 8 years, it would be hard for me to identify, even having been through it, what the top issue is, the top legal issue that I have dealt with. It does vary from day to day and week to week. Whatever issue I am working on is at that moment the one that I care most about and the one that I want to research and get to the bottom of. So, I think that is otherwise very hard to predict what is going to come up over the next few years.

Senator BEGICH. Let me ask you my final question, which kind of plays off that a little bit, and that is: as you are part of the judicial system, you will have rotations through calendars and so forth. What are you looking forward to? What are you not looking forward to? How is that? [Laughter.]

Mr. WELLNER. That is fine——

Senator BEGICH. And we will start with you, because—— [Laughter.]

Mr. WELLNER. There is nothing I am not looking forward to, and——

Senator BEGICH. I can tell you, in my job, I can give you a list. [Laughter.]

Mr. WELLNER. I think there are rotations that will be appealing for different reasons. There are rotations that will be appealing and interesting because they will be comfortable fits with what I have done in the past. There is actually some overlap in jurisdiction between Superior Court and the Office of Administrative Hearings——

Senator BEGICH. Right.

Mr. WELLNER [continuing]. Not a lot——

Senator BEGICH. Not a lot.

Mr. WELLNER [continuing]. But there is some overlap in rental housing and in tax, and I think those rotations will be appealing because there will be a comfort level and it will be interesting to see the same issues from a slightly different perspective.

There are rotations where the law will be new to me, and that is appealing for the same reason that I found my current job appealing when I left private practice, because for—I think many lawyers feel this way—it is very exciting to bounce from one area of law to another and have to learn everything, if not from scratch, from——

Senator BEGICH. It becomes a challenge.

Mr. WELLNER. It is, and I think some people love that, and I think most people who choose to apply for a trial court job would say that they love that. So, I think that would seem very appealing.

So, I think it will vary, but there is nothing that I would dread and I think I will look for the appeal in whatever rotation I land in.

Senator BEGICH. Fantastic. Ms. Trafford.

Ms. TRAFFORD. Again, I think we are in substantial agreement here. Judge Wellner pointed out that the challenge of learning new material is something that he looks forward to, and it is certainly something that drew me to be interested in wanting to pursue a nomination to Superior Court. I am excited about learning different subject matter, maybe varying over a number of years the calendar that I can be on and the types of cases that I will get to decide.

I am looking forward to, also, a changing mix of doing research and writing and being in a courtroom on—some of the calendars in Superior Court are very high-volume, many pro se litigants, as you have pointed out already. I look forward to the challenge and the variation in those experiences and challenging myself to figure out how to manage that and engage in the intellectual rigor, as well as maintaining a focus on the number one job of providing fair and accurate and just hearings for the litigants who appear in front of the court.

Senator BEGICH. Very good. Let me, if I can, I will close this hearing up, but before I do that, I know you introduced your family in your openings. Maybe you could introduce them again and have them stand up so I just can get a sense of who they are——

Ms. TRAFFORD. Sure.

Senator BEGICH [continuing]. And maybe Ms. Trafford.

Ms. TRAFFORD. Sure, and I am going to stand, because I am sitting right in front of them otherwise.

Senator BEGICH. OK. You are sitting in front of Mom.

Ms. TRAFFORD. Yes. My mother, Ann Moore, is here.

Senator BEGICH. Nice to see you. Thank you.

Ms. TRAFFORD. And this is my brother, John Moore.

Senator BEGICH. Very good.

Ms. TRAFFORD. They are here, both from Indiana.

Senator BEGICH. Very good. Welcome. Thank you.

Mr. WELLNER. I will stand for the same reason. This is my Mom, Carole Wellner.

Senator BEGICH. Good. Nice to meet you.

Mr. WELLNER. And my wife, Amy Saltzman.

Senator BEGICH. Amy, good.

Mr. WELLNER. My sister, Lisa Wack.

Senator BEGICH. Nice to see you.

Mr. WELLNER. My daughter, Rebecca Wellner.

Senator BEGICH. Nice to see you.

Mr. WELLNER. And my brother-in-law, Robert Wack.

Senator BEGICH. Fantastic. Thank you all again for being here.

First, thank you both for being here. Thank you for your willingness, again, to, one, be nominated and go through the process, and to the families, again, I do not want to overemphasize it, but I think I should, and that is the commitment of a family to support someone in public service is a great deal, so thank you very much for doing that. And always, because I was raised by my mother, and so seeing two moms here, thank you. It is great to see you here.

Again, let me close out this meeting, thank you for appearing in front of the Committee and I appreciate your candor and your willingness to answer the questions and put yourself forward in this manner.

Both of our nominees have filed responses to biographical and financial questionnaires. Without objection, this information will be made part of the hearing record,[1] with the exception of the financial data, which all are on file and available for public inspection in the Committee office.

Without objection, the record will be kept open until 5 p.m. tomorrow for the submission of any written questions or statements for the record.

Again, I want to thank you both, and at this time, the meeting is adjourned.

Mr. WELLNER. Thank you.

Ms. TRAFFORD. Thank you.

[Whereupon, at 3:17 p.m., the Committee was adjourned.]

[1] The biographical and financial questionnaires appear in the Appendix on page 15.

APPENDIX

Opening Statement of Sherry Moore Trafford
Nominee to be an Associate Judge of the District of Columbia Superior Court
March 27, 2014

Thank you, Mr. Chairman and members of the Committee. It is my honor to appear before you today as a nominee to be an Associate Judge of the Superior Court of the District of Columbia. I would like to thank the District of Columbia Judicial Nominations Committee and especially its chair, Judge Emmet Sullivan, for forwarding my name for consideration by the White House, and President Barack Obama for nominating me to serve on the Superior Court. And thank you, Representative Eleanor Homes Norton, for introducing me this afternoon and for your service to the citizens of the District of Columbia.

My daughter, Ann Elise Trafford, is a graduate of the District of Columbia Public Schools and now is a student at the University of Wisconsin. She was not able to be here for this hearing, but I am certain she will get a full report later this evening. My mother, Ann Moore, and my brother, John Moore, traveled from Indiana to be present today. My brother followed in my father's footsteps as a public school teacher, and his spring break happened to coincide with the timing of this hearing. I could not be more proud to have him and my mother present. My father passed away two-and-a-half years ago, but would have been proud to be here. My sister, Laura Sabatelli, is also a teacher, but more importantly, she manages a household of four children, three of whom are teenagers; understandably, she could not be here today. Members of my D.C. community who make up my "extended family" are here today and I want to thank them: my former minister, John Wimberly; my role model and friend, Suzanne Wells; and my law school classmate and friend, Eric Angel, who continues to inspire me in his current work as director of the Legal Aid Society for the District of Columbia.

I come from a family of public school teachers and was inspired to go into public service over many dinner-time conversations about how best to inspire young people to live up to their potential. I also had the good fortune to cross paths and work for several people whom I consider to be giants in the law. When I was an undergraduate at Indiana University, I was a teaching assistant for Thomas Ehrlich, who had previously served as the first director of the Legal Services Corporation. After law school, I had the extraordinary opportunity to work as a law clerk for Judge William Bryant, whose name now yields itself to our District of Columbia federal court annex, a few blocks away from here. Inspired by those mentors and many other colleagues, I have spent my legal career in public service here in the District of Columbia. For the past fifteen years, I have been an attorney for the Public Defender Service for the District of Columbia, ten of them working in the Mental Health Division. My work has provided me a great appreciation for the vital role of the Superior Court in the life of this city, and the importance of having a judiciary that understands not only the law, but also how the law can impact the day-to-day lives of the individuals who appear before it.

It would be my honor to serve the people of this city as an Associate Judge of the Superior Court, and I would strive to honor the legacy of people who taught me so much – my colleagues, supervisors, judges, and opposing counsel, as well as my individual clients over the years. I am happy to answer any questions that the Committee might have.

Opening Statement of Steven M. Wellner
Nominee to be an Associate Judge of the District of Columbia Superior Court
March 27, 2014

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today as a nominee for Associate Judge of the Superior Court of the District of Columbia. I would like to thank the District of Columbia Judicial Nomination Commission and its chair, Judge Emmet Sullivan, for recommending me to the White House, and President Barack Obama for nominating me. I sincerely appreciate Congresswoman Norton's kind introduction. And I am grateful to Committee members and staff for their attention and courtesy throughout the confirmation process.

I would like to introduce members of my family here today: my wife, Amy Saltzman; my daughter, Rebecca Wellner; my mother, Carole Wellner; and my sister and her husband, Lisa and Robert Wack. I am delighted they could be with me here this afternoon. My son Jacob was unable to make it back from the University of Michigan, but I know he would have enjoyed being here too. I want to recognize friends and colleagues in attendance. I would not be here without their support and encouragement.

I have lived and worked in the District of Columbia for nearly 30 years. I have spent most of my career as a lawyer in private practice, but for the last eight years I have served as an Administrative Law Judge (ALJ) with the D.C. Office of Administrative Hearings. I enjoy the day-to-day work of being a judge. In my current position, I rule on motions, conduct evidentiary hearings, and issue written decisions, simple and complex, in a broad range of subject areas, most of which were entirely new to me when I first became an ALJ in 2006. I deal with litigants of varying degrees of sophistication, including many who are self-represented. As Principal Administrative Law Judge for Unemployment Appeals, I have successfully coordinated operations for a team that handles more than two thousand contested cases a year, subject to stringent federal standards for timeliness and quality. For me, the job is a perfect mix of public interaction, intellectual challenge, variety, and logistics.

My work as an administrative law judge complements the very different experience I had earlier in my career as a law firm associate and partner. I left private practice for my current position in 2006 because I wanted to be more directly involved in public service and, in particular, efforts to improve access to justice in the District of Columbia. My work at the Office of Administrative Hearings has convinced me that being a judge is a good fit for my interests and skills. It would be a privilege and an honor to continue my public service as an Associate Judge of the Superior Court.

Thank you for considering my nomination. I look forward to answering your questions.

REDACTED

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. **Full name (include any former names used).**

   Sherry Moore Trafford

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

   I am a citizen of the United States of America by birth.

3. **Current office address and telephone number.**

   Public Defender Service for the District of Columbia
   Mental Health Division
   633 Indiana Avenue, N.W.
   Washington, D.C. 20004
   (202) 824-2844

4. **Date and place of birth.**

   June 24, 1968; Franklin, Indiana

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   I am not currently married.

6. **Names and ages of children. List occupation and employer's name if appropriate.**

   Ann Elise Trafford, age 19

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

   Yale Law School; Attended 1990 – 1993; Received J.D., 1995.

   Indiana University; Attended 1986 – 1990; Received B.A. with Honors, 1990.

   Long Island University; Attended 1989; No degree received.

Perry Meridian High School (Indianapolis, IN); Attended 1982 – 1986, Received H.S. Diploma, 1986.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

1993 – 1994
Whitman Walker Clinic, Legal Services Department
1407 S Street, N.W.
Washington, D.C. 20009
Part-time Law Clerk

1993 – 1994
Bernabei & Katz
1773 T Street, N.W.
Washington, D.C. 20009
Part-time Law Clerk

1991 & 1993
Yale Legal Services Organization
127 Wall Street
New Haven, CT 06511
Law Student Intern

Summer 1992
Miller & Chevalier
655 15th Street, N.W., Suite 900
Washington, D.C. 20005
Summer Associate

9. **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.**

Skadden Public Interest Law Fellowship (1997 – 1999)
Charles G. Albom Prize for excellence in judicial and/or appellate advocacy in connection with a clinic program (1993)
Phi Beta Kappa (1989)
Elvis J. Stahr Outstanding Senior Award (1990)
Stadelmann Scholarship in Economics (1989)
Moffat Award in Economics (1989)
HIPS Volunteer of the Year Award (2001)

10. Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

None

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

District of Columbia Bar (1998 – present)
Virginia Bar (1996 – 1999)
D.C. Superior Court, Family Court, Mental Health & Habilitation Subcommittee (2006 – present)

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

Western Presbyterian Church, Session Member (2011 – present)
Open Doors/More Light Presbyterians, Board Chair (2010 – present)
Sports on the Hill, Treasurer (2008 – 2012)
School Without Walls High School
- Local School Advisory Team (2011 – 2012)
- Home and School Association Board Member (2010 – 2011)

Capitol Hill Public Schools Parent Organization, Founding Member (2005 – 2012)
Capitol Hill Cluster School Parent Teacher Association
- Board Chair (2007 – 2008)
- Parent Involvement Coordinator (2004 – 2005)
- Local School Restructuring Team (2003 – 2004)
- Corresponding Secretary (2001 – 2003)

Helping Individual Prostitutes Survive (HIPS)
- Board Chair (1999 – 2001)
- Treasurer (1997 – 1999)
- Board Member (1996 – 1997)

To the best of my knowledge, none of the above-listed organizations currently discriminates or formerly discriminated on the basis of race, sex, or religion.

13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same

information for any administrative bodies which require special admission to practice.

Virginia, 1996
District of Columbia, 1998
United States District Court for the District of Columbia, 2011

I stopped renewing my membership in the Virginia State Bar in 1999, after becoming a member of the D.C. Bar, because I was not planning to practice in the Commonwealth of Virginia. Otherwise, there have been no lapses in membership.

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

Using Reasonable Accommodations to Preserve the Rights of Tenants with Disabilities, Journal of Poverty Law 131 (July-August 1999).

Editor, *Mental Health Proceedings*, District of Columbia Practice Manual (2008, 2009, 2010, 2011, 2012, and 2013 eds.)

Editor, *Representing Persons Subject to Civil Commitment Proceedings*, Criminal Practice Institute Manual (2009, 2010, and 2011 eds.)

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

February 25, 2013: Panel Discussion, "Mass Shootings and Mental Disability Rights in the United States," American University College of Law, Center for Human Rights and Humanitarian Law (Washington, D.C.). Webcast available at: http://media.wcl.american.edu/Mediasite/Play/61839cc63ed34b128a025d744add93c91d.

I regularly conduct trainings sessions on the topics of "Civil Commitment Law in the District of Columbia" and "Representing Clients with Mental Illness" to students from Georgetown University Law School, American University, and Law Students in Court. I have also been a presenter or a panel participant in trainings on these subjects for the Legal Aid Society of the District of Columbia, University Legal Services, Children's Law Center, Washington Legal Clinic for the Homeless, the Patient Advisory Council at Saint Elizabeths Hospital, and members of the Criminal Justice Act criminal and mental health panels in D.C. Superior Court.

16. Legal career.

A. Describe chronologically your law practice and experience after graduation from law school, including:

(1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

I served as a law clerk to the Honorable William B. Bryant of the United States District Court for the District of Columbia from January 1995 to September 1997.

(2) Whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

(3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

1997 – 1999
Bazelon Center for Mental Health Law
1101 15th Street N.W.
Washington, D.C. 20005
Skadden Fellow

1999 – present
Public Defender Service for the District of Columbia
633 Indiana Avenue, N.W.
Washington, D.C. 20004
Staff Attorney, Civil Legal Services Division (1999 – 2004)
Staff Attorney, Mental Health Division (2004 – present)

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

From January 1995 through September 1997, I was a law clerk for the Honorable William B. Bryant of the United States District Court for the District of Columbia. During this time, I researched and wrote bench memoranda for a civil case docket, drafted memoranda and orders, and assisted in management of the civil calendar.

I had a Skadden Public Interest Fellowship from 1997 to 1999 and worked as a staff attorney at the Bazelon Center for Mental Health Law. I provided technical assistance and training on the application of the Fair Housing Act and the Americans with Disabilities Act to individuals with disabilities. I represented complainants in administrative proceedings regarding fair housing cases, wrote and reviewed *amicus* briefs for state and federal court cases, and maintained a list of relevant case law summaries.

From November 1999 to January 2004, I was a staff attorney in the Civil Legal Services Division of the Public Defender Service. I was one of two attorneys who were hired to develop the practice of representing individuals in civil matters that

were ancillary to their criminal cases. My practice consisted primarily of representing respondents in juvenile delinquency cases to obtain benefits such as Social Security disability benefits, Medicaid, and TANF, and to exercise their rights as Medicaid recipients to services that might address their emotional and behavioral needs outside of detention or residential placement. I also represented individuals in landlord/tenant, neglect, custody, and citizenship proceedings. I was responsible for coordinating advice and referrals for other civil legal services matters that were not ancillary to the criminal case or that would not be handled within Public Defender Service.

Since 2004, I have been a staff attorney in the Mental Health Division of the Public Defender Service. My practice consists of representation of individuals in civil mental health detention and commitment proceedings, and representation of individuals found not guilty by reason of insanity ("NGI") in post-trial proceedings. While the majority of the civil commitment clients that I represent have no criminal case involvement, I am also appointed to represent individuals who are subject to civil commitment after being found not competent to stand trial in a criminal case, and not likely to become competent in the foreseeable future. The civil commitment portion of my practice includes representation of individuals at all stages of litigation – from probable cause/detention hearings through jury trials in D.C. Superior Court. The practice includes a mix of litigation, motions practice, and informal advocacy with District agencies and service providers. The NGI portion of my practice includes representation in conditional or unconditional release hearings in D.C. Superior Court. I also represent a small number of clients with intellectual disability in Mental Habilitation commitment cases.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

My current clients are individuals who have been diagnosed with mental illness and who are subject to detention and/or commitment proceedings, usually initiated by the D.C. Department of Mental Health. All of my clients are indigent and rely upon disability income and Medicaid, or have no income and insurance at all. I am appointed by the Court to provide representation free-of-charge. My clients are usually adult residents of the District of Columbia, although a small percentage of my clients are juveniles. When I worked in the Civil Legal Services Division, I worked primarily with youth who had been charged with delinquency. At the Bazelon Center, my work consisted primarily of providing technical assistance and support to not-for-profit legal services providers. I also had a number of individual clients, who were adults with mental disabilities seeking reasonable accommodations in housing.

In the past ten years, I have specialized in mental health law, and more broadly in disability and civil rights law. My initial work, in the Civil Division at Public Defender Service, gave me broad exposure to "poverty law" practice, i.e., landlord/tenant, abuse and neglect, probate, domestic relations, and

administrative/public benefits advocacy. My work at the Bazelon Center was focused on fair housing and disability law.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

In my position as staff attorney in the Mental Health Division at the Public Defender Service, I appear frequently in D.C. Superior Court. When I was a staff attorney in the Civil Legal Services Division, I also appeared frequently in D.C. Superior Court in a supportive role, to assist court-appointed counsel in juvenile delinquency or criminal proceedings. I did not appear in court during my fellowship at the Bazelon Center for Mental Health Law.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);
(b) State courts of record (excluding D.C. courts);
(c) D.C. courts (Superior Court and D.C. Court of Appeals only);
(d) other courts and administrative bodies.

All of my court appearances have been in D.C. Superior Court.

(3) What percentage of your litigation has been:

(a) civil;
(b) criminal.

I estimate that approximately 97% of my litigation has been civil and 3% has been criminal.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

I was associate co-counsel in two civil commitment jury trials, and lead co-counsel in one civil commitment jury trial. Additionally, I have been sole counsel in approximately 300 contested hearings before the Mental Health Commission, which are similar in many regards to bench trials.

(5) What percentage of these trials was to

(a) a jury;
(b) the court (include cases decided on motion but tabulate them separately).

All three of my trials have been jury trials. All of the Mental Health Commission hearings that I have handled are tried before a panel consisting of a magistrate judge, a psychologist, and a psychiatrist.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

(1) *In the Matter of Gary Hollins,* 2004 MHE 549 (D.C. Super. Ct.) (Judge Linda K. Davis)
This case came before the D.C. Superior Court for a jury trial in 2005 on the petition filed by Mr. Hollins' mother, asking for his inpatient commitment. This case presented novel issues in a mental health case because Mr. Hollins lived in the community during the pendency of the trial and chose to waive his appearance at trial. I was associate counsel representing Mr. Hollins and drafted a motion to quash the petitioner's subpoena that would have required his presence at trial, as well as jury instructions protecting him against any negative inferences based on his absence. The jury returned a verdict in Mr. Hollins' favor and the case was dismissed.

Opposing counsel: David O'Brien
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004
202-624-2850

(2) *In the Matter of Kevin Weber*, 2012 MHE 1507 (D.C. Super. Ct.) (Judge Carol A. Dalton)
I was sole counsel for the respondent in this case, which came before the D.C. Superior Court in 2012 on Mr. Weber's challenge to administration of involuntary medication and request for immediate discharge from inpatient hospitalization. The case presented novel issues because the Court had not previously been asked to intervene in involuntary medication in a civil detention case. I filed a motion for a temporary restraining order prohibiting Saint Elizabeths Hospital from involuntarily medicating my client, or, in the alternative, for his immediate release from detention. Opposing

counsel argued that the court did not have jurisdiction regarding the involuntary medication and that my client was not entitled to an evidentiary hearing to challenge his detention. After a temporary stay of medication, the court granted my client's request for an evidentiary hearing. Following the evidentiary hearing, the court ordered Mr. Weber's immediate release from detention.

Opposing counsel: Deon Merene, Assistant General Counsel
Department of Mental Health
64 New York Avenue, N.E.
Washington D.C. 20002
202-299-5580

Rosamund Holder, Chief
Mental Health Section
Office of the Attorney General
441 4th Street, N.W., #1150N
Washington, D.C. 20001
202-741-0865

Kimberly LeBlanc
Bonner Kiernan Trebach & Crociata, LLP
1233 20th Street, N.W., Suite 800
Washington, D.C. 20036
202-712-7000

(3) *In the Matter of Theodora Charles,* 2012 MHE 1894 (D.C. Super. Ct.) (Judge Todd Edelman)
I was sole counsel for the respondent in this case, which again involved the Court's intervention to enjoin administration of involuntary medication. Ms. Charles sought an injunction prohibiting Saint Elizabeths Hospital from involuntarily medicating her over her religious objection. The government disputed the validity of the religious objection, contested the court's jurisdiction to intervene in its decision to over-ride Ms. Charles' objection, and refused to cease medication pending the court's resolution of Ms. Charles' motion. I sought an emergency injunction in December 2012, which was granted. The Court entered a temporary restraining order prohibiting the Hospital from medicating Ms. Charles. The Department of Mental Health then discharged Ms. Charles from the Hospital and dismissed its petition for her commitment prior to any further hearings on the motion to cease administration of medication.

Opposing Counsel: Matthew Caspari, General Counsel
Department of Mental Health
64 New York Avenue, N.E.
Washington D.C. 20002
202-673-7505

Rosamund Holder, Chief
Mental Health Section
Office of the Attorney General
441 4th Street, N.W., #1150N
Washington, D.C. 20001
202-741-0865

(4) *In re Cynthia Bruce,* 2013 MHE 683 (D.C. Super. Ct.) (Judge Carol Dalton)
This case came before the D.C. Superior Court in April 2013 on the respondent's request for immediate discharge. She had been admitted voluntarily for treatment, but when she sought her discharge, the Department of Mental Health sought to detain her involuntarily. The law in the District has long upheld the right to voluntary treatment, and carves out only narrow, exceptional circumstances in which an individual can be converted to an involuntary status if the initial admission was voluntary. I represented Ms. Bruce at an evidentiary hearing on the subject of her conversion to involuntary status. The Court found that she did not fall within the narrow range of circumstances that warranted such a conversion, and ordered her immediate release from inpatient detention.

Opposing Counsel: Lauren Sharrock
Mental Health Section
Office of the Attorney General
441 4th Street, N.W., #1150N
Washington, D.C. 20001
202-741-0863

(5) *United States v. Julia Barber,* 2005 FEL 4623 (D.C. Super. Ct.) (Judge Erik Christian)
In 2007, Ms. Barber was found not guilty by reason of insanity of the charge of first-degree murder. She has resided at Saint Elizabeths Hospital since her insanity acquittal. In May 2012, I petitioned for Ms. Barber's conditional release under D.C. Code § 24-501(k), to allow her to have a series of day passes into the community. Saint Elizabeths Hospital filed a letter in support of the release, and the United States Attorney's Office filed an opposition on behalf of the government. The parties appeared for evidentiary hearings over the course of five days in the summer of 2013. I retained and presented testimony from a nationally-renowned expert psychiatrist in filicide and risk assessment, a psychologist from Saint Elizabeths Hospital, and two fact witnesses, and cross-examined the government's expert psychiatrist. This matter is pending a decision.

Opposing counsel: Colleen Kennedy
Special Proceedings Section
United States Attorney's Office
555 4th Street, N.W., Room 10-451
Washington, D.C. 20530
202-252-7563

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In the Matter of Andrew Levell, 2012 MHE 150 (D.C. Super. Ct.) (Judge Carol Dalton)
After Mr. Levell aged-out of the foster care system and returned to live in his grandmother's home, Mr. Levell's mother filed a petition for his mental health commitment. The significance of this case in mental health practice is its innovative resolution before trial. I was the sole pre-trial counsel in this case, and suggested that the parties attempt resolution through judicial mediation, and with the parties' agreement, arranged for mediation with Associate Judge Michael Ryan of the D.C. Superior Court. To my knowledge, mediation had never been attempted in a mental health case in D.C. Superior Court. This case was successfully resolved with a mediated agreement and Mr. Levell has not been subject to any additional involuntary detention or commitment proceedings.

In the Matter of DeBarrera Reyes, 2010 MHE 868 (D.C. Super. Ct., Mental Health Commission) (Magistrate Judge Joan Goldfrank).
I was sole counsel for the respondent in this case and filed a motion to dismiss the government's petition for Mr. Reyes' commitment, filed after a finding that he was incompetent to stand trial in his misdemeanor case. There was ample evidence that Mr. Reyes suffered from a cognitive impairment, which requires a separate commitment proceeding, under different legal authority. The Commission granted the motion to dismiss, and my challenge to the sufficiency of the petition has laid the groundwork for similar pre-hearing challenges.

In the Matter of Lorraine Strother, 2009 MHE 954 (D.C. Super. Ct., Mental Health Commission) (Magistrate Judge Joan Goldfrank).
I was sole counsel for the respondent in this case and filed a motion to dismiss challenging the government's attempt to involuntarily commit Ms. Strother on the grounds that she was a voluntary patient at the time that detention proceedings commenced, and therefore she was not lawfully subject to commitment proceedings. The decision dismissing the petition for commitment in this case laid the groundwork for similar analysis and dismissal of a number of later cases.

In the Matter of Eleanor Walker, 1991 MHE 373 (D.C. Super. Ct.) (Judge Linda K. Davis)
Ms. Walker was a committed outpatient, and the Department of Mental Health filed a request for an order for law enforcement to take her into custody and bring her back into an inpatient status. I filed a motion objecting to the process of detaining Ms. Walker without any prior evidentiary hearing to establish probable cause for such detention. The Court upheld my challenge and ordered that an individual who is a committed outpatient cannot be summarily detained by law enforcement without an evidentiary hearing to determine probable cause.

Training for private bar attorneys
Beginning in 2006, I was responsible for establishing a series of training programs for those attorneys in private practice who are part of the panel appointed to represent respondents in mental health cases. The training series has consisted of approximately 12 training sessions conducted by members of the Mental Health Division at the Public Defender Service as well as members of the Mental Health Commission. I was responsible for setting an agenda for each training session, arranging speakers, and preparing/gathering any written materials.

19. **Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

    A. **List all court decisions you have made which were reversed or otherwise criticized on appeal.**

    I have not held judicial office.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

    I have never been a candidate for elective, judicial, or any other public office.

21. **Political activities and affiliations.**

    - **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

      None.

    - **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

      None.

    - **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.**

      In December 2009, I contributed $50 to the Michael Bennet for Senate campaign. In July 2010, I contributed $100 to the Vincent Gray for Mayor campaign.

22. **To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law**

enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. **Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

I was a party to a divorce proceeding in the District of Columbia Superior Court in which a final order and judgment of absolute divorce was entered on December 22, 2006.

24. **Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

No.

II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

   Yes.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

   None.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

   None.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

   None.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

   I have participated, as a member of the Home and School Association for School Without Walls High School, and as a member of the Capitol Hill Public Schools Parent Organization, in petitions to and testimony before the District of Columbia Council regarding school boundaries and the budgeting process:
   - February 11, 2008 – Open letter to Chancellor Rhee regarding submission of budget for public comment
   - March 26, 2009 – Oral testimony for D.C Council Committee of the Whole, Hearing on PR 18-155: "Master Facilities Plan Approval Resolution of 2009," presented on behalf of Capitol Hill Public Schools Parent Organization
   - March 14, 2011 – Oral testimony for Mayor's Open Forum on DCPS Budget, presented on behalf of School Without Walls Local School Advisory Team
   - May 24, 2011 – Petition regarding division of Wards 6 and 7
   - November 30, 2011 – Written testimony for Mayor's Open Forum on FY 2013 DCPS Budget, submitted on behalf of School Without Walls LSAT

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

   No.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

   To the extent that any conflicts may arise, I will abide by all standards of judicial conduct and full disclosure, and will follow all rules with respect to elimination of such conflicts.

8. **If confirmed, do you expect to serve out your full term?**

   Yes.

III. FINANCIAL DATA REDACTED

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. **Are you a citizen of the United States?**

   Yes.

2. **Are you a member of the bar of the District of Columbia?**

   Yes.

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

   Yes. I was admitted to the District of Columbia bar on August 7, 1998.

4. **If the answer to Question 3 is "no" --**

   A. **Are you a professor of law in a law school in the District of Columbia?**

   B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**

   C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**

   D. **Upon what grounds is that eligibility based?**

5. **Are you a bona fide resident of the District of Columbia?**

   Yes.

6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

   Yes. Since April 2005, I have resided at 214 12th Street, S.E., Washington, D.C.

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

   No.

8. Have you been a member of either of these Commissions within the last 12 months?

No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

Four copies are supplied.

AFFIDAVIT

Sherry Moore Trafford being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 9th day of December 2013.

Notary Public

SHONELL FEED
NOTARY PUBLIC
MY COMMISSION EXPIRES
11 30 2018
DISTRICT OF COLUMBIA

REDACTED

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. **Full name (include any former names used).**

   Steven Michael Wellner

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

   I am a United States citizen.

3. **Current office address and telephone number.**

   District of Columbia Office of Administrative Hearings
   441 4th Street, NW, Suite 450N
   Washington, DC 20001

4. **Date and place of birth.**

   January 20, 1959; Madison, Wisconsin.

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

   I am married to Amy Elizabeth Saltzman, Communications Consultant, The Hatcher Group, 4340 East West Highway, Bethesda, MD 20814.

6. **Names and ages of children. List occupation and employer's name if appropriate.**

   Rebecca Anne Wellner, 21.
   Jacob Louis Wellner, 18.

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

   University of Michigan Law School; 1982 to 1985; Juris Doctor, 1985.

   University of Virginia; 1977 to 1981; Bachelor of Arts (with High Honors), 1981.

Randallstown Senior High School (Randallstown, MD); 1974 to 1977; High School Diploma, 1977.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

Summer 1984
Kirkland & Ellis
655 15th Street, NW, Suite 1200
Washington, DC 20005
Summer Associate

Summer 1983
Piper & Marbury (now DLA Piper)
100 Light Street, Baltimore, MD 21202
Summer Associate

1981 – 1982
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Paralegal

9. **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.**

John Carroll Society Pro Bono Legal Service Award, 2004
National Honor Society, 1976

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

ALS Association, DC/MD/VA Chapter
Member, Board of Directors (1999 – 2008; 2011 – present)
Vice President (2011 – present)
President (2002 – 2006)
Secretary (2000 – 2002)

Anacostia Watershed Citizens Advisory Committee
Member (2004 – 2006)
Associate Member (2003 – 2004)

Brain Injury Association of Washington, D.C.
Member, Board of Directors (2013 – present)
Secretary (2013 – present)

Tromthar Community Development Foundation
Member, Board of Directors (2008 – 2011)
Secretary (2008 – 2011)

Washington Lawyers' Committee for Civil Rights and Urban Affairs
Member, Board of Directors (2004 – 2006)
Treasurer (2005 – 2006)
Firm Representative (1986 – 1989; 1990 – 2004)

11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

District of Columbia Association of Administrative Law Judiciary (2006 – present)
District of Columbia Bar (1985 – present)
At various times, I have been a non-officer member of the following Bar Sections: Courts, Lawyers and Administration of Justice; Environment, Energy and Natural Resources; District of Columbia Affairs.
Self-Represented Litigation Network, Forms Group, Member (2009 – 2012)
Office of Administrative Hearings
Pro Bono Committee (2006 – 2011)
Chair, Pro Bono Committee (2007 – 2009)
Revenue Committee (2010 – 2011)
Salary Correction Committee (2007 – 2008)
Case Management Committee (formerly the Case Management Systems Committee) (2010 – present)
Chair, Case Management Committee/Case Management Systems Committee (2010 – 2012)
Language Access Committee (2013 – present)

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

Edmund Burke Parents Association
Jewish Community Center of Baltimore

Lafayette Home & School Association
National Honor Society
Potomac Valley Track Club
Temple Sinai, D.C.
University of Virginia Alumni Association
University of Michigan Alumni Association
USA Triathlon
YMCA of Greater Washington

None of these organizations currently discriminates or formerly discriminated on the basis of race, sex, or religion.

13. **Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

District of Columbia, 1985
United States District Court for the District of Columbia, 2002

There have been no lapses in membership.

14. **Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

None.

15. **Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.**

None.

16. **Legal career.**

A. **Describe chronologically your law practice and experience after graduation from law school, including:**

(1) **Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

I have not served as a law clerk to a judge.

(2) Whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

(3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

1985 – 1989; 1990 – 2006
Kirkland & Ellis LLP
655 Fifteenth Street, NW, Suite 1200
Washington, DC 20005
Associate (1985 – 1989; 1990 – 1993)
Partner (1993 – 2006)

1989 – 1990
United States Environmental Protection Agency
Office of General Counsel
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Attorney-Advisor

2006 – present
District of Columbia Office of Administrative Hearings
441 4th Street, NW, Suite 450N
Washington, DC 20001
Administrative Law Judge (2006 – present)
Principal Administrative Law Judge for the Unemployment Insurance jurisdiction (2011 – present)

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

I joined Kirkland & Ellis upon graduation from law school as a general litigation associate. From 1985 to 1989, my practice included work in the areas of commercial litigation, government contracts, intellectual property, and environmental law. I also had significant roles in several pro bono cases during this period.

At the United States Environmental Protection Agency, I worked in the Office of General Counsel, Air and Radiation Division. My responsibilities included drafting regulations under the Clean Air Act Amendments of 1990 and reviewing State Implementation Plans for enforceability and legal sufficiency. I also drafted portions of the agency's brief in a case involving its role in protecting the Canadian environment through regulation of acid rain in the United States.

In 1990, I returned to Kirkland & Ellis as an associate and was elected partner in 1993. My practice focused on environmental counseling, and I handled matters involving the permitting of air emission sources and wastewater discharges, hazardous materials management and disposal, site contamination and cleanup, emergency release reporting and occupational safety and health. I was also one of two senior members of the firm's Environmental Transactional Practice Group. This group managed the environmental aspects of major corporate transactions, performing "due diligence," advising clients about environmental risk allocation, negotiating and drafting environmental agreements among buyers, sellers, lenders and investors, and resolving post-closing environmental claims. In 1997, I was appointed Pro Bono Coordinator for the firm's Washington Office and held that position until I joined the Office of Administrative Hearings nearly 10 years later.

In 2006, I was appointed to serve as an Administrative Law Judge (ALJ) at the District of Columbia Office of Administrative Hearings. This office hears cases involving more than two dozen District of Columbia agencies, boards and commissions. I have adjudicated more than 2,700 contested cases, including appeals of unemployment eligibility decisions issued by the Department of Employment Services, tenant petitions and capital improvement petitions filed under the District of Columbia's rental housing law, notices of infraction and violation issued by the Department of Consumer and Regulatory Affairs and the Department of Public Works, challenges to disciplinary actions imposed by professional licensing boards, appeals of tax assessments and penalties imposed by the Office of Tax and Revenue, and, most recently, appeals of proposed long-term suspensions of students by the District of Columbia Public Schools.

In September 2011, the Chief Administrative Law Judge announced my appointment as Principal Administrative Law Judge for the Unemployment Insurance jurisdiction. As Principal ALJ, I am responsible for designing and implementing procedures to ensure the fair, quick, and efficient resolution of the more than 2,000 unemployment insurance appeals heard each year. I oversee the work of other ALJs (consistent with their statutory independence as adjudicators) and serve as liaison to both the District of Columbia Department of Employment Services and the United States Department of Labor.

C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

While in private practice, I considered my primary area of focus to be environmental law. My typical law firm clients included large national and international manufacturing concerns, corporate investors, institutional lenders and trade associations. I also represented a wide range of pro bono clients, including individuals and nonprofit corporations of limited financial means, and nonprofit groups involved in local projects to improve education and the environment.

In my current position as an ALJ, I have become especially knowledgeable in the areas of unemployment insurance law, rental housing, public school discipline, professional licensing and consumer affairs. As an administrative judge, I have no clients.

D. Describe the general nature of your litigation experience, including:

(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

I appeared in court occasionally during my time in private practice, mostly in pro bono cases or in supporting roles for more senior lawyers. As an Administrative Law Judge at the Office of Administrative Hearings, I have presided over trial-like proceedings almost every day since 2006. Of the more than 2,700 cases I have worked on at the Office of Administrative Hearings, most have involved contested evidentiary hearings.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);
(b) State courts of record (excluding D.C. courts);
(c) D.C. courts (Superior Court and D.C. Court of Appeals only);
(d) other courts and administrative bodies.

I estimate that, while in private practice, 50% of my court appearances were before D.C. courts, 20% were in federal courts, and 30% were before administrative bodies.

(3) What percentage of your litigation has been:

(a) civil;
(b) criminal.

I estimate that 97% of my litigation experience while in private practice was civil and 3% was criminal.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

While in private practice, I did not try any cases to verdict or judgment.

(5) What percentage of these trials was to

(a) a jury;
(b) the court (include cases decided on motion but tabulate them separately).

Not applicable.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and 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 court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

As a lawyer in private practice, the focus of my work was environmental counseling, especially in the context of large corporate transactions. I was involved in litigation from time to time, representing clients of limited means in a wide range of pro bono cases and assisting other lawyers of the firm with matters for longstanding clients. The five cases below are examples of the litigation I handled in private practice.

1. *DeLong v. Thompson*, 985 F.2d 553 (4th Cir. 1993).
Our client in this case had been convicted of capital murder in Virginia, had exhausted his direct appeals and had been unsuccessful in pursuing habeas corpus relief in the Virginia courts. Along with a team that included two other lawyers in my law firm and a lawyer with another law firm, I represented our client in his federal habeas corpus proceeding. The client's primary claim was that his trial counsel had been ineffective in their representation because they had failed to develop or present mitigating evidence at the penalty phase of the trial. The case was significant because it dealt with the issue of when a lawyer's decision to develop and present no mitigating evidence could fairly be characterized as a reasonable trial strategy. I served as primary contact with the client, drafted significant portions of the petition, interviewed experts and witnesses and examined the petitioner's sister. I also drafted portions of the unsuccessful appeal of the denial of the habeas corpus petition.

<u>Co-counsel</u>
Arthur F. Sampson III (then of Kirkland & Ellis)
7373 Hidden Knolls Court
Springfield, VA 22153
(703) 569-3054

Jana L. Gill (then of Kirkland & Ellis)
8 Inwood Heights Drive North

San Antonio, TX 78246
(970) 507-0601

Randal S. Milch (then of Donovan Leisure)
Verizon Communications, 38th Floor
1095 Avenue of the Americas
New York, NY 10013
(212) 395-2121

Opposing counsel
Donald R. Curry (formerly of the Virginia Office of Attorney General)
Judicial Inquiry and Review Commission
P.O. Box 367
Richmond, VA 23218
(804) 786-6636

2. *Williams & Humbert, Ltd. v. W. & H. Trade Marks (Jersey), Ltd.*, 840 F.2d 72 (D.C. Cir. 1988).
Our clients were family members who claimed ownership of the Dry Sack sherry trademark, despite the expropriation of their interest in a company that owned worldwide licenses to the trademark. The case was significant because it involved the potential *res judicata* effect of an English court's judgment expropriating trademarks without compensation to the former trademark owners, an issue about which there was a limited amount of existing case law. I was responsible for much of the initial fact gathering, drafting the motion for intervention and briefs on appeal from the U.S. District Court decision denying intervention.

Co-counsel
Jeffrey S. Davidson
Kirkland & Ellis LLP
333 South Hope Street
Los Angeles, CA 90071
(213) 680-8422

David G. Norrell
Kirkland & Ellis LLP
655 15th Street, NW
Washington, DC 20005
(202) 879-5000

James M. Amend (then of Kirkland & Ellis LLP)
Chief Circuit Mediator
717 Madison Place, NW
Washington, DC 20439
(202) 275-8120

Opposing counsel
Jack C. Berenzweig
Brinks, Gilson & Lione
455 North Cityfront Plaza Drive
Chicago, IL 60611
(312) 321-4200

3. *Jackson v. Scott*, DRB-1259 (D.C. Sup. Ct., 2001 – 2003).
Our client sought to modify a child custody/support agreement based on the defendant's failure to comply with the existing terms of the agreement. The case was ultimately resolved after mediation, with the defendant ordered to pay past and current support. We then assisted the client in her efforts to enforce the order through garnishment.

Co-counsel
David A. Codevilla (then of Kirkland & Ellis)
Tennessee Valley Authority, Office of General Counsel
400 West Summit Hill Drive
Knoxville, TN 37902
(865) 632-7338

Opposing Counsel
Judy L. Woodall
Marbury Wing
14734 Main Street
Upper Marlboro, MD 20772
(301) 952-3655

4. *United States v. Cardinal Concrete Co.*, No. 93-877M (E.D. Va. 1991 – 1994) (J. Brinkema).
Our client was a ready-mix concrete company charged with criminal violations of the Clean Water Act for unpermitted discharges to a tributary of the Potomac River. The client ultimately entered a guilty plea to misdemeanor violations of the Act. My responsibilities included making joint defense arrangements, preparing responses to investigators' inquiries and answers to a grand jury subpoena, preparing and presenting a pre-sentence memorandum and related materials, and participating in proceedings relating to potential suspension/debarment. The case was significant because the Clean Water Act violations at issue arose from a longstanding and then-widespread maintenance practice in the ready-mix industry.

Co-counsel
Jan Handzlik (then of Kirkland & Ellis)
Venable
2049 Century Park East, Suite 2100
Los Angeles, CA 90067
(310) 229-0378

Opposing Counsel
Claire Whitney
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7415
Washington, DC 20044

5. *D.C. Housing Authority v. Hunter*, LT 18568 98 (D.C. Super. Ct. 1999 – 2002). Our client was responding to an eviction notice based primarily on the condition of her rental unit. The client's rental unit was filled with the client's possessions, making it difficult to navigate and, according to the landlord, raised safety concerns. Because of the client's initial resistance to removing any possessions from the unit, we worked with the landlord and various social service agencies to design a solution other than an immediate eviction. The case, ultimately resolved through settlement, was significant because the condition of the client's rental unit arose from hoarding behavior.

Co-counsel
Pamela Auerbach (then of Kirkland & Ellis)
The Corporate Executive Board Company
1919 North Lynn Street
Arlington, VA 22209
(571) 303-6824

Opposing counsel
Lisa Jill Dessel
Musolino & Dessel, PLLC
1615 L Street, NW, Suite 440
Washington, DC 20036
(202) 466-3883

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Development of Environmental Transactional Practice
I was one of two lawyers responsible for establishing and, later, managing, Kirkland & Ellis's environmental transactional practice. The environmental transactional practice involved identifying potential environmental liabilities associated with target businesses and assets, negotiating and drafting environmental contract terms among parties to corporate transactions, working with environmental managers and consultants after closing to reduce risk and resolve compliance deficiencies, and preparing disclosure statements for government regulators. I worked with environmental scientists, engineers, plant managers, local and opposing counsel, environmental regulators, and clients with varying levels of legal and scientific sophistication and was required to become familiar with state, federal

and foreign laws governing air emissions, wastewater discharges, hazardous substance management, waste disposal, and obligations for cleanup of contaminated sites.

Pro Bono
Although I represented individual pro bono clients throughout my career in private practice, my contributions in this area have been much broader. For nearly 10 years, from 1997 to 2006, I managed the pro bono legal services program for Kirkland & Ellis's Washington office. In this role, I served as lead advocate for the program within the firm, liaison to the local pro bono legal services community, and mentor to lawyers seeking to incorporate pro bono work into their professional lives. I was also responsible for recordkeeping and reporting about the program to the partnership. During this period, the firm regularly participated in a legal services clinic operated by the Archdiocesan Legal Network, established a pilot clinic at Perry School Community Services, Inc., and advised a growing number of small and startup nonprofits on corporate governance and tax issues.

At the Office of Administrative Hearings, I served on the Pro Bono Committee from 2006 until 2011 and chaired the group from 2007 until 2009. The Committee's work included community outreach, simplification of procedures and forms, development of do-it-yourself pleadings and motions, improvements in the availability of language interpretation services, and implementation of "customer service" training for Clerk's Office staff. The Committee also advised OAH management on the development of a resource center, self-help brochures, and rules to accommodate "unbundled" legal representation.

Phosphogypsum Management Rules
From 1995 to 2003, I represented a phosphate fertilizer manufacturer in its efforts to comply with financial assurance requirements under Florida phosphogypsum stack management rules. Regulations promulgated in March 1995 limited the company's options for demonstrating its ability to pay for long-term care of its phosphogypsum stacks. (Phosphogypsum stacks are piles of waste associated with phosphate fertilizer production, and they are potential sources of air and water pollution.) Working with environmental scientists and local counsel, I successfully petitioned for the client to be allowed to establish financial assurance through alternate mechanisms available under the federal Resource Conservation and Recovery Act. I then assisted the client with its annual financial assurance filings.

Underground Storage Tank Obligations in Bankruptcy
In 2004 and 2005, in connection with an airline client's potential bankruptcy, I designed and executed a plan to comply with financial responsibility requirements under federal and state underground storage tank rules. The client had hundreds of petroleum and hazardous substance underground tanks in many locations, and the project required preparation of an underground tank inventory, analysis of applicable requirements and managing compliance as the bankruptcy proceeded.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

I have served as an Administrative Law Judge for the District of Columbia Office of Administrative Hearings since 2006. The District of Columbia Commission on Selection and Tenure of Administrative Law Judges appointed me to an initial two-year term on May 30, 2006, and reappointed me to a six-year term on May 30, 2008. The Office of Administrative Hearings is an independent executive branch agency within the District of Columbia government that adjudicates cases involving unemployment compensation, Medicaid and other public benefits, public space, rent control, professional and business licenses, and building, health and fire code violations, among others.

Most cases heard by the Office of Administrative Hearings are resolved through written "final orders." I have issued more than 2,500 final orders during my tenure as an ALJ, many of which were short and simply applied settled law to undisputed facts. Between 2007 and 2010, the Office of Administrative Hearings periodically uploaded to Lexis, Westlaw, and the agency's own website a selection of noteworthy final and interlocutory orders. Orders were usually selected for uploading either because they addressed a recurring issue with particular clarity or because they explored a topic not covered by reported Court of Appeals decisions. Those uploaded opinions that I wrote are supplied.

A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

1. *Chimes DC v. King*, OAH Case No. ES-P-06-104789 (Final Order, July 28, 2006); reversed in *Chimes District of Columbia, Inc. v. King*, 966 A.2d 865 (D.C. 2009). In this unemployment insurance case, the Court decided, in a 2-1 opinion, to limit the types of "medical documentation" required to prove "good cause" for voluntarily quitting a job for health reasons. The Court later split 5-4 on a motion for rehearing en banc. *Chimes* has become the leading case on this issue in the District of Columbia.

2. *Douglas-Slade v. U.S. Department of Transportation*, OAH Case No. ES-P-07-107456 (Final Order, July 25, 2007); remanded in *Douglas-Slade v. United States DOT*, 959 A.2d 698 (D.C. 2008). The Court remanded this unemployment insurance appeal for analysis of the claimant's assertion that she had quit because of retaliatory action by her employer. On remand, I issued a new final order reaching the same result as I had reached in the original final order. The claimant appealed a second time, and the Court affirmed the new final order.

3. *Odeniran v. Hanley Wood LLC*, OAH Case No. ES-P-08-109906 (Final Order, May 13, 2008); remanded in *Odeniran v. Hanley Wood, LLC*, 985 A.2d 421 (D.C. 2009). In this unemployment case, the Court held that the conduct giving rise to the claimant's firing – failing to perform work on a single day, despite repeated prods from supervisors – amounted to no more than "simple" misconduct. I had found "gross"

misconduct. The Court had not previously explored in any detail the distinction between gross and simple misconduct, and *Odeniran* has become the leading case on this point.

4. *Bowman-Cook v. WMATA*, OAH Case No. ES-P-08-112167 (Final Order, February 13, 2009); reversed and remanded in *Bowman-Cook v. Wash. Metro. Area Transit Auth.*, 16 A.3d 130 (D.C. 2011). The Court remanded for further analysis of an unemployment insurance claimant's assertion that her failure to communicate with her employer about her continuing absence was unintentional.

20. **Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

In or around 1990, I was an unsuccessful candidate for District of Columbia Advisory Neighborhood Commissioner.

In 2004, I applied for and was offered a position as an Administrative Law Judge at the District of Columbia Office of Administrative Hearings, which I declined. I reapplied in 2006, was offered the position and accepted. I successfully applied for reappointment in 2008.

I submitted applications to become a District of Columbia Superior Court judge in 2010, 2012, and 2013.

I have not otherwise been a candidate for elective, judicial, or other public office.

21. **Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

  None, other than those listed above.

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

  None.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of $50 or more.**

  None.

22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.

No.

23. Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

In June 2013, I was called as a fact witness (by both parties) in an administrative hearing before the District of Columbia Public Employee Relations Board. The subject of the hearing was the possible unionization of the Administrative Law Judges at the District of Columbia Office of Administrative Hearings.

24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

No.

II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

   Yes.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

   Upon reaching the age of 55, I am eligible for a pension from my former law firm, Kirkland & Ellis, under the Partners Unfunded Retirement Plan.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

   None, other than my investments and liabilities listed below.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

   None.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

   None.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

   No.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

   If a conflict of interest arises, I will resolve it pursuant to the District of Columbia Code of Judicial Conduct.

8. **If confirmed, do you expect to serve out your full term?**

   Yes.

REDACTED

III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. **Are you a citizen of the United States?**

   Yes.

2. **Are you a member of the bar of the District of Columbia?**

   Yes.

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

   Yes.

4. **If the answer to Question 3 is "no" --**

   A. **Are you a professor of law in a law school in the District of Columbia?**

   B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**

   C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**

   D. **Upon what grounds is that eligibility based?**

5. **Are you a bona fide resident of the District of Columbia?**

   Yes.

6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

   Yes. Since 2001, I have resided at 5720 Chevy Chase Parkway, NW, Washington, DC 20015.

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

   No.

8. **Have you been a member of either of these Commissions within the last 12 months?**

   No.

9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

   Four copies supplied.

AFFIDAVIT

Steven Michael Wellner being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 6th day of December 2013.

Notary Public

ELIZABETH FIGUEROA
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires July 31, 2016