PRELIMINARY REPORT ON THE NOMINATION OF E. DUNCAN GETCHELL TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

On September 6, 2007, President Bush nominated E. Duncan Getchell, Jr., to a seat on the United States Court of Appeals for the Fourth Circuit despite his exclusion from a list of recommended nominees compiled by home state Senators Webb (D-VA) and Warner (R-VA). Mr. Getchell is currently a partner at the law firm of McGuire Woods in Richmond, Virginia. If confirmed, Mr. Getchell would replace Judge H. Emory Widener, Jr., of Richmond. The American Bar Association's Standing Committee on the Federal Judiciary has not yet rated Mr. Getchell.

BRIEF BACKGROUND ON THE FOURTH CIRCUIT AND NOMINATION OF E. DUNCAN GETCHELL

The Fourth Circuit is based in Richmond, Virginia, and hears appeals from federal district courts located in Maryland, North Carolina, South Carolina, Virginia, and West Virginia. In recent years, the Fourth Circuit has been considered the most conservative circuit court in the country. Today, however, the Fourth Circuit is more notable for being the court with the most vacancies. Currently, the fifteen-judge court has five vacancies. Of the ten judges currently serving on the court, five were nominated by Republican Presidents, four were named by Democratic Presidents, and one, Judge Gregory, was nominated by President Clinton as a recess appointment and then later confirmed by the Senate during President George W. Bush's first term. With one-third of its seats now vacant, the character of this court could shift dramatically in the next few years.

The Bush Administration is very aware of the political implications of judicial nominations and has pursued a widely acknowledged and largely successful campaign of court-packing over the past seven years. In addition to Mr. Getchell, President Bush recently nominated Robert J. Conrad, Jr., of North Carolina, Steve A. Matthews of South Carolina, and Rod J. Rosenstein of Maryland to seats on the Fourth Circuit. Mr. Getchell's nomination highlights a trend in the Bush Administration's current nomination strategy: refusing to cooperate with even bipartisan efforts of home state senators to ensure speedy confirmations of nominees.

To assist in filling the vacancies on the Fourth Circuit traditionally reserved for Virginians, Senators Warner and Webb conducted an extensive and highly lauded[1] bipartisan effort to

[1] Editorial, *Joint Effort: Sens. Webb, Warner Are Right to Work Together*, HARRISONBURG DAILY NEWS RECORD (May 29, 2007) (*available at* http://www.dnronline.com/opinion_details.php?AID=10493&sub=Editorial); Editorial, *Dividing, Not Uniting*, THE ROANOKE TIMES (Sept. 14, 2007) (available at http://www.roanoke.com/editorials/wb/wb/xp-

identify qualified potential nominees. According to Senator Webb, the senators sought "an unprecedented level of involvement of professional legal organizations, as well as five Virginia Bar Associations," and interviewed more than a dozen attorneys from the Commonwealth, including two sitting members of the Virginia Supreme Court, the Dean of the University of Richmond Law School, a U.S. District Court Judge from Norfolk, and Mr. Getchell. After completing their research, the senators submitted a list of "five outstanding candidates" to President Bush. Mr. Getchell was not on this list.

Despite the senators' commendable efforts – and the fact that the individuals on their list possessed remarkably conservative credentials – President Bush ignored the senators' recommendations and tapped Mr. Getchell, whom the senators had considered and rejected. With such widespread Senate support of Warner and Webb's bipartisan cooperation, any of the individuals on the senators' list would have likely enjoyed a speedy confirmation. In light of Mr. Getchell's nomination, however, many commentators, including Bush supporters, have questioned whether Bush's top priority is filling vacancies on this understaffed court or mollifying his conservative base by picking a fight with the Senate over ultra-conservative nominees. The president has also recently refused to consult with senators in New Jersey, Rhode Island, and Maryland about circuit court vacancies in those states.

The Bush Administration's other recent trend in court of appeals nominations has been to choose individuals with little or no judicial experience so that it is difficult to evaluate their judicial philosophies, despite the fact that their personal backgrounds suggest they will serve as ideological torchbearers for the administration. The administration has recently selected individuals like Judges Jennifer Elrod and Catherina Haynes, whose nominations to the Fifth Circuit have been relatively uncontested because they lack meaningful judicial experience and have authored very few opinions. The nominations of Mr. Matthews and Mr. Getchell to the Fourth Circuit conspicuously follow this pattern, as both nominees have spent most of their careers in private practice and lack a record of judicial opinions or other writings by which their capabilities and ideologies can be evaluated. These stealth nominees undermine the advice and consent role of the Senate. Though the litigation work and professional affiliations of nominees like Mr. Getchell suggest he possesses a strongly conservative ideology, it is difficult for senators to assess his suitability for a lifetime seat on a federal appellate court based on these activities alone. But this much is clear: there is nothing in his record as an attorney to suggest that he would be an open-minded jurist with a commitment to equal justice for all, and indeed some of his writings and actions suggest a callous disregard for basic principles of equality.

131927); Carl Tobias, Op-Ed, *Senators' Suggestions are Ignored*, RICHMOND TIMES-DISPATCH (Sept. 13, 2007) (available at http://www.inrich.com/cva/ric/opinion/oped.apx.-content-articles-RTD-2007-09-13-0053.html); Press Release, Earthjustice, *Bush Rejects Bi-partisan Senate Effort in Order to Reignite Judicial Nomination Wars* (Sept. 7, 2007) (*available at* http://www.earthjustice.org/news/press/007/bush-rejects-bi-partisan-senate-effort-in-order-to-reignite-judicial-nomination-wars.html); David Kurtz, *Advice and Consent: The Bush Way*, Talking Points Memo (Sept. 7, 2007) (*available at* http://www.talkingpointsmemo.com/archives/052546.php).

BRIEF BIOGRAPHY OF E. DUNCAN GETCHELL

1. Education and Career

Mr. Getchell was born in Mobile, Alabama in 1949. He received his B.A. from Emory University in 1971, which he attended on an Air Force ROTC scholarship, and graduated with high honors. He earned his J.D. from Duke University Law School in 1974, where he was on the staff and editorial board of the Duke University Law Review. After law school, Mr. Getchell worked as an associate at McGuire, Woods & Battle for one year before serving as an Air Force JAG Officer in the Office of the General Counsel for two years, attaining the rank of Captain. (Mr. Getchell served in the United States Air Force Reserve from 1971-1977, with active duty assignment from 1975-1977.) After his tenure with the Air Force, Mr. Getchell returned to McGuire, Woods & Battle (now McGuireWoods) in 1977 and has remained there for the past thirty years. He was made partner in 1981, and currently heads the Appellate Litigation Practice Group at the firm. Outside of his work at McGuireWoods, Mr. Getchell has served on the Board of Directors and done *pro bono* legal work for the Riverside School, a school for dyslexic children, for twenty years.

2. Political Activities and Associations

Mr. Getchell is a member of the conservative Federalist Society and the National Rifle Association, and in 2000 he donated $500 to the Republican Party of Virginia. On his questionnaire, he lists memberships including "various Republican Party organizations" and the Republican National Lawyer's Association, and notes that he was a member of the Commonwealth Club – which to this day does not permit women as primary members – from 2002-2006, but that he "was not a member long enough to influence its policies" on gender. This statement by Mr. Getchell is remarkable both because he decided to join a club with widely-known discriminatory policies and because he provides no information about *any* effort to influence its policies. At best, it shows a lack of good judgment ill-befitting an appellate court judge. The Commonwealth Club is also widely known for its historically Whites-only membership policy, and serves as "the hallowed temple of Virginia's [Caucasian] political elite."[2] Mr. Getchell's most visible political roles include serving as Co-Chair of Lawyers for Dole in the 1996 election and representing the Republican National Committee in several matters during the 1996 election cycle, and the Republican Party of Virginia in 1994. He is a permanent member of the Fourth Circuit Judicial Conference, a fellow of the national Academy of Appellate Lawyers, an elected member of the American Law Institute, and a member of the Virginia State Bar and the Bar Association of the City of Richmond.

3. Published Writings and Public Statements

[2] Laura B. Randolph, *The First Black Elected Governor,* EBONY (Feb. 1990) (*available at* http://findarticles.com/p/articles/mi_m1077/is_n4_v45/ai_8325323).

Mr. Getchell has published only two substantive legal writings: an article in the Journal of Civil Litigation about the evolution of the court's role as gatekeeper in the admission of expert testimony,[3] and a Products Liability textbook chapter titled "Discovery Issues in Pharmaceutical Litigation."[4] Mr. Getchell's only published writing that gives any insight into his personal views is a letter to the editor criticizing the Methodist Church for cancelling its convention in Richmond, Virginia, because the city's minor-league baseball team is named the Braves.[5] In his letter, Mr. Getchell argues that the team was named after "a historically corrupt organ of the Democratic Party" – the Tammany Braves of Tammany Hall – and thus no one should be offended by the team's name because "no actual Indians are directly involved in any way." But this is a highly misleading statement, as even a cursory examination of the Richmond Braves' official website, www.rbraves.com, opens with the image of a tomahawk. Mr. Getchell's already offensive statement is further undermined by the fact that the practices of the Tammany Braves themselves callously mocked Native American customs. He finishes by asserting that anyone involved in the Methodist's decision to cancel the Richmond convention "should strive mightily to get some semblance of a life." Though short, Mr. Getchell's letter at best reveals disturbing insensitivity and ignorance towards a relatively powerless racial minority that has struggled to be taken seriously about the belittlement of its culture, and at worst flippantly contributes to that belittlement.

SIGNIFICANT LITIGATION

Mr. Getchell has practiced law since 1974, and has served as counsel of record in 135 cases.[6] His broad experience shows a trend of litigating against the public interest in favor of big business and conservative politics, and he has represented or filed briefs for the Republican Party in several cases. Mr. Getchell's biography on the McGuire Woods webpage highlights many of these anti-consumer, anti-plaintiff cases as the most significant cases of his career. It reads, "Mr. Getchell's appellate cases include upholding the constitutionality of Virginia's redistricting (*Wilkins*); upholding the constitutionality of the Virginia medical malpractice cap (*Pulliam*); having Virginia consumer finance laws declared unconstitutional (*NHEMA*); having punitive damages declared unconstitutional as applied (*Hugo's*); obtaining dismissal of a case in the United States Supreme Court through a suggestion of lack of jurisdiction contained in an *amicus* brief (*Sylvester*); and obtaining a writ of prohibition against a trial court's exercise of jurisdiction (*In re City of Richmond*). He has argued numerous products liability cases including one involving the meaning of Virginia's seat belt statute (*Brown*)."[7]

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[3] E. Duncan Getchell, Jr. & Joy C. Fuhr, *Faux Science at the Gate: The Gatekeeper Comes of Age in* Kumho Tire Co. v. Carmichael *and Faces the Next Big Challenge in Section 2(b) of the Restatement (Third) of Torts*, J. OF CIV. LITIG. (Virginia Association of Defense Attorneys), Vol. XI, No. 2, Summer 1999 at 137.

[4] E. Duncan Getchell, Jr., *Discovery Issues in Pharmaceutical Litigation, in* PRODUCTS LIABILITY: PHARMACEUTICAL DRUG CASES 386 (Vinson ed., Shepard's 1988)

[5] E. Duncan Getchell, Jr., Letter to the Editor, *Methodist Decision Draws Bronx Cheer*, RICH. TIMES DISPATCH, Mar. 2, 2006.

[6] www.lexis.com (last visited Nov. 12, 2007).

[7] *Available at:* http://www.mcguirewoods.com/lawyers/index/E_Duncan_Getchell_Jr.asp.

In the past two months, Mr. Getchell has been spotlighted for his connection to a personal injury case where his firm's failure to file a trial transcript caused the Virginia Supreme Court to throw out an appeal of an adverse damages award.[8] Mr. Getchell was representing Wintergreen Ski Resort in a personal injury case brought by a skier, who was awarded eight million dollars at the trial level. Though there has yet to be a determination of who was responsible for the mistake, Mr. Getchell was the lead attorney on the case at the time the error was made and was responsible for overseeing the entire case. Most recently, Christopher C. Spencer – the Richmond lawyer who was the lead trial attorney in the Wintergreen case – has filed a defamation suit against Mr. Getchell, alleging that Mr. Getchell conspired to place the blame for the mistake on Mr. Spencer to save Mr. Getchell's judicial nomination.[9] Mr. Spencer cites meetings with Mr. Getchell where it was agreed that Mr. Getchell's firm and litigation team were completely responsible for the appeal of the case, thus absolving Mr. Spencer of responsibility. Mr. Spencer alleges that Mr. Getchell later deliberately misinformed the White House that Mr. Spencer had been responsible for the filing mistake. White House spokespeople then relayed that information to the press, allegedly damaging Mr. Spencer's reputation in the legal community.

We describe below some the litigation Mr. Getchell has handled that may shed light on his judicial philosophy. In particular, his litigation demonstrates that he typically represents either powerful corporate interests or the Republican Party and its ideological allies.

1. Commerce Clause

Mr. Getchell has served as *pro bono* counsel of record in only one reported case, *United States v. Morrison*, where he supported the unconstitutionality of the Violence Against Women Act (VAWA).

United States v. Morrison.[10] Mr. Getchell provided *pro bono* services and submitted an *amicus* brief for the ultra-conservative Independent Women's Forum arguing that VAWA was unconstitutional. The brief argued that dealing with domestic violence was an issue that should be left to the states. In this significant Commerce Clause case, the Supreme Court ruled that Congress did not have authority under the Commerce Clause to enact VAWA. The court thus rejected the claims a female student at Virginia Tech had filed under the VAWA when the university failed to discipline two male football players who had gang raped her, even after one of them openly admitted to the rape during a university hearing.

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[8] Marc Davis, *Error in Major Case Tied to Federal Judge Nominee*, THE VIRGINIAN-PILOT, Oct. 9, 2007, *available at* http://content.hamptonroads.com/story.cfm?story=134267&ran=113533.
[9] Marc Davis, *Bush Judicial Nominee Sued, Accused of Defamation*, THE VIRGINIAN-PILOT, Nov. 16, 2007, *available at* http://content.hamptonroads.com/story.cfm?story=137054&ran=127751.
[10] *United States v. Morison*, 529 U.S. 598 (2000).

Smithfield Foods, Inc. v. Miller.[11] Mr. Getchell succeeded in having Iowa's anti-corporate farming law declared unconstitutional under the dormant commerce clause. The Eighth Circuit vacated this decision because the Iowa General Assembly had amended the statutes at issue during the pendency of the appeal.

2. Elections and Redistricting

*Wilkins v. West***.**[12] Mr. Getchell appeared as special counsel to the Republican-run Virginia state attorney general's office to defend a redistricting plan against a suit brought by state Democrats. Though it acknowledged that race had been a factor in designing new voting districts, the Virginia Supreme Court upheld the state's redistricting plan as constitutional. The trial court had found that certain voting districts were unconstitutional as a result of racial gerrymandering.

Simpson v. City of Hampton.[13] Mr. Getchell defended the city of Hampton, Virginia, against charges that its election system was racially discriminatory. The court denied the voters' motion to preliminarily enjoin the upcoming election because it felt the election was too soon for such a substantial alteration of the electoral system, and because the voters could not establish a likelihood of prevailing on the merits by showing that the white majority voted sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate.

Morse v. Republican Party of Virginia.[14] Mr. Getchell represented the Republican Party of Virginia before the U. S. Supreme Court against allegations that the party was violating the Voting Rights Act by charging a fee to delegates who wished to attend its nominating convention. The court rejected these arguments, ruling 5-4 that the Republican Party must get clearance under the Voting Rights Act before charging such a fee.

3. Jurisdiction/Standing/Damages

Johnson v. Hugo's Skateway.[15] Mr. Getchell represented a skating rink, which had ordered the arrest of the only minority patron in the rink when the patron had refused to submit to the rink's unexplained request to come into a "back room." Though the jury found for the minority patron and awarded him substantial compensatory and punitive damages, and though the court held that there had been sufficient evidence to support the jury's verdict, Mr. Getchell succeeded in having the punitive damage award overturned as unconstitutional.

4. Privacy

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[11] *Smithfield Foods, Inc. v. Miller*, 241 F.Supp. 2d 978 (S.D. Iowa 2003), *vacated and remanded*, 367 F.3d 1061 (8th Cir. 2004).
[12] *Wilkins v. West*, 264 Va. 447 (Va. 2002).
[13] *Simpson v. City of Hampton*, 919 F. Supp. 212 (E.D. Va. 1996).
[14] *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996).
[15] *Johnson's v. Hugo's Skateway*, 949 F.2d 1338 (4th Cir. 1991).

York v. Jones.[16] Mr. Getchell represented a Medical College in a suit brought by a husband and wife who sought the release and transfer of their frozen pre-zygote from the Medical College in New York to a hospital in California, to where they had moved. The court held that the Medical College did not enjoy Eleventh Amendment immunity, and denied the Medical College's motion to dismiss.

5. Consumer Issues

Whitson v. Heilig-Meyers Furniture.[17] The federal court for the Northern District of Alabama refused to approve the proposed settlement reached by the parties in this class action suit because the extremely high negotiated attorney's fees suggested that the settlement was collusive. The court wrote that "Despite learned class counsel's years of experience and expertise, one doubts whether even the wisdom and counsel of King Solomon would justify an hourly rate of $ 3,908.29." Mr. Getchell was part of the defense team that had negotiated to award attorneys this exorbitant hourly fee.

National Home Equity Mortgage Association v. Face.[18] Mr. Getchell represented a mortgage group before the Fourth Circuit in a suit brought by consumers challenging pre-payment penalties. Mr. Getchell assisted the defendants in successfully arguing that though Virginia law prevented penalizing consumers for paying off their mortgages early, the Virginia law was preempted by applicable federal law.

Johnson v. MBNA American Bank.[19] Mr. Getchell represented a bank in appealing a case that had awarded damages to the plaintiff borrower for the bank's negligent violation of the Fair Credit Reporting Act. A lower court had ruled that a woman did not owe a $17,000 debt on her husband's account because the bank failed to conduct a reasonable investigation into the woman's claim. The Fourth Circuit affirmed.

America's MoneyLine, Inc. v. Coleman.[20] Mr. Getchell unsuccessfully represented a lender who was attempting to avoid a class action suit by compelling arbitration.

Lynch v. McGeorge Camping Center, Inc.[21] Mr. Getchell unsuccessfully represented a seller attempting to compel arbitration in a payment dispute. The court held that "everything about the [seller's] arbitration clause was designed to advantage the seller and discourage a dissatisfied customer from seeking redress."

6. Equal Protection

[16] *York v. Jones*, 717 F.Supp. 421 (E.D.Va. 1989).
[17] *Whitson v. Heilig-Meyers Furniture*, 1995 U.S. Dist. LEXIS 4312 (N.D. Ala. 1995).
[18] *Nat'l Home Equity Mortgage Ass'n v. Face*, 322 F.3d 802 (4th Cir. 2003).
[19] *Johnson v. MBNA Am. Bank*, 357 F.3d 426 (4th Cir. 2004).
[20] *America's MoneyLine, Inc. v. Coleman*, 360 F.3d 782 (7th Cir. 2004).
[21] *Lynch v. McGeorge Camping Ctr., Inc*., 2005 U.S. Dist. LEXIS 10201 (E.D. Va. 2005).

HCMF Corporation v. Allen.[22] Mr. Getchell represented corporate entities running nursing homes who claimed that their Equal Protection rights had been violated by the agency that administered the state's Medicaid program. The court held that classifying the nursing homes based on their financing arrangements for purposes of reimbursement passed rational basis review.

Norfolk Federation of Business Districts v. Department of Housing and Urban Development.[23] Mr. Getchell represented the city against claims that its public funding of a private development proposed by the redevelopment authority violated the constitutional and statutory rights of the business association and its members.

7. White-Collar Crime

United States v. Norton.[24] Mr. Getchell successfully represented a physician on appeal in a Racketeer Influenced Corrupt Organizations Act (RICO) case in connection with Medicare kickbacks. The physician's other related convictions were upheld.

United States v. Jennings.[25] Mr. Getchell unsuccessfully represented a housing repair contractor charged with bribing a government official for government contracts.

8. Employment

Doss v. Jamco, Inc.[26] Mr. Getchell filed an *amicus* brief in support of a company facing allegations that it had fired a female employee because she was pregnant. Mr. Getchell filed the brief on behalf of the Roanoke Regional Chamber of Commerce and the Greater Washington Board of Trade.

Rodriguez v. Smithfield Packing Co.[27] Mr. Getchell represented Smithfield Packing Co. and the plant's Chief of Security against claims that adverse actions were taken by the plant against employees involved in union activity, and that the plant displayed considerable hostility towards union organizing. Though the jury found that some of the defendants had violated plaintiffs' constitutional rights by ordering their unlawful arrest in the wake of a unionization election, the Fourth Circuit dismissed the claims against the defendant company and Chief of Security for want of state action and based on a release signed by the plaintiffs.

Government Micro Resources Inc. v. Jackson.[28] Mr. Getchell represented Government Micro Resources Inc. (GMR) in this defamation suit, where a former GMR employee, Mr. Jackson, claimed that GMR told the Mr. Jackson's new employer that the he had

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[22] *HCMF Corp. v. Allen*, 85 F. Supp. 2d 643 (W.D. Va. 2000).
[23] *Norfolk Fed'n of Bus. Dists. v. Dep't of Housing and Urban Dev.*, 932 F. Supp. 730 (E.D. Va. 1996).
[24] *United States v. Norton*, 2001 U.S. App. LEXIS 18811 (4th Cir. 2001).
[25] *United States v. Jennings*, 160 F.3d 1006 (4th Cir. 1998).
[26] *Doss v. Jamco, Inc.*, 254 Va. 362 (Va. 1997).
[27] *Rodriguez v. Smithfield Packing Co.*, 338 F.3d 348 (4th Cir. 2003).
[28] *Gov't Micro Res. Inc. v. Jackson*, 271 Va. 29 (Va. 2006).

been responsible for a $3 million loss to GMR. The Virginia Supreme Court reinstated a jury verdict of $5 million.

Abcouwer v. NiSource.[29] Mr. Getchell unsuccessfully represented the employer in its effort to block termination benefits for a terminated employee. The employer had attempted to allege that the employee was not entitled to termination benefits because he was a participant in a group effecting the acquisition of the employer. The Fourth Circuit held that a reasonable jury could have found that the employee was not a participant in the group effecting the acquisition.

Retired Pilots Association of US Airways v. US Airways.[30] Mr. Getchell represented US Airways in the distress termination of a pension plan it had maintained for its pilots. The court ruled in favor of US Airways since the Retired Pilots Association of US Airways had not challenged the termination order until it had been fully consummated and the plan had been implemented.

Lucker v. Cole Vision Corporation.[31] The employee, a licensed optician, contended that a certain advertisement was fraudulent and that his license could be revoked if he participated in the advertising scheme. Mr. Getchell represented the employer who fired the optician when he refused to participate. The court ruled against the optician, holding that the Virginia Consumer Protection Act (VCPA) protected the public at large from unethical transactions by suppliers, but did not protect the optician's property right in his employment. It also held that the speech of the optician was not within the protective reach of the VCPA because he was an employee and not a consumer.

9. Personal Injury and Medical Malpractice

Velocity Express Mid-Atl., Inc. v. Hugen[32] Mr. Getchell successfully argued for reversal of the largest personal injury award ($60 million) in Virginia history. The plaintiff in the suit suffered from "catastrophic injuries" and "permanent physical and mental disabilities" resulting from an accident that was admittedly caused by defendant's employee. The court reversed and remanded the damages award, however, because of plaintiff's counsel's use of inappropriate emotional and economic appeals during closing arguments. The case settled following the remand.

Delk v. Columbia/HCA Healthcare Corp.[33] Mr. Getchell represented a psychiatric hospital and corporation whom the plaintiff sued for failing to protect her during her hospitalization from sexual assault by another patient who was HIV positive. On appeal the court found that plaintiff's allegations were sufficient to support a claim of negligence arising from the special relationship between plaintiff and defendant which created a duty to protect her from third persons. Plaintiff also stated a claim of intentional infliction of

[29] *Abcouwer v. NiSource, Inc.*, 135 Fed. Appx. 566 (4th Cir. 2005).
[30] *Retired Pilots Ass'n of US Airways v. US Airways*, 369 F.3d 806 (4th Cir. 2004).
[31] *Lucker v. Cole Vision Corp.*, 2005 U.S. Dist. LEXIS 25118 (W.D. Va. 2005).
[32] *Velocity Express Mid-Atl., Inc. v. Hugen*, 266 Va. 188 (Va. 2003).
[33] *Delk v. Columbia/HCA Healthcare Corp.*, 259 Va. 125 (Va. 2000).

emotional distress based on allegations that defendants were reckless in failing to inform her that she was exposed to HIV so she might take preventive measures to avoid transmission to her husband.

Worsham v. A.H. Robins Co.[34] Plaintiff consumer wore an intrauterine contraceptive device (IUD) manufactured by defendant manufacturer. She contracted a serious form of pelvic inflammatory disease, necessitating a complete hysterectomy. Mr. Getchell represented the manufacturer, who was aware that defects in the IUD could cause such infections, but who had failed to correct the defect or warn consumers. The court upheld the jury findings for the consumer.

Palmer v. A.H. Robins Co.[35] Mr. Getchell represented a doctor who prescribed a new form of contraceptive for plaintiff patient. The contraceptive failed and plaintiff became pregnant, but upon the doctor's misplaced advice, plaintiff did not remove the contraceptive. As a result, plaintiff suffered a miscarriage and permanent damages. The jury awarded plaintiff significant damages, and the appellate court affirmed.

Power v. Kendrick.[36] Mr. Getchell represented individual doctors in this medical malpractice case. As a result of the doctors' alleged malpractice, both of plaintiff's legs were amputated below the knees, she sustained permanent damage to her lungs, vision, and left arm, severe hair loss, "degenerative muscles," permanent scarring on her chest and neck, abnormal urinary function, and was "permanently damaged in mind and body." The district dourt for the Eastern District of Virginia awarded a judgment to the plaintiff on her claim under the Emergency Medical Treatment and Active Labor Act of 1986 (EMTALA), and the Fourth Circuit affirmed.[37] The claims against individual doctors were dismissed, however, for being outside of the scope of EMTALA.

Pulliam v. Coastal Emergency Servs., Inc.[38] Mr. Getchell represented the defendant before the Virginia Supreme Court in this personal injury case, arguing that the state statutory one million dollar cap for medical malpractice cases was constitutional. Mr. Getchell's argument successfully convinced the court to reverse the two million dollar jury award.

Brown v. Ford Motor Co.[39] Mr. Getchell represented Ford in the appeal in this products liability case. Mr. Getchell helped Ford successfully argue that the trial court did not err in allowing evidence that Plaintiff had not been wearing her seat belt at the time of the accident.

King v. Ford Motor Co.[40] Mr. Getchell unsuccessfully represented Ford in this wrongful death suit, where the court found sufficient evidence to support the jury finding that the

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[34] *Worsham v. A.H. Robins Co.*, 734 F.2d 676 (11th Cir. 1984).
[35] *Palmer v. A.H. Robins Co.*, 684 P.2d 187 (Colo. 1984).
[36] *Power v. Kendrick*, 247 Va. 59 (Va. 1994).
[37] *Power v. Arlington Hosp. Ass'n*, 42 F.3d 851 (4th Cir. 1994).
[38] *Pulliam v. Coastal Emergency Servs., Inc*., 257 Va. 1 (Va. 1999).
[39] *Brown v. Ford Motor Co.*, 2001 U.S. App. LEXIS 4539 (4th Cir. 2001).
[40] *King v. Ford Motor Co*., 209 F.3d 886 (6th Cir. 2000).

passenger restraint system in the automobile in which decedent was riding was defective, causing her death.

O'Neill v. Windshire-Copeland Associates.[41] Plaintiff was rendered a quadriplegic when she fell backwards over a second-story balcony railing that violated the height requirement of the local building code. Mr. Getchell represented the defendant apartment complex. The district court found that defendants were negligent *per se* because the low balcony guardrail violated the height requirement of the local building code. However, the district court submitted the question of contributory negligence to the jury, which found in defendants' favor.

10. Environmental

Carroll v. Litton Systems, Inc.[42] Mr. Getchell filed an *amicus* brief in support of defendants, whose facility had leaked contaminants into the well water of plaintiffs. Plaintiffs suffered numerous health problems as a result. The *amicus* brief was filed on behalf of the Product Liability Advisory Council, Inc., an association of corporate manufacturers.

Staton v. Department of Housing and Urban Development.[43] Mr. Getchell represented the Richmond Redevelopment and Housing Authority against charges that the city violated the National Environmental Policy Act by not completing an appropriate environmental impact review before demolishing historic buildings. The court found the issue moot since the demolition happened before the case went to trial.

CONCLUSION

No nominee comes to the Senate Judiciary Committee with a presumption of confirmation. As committee Chairman Patrick Leahy (D-VT) himself has stated, the Senate's constitutional "advice and consent" role is a serious responsibility, by which "those 100 of us privileged to serve in the Senate are entrusted with protecting the rights of 280 million of our fellow citizens." Therefore, the committee must thoroughly review each nomination in order to uphold the integrity of this constitutional duty.

Virginia Senators Warner and Webb considered and rejected E. Duncan Getchell for appointment to the Fourth Circuit. He has authored no published articles or speeches that shed light on his judicial philosophy. His long substantial litigation experience advocating on behalf of powerful corporate interests coupled with his actions in joining and remaining a member of the Commonwealth Club of Richmond, notorious for its past record of white-only membership and its current policy of men-only membership, and his dismissive treatment of caricatures of Native Americans strongly suggest a nominee who will not be dedicated to equal justice for all.

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[41] *O'Neill v. Windshire-Copeland Assocs.*, 372 F.3d 281 (4th Cir. 2004).
[42] *Carroll v. Litton Systems, Inc.*, 1995 U.S. App. LEXIS 2015 (4th Cir. 1995).
[43] *Staton v. Dep't of Housing and Urban Development*, 1989 U.S. Dist. LEXIS 17832 (E.D.Va. 1989).

President Bush had the opportunity to nominate a number of qualified, respected, conservative candidates with bipartisan support to the Fourth Circuit. Instead, he chose to follow his alarming pattern of snubbing home state senators and selecting stealth nominees with no judicial experience or paper trail. Mr. Getchell represents one of a series of nominees who, if confirmed as circuit judges, will simply implement President Bush's extreme right-wing political ideology from the bench.

After reviewing Mr. Getchell's record, Alliance for Justice does not believe that he is qualified to serve on the U.S. Court of Appeals for the Fourth Circuit. The committee should perform its constitutional duty and reject this nomination.