

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-19
US v. Higgs
(Messitte)

CAPITAL SENTENCING. Whether the district court erred in denying the defendant's motion for a new capital sentencing trial under Brady v. Maryland.

02-2118
Garcia-Bonilla v. John Ashcroft

IMMIGRATION. Whether the BIA abused its discretion in summarily dismissing petitioner's appeal pursuant to 8 C.F.R. Section 1003.1(d)(2)(i)(E) (2003) for failure to file a separate brief or statement.

03-1352
Asika v. Ashcroft

IMMIGRATION. Whether Attorney General's interpretation of 8 U.S.C. Section 1256(a) on five-year limitation on rescission is entitled to deference.

03-1562
Carter v. Baltimore County, MD
(Harvey)

CIVIL RIGHTS. Challenge to summary judgment in civil action alleging wrongful arrest and detention; qualified immunity.

PANEL I
COURTROOM ONE
Courthouse Room 435 (Red Carpet)
9:30 a.m.

TUESDAY, JANUARY 20, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

02-2142
Blanco De Belbruno v. Ashcroft

IMMIGRATION. Whether the Board's use of the summary
affirmance procedure as set forth at 8 C.F.R. Section
1003.1(a)(7) (2003) violated the petitioners' due process
rights.

03-1144
Ngarurih v. Ashcroft

IMMIGRATION. Whether this Court retains authority under
IIRIRA to reinstate voluntary departure.

03-1005 (L), 03-1006
Pueschel v. Mineta, Sec
(Wexler)

CIVIL. Whether the district court properly dismissed
appellant's Federal Tort Claims Act action; whether res
judicata barred appellant's Title VII action.

03-1684
Janjer Enterprises v. Executive Risk Indem
(Messitte)

INSURANCE. Whether policy was a "claims made and reported
policy" which is excluded from state law prohibiting
insurer from disclaiming coverage due to late notice.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

TUESDAY, JANUARY 20, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1406
Buzzard v. Holland
(Copenhaver)

ERISA. Whether substantial evidence supported a conclusion that there was no causal link between mine accident and disability; other issues.

03-1638
Intl Chemical v. PPG Industries
(Stamp)

LABOR. Challenge to summary judgment in action by union seeking to vacate in part an arbitration award; whether grievance settlement is a separate enforceable contract from the collective bargaining agreement.

03-1362
Dunn v. Ronbotics Corp
(Lee)

SECURITIES. Challenge to dismissal for failure to allege fraud with sufficient specificity required by the Private Securities Litigation Reform Act.

03-1401
District Memorial v. Thompson, Sec
(Cogburn)

ADMINISTRATIVE AGENCY. Whether "swing beds" should be included in count for Medicare reimbursement purposes.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

TUESDAY, JANUARY 20, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4241
US v. Zuberi Hondo
(Currie)

SENTENCING GUIDELINES. Whether district court properly counted an uncounseled conviction from a trial in absentia in calculating defendant's criminal history score.
15 mins. per side

03-1326
Denny's v. Cake
(Herlong)

ERISA. Whether personal jurisdiction existed over California state officials; whether Anti-Injunction Act or Abstention Doctrine bars claims that state law is preempted by ERISA.

03-4204
US v. Frantz Michel
(Hudson)

CRIMINAL LAW & PROCEDURE. Whether there was reversible error regarding jury selection, evidentiary rulings, and prosecutorial misconduct; other issues.

03-1604
Eastern Assoc Coal v. DOWCP

BLACK LUNG. Whether the ALJ erred in denying employer's request for modification after claimant was awarded benefits due to the employer's initial failure to oppose the application.
15 mins. per side

PANEL IV
COURTROOM FOUR
Courthouse Room 420 (Tweed Carpet)
9:30 a.m.

TUESDAY, JANUARY 20, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

02-1986
Johnson v. Toys-R-Us Delaware
(Black)

CIVIL RIGHTS. Challenge to summary judgment in action alleging racial discrimination and breach of contract in retail store's cancellation of purchased gift cards.

02-4917
US v. Robert Kennedy, Jr.
(Kiser)

CRIMINAL LAW & PROCEDURE. Challenge to denial of motion to suppress grand jury testimony; alleged prosecutorial misconduct; challenge to denial of jury instruction on perjury entrapment.

03-1198
Rich Food Services v. Rich Plan Corp
(Britt)

CONTRACTS. Whether franchise agreement was a renewal of existing contract or a new agreement.

03-1075
Schramm Inc v. SHIPCO Transport Inc
(Duffy)

ADMIRALTY. Whether the Carriage of Goods by Sea Act is applicable to destruction of goods on land; prejudgment interest.

PANEL I
COURTROOM ONE
Courthouse Room 435 (Red Carpet)
9:30 a.m.

WEDNESDAY, JANUARY 21, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

02-2199 (L), 02-2200 03-1351 03-1354
The Pittston Company v. US
(Spencer)

COAL ACT. Challenge to the delegation of administrative authority under the Act to an alleged interested private party.

02-4877
US v. Eric Van Buren
(Moon)

SENTENCING GUIDELINES. Whether the district court made proper sentencing determinations regarding drug quantity and obstruction of justice; other issues.

02-4956
US v. Anthony K. Rouse
(Michael)

SENTENCING. Whether the district court erred in running federal sentence consecutively to state sentence where state conviction was related to and part of the federal conspiracy sentence.
15 mins. per side

03-1248
Gottlieb v. Bowl America, Inc.
(Hilton)

CIVIL. Whether the district court properly granted summary judgment against the plaintiff's claims alleging employment discrimination and employee benefits violations.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

WEDNESDAY, JANUARY 21, 2004

UNITED STATES COURT OF APPEALS
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Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1387 (L), 03-1453
Williams v. Professional Trans
(Faber)

CONTRACTS. Whether rate dispute should have been submitted to state Public Service Commission; whether district court erred in determining the contract starting date.

03-1314
Shaliehsabou v. Hebrew Home
(Williams)

FAIR LABOR STANDARDS ACT. Whether ministerial exception applies to appellant; other issues.

03-1307
Saudi v. V. Ship Switzerland
(Williams)

CIVIL PROCEDURE. Numerous issues in personal injury action arising from maritime accident.

03-1343
US ex rel Herrera v. Danka Office Imaging
(Cacheris)

FALSE CLAIMS ACT. Challenge to dismissal of qui tam action for failure to plead fraud with sufficient particularity; challenge to denial of motion to amend complaint.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

WEDNESDAY, JANUARY 21, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1225 (L), 03-1262
Miller v. Asensio
(Norton)

SECURITIES. Challenge to jury instructions and denial of new trial after jury awarded no damages in securities fraud cases; other issues.

02-2078
Akwada v. Ashcroft

IMMIGRATION. Whether the Board abused its discretion in denying motion to reopen in absentia removal order based on claim that petitioner did not receive notice of hearing.

03-1115
Crowley v. CCAir, Incorporated
(Horn)

DAMAGES. Whether jury award for compensatory damages was excessive in employees' wrongful termination case.

03-1564
Castillo v. Emergency Medicine
(Brinkema)

MEDICAL MALPRACTICE. Whether treatment was continuous and substantially uninterrupted for purposes of determining the running of the statute of limitations.

PANEL IV
COURTROOM FOUR
Courthouse Room 420 (Tweed Carpet)
9:30 a.m.

WEDNESDAY, JANUARY 21, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4557
US v. Rick Joe Baer
(Jackson)

CRIMINAL LAW & PROCEDURE. Challenge to dismissal of indictment for allegedly making a false statement on application for airport security badge.

03-6146
Reid v. Angelone
(Payne)

HABEAS CORPUS. Whether a certificate of appealability is required to appeal denial of Fed. R. Civ. P. 60(b) motion.

03-1752
Made USA Foundation v. Phillips Foods Inc
(Legg)

FALSE ADVERTISING. Whether consumers have standing to sue for allegedly false advertising under the Lanham Act.

03-1232
Cannelton Industries v. William H. Frye

BLACK LUNG BENEFITS. Whether the ALJ's decision awarding benefits is supported by substantial evidence.
15 mins. per side

PANEL I
COURTROOM ONE
Courthouse Room 435 (Red Carpet)
9:30 a.m.

THURSDAY, JANUARY 22, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1597
Michelle Hodge v. Wal-Mart Stores, Inc
(Lowe)

02-2360 (L), 02-2361
St. Paul Fire v. American Intl Specia
(Hilton)

03-4363 (L), 03-4439
US v. Sandako Brandon
(Beaty)

03-1510
Travelers Indemnity v. Miller Building Corp
(Boyle)

CIVIL. Whether, based on the appellant's negligence claims and state tort law, the appellee was entitled to summary judgment.

INSURANCE. Challenge to summary judgment in declaratory judgment action determining that two of four insurers were not responsible for underlying liability despite indemnification agreement.

CRIMINAL LAW & PROCEDURE. Whether district court erred in refusing to sentence defendant as a career offender; whether district court erred in admitting transcripts of recorded conversation in addition to the actual recordings.

INSURANCE. Whether commercial general liability policies created a duty to indemnify or defend policyholder in underlying arbitration.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

THURSDAY, JANUARY 22, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

03-1308
Poth v. Russey
(Lee)

SECURITIES. Challenge to summary judgment in action alleging fraud and breach of fiduciary duties in the purchase of stock in merger agreement.

03-1223
McCoy v. Holland
(Williams)

ERISA. Whether the Plan abused its discretion when it determined plaintiff's mental impairment was not the result of coal mine accident.

03-4567
US v. Deunte L. Humphries
(Hudson)

SEARCH & SEIZURE. Whether police officer had probable cause to stop and search defendant.

03-1120
Shooting Point v. Cumming
(Smith)

ROOKER-FELDMAN DOCTRINE. Whether the district court properly dismissed this Section 1983 action.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

THURSDAY, JANUARY 22, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/20/2004 - 01/23/2004 Session)

NUMBER AND STYLE

NATURE OF CASE

02-4844
US v. Agnes Holbrook
(Jones)

CRIMINAL LAW & PROCEDURE. Whether Holbrook's motion to withdraw her guilty plea voided the government's obligations under the plea agreement when the district court found Holbrook bound by her agreement.

03-4715
US v. Harsimrat Singh etal
(Beaty)

SEARCH & SEIZURE. Whether district court erred in disregarding informant's tip to highway patrol officers in determining there was a reasonable suspicion of criminal activity.

03-4589
US v. Robert Nelson May
(Mullen)

SENTENCING. Challenge to downward departure in "cross-burning" case due to victim provocation and defendant's aberrant behavior.
15 mins. per side

03-4127
US v. Clifton Williams
(Boyle)

CRIMINAL LAW & PROCEDURE. Whether statutory definition of machine gun is unconstitutionally vague; other issues.

PANEL I
COURTROOM ONE
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8:30 a.m.

FRIDAY, JANUARY 23, 2004

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

03-1030
Schaffer v. Weast
(Messitte)

EDUCATION. Whether the school system should bear the burden of proof in establishing the appropriateness of proposed individualized special education program for student under IDEA.

03-1619
Idias v. US
(Fox)

CIVIL. Propriety of summary judgment upholding agency's disqualification of store from participation in Food Stamp Program.

03-4191
US v. Michael David Brown
(Michael)

SENTENCING. Reviewability of standard applied by district court in denying downward departure.
15 mins. per side

02-4831
US v. Dariusz Piotr Kiulin
(Fox)

SENTENCING GUIDELINES. Whether court erroneously relied on presentence report's statement of ecstasy's street value when calculating drug equivalent of cash seized.
15 mins. per side

PANEL II
COURTROOM TWO
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8:30 a.m.

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UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

02-2317
US v. Colkitt
(Harvey)

CIVIL. Challenge to district court's approval of
arbitration insurance award.

03-4529
US v. Irvin Mayo
(Payne)

SEARCH & SEIZURE. Challenge to suppression of evidence and
statements obtained as a result of Terry stop and
subsequent arrest.

03-1659
Bonolis v. Metropolitan Life
(Garbis)

ERISA. Challenge to denial of disability benefits under
employer-sponsored disability plan.

03-4017
US v. Andre E. Riggs
(Motz)

SENTENCING GUIDELINES. Challenge to downward departure for
diminished capacity.
15 mins. per side

PANEL III
COURTROOM THREE
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8:30 a.m.

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UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

02-4769 US v. Terry B. Pressley (Houck)	SENTENCING. Whether appellant was properly sentenced as an armed career criminal. (15 mins. per side)
02-4859 (L), 02-4860 US v. David Tzuwei Yang (Davis)	CRIMINAL LAW & PROCEDURE. Whether the Arms Export Control Act is unconstitutionally vague; denial of entrapment instruction; limitations on jury voir dire.
03-4403 US v. David L. Hatfield (Faber)	SEARCH & SEIZURE. Challenge to suppression of evidence obtained when police executed an arrest warrant at a private home without knocking and announcing their presence and intent.
02-2432 Walton v. Greenbrier Ford Inc (Jackson)	FLSA. Whether a service advisor at an automobile dealership is exempt from overtime requirements under 29 U.S.C. Section 213(b)(10)(A) (2000).

PANEL IV
COURTROOM FOUR
Courthouse Room 420 (Tweed Carpet)
8:30 a.m.

FRIDAY, JANUARY 23, 2004