

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

05-7804
US v. Bowman
(Currie)

HABEAS CORPUS. Sufficiency of factual basis supporting guilty plea to distribution of controlled substance resulting in the death of another person.

06-1592
Sewell Coal Company v. DOWCP

BLACK LUNG BENEFITS. Whether claim was timely; whether Administrative Law Judge erred in applying 20 C.F.R. Section 725.414 to limit and evaluate medical evidence; whether award of benefits is supported by substantial evidence; whether Judge properly determined eligibility date.

06-7921
US v. Powell
(Messitte)

POSTCONVICTION LAW. Whether defendant is entitled to be resentenced as a non-career offender on ground that actual innocence of being career offender excuses any procedural default or alleged lack of due diligence; whether Johnson v. United States applies retroactively.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

TUESDAY, JANUARY 29, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

07-1348

Piney Run Preser v. County Commissioner
(Davis)

CLEAN WATER ACT. Whether private enforcement action was
barred by consent judgment entered into between county and
state agency.

07-1234

Walraven v. Davis
(Whitney)

FIRST AMENDMENT. Whether North Carolina's temporary ban on
in person and telephone solicitation of the recently
injured violated healthcare provider's commercial speech
rights.

05-7382

Townes v. Jarvis
(Hilton)

HABEAS CORPUS. Whether petitioner was erroneously classi-
fied as parole ineligible and whether said classification
violated his Fourteenth Amendment rights.

PANEL II
COURTROOM TWO
Courthouse Room 201 (Green Carpet)
9:30 a.m.

TUESDAY, JANUARY 29, 2008

REVD 12/28/07

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

07-4112
US v. Barbara Bland
(Keeley)

CRIMINAL. Whether misdemeanor exception in 20 U.S.C.
Section 1097(a) applies to attempted federal financial aid
fraud.

07-1351
Green v. City of Raleigh
(Boyle)

CONSTITUTIONAL LAW. Challenge to the constitutionality of
city's picketing ordinances.

07-1322 (L), 07-1910
US ex rel Wilson v. Graham County Soil
(Thornburg)

FALSE CLAIMS ACT. Did the district court err in dismissing
the action; did the court abuse its discretion in denying
Rule 56(f) application; other issues.

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
9:30 a.m.

TUESDAY, JANUARY 29, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

07-6
Cagle v. Branker
(Howard)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

07-1001
Gaskins v. BFI Waste Services
(Lee)

ATTORNEYS' FEES. Did excusable neglect prevent fee petition from being untimely; was fee petition reasonable and properly documented.

06-7719
Thigpen v. McDonnell
(Hilton)

CIVIL RIGHTS. Whether the district court properly dismissed inmate's due process and equal rights protections challenge to the Virginia statute requiring registration of sex offenders.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

TUESDAY, JANUARY 29, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1683

Hayes v. DeWitt
(Garbis)

CIVIL RIGHTS. Was defendant entitled to qualified immunity regarding plaintiff's detention.

07-1200

Kubota Tractor Corp v. Strack
(Morgan)

BANKRUPTCY. Whether debt is non-dischargeable in bankruptcy under exception for conversion amounting to willful and malicious injury or for defalcation of proceeds in fiduciary context.

07-4026

US v. Davon Tate
(Davis)

FOURTH AMENDMENT. Whether district court erred in denying Franks hearing.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

WEDNESDAY, JANUARY 30, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

07-1615
AES Sparrows Point v. Smith
(Bennett)

NATURE OF CASE

ZONING. Challenge to district court's ruling that Baltimore County ordinance prohibiting construction of liquified natural gas terminals in environmentally sensitive areas is not preempted by Natural Gas Act.

PANEL II
COURTROOM TWO
Courthouse Room 201 (Green Carpet)
9:30 a.m.

WEDNESDAY, JANUARY 30, 2008

revd 1/23/08

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

07-1163

M & S Partners v. Scottsdale Ins Co
(Copenhaver)

CIVIL PROCEDURE. Choice of law and default judgment issues
in insurance coverage case.

07-1015 (L), 07-1127

Johnson v. Wheeling Pittsburgh
(Stamp)

CIVIL LAW. Whether district court erred in dismissing
retaliation, race, and religious discrimination claims and
excluding evidence on remaining religious discrimination
claims.

07-1123

EEOC v. Sunbelt Rentals
(Messitte)

EMPLOYMENT DISCRIMINATION. Whether EEOC adduced sufficient
evidence of religious discrimination based upon hostile
work environment and of employer's knowledge.

07-4211

US v. Cedric L. Benton
(Conrad)

CRIMINAL LAW & PROCEDURE. When magistrate judge conducts
plea colloquy pursuant to United States v. Osborne, 345
F.3d 281 (4th Cir. 2003), may magistrate judge accept
guilty plea, or must plea be accepted by district judge;
voluntariness of guilty plea.

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
9:30 a.m.

WEDNESDAY, JANUARY 30, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

06-4691

US v. Jay E. Lentz
(Ellis)

CRIMINAL LAW & PROCEDURE. Whether court constructively amended indictment; evidentiary issues related to recorded phone conversations between defendant and attorney; other issues.

07-4222

US v. Gary Alan Rinehults
(Hudson)

SENTENCING GUIDELINES. Scope of waiver; application of USSG Section 5G1.3(b).
15 mins. per side

06-4844 (L), 06-4845

US v. June R. Garcia
(Moon)

CRIMINAL LAW & PROCEDURE. Evidentiary issues; in court identification; USSG Section 3C1.1 sentence enhancement.

06-4171

US v. Roger H. Viar, Sr.
(Moon)

CRIMINAL LAW & PROCEDURE. Whether evidence was sufficient to prove specific allegations in the indictment regarding the conspiracy.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

WEDNESDAY, JANUARY 30, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

07-1315

Ingle v. Yelton
(Thornburg)

CIVIL RIGHTS. Whether district court erred on remand in denying motion to compel and Rule 56(f) motion; whether defendants are entitled to qualified immunity.

07-4103 (L), 07-4094

US v. John Alvis Jackson
(Moon)

CRIMINAL LAW & PROCEDURE. Numerous challenges to convictions and sentencing for bank fraud and wire fraud in connection with ERISA plan.

07-4420

US v. Raul Diaz-Ibarra
(Hilton)

CRIMINAL LAW & PROCEDURE. Propriety of sixteen-level enhancement for "crime of violence" under USSG 2L1.2(b)(1)(A).
15 mins. per side

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

THURSDAY, JANUARY 31, 2008

REVD 1/30/08

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

06-2105 (L), 06-2183

Evergreen America v. NLRB

LABOR LAW. Whether substantial evidence supports findings of unfair labor practices; whether remedy is appropriate.

07-1527

City of Falls Church v. Fairfax Cnty Water
(Hilton)

FEDERAL PREEMPTION. Whether Federal Acts creating Washington Aqueduct preempt state law regarding the supply and distribution of water to certain customers.

06-2140

CACI Premier Tech v. Rhodes
(Lee)

DEFAMATION. Challenge to summary judgment on defense contractor's defamation claims against radio commentator.

07-4122

US v. John L. Irby
(Wilson)

CRIMINAL LAW & PROCEDURE. Whether compliance with the statutory and regulatory requirement that a Veterans Affairs hospital post regulations governing conduct of persons on its property is a substantive element of an underlying offense that must be proven beyond a reasonable doubt.

PANEL II
COURTROOM TWO
Courthouse Room 201 (Green Carpet)
9:30 a.m.

THURSDAY, JANUARY 31, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

07-1009
Christopher U. Hall v. Sullivan
(Quarles)

LEGAL MALPRACTICE. Whether summary judgment was appropriate on legal malpractice claims.

07-6598
Bustos v. White
(Herlong)

HABEAS CORPUS. Whether district court erred in determining that habeas petition was timely filed and that trial counsel rendered constitutionally ineffective assistance of counsel.

PANEL III
COURTROOM THREE
Courthouse Room 223 (Tan Carpet)
9:30 a.m.

THURSDAY, JANUARY 31, 2008

REVD 1/30/08

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

07-1181
Steinburg v. Chesterfield County
(Payne)

CIVIL. Denial of motion to amend complaint; whether
defendants unconstitutionally limited plaintiff's speech.

06-2297
Othentec Limited v. Jeffrey Phelan
(Hilton)

CIVIL. Whether district court properly granted summary
judgment on state law claims under Virginia Computer Crimes
Act and Virginia Uniform Trade Secret Act.

07-4544
US v. Kevin Geddings
(Dever)

CRIMINAL LAW & PROCEDURE. Was 18 U.S.C. Section 1346
unconstitutional as applied to defendant; sufficiency of
the evidence; other issues.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

THURSDAY, JANUARY 31, 2008

revd 1/23/08

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

07-4105 (L), 07-4118
US v. S. Matamoros-Modesta
(Voorhees)

CRIMINAL LAW & PROCEDURE. Whether state felony conviction for possession of narcotics qualifies as an "aggravated felony" for purposes of USSG Section 2L1.2(b)(1)(C).

06-5154
US v. Keith Luckerson
(Conrad)

CRIMINAL LAW & APPEAL. Whether issue sought to be raised is within the exception to waiver of right to appeal; sentencing issue.

06-7381
Webb v. Hamidullah et al
(Floyd)

BIVENS. Whether material issues of fact exist preventing summary judgment on claims of deliberate indifference to serious medical needs.

06-4628
US v. Tradon M. Drayton
(Jones)

CRIMINAL LAW & PROCEDURE. Whether district court erroneously denied motions to dismiss and for acquittal and imposed improper sentence.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
8:30 a.m.

FRIDAY, FEBRUARY 1, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

06-2182

Rosenfield v. Wilkins
(Loken)

CIVIL. Whether CJA counsel has property interest in attorney's fees; whether judge sitting by designation abused his discretion in denying recusal motion.

05-5157

US v. David Armstead
(Wexler)

CRIMINAL LAW & PROCEDURE. Sufficiency of evidence to prove retail value of bootlegged DVDs for felony copyright infringement conviction under 18 U.S.C. Section 2319(b)(1); other issues.

06-4876

US v. Barbara Corby Martin
(Moon)

CRIMINAL LAW & PROCEDURE. Whether sufficient evidence supported arson conviction; whether consecutive sentences were statutorily required; whether multiple convictions and sentences violated the Double Jeopardy Clause.

05-5178

US v. Jessie Hairston
(Kiser)

CRIMINAL LAW & PROCEDURE. Whether the potential error under Fed. R. Civ. P. 11 would require vacating the possession of a firearm by a felon counts or all of the convictions.

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FRIDAY, FEBRUARY 1, 2008

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

06-4514

US v. Rodriguez-Amaya
(Lee)

IMMIGRATION. Whether civil administrative deportation detentions are includable under the Speedy Trial Act 30-day time limitation; other issues.

07-4152

US v. Kenneth Curry
(Kelley)

CRIMINAL LAW & PROCEDURE. Whether sentence after remand resulting from downward variance is reasonable.

07-1177

BB&T Corporation v. US
(Tilley)

TAX. Whether district court properly upheld IRS's disallowance of deduction for rent on basis that appellant did not acquire genuine leasehold interest in property.

05-4985 (I), 05-4989

US v. Maqsood Hamid Mir
(Williams)

CRIMINAL LAW & PROCEDURE. Admission of evidence; Speedy Trial Act; numerous issues

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FRIDAY, FEBRUARY 1, 2008

UNITED STATES COURT OF APPEALS
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(01/29/2008 - 02/01/2008 Session)

NUMBER AND STYLE

NATURE OF CASE

06-4826
US v. Kenneth Roshaun Reid
(Currie)

CRIMINAL LAW & PROCEDURE. Sufficiency of jury instructions;
other issues.

06-5166 (L), 06-5295
US v. Michael Kevin Harris
(Maxwell)

SENTENCING GUIDELINES. Whether methamphetamine offense
created substantial risk of harm; disparity with
co-defendant's sentence; cross reference to accessory after
the fact guideline.
15 mins. per side

07-4212
US v. Larry Donald Stacy
(Dever)

SENTENCING GUIDELINES. Whether district court erred by
imposing five level enhancement for pattern of activity
involving sexual abuse or exploitation of a minor pursuant
to USSG Section 2G2.2(b)(5).
15 mins. per side

07-1148
In Re: Yates
(Titus)

BANKRUPTCY. Whether imposition of bond was discriminatory,
did the bond violate the discharge order, and was the bond
dischargeable; other issues.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
8:30 a.m.

FRIDAY, FEBRUARY 1, 2008