

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (03/23/2010 - 03/26/2010 Session)

09-0004	Briefs	HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.
Teresa Lewis v. Barbara Wheeler (Conrad)		
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09-1438	Briefs	CONSTITUTIONAL LAW. Whether law enforcement operation was constitutionally reasonable; qualified immunity and other issues.
David Ruttenberg v. Frank Jones (Ellis)		
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09-1283	Briefs	CIVIL. Whether the district court erred in modifying the attorney fee payment from \$6,000,000 to \$600,000 in its order approving settlement.
Abrams & Abrams, P.A. v. National Union Fire (Boyle)		
Associations: 09-1285		
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09-1632	Briefs	FAIR CREDIT REPORTING ACT. Whether district court properly denied class certification; calculation of damages under the Act.
Patrick Stillmock v. Weis Markets, Incorporated (Garbis)		

Tuesday, March 23, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-6964	Briefs	Section 2255. Whether counsel was ineffective for failing to object to inclusion of assault and battery conviction as a predicate offense for purposes of armed career criminal designation; other issues.
US v. Nicholas Tucker (Anderson) Associations: 08-7704		
09-1251	Briefs	CIVIL PROCEDURE. Whether the district court erred applying Maryland's public policy exception to the lex loci delicti rule; related issues.
Katherine Lewis v. Jeremy Waletzky (Messitte)		
09-1323	Briefs	IMMIGRATION. Whether substantial evidence supports the denial of Agbornchong's application for asylum.
Diana Agbornchong v. Eric Holder, Jr.		
09-1468	Briefs	CIVIL. Whether the district court properly dismissed appellant's declaratory judgment action for lack of subject matter jurisdiction.
Settlers Crossing, L.L.C. v. U.S. Home Corporation (Chasanow)		

Tuesday, March 23, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-7433	Briefs	QUALIFIED IMMUNITY. Whether plaintiff met his burden of showing that defendant's mistake was unreasonable.
Frederick Henry v. Robert Purnell (Motz)		
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08-1918	Briefs	Federal Tort Claims Act. Whether district court's judgment on causation of newborn's injuries was clearly erroneous; other issues.
Sherita Murphy v. US (Doumar)		
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08-6670	Briefs	CIVIL RIGHTS. Whether claim against police officer in his individual capacity related back under Fed. R. Civ. P. 15 to original complaint alleging excessive force.
Tyrone Robinson v. Joseph Clipse (Blatt)		
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09-1615	Briefs	CONSTITUTIONAL LAW. Constitutional challenge to Virginia's citizens-only provision regarding requests for public records under state FOIA; standing; other issues.
McBurney etal v. Mims etal (Spencer)		

Tuesday, March 23, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-2242	Briefs	CIVIL. Whether district court erred in granting summary judgment to Allstate on bad faith claim.
Paul Potylicki v. Allstate Insurance Company (Currie)		
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09-1723	Briefs	CONSTITUTIONAL LAW. Challenge to constitutionality of Virginia statute prohibiting dissemination of social security numbers; other issues.
Betty Ostergren v. Robert McDonnell (Payne)		
Associations: 09-1796		
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08-2155	Briefs	AVIATION. Whether substantial evidence supports finding that petitioners operated over a congested area; whether "congested area" in 14 C.F.R. Sections 91.119(b) and 137.51(b) is unconstitutionally vague.
George Folk v. Robert Sturgell		
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07-5138	Briefs	CRIMINAL. Whether district court erred in excluding battered spousal syndrome defense, and denying appellant's motion for a continuance or to compel testimony of witness in government custody; other issues.
US v. Edna Bey (Titus)		

Tuesday, March 23, 2010

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-8191 [Briefs](#)
Timothy Rice v. M. L. Rivera
(Anderson)
Associations: 09-6001

HABEAS. Whether district court correctly found Rice's Section 924(c)(1) conviction lawful after Bailey v. United States; whether "carry" prong of Section 924(c)(1) may provide an appropriate basis to affirm.

08-1858 [Briefs](#)
US Airline Pilots Association v. AWAPPA, LLC
(Reidinger)

CIVIL. Whether the district court erred in dismissing the US Airline Pilots Association's RICO complaint; other issues.

08-8525 [Briefs](#)
US v. Jeffrey MacDonald
(Fox)

SECTION 2255. Whether district court's procedural decisions prohibiting expansion of the record to include post-trial evidence were erroneous in light of 28 U.S.C. Section 2244(b)(2)(B)(ii) (2006).

Tuesday, March 23, 2010

PANEL V
Courtroom 5
Room 339 (Spencer)
9:30 a.m.

REVD 3/19/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-1776 [Briefs](#) ERISA. Whether Pension Fund could disregard corporation's transfer of assets prior to completing withdrawal payments to Fund.
Teamsters Joint Council No. 83 v. Weidner Realty
(Hudson)

09-4072 [Briefs](#) FOURTH AMENDMENT. Whether AOL acted as government agent in searching defendant's email for the presence of child
US v. Thomas Richardson, Jr.
(Reidinger)

09-1822 [Briefs](#) LABOR. Whether union members entitled to health benefits under company pension plan, the relevant CBA, and ERISA.
Gregory Parsons v. Power Mountain Coal
(Faber)

09-4119 [Briefs](#) CRIMINAL LAW. Whether district court erred in granting Section 2255 relief and vacating ACCA sentence.
US v. Antoine Pettiford
(Legg)

Wednesday, March 24, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

REVD 2/23/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (03/23/2010 - 03/26/2010 Session)

09-4606	Briefs	CRIMINAL LAW & PROCEDURE. Whether district court erred finding testimony admissible as a statement against interest; related issues.
US v. Michael Hadeed, Jr. (Brinkema)		
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09-1737	Briefs	CIVIL RIGHTS. Whether defendant state troopers are entitled to qualified immunity for Section 1983 claims of unconstitutional arrest.
Angela Swagler v. Neighoff (Bennett)		
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08-2366	Briefs	CIVIL. Whether policy prohibiting relatives from working within same agency violates the North Carolina and United States Constitutions; other issues.
Latrice Woodard v. The County of Wilson (Dever)		
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09-1248	Briefs	ERISA. Whether the insurer abused discretion by denying long term disability benefits without doing a vocational analysis.
Thomas Piepenhagen v. Old Dominion Freight (Turk)		

Wednesday, March 24, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-1606	Briefs	CIVIL. Whether district court clearly erred in its findings of fact and conclusions of law in denying medical negligence claims under FTCA; other issues.
Veronica Drennen v. US (Johnston)		
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09-1050	Briefs	CONSTITUTIONAL LAW. Challenge to the constitutionality of N.C. statute creating minority business enterprise and women business enterprise programs in the highway construction industry.
HB Rowe Company Incorporated v. W. Tippet (Boyle)		
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09-4687	Briefs	CRIMINAL LAW. Did service member have reasonable expectation of privacy in digital contents of his personal MP3 player; other issues.
US v. Kevin Rendon (O'Grady)		

Wednesday, March 24, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
9:30 a.m.

REVD 3/19/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-1397	Briefs	TRADEMARK LAW. Whether plaintiff should have been granted judgment as to trademark infringement and trademark dilution; challenge to award of profits and attorney's fees.
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09-4166	Briefs	SENTENCING GUIDELINES. Whether defendant committed the offense of structuring as part of a pattern of unlawful activity within the meaning of USSG § 2S1.3(b)(2).
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09-4219	Briefs	CRIMINAL. Whether district court erred in ordering involuntary medication of Bowles to render him competent to stand trial.

REVD 3/22/10

Wednesday, March 24, 2010

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-4343 [Briefs](#) CRIMINAL LAW. Whether ex post facto clause applies to post-Booker determination of sentencing guidelines range; suppression
US v. Derrick Lewis issue.
(Hudson)
Associations: 09-4474

09-1566 [Briefs](#) FEDERAL PROCEDURE. Whether city's regulation of trucks by haul permit is preempted by federal law.
Norfolk Southern Railway Co. v. City of Alexandria
(Cacheris)
Associations: 09-1608

09-1092 [Briefs](#) CIVIL. Whether issues of fact precluded 12(b)(6) dismissal; propriety of reliance on ERISA and COBRA law for non-ERISA case;
Estate of John Cecil Spinner v. Anthem Health disclosure duties of insurer.
(Moon)

Wednesday, March 24, 2010

PANEL V
Courtroom 5
Room 339 (Spencer)
9:30 a.m.

REVD 2/23/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-8428	Briefs	CIVIL RIGHTS. Whether the state can enforce its Maryland DNA Collection Act using necessary force against inmates as enumerated in its Division of Correction Directives.
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09-4333	Briefs	CRIMINAL. Whether Bethea's prior escape conviction was properly considered a violent felony under 18 U.S.C. 924(e); other issues.
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08-4604	Briefs	CRIMINAL LAW & PROCEDURE. Whether the waiver of appeal rights in the plea agreement forecloses this appeal; whether sentence is procedurally unreasonable.
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08-7847	Briefs	CRIMINAL LAW & PROCEDURE. Whether the district court erred in not holding an evidentiary hearing on the government's Fed. R. Crim. P. 35(b) motion.

Thursday, March 25, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (03/23/2010 - 03/26/2010 Session)

09-1076 [Briefs](#) BANKRUPTCY LAW. Challenge to holdings relating to avoidance and turnover of preference; affirmative defense, necessary party, declaratory judgment, and fraudulent conveyance.
Firstpay, Incorporated v. Michael Wolff
(Messitte)
Associations: 09-1107

09-1250 [Briefs](#) CIVIL. Whether the magistrate judge erred in granting defendants' summary judgment motion on § 1983 and state law libel claims.
Stacy Harrell v. City of Gastonia
(Horn)

09-1021 [Briefs](#) ADA. Whether the ADA requires sports stadium to make accessible to deaf individuals all aural information projected over public address system; other issues.
Shane Feldman v. Pro Football, Incorporated
(Williams)
Associations: 09-1023

09-1332 [Briefs](#) LABOR LAW. Whether sign display was protected free speech; other issues.
McElroy Coal Company v. NLRB
Associations: 09-1427

Thursday, March 25, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-4448 [Briefs](#) CRIMINAL LAW. Whether district court's questioning of sole defense witness deprived defendant of fair trial; jury selection.
US v. Brandon Burrus
(Doumar)

09-1009 [Briefs](#) CIVIL. Whether court erred by instructing jury that plaintiff was required to prove her employment was terminated "solely
because" of her disability or retaliation; other issues.
Bonnie Dank v. James Peake
(Bennett)

08-5220 [Briefs](#) CRIMINAL LAW & PROCEDURE. Whether the evidence was sufficient to support Susi's convictions; other issues.
US v. Alfredo Susi
(Whitney)

Thursday, March 25, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
9:30 a.m.

REVD 2/23/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-5224 US v. Davon Perry (Motz)	Briefs	CRIMINAL. Whether there was sufficient evidence to demonstrate defendant violated 18 U.S.C. Section 2119 (2006) (carjacking); related issue.
08-2278 Frederick Aikens v. William Ingram, Jr. (Dever)	Briefs	CIVIL. Whether district court erred in denying Aiken's Fed. R. Civ. P. 60(b) motion or, in the alternative, failed to treat the motion as a new action.
09-1314 Star Broadcasting, Incorporate v. Reed Smith LLP (Hilton)	Briefs	CIVIL. Whether the district court erred in granting summary judgment for appellee in legal malpractice suit.
09-4375 US v. Willie Alston (Davis)	Briefs	CRIMINAL LAW. Whether conviction based upon a plea entered pursuant to North Carolina v. Alford established a predicate conviction under the Armed Career Criminal Act.

Thursday, March 25, 2010

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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05-1768 New v. Astrue (Harwell)	Briefs	SOCIAL SECURITY. Whether claimants are entitled to child insurance benefits.
08-4439 US v. Antonio Dean (Conrad)	Briefs	SENTENCING GUIDELINES. Whether district court erred in finding that defendant was a career offender.
08-4015 US v. Van Cleve Ashley (Garbis)	Briefs	CRIMINAL. Whether under 18 U.S.C. Section 1513, government must prove defendant knew the witness gave information to federal authorities; whether the district court constructively amended the indictment.
08-4207 US v. Marques Bynum (Reidinger)	Briefs	CRIMINAL LAW & PROCEDURE. Whether use of administrative subpoenas violated the Fourth Amendment; sufficiency of the evidence, and whether the sentence was reasonable; other issues.

Thursday, March 25, 2010

PANEL V
Courtroom 5
Room 339 (Spencer)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-5203 US v. John Roe (Messitte)	Briefs	CRIMINAL LAW & PROCEDURE. Whether the evidence was sufficient to support conviction for impersonating a federal officer under 18 U.S.C. Section 912; other issues.
09-4481 US v. Martha Mitchell (Copenhaver)	Briefs	CRIMINAL. Whether the district court erred in denying Mitchell's motion to suppress; other issues.
09-4282 US v. Shonitha Knight (Whitney)	Briefs	SENTENCING GUIDELINES. Whether, after Booker, it was plain error and a violation of the Ex Post Facto Clause to apply the 2007 Guidelines Manual; other issues.
09-1238 Humphrey Mbah v. Eric Holder, Jr.	Briefs	IMMIGRATION. Whether the Immigration Judge's adverse credibility finding and rejection of petitioner's corroborative evidence, affirmed by the Board, were supported by substantial evidence.

Friday, March 26, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-5026	Briefs	CRIMINAL. Whether the district court erred in ordering restitution to all victims of the mail fraud scheme.
United States v. Michael Lomas (Britt)		
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06-1503	Briefs	CIVIL. Applicability of West Virginia Unfair Trade Practices Act; other issues.
Stafford EMS Inc v. J B Hunt Transport (Copenhaver)		
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09-7216	Briefs	HABEAS. Whether introduction of expert testimony based on allegedly invalid science violated due process; whether defendant received ineffective assistance of counsel.
James Flippo v. Thomas McBride (Johnston)		
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08-5128	Briefs	SENTENCING GUIDELINES. Whether enhanced offense level under USSG Section 2K2.1(a)(1) for prior crimes of violence was plain error.
US v. Harry Leshen (Smith)		

Friday, March 26, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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08-5057	Briefs	SENTENCING. Whether the district court provided individualized rationale for the chosen sentence; standard of review.
US v. Benjamin Hernandez (Herlong)		
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09-0279	Briefs	CAFA. Issues regarding effect of settlement negotiation documents, post-removal amended complaint, and amendment to notice of removal on federal jurisdiction.
Judith Moffitt v. Residential Funding Co (Motz)		
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09-0280	Briefs	CAFA. Issues regarding effect of settlement negotiation documents, post-removal amended complaint, and amendment to notice of removal on federal jurisdiction.
Lynn Fulmore v. Premier Financial Corporation (Motz)		
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09-0281	Briefs	CAFA. Issues regarding effect of settlement negotiation documents, post-removal amended complaint, and amendment to notice of removal on federal jurisdiction.
Edwin Ruble v. The Mortgage Consultants (Motz)		

Friday, March 26, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-4165	Briefs	REVOCATION OF SUPERVISED RELEASE. Sufficiency of evidence, use of hearsay evidence in revoking supervised release; whether sentence was plainly unreasonable based on adequacy of district court's explanation of sentence.
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08-4907	Briefs	CRIMINAL. Whether district court erred in denying mistrial following witness's reference to pending state murder charges; application of murder cross-reference.
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09-9512		ATTORNEY DISCIPLINE. Reciprocal disciplinary proceedings.
In re Attorney Discipline		PANEL IV Courtroom 4 Room 414-D (Tweed Carpet) 8:30 a.m.
REVD 2/23/10		Friday, March 26, 2010