

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, VA
(03/24/2009 - 03/27/2009 Session)

06-0023 Darick Walker v. Loretta Kelly (Hilton)	Briefs	HABEAS CORPUS. Whether petitioner's mental retardation precludes imposition of death penalty under Eighth Amendment as interpreted in Atkins v. Virginia, 536 U.S. 304 (2002).
08-0011 Darick Walker v. Loretta Kelly (Hilton)	Briefs	HABEAS CORPUS. Whether the district court erred in holding that petitioner had not established a violation of Brady v. Maryland, 373 U.S. 83 (1963).
08-4045 US v. Antonio Griffin (Conrad)	Briefs	CRIMINAL LAW & PROCEDURE. Whether investigatory stop and protective search of vehicle violated Fourth Amendment.

Tuesday, March 24, 2009

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

REVD 2/26/09

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, VA
(03/24/2009 - 03/27/2009 Session)

08-1031 Compania Naviera Joanna SA v. n (Norton)	Briefs	ADMIRALTY LAW: Whether the district court erred in granting motion to dismiss a limitation of liability proceeding by party that brought it on the ground of forum non conveniens; other issues.
08-5009 US v. Jose Mejia (Titus)	Briefs	CRIMINAL LAW & PROCEDURE. Whether restitution determination based on owner's testimony about vehicle's value amounted to abuse of discretion.
07-5051 US v. Isaac Ahanmisi (Williams)	Briefs	CRIMINAL. Whether tax loss amount was a "reasonable estimate" when it was based on tax returns selected based on specific criteria; other issues.

Tuesday, March 24, 2009

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

REVD 3/12/09

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, VA
(03/24/2009 - 03/27/2009 Session)

08-1706 Fidelity Bank PLC v. M/T Tabora (Quarles)	Briefs	MARITIME LAW: Whether the district court abused its discretion in dismissing wrongful arrest count of counterclaim on forum non conveniens grounds; other issues.
08-1367 Anna Midi v. Eric Holder, Jr.	Briefs	IMMIGRATION. Whether the Board erred finding petitioner was not eligible for relief under the CSPA; related issues.
07-1699 Cross v. Bragg (Quarles)	Briefs	ERISA. Whether an unambiguous provision in a Plan can be a scrivener's error; other issues and cross-appeal.
08-1375 B & J Enterprises, LTD v. Ken Giordano (Garbis)	Briefs	TRADEMARK LAW: Whether summary judgment was appropriate in case alleging trademark infringement and anticybersquatting claims.

Tuesday, March 24, 2009

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

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, VA
(03/24/2009 - 03/27/2009 Session)

08-1353 LIOBMedia, LLC v. DataFlow/Alaska, Incorporated (Hilton)	Briefs	CONTRACT: Whether district court properly entered judgment in favor of defendant on basis that plaintiff was unable to establish damages arising from alleged breach of contract.
08-1845 Commonwealth of Virginia v. James Reinhard (Payne)	Briefs	CONSTITUTIONAL LAW. Whether sovereign immunity bars suit by a state agency against state officials in their official capacities.
08-4748 US v. Jermarl Jones (Blake)	Briefs	CRIMINAL LAW & PROCEDURE. Whether district court erred in denying motion to suppress; other issues.
08-4588 US v. Timothy Jenkins (Norton)	Briefs	SENTENCING GUIDELINES. Whether possession of firearm facilitates simple possession of user quantity of drugs, USSG Section 2K2.1(b)(6).

Tuesday, March 24, 2009

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

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, VA
(03/24/2009 - 03/27/2009 Session)

08-4519	Briefs	CRIMINAL LAW & PROCEDURE. Whether appellate court should notice Rule 11 error; whether prior state conviction provided proper basis for sentence enhancement.
US v. Danny Brachtendorf (Reidinger)		
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08-1002	Briefs	CIVIL. Whether appellant's first amendment right to free speech was violated in relation to city councilman's statement to press and whether right to petition government infringed.
Vincent Camastro v. City of Wheeling (Stamp)		
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08-1216	Briefs	CIVIL. Whether the district court correctly held that racing officials' primary duty directly relates to defendant's general business operations, rendering the position exempt under the Fair Labor Standards Act's administrative exemption; other issues.
John Desmond v. PNGI Charles Town Gaming, L.L. (Bailey)		
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08-4295	Briefs	CRIMINAL LAW & PROCEDURE. Whether district court dismissal of retained counsel based upon alleged conflict of interest violated defendant's Sixth Amendment right.
US v. Gagik Urutyan (Spencer)		

Tuesday, March 24, 2009

PANEL V
Courtroom 5
Courtroom of Judge Spencer
9:30 a.m.

REVD 2/26/09

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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07-5101 US v. Rico Joy (Wooten)	Briefs	CRIMINAL LAW & PROCEDURE. Whether arresting officers had probable cause to arrest appellants; whether there was reasonable suspicion to stop appellants.
08-1295 Jobie Lance v. Retirement Plan of Internation (Houck)	Briefs	ERISA. Whether the district court erred in finding the plan administrator did not abuse his discretion in denying benefits; standard of review.
08-1437 Tammy Fields v. Tolbert Prater (Moon)	Briefs	CIVIL RIGHTS: Whether the members of Social Services Board and Board of Supervisors are entitled to defense of qualified immunity regarding alleged improper hiring based upon political affiliation.
08-1896 Bridget Hardt v. Reliance Standard Life Insuran (Friedman)	Briefs	ATTORNEY'S FEES. Whether remand of ERISA case, followed by Plan's award of benefits, made plaintiff the prevailing party for purposes of fee award.

Wednesday, March 25, 2009

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

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, VA
(03/24/2009 - 03/27/2009 Session)

07-2162 Brenda Bryant v. City of Cayce (Perry)	Briefs	CIVIL RIGHTS: Whether district court erred in holding that police officer was not entitled to qualified immunity in 42 U.S.C. § 1983 action.
08-1789 Williams Mountain Coal Company v. DOWCP	Briefs	BLACK LUNG. Whether substantial evidence supports Director's finding of total disability based on pneumoconiosis. 15 mins. per side
08-1431 Eva Spry v. Eaton Corporation Long Term Di (Seymour)	Briefs	ERISA. Whether district court applied correct review standard; propriety of insurer's denial of coverage.
06-2125 US v. Under Seal (Lee)	Briefs	CRIMINAL LAW & PROCEDURE: Whether entities were properly found in contempt for failure to comply with grand jury subpoena; whether collective fines are impermissibly punitive.

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

Wednesday, March 25, 2009

REVD 3/24/09

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, VA
(03/24/2009 - 03/27/2009 Session)

07-2189 West Virginia Highlands Conser v. Dirk Kempthorne (Stamp)	Briefs	SURFACE MINING CONTROL & RECLAMATION ACT: Whether district court correctly held that plaintiff was entitled to attorney's fees under the SMCRA for work performed at the administrative level.
07-5128 US v. Geoffrey Harvey (Goodwin)	Briefs	CRIMINAL LAW & PROCEDURE. Whether defendant's mental illness and emotional trauma suffered by the victims warranted substantial upward sentencing variance.
08-6150 Scott Rendelman v. Nancy Rouse (Motz)	Briefs	CIVIL. Whether a Maryland prison's practice of providing a pork-free, ovo-lacto vegetarian diet, in lieu of a Kosher diet, is the least restrictive means of furthering a compelling government interest under the Religious Land Use And Institutionalized Pe
08-1917 Merck & Company, Incorporated v. International (Wilson)	Briefs	ARBITRATION. Whether district court erred in overturning arbitration decision.

Wednesday, March 25, 2009

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

UNITED STATES COURT OF APPEALS
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08-1389 Francoise Gomis v. Eric Holder, Jr.	Briefs	IMMIGRATION. Whether substantial evidence supports the Board's finding that petitioner was not eligible for withholding from removal; related issues.
08-6570 Marvin Sumner v. Keith Davis (Williams)	Briefs	HABEAS. Whether prisoner must demonstrate prejudice where counsel's procedural error precluded consideration of issue on direct appeal.
07-5123 US v. Cordell Smith (Whitney)	Briefs	CRIMINAL LAW & PROCEDURE. Whether admission of ATF agent's testimony about firearms' provenance violated best evidence rule; whether district court improperly accorded presumption of reasonableness to sentencing guidelines range.

Wednesday, March 25, 2009

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

REVD 3/20/09

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, VA
(03/24/2009 - 03/27/2009 Session)

08-1105 Earl Cole v. Buchanan County School Board (Jones)	Briefs	CONSTITUTIONAL LAW: Whether newspaper reporter established a prima facie case of First Amendment violation by county school board and its members; other issues.
08-4136 US v. Michael Malloy (Williams)	Briefs	CRIMINAL LAW & PROCEDURE. Whether mistake of age can be a defense to 18 U.S.C. Section 2251(a) (2006); whether removal of word "knowingly" from indictment resulted in constructive amendment; other issues.
08-1476 Breezewood of Wilmington Condo v. Amerisure (Dever)	Briefs	CIVIL. Whether insurance company breached duty to defend; definition of "property damage" under policy; factual disputes.
07-5116 US v. Eric Hans (Herlong)	Briefs	CRIMINAL LAW & PROCEDURE. Whether evidence was sufficient to support conviction; juror selections; motion for mistrial.

PANEL V
Courtroom 5
Courtroom of Judge Spencer
9:30 a.m.

Wednesday, March 25, 2009

REVD 3/24/09

UNITED STATES COURT OF APPEALS
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08-1527 [Briefs](#)
Natalie Stephens v. Michael Astrue
(Gauvey)

ATTORNEY'S FEES: Whether award of attorney's fees under Equal Access to Justice Act is payable to Social Security claimant or to claimant's attorney; other issues.

Thursday, March 26, 2009

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

REVD 3/20/09

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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07-5127 US v. James Richard Ricks (Conrad)	Briefs	CRIMINAL LAW & PROCEDURE. Whether the district court erred in denying appellant's motion for a new trial to present the justification defense against a charge of possession of a firearm by a felon, 18 U.S.C. 922(g) (2000).
07-2157 Beverly Calhoun v. UPS	Briefs	LABOR. Whether driver was unlawfully disciplined under Surface Transportation Assistance Act for refusal to operate vehicles based on safety checks exceeding employer's inspection standards.
08-1814 John Quillin v. C.B. Fleet Holding Company Inc (Blake)	Briefs	STATUTE OF LIMITATIONS. Whether plaintiff was on "inquiry notice" more than three years before filing suit that over-the-counter product could cause renal failure.

Thursday, March 26, 2009

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

REVD 3/20/09

UNITED STATES COURT OF APPEALS
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08-1674 M. Offen v. Alan Brenner (Titus)	Briefs	DEFAMATION: Whether district court properly found that defamatory comments challenged by plaintiff were protected by privilege.
08-1080 Volvo Cars of North America, L v. US (Osteen)	Briefs	TAXATION LAW. Whether second contract superseded the first, transforming earlier transfers of inventory into bona fide sales for federal tax purposes; if not, whether extrinsic evidence of parties' intent supports a refund.
08-1626 EEOC v. Thompson Contracting, Grading, (Boyle)	Briefs	EMPLOYMENT DISCRIMINATION: Whether employer met its burden to prove that reasonably accommodating employee's religious beliefs would cause undue hardship on business; other issues. Average.
08-1757 Robert Martin v. Gordon Ball (Stamp)	Briefs	CONTRACT LAW. Whether legal malpractice suit against class action counsel was required to be brought in state court that retained jurisdiction over the settlement.

Thursday, March 26, 2009

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08-1603 [Briefs](#) ADMINISTRATIVE LAW: Challenge by nursing facility to imposition of civil monetary penalty.
SunBridge Care and Rehabilitat v. Michael Leavitt

08-1755 [Briefs](#) CIVIL. Duty of care owed to plaintiff by entity leasing forklift to plaintiff's employer; other issues.
David Wert v. Jefferds Corporation
(Wilson)

07-4661 [Briefs](#) CRIMINAL LAW & PROCEDURE. Whether the district court erred in admitting "rent roll" exhibit; other
US v. Jair Francis
(Williams)

08-1358 [Briefs](#) CIVIL. Whether the district court erred in granting defendant's summary judgment motion on Wells' Title VII
Michael Wells v. Robert Gates
(Titus)

Thursday, March 26, 2009

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
9:00 a.m. **

REVD 3/12/09

UNITED STATES COURT OF APPEALS
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08-1460 [Briefs](#) CONTRACT: Challenge to district court's orders rejecting claims for contribution to excess costs for real estate
Commonwealth Group-Winchester v. Winchester development work.
(Conrad)

08-1885 [Briefs](#) INSURANCE. Whether territorial coverage provision relieved insurer of duty to defend or indemnify
CACI International, Incorporat v. St. Paul Fire and contractor in actions alleging abuse and torture at Abu Ghraib and Buka prisons.
(Brinkema)

08-4423 [Briefs](#) CRIMINAL LAW & PROCEDURE. Whether threatening communications transmitted via the internet were
US v. Kelly Wadford, Jr. transmitted in interstate commerce; other issues.
(Duffy)

Thursday, March 26, 2009

PANEL V
Courtroom 5
Courtroom of Judge Spencer
9:00 a.m. **

UNITED STATES COURT OF APPEALS
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06-4538 US v. James Wright (Bennett)	Briefs	CRIMINAL LAW & PROCEDURE. Whether government's loss of audio recording warranted judgment of acquittal or adverse inference jury instruction; other issues.
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08-4163 US v. James Frink (Britt)	Briefs	CRIMINAL. Sufficiency of evidence; altered and wiretap evidence; photographic identification; other issues.
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08-4643 US v. Jack Carter (Boyle)	Briefs	SENTENCING. Whether district court erred by varying downward to impose probation sentence.
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07-4249 US v. David A. Passaro (Boyle)	Briefs	CRIMINAL LAW & PROCEDURE. Challenge to Patriot Act and general criminal assault statute as void for vagueness; other issues.

Friday, March 27, 2009

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

UNITED STATES COURT OF APPEALS
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08-4411 US v. Daniel Crabtree (Jones)	Briefs	CRIMINAL LAW & PROCEDURE. Whether there is clean hands exception to statutory bar against using privately secured wiretaps in court proceedings.
08-4683 US v. Dean Gatherum (Johnston)	Briefs	CRIMINAL LAW & PROCEDURE. Whether search warrant contained allegations sufficient to support probable cause determination in child pornography case; other issues.
08-4441 US v. John Swain (Johnston)	Briefs	CRIMINAL LAW & PROCEDURE. Whether the district court erred in denying motion to suppress firearm and statement.
08-4430 US v. Timothy Cline (Faber)	Briefs	CRIMINAL LAW & PROCEDURE. Whether district court erred in applying obstruction of justice enhancement; calculation of loss for tax evasion and social security fraud.

Friday, March 27, 2009

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

UNITED STATES COURT OF APPEALS
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07-5088 US v. Maurice Gibson (Faber)	Briefs	CRIMINAL LAW & PROCEDURE. Denial of mistrial and new trial; other issues.
08-1746 Pennsylvania Electric Coil, Li v. City of Danville (Kiser)	Briefs	CONTRACT. Whether district court erred in granting summary judgment in favor of City on contractor's claims for restitution and unjust enrichment.
08-4161 US v. David Rhodes (Goodwin)	Briefs	SENTENCING. Whether the evidence is sufficient to establish that firearms located in defendant's residence were possessed in connection with the offense, as required for enhancement under USSG Section 2D1.1(b)(1).
06-5289 US v. Marc Anthony Jeffers (Conrad)	Briefs	CRIMINAL LAW & PROCEDURE. Whether district court committed plain error in not requiring jury to unanimously agree on specific firearm; whether government violated the Jencks Act, 18 U.S.C. Section 3500, Brady v. Maryland, 373 U. S. 83 (1963), or Fed. R.

Friday, March 27, 2009

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