

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

10-4493	Briefs	CRIMINAL: Whether the district court plainly erred in applying a two-level enhancement to Defendant's offense level pursuant to USSG Section 3B1.3 for abusing a position of trust.
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10-1911	Briefs	CIVIL: Whether the court erred in granting summary judgment to defendants on employment discrimination complaint and denying Fed. R. Civ. P. 56(f) request for discovery.
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10-1440	Briefs	CONTRACTS: Dispute between aviation services companies regarding right to service transient aircraft at Dulles airport.
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Signature Flight Support Corp v. Landow Aviation		
(Cacheris)		
Associations: 10-1968		
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10-4260	Briefs	CRIMINAL LAW: Whether the district court adequately explained Dendy's sentence; and whether the district court acknowledged its authority to sentence Dendy outside of his advisory guidelines range
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US v. Orenthal Dendy		
(Floyd)		

PANEL I
Room 348 (Payne)
9:30 a.m.

Tuesday, May 10, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

10-2347	Briefs	CONSTITUTIONAL LAW: Whether Congress exceeded its power under the Commerce Clause, or violated the First, Fifth, or Tenth Amendment, or the Religious Freedom Restoration Act, when it enacted the Affordable Care Act
Liberty University, Inc. v. Timothy Geithner (Moon)		

11-1057	Briefs	CONSTITUTIONAL LAW: Whether Virginia had standing to challenge the Affordable Care Act, and whether legislation was a valid exercise of Congress's commerce or taxing power.
Commonwealth of Virginia v. Kathleen Sebelius (Hudson)		
Associations:	11-1058	

09-5197	Briefs	CRIMINAL: Admissibility of psychiatric evidence and evidence of prior bad acts; other issues.
US v. David Dietz (Currie)		

09-5009	Briefs	CRIMINAL: Whether guilty plea, including waiver of right to appeal, was knowing and voluntary.
US v. Ernest Darcus, Jr. (Payne)		

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

Tuesday, May 10, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

Page 3 of 15

09-1748 US v. John Rachel (Nickerson) Associations: 09-2183	Briefs	GOVERNMENT PROCUREMENT: In False Claims Act case, whether the district court erred in instructing the jury, denying post-trial motions, denying costs and attorneys' fees, and other issues.
10-1734 William Harden v. Wicomico County, Maryland (Nickerson)	Briefs	CIVIL: Propriety of summary judgment entered against former employee of County who alleged retaliatory discharge and First Amendment violations.
09-4988 US v. Gabriel Perez-Amaya (O'Grady) Associations: 09-4989, 09-4991	Briefs	CRIMINAL: Propriety of exclusion of video as impeachment evidence and qualification of officer as expert; sufficiency; instructions; sentencing.
10-1401 Heather Braun v. Gary Maynard (Motz)	Briefs	CIVIL RIGHTS: Whether a positive ION scan provides suspicion adequate to justify a strip and visual body cavity search of a prison employee; qualified immunity and supervisory liability issues.

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

Tuesday, May 10, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

10-1509	Briefs	FEDERAL PROCEDURE: Whether the district court erred in reversing award of costs
Gary Ellis v. Grant Thornton LLP (Faber)		
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08-4055	Briefs	CRIMINAL: Whether admission of recorded statements obtained in violation of Williamson's Sixth Amendment rights was plain error requiring relief.
US v. Rodney Williamson (Tilley)		
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10-1548	Briefs	REHABILITATION ACT: Whether former U.S. Marshal is disabled under the Act based on hearing loss.
Phillip Cochran v. Eric Holder, Jr. (Cacheris)		
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10-1706	Briefs	ARBITRATION LAW: Whether arbitration panel exceeded its authority; other issues.
Central West Virginia Energy, v. Bayer (Hudson)		

Associations: 10-1934

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

Tuesday, May 10, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

Page 5 of 15

10-1499 [Briefs](#) LABOR LAW: Whether an applicant may sue a prospective employer under the anti-retaliation provisions of the Fair Labor
Natalie Dellinger v. Science Appl. Intern. Corp. Standards Act.
(Cacheris)

10-2352 [Briefs](#) BANKRUPTCY: When is severance pay "earned" for purpose of determining priority of claims for wages "earned within" 180 days
Bruce Matson v. Diego Alarcon prior to bankruptcy.
(Huennekens)

10-1880 [Briefs](#) CIVIL: Whether the district court viewed the record in the light most favorable to plaintiff on summary judgment; whether facts
Whitney, Bradley & Brown, Inc. v. Christian established a pattern of racketeering activity under RICO.
(Hilton)

09-4810 [Briefs](#) CRIMINAL: Whether indictment rested on perjured testimony relating to material matter; inconsistencies in verdict; other issues.
US v. Reginald Morton
(Jones)

Associations: 09-5004

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

Tuesday, May 10, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

Page 6 of 15

09-4298 [Briefs](#)
US v. Torrell Vann
(Boyle)

Rehearing En Banc.

08-4475 [Briefs](#)
US v. Jason Simmons
(Thornburg)

Rehearing En Banc.

En Banc Courtroom (Green)
9:00 a.m.

Wednesday, May 11, 2011

REVD. 4/1/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

Page 7 of 15

10-1792 [Briefs](#) TITLE VII: Whether the statutory exemption granted to religious institutions bars the claims in this suit.
Lori Kennedy v. Villa Saint Catherine, Inc.
(Grimm)

10-1533 [Briefs](#) ENERGY POLICY AND CONSERVATION ACT: Challenge to DOE's final rule adopting energy conservation standards for small electric
National Electrical Manufactur v. US Department motors.

10-1684 [Briefs](#) CIVIL: Propriety of district court's denial of Plaintiff's motion for a judgment as a matter of law; propriety of reduction in jury's
Minnesota Lawyers Mutual v. Terrence Batzli damages award; other issues.
(Hudson)
Associations: 10-1839, 10-1910

10-1530 [Briefs](#) INSURANCE LAW: Issues regarding interpretation of insurance policy provisions and business interruption loss calculation.
Breton, LLC v. Graphic Arts Mutual Insurance
(Trenga)
Associations: 10-1571

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

Thursday, May 12, 2011

REVD 5/6/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

Page 8 of 15

10-4050	Briefs	SENTENCING: Whether the district court abused its discretion in ordering restitution for losses resulting from uncharged conduct.
US v. Ronald Bryant (Osteen)		

10-1203	Briefs	CIVIL: Whether the district court properly awarded Bosley attorney's fees and costs beyond the \$30,000 sum stated in the Fed. R. Civ. P. 68 offer of judgment.
Brenda Bosley v. Mineral County Commission (Bailey)		

10-1681	Briefs	BANKRUPTCY LAW: Whether 11 U.S.C. § 522(f)(1) requires a debtor to file an exemption in order to avoid a judicial lien against her real property.
Anne Botkin v. DuPont Community Credit Union (Conrad)		

10-1857	Briefs	LABOR LAW: Whether FLRA properly upheld arbitration award regarding dues which had not been withheld in accordance with bargaining agreement.
NTEU v. FLRA		

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

Thursday, May 12, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

Page 9 of 15

10-1882 [Briefs](#) TAX INJUNCTION ACT: Whether the levy imposed by the county on plaintiff is a "tax" or a "fee."
GenOn Mid-Atlantic, LLC v. Montgomery County
(Messitte)

10-1985 [Briefs](#) TAX LAW: Whether Treas. Reg. 1.6015-5(b) regarding filing a request for equitable relief under IRC 6015(f) is valid; other
issues.
Octavia Jones v. Commissioner

10-1232 [Briefs](#) ESTABLISHMENT CLAUSE: Propriety of summary judgment ruling that County Board's invocation policy, as implemented at Board
Janet Joyner v. Forsyth County, North Carolina
(Beaty) meetings, violated First Amendment Establishment Clause.

10-1925 [Briefs](#) CIVIL RIGHTS: Whether police officials were entitled to qualified immunity.
Chasity Hutchison v. David Lemmon
(Chambers)

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

Thursday, May 12, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

Page 10 of 15

10-1592	Briefs	ADMINISTRATIVE: Whether district court correctly upheld recovery, as overpayment under Medicaid statutes, of funds received by state in settlement of action against pharmaceutical company
West Virginia Department v. Kathleen Sebelius (Goodwin)		

10-4297	Briefs	CRIMINAL LAW: Whether permitting co-defendant to assert Fifth Amendment privilege was error.
US v. Bruce Miller (Howard)		

10-1908	Briefs	TORTURE VICTIM PROTECTION ACT: Whether a corporation may be liable under the TVPA; other issues.
Mohammed Aziz v. Alcolac, Incorporated (Garbis)		

10-4417	Briefs	FOURTH AMENDMENT: Whether the district court erred in granting Appellee's motion to suppress evidence and statements resulting from a vehicle search following a traffic stop.
US v. Stephen Digiovanni (Blake)		

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

Thursday, May 12, 2011

REVD 5/6/11

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

Page 11 of 15

09-4812	Briefs	CRIMINAL: Whether confessions were properly admitted in light of Maryland v. Shatzer, 130 S. Ct. 1213 (2010); admission of Rule 404(b) evidence; other issues.
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10-1997	Briefs	CONSTITUTIONAL LAW: Does the requirement of Va. Code Section 24.2-506 that petition signatures be witnessed by a district resident violate the First Amendment.
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10-1122	Briefs	LONGSHORE: Whether ALJ erred in averaging the results from two audiograms to determine extent of hearing loss.
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10-1802	Briefs	REAL ESTATE: Whether title insurance company can pursue cause of action against a CRESPA bond
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PANEL V
Room 339 (Spencer)
9:30 a.m.

Thursday, May 12, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

Page 12 of 15

09-4215 [Briefs](#) CRIMINAL LAW: Numerous challenges to co-defendants' convictions and sentences.
US v. Willie Mitchell
(Davis)
Associations: 09-4361, 09-4357, 09-4359

09-4193 [Briefs](#) CRIMINAL: Whether defendants were deprived of their Sixth Amendment rights to a fair and impartial jury; other issues.
US v. Tremayne Blackwell
(Voorhees)
Associations: 09-4202

10-4568 [Briefs](#) SENTENCING: Whether the district court erred in considering non-assistance factors in reducing the defendant's sentence.
US v. James Clawson, Sr.
(Brinkema)

10-4267 [Briefs](#) CRIMINAL: Whether imposition of 36-month sentence (statutory maximum) upon revocation of supervised release based on
US v. Timothy Benton
(Jackson)
defendant's statements was plainly unreasonable in light of court's initial determination that six-month sentence was reasonable.

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

Friday, May 13, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/10/2011 - 05/13/2011 Session)

Page 13 of 15

09-4516 US v. Russell Lee (Chasanow)	Briefs	CRIMINAL: Whether this Court may sua sponte dismiss a criminal appeal as untimely, and if so, whether such a dismissal is warranted when the delay in filing is not inordinate.
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10-4377 US v. Martin Simmons (Duffy)	Briefs	CRIMINAL: Propriety of denial of motion to suppress; propriety of sentencing enhancement.
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10-4198 US v. Tony Gregg (Spencer)	Briefs	CRIMINAL: Whether the district court erred in reducing the sentence; other issues.
Associations: 10-4199		

10-4209 US v. Tyerail Massenburg (Williams)	Briefs	CRIMINAL: Whether the district court erred in finding that officers had reasonable suspicion to stop and frisk the defendant.
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PANEL II
Room 201 (Green Carpet)
8:30 a.m.

Friday, May 13, 2011

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10-1491 [Briefs](#) LABOR LAW: Whether employer had obligation to provide retiree health benefits beyond duration of collective bargaining
Mary Quesenberry v. Volvo Trucks North America agreement; other issues.
(Jones)

10-1759 [Briefs](#) LABOR LAW: Did the district court err in denying preliminary injunction to continued health benefits of retirees.
Harold Dewhurst v. Century Aluminum Company
(Copenhaver)

10-6652 [Briefs](#) HABEAS CORPUS: Whether district court erred in granting habeas relief.
Terrence Hyman v. Alvin Keller, Jr.
(Boyle)

10-6969 [Briefs](#) HABEAS CORPUS: Issues regarding whether defendant knowingly and intelligently waived Miranda rights and whether counsel
Anthony Bone v. Marvin Polk
(Beaty)
was ineffective.

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

Friday, May 13, 2011

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (05/10/2011 - 05/13/2011 Session)

10-4259 [Briefs](#)
US v. Michael Carroll
(Jones)

CRIMINAL: Whether a state conviction constituted relevant conduct for sentencing purposes, whether the district court based its loss estimate on evidence presented at sentencing, other issues.

10-4768 [Briefs](#)
US v. Calvin Bonner
(Schroeder)

CRIMINAL: Whether the district court erred in granting the defendant's motion for acquittal.

10-1318 [Briefs](#)
Capitol Radiology, LLC v. Sandy Spring Bank
(Chasanow)

CIVIL: Whether the district court properly granted summary judgment to defendant on plaintiff's breach of contract claim.

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