

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/14/2013 - 05/17/2013 Session)

11-2118 [Briefs](#) CIVIL: Whether, in suit seeking damages for act of terrorism, district court erred in dismissing claims on res judicata and
Jennifer Clodfelter v. Republic of Sudan statute of limitations grounds.
(Doumar)

12-1367 [Briefs](#) FEDERAL TORT CLAIMS ACT: Whether complaint sufficiently alleges facts supporting theory of res ipsa loquitur to avoid N.C.
Margaret Littlepaige v. US R. Civ. P. 9(j) certification requirement; other issues.
(Howard)

12-1096 [Briefs](#) PREEMPTION: Challenge to district court's preliminary injunction of certain state law provisions relating to immigration.
US v. State of South Carolina
(Gergel)
Associations: 12-1099, 12-2514, 12-2533

PANEL I
Blue Courtroom (Room 339)
9:30 a.m.

Tuesday, May 14, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/14/2013 - 05/17/2013 Session)

11-7354 [Briefs](#) HABEAS CORPUS: Whether the district court complied with Miller v. Fenton, 474 U.S. 104 (1985); ineffective assistance of
John Moss, III v. David Ballard first trial counsel.
(Goodwin)

12-1795 [Briefs](#) CREDIT LAW: Did the complaint state a cause of action under Maryland's Credit Grantor Closed End Credit provisions; statute
Melissa Bediako v. American Honda Finance of limitations and other issues.
(Titus)

11-2327 [Briefs](#) CIVIL: Whether district court erred in dismissing claims under Va. Code Ann. section 18.2-500 (2009) and of tortious
James Dunlap v. Cottman Transmission interference with contract and business expectancy.
(Allen)

PANEL II
Red Courtroom (Room 412)
9:30 a.m.

Tuesday, May 14, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-2183 [Briefs](#)
Educational Media Co at VT v. J. Insley
(Lauck)

CONSTITUTIONAL LAW: Whether state regulation prohibiting alcohol advertising in college student publications is unconstitutional on its face or as applied.

12-1369 [Briefs](#)
United States ex rel Kurt Bunk v. Gosselin
(Trenga)

FALSE CLAIMS ACT: Proper measure of penalties under Excessive Fines Clause, standing, and other issues.

Associations: 12-1417, 12-1494

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

Tuesday, May 14, 2013

REVD 5/10/13

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-7301 [Briefs](#) POST-CONVICTION RELIEF: Whether district court on collateral review correctly concluded that erroneous jury instruction
US v. Terrence Smith regarding witness tampering was harmless.
(Motz)

11-5167 [Briefs](#) CRIMINAL: Whether district court should have dismissed case based on government's discovery violations; propriety of
US v. Genaro Flores-Duran venue; other issues.
(Flanagan)

12-4652 [Briefs](#) CRIMINAL LAW: Whether there was sufficient evidence for conviction of aiding and abetting the crime of piracy; other
US v. Mohammad Shubin jurisdictional and evidentiary issues.
(Doumar)

12-1819 [Briefs](#) CONTRACT LAW: Whether district court erred in finding contract ambiguous; other issues.
Kelly Capital, LLC v. S&M Brands, Inc.
(Payne)

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

Tuesday, May 14, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (05/14/2013 - 05/17/2013 Session)

11-2038	Briefs	BLACK LUNG: Whether Administrative Law Judge and Benefits Review Board abused their discretion in awarding attorney's fees.
Eastern Associated Coal Corp. v. DOWCP Associations: 11-2380		
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12-6212	Briefs	CONSTITUTIONAL RIGHTS: Whether the district court erred in dismissing a federal prisoner's civil rights complaint for failure to state a cognizable claim of constitutionally inadequate dental care.
Jason King v. US (Berger)		
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12-1610	Briefs	FEDERAL PROCEDURE: Whether Wal-Mart Stores v. Dukes precludes class certification for claims challenging centralized corporate compensation policies; other issues.
Luanna Scott v. Family Dollar Stores, Inc. (Cogburn)		
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12-6624	Briefs	HABEAS: Whether appellate counsel was ineffective for failing to raise an argument under Arizona v. Gant, 556 U.S. 332 (2009) on direct appeal; other issues.
US v. Mario Baker (Payne)		

PANEL V
Gold Courtroom (Room 348)
9:30 a.m.

Tuesday, May 14, 2013

12-6624 – Moved to fourth.

REVD 5/10/13

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-1928	Briefs	CIVIL: Whether a dispute of material fact exists over questions of personal liability on copyright claims sufficient to survive summary judgment; other issues.
Universal Furniture Intl v. Paul Frankel (Osteen)		
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12-2084	Briefs	CONSTITUTIONAL LAW: Whether plaintiff had standing to challenge application of N.C. statute and implementing regulations regarding dispensing of dietary advice; other issues.
Steve Cooksey v. Michelle Futrell (Cogburn)		
Associations: 12-2323		
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12-2188	Briefs	FEDERAL PROCEDURE: Does court of appeals have jurisdiction to review remand order, including ruling regarding fraudulent misjoinder; other issues.
E.D. v. Pfizer, Incorporated (Chambers)		
Associations: 12-2191, 12-2193, 12-2194, 12-2189, 12-2190, 12-2195, 12-2197, 12-2199, 12-2205, 12-2207, 12-2208, 12-2218, 12-2219, 12-2220, 12-2221, 12-2222, 12-2223, 12-2224		

PANEL I
Red Courtroom (Room 412)
9:00 a.m. **

Wednesday, May 15, 2013

** Start time adjusted to 9:00 a.m.

REVD 5/10/13

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-1980	Briefs	CIVIL RIGHTS: Did the district court err in dismissing plaintiff's unlawful arrest and unlawful seizure claims.
Roxana Santos v. Frederick County Board (Legg)		
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12-0005	Briefs	HABEAS CORPUS: Challenge to district court's denial of habeas corpus challenge to state capital convictions and sentence of death.
Ricky Gray v. Eddie Pearson (Trenga)		
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12-2096	Briefs	FAIR HOUSING: Whether substantial evidence supports Secretary's finding of discriminatory practices in violation of Fair Housing Act.
Michael Corey v. HUD Associations: 12-2239		

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

Wednesday, May 15, 2013

12-1980 – Moved to first.

12-346 – Continued.

REVD 5/10/13

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-6839	Briefs	CIVIL: Whether use of presentence investigation report during civil commitment under 18 U.S.C. section 4248 (2006) was plain error; other issues.
US v. Michael Pardee (Flanagan)		
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12-2244	Briefs	CIVIL: Whether district court properly granted summary judgment in business tort and contract suit.
Gen. Assurance of America, v. Overby-Seawell (Ellis)		
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12-2076	Briefs	CIVIL RIGHTS: Whether the district court erred in denying summary judgment on qualified immunity and public officer immunity defenses.
Steven Thomas v. R. Holly (Boyle)		
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12-6146	Briefs	ADAM WALSH ACT: Whether psychotherapist-patient privilege is applicable; whether "lack of volitional control" prong of test was proven by clear and convincing evidence; other issues.
US v. Mikel Bolander (Friedman)		

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

Wednesday, May 15, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-2333	Briefs	CIVIL RIGHTS: Whether district court properly denied deputy sheriff's motion for summary judgment based on qualified immunity in excessive force case.
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12-1791	Briefs	TELEPHONE CONSUMER PROTECTION ACT: Whether the TCPA violates the First Amendment; whether political robocalls are exempt from disclosure requirements; other issues.
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12-1662	Briefs	FTCA: Whether district court properly concluded that newly discovered evidence justified damages award in excess of damages sought in administrative claim.

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

Wednesday, May 15, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-1935	Briefs	BANKRUPTCY: Whether district court properly interpreted and applied test for good faith defense.
Harris Gold v. Gateway Bank, FSB (Trenga)		
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12-4725	Briefs	CRIMINAL: Whether district court erred in finding that government may forcibly medicate defendant for purpose of rendering him competent to stand trial on drug distribution charge.
US v. Frank Chatmon (Hilton)		
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12-2059	Briefs	INSURANCE: Challenge to district court's determination that insurance coverage claims are barred by sudden and accidental pollution exclusion.
Ross Development Corp. v. Fireman's Fund (Seymour) Associations: 12-2454		
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11-5161	Briefs	CRIMINAL: Whether sentence enhancement under USSG section 3B1.4 was impermissible double counting when defendant was convicted under 21 U.S.C. section 861(a)(1) (2006); other issues.
US v. Herbert DeVaughn (Keeley)		

PANEL V
Gold Courtroom (Room 348)
9:30 a.m.

Wednesday, May 15, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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12-2296	Briefs	COMMERCIAL LAW: Issues related to propriety of jury instructions, finding regarding violation of N.C. Unfair Trade Practices Act, and treble damages award.
Colonial Trading, LLC v. Bassett Furniture (Voorhees)		
Associations: 12-2358		
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12-2102	Briefs	COPYRIGHT LAW: Whether the district court erred in granting preliminary injunction.
Metropolitan Regional v. American Home (Williams)		
Associations: 12-2432		
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12-1952	Briefs	CIVIL: Propriety of district court's holding that plaintiff's indemnification claims arose out of or related to settlement agreement, not indemnification agreement; related issues.
Amer. Contractors Indemnity v. Carolina Realty (Cain)		

PANEL VI
Blue Courtroom (Room 339)
9:30 a.m.

Wednesday, May 15, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
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11-6945

[Briefs](#)

REHEARING EN BANC

James Blakely v. Robert Wards
(Gergel)

Butzner En Banc Courtroom 201
9:00 a.m.

Thursday, May 16, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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10-2347 [Briefs](#) AFFORDABLE CARE ACT: Constitutionality of individual and employer mandates in light of NFIB v. Sebelius, 132 S. Ct. 2566
Liberty University, Inc. v. Jacob Lew (2012).
(Moon)

12-1888 [Briefs](#) LHWCA: Whether the district court erred by ruling that the defendant ship owner was not entitled to judgment as a matter of
Richard Bunn v. Oldendorff Carriers GmbH law in plaintiff longshoreman's negligence action.
(Nickerson)

12-2147 [Briefs](#) CIVIL RIGHTS: Did district court properly deny qualified immunity in case alleging violations of S.C. Adoption Assistance and
Kenneth Hensley v. Lillian Koller Child Welfare Act; other issues.
(Anderson)

PANEL I
Red Courtroom (Room 412)
After the en banc session

Thursday, May 16, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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12-1832 [Briefs](#)
Sons of Conf. Veterans v. City of Lexington
(Wilson)

CONSTITUTIONAL LAW: Whether city's flag ordinance violates Sons of Confederate Veterans' right to free speech; whether ordinance violates consent decree.

12-1429 [Briefs](#)
Waugh Chapel South, LLC v. United Food
(Quarles)

LABOR: Whether petitions were "sham" claims within exception to Noerr-Pennington doctrine; other issues.

PANEL II
Green Courtroom (Room 201)
After the en banc session

Thursday, May 16, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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11-7335 [Briefs](#)
US v. Calvin Dyess
(Faber)

POST-CONVICTION: Whether the district court failed to address all of movant's 28 U.S.C.A. section 2255 claims; Apprendi v. New Jersey, 530 U.S. 466 (2000) error; ineffective assistance of counsel.

12-4521 [Briefs](#)
US v. Timothy Joelette Harris
(Boyle)

SENTENCING: Whether the district court erred in applying a four-level enhancement under USSG section 2K2.1(b)(4)(B) for a firearm with an altered or obliterated serial number.

PANEL III
Tan Courtroom (Room 223)
After the en banc session

Thursday, May 16, 2013

REVD 5/15/13

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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12-4772 [Briefs](#)
US v. Carly Ahlstrom
(O'Grady)

CRIMINAL: Sufficiency of evidence regarding reliability of alcohol breath machine; propriety of traffic stop.

12-1671 [Briefs](#)
Bobby Bland v. B. Roberts
(Jackson)

CIVIL RIGHTS: Whether defendant sheriff is entitled to qualified immunity; whether sheriff retaliated against employees in violation of their First Amendment rights.

PANEL IV
Tweed Courtroom (Room 414-D)
After the en banc session

Thursday, May 16, 2013

REVD 4/26/13

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-4096 [Briefs](#)
US v. Okechukwo Otuya
(Chasanow)

CRIMINAL LAW: Numerous issues arising from bank fraud scheme; evidentiary rulings, sufficiency of evidence, calculation of loss.

11-5204 [Briefs](#)
US v. Lewis Alston
(Flanagan)

SENTENCING: Whether Fair Sentencing Act should have been applied; whether upward departure was improperly imposed.

PANEL V
Gold Courtroom (Room 348)
After the en banc session

Thursday, May 16, 2013

REVD 5/1/13

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-1350 [Briefs](#) CONTRACT: Whether real estate transaction was unenforceable agreement-to-agree; other issues.
James Sanderford v. Duplin Land
(Howard)

12-6679 [Briefs](#) HABEAS CORPUS: Whether the district court correctly ruled on ineffective assistance of counsel claims.
Thomas Moore, Jr. v. Michael Hardee
(Fox)
Associations: 12-6727

12-2063 [Briefs](#) TORT LAW: Whether the common law negligence claim should have been submitted to the jury; other issues.
Levert Smith v. Ronald Lusk
(Chambers)

PANEL VI
Blue Courtroom (Room 339)
After the en banc session

Thursday, May 16, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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12-1587	Briefs	ANTITRUST: Challenge to district court's entry of summary judgment on antitrust counterclaims.
Kolon Industries Incorporated v. E. I. DuPont (Payne)		
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12-1260	Briefs	CIVIL: Appeal from \$919 million jury verdict and injunction against future production issued in suit for misappropriation of trade secrets.
E. I. DuPont De Nemours & Comp v. Kolon (Payne)		
Associations: 12-2070		
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12-1537	Briefs	CONSTITUTIONAL LAW: Whether district court properly abstained from deciding plaintiff's constitutional claims under Burford; other issues.
Town of Nags Head v. Matthew Toloczko (Dever)		
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12-1538	Briefs	CONSTITUTIONAL LAW: Whether the district court properly dismissed plaintiffs' claims for regulatory taking and for alleged violations of procedural due process and equal protection.
Roc Sansotta v. Town of Nags Head (Dever)		

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

Friday, May 17, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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12-1065	Briefs	BIVENS: Whether current and former armed service members may sue federal officials for sexual assault suffered during service.
Kori Cioca v. Donald Rumsfeld (O'Grady)		
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12-4347	Briefs	CRIMINAL: Whether district court erred in rulings regarding eyewitness identification evidence; sufficiency of evidence to support section 924(c) conviction and sentence; other issues.
US v. Troy Baylor (Spencer)		
Associations: 12-4357		
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12-4559	Briefs	CRIMINAL: Whether Jackson had reasonable expectation of privacy in trash can located behind his residence and not left for collection.
US v. Dana Jackson (Hudson)		
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12-4868	Briefs	CRIMINAL: Whether district court complied with due process when ordering defendant be detained for psychiatric evaluation pursuant to 18 U.S.C. sections 4241(b), 4242(a), 4247(b) (2006).
US v. Charlie Song (Brinkema)		

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

Friday, May 17, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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12-4627 [Briefs](#) CRIMINAL: Whether probable cause determination could be based on traffic infraction by driver whose vehicle was being tracked by GPS device; other issues.
US v. Naarl Richard
(Duffy)

12-4563 [Briefs](#) CRIMINAL: Whether to allow discovery regarding jury selection; sufficiency of evidence; closing arguments; motion to suppress.
US v. Corey Jones
(Hilton)
Associations: 12-4565

12-4535 [Briefs](#) CRIMINAL LAW: Whether trial court abused discretion by requiring defendant to wear leg irons during trial; evidentiary issues.
US v. Courtney Dione Cowan
(Voorhees)

12-4266 [Briefs](#) CRIMINAL LAW: Challenge to conviction on numerous grounds.
US v. James Lespier
(Reidinger)

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

Friday, May 17, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-4433	Briefs	CRIMINAL: Sufficiency of evidence; propriety of U.S. Sentencing Guidelines Manual section 2B1.1(b)(2) enhancement; reasonableness of sentence; standard of review.
US v. Dorothy Anderson (Anderson)		
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12-4009	Briefs	CRIMINAL: Whether a Maryland probation before judgment disposition qualifies as a predicate conviction under U.S. Sentencing Guidelines Manual section 2L1.2(b)(1)(D); other issues.
US v. Ever Medina (Bredar)		
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12-4263	Briefs	CRIMINAL: Whether Speedy Trial Act required indictment be dismissed; whether plain error occurred when jury was told of defendant's criminal history before it was polled; other issues.
US v. Marco Cherry, Jr. (Doumar)		
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12-4542	Briefs	CRIMINAL: Whether the district court impermissibly encouraged the defendant to plead guilty; whether the court abused its discretion by denying the defendant's motion to withdraw his guilty plea.
US v. Francis Davis (Gibney)		

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

Friday, May 17, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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12-4298	Briefs	CRIMINAL: Issues related to jury instructions, motion for new trial, and sentencing.
US v. Gregory Bartko (Dever)		
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12-4164	Briefs	CRIMINAL: Whether the issues appellant seeks to raise on appeal fall within the scope of his appellate waiver; other issues.
US v. Yoocho Weon (Legg)		
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12-6831	Briefs	CIVIL: Whether district court erred when it civilly committed respondent, pursuant to 18 U.S.C.A. section 4248 (West Supp. 2012); other issues.
US v. Carlos Ofarrit-Figueroa (Boyle)		
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12-4130	Briefs	CRIMINAL: Whether expert testimony met Daubert standard; whether supplemental search warrant was proper; other issues.
US v. Jason Scott (Messitte)		

PANEL V
Gold Courtroom (Room 348)
8:30 a.m.

Friday, May 17, 2013

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (05/14/2013 - 05/17/2013 Session)

12-4346	Briefs	SENTENCING: Whether the district court erred in counting a consolidated sentence imposed under state law as separate convictions for purposes of applying the career offender enhancement in USSG section 4B1.1.
US v. Xavier Marquis Davis (Cogburn)		
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12-6021	Briefs	CRIMINAL: Whether district court must give individualized reasoning when ruling on motion for reduction of sentence under 18 U.S.C. section 3582.
US v. Mitchell Smalls (Smith)		
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12-4282	Briefs	SENTENCING GUIDELINES: Lack of notice and adequate justification for upward variance; amount of loss.
US v. Bobbie Perez (Flanagan)		
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12-2123	Briefs	CIVIL RIGHTS: Whether deputy was entitled to qualified immunity defense; other issues.
Brian Sawyer v. Jim Asbury (Goodwin)		

PANEL VI
Blue Courtroom (Room 339)
8:30 a.m.

Friday, May 17, 2013