

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-2309

McKenzie v. Universal Maritime

LONGSHORE BENEFITS. Whether ALJ's decision denying disability benefits is supported by substantial evidence. 15 mins. per side

05-2313

Perez-Vargas v. Gonzales

IMMIGRATION. Whether BIA erred in interpreting Immigration Judge's authority under 8 U.S.C. Section 1154(j); jurisdiction over BIA's order.

06-1216 (L), 06-1548

Peterson v. Natl Telecom Infor  
(Lee)

ADMINISTRATIVE LAW. Whether NTIA is exempt from notice and hearing requirements of the APA when it adopts new rule through contract; reasonable restriction and standing issues.

06-1667

El-Masri v. US  
(Ellis)

STATE SECRETS PRIVILEGE. Whether district court erred in dismissing abduction, detention, and torture claims based on government's assertion of evidentiary state secrets privilege.

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

TUESDAY, NOVEMBER 28, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-5265

US v. Thomas Joseph Dalton  
(Norton)

CRIMINAL. Whether sentence was reasonable; other issues.

05-1123

Nunnery v. Rountree  
(Friedman)

BANKRUPTCY. Whether state court judgment is  
non-dischargeable under 11 U.S.C. Section 523(a)(2).

05-2229

Sciolino v. City of Newport News  
(Jackson)

CIVIL. Does police department violate a probationary  
employee's due process rights by placing in his file,  
without a hearing, a letter terminating his employment for  
cause?

05-2289 (I), 05-2411

Integrated Elec Ser v. NLRB

LABOR. Is NLRB's finding that company engaged in unfair  
labor practices supported by substantial evidence; other  
issues.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

TUESDAY, NOVEMBER 28, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1637

Murphy v. O'Donnell  
(Hilton)

BANKRUPTCY. Whether unsecured creditors whose claims were compromised by confirmed Chapter 13 plan should, upon acceleration of payoff, receive more than provided in plan when debtor sells his residence and realizes post-confirmation appreciation.

05-1844

O'Donnell v. Goralski  
(Hilton)

BANKRUPTCY. Whether refinancing of mortgage on residence of Chapter 13 debtor and accelerated payment of unsecured creditors' compromised claims amounts to plan modification, requiring compliance with modification provision of 11 U.S.C. 1329.

05-2238

Kreisler v. Goldberg  
(Davis)

BANKRUPTCY. Should bankruptcy protection have extended to wholly-owned subsidiary of bankrupt parent?

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

TUESDAY, NOVEMBER 28, 2006

REVD 11/9/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

05-2315  
Odogwu v. Gonzales

06-6457  
Mironescu v. Costner  
(Beaty)

NATURE OF CASE

IMMIGRATION. Whether petitioner is statutorily eligible for adjustment of status after failing to voluntarily depart; ineffective counsel.

HABEAS CORPUS. Propriety of preliminary injunction prohibiting extradition and in camera inspection order.

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

TUESDAY, NOVEMBER 28, 2006

REVD 11/27/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1526

Cooper v. Gonzales

IMMIGRATION. Whether Immigration Judge's failure to subpoena witnesses amounted to due process violation; other issues.

06-4008

US v. James Dana Sweets  
(Blake)

CRIMINAL LAW & PROCEDURE. Whether admission of pre-Miranda statements violated Fifth or Sixth Amendments; alleged Brady, Giglio violations.

06-4064

US v. Norwood W. Barber  
(Wilson)

CRIMINAL LAW & PROCEDURE. Whether the district court properly denied Barber's Fed. R. Crim. P. 29 motion to dismiss for insufficiency of the evidence to show a conspiracy existed; other issues.

05-2337

Offen v. Brenner  
(Titus)

DEFAMATION. Whether defendant is entitled under Maryland law to absolute immunity for allegedly defamatory statements.

PANEL V  
COURTROOM FIVE  
Courthouse Room 339  
9:30 a.m.

TUESDAY, NOVEMBER 28, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1639 (L), 05-1640

Lee v. Prince William Cnty  
(Ellis)

CIVIL RIGHTS. Sufficiency of claims alleging First Amendment retaliation and violation of ADA; exhaustion of administrative remedies and statute of limitation issues.

06-1239

Convenience Retail v. Sunoco Inc (R&M)  
(Quarles)

CONTRACTS. Is plaintiff entitled to termination of contract based on alleged material breaches.

06-1414

CSX Transportation v. Tran-Comm Intl Union  
(Chasanow)

RAILWAY LABOR ACT. Whether arbitration tribunal has jurisdiction regarding New York Dock implementing agreement and conditions; other issues.

06-1312

Nuvox Communications v. Jo Anne Sanford  
(Britt)

TELECOMMUNICATIONS ACT. Whether district court has jurisdiction to review challenge to State Commission decision regarding alleged rights established by the FCC.

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

WEDNESDAY, NOVEMBER 29, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1221

Discover Bank v. Vaden  
(Quarles)

ARBITRATION. Whether district court had subject matter jurisdiction; whether arbitration was properly compelled.

06-1347 (L), 06-1594

Bacon v. City of Richmond  
(Hudson)

ADA. Whether city defendants are liable for remediating architectural defects; whether settlement agreement entered into by school board binds city defendants; attorney's fees.

05-2362

New West Materials v. Interior Board Land  
(Ellis)

SMALL TRACT ACT. Whether government may invoke mineral reservation in 1959 patent deeds to claim ownership of sand and gravel; whether agency interpretation entitled to deference.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

WEDNESDAY, NOVEMBER 29, 2006

REVD 11/2/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1127 Dtex LLC v. BBVA (Anderson)	CIVIL. Whether Mexican financial institution is subject to personal jurisdiction in South Carolina; whether RICO claims were properly dismissed; effect of pending proceedings in Mexico.
05-5223 US v. James E. Elston, Jr. (Conrad)	CRIMINAL LAW & PROCEDURE. Whether law enforcement officer had reasonable suspicion to justify Terry stop based on anonymous tip.
05-5013 US v. Ricky Christian (Jones)	SENTENCING GUIDELINES. Whether defendant had two prior felony convictions for crimes of violence, USSG Section 2K2.1(a)(2).
06-4159 US v. Joseph K. Newbold (Osteen)	SENTENCING GUIDELINES. Armed career criminal sentence; other issues.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

WEDNESDAY, NOVEMBER 29, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-3  
Wilkinson v. Polk  
(Howard)

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

06-1038  
Campbell v. Galloway  
(Eliason)

CIVIL RIGHTS. Whether police officers are entitled to qualified immunity in suit alleging retaliatory and discriminatory conduct in workplace.

06-1137  
Daniels Company, Inc v. Mitchell

BLACK LUNG. Whether ALJ applied correct law in determining length of claimant's coal mine employment; other issues.

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

WEDNESDAY, NOVEMBER 29, 2006

REVD 11/22/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-4358 (L), 06-4359 06-4360  
US v. James Douglas Smith  
(Wooten)

CRIMINAL. Whether district court has authority to order a federal sentence to run consecutive to any unimposed future sentence; other issues.

06-4332  
US v. Edmond Faison  
(Kelley)

CRIMINAL LAW & PROCEDURE. Whether district court properly computed Speedy Trial Act time; whether road was Virginia "highway."

06-4444 (L), 06-4489  
US v. Gregory McNeill  
(Davis)

CRIMINAL. Whether a warrantless misdemeanor arrest violates the Fourth Amendment where conduct relied upon for probable cause did not occur in presence of officer.

06-4399  
US v. Frank Gary Buckner  
(Wilson)

CRIMINAL. Whether warrantless search of defendant's password protected files on computer was reasonable based upon wife's consent; related issues.

PANEL V  
COURTROOM FIVE  
Courthouse Room 339  
9:30 a.m.

WEDNESDAY, NOVEMBER 29, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4984 (L), 05-4988

US v. Laurencio Gonzalez  
(Quarles)

CRIMINAL LAW & PROCEDURE. Whether the police conducted a lawful search of Gonzales' residence; other issues.

06-1840 (L), 06-1901

Retail Industry Lead v. Fielder  
(Motz)

PREEMPTION. Whether ERISA preempts Maryland law establishing payroll tax on state's largest employers to help offset state Medicaid expenditures; other issues.

06-1023 (L), 06-1061 06-1213

Media General Opera v. NLRB

LABOR. Challenge to NLRB findings on discontinuance of bonus, disparate enforcement of e-mail policy, and employee compensation for arbitration proceedings and collective bargaining.

06-1370 (L), 06-1371

Life Partners Inc v. Morrison  
(Hudson)

COMMERCE CLAUSE. Does the application of the Virginia Viatical Settlements Act to out-of-state purchaser's agent violate the Commerce Clause.

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

THURSDAY, NOVEMBER 30, 2006

REVD 11/22/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-4611

US v. Moussaoui  
(Brinkema)

CRIMINAL LAW & PROCEDURE. Whether civil plaintiffs may  
intervene in criminal cases to access discovery materials;  
jurisdiction issue.

05-2059

Nigh v. Koons Buick Pontiac  
(Lee)

ATTORNEY'S FEES. Whether failure to reduce attorney's fees  
in light of statutory damage cap was abuse of discretion.

06-1130

A. K. v. Alexandria City Sch  
(Lee)

IDEA. Whether IDEA procedural requirements were complied  
with and IEP was appropriate.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
9:30 a.m.

THURSDAY, NOVEMBER 30, 2006

REVD 11/22/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1131

Renaissance Greeting v. Dollar Tree Stores  
(Ellis)

TRADEMARK. Whether there is a likelihood of confusion based upon similarity of the parties' respective trademarks; discovery issues.

06-4420

US v. James Pope, Jr.  
(Hudson)

CRIMINAL. Whether the district court erred in denying Pope's motion to suppress; other issues.

06-1218

Hobet Mining Inc v. Terry

BLACK LUNG BENEFITS. Whether ALJ's findings of legal pneumoconiosis, total respiratory disability, and disability due to pneumoconiosis are supported by substantial evidence.  
15 mins. per side

06-4612

In re: Grand Jury  
(Doumar)

Grand Jury. Whether district court abused its discretion in quashing subpoena.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
9:30 a.m.

THURSDAY, NOVEMBER 30, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1004

Brockman v. Snow  
(Titus)

TITLE VII. Whether plaintiff engaged in protected activity or suffered from adverse employment action; whether pregnancy-related complications constitute a disability under the Rehabilitation Act.

05-5240

US v. Timothy Padgett  
(Thornburg)

SENTENCING. Propriety of application of Armed Career Criminal enhancement; evidentiary issue.

05-2394

Srinivasan v. Snow  
(Messitte)

EMPLOYMENT DISCRIMINATION. Whether court's jurisdiction is limited to reviewing denial of motion for reconsideration on claims of national origin, race discrimination and retaliation; other issues.

PANEL IV  
COURTROOM FOUR  
Courthouse Room 414-D (Tweed Carpet)  
\*\* 9:00 a.m. \*\*

THURSDAY, NOVEMBER 30, 2006

REVD 11/29/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-1363 Lee v. York Cnty School Div (Smith)	CIVIL RIGHTS. Was teacher's expression properly held to be curricular and not to involve matters of public interest.
06-1596 WV Highlands Consvr v. Kempthorne (Stamp)	ENVIRONMENTAL. Whether surface coal mining statute authorizes judicial review of decisions involving citizen enforcement disputes; interpretation of regulations governing enforcement requests.
06-4092 US v. Rodney T. Hill (Friedman)	CRIMINAL LAW & PROCEDURE. Whether a certain portion of Nider Boulevard is a public highway under Virginia law.
06-4211 US v. Hernandez-Villanueva (Chasanow)	SENTENCING. Whether sentence exceeding advisory range for gang member was reasonable; admissibility of defendant's statement at sentencing.

PANEL V  
COURTROOM FIVE  
Courthouse Room 339  
9:30 a.m.

THURSDAY, NOVEMBER 30, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-5051

US v. Rider Oriach  
(Hilton)

CRIMINAL LAW & PROCEDURE. Whether district court properly denied motion to suppress; admission of certain photographs.

06-4335 (L), 06-4361

US v. Chonti Lilly  
(Harwell)

CRIMINAL. Whether sentencing guidelines were properly applied to enhance sentence; whether government may appeal a concurrent sentence.

06-1206 (L), 06-1207

Grochal v. Ocean Technical Svcs  
(Quarles)

BANKRUPTCY. Whether subcontractors' interest in interpleaded government contract fund takes priority over claims of other creditors of shipyard's bankruptcy estate.

06-4223

US v. Zachery Tinsley  
(Hudson)

CRIMINAL LAW & PROCEDURE. Whether district court erred when departing upward to a sentence of 120 months' imprisonment; sufficiency of evidence.

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

FRIDAY, DECEMBER 1, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

06-1134 (L), 06-1238  
Novell Inc v. Microsoft Corp  
(Motz)

05-4668  
US v. Terry Wayne Stephens  
(Turk)

NATURE OF CASE

ANTITRUST. Whether plaintiff had standing to bring  
antitrust allegations; whether government's complaint  
tolled statute of limitations.

CRIMINAL LAW & PROCEDURE. Whether the evidence was  
sufficient to corroborate Stephens' confession and sustain  
the convictions on Counts One and Two.

PANEL II  
COURTROOM TWO  
Courthouse Room 233 (Green Carpet)  
8:30 a.m.

FRIDAY, DECEMBER 1, 2006

REVD 11/20/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-11

Cummings v. Polk  
(Boyle)

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

06-4522

US v. Derry Pyles  
(Keeley)

CRIMINAL. Whether extent of downward variance based upon  
defendant's extraordinary rehabilitation was unreasonable.

06-4119

US v. Thomas L. Bromwell  
(Motz)

CRIMINAL LAW & PROCEDURE. Propriety of protective order  
restraining defendants from making substitute assets  
unavailable for forfeiture upon conviction.

05-4389

US v. Rubin C. Slade Jr.  
(Keeley)

SENTENCING. Whether life sentence was reasonable; other  
issues.

PANEL III  
COURTROOM THREE  
Courthouse Room 225 (Tan Carpet)  
8:30 a.m.

FRIDAY, DECEMBER 1, 2006

REVD 11/29/06

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

06-4243

US v. Kenneth R. Godsey  
(Faber)

SENTENCING. Whether sentence of double the guidelines range was reasonable.

03-1841

State of WV v. Thompson

MEDICAID ACT. Whether Secretary's disapproval of state plan amendment to include undue hardship waiver exemption for decedent's homestead was proper.

05-4486 (L), 05-4487 05-4490

US v. David Allen Uhrich  
(Davis)

CRIMINAL LAW & PROCEDURE. Whether district court properly admitted evidence and calculated loss amount; other issues.

06-1285 (L), 06-1491

White v. Sun Life Assurance  
(Thornburg)

ERISA. Was cause of action timely filed; were benefits improperly denied by administrator; standard of review and attorney's fees issues.

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

FRIDAY, DECEMBER 1, 2006

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, Virginia  
(11/28/2006 - 12/01/2006 Session)

NUMBER AND STYLE

06-4282 (L), 06-4307  
US v. David Pasquantino  
(Motz)

06-1232 (L), 06-1298  
Auto Owners Ins Co v. Potter, et al.  
(Britt)

05-2122  
Davis v. ECPI  
(Anderson)

NATURE OF CASE

CRIMINAL LAW & PROCEDURE. Whether Booker issue is properly preserved; reasonableness of new sentence.

INSURANCE. Whether insurer has duty to defend after reversal of declaratory judgment; what is effect of settlement between insured and insurer on prior settlement between insured and claimants; other issues.

ARBITRATION. Whether parties were properly enjoined from pursuing arbitration pending determination whether arbitration provision is unconscionable; jurisdiction issue.

PANEL V  
COURTROOM FIVE  
Courthouse Room 339  
8:30 a.m.

FRIDAY, DECEMBER 1, 2006

REVD 11/22/06