

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/23/2012 - 10/26/2012 Session)

10-1494	Briefs	CIVIL: Whether district court erred in granting summary judgment against appellant on 42 U.S.C. section 1983 (2006) claims, state claims of gross negligence and breach of contract.
Sotina Cuffee v. John Newhart (Friedman)		
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11-2089	Briefs	CONTRACT LAW: Whether the district court erred in granting summary judgment on equitable estoppel and breach of contract claims; attorneys' fees and other issues.
Best Medical International v. Eckert & Ziegler (Hilton)		
Associations: 11-2141, 12-1121		
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11-1897	Briefs	EMPLOYMENT DISCRIMINATION: Whether the district court erred in granting summary judgment on Title VII claim for reasonable accommodation of Sabbath observance; other issues.
EEOC v. Thompson Contracting (Boyle)		
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11-2133	Briefs	IMMIGRATION: Whether the Board erred not permitting evidence outside the record of conviction.
Manuel Mondragon v. Eric Holder, Jr. Associations: 12-1070		

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

Tuesday, October 23, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (10/23/2012 - 10/26/2012 Session)

11-1847	Briefs	FEDERAL PROCEDURE: Whether plaintiffs have standing to seek relief from enforcement of the prohibition against acquisition of hand guns by out-of-state residents.
Michelle Lane v. Eric Holder, Jr. (Lee)		
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10-7118	Briefs	HABEAS CORPUS: Did the district court properly grant habeas relief on ground of ineffective assistance of counsel for failure to inform defendant of pre-trial plea offer; other issues.
John Merzbacher v. Bobby Shearin (Davis)		
Associations: 10-7185		
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11-1952	Briefs	CONSTITUTIONAL LAW: Did the district court err in striking a portion of the "electioneering-communication" and "expressly advocating" definitions in West Virginia campaign finance statutes; other issues.
Ctr. for Ind. Freedom v. Natalie H. Tennant (Johnston)		
Associations: 11-1993		
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11-1722	Briefs	INSURANCE LAW: Whether district court erred in granting summary judgment on remediation claim; other issues.
Builders Mutual Insurance Comp v. Dragas (Smith)		

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

Tuesday, October 23, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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12-1108	Briefs	ERISA: Propriety of district courts determination of Fund's liability for overpayment of contributions; consideration of extrinsic evidence and laches defense; other issues.
U.S. Foodservice, Inc. v. Truck Drivers & Help. (Motz)		
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12-1643	Briefs	TRADEMARK LAW: Challenge to evidentiary ruling, to reasonableness of jury verdict, to propriety and scope of injunction; other issues.
The Coryn Group II, LLC v. O.C. Seacrets, Inc. (Quarles) Associations: 12-1648		
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11-2235	Briefs	ADMINISTRATIVE PROCEDURE: Whether the Secretary of Labor complied with the Administrative Procedure Act with respect to regulations related to the temporary agricultural worker program.
North Carolina Growers' Assoc. v. Hilda Solis (Osteen)		
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11-1697	Briefs	CERCLA: Whether the district court erred in applying evidentiary standard for determining liability and in declining to conduct "divisibility analysis;" other issues.
AVX Corporation v. United States of America (Wooten)		

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

Tuesday, October 23, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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12-1274	Briefs	FOIA: Whether FOIA's Exemption 4 and intra-agency Exemption 5 shield the information at issue from disclosure.
American Management Services v. Dep't (Ellis)		
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12-4317	Briefs	CRIMINAL LAW: Under the exigent circumstances doctrine, were the police entitled to open locked closet to determine scope of the danger.
US v. Joseph Yengel, Jr. (Morgan)		
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11-1800	Briefs	CIVIL: Whether the district court properly concluded that Plaintiff's testimony did not preclude summary judgment on wrongful death and excessive force claims; related issues.
Alita Littleton v. Jordan Swonger (Messitte)		
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11-2140	Briefs	TORTS: Whether lessor of construction equipment owed duty to stranger to lease.
Carl Tuel v. Hertz Equipment Rental Corp. (Ellis)		

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

Tuesday, October 23, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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11-6386	Briefs	CIVIL: Propriety of dismissal of action seeking declaration that prisoner is United States national.
Kamal Patel v. Janet Napolitano (Dever)		
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11-2159	Briefs	CIVIL: Whether the district court erred in granting summary judgment as to plaintiff's negligence claim; other issues.
Peter Jarmak v. Rebecca Ramos (Moon)		
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10-7564	Briefs	HABEAS CORPUS: Whether counsel's failure to object to imposition of one criminal history point for appellant's Virginia failure to appear conviction constituted ineffective assistance of counsel.
US v. Kelvin Smith (Moon)		
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11-4554	Briefs	CRIMINAL: Whether delay in transcript production violated due process and, if so, whether reduction in sentence is appropriate remedy; other issues.
US v. Xavier Jennette (Britt)		

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

Tuesday, October 23, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (10/23/2012 - 10/26/2012 Session)

11-4891	Briefs	SENTENCING: Whether, on illegal reentry conviction, district court erred in applying sixteen-level sentence enhancement under USSG section 2L1.2(a) after finding prior conviction under California Penal Code section 422(a) (2011) a crime of violence.
US v. Jesus Torres-Miguel (Seymour)		
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11-7482	Briefs	CONSTITUTIONAL LAW: Whether complaint stated a claim under the Eighth Amendment for denial of adequate medical care for gender identity disorder.
Ophelia De'Lonta v. Gene Johnson (Turk)		
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11-7427	Briefs	HABEAS: Whether Va. Code section 18-2-361(A) is unconstitutional; whether appellant's claims were procedurally defaulted on direct appeal and collateral review; other issues.
William MacDonald v. Tim Moose (Lee)		
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12-1437	Briefs	CONSTITUTIONAL LAW: Whether Maryland's handgun wear-and-carry permit statute violates the Second Amendment.
Raymond Woollard v. Denis Gallagher (Legg)		

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

Wednesday, October 24, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (10/23/2012 - 10/26/2012 Session)

11-4819	Briefs	CRIMINAL: Whether evidence was sufficient to prove robbery affected interstate commerce under Hobbs Act; whether Virginia eluding police conviction was violent felony for career offender purposes; other issues.
US v. Carter Tillery (Spencer)		
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11-2230	Briefs	CONSTITUTIONAL LAW: Whether plaintiff adequately pled a violation of his First Amendment rights by TSA agents; other issues.
Aaron Tobey v. Terri Jones (Hudson)		
Associations: 11-2276		
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11-4926	Briefs	CRIMINAL: Whether Defendant was denied the right to be present at a critical stage in violation of the Constitution and Fed. R. Crim. P. 43.
US v. Nicholas Gonzales-Flores (Moon)		
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11-2078	Briefs	ADA/Title VII: Did the district court err in granting summary judgment on "regarded as disabled" claim under ADA and pregnancy discrimination claim under Title VII; other issues.
Peggy Young v. UPS (Chasanow)		

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

Wednesday, October 24, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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11-2337	Briefs	ADMINISTRATIVE LAW: Whether the district court erred in relying on information outside the administrative record; whether the Biological Opinion is arbitrary and capricious.
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11-2408	Briefs	CIVIL: Whether 38 U.S.C. section 511(a) bars reconsideration of issues material to claim under Federal Tort Claims Act where such issues were addressed previously in veteran benefits determination?
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11-4818	Briefs	SENTENCING: Whether the district court properly calculated Hargrove's criminal history score; whether procedural sentencing errors were harmless; whether the court imposed a substantively reasonable sentence; other issues. (15 mins. per side)

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

Wednesday, October 24, 2012

REVD 10/19/12

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (10/23/2012 - 10/26/2012 Session)

11-4273	Briefs	CRIMINAL LAW: Whether theft of a corporation's identity is proscribed by criminal statutes; sufficiency of the evidence; other issues.
US v. Jimmy Hilton, Jr. (Voorhees)		
Associations: 11-4298, 11-4743		
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11-2248	Briefs	CIVIL RIGHTS: Whether defendants were entitled to sovereign immunity; whether district court erred by improperly "harmonizing" the verdict form.
Terry Gandy v. Neal Robey (Brinkema)		
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11-1835	Briefs	SURETYSHIP LAW: Whether surety is released by lessor's failure to enforce lien; mitigation, duty of good faith, attorneys' fees and post-judgment interest issues.
The Kanawha-Gauley Coal & Coke v. Pittston (Goodwin)		
Associations: 12-1037		
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11-2362	Briefs	LABOR LAW: Whether substantial evidence supports Board's determination of violation of National Labor Relations Act; burden of proof issues.
Gestamp South Carolina, L.L.C. v. NLRB		
Associations: 12-1041		

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

Wednesday, October 24, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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11-2256 [Briefs](#)
Conn Feamster v. Mountain State BC&BS
(Goodwin)

INSURANCE: Whether two entities qualify as single employer under 26 U.S.C. section 414(m); whether small employer exemption in 29 U.S.C. section 1161(b) applies; other issues.

11-4283 [Briefs](#)
US v. Bryan Noel
(Voorhees)

CRIMINAL LAW: Whether the amount of victim-impact testimony and the prosecutor's related statements during closing arguments resulted in a due process violation; other issues.

11-4847 [Briefs](#)
US v. Phillip Hamilton
(Hudson)

CRIMINAL: Whether evidence supported conviction for federal program bribery and extortion; whether e-mails were improperly admitted; whether jury instructions were erroneous; whether 14-level enhancement was properly applied.

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

Wednesday, October 24, 2012

REVD 10/23/12

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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11-1956 [Briefs](#)
SunTrust Mortgage Inc. v. United Guaranty
(Payne)

Associations: 11-2086

CONTRACT LAW: Whether summary judgment was properly granted on claim and counterclaim; damages and sanctions issues.

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

Wednesday, October 24, 2012

REVD 10/19/12

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/23/2012 - 10/26/2012 Session)

11-6741	Briefs	HABEAS CORPUS: Whether sexual activity in 18 U.S.C. section 2422(b) requires actual, attempted, or solicited physical contact; whether advice to stipulate to sexual activity and guilt constituted ineffective assistance of counsel.
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11-2014	Briefs	CONTRACT/COPYRIGHT INFRINGEMENT: Whether district court properly entered summary judgment on contract and copyright infringement claims; damages issues.
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11-2150	Briefs	BANKRUPTCY: Applicability of the earmarking defense, the new value defense.
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11-2277	Briefs	CIVIL: Whether plaintiffs established cognizable interest in mine voids sufficient to preclude dismissal.

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

Thursday, October 25, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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11-2101	Briefs	INTERSTATE LAND SALES FULL DISCLOSURE ACT: Whether bankrupt realty management company accused of fraudulent land sales can seek contribution from real estate developer.
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11-2390	Briefs	CIVIL: Whether unanswered telephone call constitutes a "communication" under the Fair Debt Collection Practices Act; other issues.
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11-2161	Briefs	CIVIL: Whether the National Bank Act preempts claim under the Maryland Credit Grantor Closed End Credit Provisions; other issues.
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11-4863	Briefs	CRIMINAL: Whether law enforcement unlawfully extended the length of time necessary to conduct a routine traffic stop; other issues.

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

Thursday, October 25, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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11-4545	Briefs	SENTENCING GUIDELINES: Reasonableness of upward departure pursuant to USSG section 4A1.3. (15 minutes per side)
US v. DeWayne Blakeney (Dever)		
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11-5148	Briefs	SENTENCING GUIDELINES: Propriety of three-level increase for creating a substantial risk of harm to human life or the environment in a methamphetamine offense, USSG section 2D1.1(b)(13)(C)(ii). (15 minutes per side)
US v. Foster Williams, III (Bailey)		
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11-2041	Briefs	REHABILITATION ACT: Whether a private school student is entitled under Section 504 of the Act to services at a public school facility at public expense.
D. L. v. Baltimore City Board of School (Garbis)		
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11-2366	Briefs	ADMINISTRATIVE PROCEDURE ACT: Whether district court had jurisdiction under APA to review challenge to implementation of project; whether alleged maritime contracts conferred admiralty jurisdiction on court.
Village of Bald Head Island v. U. S. Army Corps (Boyle)		

Associations: 11-2368

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

Thursday, October 25, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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11-2077 [Briefs](#) FALSE CLAIMS ACT: Did the complaint sufficiently allege presentation of false claims for payment related to drugs promoted
US ex rel. Noah Nathan v. Takeda for uses not medically indicated; other issues.
(Trenga)

11-2180 [Briefs](#) FALSE CLAIMS ACT: Whether the district court erred in granting summary judgment on "worthless services" claims; challenge
United States ex rel Davis v. U.S. Training Ctr. to evidentiary rulings; other issues.
(Ellis)

11-1871 [Briefs](#) ENVIRONMENTAL LAW: Whether the district court erred in upholding Army Corps of Engineers' decision; whether test for
Deerfield Plantation Phase II- v. US Army Corps Clean Water Act jurisdiction was met.
(Harwell)

Associations: 11-2253

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

Thursday, October 25, 2012

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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11-2283 [Briefs](#)
Jonathan Blitz v. Janet Napolitano
(Osteen)

JURISDICTION: Whether district court had jurisdiction to review constitutional challenges to TSA Standard Operating Procedure regarding advanced imaging technology and pat-downs at airport security checkpoints; other issues.

11-2274 [Briefs](#)
Eun Kim v. Parcel K- Tudor Hall Farm LLC
(Williams)

Associations: 11-2298

FRAUD: Whether district court properly determined amount of equitable lien to be imposed on real property; other issues.

11-2057 [Briefs](#)
Mitsui Sumitomo Ins. Co. v. Duke University
(Auld)

INSURANCE LAW: Did the district court err in interpreting the term "occurrence" in CGL policy; other issues.

11-4860 [Briefs](#)
US v. Ernest McDowell, Jr.
(Flanagan)

CRIMINAL LAW: Whether the Government established that McDowell was an armed career criminal.

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

Thursday, October 25, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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11-4702 [Briefs](#) CRIMINAL LAW: Challenges to defendants' criminal convictions and to sentence.
US v. Saraeun Min
(O'Grady)
Associations: 11-4703, 11-4704, 11-4758, 11-4795, 11-4796

11-2006 [Briefs](#) MEDICAID LAW: Whether claim for money damages is barred; whether agency fulfilled obligation to ensure that managed
Three Lower Counties Comm. v. Maryland care organizations reimburse federally-qualified health centers for certain services.
(Nickerson)
Associations: 11-2175

11-4715 [Briefs](#) CRIMINAL: Whether the district court erred holding that its error under *Skilling v. United States*, 130 S. Ct. 2896 (2010),
US v. Victoria Sprouse affected defendant's substantial rights and required a new trial; other issues.
(Reidinger)

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

Thursday, October 25, 2012

REVD 10/19/12

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (10/23/2012 - 10/26/2012 Session)

11-4942 [Briefs](#)
US v. Gary Gillion
(Anderson)

CRIMINAL: Sufficiency of the evidence to support mail fraud convictions; other issues.

11-5151 [Briefs](#)
In re: 2703(d) Application
(O'Grady)

FEDERAL PROCEDURE: Whether the district court erroneously continued sealing of 18 U.S.C. section 2703 orders requiring disclosure of information about movants' internet communications; other issues.

08-4055 [Briefs](#)
US v. Rodney Williamson
(Tilley)

CRIMINAL: Issues relating to alleged violations of constitutional rights, harmless error, and entitlement to appointment of counsel for Rule 33 motion filed during pendency of direct appeal.

Associations: 11-5179, 12-6933

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

Friday, October 26, 2012

REVD 10/25/12

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/23/2012 - 10/26/2012 Session)

11-4801	Briefs	CRIMINAL LAW: Whether the denial of motion for judgment of acquittal was erroneous; whether sentence of life without parole reflected procedural and/or substantive error; other evidentiary and trial issues.
US v. Franesiour Kemache-Webster (Titus)		
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11-5048	Briefs	CRIMINAL: Propriety of district court's denial of motion to suppress as untimely and, alternatively, as meritless; denial of motion to dismiss; other issues.
US v. Daniel Brown (Moon)		
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11-2116	Briefs	FMLA: Whether district court erred in finding plaintiff was returned to "equivalent position" following medical leave and in entering summary judgment on retaliatory discharge claim.
Kimberly Laing v. Federal Express Corporation (Mullen)		
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11-5218	Briefs	CRIMINAL LAW: Challenges to conviction and sentence.
US v. Roger Day, Jr. (Gibney)		

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

Friday, October 26, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (10/23/2012 - 10/26/2012 Session)

11-4896 [Briefs](#) CRIMINAL: Whether the district court properly denied the Defendant's motion to suppress evidence found in his vehicle; other
US v. Talvin Lawing issues.
(Schroeder)

11-6781 [Briefs](#) HABEAS CORPUS: Whether prosecutorial misconduct rendered Fisher's guilty plea involuntary or undermined his right to
US v. Cortez Fisher effective assistance of counsel.
(Motz)

12-1011 [Briefs](#) FALSE CLAIMS ACT: Whether relator's complaint was time-barred; other issues.
United States ex rel. Carter v. Halliburton
(Cacheris)

11-4888 [Briefs](#) CRIMINAL LAW: Challenge to conviction under 18 U.S.C. section 2320; sufficiency of the evidence on conspiracy count;
US v. Donald Cone evidentiary and other issues.
(Lee)

Associations: 11-4934

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

Friday, October 26, 2012

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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12-1064 [Briefs](#)
Wincopia Farms, LP v. G&G, LLC
(Quarles)
Associations: 12-1080

FRAUD: Whether guarantor had standing to assert fraud claim; whether litigation of claim was precluded by foreclosure proceedings; other issues.

10-5296 [Briefs](#)
US v. Thomas Royal
(Bennett)

CRIMINAL: Whether bullets found in antique gun were ammunition for 18 U.S.C. 922(g) violation; whether Maryland assault charge is violent felony.

11-5193 [Briefs](#)
US v. Harold Ford
(Britt)

CRIMINAL: Whether double jeopardy rights violated by retrial on remand after 18 U.S.C. section 922(g)(1) conviction vacated based on United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc).

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

Friday, October 26, 2012

REVD 10/19/12