1 claim suing under the Virginia Tort Claims Act is
2 governed by 243.2 or the Tort Claims Act, and the
3 Supreme said the Tort Claims Act governs.
4 THE COURT: Right.
5 MR. DYBING: Judge Spencer discusses the effect
6 of Ogunde and an earlier Supreme Court case called
7 Billups in his opinion, and I submit I would hope that
8 the Judge Spencer's opinion might illuminate some of
9 those issues if the court has continued questions
10 about them.
11 THE COURT: Do you have that opinion with you?
12 MR. DYBING: I do, Judge. Our toner was running
13 low when I was printing this --
14 MR. LUSTIG: Judge, does he have an extra copy
15 for me to look at?
16 MR. DYBING: I regret, Charles --
17 THE COURT: We can run one for you. That's not
18 a problem. I will ask the bailiff to run one for you.
19 MR. LUSTIG: That would be great, because I
20 would like the opportunity to respond, if I may.
21 THE COURT: We'll run a copy, and I am going to
22 take a recess for about five or ten minutes.
23 NOTE: At this point recess is had from 3:39 to
24 3:54 p.m., whereupon court is reconvened, as follows:
25 THE COURT: Thank you for your patience,

1 gentlemen.

2 Now, Black's Law Dictionary, I am not sure gives
3 a whole lot of guidance, I didn't think that it would,
4 but I first looked up the word confined, I found it in
5 here, confinement, close enough, the act of
6 imprisoning or restraining someone, the state of being
7 imprisoned or restrained. That doesn't give a whole
8 lot of help, so I thought well, maybe the word
9 detainee might, maybe that will help us. Detainee is
10 defined as a person held in custody, confined or
11 delayed by an authority such as law enforcement or a
12 government.

13 I note that in the Harris case, the prisoner up
14 in the Northern Neck Regional Jail, was a quote
15 pretrial detainee, and Judge Spencer reasoned that the
16 8.01-243.2 one-year statute of limitations applies.
17 That seems to give a crazy result where you could have
18 the strip search apply outside the fence in a parking
19 lot and have a two-year statute of limitations, step
20 inside the fence and it's a one-year statute of
21 limitations, but that's not the only instance in the
22 law of Virginia where you get crazy results. I am a
23 judge, not a legislator. The statute says no person
24 confined. I think I am going to have to rule that the
25 one-year statute of limitations applies in this case,

1 and I will sustain the special plea of the statute of
2 limitations.
3 MR. DYBING: Your Honor, I brought an order that
4 also has the paragraph dealing with our demurrer. If
5 the court is either inclined not to rule on the
6 demurrer or to rule on it, I will be happy to either
7 delete that sentence or modify it.
8 THE COURT: Well, had I ruled the other way on
9 the statute of limitations, I would have overruled the
10 demurrer. I think they have pled sufficiently to get
11 past the demurrer problem, but I would rather just not
12 rule on that.
13 MR. DYBING: I will recast this.
14 MR. LUSTIG: Do you want to send me a clean
15 order?
16 MR. DYBING: I will send you a clean order,
17 Charles, without reference to the demurrer.
18 THE COURT: I think the statute of limitations
19 makes it moot, doesn't it?
20 MR. DYBING: It does, of course, I just brought
21 one order, and I will correct it and forward it --
22 THE COURT: I don't want to give the Court of
23 Appeals too much stuff to work with. I will rule on
24 one thing at a time.
25 MR. LUSTIG: This is the Virginia Supreme Court,

1 Judge, since this is a civil case.

2 THE COURT: That's right. Excuse me. It's a

3 civil case. It's got to go to the Supreme Court.

4 MR. LUSTIG: If my client was to pursue that.

5 Thank you, Your Honor.

6 THE COURT: Thank you, folks.

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9 NOTE: The hearing ended at 4:00 p.m.

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