

**Bar Association of the Fifth Federal Circuit  
2017 Appellate Advocacy Seminar**

**Summary of Issues to be Orally Argued  
On Tuesday, October 3, 2017**

**East Courtroom**

***United States v. Morris Alexander Wise* (No. 16-20808)**

On the morning of September 15, 2011, Morris Alexander Wise was a passenger on a Greyhound bus traveling from Houston, Texas, to Chicago, Illinois. The bus driver made a scheduled stop at the “local bus stop in the 900 block of South Frazier” in Conroe, Texas. During that stop, two plainclothes police detectives from the Conroe Police Department approached the bus driver as the driver exited the bus and sought permission to search the passenger cabin and luggage hold for drugs. The driver gave consent. Cocaine was discovered in a locked backpack stored over Wise’s seat. A female passenger told detectives that she had seen Wise with the backpack. A canine handler had his dog sniff the backpack and it alerted to the presence of drugs. The detectives used bolt cutters to cut the lock and open the backpack, which contained seven small brick-type packages wrapped in white cellophane and turned out to be cocaine. Wise was interviewed and found to have a lanyard with some keys, one of which was to the lock on the backpack. He was arrested and charged with two counts: (1) conspiracy to possess with intent to distribute five kilograms or more of a mixture or substance containing a detectable amount of cocaine; and (2) possession with intent to distribute five kilograms or more of a mixture or substance containing a detectable amount of cocaine. Wise’s appeal asserts that the District Court clearly erred by finding that the officers’ “bus check” at a predetermined point was a checkpoint for general crime control. His appeal further asserts that the District Court clearly erred by finding that the bus driver did not voluntarily consent to a search of the bus.

***Maranda Lynn O'Donnell v. Harris County, TX*** (No. 17-20333)\*

The District Court concluded that the Constitution requires release of misdemeanor arrestees within 24 hours of arrest if the arrestee professes the inability to pay secured bail. Having found the county was committing 20,000 constitutional violations each year, the District Court exercised its equitable power to craft an injunction that would remedy these violations and prevent future ones. Harris County's appeal challenges the propriety of the District Court substantive ruling and further questions whether Harris County is a proper party to enjoin because under 42 U.S.C. § 1983, an injunction may only issue against Harris County if plaintiffs' injury resulted from a county policy promulgated by a county policymaker – not from a policy mandated by state law. Because § 1983 prohibits enjoining judicial conduct, the appeal also asks whether the District Court may circumvent this prohibition by enjoining the Sheriff from following judicial orders. And if so, is the County liable for actions taken by the Sheriff as an officer of the Courts.

\*(30 Minutes of Argument Per Side).

***Steven Strong v. Green Tree Servicing, L.L.C.*** (No. 16-11346)

This appeal involves issues regarding denial of remand, denial of leave to amend Steven Strong's complaint and the scope and limitations of debt collection activities. Strong's appeal essentially argues that the District Court improperly granted Green Tree's Motion for Final Summary Judgment on his claims for money damages and other relief against Green Tree, his loan servicer. Specific issues include: whether the District Court erred in finding that Green Tree timely removed the case and denying Strong's Motion to Remand; whether the District Court erred in denying Strong's leave to amend his complaint; and whether the District Court erred in granting summary judgment for Green Tree on all of Strong's Texas Debt Collection Act claims, injunction relief, attorney's fees and damages.

## **West Courtroom**

### ***United States v. Kenneth E. Fairley*** (No. 17-60001)

Whether defendant, Kenneth E. Fairley is entitled to relief under plain-error review of his claim—presented for the first time on appeal—that he was wrongly convicted of violating 18 U.S.C. § 641. Fairley’s indictment charged various means of committing the offense and the District Court added a related means found in the statute but not in the indictment. Fairley maintains that his jury instructions substantively modified his indictment, and the jury’s guilty verdict further modified it. Fairley argues that these errors, individually or cumulatively, require reversal. His appeal further challenges whether the District Court properly admitted tape recordings of conversations between Fairley and his accomplice that qualify as co-conspirator statements as well as admissions of a party opponent. Lastly, Fairley’s appeal asks the Fifth Circuit to review whether the District Court appropriately sentenced him based on the proof adduced at trial, including enhancements based on (a) the loss amount and (b) Fairley’s abuse of a position of trust.

### ***Ray Wildman v. Medtronic, Inc.*** (No. 17-50010)

This case arises out of significant and permanent personal injuries suffered by Ray Wildman after he was implanted with a defective spinal cord stimulator that was marketed, warranted, and sold by defendant, Medtronic, Inc. Wildman’s appeal seeks reversal of the District Court’s ruling that his state-law claims are preempted by Federal law under § 360k of the Medical Device Amendments of 1976 (“MDA”). His appeal specifically questions whether warranty claims that are premised on express warranties that were never approved by the U.S. Food and Drug Administration are preempted under the MDA.

### ***Senaida Sandoval v. City of Pflugerville*** (No. 16-51369)

Senaida Sandoval, a police dispatcher with the City of Pflugerville, filed a civil rights lawsuit against the City asserting violations of Title VII, the ADA, the Texas Labor Code, the U.S. Constitution, and the Texas Constitution. The City filed an answer. Ms. Sandoval filed a motion for partial summary judgment on her retaliation claim. The City filed its own motion for summary judgment. The District Court granted summary judgment on all claims in favor of the City. The District Court found Ms. Sandoval

presented evidence that “Plaintiff was fired in part due to conversations which included allegations of sexual harassment.” Ms. Sandoval’s appeal first questions whether such evidence engenders a fact issue regarding pretext. Secondly, her appeal asks the Court to consider whether a citizen-employee’s interest in exposing sexual harassment, civil rights violations, and misconduct by a police department outweighs the department’s interest in promoting harmony in the workplace.