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BAR & BENCH

NEWSLETTER: Vol. 31, No. 1 February 2019

West Michigan Chapter of the Federal Bar Association

Bar & Bench

NEWSLETTER



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Welcome to our refreshed newsletter!

In this issue you'll find:

- Greetings from past-president Sharon Turek
- Meet Matt Borgula, WMC FBA president
- Appellate Round-Up
- Ray Buffmyer: CJA Panel Attorney Retires After Five Decades
- 2018 Trial Verdicts in Western Michigan District
- 2019 Officers
- Thanks to our Sponsors

Greetings...

from **Sharon Turek**, Immediate Past President

It is a pleasure to introduce to you our new, quarterly FBA digital newsletter. We hope you'll like the new digital format. As we make this change, we owe an enormous debt of gratitude to our friend, Joe Kuiper, who for many years worked tirelessly to edit and publish our chapter's newsletter, earning recognition from the national FBA for his work.



Sharon Turek

It was a busy year! The FBA hosted several programs in 2018, including our **Supreme Court Review** and three-part **Immigration Law Series**. We were happy to again help sponsor and support this district's **Hillman Advocacy Program**.

In November, a **veterans' outreach program** offered information about resources available to veterans in our community and FBA lawyers provided veterans with pro bono assistance with wills and

other legal documents.

Work continues on the **Historical Society's book about the history of the Western District**, with contributions from Judge Brenneman and others. Publication is expected in late 2019 or early 2020.

Our **Annual Meeting took place on Thursday, October 11, 2018**, at the McKay Tower Ballroom in downtown Grand Rapids. Chad A. Readler, Acting Assistant Attorney General of the Civil Division of the United States Department of Justice in Washington D.C., was the speaker.

So as you can see, the year went by fast, which brings me to the main message that I want to impart to all of you, which is to take care of yourself. The law is a very demanding profession. We spend most of our time taking care of client needs and problems. We can all take better care of ourselves. This lesson was brought to mind last year when we lost a longtime friend and member of the FBA. Attorney Gaylor Cardinal died suddenly while working in his office. Gaylor had served as one of our district's Criminal Justice Act (CJA) panel attorneys for more than 30 years. His death reminds us once again that tomorrow is never guaranteed. So my message to you is to **take care of yourselves and make sure that you make time for the really important things in your life.**

Best Wishes,
Sharon

Meet Matt Borgula

President, Federal Bar Association, Western District of Michigan



Matt Borgula

When Matthew Borgula was elected president of the WDM of the FBA, he joined his wife, Jennifer McManus, in becoming the first married couple to have both served in that position.

Borgula is a private-practice trial attorney and partner at Springstead Bartish Borgula & Lynch. He's a recognized expert in criminal violations of federal fraud, money laundering, the bank secrecy act, and complex computer-related crimes. And he's a former Assistant US Attorney, as well as a seasoned defense attorney.

Matt is known for a zealous commitment to achieving justice for his clients. And that commitment extends beyond the workplace in his career-long commitment to pro bono work and public service.

Matt is married to Jennifer McManus, FBA president 2012-2013, and

current Appellate Chief for the United States Attorney's Office. When he's not working, he's happiest spending time with Jennifer and their talented kids.

Notable cases:

United States v David McQueen

State of Illinois v. Patrick Sykes (the "Girl X" case)

United States v. Steven Deuman

Appellate Round-Up

United States v. Quarles

On January 11, 2019, the Supreme Court (17-778) has granted certiorari in this **Chief Judge Jonker** case, originally resolved by a plea in 2014. The case was handled by AUSA **Sean Lewis**, and AFPDs **David Kaczor** and **Jasna Tosnic**. Judge Jonker sentenced Jamar Quarles to 204 months in custody on a felon in possession of a firearm charge. The Sixth Circuit affirmed the decision that Michigan's crime of third-degree home invasion was categorically equivalent to generic burglary, and therefore was properly qualified as a predicate "violent felony" under the Armed Career Criminal Act. 850 F.3d 836 (6th Cir. 2017). This vastly increases the Guideline range sentence.



David Kaczor

The issue accepted for Supreme Court review is whether "generic burglary" under ACCA requires proof that intent to commit a crime was present at the time of unlawful entry (two circuits so hold), or if it is sufficient that the statute permits the defendant to form intent to commit a crime at any time during the break-in (three circuits plus the Sixth). This is an issue with Michigan's statute, plus many other states' laws.



Jasna Tosnic

Unfortunately, no one local will be arguing at the high court. After the Sixth Circuit, the certiorari petition was handled by the University of Virginia Law School Supreme Court litigation clinic, as well as the Vinson & Elkins and the Roberts Russell law firms, both out of Washington, D.C.

Review the SCOTUS blog summary, [here](#).

United States v. Christian

This case will be heard en banc by the Sixth Circuit on March 20, 2019, to be argued by AUSA and former FBA president **Jennifer McManus** and University of Tennessee Legal Clinic attorneys for

the defense. **Scott Graham** represented Tyrone Christian at trial below, and AUSA **Tim VerHey** and **Heath Lynch** tried the case for the Government. Lynch is now in private practice.

In a 2-1 decision, the Sixth Circuit panel originally reversed Chief Judge Jonker's decision that the state search warrant in a drug case was supported by probable cause, and that the good faith exception would save the warrant in any event. 893 F.3d 846 (6th Cir. 2018) (vacated). Judge Gilman wrote the opinion, joined by Judge Stranch, while Judge Rogers dissented. Prior defense counsel **Larry Phelan** handled the original evidentiary hearing on the Fourth Amendment issue.

The majority opinion reversed, holding that the warrant failed to establish more than speculative connection between drug activity and the residence prior to the search. The Sixth Circuit also held that a recorded telephone call could not be played at trial under the co-conspirator hearsay exception. Judges Gilman and Rogers, although senior, will be permitted to participate en banc since they sat on the original panel.



Tim VerHey



Jennifer McManus



Heath Lynch



Larry Phelan

West Michigan Band Instruments, LLC v. Coopersville Public Schools

On January 16, 2019, the Sixth Circuit affirmed Judge Maloney's decision dismissing a free-speech, viewpoint-based discrimination case brought by a private company supplying band instruments, represented by **Daniel Broxup** of Mika Meyers, against Coopersville Public Schools, represented by **Mark Ostrowski** and **Bogomir "Beau" Rajsic** of Kluczynski Girtz & Vogelzang. WMBI claimed that Coopersville's decision to take bids from private musical instrument companies to be the sole provider at its "Band Night" for parents violated First and Fourteenth Amendment rights. The issue argued was whether school districts can influence commercial transactions of students/parents and commercial vendors by denying access to a forum like "Band Night."



Daniel Broxup



Mark Ostrowski

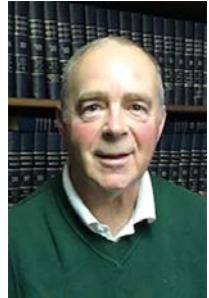
The Sixth Circuit affirmed the decision that WMBI could not establish that it had a "viewpoint" against which the public school

discriminated, and could not refute the school's position that its decision was viewpoint-neutral. In addition, the appeals court agreed that the school met the standard of demonstrating that its restriction on commercial speech met intermediate scrutiny, i.e., it demonstrated that the restriction directly and materially advanced the substantial government interest of minimizing from the educational purpose of the evening to present information about the band program.



Bogomir Rajsic

CJA Panel Attorney Retires After Five Decades



Ray Buffmyer After 40 years of practice in Mid and West Michigan, Ray Buffmyer of Charlotte is reluctantly forcing himself to retire after more than five decades in practice. A self-described workaholic who has tried approximately 30 first-degree murder cases and handled two death penalty cases in federal court, Ray was diagnosed Parkinson's Disease three years ago. While he's not happy about retiring, he believes doing so is best for his health and has many professional accomplishments on which to look back and be proud.

A little known fact about Ray is that he was a NCAA Division I wrestler in college, wrestling at Michigan State University in the early 1970s after having been a state champion in high school. This background led him to a life-long love of exercise and fitness, which will surely serve him well as he deals with Parkinson's.

Ray graduated from Cooley Law School in Lansing in 1976. He began his legal career in the Eaton County prosecutor's office where he practiced for six or seven years. It is there that he tried and won a noteworthy murder case that he remembers with pride today. A man robbed a local Domino's Pizza store and in doing so, shot several teenagers employed there in the back of the head, killing them. The man is still in prison. Getting him off the streets was one of Ray's greatest successes and he believes that if he never did a single good thing after that, his life would have served a purpose.

But of course, good things did not stop there. After leaving the prosecutor's office he went into private practice, frequenting the courts in Ingham and Eaton counties. He met his wife, Debra, who was working as a Michigan State University police officer, when he cross-examined her on the witness stand in front of a jury – she was not an easy witness! They ran into each other at a party shortly thereafter, married, and settled in Charlotte. Debra is still working for the courts in Eaton County.

Ray is locally known around Charlotte as the "Lawdog" and for years wrote a column for the Eaton County Journal answering legal questions. He and his law partner Dave Smith shared a downtown law office in Charlotte for more than 30 years, where his practice consisted of 40% criminal work and 60% civil/divorce work. The record number of times he represented the same man in divorce proceedings was five. His commitment to others is part of who he is. One of the reasons he forestalled his retire following his Parkinson's diagnosis was to make sure Patti, his assistant of more than 30 years, had a soft landing as she also headed into retirement.



*Smith & Buffmyer
Downtown Charlotte*

Ray did federal criminal work in this district as a private-practice attorney. In 1981, he received a call from the Honorable Robert Holmes Bell, who was then on the federal bench. Ray knew Judge Bell quite well from his days of practice in Ingham County when Judge Bell was on the state court bench. When Judge Bell asked if he would be willing to take some court-appointed cases, Ray agreed and continued to take court-appointed cases at the request of judges and then continued this work when the process was formalized through the Criminal Justice Act panel in this district. His first federal trial was a Felon in Possession of a Firearm case bench tried to the Honorable Benjamin F. Gibson. The verdict was not guilty – Ray should have retired then!

Ray has learned a lot in his years of practice. Number one, to him, is to maintain a sense of humor. Nothing is as serious as lawyers, particularly newer lawyers, make it out to be and you have to have perspective, he says. He encourages lawyers to keep perspective and a sense of humor to ensure that they neither burn bridges nor burn out. Second, he learned that lawyers simply have to have client control, which is accomplished by setting the parameters of your role from the beginning and making sure you stick to those parameters. And finally, he has learned that you have to save money; as a private practitioner, income will naturally ebb and flow, and you have to be careful and plan for your future.

Ray intends to stay active as he heads into retirement. While Parkinson's has not affected his cognitive abilities, it has impacted his motor skills, so he's channelling his inner athlete and committing to regular exercise to stave off the disease. He plans to work with the Parkinson's Foundation and to offer mediation services in retirement. Ray will be missed and we are lucky to have had his presence in our legal community for all of these years. We wish him well as he heads into this next chapter of life!

Britt Cobb

Britt Cobb is a partner at Willey & Chamberlain, LLP in Grand Rapids, a firm specializing in state and federal criminal defense at both the trial and appellate

levels. Britt is also a member of the FBA newsletter committee.

Western District Trial Verdicts 2018

Verdict Date	Case	Judge	Attorneys	Verdict
1/4/18	Matzke v. Heyns (Prisoner civil rights)	Maloney – bench	P: Pro se D: Douglas Powe	For Defendants
1/8/18	United States v. Wilson et al.	Quist – jury	USA: Maarten Vermaat, Paul Lochner Def. Wilson: Rick Zambon Def. Debruler: Paul Mitchell Def. Smith-Kilpatrick: Scott Graham	Guilty
1/12/18	Thompson v. Stenglein (Prisoner civil rights)	Neff – bench	P: Pro se D: Allan Soros	For defendant
1/29/18	Zuhl v. Haskins (Fourth Amendment excessive force)	Kent – jury	P: Cynthia Heenan, Hugh Davis D: James Straub, Sarah Hartman, James McGovern	For defendant
2/12/18	United States v. Heinkel	Jonker – bench	USA: Hannah Bobee D: Beth LaCosse	Guilty
2/6/18	United States v. Tobias	Jonker – jury	USA: Paul Lochner Def.: Beth LaCosse	Not guilty
2/9/18	United States v. Samuels	Jonker – jury	USA: Maarten Vermaat, Paul Lochner Def.: Karl Numinen	Guilty
3/28/18	United States v. Whyte	Jonker - jury	USA: Stephen Baker, Justin Presant Def.: Paul Mitchell	Guilty
4/3/18	Otte v. Greyhound Lines, Inc. (Diversity – personal injury)	Quist – jury	P: Aaron Wiseley, Matthew Malleis D: Mark Shreve, Boyd Chapin, Jr.	For defendants
4/10/18	United States v. Degenaer	Maloney - jury	USA: Hannah Bobee, Maarten Vermaat Def.: Mark Dobias	Guilty
4/11/18	Moore v. Prunick et al. (Prisoner civil rights)	Maloney – bench	P: Pro se D: Michael Dean	For defendants
4/12/18	Evoqua Water Technologies LLC v. M.W. Watermark, LLC (Trademark)	Jonker – jury	P: Craig Smith, Eric Carnevale, Joe Sadler D: G. Thomas Williams	For plaintiff on trademark infringement, \$0; for defendants on all other claims
4/26/18	HLV, LLC v. Stewart (RICO)	Maloney – jury	P: Nicholas Bostic, Brittany Dzuris	For plaintiff, \$1

			D: Robert Callahan USA: Stephen Baker, Joel Fauson Def.: Rick Zambon	
5/17/18	United States v. Neeley	Neff - jury	USA: Dan Mekaru, Davin Reust Def.: Jolene Weiner-Vatter	Guilty on all counts except Ct. 7
6/14/18	United States v. Clayton	Neff - jury	USA: Nancy Bogren D: Sarah Howard	Guilty
6/14/18	United States v. Matthews	Kent - bench	P: Pro se D: Michael Dean	Not guilty
6/18/18 (6/21/18 Judgment)	Anthony Moore v. Davis	Quist - bench	P: Pro se D: Allan Soros	For plaintiff, \$250
6/19/18 (6/21/18 Judgment)	Horacek v. Martin et al. (Prisoner civil rights)	Quist - bench	P: Pro se D: Michael Dean	For defendant
6/27/18 (8/1/18 Judgment)	Perreault v. MDOC et al. (Prisoner civil rights)	Carmody - bench	P: Pro se D: Michael Dean	For defendants
7/16/18 (8/6/18 Judgment)	Bostrom v. Pepper et al. (Prisoner civil rights)	Quist - bench	P: Pro se D: Michael Dean	For plaintiff, \$250
7/17/18	United States v. Applegate	Maloney - bench	USA: Ray Beckering, Nicole Mazzocco D: Ryan Maesen	Guilty
7/17/18	Brown v. Prelesnik et al. (Prisoner civil rights)	Carmody - jury	P: Dan Manville D: Michael Dean	For defendants
8/15/18	United States v. Monkemeyer	Quist - jury	USA: Maarten Vermaat, Paul Lochner Def.: Beth LaCosse	Not guilty
8/15/18	Lindsey v. Wertanen et al.	Quist - bench	P: Racine Miller D: Kristen Simmons	For defendants
8/16/18	Kevin Williams v. Montgomery et al. (Prisoner civil rights)	Quist - jury	P: Pro se D: Kristen Simmons	For defendants
8/22/18	Dykes v. Marshall (Prisoner civil rights)	Kent - jury	P: Pro se D: Michael Dean	For plaintiff, \$5,500
8/23/18	Holt v. Battle Creek (FLSA)	Neff - bench	P: Robert Alvarez, Agustin Henriquez, Jr. D: Mark Kreter, Dan Boocher	For defendant
9/6/18	United States v. Easterling	Quist - jury	USA: Def.:	Guilty
9/11/18	Mark Hardy v. Stoddard et al (Prisoner civil rights)	Kent - jury	P: Paul Albarran, Seth Arthur D: Michael Dean	For defendants
9/12/18	Anthony Moore v. Fegan (Prisoner civil rights)	Maloney - jury	P: Pro se D: Kristen Simmons	For plaintiff, \$100
9/14/18	United States	Quist - jury	USA: Mark	Not guilty Ct. 1;

	v. Tajia Perez		Courtade Def.: Scott Graham	Guilty on Cts. 2, 3
9/17/18	United States v. Igoba	Jonker - jury	USA: Sally Berens, Chris O'Connor Def.: Patrick O'Keefe	Guilty
9/25/18 (11/15/18 Judgment)	D'Andre Alexander v. Govern (Prisoner civil rights)	Quist – bench	P: pro se D: Brandon Waddell	For defendant
9/25/18 (10/11/18 Judgment)	D'Andre Alexander v. Kind et al. (Prisoner civil rights)	Quist – bench	P: pro se D: Brandon Waddell	For defendants
10/15/18	Meirs v. Ottawa County et al. (Civil rights – suicide of pretrial detainee)	Maloney – jury	P: Steven Budaj, Julie Hurwitz, Huwaida Arraf D: Doug Van Essen	For defendants
9/28/18	D'Andre Alexander v. Fillion et al. (Prisoner civil rights)	Quist – jury	Defs.: Brandon Waddell, Ronald Chapman, Carly Van Thomme	For plaintiff \$9,000 as against some defendants
10/4/18	Heard et al. v. Finco et al. (Prisoner civil rights)	Quist – jury	P: Daniel Manville D: John Thurber and Patrick Meyers	For plaintiff Heard \$800; for plaintiff Nelson \$800; for plaintiff Moses \$650; for plaintiff Johnson \$650
10/22/18	Anderson v. Haworth	Kent – bench	P: Brad Glazier and Rob Howard D: Andrea Bernard and Ryan Grondzik	For plaintiff, \$86,258
10/23/18	Mustafa Dogan Dairy Consulting, Inc. v. La Colombe Torrefaction, Inc. (Breach of contract)	Maloney – jury	P: Mike Risko D: Jared Bayer and Derek McLeod	For plaintiff, \$500,000
10/23/18	United States v. Castro et al.	Jonker – jury	USA: Steven Baker, Joel Fauson Defense: Matthew Lombard (Castro); Larry Phelan (Nelson); Mary Chartier & Takura Nyamfukudza (Tatum); Patrick O'Keefe (Howard); Sarah Howard (Atkinson); Mike Hills (Cox); Keith Turpel (Thompson)	Castro: Guilty on Cts. 1 Nelson: Not guilty Tatum: Guilty on Ct. 1, Not Guilty Ct. 2, Guilty Ct. 3 Howard: Guilty Ct. 1 Atkinson: Not guilty Ct. 1, Guilty Ct. 11 Cox: Not guilty Avery: Not guilty Thompson: Guilty Ct. 1

11/28/18	United States v. Abrams	Maloney – jury	USA: Rene Shekmer and Austin Hakes Defense: Rick Zambon USA: Hannah Bobee Def.: Beth LaCosse	Guilty
11/15/18	United States v. Brunk	Maloney – bench		Guilty

Upcoming Events

February 27 Annual Supreme Court Review

Presented by attorneys John Bursch of Bursch Law PLLC and Donald A. Davis of Springstead Bartish Borgula & Lynch PLLC

If you'd like to order a \$10 brown bag lunch,
email Melissa_Rabidoux@fd.org by close of business on Friday,
February 18.

Federal Court House, Jury Assembly Room

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Sarah Riley Howard is the editor of the FBA newsletter, but she is more than willing to recommend to the FBA that she give up that post to interested parties. Sarah, a former FBA president, is a civil rights attorney with Pinsky Smith Fayette & Kennedy LLP, where she vindicates important constitutional claims of individuals in employment and other settings, as well as defends those charged with federal crimes.

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