

January/February 2018

# BARBEAT

Genesee County Bar Association



## For-Mar Nature Preserve

Reflections On The Holiday Dinner

Michigan Shared Parenting Act

Women Lawyers Association of Michigan  
Centennial Gala

Mindfulness Meditation in Your Attorney Toolbox

Limited Scope Representation (LSR) New Rules  
effective January 1, 2018

230-½ Years Ago—September 17

Law Day

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Bar Beat Editor  
 LindaLee Massoud  
 BarBeat@gcbalaw.org

Bar Beat Assistant Editors:  
 Roberta J.F. Wray  
 Shelley R. Spivack

Genesee County Bar Association  
 315 E. Court St., Flint, Michigan 48502-1611  
 (810) 232-6012  
 For editorial information, call (810) 232-6000.

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# Reflections On The Holiday Dinner

By Hon Mark W. Latchana, President



Hon. Mark W. Latchana

As I write this article, the 2017 Holiday season is drawing to a close. Families that celebrated together are now going back to their respective busy lives. The work schedule for many of us has returned to normal. Children are back to school. As we all go back to routine activities, I encourage all of us to reflect back on the holiday season, and more specifically, the GCBA's Annual Holiday Dinner.

I was fortunate enough to spend the evening serving dinner to citizens of Genesee County along with a number of our members and other volunteers. As the Bar has done for the previous 26 years, we gathered again to help those who need a little help. In addition to the meal, children were treated to a visit and photo with Santa and a wrapped gift. New this year was the addition of a book for each and every child. All those in attendance were also treated to some truly spectacular entertainment.

As I stood in the greeting line saying hello and Merry Christmas to as many of our guests as I could, it occurred to me how fortunate we are as a profession and association to be able to do something like the Holiday Dinner for our community. The Holiday Dinner is entirely paid for through donations. The labor is all provided by members and volunteers. The sense of gratitude from those in line was palpable. In its most simple terms, the chance for a hot meal and some lively entertainment was very likely the highlight of the holiday season for many of those in attendance.

Later, I transitioned to helping those in line fill their plates and find seats. I was surrounded by volunteers with

smiles on their faces who were eager to help. I watched as each attendee was helped to whatever their plate could hold and then led to a seat and left with a heartfelt "Merry Christmas!" I watched as prosecutors and defense attorneys, plaintiff's counsel and insurance defense lawyers, and judges and magistrates worked hand-in-hand to serve the public. No matter their role in the legal community, everyone joined together for the common goal of serving a hot meal and providing a gift to kids who might not otherwise get one for Christmas.

Still later, I stood shoulder-to-shoulder with my wife and a Felony Drug Court graduate as we served food. The graduate had contacted the court earlier in the week looking for an opportunity to volunteer. She is doing well in recovery and even brought her daughter along to help. In fact, I saw many of our members and their children learning the lessons of selflessness and volunteerism together. The opportunity to help others and teach our kids some valuable lessons is, as they say in the television commercial, "priceless."

As I noted above, for many of the attendees, the Holiday Dinner was most likely the highlight of their holiday. As I reflect on the experience, I have to say it was the highlight for me, too. Many thanks to the Holiday Dinner Committee and to all those who made the event the success that it was and will continue to be.



## Welcome New Members

**Attorney: Amir E. Abu-Aita**

Employer: Abu-Aita Law Firm, PLLC

Undergrad School: Central Michigan University

Law School: Western Michigan University Thomas M.

Cooley Law School

**Affiliate: Constance Neithercut**

## 27th Annual Community Holiday Dinner

**Thank you! Thank you! Thank you!**

Because of you our 27th Annual Community Holiday Dinner was a great success. We were able to meet and exceed our donation goal.

We served 884 people, 380 kids received a gift and had their picture taken with Santa, and we gave away 318 books!

Hoping you had a joyous holiday season!

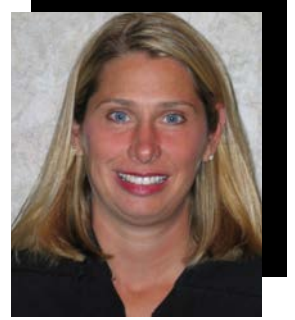
Holiday Dinner Committee

Genesee County Bar Association

Genesee County Bar Foundation

# Michigan Shared Parenting Act

By Hon. F. Kay Behm



Hon. F. Kay Behm

Members of Michigan's House of Representatives have proposed sweeping changes to the Michigan Child Custody Act. The new bill is called the Michigan Shared Parenting Act. This bill would create a broad presumption of joint legal custody and equal parenting time for all parents, children, and families regardless of the individual circumstances of any particular family. The bill would eliminate the focus of the existing law which centers on what is in the best interest of children and, instead, focuses on the parents being considered "equal." The Genesee County Family Court judges unanimously oppose the proposed legislation. The following are some of the reasons the proposed legislation is also opposed by the State Bar of Michigan Family Law Section, the Michigan Judges Association, the Referees Association of Michigan, and the Michigan Probate Judges Association.

Although the bill would mandate a presumption of equal parenting time, there are no guarantees that each parent would actually be involved in his or her child's life 50% of the time. Nonetheless, child support would be calculated as if each parent exercised equal parenting time. Deadbeat parents would be unfairly relieved of paying child support consistent with the reduced amount of parenting time that they exercise.

The proposed change in the law assumes that all child custody cases are a result of divorcing couples. In reality, an overwhelming number of cases involve couples who have children but are not married. In Genesee County, only 24% of all custody cases filed involve children of divorcing parents, leaving 76% of the cases between parents who have never been married. Approximately 38% of all custody cases between unmarried parents involve children with no identified legal father at the time the court case is filed. The new bill requires equal parenting time for parents who may have never met their child, let alone lived with that child.

Supporters of the new bill argue the existing law allows the courts to discriminate against fathers by automatically awarding custody to mothers and dividing parenting time along an established 80/20 split preferring mothers over fathers. This is simply not how custody determinations are actually made. The great majority of custody and parenting time orders are based upon agreements reached by the parties rather than a decision imposed upon the parties by the courts. If the parties cannot agree, judges conduct child custody trials and award custody and parenting time between the parents based on the best interests of the children regardless of the parent's gender. In Genesee County, fathers of children in child custody cases are regularly

awarded both joint and full legal and physical custody.

The current law focuses on the needs and care of the children to determine who is awarded custody and parenting time. Judges look at 12 factors to determine the best custody arrangements for children on a case-by-case basis. Existing law allows for the flexibility necessary to address the many types and unique circumstances of families. Of course, the best-case scenario for any child is to have two actively involved, loving parents. However, the professionals who are on the front lines of custody disputes every day too often see parents of both genders who are either unwilling or unable to be equally involved in parenting their children.

The new bill would eliminate domestic violence as one of the 12 best interest factors. The bill would make domestic violence relevant only if a parent can show by clear and convincing evidence that a child has been exposed to domestic violence. The new legislation would place a higher and unfair burden of proof on victims of domestic violence.

This new legislation would eliminate over 40 years of established case law. The bill contains a myriad of new undefined legal terms and standards for deciding custody. With these proposed changes, all existing custody orders would be subject to new litigation. The courts and litigants would face years of litigation on appeals to clarify and interpret the new definitions, presumptions, and language of the proposed litigation.

Since its introduction to Michigan's House of Representatives, the bill has been referred to the Committee on Judiciary. The bill is currently sitting on the floor of the House. It does not appear that there will be enough votes to get the bill to the Senate. Various groups continue to work on proposing alternative legislation. Unfortunately, the proposed alternatives continue to focus on a presumption of joint custody regardless of the problems identified above. The bill can be accessed at: <http://www.legislature.mi.gov/documents/2017-2018/billintroduced/House/pdf/2017-HIB-4691.pdf>

*2017 In Memoriam*

*John (Jack) Wright*



# Women Lawyers Association of Michigan Centennial Gala

By Samantha J. Orvis



Samantha J. Orvis

You may have seen a “Save the Date” going around for the Centennial Gala, April 27, 2018, a glamorous occasion during which the Women Lawyers Association of Michigan (WLAM) will be celebrating its 100<sup>th</sup> anniversary. This event is sure to be one of the most historic bar events of 2018 and is a celebration relevant to the entire legal community.

The Centennial Celebration will be a black-tie optional event held at The Colony Club in Detroit. The Colony Club was one of the first women’s clubs in the city of Detroit, opening in 1927. Because of its historic ties to women of the past, this beautifully restored venue is the perfect location for WLAM’s 100<sup>th</sup> anniversary celebration.

The theme this year will be *Looking Back, Moving Forward* and will honor the past presidents of our state organization as well as each of our regions. A private reception for these individuals, as well as the current leadership of the organization, will precede the main event. Women lawyers have made an undeniable impact on the local community, as well as on local Genesee County firms, and there is no better time to support and celebrate their accomplishments than at this grand event.

All of you reading this, yes that means you too, know at least one female lawyer who has had some impact on your career or the legal profession as a whole.

We have some remarkable and accomplished female attorneys in the Genesee county area. The Women Lawyers Association of Michigan is an active bar, with seven local regions across Lower Michigan, each of which hosts events to benefit its members and non-members alike. WLAM offers opportunities for networking, service to the community, and professional growth, among others.

There are many opportunities to sponsor this historic celebration. Anyone interested in learning more should email: [sorvis@garanlucow.com](mailto:sorvis@garanlucow.com). Registration for the event will open soon. Priority registration will be given to members of WLAM. The event is expected to sell out, so register early. You don’t want to miss your chance to celebrate with sister women lawyers and their supporters during this momentous occasion.

## 2018 Pro Bono Clinics-Attorney Volunteers Needed!

Please consider participating in the Pro Bono Clinics sponsored by **Legal Services of Eastern Michigan (LSEM)** and the **Genesee County Bar Association (GCBA) Pro Bono Committee**. This is your call to join your colleagues in supporting a vital service that only attorneys in our community can provide. Although we all receive countless requests from charitable organizations on behalf of many worthwhile causes, the contribution of your legal skills to the poor is something you are uniquely able to provide.

Volunteer attorneys may sign up via “sign-up genius” at the link below:  
<http://www.signupgenius.com/go/10c044baba62aa7f85-volunteer1>

The clinics run from **9:00 a.m. to 12:00 p.m.** at LSEM’s office, 436 S. Saginaw St., Flint, MI 48502. LSEM pre-screens clients for eligibility. Coffee and snacks are provided for volunteer attorneys. LSEM will make every effort to pair attorneys with clients who have issues relating to each attorney’s practice area(s).

The 2018 Pro Bono Legal Aid Clinics will be held on the following dates: **February 23, March 23, April 20, May 11, June 22, July 27, August 24, September 21, October 19, November 16 and December 14.**

If you have any other questions or would like more information, please contact Julie Nichols at [jnichols@lsem-mi.org](mailto:jnichols@lsem-mi.org) or 1.800.322.4512 ext. 115. The “sign-up genius” link also can be found at [www.lsem-mi.org](http://www.lsem-mi.org) and [www.gcbalaw.org](http://www.gcbalaw.org).

# Mindfulness Meditation in Your Attorney Toolbox

By Roberta J.F. Wray



Roberta J.F. Wray

We've all experienced the stress associated with our chosen profession. It comes with the knowledge that what we do can have life-changing impacts on the clients we represent. In turn, these stresses can affect ourselves and our families. Some of the ways we deal with stress can be harmful.

The State Bar of Michigan has resources available to members to help deal with the problems associated with the harmful stress-relievers, such as drugs and alcohol.

In recent years a great deal of emphasis has been placed on various kinds of meditation as stress relievers. The problem is determining which type of meditation of the dozen or so being widely promoted might be right for you.

A recent article in *GP Solo*, a publication of the American Bar Association, is by Ann Arbor native Cheyne R. Scott. Scott is a 2011 graduate of Thomas M. Cooley Law School, licensed in Michigan and New Jersey. A brief excerpt from her article has a short form suggestion for stress-management.

I could suggest that you do yoga for 30 minutes per day or exercise an hour per day, activities associated with increased mindfulness and reduced stress, but I already know your busy lawyer brain would likely shoot down these suggestions. Instead, I will

suggest the simplest way to incorporate mindfulness into your practice and daily life: meditation.

Most attorneys live their lives in six-minute increments, and the thought of adding another task to an already packed schedule seemingly adds stress instead of reducing it. However, just mindfully sitting in silence for five minutes daily can have a tremendous impact on your stress, anxiety, and overall mindset.

Among the benefits listed, besides stress relief, are increased productivity, better focus, gaining more time for activities away from work and better sleep.

For a deeper dive into the process see: <https://tinyurl.com/attorney-stress>

The State Bar of Michigan's Lawyers and Judges Assistance Program is a completely confidential resource staffed with experienced professionals to help deal with addictions when stress relief has progressed past the mindfulness/meditation stage. <http://www.michbar.org/generalinfo/ljap/home> (and particularly the Practicing Wellness link.)



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# Limited Scope Representation (LSR)

New Rules effective January 1, 2018

By State Bar of Michigan Staff

On September 20, 2017, the Michigan Supreme Court adopted new rules providing direction to attorneys for offering ethical, quality limited scope representation (LSR) in civil cases. LSR, also known as “unbundling,” allows attorneys to provide discrete legal services of limited scope, agreed to in advance with the client, rather than traditional full representation. Based on the recommendation of the State Bar of Michigan 21st Century Practice Task Force, the rules proposal was created by the State Bar’s Workgroup on Unbundling and approved by the Representative Assembly. The new Michigan LSR rules went into effect January 1, 2018.

LSR most often involves an attorney providing a self-represented party with advice and coaching, mapping out an overall legal strategy to resolve the entire matter, and/or performing one or more discrete legal tasks, such as preparing pleadings, conducting discovery, making a limited court appearance, or negotiating settlement. Since unbundled services require a much lower level of attorney commitment than full representation, it is less costly, putting legal assistance within reach of many low- and moderate-income individuals who otherwise could not afford to retain a lawyer. The new Michigan rules exclusively address private civil matters, rather than criminal or commercial matters. Experience in the over 30 states that have formally adopted LSR demonstrates that this is best practice, and also that all stakeholders tend to benefit: courts benefit from better prepared *pro se* civil litigants, fewer delays, and a more efficient docket; clients benefit from attorney expertise, and from paying for legal services only where a lawyer is truly needed; and attorneys benefit from gaining access to a previously untapped market of self-represented clients, increasing revenues and growing their practices.

LSR provides important support for access to justice inasmuch as most studies show that no more than 20% of the civil legal needs of the poor are being met. Our state is well-positioned for LSR to help an increasing number of *pro se* litigants in light of Michigan’s highly respected nonprofit self-help program, the Michigan Legal Help website and local self-help centers, which reaches more than 25,000 users per week, and the State Bar of Michigan’s cutting-edge systems for lawyer directories.

Not every type of legal matter, nor every client, is a good fit for unbundling. LSR tends to work best with matters such as landlord-tenant disputes, expungements, non-complex consumer or tax matters, simple divorces and other domestic and family law issues. In all cases, unbundling requires education and training of lawyers, clients, judges

and court staff. It also requires informed judicial engagement, rules that provide clear guidance, quality control mechanisms, deliberate attention to ethical questions, and full integration into the entire legal services delivery system.

The first step in crafting an effective limited-scope representation agreement is the initial consultation, which includes considerably more than the traditional intake and conflicts check. In LSR, a successful initial consultation includes: accurately diagnosing the legal issues presented, assessing the suitability of the matter for self-representation at all, including the ethical obligation to accurately assess the client’s capacity for self-representation; determining whether *any* LSR services are appropriate; determining which tasks the client could perform and which tasks should be performed by an attorney; assessing the client’s ability to pay, determining a rough-draft budget; and, where appropriate, empowering the client to move forward with self-representation, in some cases supported by LSR, in some cases not. Only after such a comprehensive initial consultation is it possible to determine whether to engage the client at all, and whether the client actually needs full representation by a lawyer, ongoing support via LSR as a self-represented litigant, or little more than some advice and a “game plan” to proceed independently with self-representation.

Whether or not to offer LSR service is, of course, up to each individual lawyer or law firm. Attorneys who choose to provide such services do not need to reinvent the wheel that has worked so effectively in over 30 other states in order to utilize the new Michigan LSR rules. The State Bar is continuing to develop tools, template forms, training materials, and other resources. Watch the State Bar’s website for these resources as they become available, as well as links to the actual LSR rules themselves. On that website, you can also sign up for alerts about the State Bar’s ongoing work on LSR.



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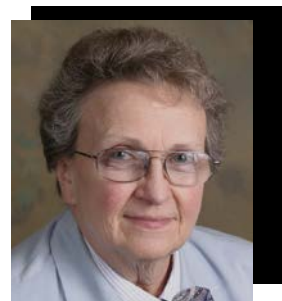
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# 230-1/2 Years Ago—September 17

By Roberta J.F.Wray



Roberta J.F. Wray

“Monday, May 14, 1787, was the day fixed for the meeting of the deputies in Convention for revising the federal system of Government.” With these words, James Madison opened his *Notes of Debates in the Federal Convention of 1787*. Six hundred twenty-five pages later we find the following: “The few alterations and corrections made in these debates which are not in my hand writing, were dictated by me and made in my presence by John C. Payne.”

Between the opening and closing sentences are contemporaneous notes and entire speeches by the “Founding Fathers” revealing, in great detail, the reasoning behind every decision that led to the Constitution of the United States of America. They were first published in 1840 in *The Papers of James Madison* four years after his death. In his will he stipulated that the “Notes” should not be published until after the last of the participants had died.

A limited “stand alone” edition of the “Notes” was published in 1893. I wonder, as does the editor of the Bicentennial Edition, why the Notes were out of print and therefore unavailable for scholars, teachers, lawyers, legislators and the public for many years. It seems to me the simplest of solutions to the question, “What did the Founding Fathers intend?” Yet in every complex legislative situation, or judicial challenge, rather than consulting the original notes the debate of the ignorant ensues.

There is no need to puzzle over the reasons the powers of each branch were constructed as they are. There is no need to wonder what the commerce clause was intended to cover or why the terms of office were set as they are. The “Notes” cover these issues. They even cover the debate

over limiting terms and preventing successive terms.

The final document was approved unanimously despite the fact, as Dr. Benjamin Franklin noted:

... there is no form of Government but what may be a blessing to the people if well administered, and believe further that this is likely to be well administered for a course of years, and can only end in Despotism, as other forms have done before it, when people shall become so corrupted as to need despotic Government, being incapable of any other.

... [W]hen you assemble a number of men to have the advantage of their joint wisdom (my emphasis), you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views.

... Much of the strength and efficiency of any Government in procuring and securing happiness to the people depends on opinion, on the general opinion of the goodness of the Government, as well as of the wisdom and integrity of its Governors.

At last Madison’s “Notes” are generally available at reasonable cost and have been for thirty years. The “wisdom of the Governors” might be enhanced if they all owned or at least consulted a copy.

## Thinking Questions to Plan Your 2018

- If you didn’t need a paycheck, how would you spend your time?
- If you could be remembered for one thing, what would it be?
- What activity makes you forget the world around you?
- What about your life now would make your younger self sad?
- If you had to give up every hobby except one, which would you choose?

—unknown source



# Law Day

By Sherri L. Belknap



Sherri L. Belknap

My first interaction with the Genesee County Bar Association was when they needed attorneys to volunteer to assist the Law Day participants. I was not yet a member but Deborah AdeOjo asked me to help. I loved it. I talked with a team who had been planning their case for months. I saw the enthusiasm that they had and was amazed at their attention to detail. After this, I joined the Genesee County Bar Association and became a member of the Law Day committee.

Each year, I watch some of the trials presented by Genesee County area high school students. You can see the nervousness disappear as they start to present their cases. The jurors listen to the presentation of the facts and decide



the defendant's fate. During the jury deliberations, the Genesee County Circuit Court judges talk

to the students. After the verdict is entered, the students begin to talk about their experience as their teachers beam with pride.

Law Day is a celebration of what we, as attorneys, do. It celebrates the law, the legal system, and welcoming students into our world. It is an opportunity to provide students with a positive experience with our legal system and possibly a way to reach our future attorneys.

**Please join us in celebrating Law Day 2018 on Friday, April 27, 2018. Save the date!**

## 2017-18 Supreme Court Docket to Date

By Roberta J.F. Wray

Gerrymandering, Maintenance of up-to-date voter lists, Separation of Powers, Original Jurisdiction, Habeas actions: these are just a handful of the topics that will be considered in this term of the United States Supreme Court. Some others involving criminal law issues are:

*Carlos Ayestas v Lorie Davis*, Director, Texas Department of Criminal Justice (Institutional Division) seeks to determine whether the Fifth Circuit erred in a holding concerning the proper timing for provision of "reasonably necessary" resources to investigate and develop an ineffective-assistance-of-counsel claim" (Docket No. 16-6795);

*Timothy Ivory Carpenter v United States* asks whether the warrantless seizure and search of historical cell phone records revealing the location and movements of a cell phone user over the course of 127 days is permitted by the Fourth Amendment (Docket No. 16-402);

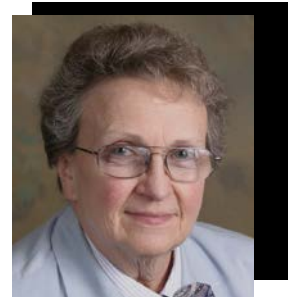
In *Rodney Class v United States* the question is whether a guilty plea inherently waives defendant's right to

challenge the constitutionality of his statute of conviction (Docket No. 16-424).

An unusual case arising out of interactions of federal courts and Congress is *David Patchak v Ryan Zinke*, Secretary of the Interior, *et al.* While the outcome of a case involving land was in district court following remand from the Supreme Court, Congress passed a stand-alone statute "directing that any pending (or future) case" involving the property be "promptly dismissed." There was no amendment to underlying substantive or procedural laws. The District Court entered summary judgment for Defendant and the Court of Appeals affirmed. The question is whether this constitutes a violation of the Constitution's separation of powers principles (Docket No. 16-498).

Other cases will likely involve questions arising out of presidential Executive Orders, including the immigrant bans.

As of January 28, 2018, 43 cases have been argued; one has been reversed and remanded; upcoming are voter registration purges in Ohio and two Fourth Amendment cases involving automobiles. Stay tuned.



Roberta J.F. Wray

# A Hero Remembered: Max Dean

By Shelley R. Spivack



Max Dean

On January 4th of 2018, the Flint legal community lost one its true heroes - Max Dean. Born in Flint, Michigan on December 15, 1922, the son of the late Myrtle (Spears) and Harry Dean, Dean graduated from Beecher High School and received both his undergraduate and law degrees from the University of Michigan (1947 and 1949 respectively).

Prior to completing his degrees at U of M, Dean had a distinguished military career during World War II as a First Lieutenant in the US Marine Corps. Serving as a dive bomber pilot in the Pacific Theater, he was awarded two Distinguished Flying Crosses and five Air Medals.

Licensed by the State Bar of Michigan in 1950 and admitted to practice before the United State Supreme Court in 1959, Dean practiced law in Flint for nearly 50 years. As a founding partner of the firm Leitson, Dean, Dean, Abrams, and Segar, he was a model of advocating human rights and compassion for all throughout his entire career.

The courage Lt. Dean exhibited in battle stayed with him as a lawyer. At the height of the McCarthy era, Dean and his partner Morton Leitson were threatened with the ruination of their careers as they called publicly for clemency for Julius and Ethel Rosenberg. During the Civil Rights Movement of the 50's and 60's Dean fought for equality and justice for all people both at home and in the South. During the 1960's, Dean labored for justice in Alabama and Mississippi as both a demonstrator and a lawyer for organizations such as the NAACP and the Southern Christian Leadership Conference. During one of these marches, Dean shared a cab with the Rev. Martin Luther King Sr. who insisted that he leave the cab before Dean as blacks and whites were not permitted to stay in the same cab together.

A highlight of Dean's legal career was his role as co-counsel on a pair of cases that led the U.S. Supreme Court in 1966 to rule as unconstitutional the use of poll taxes. Along with his partner, Robert Segar, Dean assisted the National Lawyers Guild in voter registration drives


and various voting rights cases in the South. Dean and Segar took on the case of Evelyn Butts challenging the constitutionality of the poll tax. The trial took place in Alexandria, Virginia and a three judge panel very quickly denied the plaintiff's case based on precedent, including a U.S. Supreme Court case upholding the very same statute. The decision was appealed directly to the Supreme Court. The importance of the case was underscored by the presence of the then U.S. Solicitor General and later Supreme Court Justice, Thurgood Marshall, who argued for the United States as *Amicus Curiae*. In March of 1966 the Supreme Court issued its opinion overruling its prior decision and invalidating the poll tax in state elections in Virginia and in other states. 383 U.S. 663 (1966). <https://supreme.justia.com/cases/federal/us/383/663/case.html>. As cases involving voter access continue to be fought across the country, the precedent set by Dean and Segar is just as important today as it was in 1966.

Max Dean was a valued friend, esteemed colleague and role model to many in the Flint community. As aptly stated by 7th Circuit Court Administrator Barbara Menear and attorney John Nickola:

"The fair administration of justice for everyone was always his goal and he provided his work and legal talent to achieve it while always working to improve the system. The system is better because of his efforts, example and dedication.


Rest in Peace Counsel.

You have won your case and your clients have been well served. Thank you for your efforts and example."



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