

A TRIBUTE TO CHARLES E. ARES

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It has been a somewhat daunting and humbling experience to write this tribute to Charles E. Ares in honor of his retirement from full-time law teaching in 1992. Preparation for this involved the gathering of information from many other sources as well as delving into my own memories of some twenty-four years of service on this law faculty as his colleague, associate dean in his decanal administration, and friend. But it had the salutary effect of requiring me to focus on the extraordinary extent of his diverse interests, energy, intellect, compassion and resilience that he brings to the many tasks and vicissitudes of life. And, it made me realize that his "retirement" will not be in tune with the normal sense of that word; instead, it means only that he will be re-directing all his effort and attention to other important matters of interest to him. The conventional "retirement" is simply not a word that is in his vocabulary.

Accordingly, this piece is intended to recognize and celebrate his more than twenty-five years of service to this College of Law, the University of Arizona, the bench and bar of this State, and the legal profession and community generally. But first some background material is in order.

The Years Prior to Becoming Dean (Pre-1966).

Charles was born in Arizona in 1926 and attended public school here in Tucson. Immediately following his graduation from high school, he enlisted in the United States Navy and served in the South Pacific area during the latter stages of World War II, 1944-46. He entered the University of Arizona in 1946 and was graduated from the College of Law in 1952 with the Juris Doctor degree, ranking second in his class. During his legal education he also served as President of the Student Bar Association and won the National Moot Court Competition, sponsored by the Association of the Bar of the City of New York, in 1951. At that time the law college did not have a law review. Most importantly, however, it was on December 28, 1949, that he married Jean Carol Wallis.¹

Following his graduation from the law college he was appointed Law Clerk to Justice William O. Douglas of the United States Supreme Court, serving in that capacity during the 1952 term.² Returning to Tucson, he was admitted to the Arizona Bar in 1953 and did a stint as a Deputy County Attorney in the criminal division of the Pima County Attorney's Office from 1953-56. He then

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1. I have been informed by unimpeachable authority that at the practice for the wedding ceremony he could not remember his own name.

2. For a partial description of this clerkship for Justice Douglas, see *Legal Pioneers: Charles Edgar Ares*, 26 ARIZ. ATT'Y, July 1990, at 49.

engaged in the private practice of law in Tucson for about five years, mostly as a partner in the law firm of Udall & Udall, emphasizing civil litigation and including a significant amount of public interest law work.

As an example of the latter, it was during this period of private practice in Tucson that he represented, along with two other noted attorneys,³ a Japanese-American man and a Caucasian woman who had been refused the issuance of a marriage license by the clerk of the Pima County Superior Court under the then-existing Arizona miscegenation statute.⁴ In an unreported case in the Pima County Superior Court he helped to persuade the trial judge to declare the statute to be in violation of the First and Fourteenth Amendments to the United States Constitution,⁵ and obtained the marriage license for his clients.

It was in 1961 that he made the important decision to enter the law teaching profession, joining the faculty of the New York University School of Law as an Associate Professor and being promoted to full Professor in 1965. During this period he served as a consultant to the Vera Foundation (later the Vera Institute of Criminal Justice) in the development of the Manhattan Bail Project, co-authored the seminal article on bail reform,⁶ and received the Linbach Award for Distinguished Teaching from the New York University School of Law. In addition, he served as an active member of the board of directors of the New York Civil Liberties Union, and participated in the writing of the petitioner's brief in the case of *In re Gault*,⁷ the landmark decision of the United States Supreme Court concerning the right to counsel of juveniles in criminal cases.

He returned to the University of Arizona College of Law in 1966 as Dean and Professor of Law, his decanal tenure lasting some seven years and during which the law college experienced exciting changes and growth. From 1973 to 1992 he engaged in full-time teaching here as a Professor of Law with the exception of a tour of duty as Visiting Professor of Law at the Harvard Law School during the Spring Term, 1975. In recognition of his many professional accomplishments, he was honored with a permanent appointment as Law College Association Professor of Law (now, J. Byron McCormick Professor of Law) in 1985.

With that as the general background, we turn to the details of his years of service here.

3. Frank J. Barry, Jr., and Paul G. Rees, Jr.

4. ARIZ. REV. STAT. ANN. § 25-101(A) as in effect prior to the 1962 amendment. See House Bill No. 9, 1942 Ariz. Sess. Laws 465.

5. See *Oyama v. O'Neill*, No. 61269 (Pima County, Ariz. Super. Ct. Dec. 23, 1959) (Herbert L. Krucker, J.). The Arizona legislature repealed the miscegenation statute in 1962. 1962 Ariz. Sess. Laws, ch. 14, § 1, at 21-22.

6. See Charles E. Ares et al., *The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Release*, 38 N.Y.U. L. REV. 67 (1963). These efforts were a major factor in the enactment of the federal Bail Reform Act of 1966. See Pub. L. 89-465, 89th Cong., 2d Sess., 80 Stat. 214. And he was present as an invited guest when President Johnson signed it into law on June 22, 1966.

7. 387 U.S. 1 (1967).

The Years as Dean (1966–73) and As Professor (1966–92)

Service to the Bench and Bar

It is no secret, of course, that since coming back to the University of Arizona College of Law as Dean and Professor of Law in 1966 and up to the present date, Charles has engaged in a mind-boggling array of service activity for the judiciary and the bar of this State. To highlight only a few, he has served as the *chair* of a number of important committees and other groups including: the Arizona Supreme Court Committee to Review the Arizona Rules of Criminal Procedure (1970–72); the Arizona State Justice Planning Agency (1969–72); the State Bar Special Committee on Lawyer Advertising (1977); and, the Arizona Supreme Court Committee to Study the Contingent Fee (1985–86).

Charles has also been active as a member of the Arizona Supreme Court Committee on Court Reform (1989 to date). And, he has served as a Pima County Superior Court Judge *pro tempore* during the Spring Semester 1988 while on leave from the College of Law.

In view of these extensive efforts on behalf of the bench and bar of this State, it came as no surprise when he was presented the Walter E. Craig Distinguished Public Service Award by the Arizona Bar Foundation in June 1990.

Other Service to the Legal Profession and the Community

Closely related to that have been his many endeavors on behalf of the legal profession in general as well as community service. These would include, for example, the following: Reporter for the American Bar Association Committee on Minimum Standards of Criminal Justice, Pretrial Release (1966–1967); elected member of the American Law Institute; teaching at numerous continuing legal education events; long-time membership on the Board of Directors of the Pima County Legal Aid Society, and service as chair of the Arizona Legal Services Advisory Council.

As a staunch believer in, and defender of, our individual rights, Charles is justifiably proud of being a founding member of the Arizona Civil Liberties Union as well as of his membership on the National Advisory Council of the American Civil Liberties Union.

University Service

Charles has also been a major resource for the University of Arizona in general. Thus, he was chair of the University Grievance Committee (1971–74) and has served two terms as an elected member of both the Faculty Senate (1973–74, 1975–76) and the Committee of Eleven (1975–76, 1976–77). In connection with the latter, he was chair of the sub-committee which undertook a study of the role of intercollegiate athletics at this university.

Moreover, at the request of then-President Koffler, he conducted a study of the University's Near Eastern Center Outreach Program. Most recently, at the behest of President Pacheco, he chaired the *Ad Hoc* Academic Area Budget Committee (1992).

It was in recognition of some of these and his many other accomplishments that the University of Arizona Alumni Association presented him its Faculty Achievement Award in 1980, and its Distinguished Citizen Award in 1987.

All of the foregoing service activities on behalf of the Arizona judiciary and state bar, the legal profession, and the community obviously required a huge amount of time and dedication. It becomes all the more noteworthy that he was able to accomplish them while serving full-time as Dean from 1966 to 1973 and as a full-time law teacher thereafter. And, thus, it is especially to his law college contributions that I now turn, being both a law professor and his former associate dean.

Law College Service

As Dean from 1966-73

Charles was appointed Dean by then-President Richard Harvill, commencing his duties in July, 1966. When he arrived here he found a small, older, and underpaid faculty, a building that was not conducive to either good teaching or legal research, a totally inadequate law library that had a large portion of its entire collection in storage due to lack of space, and a curriculum that was outdated and certainly not representative of modern legal education.

Faced with these and other problems, he needed all of his unshakable integrity and sense of fairness, as well as an uncompromising commitment to quality legal education, in order to deal with them.

The result was that during his tenure as Dean he managed to turn the school around, literally "bootstrapping" it up to the level of the better state law schools in the country. And, in that process, (1) he ensured that the law school admission procedure would be resolutely open, honest, and fair; (2) a new generation of young and talented lawyers were hired as faculty; (3) the curriculum was modernized; (4) the number of women law students increased greatly; (5) the Law College Association was started; (6) the Board of Visitors was established; (7) the law college became a member chapter in The Order of the Coif (the national legal honor society); (8) the growth of the *Law Review* into a mature and respected journal was achieved; (9) the qualifications of the entering classes consistently and dramatically increased; and (10) much of the essential spadework for eventually obtaining a new law building was accomplished.

In addition, and very importantly, the active recruitment of minorities as members of the law student body was begun, a process which Charles has continued to support strongly to the present day. Thus, it was no accident that Charles was later presented the Carlos G. Robles Memorial Foundation Award for Outstanding Contributions to the Hispanic Community in 1983, and the Community Service Award by the Minority Law Students Association in 1987.

While this was all going on, Charles had also assumed a national leadership role at the very forefront, the cutting edge, of legal education in the United States. In addition to his committee work in the Association of American Law Schools, this was evidenced by his appointment in 1969 to the very select

Advisory Committee to the Carnegie Commission to Study New Directions in Legal Education.⁸

These were only some of his many accomplishments while serving as Dean. But lest I be accused of engaging in totally unabashed adulation here, I feel constrained to point out some more-or-less well known items, occurring during and after his deanship.

For example, those now undying words comparing lawyers to either "architects" or "carpenters" of the law were original with Charles! And there were a few faculty recruiting errors committed during his deanship, such as the case of the wrong person (but with the correct name) being hired.⁹ Likewise, the obvious miscalculation in recruiting a tax person (the author of this tribute) to also teach English Legal History.¹⁰ Finally, I especially recall, among other notable incidents, that when J. Edgar Hoover's Federal Bureau of Investigation directorship fell vacant, there was a rumor going around the law school that Charles was being considered for it. Charles quickly distributed a memorandum to the students and faculty in an apparent attempt to dispel the rumor, but he signed it "C. Edgar Ares."

But these mostly long-forgotten events were like disappearing ripples on an otherwise smooth pond of decanal accomplishments. With those passing memories it is now time to consider his contributions as a law professor.

As Full-time Law Professor from 1973-92.

After resigning the deanship in 1973, Charles returned to full-time law teaching for almost all of the next nineteen years. During that period he was (and remains) a superb law teacher, demanding and receiving the very best from his students. In recognition of this he was presented the Creative Teaching Award by the University of Arizona Foundation in 1981 following his nomination for that honor by Dean Roger C. Henderson.

Although many of his public service-type activities, referred to earlier, involved extensive research and writing of reports dealing with the development of the law, he still found the time to do some of the more traditional kinds of scholarly research and publication.¹¹ But his heart and mind, being grounded in practical reality, were and are primarily devoted to public service of one kind or another. For example, his compassion for the underdog would compel him to respond to calls for help from individuals apparently suffering wrongs from the powers in legal academia.

8. In addition to Charles, the only members of that Advisory Committee were: Abraham Goldstein, Dean of the Yale Law School; Geoffrey Hazard, formerly Director of the American Bar Foundation and then Professor of Law at the Yale Law school; Murray Schwartz, Dean of the U.C.L.A. Law School; and Father Robert F. Drinan, S.J., formerly Dean of the Boston College School of Law.

9. This inadvertent error was the product of a rather amazing sequence of coincidences. When it was discovered, Charles explained the error to that wrong person who then decided not to accept the appointment.

10. Fortunately, Dean Ares had the wit to correct this folly before I had the opportunity to demonstrate my complete ignorance of that field.

11. See, e.g., Charles E. Ares, Chandler v. Florida; *Television, Criminal Trials, and Due Process*, 1981 S. CT. REV. 157; Charles E. Ares, *Religious Meetings in the Public High School: Freedom of Speech or Establishment of Religion?*, 20 U.C. DAVIS L. REV. 313 (1987).

Thus, Charles has volunteered to be on the Association of American Law Schools' list of persons available, without fee, to defend issues of academic freedom. A large southern university law college had denied tenure to some young faculty members who were liberal and outspoken, apparently mostly on the ground of lack of collegiality. No one from the southern region on that AALS list wished to represent them, however. So, Charles took on this task and carried it out so effectively that the case was settled to the complete satisfaction of his clients.¹² When Charles refused their insistent offer to pay him a fee, they contributed a significant sum, in gratitude for his efforts, to the Charles E. Ares Fund¹³ of the University of Arizona College of Law to be used by the Dean for the support of legal education or empirical research.¹⁴

But, as a law professor, he was more than just a great teacher engaged in extensive outside public service and defending issues of academic freedom. Charles was also a "good soldier," if you will, typically bearing without complaint much more than his fair share of hard law college committee work and other tasks. One of the more recent of these was his successful chairing of the Self-Study Committee in connection with the ABA/AALS accreditation reinspection visit.

Just as importantly, however, he has been a good colleague to his fellow teachers, always willing to discuss legal issues, read and comment on drafts of their articles and papers, and to provide counsel on whatever topic to young and older faculty members who inevitably sought him out.

Conclusion

It is obvious, however, that this was not a one-person show. Charles could never have accomplished all that he has without the support of his family. And he could never have survived the sledgehammer blows of shared tragic personal loss, and medical problems which included a series of debilitating back operations, without the love, endurance, resilience, grace, wit, understanding and active support of his lovely wife, Jean. Together they make a truly remarkable combination.

Now a part-time teacher, Charles continues today to help provide both a sense of stability and integrity to our law college as well as participate in its vision for the future. And, his deanship provided the secure foundation upon which his successors could build and upon which today's law college firmly rests. He has given unstintingly of himself for over a quarter century to the College of Law, the University and the legal profession in its broadest sense, and to the very great benefit of all three.

12. For a description of some of the issues in this case, see Jerre S. Williams, *Chairman's Message*, 27 ADMIN. L. REV., Fall 1975, at iii, viii-xii.

13. The fund was previously established on February 24, 1973 by seven former Editors-in-Chief of the *Arizona Law Review* in appreciation of the support Charles Ares gave to the *Law Review* during his deanship.

14. The contribution was made on February 2, 1977, when Joseph M. Livermore was Dean.

As a faculty member, colleague, and friend, the only possible response to all of Charles' dedication, hard work and achievements is to say on behalf of all the law faculty and staff, with a deeply-felt sense of gratitude, respect and affection, "Thanks for the law school, Charles. Thanks for everything."

I am personally looking forward to his next twenty-five years.