

CHARLES ARES: MENTOR, COLLEAGUE, FRIEND

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When I first met Charles Ares, the University of Arizona Law College was undergoing something of a transformation. With my entering class in the Fall of 1973, the number of women attending law school rose dramatically. While the classes behind us had only a few women, a full one-third of our group was female. The Law College, then occupying the Park Avenue building with only one women's restroom, may not have been ready for so many of our gender. Charles Ares, however, made us feel welcome; he somehow conveyed to each of us the sense that our decision to come to law school had been the right choice.

I took every course he taught during my three years in law school (Civil Procedure, Constitutional Law, Remedies, and The First Amendment) and still consider him my teacher. He had an unabashed exuberance in the classroom, perhaps because he had just relinquished the decanal baton to Joe Livermore. As an ex-dean, Charles seemed to luxuriate in being out of the limelight and behind the lectern.

Professor Ares was respectful, challenging, sometimes intimidating, often funny, and, ultimately, inspiring. He admonished us to rigorously analyze each court opinion, statute, regulation, or theory that we encountered in law school; he taught us that meticulous analysis was essential to good lawyering. But he also pressed us to think beyond the four corners of the cases we were reading.

I remember the day Professor Ares called on classmate Rita Meiser in Civil Procedure to "do" *Erie Railroad v. Tompkins*.¹ A hushed sense of collective relief swept through the classroom when he announced Rita's name. She gamely made her way through the facts and reasoning of Brandeis' famous opinion as Ares used each of her responses to trigger new and (I now realize) unanswerable questions. When he finally asked her to identify the precise constitutional provision upon which Brandeis relied, we saw for the first time that Brandeis had been intriguingly silent on that point. Ares' careful questioning of brave Rita helped us to see the subtleties and weaknesses of the case itself. Rita, who was on the firing line for the entire class, gave an admirable performance, and afterwards we congratulated her as if she had just completed the New York Marathon.

In Constitutional Law, Professor Ares was truly in his element. The 1973 Term of the Supreme Court had produced great cases for classroom discussion, most notably *Roe v. Wade*.² In that crowded lecture hall, he demonstrated to us his approach to critical legal analysis. We were spellbound as he soundly lambasted his mentor and former boss, William O. Douglas, for the Justice's penumbral reasoning in *Griswold*.³ When he moved from *Griswold* to *Roe*, from

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1. 304 U.S. 64 (1938). I must confess that when Ares announced that we would be getting to the *Erie* decision, I believed him to say "the eerie decision." I thought to myself, they're all eerie at this point, so this one must be horrendous.

2. 410 U.S. 113 (1973).

3. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

birth control to abortion, the tension in the class seemed to mount. His voice rose as he probed the jurisprudential gaps in Harry Blackmun's trimester formula. Through his careful dissection of *Roe v. Wade*, many of us came to see the case as one whose result we applauded but whose rationale was found in Blackmun's creative genius rather than logic or precedent.

Professor Ares conveyed the sense that he would be personally disappointed if students were to turn in a mediocre performance. That personal concern motivated us and, it must be said, sometimes haunted us. During the second semester of my first year, when the heavy Constitutional Law class was rolling toward a climactic finish, I had a dream about Professor Ares. In the dream, I was standing in a long hallway after learning that I had received a "C" on his final exam. From down the corridor walked Charles Ares. As he passed by, he looked at me with great sadness and said, "I am disappointed in your performance on my exam. I expected better." I was mortified.

When the true grades were posted, I saw with relief that, through luck, I had received an "A." In my glee, I told my friend and classmate Ron Curry about the dream. After listening to the whole episode, Ron, looking miserable, confided that the dream had taken place in real life for him. As it happened, he had received a low "B" in the Constitutional Law class, and Charles Ares had indeed stopped him in the hall to tell him he had expected better. Ron was anguished, demoralized, sick; he vowed not to let it happen again. In the remaining two years of law school and thereafter, Ron did indeed redeem himself: he graduated with honors, secured a federal clerkship after law school, and then took a staff position in Morris Udall's office (on the recommendation of Charles Ares). I'm not sure Charles ever understood the impact of his professorial disappointment.

In Professor Ares' wonderful First Amendment seminar my third year, we debated lawyer advertising, the Pentagon Papers case,⁴ *Cohen ("F--- the draft") v. California*,⁵ and other intriguing controversies of that decade. The issues had an immediacy for us; many of the students in the seminar had been, if not overt protestors of the war in Viet Nam, at least vocal critics. Professor Ares, however, forced us to set aside our political ideologies in analyzing the constitutional doctrines. Should the amendment protect the Nazi parade in Skokie, Illinois, just as it protected the anti-war message worn by Mr. Cohen? In our deliberations in the long seminar room on the second floor, Ares treated us as intellectual equals, and that very respect added immeasurably to our self-confidence. He never made us feel silly or stupid, even when we advanced patently silly theories in class. I recall his response when I tried to articulate a notably weak distinction between two court decisions. "I'm sorry," he said. "I don't find that a particularly compelling argument. Would you like to think about it and try again later?" The message to me was, you are not dumb, although your argument may be, and you can do better.

Since graduation I have come to realize that Charles's concern for others is a way of life, not a pedagogical technique. Despite great personal tragedy, he and his wife Jean—a woman of immense compassion and intelligence—have continued to devote themselves to public service. Through their words and

4. *New York Times v. United States*, 403 U.S. 713 (1971) (per curiam).

5. 403 U.S. 15 (1971). Those who know me will wonder why I don't spell out the F-word. The missing letters are in deference not to Charles, who never shied away from expletives, but to the diverse readership these tributes might attract.

example, Jean, a teacher of young children, and Charles, a teacher of adults, have touched in a lasting way each of their students.

As his colleague now for seven years, I'm seeing another side of Charles Ares. This is the Charles who is never satisfied with his own performance, who presses himself always to give more. After teaching for three decades, he still agonizes about a "bad" fifty-minute class and rejoices when the chemistry in the classroom is right. He seems wholly engaged in the moment, the argument at hand, the student's insistent question after class. The moral and intellectual issues of the day continue to occupy him, and we are the richer for it.

I appreciate now (as I never did as a law student), the many demands on the time of the law teacher. Charles somehow finds the energy not only to perform as a master teacher, but also to chair countless University and Bar-related committees. And, yet, Charles-as-public-servant does not eclipse Charles-as-mentor. He seems always available on a personal level. In spite of the hectic pace of his post-retirement life, he still has time to answer questions from students, colleagues, and colleagues who are former students, about teaching, about the law, about life.

Thank you, Charles.