

Evo DeConcini  
Oral History Project:  
Arizona Legal History

Charles Ares

Arizona Historical Society



THE EVO DECONCINI ORAL HISTORY PROJECT: ARIZONA LEGAL HISTORY

HISTORICAL NOTE

In 1985, James F. McNulty, Jr., former U.S. Congressman from Arizona and currently an attorney with Bilby and Shoenhair in Tucson, proposed that the Arizona Historical Society develop an oral history project to collect the reminiscences of senior judges and lawyers in Southern Arizona. As a former partner in one of the oldest law firms in the state, in Bisbee, he had long been aware of the wealth of information and experience expressed in many of his colleague's lives and careers, some of whom had been practicing law for over fifty years. In an effort to preserve and disseminate their stories and observations about the profession, the Archives Department of the Arizona Historical Society/Tucson developed a pilot program focused on Southern Arizona, with the goal of collecting the reminiscences of fifteen to twenty individuals associated with the legal profession over the last fifty years.

The project was funded through a challenge grant made by Roy Drachman and money subsequently donated by members of the Pima County Bar Association and the DeConcini family. At Mr. Drachman's request, the project was named for the late Judge Evo DeConcini, a highly-respected member of the Arizona Bar and a long-time friend.

Most of the interviews were conducted between 1986 and 1988, by Mr. McNulty. Interviews were also conducted by Robert

Palmquist, Jack August, and Adelaide Elm. Additional interviews with judges and attorneys conducted previously for other oral history projects were included with the DeConcini Project, to expand the scope of the project. The narrators, representing both rural and urban practices, were identified for inclusion by Mr. McNulty and other members of the State Bar. They included three judges, sixteen attorneys, the wife of a former state Supreme Court justice, and the legal secretary of one of the oldest law firms in the state. All transcripts and tapes are available to the public at both the Arizona Historical Society and the University of Arizona College of Law.

In addition to preserving the recollections of legal practitioners in Southern Arizona, the Evo DeConcini Legal History Project has spurred the collection and preservation of primary documents relating to legal history, such as day books, client ledgers, correspondence and photographs from law firms and individuals connected with the profession. It is hoped that the DeConcini Project will serve as a model for the collection of such memoirs and historic materials on a state-wide basis.

THE EVO DECONCINI ORAL HISTORY PROJECT: ARIZONA LEGAL HISTORY

SCOPE AND CONTENT NOTE

This collection consists of 43 cassette tapes (60 to 90 minutes in length), thirty-two 1/4-inch audio tapes, and twenty-one transcripts produced for the "Evo DeConcini Oral History Project: Arizona Legal History" by the Archives Department of the Arizona Historical Society between 1986 and 1988.

The collection is arranged in two series: (1) Oral interviews conducted for the project; and (2) Oral interviews gathered from other projects.

Series One consists of fifteen interviews: (1) Charles Ares; (2) Ralph W. Bilby; (3) Thomas Chandler; (4) Elizabeth Daume; (5) Ora DeConcini; (6) Gordon Farley; (7) Martin Gentry; (8) Thomas L. Hall; (9) Virginia Hash; (10) Norman Hull; (11) Ashby I. Lohse; (12) James F. McNulty, Jr.; (13) James Murphy; (14) Alton C. Netherlin; (15) Joseph C. Padilla; and (16) Wesley Polley. Interviews 1, 2, 3, 5, 6, 7, 8, 10, and 13 were conducted by Mr. McNulty. Interviews 11, 14, 15 and 16 were done by Robert Palmquist. Adelaide Elm conducted interviews 4, and 9, and Jack August conducted interview 12.

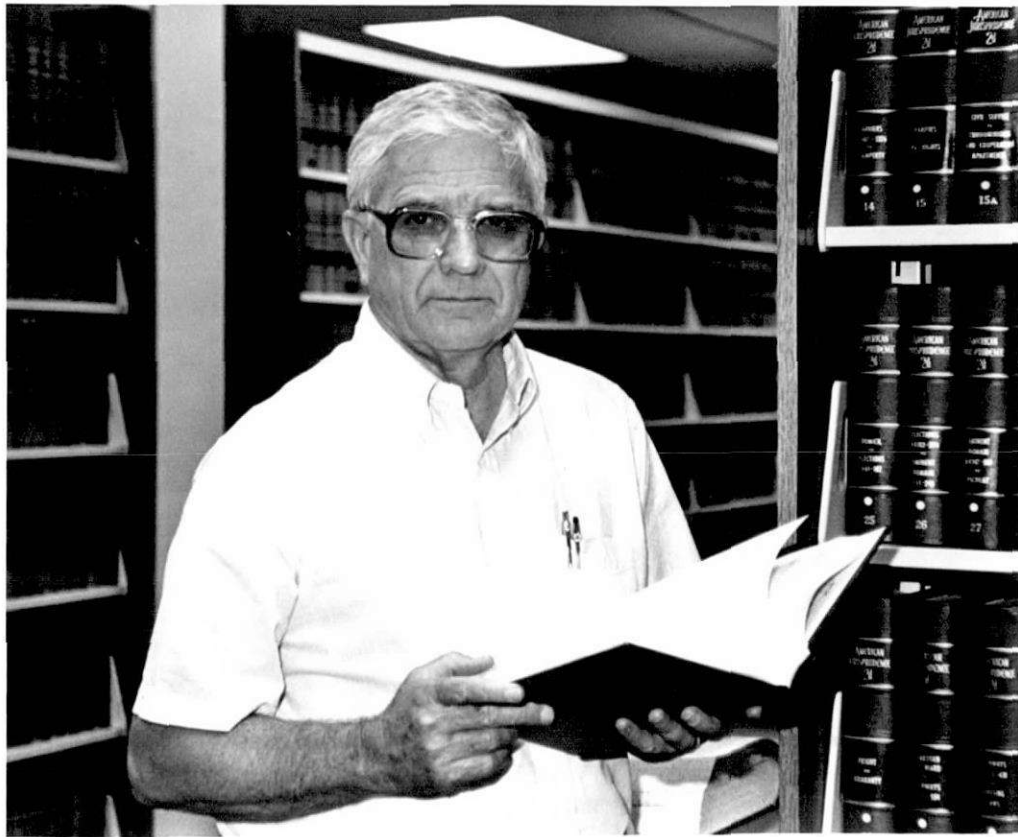
Series Two consists of five interviews: (17) Harry Gin; (18) Don Hummel; (19) Hayzel B. Daniels; (20) Rubin Salter; (21) Rose Silver. The Gin interview was conducted by Bonita Lam for the "Chinese in Tucson" project; Don Bufkin, Acting

Executive Director of the Arizona Historical Society, conducted the Hummel interview; Richard Harris and Carol Jensen conducted the Daniels interviews; Baiza Muhammad interviewed Salter for the African-American History Internship Project; and Rose Silver was interviewed by Mary Melcher for the "Women and Work: An Aural History," a joint project of the Arizona Humanities Council and the University of Arizona.

The bulk of the collection deals with the experiences and observations of these individuals relating to the legal profession in Southern Arizona over the last sixty years. The interviews document the following topics: education preparatory to the profession (law school, reading law, the bar exam); legal practice during the Depression, and the influence of the New Deal; relationships between the legal profession and politics; the role of judges vis a vis the Bar; the increasingly litigious nature of society; the effect of social changes on the practice of law; the experiences of women and minorities in the profession; and post- World War II changes in the legal system. Of particular interest are anecdotes about particular cases and clients; histories of several old law firms in Southern Arizona; University of Arizona Law School professors and courses of study; opportunities some had to practice law without a law degree; and remembrances of the colorful individuals who influenced the profession in Territorial days and early statehood.

The collection is valuable for its comprehensive look at

the law profession in Southern Arizona over the first half of this century, and its emphasis on the changes which have occurred within the profession during that period.



Charles E. Ares Interview

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Charles E. Ares

Charles Edgar Ares was born September 11, 1926, in Tucson, Arizona. His father, Albert Frederick Ares, was a cotton farmer in Marana. The family later farmed in the Flowing Wells area of Tucson, at Continental, and in Elfrida, where they worked on the Grizzle apple orchard.

Ares attended elementary schools in Southern Arizona. He graduated from Tucson High School and joined the navy in 1944, when he was seventeen years old. In 1946, after two-and-a-half years in the navy, Ares enrolled at the University of Arizona where he majored in political science, and in 1949 became a student in the College of Law. He received his J.D. in 1952.

Upon graduation from law school, Ares spent a year as law clerk to U.S. Supreme Court Justice William O. Douglas. He then returned to Tucson and entered private practice, first with Harry Ackerman and then with Morris and Stewart Udall. For the first three years he was also Deputy County Attorney. In 1961 Ares joined the New York University law faculty, returning to Tucson in 1966 to become Dean of the University of Arizona College of Law. After seven years he stepped down from the position of dean to become a full-time law professor.

This interview deals mainly with Ares' experiences in the legal profession. He discusses his year as law clerk at the Supreme Court, and reminisces about Justice Douglas and some of the other justices, particularly Felix Frankfurter. He also talks at length of his experiences in the education of lawyers.

In the discussion of his philosophy of legal education and the changes that have taken place over the years, he provides valuable insight into the role of the lawyer in the community and the relationship between law schools and the way law is practiced.

The interview ends with Ares' advice to those considering entering the legal profession.

CHARLES E. ARES INTERVIEW

Good Afternoon. This is Tuesday, May 10, 1988. I'm James McNulty. This is part of the Evo DeConcini Oral History of Laws, Lawyers and Judges in Southern Arizona in the Twentieth Century. We're pleased to have with us today, for an interview, Charles Ares, professor at the University of Arizona College of Law, former dean and a man who has been on very close terms with many of the best-known lawyers in the state of Arizona, not to mention his work with the United States Supreme Court and Justice William Douglas.

McNulty: Chuck, my classmate and friend, good afternoon, and nice to have you with us.

Ares: Good afternoon, Jim. Thank you.

McNulty: Where did you start life, Charles?

Ares: Well, my family was living at Marana, Arizona, about twenty-three miles northwest of Tucson, when I was born in 1926. My father [Albert Frederick Ares] was a cotton farmer there.

McNulty: Had he been born there himself?

Ares: No. My family came--actually there is some doubt, I suppose, to be honest about it, where my father was born. But he came from a French-Canadian family in Quebec. He always insisted that he was born when his mother was on a trip to upstate New York. So he was therefore a U.S. citizen, but he was one of a very large family; left home at an early age; worked his way around the country. Met my mother [Grace Dryden] in Kansas where they were married, and most of my, all of my brothers and sisters were born in Colorado,

where he was farming. Rocky Ford, Colorado. Out on the plains.

McNulty: What made him think that the dry farming, or the necessity of irrigation in Arizona might represent a real opportunity for him?

Ares: I think what made him think that was a guy named Post who was opening the so-called Post Project at Marana at that time. They were just opening up that area of land, and he went to Colorado and recruited a couple towns full of people to come to this new area and undertake cotton farming.

McNulty: Did your father rent land or did he homestead it?

Ares: No. They purchased land. He purchased land in that project and farmed there until the Depression hit in the thirties, or late twenties and early thirties.

McNulty: Had the irrigation district been formed at that time?

Ares: There was no irrigation district. There is sort of an interesting story to that. The water for that whole project was pumped at Cortaro. There was a large well at Cortaro and they ran the water in a concrete-lined ditch from there to Marana. And one of the stipulations when the farmers bought the land in the Marana project was that they not drill any wells. And they had to take their water from Cortaro. My father, who was by way of a kind of self-educated radical, saw danger in that because he

thought that if the people who owned the water rights were of a mind to, they could drive the price of water up and the farmers would be at their mercy. And he tried to get a cooperative organized in Marana. He was unsuccessful doing that. He was successful only in one thing and that is incurring the wrath of the people who owned the water rights. And so when the Depression came and the price of cotton went plummeting down, oddly enough the price of water went up. And the people who owned the mortgages on the property there then traded most of the farmers their equity in the land at Marana for equity in land in California, Visalia. A lot of orchard land. Everybody, I think--this is the story, at least. I was very young and didn't know this first hand. But the story is that everybody in Marana got this offer of a trade of land except my father. They offered him nothing. And ultimately he was driven off the land at Marana.

McNulty: And out of the community of Marana as well?

Ares: Well, he had to, yes. We then--he farmed at Flowing Wells here near Tucson for a while. Farmed at Continental for a while, in that area that had been developed down there as some sort of a company farm. I don't remember that very well. And then ultimately moved to Elfrida in Cochise County, where he had the

old so-called Grizzle apple orchard. And we farmed-- mostly took care of the orchard, which was sort of on the downhill slide at that time--until the late forties when I left there. They sent me to California to go to high school. And then they ultimately moved here to Tucson.

McNulty: Did you graduate from a California high school?

Ares: No. No, I went only a year when my folks then moved here. And I came back. I'd been living with a sister, and I came back to Tucson and went to junior high school at Mansfeld Junior High and then graduated from Tucson High School.

McNulty: How many different schools did you attend at elementary and secondary levels?

Ares: Well, let's see. I went to the Rillito School, which was the first one, that was an elementary school. Then I went from there to a school in the Flowing Wells District, then I went to the Continental School. Then I went from there to Webb School in Elfrida.

McNulty: Just north of Elfrida?

Ares: That's right.

McNulty: The old Webb Schoolhouse.

Ares: Right. And from there I went to James Madison Junior High School in Santa Monica, California. And then came back to Mansfeld Junior High School here in

Tucson, and then Tucson High School. And then the University of Arizona.

McNulty: And finally out of public schools, secondary schools, at least, in what year?

Ares: Graduated from high school in 1944.

McNulty: When you speak of the Grizzle apple orchard, my recollection is that there is no Grizzle apple orchard today, although there is still a significant peach orchard left.

Ares: That's right. The apple orchard, my guess is, probably disappeared along about the time my parents left. They were renting that land and in the late forties they left there. And I think that's been turned over to mostly chili and cotton. But I'm not sure about the cotton. The Grizzle peach orchard is the second generation of Grizzles. The old, older Grizzles had started the apple orchard. When they sold out they had--Louis Grizzle had started the peach orchard up on the hill, a little bit higher elevation.

McNulty: West and higher . . .

Ares: Yes.

McNulty: . . . than the place that you had farmed.

Ares: Yes. A tremendous peach orchard. I visited there, I don't know, back in the seventies, I guess, the last time I've been there.



McNulty: Every summer I go down at five o'clock in the morning and pick about a hundred pounds of peaches, and Jacquie [Jacqueline Boevers McNulty] and I put them up.

Ares: I should go back.

McNulty: This summer we telephoned Mamie Grizzle, which is our normal style of doing things, and she gives you a day that you can come. Because she doesn't want to have folks on the property after three o'clock in the afternoon.

Ares: Oh, is that right?

McNulty: Her view is that that's long enough to get your peaches that day and you can come back the next day.

Ares: No, I remember them very well. I was pretty young at that time.

McNulty: Louis and Mamie Grizzle.

Ares: Yes.

McNulty: You knew that Louis had since died?

Ares: Yes. I knew that.

McNulty: And my old firm in Bisbee is probating the estate.

Ares: Oh, is that right?

McNulty: But there's two more generations coming along, so that enterprise looks relatively secure.

Ares: (laughs) Good.

Ares: In 1944, now, when you graduated from high school, you'd have been about eighteen years old?

Ares: Seventeen.

McNulty: The war was still on.

Ares: Right.

McNulty: You would have been too young for that.

Ares: No.

McNulty: You were in the service?

Ares: Yes, I--it seems sort of odd now--I enlisted in the Navy as soon as I got out of high school.

McNulty: While you were still seventeen?

Ares: While I was seventeen. Yes. I suppose that's why I went to the navy, because I could get into the navy at seventeen and I think you had to wait until you were eighteen to get into the army. But I went into the navy in June of 1944.

McNulty: And what did the navy do with you?

Ares: Well, (laughs) they sent me through boot camp and then they, they tried to make an electrician out of me. And I think, probably, the best I can say about that is that I escaped electrocution. And I didn't electrocute anybody else, but I can't say much more than that (laughs) about my being an electrician.

McNulty: So after what, a year-and-a-half or two years . . .

Ares: Oh, I was about two years in the navy and I was, we went overseas. It was right at the end of the war, really. I was in the Philippines when they, when the war ended.

McNulty: This would have been after the Leyte invasion?

Ares: Oh, yes. Right. Right.

McNulty: Were you on shore or stationed on a ship?

Ares: No, I was stationed on a ship. A large repair ship, which ultimately wound up in Okinawa. And then anybody who had too few points to go back to the States with the ship was transferred off, and so I was transferred off to a very slow ship that made about eight knots an hour and they, my regular ship had gone back and they went twenty, twenty-five knots an hour. But it just took me that much longer to get back to the States.

McNulty: When did you arrive stateside?

Ares: Well, I don't know. It must have been sometime in the late spring of 1946, I guess it would have been.

McNulty: Did you enroll at the University of Arizona right away?

Ares: As soon as I came out of the navy I, yes, I started at the University the next September.

McNulty: What college had you chosen?

Ares: Well, I was in the College of Liberal Arts at that time. Richard [A.] Harvill was the Dean of the Liberal Arts College. And I went through on the accelerated program.

McNulty: Which means what?

Ares: Which means I spent, I guess, two years in

undergraduate, a little more than two years in undergraduate school, and then went into the Law School, as you could do in those days. A great mistake, I must say. And one on which I, a decision which I made with poor advice. I must say, from one of my dear friends, Dick Harvill. When I went to ask him whether he thought I should--because I was short of money, and I didn't have all that much G.I. Bill to cover me all the way through, and so I needed to make some money--and asked him if he thought it would be okay if I just went to the Law School without getting the degree. And he said sure, he thought that would be fine. In retrospect, I think that's the worst advice I think he ever gave a student.

McNulty: Why do you think things would have been better or different had you gotten . . .

Ares: Oh, I would have gotten a better education. That's all. I don't know whether it would have made a bit of difference in the direction my life took, at all.

McNulty: In what subject did you major?

Ares: I was in political science.

McNulty: And so with at least eighty units and at least a "C" average, you began University of Arizona College of Law.

Ares: Yes. I had better grades than that.

McNulty: Of course.

Ares: I had not been a very good, I had been an indifferent student in high school. Sort of lost in the crowd, I guess, looking back on it. I really found, I guess found myself when I was in college. And, I don't know, partly because I was exposed to the influence of Neil Houghton, who challenged me a great deal. I've always, I've often thought that a lot of my interest in public affairs, which is just sort of natural and a kind of outgrowth of my family's view of things, was really reinforced by being exposed to Neil and the sort of skeptical mind that Neil had about lots of things.

McNulty: You began in September of what year?

Ares: September of--I guess it would have been September of 1949 when I became a first-year student. I think Morris [K.] Udall had graduated from the Law College, I think the previous spring. I didn't know him, but I think that's when he graduated.

McNulty: Do you remember some of your classmates?

Ares: Sure. Harry Ackerman was one. John Mills was one. Keith Benton was one. Jim [James P.] Haythornwhite, Ted Bloodworth, Jack [John H.] Killingsworth. Nancy [Lee] Fulbright from Florence . . .

McNulty: Yes.

Ares: . . . was the only girl in our class.

McNulty: Well, almost the only woman in the school.

Ares: Well, there probably was one woman in each class.  
Probably about that. I think . . .

McNulty: Mary Anne Reimann.

Ares: Mary Anne had been there. She was, what, two years  
ahead of us, or one year?

McNulty: One.

Ares: One year ahead of us, I guess. Lowell [E.]  
Rothschild was in that class. He was somehow out of  
phase. He was about a half a year ahead of us or  
something like that, I think.

McNulty: Well, those years, of course, you had the two summer  
sessions.

Ares: Right.

McNulty: And you had a lot of people in a big hurry.

Ares: That's right. It was the--the place was--we were  
all, virtually all, veterans of the services,  
attending on the G.I. Bill, and people going as fast  
as they could. The school was--my class was a large  
class. I think there were one hundred eight who  
entered in the entering class.

McNulty: How many of them were around a year later?

Ares: I'm not sure about a year later. Probably no more  
than half. Only thirty-five of us graduated.

McNulty: Of one hundred, eight?

Ares: Yes. That was under the old system, where, as you  
said, all you had to have was a "C" average to get

in.

McNulty: And eighty-two units.

Ares: And eighty or eighty-two units or something like that. But they were ruthless in weeding people out. And so well over half of the people who started didn't finish.

McNulty: Is that system inherently inferior or superior to the current system?

Ares: Well, the older I've gotten the more I think that there is no black and white answer to almost any question. And I think on balance that's an inferior system. I'm sure it's an inferior system for a number of reasons. It's brutal for one thing. I mean, there are people who started law school that way who could have been told, without anybody having any doubts at all, that they were never going to make it and they shouldn't try. The educational requirements were not rigorous enough. The atmosphere it created was one of absolute terror in the classes. That, combined with the fact that the faculty were by and large much older and a long way away from the experiences of the people who were the students. And it was a very rigidly hierarchical kind of society. And so the atmosphere really was one of terror. I think most of us who've gone through that and survived it, as you and I did,

really take pride in the fact that we did survive that kind of system. And it wasn't so terrible for us because we were among those who, fortunately, were able to do it fairly easily. Not easily, but well. And, but I think for a lot of the people in the class it was a terrible experience. And it, I think, for the teachers it's a bad system. Because you have to really guard yourself to be strong enough, rigorous enough to ruthlessly chop out people. And that's a bad way to educate people, if you have to be wondering whether you can really engage somebody in a deep discussion of something for fear that you may be creating a relationship that will prevent you from then saying, "I'm sorry, you flunk." And that's a very bad kind of atmosphere to create for the teacher as well as the student.

McNulty: When did you have an idea that you were interested in the law as a career?

Ares: That's an odd question for me. I, my family, I'm the first member of my family who graduated from college. I had a brother [Paul] who almost graduated, who should have. And who is a heck of a lot smarter than I am. But he just never, the Depression and he had some personal experiences that kept him from graduating. None of my family were lawyers. I never knew a lawyer before I went into the law school. I



don't think I'd ever met one. My family have always, had always been in public affairs. And there was that natural connection between an interest in public affairs and the realization, I guess, that lawyers were engaged in public affairs. So my, my interest in politics was first, I'm sure, and it just seemed a natural thing that if you were interested in politics and government, that you would become a lawyer. And so I wanted to become a lawyer. I hadn't, I didn't have the faintest idea, when I was a kid, what the inside of a courtroom looked like.

McNulty: Did you go to school steadily, or did you stay out of school in the summers? Between the first and second, and the second and third years?

Ares: No. I had to work in the summers.

McNulty: Where did you work?

Ares: Well, I worked mainly as a construction laborer for Sundt Construction Company. My brother worked in the office at Sundt and he had a good friend who was a superintendent and he would give me a job every summer. So I would go out and make good money. I got married in my first year of law school, so I really needed to make money. And we had a, our first daughter was born at the end of my first year.

McNulty: You would have graduated, then, in June of 1952.

Ares: That's right.

McNulty: You did so?

Ares: Yes.

McNulty: You graduated with some academic distinction?

Ares: Yes. I graduated second in the class. People have always--it's funny, Ernest [L.] Heimann and I were neck and neck all the way through school. Sort of at the top of the class. And going into the final semester I was number one. In my final semester I was distracted because by then I had gotten the appointment to be a law clerk to William O. Douglas.

McNulty: You already had that?

Ares: I had--that selection was made in the late fall. But there were deficiencies in my background because this school didn't offer a very rich curriculum, particularly in federal stuff. So I was having to read a lot of stuff in preparation for the clerkship, on federal jurisdiction and more on constitutional law, although I'd read an awful lot of that just because of my natural interest in it. But I must say, I didn't keep up, I wasn't able to keep up on the studies as well as I might. And I remember that when the grades came in at the end of the second semester--or it may have been the end of the first. No, it was the end of the second semester. J. [James] Byron McCormick was the acting dean at that point because John [D.] Lyons [Jr.] was, I guess he

was at the Wage Stabilization Board in San Francisco--on a leave--and Dr. McCormick was the dean. And he called me in, and he really felt terrible to have to tell me. And he was really very, very apologetic and sad about it. And I thought, "Gee, some terrible tragedy has happened." And he had to tell me that Ernest Hyman had passed me and was going to graduate number one and I was going to graduate number two. And I was so relieved I didn't know what to do, but I had to commiserate with the dean and say, "Well, I wasn't really surprised, because I hadn't worked as hard as Ernie had on the law school stuff. I had been working on other things."

McNulty: What triggered your interest in becoming a clerk for a United States Supreme Court Justice?

Ares: Well, I guess, I guess I found out in the law school that Justice Douglas had a practice of selecting his clerk, he only took one at that time, from the law schools in the ninth circuit, here in the west. And I guess I'd heard that and--probably from Dr. McCormick or John Lyons, I suppose. Because the law school made a recommendation of somebody and they asked me if I would be interested. And my bent was in that direction, in constitutional law, and I fancied myself a civil libertarian and here was this great civil libertarian figure in our history. And I

remember he was on the campus to make a speech of some kind, over in the Student Union, and I remember that Neil Houghton, who wasn't an idol worshipper of anybody, was not terribly complimentary about Douglas, had not been. And when I--but we were at this speech and I said, "I think there's a chance I might be able to at least interview with him about the clerkship." And Neil shoved me out of the chair and said, "Go talk to him now." (laughs) It was obvious that although he didn't think Douglas was a, was a, any idol to be worshipped, he obviously thought it would be a great thing if I were able to at least talk to him about the clerkship.

McNulty: Wasn't Douglas in these years a frequent visitor to Tucson in the wintertime?

Ares: Yes.

McNulty: And didn't he use the upstairs in the law school . . .

Ares: He did.

McNulty: . . . for research from time to time?

Ares: He did. Yes. He, actually he had gotten acquainted with Dick Jenkins, who with his sister had La Osa Ranch. And actually it was at the ranch that Douglas did a lot of his recuperating after the horse rolled on him up in Oregon or Washington and almost killed him. And he spent a lot of time at La Osa and he

would come down to the law school. And he had an office upstairs that he used. Yes, he was at the university a great deal.

McNulty: So did you take the bar examination before you went back east?

Ares: No. No. I had to go back early because his clerk who I was replacing had, was going into the army, in the JAG [Judge Advocate General's Office] and he had to report early. So I didn't have time to take the bar that summer. So we, as soon as school was out, we loaded up our, I don't know it was about a 1942 Ford, with my wife and a small daughter and we travelled to Washington for the clerkship.

McNulty: Where did you live while you were there?

Ares: Well, first we lived in East Riverdale, Maryland, which is northeast of Washington. We used to come in through the, by the Bladensburg Peace Cross--I remember that--and into the city. But it proved to be unsatisfactory because I worked very long hours and that was a long way out. And so we very quickly started looking for a place in the city. And we rented a house, we rented the top floor of a two-floor, two-story house on North Carolina Avenue, North. . . .

McNulty: East.

Ares: East. Northeast. And we lived there. Which was

close, and I guess I took the, normally took the trolley to work.

McNulty: How long did you keep that job?

Ares: One year. A little over a year. I was there during that fifty, so-called 1952 term, and then I overlapped, because my successor wasn't coming until later in the summer. So I came back to Arizona to take the bar examination.

McNulty: This would have been 1953? A little over a year . . .

Ares: It was 1953.

McNulty: . . . after you graduated.

Ares: Yes. And then, and the family had come back by the time--by that time we had another daughter. And then I went back to Washington and spent the rest of the summer there until September.

McNulty: What would a typical day have been during this year you were clerking for Justice Douglas?

Ares: That's a long time ago. I guess, I worked long hours. Get into the office, I suppose, around eight o'clock in the morning. A lot of the time was taken up reviewing so-called certiorari petitions: writing memos for the Justice on summarizing the case, the issues, the proceedings below and then, what all law clerks for Douglas had always regarded as the least useful part of the memorandum, a recommendation of

what should be done with the case. At that time, I don't know if there were twenty-five or thirty of those to be done each week. I remember the first summer when I--Marshall Small was my predecessor--and we overlapped a couple of weeks and he was going to teach me the ropes and he gave me my first petition for certiorari to do something with and after about two days struggling with this thing, he finally took pity on me, and he said, "You know, I think you're going to have to do this a little faster than this because there are going to be twenty-five of these a week." But you learned very fast to--you had no secretary, you did your own typing--you learned very fast to digest those things and then begin to spot the cases in which there was any serious question that they might be reviewed by the court. And about eighty-five percent of the cases at the time were denials. And . . .

McNulty: Was it an exciting time for you?

Ares: An incredibly exciting time. Yes. Some of the other work that I would do, the Justice--one of the things about Douglas is he wrote very fast and one of the things the clerks had to do was to try to get stuff to him or try to get hold of his opinions before he circulated a draft to the rest of the court. Because he was so impatient they would go out before you'd

get your hands on them. Not that that made any difference except that there were sometimes things you could do to clean them up a little bit in terms of citations and syntax and things like that. And really one of the most exciting times and sort of terrorizing experiences was when he would have an opinion which had been circulated and it was getting ready to be put in final form to be announced-- typically the Monday of the following week--when he would, you would have an appointment to go in with him with my copy of the draft of his opinion with my recommendations and my suggestions as to changes or improvements or anything like that and sit down across the desk from him and go over the opinion word by word. An incredibly exciting time but also one that just scared the pants off of you because we were all told by our predecessors that you have about twenty seconds to get your point across. If you can't do it in twenty seconds, you're going to lose him. And so you have to have, be really prepared and you have to have it all honed and then get right to the point and tell him what you want to tell him.

McNulty: Justice Douglas has seemed to many to be austere, perhaps even a little cranky. Was that your recollection of him?

Ares: Sure. I don't know about austere. Not austere in



the sense of a Boston Brahmin like Holmes or somebody like that, but sort of withdrawn frequently, not always outgoing. Cranky, yes. Rough, mean, arbitrary, all those things. Yes. He was a tough person to work for. He was very demanding. Of course he was--I've never met anybody with a brain as powerful as his. He worked incredibly fast and simply trying to keep up with him intellectually was an awful job. And he was very impatient with you.

McNulty: You've mentioned starting at eight in the morning. Typically when would a day end?

Ares: Oh, if you were lucky you got out by seven o'clock at night. If you were lucky.

McNulty: What kind of hours did Justice Douglas put in?

Ares: Well, he wasn't normally in quite that early. He didn't have to spend that much time. And he would go home six o'clock or five o'clock, something like that. Many nights I would have to go back and work at night. Many nights. It was more nights than I didn't.

McNulty: Did you have any occasion or opportunity to be in the company of other justices or to watch interaction between the justices, other than on the bench itself?

Ares: Oh, some. Not a lot. For one thing, Douglas had only one clerk. The other justices had at least two and the chief had three. So you didn't have much

time to socialize, but I usually had lunch with the law clerks. We had our own dining room. We'd go through the line in the cafeteria and then go to a dining room. And we had a practice of inviting the justices to have lunch with us. By the time I got there they were doing it individually. They had done it in twos, and that didn't work at all, because they're the wrong kind of egos to put together in a thing like that. So during my time we had them singly. And so we'd have lunch with Justice Hugo Black, and then Felix Frankfurter and Robert Jackson and on down the line. Those were great times, but you didn't get very many of those. Once in a while I'd have some personal contact with the other justices. Frankfurter was quite gregarious, but not easy to talk to. Tom Clark was very easy to talk to and I was good friends with two of the clerks in his office. Hugo Black, not very accessible at that point. His wife had died the year before, his first wife, and he was not in very good shape. He was having shingles at that time too, and. . . . But I was very friendly with both the clerks in his office. And so I would see them a lot and I'd see the justice now and then, but not very much.

McNulty: Did the clerk sit in the courtroom when the court was in session?

Ares: Sometimes, but not very often. You know, you can't generalize, or I couldn't generalize from my own experience because Douglas didn't like to see his clerks in the courtroom. In his view that meant the clerk didn't have enough to do and he should be back doing his work. So on the occasions when we did really want to hear an argument, as for example in the school segregation case, Brown versus the Board [of Education of Topeka] we got seats behind the pillar so he couldn't see us. And we would sit and listen to the arguments. But if he sensed that you were there, it wouldn't be very long until a note would come in the hands of a messenger, and the justice would be asking you to do something, look up something for him. You'd have to go back to the office or go to the library.

McNulty: Which would require your immediate departure.

Ares: (laughs) That's right.

McNulty: Do you remember what you were paid?

Ares: Yes. It was--I don't remember exactly--but it was a little over five thousand dollars a year.

McNulty: Are there any experiences you had in the court that are memorable for unhappy reasons?

Ares: Unhappy reasons?

McNulty: Yes.

Ares: Well, I think that the whole--there was one unhappy

feature of the whole experience and that was that during the year that I was there Justice Douglas and Justice Black were a small minority. And typically, and dissented in--I think Douglas wrote thirty-seven dissenting opinions that term. So that, and just looking at what the court was doing--this was the [Frederick Moore] Vinson court--and watching what the court was doing, it was not a very happy sight for someone of Douglas' viewpoint, or my persuasion. So that was not terribly happy. The school segregation cases were argued for the first time that year. That was not an unhappy experience. I mean that was really quite a remarkable experience to watch Thurgood Marshall and John W. Davis argue that case. Just an incredible experience.

McNulty: Were you interviewed by Justice Douglas before you went to work for him?

Ares: No. He had, he has always had, or had always had someone else select his law clerks. I was interviewed by a former clerk who practiced in Oakland, California, Stanley Spearill. He made the selection.

McNulty: Were there any inquiries of political dispositions?

Ares: No. No. I'm sure Douglas never made any such inquiry as that, and Stan never did either. He did want to know what your views of things were. What

did you think was important? What kinds of issues were you interested in, were you really excited about? And I'm sure he selected people who at least were in the same ballpark as William O. Douglas. In later years, Douglas, after a while he would, when he would have a bad experience with a clerk, and he did once in a while, he then always blamed the person who selected the clerk, for having done a bad job.

(laughs) And after a while, I don't think he stopped having Stan do it for that reason, but Stan had done had done it for a number of years and he was replaced by, actually I guess by the guy who succeeded me.

Tom Klitgard became the--he was the one who selected the clerks. Then Douglas got unhappy with him and he asked three of us, Jerry Falk who practices in San Francisco--a very interesting, very important lawyer in San Francisco--and Bill Cohen at Stanford, and me to serve as a committee to select his law clerks. So for a few years at the end of his career we selected his law clerks.

McNulty: Do you ever remember Justice Douglas letting his hair down, having laughs, good humored . . .

Ares: Oh, yes.

McNulty: . . . moments?

Ares: Sure. He was a very engaging person when he put his mind to it. When he wanted to be. He had great

charm.

McNulty: Did he have interests other than the law?

Ares: Oh! Oh, yes!. If people have criticisms of him, it was that he wasn't, he didn't spend enough time being concerned about the law. And he prided himself on not being what he called--what a lot of judges became--"dry husks" of human beings.

McNulty: He was a great outdoorsman . . .

Ares: He was a great outdoorsman. He was interested in nature. He was interested in wildlife. He was interested in developing countries and many of his travels around the world were aimed at developing nations, the developing peoples. His interests in those things got him into a lot trouble, publicly, because he wrote books about them. And he tended to be sympathetic with aspiring peoples, revolutionary peoples. And his positions frequently got him into difficulty. He didn't limit himself, by any means, to his work on the court. My estimate of the amount of time that the court's work occupied him was no more than three days a week. I mean, he could get all the work done. He was an incredibly productive person. And he'd get all of his work done in three days.

McNulty: Were there any members of the Supreme Court with whom he had lasting, profound, and perhaps occasionally

disagreeable differences?

Ares: Oh, yes. Lasting and profound and disagreeable differences with Felix Frankfurter. And Robert H. Jackson. If you've read any of Frankfurter's stuff, he detested Douglas. Thought he was a charlatan. Thought he was politically ambitious and unprincipled, all those things. There was an odd relationship, because I remember the justice asking me to send things to Justice Frankfurter during the summer when Frankfurter was away at the Cape--or Martha's Vineyard, I suspect--things he thought that Frankfurter would be interested in. They were always legal things, not extra-legal things. But there was that funny relationship. Obviously Frankfurter had no use for Douglas and Douglas--it wasn't that he had no use for Frankfurter, I think he admired him and recognized him for his abilities, but I don't think he liked him very well.

McNulty: So, 1953 then, brings the taking of the bar examination . . .

Ares: Yes.

McNulty: . . . passing it successfully, and a return to Tucson, Arizona.

Ares: Right.

McNulty: Before we get out of this period, as you look back at the members of the law college faculty with whom you

had experiences during your years there, and measured in part in the light of your year's experience with Justice Douglas, who are some of the professors that stand out in your mind and for what reasons do they do so?

Ares: Well, John Lyons of course, I think would lead the list. He was the dean when I was in school, although he was gone part of the time, because he seemed, he epitomized to me the civil, the civility in law. I mean, John was obviously intelligent, he was very careful, he was professional in everything he did, he had compassion, and he was a gentle person. And I just thought he was--and his integrity was unquestioned--and I just thought he was sort of the model of what a good lawyer should be. And he taught very well. He taught contracts and that sort of thing and I just thought he was a very good teacher, very methodical, not an exciting teacher, but a very methodical, good, good tough teacher. Claude [H.] Brown was one who had a great deal of influence on me because of the rigor of his mind. I mean, he taught the procedural courses. I now know that I would never have taught the courses the way he did, but for me the exercise in logic, the exercise in logical thinking and close analysis was good for me. It was not something I had been exposed to very much, if at



all. And I just thought he was a fine teacher in the sense that he, the rigor of his analysis and the demands he made on you were, I thought, very good for me.

McNulty: A fully disciplined mind.

Ares: A very disciplined mind. Yes. I thought he was a great teacher in that respect. Speight [William S.] Barnes, who taught constitutional law and a couple of other courses, taxation, a couple of other courses like that. I just loved Speight. I thought he was one of the world's great human beings. He was a generous person, thoughtful, and I thought his values were beyond reproach. I thought he was very good. He was not the great constitutional scholar that some other people I've met might have been, but if you wanted somebody who was honest and whose values were of the best you could imagine, that was Speight Barnes.

McNulty: A man of unending good will.

Ares: Oh, yes. Oh, yes.

McNulty: Well, when you came back to Tucson in 1953 did you know where you were going and what you were going to do?

Ares: No, I didn't know for sure. Harry Ackerman and I had--we were classmates--and we had always talked about practicing law together and so we did that. We

formed a little law firm. At that time you could also be a deputy county attorney and practice part time. So we decided--Harry was in the county attorney's office under Morris Udall at that time--we decided that we should probably do that, because we didn't have much in the way of business. So we decided also that, since Harry had had the experience in prosecuting and I hadn't, then also because he had more connections that might have ripened into client relationships that it would be better if he practiced and I went into the county attorney's office. And Morris Udall was willing, so we did that.

McNulty: You actually just kind of traded slots?

Ares: Yes. Pretty much.

McNulty: But you still remained in private practice . . .

Ares: Yes.

McNulty: . . . and in partnership with Harry.

Ares: Right. We did some private practice and . . .

McNulty: How long did that situation last?

Tape 1, Side 2

Ares: Well, that lasted until the end of Mo's term, which I guess would have been 1954. He went into--he and Stewart [L. Udall] were in partnership at that time. And so, Morris then made an abortive run for Superior