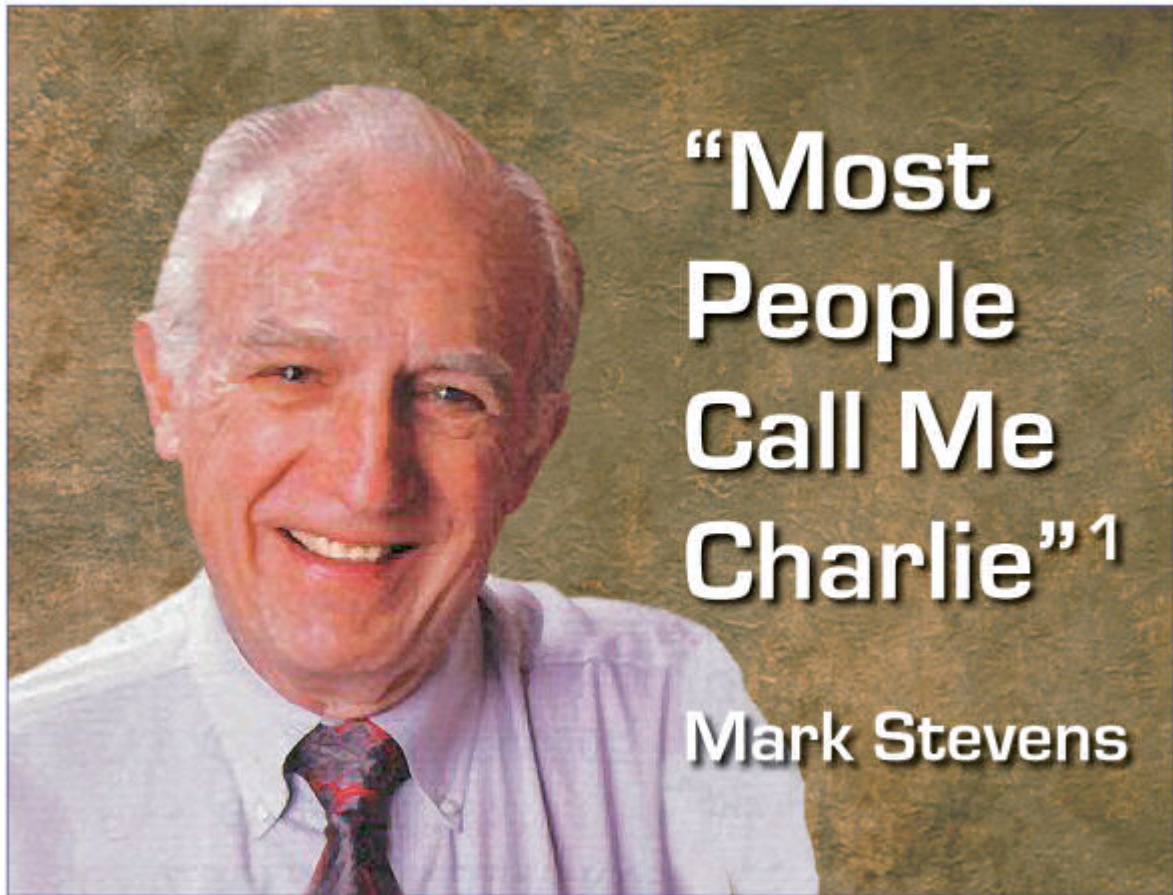


## ?Most People Call Me Charlie?

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Wednesday, September 16th, 2015



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?Example is not the main thing in influencing others. It is the only thing.?

?Albert Schweitzer

*State of Texas v. Charles County:1976?1995*

A woman was brutally murdered in San Antonio and one of the three suspects, of course, was her husband. The assistant district attorney assigned to the case was a master at putting people on death row, but he had trouble keeping them there, because he cheated so often and so flagrantly that his capital convictions almost never survived appellate review. This prosecutor really wanted the husband, so he quickly made a deal with

Moore, one of the other two defendants, even before Moore had a lawyer, promising that his cooperation would make it "easier and light on" him.<sup>2</sup> On April 27, 1976, a lawyer was appointed to represent the second defendant—whose name was County—and the prosecutor, apparently lacking complete confidence in Moore, made a deal with the lawyer that he would not seek the death penalty in County's case if he cooperated against the husband. County did cooperate, just as he and his lawyer had agreed he would, but it turns out that the assistant district attorney was not a man of his word. Shortly after convincing a jury to condemn the husband to death, the prosecutor let Moore plead guilty to a lesser charge for 17 years' imprisonment. He denied that he had ever had a deal with County and his lawyer, though, and he prosecuted County and put him on death row, just like he had done the husband.

Unfortunately for the assistant district attorney, Charlie Butts was the lawyer appointed to defend Charles County, and he was not about to allow a client of his to be cheated out of his life by an "unethical and unprofessional"<sup>3</sup> prosecutor. Justice would eventually come in this case, but it took almost 19 years. It was a good thing for Charles County that Charlie Butts never quit on him.

### **The court of criminal appeals reversed County's first conviction in 1984, but the prosecutors got another**

After losing the first trial, Charlie appealed to the Texas Court of Criminal Appeals, and that court reversed County's conviction because of error in the jury charge.<sup>4</sup> That was 1984. By then, the original, cheating prosecutor was no longer employed by the state, but the new prosecutors pushed ahead and announced their intention again to seek the death penalty. Charlie, and co-counsel Bobby Willmann, moved to quash the capital murder indictment, arguing that the 1976 agreement not to seek the death penalty should bar the state from doing so now. The prosecutor who had made the deal was called as a witness and denied having done so. The trial court overruled the motion, the prosecution went forward, and County was again convicted and sentenced to death.

### **Another reversal proved that Butts was right all along**

And Charlie continued to fight. He appealed again to the court of criminal appeals, and, among other things, he argued that the trial court had erred in overruling the motion to quash. Initially, on March 29, 1989, a majority of the court voted 5-3 to affirm the conviction, rejecting all points of error, including those related to the "alleged agreement between the prosecutor and appellant's attorney."<sup>5</sup>

Despite the fact that the original majority managed to call the agreement an "alleged" one no less than four times in the course of three paragraphs,<sup>6</sup> Charlie knew it was real, because he had been present when it was made. Convinced that the trial record did not accurately reflect the court's ruling, he filed a motion for rehearing and included a motion to abate the appeal so the record could be corrected. Rehearing was granted, the appeal was abated, and the case was remanded for a hearing about the record. The trial judge, the Honorable Pat Priest, held a hearing and agreed that parts of the record were inaccurate. In addition to correcting the record, Judge Priest added this to it, making crystal clear who he believed had told the truth—and who had not—about the agreement:

[I]n fact, I did find that Mr. County was told that he would not be prosecuted for capital murder, and I couldn't, frankly, fathom any reason under the sun why Mr. Butts would have given [the prosecutor] carte blanche with his client with any understanding short of that, and I do not believe, in fact that he did. I think that was the understanding, and so I intended to explicitly find exactly the opposite of what the Court of Criminal Appeals found that I implicitly found.<sup>7</sup>

Of course, Charlie had had it right from the start. The state had made an agreement not to seek the death penalty against County, and had violated the agreement—not once, but twice. Based on the corrected record,

on May 15, 1991, a new majority of the court of criminal appeals reversed the conviction and remanded the case for a new trial, holding that the trial court had the authority to bar the prosecution for capital murder "on a finding that an enforceable agreement not to prosecute existed."<sup>8</sup> Only Judge Campbell, who had authored the opinion on original submission, dissented.

### **A third trial ends in conviction and a life sentence, but it too is reversed**

Bexar County next reindicted Charles County in 1991 and later retried him a third time, this time for murder. Fortunately, Charlie was still there.<sup>9</sup> Although County was convicted and sentenced to life imprisonment, Charlie appealed, this time to the San Antonio Court of Appeals. On March 9, 1994, in a unanimous opinion written by Justice Tom Rickhoff, the court reversed the conviction once more, finding that the trial court had failed to properly apply the law of parties to the facts of the case.<sup>10</sup>

### **County goes home in 1995 after three trials, three reversals, and a plea bargain for time served**

And finally, the state had enough. On December 30, 1994, Charles County was offered, and accepted, a plea bargain of 40 years' imprisonment, with credit for time served. He walked out of jail 31 days later a free man. It would not have happened but for Charlie Butts' heroic willingness to wage this epic war for more than 18 years.

### **Early life, military service, law school, and a diverse career in the law**

Charles Dana Butts died in San Antonio on July 23, 2015, at the age of 94. He practiced law for 66 years. Charlie was born and raised in Wichita Falls. He started law school at the University of Texas in 1941, but like many of his generation, his education was interrupted by the war. He joined the Air Force in 1942 and was later awarded the Bronze Star as First Sergeant of 535th Bomb Squadron, 381st Bomb Group (H) in England. He returned to law school at UT in 1946 and got his degree on May 10, 1949. He went back to Wichita Falls to practice law, and soon moved to Odessa and then to Billings, Montana. In the early 1960s he joined the Tarrant County District Attorney's Office, and a few years later he and Shirley moved to San Antonio. She was a defense lawyer, and Charlie worked for the Bexar County District Attorney's office, eventually serving as First Assistant to District Attorney Ted Butler.

Although he handled a wide variety of civil cases, and prosecuted a number of high-profile defendants,<sup>11</sup> Charlie today is widely regarded as one of the very best criminal defense lawyers ever to practice in Texas. He was a founding member and past president of the Texas Criminal Defense Lawyers Association (1987-88), president of the San Antonio Bar Association (1979-1980), and Director Emeritus of the San Antonio Criminal Defense Lawyers Association.

### **Shirley Butts was the best lawyer he ever knew, and he never tired of saying it**

I very clearly remember the first time I heard Charlie speak. It was 1976, I was a first-year law student at St. Mary's, and he was a guest lecturer in our criminal law class. I knew of Shirley Butts then because she was a professor at the law school. I later learned that she got her law license in 1954, that she worked for the Tarrant County District Attorney's Office and was in private practice in Fort Worth for several years before moving to San Antonio with Charlie, where she worked with him and other lawyers. In 1981 she joined the San Antonio Court of Appeals, where she served with distinction as an Associate Justice for a number of years.

Charlie could not have been more proud of his wife's accomplishments as a teacher, a lawyer, and a judge. I remember he praised her the first time I heard him speak, and in the scores of times since then that I heard

him, never?not once?did he fail to credit Shirley?s legal genius. When interviewed as a past president, Charlie made sure, as always, to give Shirley the credit she deserved: ?I?m blessed with having a wife that?s, I think, the best lawyer I ever knew.?12 Their marriage of 48 years ended with his death, and I guess I never met two people more devoted to each other.

### **Mentally strong to the very end**

A few years ago, while crossing the street on the way to deliver a CLE in San Antonio, Charlie was run down by a careless driver. This accident slowed him down a little, forcing him to use a walker, and toward the end of his life he was slowed down a little more by heart problems, which confined him to a wheelchair. That said, he remained in relatively good physical health for most of his life.

I am happy to report that Charlie had all his mental faculties to the very end. I saw Charlie often during his last few months, and I was astounded at how well his mind worked. At his 94th birthday party in June, he recalled the names of lawyers, judges, clients, cases, and trials from 40, 50, 60 years ago. He talked about campaigning against Warren Burnet for District Attorney in Ector County in 1951, and about how the two of them drank beer the night Warren squeezed out his narrow victory. He discussed two of his cases that had had particularly significant impacts on Texas law.<sup>13</sup> He absolutely was as sharp as anyone a third his age.

Charlie was scheduled to speak at the San Antonio Criminal Law Institute on April 17 this year, but reluctantly called and canceled about a week before the seminar because of health concerns. He did get his paper to us and it was excellent?as well-written and informative as any he ever wrote. We published the paper??Reflections on a Lifetime in the Courtrooms of America??in our course materials, and if you don?t have a copy, email me and I will send it to you.

### **He never stopped teaching**

This was the 52nd year the San Antonio Criminal Law Institute has been presented, and during that time, probably nobody spoke as often as Charlie Butts. He also spoke and wrote papers frequently for TCDLA for the last 44 years. Since 1999 Charlie served on the editorial board of the *San Antonio Lawyer*, and he authored more than a dozen articles for that publication. His ten-part series, ?War Stories,? inspired and entertained us and, I strongly suspect, was the single most popular item the *Lawyer* ever published. In his last paper for our Institute in April, Charlie wrote about many of his cases dating back to the ?50s, and said, ?I can remember all of them in detail to this day.? And I know he could.

### **Gratitude**

A man approached me at Charlie?s funeral, stuck out his hand, and asked, ?Do you know who I am?? I was almost certain I did, even though there was no reason for me to know him. The man?or at least the man I thought he was?and I had never met, or even spoken, as far as I remembered. I had only seen him two or three times in my life, and not at all in more than 20 years. I shook his hand, took a chance, and said, ?You?re Charles County.? And he was. Even though I did not recognize his face, I knew he would be at the funeral, if there was any possible way he could get there. He introduced me to the family members who accompanied him. He seemed to be in good health, especially for a man who had spent a third of his life behind bars, much of it on death row.

After the funeral, when the pallbearers had carried out the casket to the hearse, just before it would depart for the Texas State Cemetery in Austin, Mr. County asked the funeral director if his family could take a picture of him beside the car in which his former lawyer lay. The services that afternoon had been moving indeed: the playing of ?Taps?; the presentation of the folded American flag to Justice Butts; the presence of Charlie?s family, the gathering of judges and lawyers from the courthouse; the heart-felt eulogies given by



Suzanne Hildebrand and Judge Priest. Of all the moving moments that day, though, I was most affected by the presence of the County family. Charlie had fought for years and had finally been able to get this man back to his family, and the man and his family knew it, and they came to show their gratitude. This touched me, and I'm as certain as I can be that Charlie would have been particularly happy to know that Charles County was at his funeral.

### We salute you, amigo



[4]

Charlie's email address was CarlosAmigo, and until recently, he was an active participant on the San Antonio Criminal Defense Lawyers' listserve. He was quick both to join the legal debates that lawyers sometime have, as well as to congratulate those who had won a case or achieved something in the legal community. A few years ago, I wrote an opinion piece in the local newspaper that challenged our district attorney to join the rest of the civilized legal world and establish a pretrial diversion program for adults. Charlie wrote an email to me about a similar program he and his boss, Doug Crouch, had set up when they worked together in the Tarrant County District Attorney's Office 50 years ago, before anyone had heard the term "pretrial di-version." This sort of note was pure Charlie Butts: a well-written, entertaining history lesson meant to teach something useful about the present and the future. He wrote that their efforts half a century ago had been savaged by the Fort Worth media, but that it had nonetheless been a positive program. "I do believe we saved some very worthy young people from having a criminal record, thereby serving society, the criminal justice system, and not to mention saving a whole lot of expenses to the taxpayers." Not a bad idea, then or now.

Charlie closed his email with best wishes for me and Stephanie,<sup>14</sup> and he attached a photograph of himself raising a glass of white wine. The picture bore the caption: "By the attachment hereto, I salute you." It is our turn now, Charlie, to salute you. Albert Schweitzer was right: Example is the only way to influence others, and for so many years, for so many people, you served as a wonderful example of how real lawyers should conduct themselves, in and out of court.

Thank you for that, and adios, amigo.

### Notes

1. This is how he introduced himself when interviewed as a past president for the oral history project maintained by the Texas Criminal Defense Lawyers Association. See [5] [www.youtube.com/watch?v=K65ANmtTYo4](http://www.youtube.com/watch?v=K65ANmtTYo4)

. Charlie was unfailingly courteous and had the manners and bearing of a 19th-century gentleman, but he did not have a pompous bone in his body.

2. *See Buffington v. State*, 652 S.W. 2d 394, 396 (Tex.Crim.App. 1983)(Clinton, J., dissenting).

3. These were the adjectives supplied by Presiding Judge John Onion, and earned by the prosecutor, for *Brady* violations he committed in the husband's case. *See Buffington v. State*, 652 S.W. 2d at 395 (Tex.Crim.App. 1983)(Onion, P. J., concurring). Judge Edward Prado, now on the Fifth Circuit, then a United States District Judge, called the prosecutor's behavior "deplorable." *Buffington v. Copeland*, 687 F. Supp. 1089, 1093, 1104 n.12 (W.D. Tex. 1988).

4. *County v. State*, 668 S.W. 2d 708, 711 (Tex.Crim.App. 1984). Charlie would be the first to insist that his co-counsel, Shirley Butts, be given proper credit for the appellate victory.

5. *County v. State*, 812 S.W. 2d 303, 310 (Tex.Crim.App. 1989). Judge Bill White, former Bexar County District Attorney, did not participate in the decision.

6. *County v. State*, 812 S.W. 2d at 310-311.

7. *Id.* at 316.

8. *Id.* at 317.

9. And so was Bobby Willmann.

10. *County v. State*, No. 04-92-00347-CR (Tex.App. San Antonio 1994, no pet.)(not designated for publication).

11. While working in Tarrant County, Charlie assisted in the prosecution of Kenneth Allen McDuff for a triple murder in 1966. The jury in that case sentenced McDuff to death, but his sentence was commuted to life imprisonment following the Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972). McDuff was paroled in 1989, and was later convicted of multiple capital murders that earned him the title of "The Most Notorious Serial Killer in Texas History." The 1966 trial is detailed in *Bad Boy*, written by Gary M. Lavergne.

12. To listen to the interview, go to [\[5\]www.youtube.com/watch?v=K65ANmtTYo4](http://www.youtube.com/watch?v=K65ANmtTYo4).

13. *County v. State*, 668 S.W. 2d 708 (Tex.Crim.App. 1984); *Grayless v. State*, 567 S.W.2d 216 (Tex.Crim.App. 1978).

14. My wife Stephanie Stevens, the best lawyer I know.

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