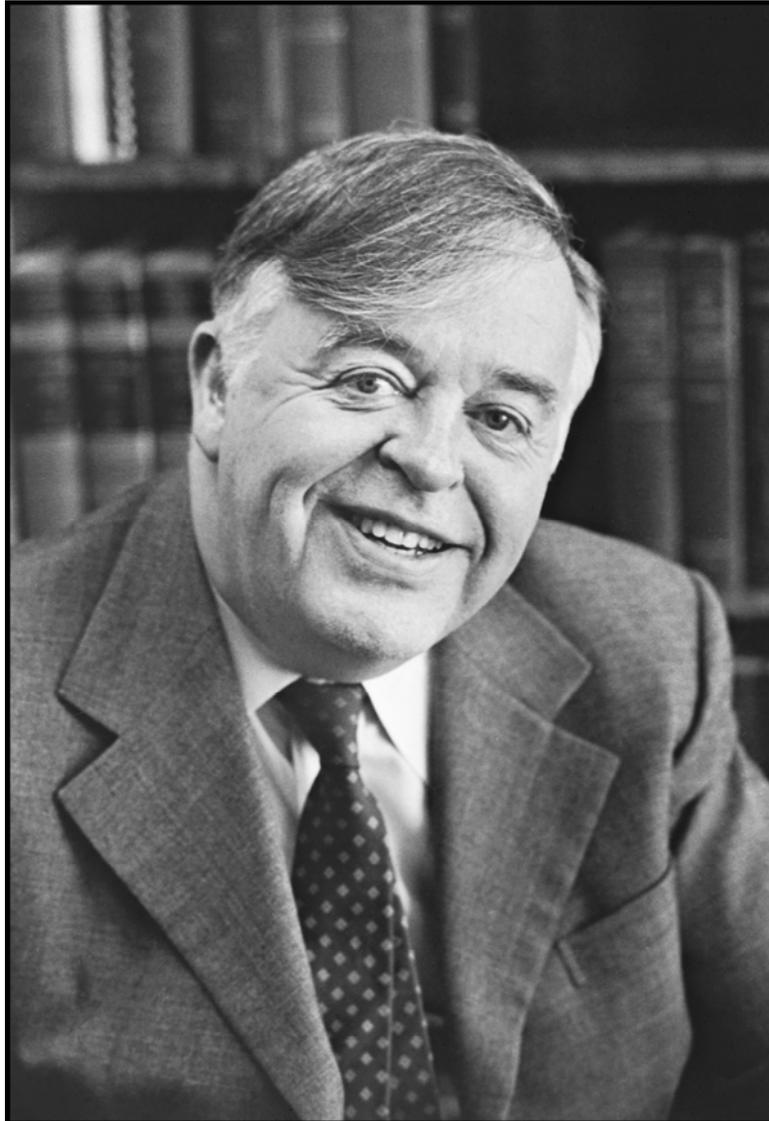

IN MEMORY OF PROFESSOR DAVID
CARROLL



A TRIBUTE TO PROFESSOR DAVID CARROLL

The following tributes commemorate the May 2004 passing of David Carroll, one of USC Law School's most beloved and well-respected professors. Professor Carroll was a member of the faculty from 1975 until his retirement in 1992. These pieces evidence the many wonderful contributions that Professor Carroll made to the Law School and the lives of those around him.

TRIBUTE

DAVID CARROLL

ARTHUR BERNEY*

Professor David Carroll was one of those people you meet whose coincidence and connection with your own life provides the realization that to know him is to feel blessed. David was one of two of the closest friends I ever had. There are plenty of accolades that will be deservedly paid to him. I want to talk about him in a personal way. We met forty-five years ago in Toledo, Ohio. He was a young, practicing lawyer teaching as an adjunct, and I was starting my teaching career at the University of Toledo Law School. When I came to know him I could not tolerate the idea that someone of his immense intellect and keen wit was not sharing it with a wider, more appreciative audience. He was born to be a teacher and a great one at that.

In his teens David was struck down by polio that put him in a wheelchair for life. One powerful arm and a dauntless will coupled with a powerful mind saved him, as well as all of us whose paths crossed his, from a life less lived. He once told me during one of his down moments, and as you can imagine these were not infrequent, that his first professional physical therapist had “saved” him. Not because that person gave him courage or hope, but to the contrary because he told David that he had to accept he would lead a diminished life and that the sooner David accepted this he would find peace. This drove David into a rage and propelled him to prove that the bible-quoting (you can fill in the next word) was wrong. David admitted that whenever he felt so tired or even cheated by life, he would use that rage to drive him to overcome the next challenge, whatever it was.

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Still, if David was driven, it never showed. His openness, empathy, and interest drew all that knew him as if he was a human magnet. No one created a wider group of diverse friends than did David. He was a wonderful storyteller and spinner of tales. His humor ran the gamut from witty to hilarious, from sweet to sharp, from teasing to gentle. He had a deep philosophical and sometimes cynical understanding of the human condition. He just loved to play games and his favorite, without his realizing it, I suspect, was to engage one in intellectual forays on the most esoteric and profound subjects. He made you think. If you needed help to think through a problem David was your man. Conversations with David, whether passing and brief or carried on for days with important insights gained, are numbered among the most interesting in my life.

David must have known from the date of his physical affliction that his only recourse would be a life of the mind. So when most of us were playing ball, goofing around, and flirting during our teen years (although I am sure David did some of the last if later observation means anything), he was reading everything he could get his hands on. That became a life-long habit and later in life he took to writing fiction of his own.

After graduating from law school he practiced in Toledo for a time. I take some pride in encouraging him to pursue his taste for teaching. A few years later, to my delight he wrote to tell me that he was going to try full-time teaching. I asked, "Toledo?" He replied, "No, Africa." I guess he just wanted to make it easy on himself. He taught law school in Uganda one year and a second in Nigeria, each at the time of the rise of murderous regimes in both countries. He later joked about the fact that people must have thought he was CIA because terrible happenings occurred in each country soon after his arrival. The reality is that in both places he risked his life by sheltering his students who were members of the tribes who were under attack. David was a brave man, not unlike those honored at the memorial to Righteous Gentiles at the Ear Vacuum in Jerusalem. If some day Africa creates a Memorial remembering its victims of murderous, hateful regimes, David's name should be inscribed on its walls.

To my knowledge his first law school publication, since serving as Editor-in-Chief for the Ohio State Law School, was as one of my co-authors on the first Poverty Law Book adopted at law schools back in the early 70s. He spent a summer in Vermont and I desperately needed someone to help with the Commercial Law chapters of the book. He was a true scholar—he had an unquenchable thirst for knowledge. I could be wrong about this, but I believe he wrote mainly to meet the demands of publication. We had long discussions about this. I recall him saying that

once he figured out what needed to be said about a particular subject of interest, he preferred to move on to some intriguing inquiry other than the tedious work of writing. But he knew how, as he said, “to put his druthers aside when it came time to do so.” Like the composer Brahms, he buried in dusty bins stuff he had written that was better than the works of others whose work was published.

David to my mind was a teacher above all else. I would hazard a firm guess that he was the favorite law teacher of most students who took his courses. There were at least two reasons I can offer to back this up. One, as noted, he was intellectually powerful. He could deconstruct the law before your eyes and then turn around and show you, rather than lead you, to understand how, despite its shortcomings and silliness, the law could still be the bedrock of civil society if only you kept at the ongoing process of debunking it as practiced, and worked hard to improve it in whatever way possible. He could demonstrate through the intricacies of the Commercial Code how, in so many ways, it served established interests while at the same time revealing its history of reformative qualities, encouraging his students to take upon themselves the pragmatic work of continuing the reformist task. He was drawn to or at least intrigued by the critical legal studies movement but held back not because he was conservative or conventional in his thinking, but because he remained very much a pragmatist.

Second, he brought so much of himself into the class, with some of the magical powers of connectivity associated with former President Clinton. With this talent and a good hunk of ham he engaged and enlivened his students. Much of what he brought was an optimistic and joyful expression of life.

After he retired he returned to his family in Georgia. He designed a house made to order to his needs, full of surfaces, on a beautiful pasture in rural Georgia. He raised a couple of ponies and seemed to find happiness in his seclusion surrounded by nature. He wrote fiction, and returned to his religious roots. He always had a strong spiritual side. He became active for a time in his church community but then for some reason (he remained vague about this) he stopped going. Nevertheless, he continued his services teaching children with learning disabilities. They must have thought that Santa Clause had come to Georgia, with his white beard and wild white head of hair, just to make them smarter and happier. I knew that his health was failing when he told me that he had stopped tutoring. In his final years I was ever grateful that he allowed me to stay close as we carried on long e-mail exchanges mostly about philosophy, religion, politics, and

sometimes even the law. I deceived myself by clinging to this e-mail, connecting vine; but then he let go of his end. I knew what to expect. A best friend had gone but through the tears of loss I console myself, my family, our mutual friends, and all who loved him with the thought I opened with. David Carroll was one of those people you meet whose coincidence and connection with your own life provides the realization that to have known him is to feel blessed.

A HERO FOR ANY TIME: REMEMBERING DAVID CARROLL

STEPHEN J. MORSE*

David Carroll and I joined the USC faculty together in 1974. Dave was an eminent commercial law scholar, and previously a highly successful lawyer, visiting from Boston College, and I was just beginning law teaching. Dave was an excellent scholar, teacher, and colleague, but I will focus on Dave's outsized personality and character that so affected all those fortunate enough to know him.

The early 1970s were heady times at USC, which was abuzz with the interdisciplinary teaching and scholarship and immense intellectual energy that mark the institution. Most of the faculty were younger than Dave and had quite different backgrounds, but he fit in easily. He loved the give-and-take of USC's unique faculty culture, and he brought wisdom, maturity and academic savvy to the institution. After Dave accepted our invitation to become a member of the standing faculty, Dean Dorothy Nelson immediately named him Associate Dean for Academic Affairs. Dave knew how law schools worked and how they should work. He had seen it all. He was a constant source of sound counsel and friendship, especially when, as a still very inexperienced faculty member, I became associate dean. Dave was my *consigliere*, and no one could have been more generous with his time or more consistently helpful.

More important, Dave was a good friend and a constant source of warmth, wisdom, and fun. When he and I met, I was struck with his brilliant, lively eyes, his wonderful hair and beard, and his ebullient personality. He was a presence, and simply great fun to be with. My wife Jean—also Dave's good friend—and I frequently socialized with him, joining him for many lovely evenings by the pool at his house in Sherman

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Oaks. I especially recall spending the celebratory evening of July 4, 1976 with Dave. Jean and I had brought our infant daughter, Elisabeth, whom Dave enjoyed, and we watched the tall ships in the New York harbor on television, talking about how fortunate we all were. With his sparkling, curious intelligence and wide experience, Dave was a great conversationalist about everything from politics to horses. Indeed, Dave was especially fond of the race track and took Jean and me to Santa Anita. Dave was in his element. I never played cards with Dave because it would have been no fun for him and a losing proposition for me; he was just too good.

Most important, Dave's character and life were inspirational. An adolescent bout with polio left him essentially triplegic, with the full use of only one arm. He lived the vast bulk of his adult life prior to the passage of the Americans with Disabilities Act, which finally and properly mandated equitable treatment of people with physical and mental disabilities, and which made life easier for persons with disabilities. Dave was a victim of his disease, but he did not treat himself as disabled. He never felt sorry for himself, or if he did he never showed it. He lived as if he were not impaired in any way, adventurously and to the fullest. Dave refused to be limited by his "limitations." He was a visiting professor twice in Africa, a continent to which he was deeply attached. In the United States he always lived entirely independently, a task made much easier when he finally acquired an electric wheelchair and a van with an electric lift as well as hand controls. Despite Dave's unwillingness to be treated or to live as a victim, he had complete understanding of what it was like to live with disadvantages, whether these were physical or socioeconomic. Dave had entire empathy and sympathy for those less fortunate, and he dedicated much of his scholarly life to working on their behalf. Nothing about Dave Carroll himself or the life that he led manifested the burden he bore with such grace, dignity, and courage. He was a hero for any time.

DAVE CARROLL DID NOT WANT TO BE A ROLE MODEL

MICHAEL H. SHAPIRO*

Dave Carroll could not walk. It was a central fact about his life. It was something that was there and could not be denied and was there and had to be denied. It was something that he and others had to dwell on and something that he and others could not dwell on.

But he was not Dave Carroll, the crippled guy, as he sometimes called himself. He could not be reduced to this trait. He was Dave Carroll, the law professor, teacher, and friend whose success was not asterisked, as in “he did well, considering what he was up against.” He did well, period. And of course he did well, considering what he was up against. These are both correct facts of the matter about him.

When a man dies, it is commonplace for relatives and friends (and even strangers) to imagine what he would have said or thought or wanted done (or not) if he were still here and could see us struggle with his departure. It is not always clear why we care about what the departed would have preferred, but we do care, a lot, and I am not going to question this.

I do not think Dave was comfortable with the idea that he was an exemplar for how to live generally and for how to live with a physical disability. And surely no one is comfortable knowing that he is a point of comparison for those who feel sorry for themselves. (“Stop complaining about limping; Dave would love to be able to limp.”) But he knew he was a model, a representative, watched by everyone who ever wondered how they could exist and function and not be demolished by a catastrophe like polio. His legs were paralyzed; his right arm down to his hand was paralyzed; he had the full use of only one limb, his left arm—all the result of polio contracted when he was in high school. (He played football, and

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perhaps this bleakly illustrates the “revenge effects” of athletic accomplishment; some have said that polio has a taste for highly developed athletic musculature, but I have not researched the point.) He was not gifted at self-delusion, even though he knew its comforting properties, and so he knew, in particular, that it was too simple to expect or even want people to ignore the fact that he could use only one arm, plus one hand. The disability does not simply drop from sight in all contexts, as if nothing were the matter. Yet one often found it difficult to stay focused on his disability even if one wanted to. The disability became part of a semivisible baseline, dropping from sight when listening to Dave question someone’s legal analysis, explain something to a student, talk about some idea to write about, or even explain the discipline of betting on horses, which kept him amused through many seasons at Santa Anita. And sometimes, the disability was paramount. There was no way around this, and it went beyond the need for ramps and high-tech vans and door handles suitably placed. It went to alternative lives foreclosed.

He succeeded wonderfully as a teacher, scholar, and friend to students and colleagues alike. He was a presence in every aspect of the life of the Law School—teaching, writing, administration, workshops, befriending students, advising colleagues, advocating reforms (or the status quo, when need be), attending appointments dinners, livening up parties, and schmoozing in the faculty lounge. One would raise Dave as an illustration of what it means not to be self-absorbed. He never let anyone or any institution down; no one ever worried about the quality of whatever Dave was doing—except Dave himself. At least twice a year, every year, he would mutter bleakly about never being sure he had ever graded an exam correctly or consistently with others. “Who’ll know the difference?” was a thought that probably never occurred to him.

I expect that the most common images of Dave were of him smiling or laughing at something, or holding forth on whatever it was that interested him while he was operating the machinery that lifted him into his van (a vehicle forever giving him trouble) or let him get out. That is fine. But there is another layer to these images, or at least to mine. He hated having a physical disability. He made no secret of it. He did not characterize it as being differently abled. He hated the fact that it burdened or foreclosed important opportunities in his life. He hated the trouble he had to go through to get from place to place. He hated being without a mate. But he also hated the fact that the damage done to him shortened his lifespan. He did not welcome death as a release from bondage; he grabbed onto everything that was open to him and never stopped living, hoping,

accomplishing, and enjoying life to whatever limits the world imposed on him. That is why he was and is a model, whether he liked it or not. But not solely a model for the efficient management of disability—rather, a model for how to live, abled or otherwise, with whatever hits you. He bore the role of role model well; that was part of his friendship.

MY MEMORIES OF DAVID CARROLL

MATTHEW SPITZER*

Dave Carroll was not one of my professors, but he was one of my favorite colleagues. Dave was a triplegic; he had the use of only one of his arms and neither of his legs. He needed an electric wheelchair, a van with an electric lift, special openers on the men's room doors, an assistant to help him live, and so forth. Every aspect of life was a struggle and needed special attention and forethought. Something that would be a small problem for one of us would be a large problem for Dave. In spite of his unquestionably difficult situation, Dave never revealed any trace of bitterness. In fact, he was such a strong personality that I never really thought much about his use of a wheelchair. Instead, I thought of Dave on a personal level primarily as a fundamentally nice man who seemed to like horse racing more than I could ever fathom. He loved to go to the races, analyze the races, bet on the races, and claim that he could routinely win (although not enough to make up for the track's take) by betting on the horses. But, of course, he used a wheelchair.

On a professional level I remember Dave as a smart, liberal scholar of commercial law. Dave and I were on the faculty with Alan Schwartz, a market-oriented scholar of commercial law (and several other areas of law). Alan presented a paper at one of our Friday afternoon workshops that concluded, unsurprisingly, that regulation was unlikely to improve consumers' welfare, and probably would hurt consumers. It was a typical Alan Schwartz piece—inventive, based on an explicit and fairly technical economic model of the market, and extremely smart. Dave raised his hand and asked several penetrating questions about the nature of the assumptions that drove the model and the anti-regulation conclusions. Although he was not a trained economist, Dave Carroll quickly honed in on the weakest of the assumptions, and pushed. It was exactly the right move, given Dave's interests—protecting consumers and doing cutting edge legal scholarship.

* Dean and Carl Mason Franklin Professor of Law and Professor of Political Science, University of Southern California.

Dave also cared about diversity. Of course, no one can feel as much an outsider based on race, sex, or ethnicity as a triplegic would feel. But he empathized with historically underrepresented groups. And he hoped that we would diversify our student body while he was here. I suspect he would never have guessed that in 2004 the USC Gould School of Law would enroll a class with forty-six percent of the individuals in the student body identifying themselves as members of minority groups. But had he known that this was true, he would have been impressed and proud.

I missed Dave a lot, on both a personal and professional level, when he retired. Once he moved away and built his house in Georgia, it became clear that he would not be visiting. I do not think he ever came back to USC after he moved away. I wish he had.

DAVID W. CARROLL

STEPHEN H. TURNER

At Dave's memorial service in Holly Springs, Georgia, Dave's lifetime friend, Birch Riber, recounted the evening before and the morning that Dave contracted polio. Birch told how he had spent the night at Dave's home in Hillsboro, Ohio after Birch and Dave had finished football practice. Birch awoke early to return to his home to mow the yard before the morning football practice, where he was to meet Dave. When Dave awoke and attempted to stand, he fell over. He had contracted polio. He never walked again.

I believe Dave's philosophy of saying yes to life¹ (Dave, in his wheelchair, took a hot air balloon ride) came from his realization that life is fragile. His kindness and his compassion came from his understanding that life can be hard.

I met Dave on the first day of my first year of law school. He was my Contracts professor. Then, as throughout his career, he was a favorite of the students. In his relationship with his students, he combined seriousness of purpose with consideration and compassion. As his student (I also had Dave for Corporations) and later as his friend, I observed his concern that he always be prepared so that he would teach effectively and his students could learn. His concern was reflected in his students' evaluations, which were uniformly high.

Dave's students respected him because of his intellectual and academic abilities. They liked him because he was kind. Although he was very serious about his teaching and had a record of accomplishment (he completed his undergraduate studies at Ohio State University in three years and was a member of the Order of the Coif and Editor-in-Chief of the *Ohio State University Law Review* before having a successful law practice and academic career), Dave never forgot that law school is hard. Although, at

1. In life, but not in poker (and thus unlike the other members of his poker club from whom he regularly took money, see below), Dave was a "plunger."

least academically, he had more in common with the students who did well in his classes, he was always more concerned about those who did not. Each year in his first-year contracts class, Dave gave a party shortly after the students received their grades for the first semester so as to buoy the spirits of those students who had not done as well as they had hoped.

My relationship with Dave changed from one of professor and student to one of friendship when, near the end of my third year in law school, several law school classmates and I formed a poker club with him. The club, which primarily played at his house, lasted through job changes, marriages (it outlasted one marriage), births, dumb jokes, the same dumb jokes, card games that bore only a slight resemblance to poker, and the fact that Dave regularly took the other players' money. (Having lasted fourteen years, Dave noted that our poker club was one of the oldest institutions in southern California.) The last night the club played before he left Los Angeles to retire in Georgia, the original members of the club remembered the bad poker and the good times we shared with him. (We also recalled the repeated discussions about whether or not "V For Victory" is a different game from "Iron Cross," and the subtle differences between "Jane Fonda" and "Nancy Reagan" Anaconda.) The poker group continued to meet after he left, but without him to hold us together, in time, we stopped playing. Like everything else I used to do with Dave before he left for Georgia, playing poker was not as much fun without him.

Dave and I became friends, in part, because we shared a great enjoyment of sports. He and I have watched them all. On one occasion we watched the Los Angeles Aztecs—how many people know what sport they played?—when there were so few people in the Los Angeles Coliseum that you could count them.

In 1981, the University of Notre Dame sponsored a lecture series in conjunction with the United Nations having designated that year as the "International Year of the Handicapped." Notre Dame invited leading experts in a variety of fields who had physical disabilities to lecture at the university. When Notre Dame invited Dave, Dave replied he would be happy to lecture, but he was only available on the Friday before or the Monday after the USC/Notre Dame football game, which, in 1981, was held in South Bend. Notre Dame said it would be pleased to have him lecture on the Monday after the football game and enclosed two tickets in case he would like to attend. Dave invited me to join him.

For me the trip was not merely great fun, but also enlightening. Because I had already been good friends with Dave for almost two years, I

knew of the practical difficulties people with disabilities face perhaps more than most. Our trip, however, showed me much more graphically the impediments that people with disabilities must confront everyday. Because the air traffic controllers were on strike, our flight to Chicago was delayed two hours. Dave had requested that, because he would be unable to leave his seat, we be allowed to board the plane shortly before it left the terminal. Unfortunately, the airline officials were not obliging, and insisted we board the plane shortly before the scheduled take-off. We then sat at the terminal for two hours, during which time Dave, unlike the other passengers, could not leave.

Dave seldom made reference to being in a wheelchair. Therefore, even for his good friends, it was easy to overlook his perseverance and tenacity. As a result of our short trip, I appreciated more fully the challenges of which he did not speak but faced everyday. It also caused me to be amazed at all the places he had been. From 1965 to 1967 Dave taught in Nigeria, and from 1971 to 1973, when Idi Amin was expelling the Indians, he taught in Uganda. Returning from Uganda, he took a trip through Europe with a friend, which included an excursion to the top of Mount Vesuvius.

Although Dave and I watched and enjoyed all sports, the NCAA college basketball tournament was our favorite. He and I were fans of the NCAA tournament before it was fashionable. We cursed CBS's blackout policy. We applauded ESPN's coverage and regretted the day when that coverage ceased. Through the years, he and I watched part or all of over 500 tournament games.

It was while watching the USC basketball team, in person, that I saw Dave become as angry as I had ever seen him. He and I had purchased season tickets. When we arrived for the first game of the season, we were advised that, although there was just as much space for people in wheelchairs to watch the game near center court, he would have to sit at the end of the court in space arbitrarily selected for people with wheelchairs. Dave and I vigorously opined to the usher, his supervisor, the head usher, and a representative at the Los Angeles Police Department that such treatment was not merely improper, but also probably illegal. After some further negotiations, he and I were allowed to sit in a more desirable location. That episode is noteworthy because it reflects his sense of fairness. First, Dave knew it was unfair that people with wheelchairs should arbitrarily be given the worst seats, and he would not accept such discrimination. In addition, that experience and its aftermath showed his sense of fairness in how he treated people. The next week, when we returned to the arena, he, unnecessarily, apologized to every person with

whom we had spoken previously and noted that although the policy they were attempting to enforce was wrong, it was not their policy.

Through his friendship with me, Dave became friends with my then-girlfriend and now wife (and fellow Law Center graduate), Bonnie Kaye Turner. Wanting the best for me, early in our friendship Dave indicated I should marry Bonnie. I clearly recall one evening while Bonnie, Dave, and I were having dinner together, he engaged in, what I thought at the time, was a very lengthy discussion of how two people can live together much cheaper than they can apart. Whether because or in spite of Dave's urging, he was a close friend of Bonnie. Therefore, when Bonnie was pregnant with our first child, we both agreed that if our child was a boy we would name him for Dave. While growing up, David, now nineteen, was one of Dave's most enthusiastic admirers.

Dave was a friend not only in the good times but in the bad as well. In May 1991, I, along with almost half the other associates in my former firm, was laid off. I was a young lawyer with two little kids and a very big mortgage. I thought the whole world had fallen in on me. Because of Dave's common sense analysis and unfailing loyalty, I knew I needed to speak with him, the wisest person I have ever known. He was en route from Los Angeles to Georgia. I tracked him down at the Holiday Inn in Ruston, Louisiana to give him what then seemed like such terrible news. Bonnie and I will always remember that he offered to turn his van around and return to Los Angeles to help me find a job. Through that very dark period his friendship was a constant light.

I do not want my comments to finish on what could be perceived as a somber note. Furthermore, no discussion of my friendship with Dave, indeed no discussion of Dave, would be complete without at least one horse racing story. I am not going to tell the story about the time I, then an elder in the Presbyterian church, was with Dave at Santa Anita on Good Friday. (The Lord works in mysterious ways.) Rather, I am going to recall my last trip to Santa Anita with Dave. As he had done for several years, in 1992 he donated a day at the races for four students to be auctioned at a fundraiser to assist students working for public interest law firms. Shortly before the agreed on date to go to the races, Dave became ill and had to be hospitalized. After he was released from the hospital he requested that I accompany him to Santa Anita where we were to meet the students who had purchased the day at the races. Because of a prior commitment, he and I had to leave after the sixth race. We had very little luck during the first five races; then, as the students and I tried to determine what our bets would be for the sixth race, Dave said he had "Dave Carroll's pick of the

day,” a horse named Viva El Capitan. Former Senator Bradley said when he was a basketball player he liked to finish practice by making a shot. He called such a shot “one to quit on.” On May 9, 1992, the sixth race at Santa Anita was one to quit on. Viva El Capitan broke from the starting gate and led down the back stretch. It was six lengths in front as it turned the corner and headed for home. As Viva El Capitan came down the home stretch far out in front, I repeatedly hit the railing in front of me with my rolled-up program and said, “Dave Carroll’s pick of the day, Dave Carroll’s pick of the day.” Dave Carroll’s pick of the day, Viva El Capitan, won. We all cashed our winning tickets, and Dave and I left. I may again go back to Santa Anita, but I have not as yet.

I visited Dave on several (not enough) occasions while he lived in Georgia. I marveled that, just as he had done in Hillsboro, Ohio, at Ohio State University, in practice in Toledo, and in Boston, Nigeria, Uganda, and Los Angeles, Dave had made a life. He became a Braves fan and was the Treasurer of the Holly Springs United Methodist Church. He was devoted to his sister, brother-in-law, and their children and grandchildren. After his sister and brother-in-law died, one of his nephews told me, “Dave probably thought when he came to Georgia we would be supporting him, but he has been supporting us.”

After Birch Riber (who is a successful international sports promoter and an associate of Tiger Woods) spoke, I recalled my memories of Dave. Although Birch and I conveyed our love and respect for Dave and gratitude for his friendship, the most powerful speaker was his long-time housekeeper who in a trembling voice, said that, although she did not like to speak publicly, she had to tell how much she loved Dave and would treasure her memories of being with her daughter and Dave watching her granddaughter play softball for Cherokee County High School. With his courage, integrity, strength, loyalty, and compassion Dave touched people regardless of background or circumstance.

The missionary who ran the mission church that my family attended when we lived in Khartoum, Sudan used the expression “friends of the heart.” For me, Dave was truly a “friend of the heart.” To quote Duke Ellington, I loved Dave madly. I loved him madly and I miss him terribly.

DAVE CARROLL: AN APPRECIATION

CHARLES D. WEISSELBERG*

David Carroll was an extraordinary man, a generous teacher and colleague, and all-around good guy. Others have noted his significant scholarly contributions in the fields of commercial and poverty law. But I came to appreciate Dave for his warmth, sense of humor, and willingness to talk through difficult problems in law and life.

I met Dave when I joined the USC faculty in 1987. I taught primarily in the Post-Conviction Justice Project, part of USC's clinical program. Dave was a mentor to faculty who taught USC's classroom courses. But he also proved a wonderful colleague for me. He had a real knack for getting to the heart of a legal problem, and he understood and respected the world of practice. I found myself talking to him on a regular basis. Although my work was, at first glance, far afield from his area of specialty, we discovered a number of connections. For one thing, the Project's clinical practice—in which we usually represented sentenced prisoners—regularly required a careful review of the deeds and deals that led many of our clients to be guests of the government. Courts are fond of stating that the validity of a plea agreement (I sometimes have difficulty calling it a “bargain”) should be judged by contract law standards. So Dave and I had much to discuss.

We regularly talked about basic principles of contract law as applied in the context of the criminal justice system. I recall his amazement at the terms of some clients' plea agreements. In one case, a defendant had pleaded guilty to all of the charges in the indictment, cooperated fully with the government, forfeited a big pile of cash, and received a lengthy sentence. In exchange, the federal prosecutor promised to bring the defendant's cooperation to the attention of the U.S. Parole Commission.

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But the client clearly did not know or understand the terms of the deal; he pleaded guilty to a non-parolable offense. Dave spent a fair amount of time helping me work through contract law principles as we tried to overturn the plea. He was outraged by the agreement; but, having a fine sense for the absurd, he was less surprised than I when the courts upheld the conviction.

I miss Dave's generosity. I miss his sense of humor. I miss having him as a colleague down the hall, a person to whom I can turn with any question at all. I know that many students benefited from Dave Carroll's deep knowledge and gentle manner. Many faculty did as well, and I am fortunate to have been one among them.