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## In Memoriam: Charles Wendell Carnahan

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# WASHINGTON UNIVERSITY LAW QUARTERLY

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## IN MEMORIAM

Charles Wendell Carnahan, 1903-1961\*

Wendell Carnahan was a quiet man. He did not press his views upon others. But decisions were wiser when his views were considered. He often spoke in wryly humorous analogy, describing people in terms of the appearances or characteristics of animals. But he never allowed this delightful play of imagination to distort the serious point he wanted to make. Instead, he used the frivolous figure to make an opening for the hard fact. Sometimes the fact he drove into the opening hurt too much for being true, but it always stuck. Wendell's words never hurt except to heal, however, for he was a kind man.

Wendell Carnahan was a quiet scholar. We knew he had health problems that were a serious handicap to scholarly production, but we never heard anything about them from Wendell. When he had to go to the hospital for an eye operation or heart treatment he tried to deceive us into thinking that he was out of town, and he often succeeded. Illness was not worth talking about for Wendell. It was not worth slowing down scholarly production, either. His books, articles, and revisions in the fields of conflicts, insurance, and dental jurisprudence, continued to flow regardless of how Wendell felt. And their high quality was undiminished.

Wendell Carnahan was a quiet teacher. And a frustrating one, from the reports of his students. He did not expound. He made stu-

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\* Ph.B. 1923, J.D. 1925, Univ. of Chicago; LL.M. 1937, Juris.Sc.D., 1942, Columbia Univ. Admitted to practice in Illinois, 1925; Missouri, 1943. Engaged in general practice with several law firms and alone, in Chicago, 1925-1930. Asst. Prof. of Law, Univ. of Louisville, 1930-1935; Assoc. Prof. 1935-1936; Prof. of Law 1936-1938; fellow Columbia Univ. 1936-1937; Prof. of Law, Washington Univ. since 1938; Zumbalen Prof. of the Law of Real Property since 1946. Visiting Prof. Univ. of Texas, Summer 1956. Attorney in home-office of General American Life Ins. Co., half-time 1943-1946. Editor, *Cases and Materials on Conflict of Laws* (1935). Co-Editor (with Taintor, Brown and Harper), *Cases and Materials on Conflict of Laws* (1950). Author, *Conflict of Laws and Life Insurance Contracts* (1942), (2d ed. 1958); *The Dentist and the Law* (1955), and of articles in various Law Reviews.

dents think for themselves. He did this by rejecting everything but the fruit of logically ordered thought, and by questions that cut through confusion and irrelevance like lancets. But at alumni dinners the most typical comment about Wendell has always been, "I hated his classes at the time, but ten years later I realized that Wendell Carnahan taught me more than anybody else." There is no higher praise for a teacher than that his students have to grow up to his teaching.

Wendell Carnahan was a fine colleague. Let the record show our appreciation.†

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Charles Wendell Carnahan was a revered teacher and a true scholar who made valuable contributions to the literature of the law. Well do I remember the tall, slender, dark young man who came to the Columbia University Law School in the autumn of 1936 as a graduate fellow in law. I still have the picture that I took of the graduate students of that year, when they came to our house, in Leonia, New Jersey, for afternoon tea. Mrs. Carnahan came with Charles. Thus the graduate students and their wives became acquainted with each other. Charles undertook to write a dissertation on some phase of the conflict of laws, under the guidance of Professor Elliott E. Cheatham. As I recall, it was thought even then that a revision of the Restatement of the Conflict of Laws would have to be undertaken, and that thorough studies of the conflicts problems arising in special fields of law or of business activity would provide the groundwork for the New Restatement.

Professor Carnahan chose to write on the problems of life insurance. His studious habits and his scholarly drive for thoroughness led him to complete, in a period of about six years, one of the most comprehensive and thorough dissertations ever received at Columbia. Not content with analyzing the case law, Professor Carnahan amassed policy forms and binding receipts; I remember the latter especially. His excellent dissertation was approved by a faculty committee in 1942, and was published in 1942 under the title, "Conflict of Laws and Life Insurance." Its usefulness to the legal profession and to legal scholars was attested by the publication of a second edition in 1958. Rarely, indeed, has a doctoral dissertation been rewarded by a second edition.

During the period of Professor Carnahan's residence at Columbia and his work on the dissertation, I was engaged in drafting a revision of the New York Insurance Law, and some of the unique provisions,

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† Resolution adopted by the Faculty of Law, Washington University, October 18, 1961.

on the scope of application of local (New York) law, which appeared in the 1939 enactment of the revision, were due in part to Professor Carnahan's researches. Moreover, his work influenced some proposals, as to the conflict of laws, which I made before the Section of Insurance Law, American Bar Association, in 1940, and which have, along with Professor Carnahan's work, been of some influence in the drafting of the New Restatement of the Conflict of Laws. I mention my own efforts merely because I believe that in law, as in other fields of human activity, the best results are products of cooperative intellectual effort.

It is sad to know that the gentle, earnest spirit of Charles W. Carnahan is with us no more. He should have been spared for many more years of a useful and happy life. To those who outlived him it is a comfort to know that his work will long survive him and that he died, as he had lived, a true scholar and gentleman.

EDWIN W. PATTERSON†

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Charles Wendell Carnahan was associated with General American Life Insurance Company, on a part-time basis, from the early part of 1943 until the spring of 1946.

One of the lawyers associated with the Company was called into military service late in 1942. The pressure of work made it necessary that he be replaced. But the problem of replacement was not easy. We were not able to offer a permanent position to anyone because of the need, and our desire, to keep the position open for the lawyer who had gone into military service. At the same time, we required a mature lawyer who possessed adequate judgment and a sound knowledge of the law relating to life, health and accident insurance.

Wendell Carnahan fulfilled this requirement in ample measure. Happily for us, he was both willing and able to accept the position on a part-time basis. He had no interest in abandoning his career in the teaching profession. The Law School at Washington University had remained open during the war—but only on a limited basis. As a result, Professor Carnahan was not then on a full-time teaching schedule.

As he became acquainted with the Company's organization and familiar with internal, administrative procedures, he assumed the direct responsibility of acting as legal advisor to four of the operating departments of the Company. These departments dealt with the underwriting and issuance of policies and many phases of the administration and servicing of policies already in force. His work involved a consideration of a great variety of legal questions which are incident

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† Cardozo Professor Emeritus of Jurisprudence, Columbia University; Visiting Scholar, University of Virginia Law School.

to the operation of a life insurance company. He had frequent conferences with department heads and other responsible employees. His counsel on legal problems often required extensive research and the preparation of formal opinions. In addition, he worked on special assignments of long range import and prepared studies on problems related to fundamental policies of operation.

In his work with the Company, Professor Carnahan set for himself the high standards of legal scholarship which he applied to his teaching. He was an indefatigable worker—resourceful and imaginative in research—with an ability to reason closely and to present his analyses and conclusions clearly and graphically.

I believe that his association with the Company was a pleasant experience for him. I know that it was of substantial and lasting value to the Company.

FRANK P. ASICHEMEYER†

It was first my privilege to become acquainted with Charles Wendell Carnahan in the spring of 1934 when I visited the University of Louisville preparatory to my assumption of the Deanship of the Law School in the fall of that year. Wendell Carnahan had been chairman of a committee which operated the school in an administrative capacity during the year 1933-34, due to the resignation of Dean Neville Miller, who had been elected Mayor of the City of Louisville.

Wendell had done a splendid job in connection with the operation of the Law School during that period of time. He was then, and later during my two years tenure at the University of Louisville Law School, not only my warm friend but one upon whom I could count for sound and solid advice concerning any problem that arose in connection with the administration of the school.

From the first I was impressed with his dedication to the teaching of law and to scholarly study and writing. I have known very few law teachers who prepared for classroom work in as comprehensive and scholarly manner as did Wendell Carnahan. I had occasion, from time to time, to borrow his classroom teaching notes and materials which he personally hammered out on a typewriter. The extent of his research and annotations in order to present fully the problems that arose from the consideration of a particular case were always a source of amazement to me. It was difficult to understand how he could muster the time to prepare such copious notes.

While he was highly scholarly in his approach to legal problems, his five years of active practice of law at the Chicago Bar always stood him in good stead. He made no particular point about his having

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†Vice-President & General Counsel, General American Life Insurance Company.

such practical experience, but his approach to, and treatment of, legal problems in and outside of the classroom reflected his practical knowledge as well as his scholarly grasp.

In addition to his thorough approach to preparation for the classroom, he continuously engaged in research and writing. His articles in various law reviews and his special work in the Conflict of Laws in Life Insurance Contracts, which he wrote in connection with his graduate study at Columbia University School of Law, are well known to all law teachers.

He also made a great contribution to the field of conflict of laws, first through the publication of cases and materials of his own, and then as co-editor along with Taintor, Brown & Harper in preparing cases and material in this field. He also plowed a good deal of new territory in preparing his book, *The Dentist and The Law*.

It was my privilege to invite him to join the faculty of the Washington University School of Law, St. Louis, 1938, and again to be intimately associated with him as a member of the faculty of that school for the next four years. Though separated professionally after this time, we kept in touch over the next 19 years, and his sudden passing came as a profound shock.

His life was not an easy one and was touched by personal tragedy in the loss of his only child. In later years his own physical condition made it difficult for him to move around with the freedom he had previously enjoyed. Despite these personal problems, he always put on a cheerful front and remained an indefatigable worker.

Certainly the life and work of Wendell Carnahan in legal education was one of dedication and devotion to the profession and exemplified the high standards and ideals that form the hallmark of truly excellent performance.

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JOSEPH A. MCCLAIN†

Professor Carnahan's most significant and lasting contribution to his students was strangely enough not the substantive law which he taught, but his instilling in them an appreciation and understanding of the searching and selective analytical processes applicable to legal reasoning. Years after his students have long forgotten the Rule in Shelley's Case and the importance of the fee tail in the development of modern property law, they are every day applying the Carnahanian method to the legal problems of their respective law practices. No one could reason through the exhaustive hypothetical situations (which he must have spent hours carefully preparing) and come away

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† Former dean, Washington University School of Law; Visiting Professor of Law, Stetson University.

from one of his courses with the idea that the logic of law is simply finding the right slot for the pertinent black-letter rule. He was a master at analyzing the facts and stimulating thoughts that a change in one fact might have called for a different result. Even in his final examinations, he cautioned the student that if it were necessary to assume additional facts to state a reasoned answer, the student should assume these facts and show how they influenced his answer. This is what the practicing lawyer must do in counselling his clients or presenting his cases; in actual practice, however, (as contrasted with the classroom) the lawyer must pursue his assumptions to determine whether or not the facts will substantiate them and thus affect his legal conclusions. But the discipline of Professor Carnahan's classroom was not simply the understanding of the pertinent case or footnote; he seemed to be convinced that anybody could grasp this without his help. Underlying his teaching, as I saw it, was the scholar's questioning "Where do we go from here?" Translated into the problems of one's law practice where no fact situation seems to fit exactly any reported case, his method has demonstrated the importance that our law faculties contain a respectable percentage of full-time scholars, philosophers, questioners, and even dreamers. His testing of principles by carrying them to their logical conclusion, his constant questioning of basic premises, and his ability to teach even by means of hypotheticals wrongly reasoned, have all been valuable training for the later personal encounter of oral argument in private practice. After Professor Carnahan, what fears could Justice Frankfurter's sharp questioning possibly hold?

Although he appeared to be a stern taskmaster, his instruction was tempered by a certain humor which only served to sharpen his carefully framed hypotheticals; to a generation of practicing attorneys the story of Little Red Riding Hood has become the key to a meaningful store of knowledge concerning the "niceties of conveyancing." Professor Carnahan had the rare ability to force each student to push himself beyond his normal abilities; faced with a set of classroom notes containing more half-answered problems and question marks than positive statements, the student was left to reason and think for himself within the guidelines afforded by class discussion. His classes always provoked extracurricular discussion; it seemed to me that he intended that more law should be learned in the corridors than in the classroom. The arguments and discussions over Carnahan hypotheticals would rage from classroom to coffee shop; he certainly did not believe in spoon-feeding, but in establishing an insight through basic premises by which the student could continue to reason for himself and, in fact, teach himself. He was aware and flattered that

his classes were called the "Mystery Hour"; this I learned from him years later while a fellow faculty member.

It is too bad that his shy and modest manner kept his students from getting to know him better and his kindnesses in their behalf. Many attorneys even today are unaware of his favorable word or gentle nudge to a prospective employer which started them on the road to their now successful practices. This is more than offset, however, by the growing number of his former students who realize as each day passes his contribution to their legal foundations. It is nostalgic and humorous to hear those who were once both infuriated and tongue-tied by his "peek-a-boo" methods of instruction credit him for having schooled them to think analytically. I am sure that, if he were here today, he would consider such a collective judgment a fitting end to the saga of Little Red Riding Hood.

STANLEY M. ROSENBLUM†

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† Lecturer in Law, Washington University.