

IN MEMORIAM

DAVID C. KOHLER 1953-2009

David C. Kohler, Professor of Law and Director of the Donald E. Biederman Entertainment and Media Law Institute at Southwestern Law School in Los Angeles died at the age of fifty-six on October 15, 2009, after a prolonged battle with cancer.

A native of Richmond, Virginia, Dave received his B.A. in anthropology (magna cum laude) in 1975 and his law degree in 1978, both from Duke University. He began his legal career as an associate in the Washington, D.C., office of Hogan & Hartson, later returning to Richmond to become a partner at Christian & Barton. In 1991, he became the assistant vice president and deputy general counsel at Turner Broadcasting's Cable News Network (CNN), was named

senior vice president and general counsel for CNN in 1996. He left CNN in June 2000. In 2003, Dave became a professor of law and director of the Biederman Institute at Southwestern Law School. He also served as a guest lecturer at Duke, Emory, Harvard, UCLA, and William & Mary, and as an adjunct professor at Virginia Commonwealth University.

He wrote numerous articles on media, First Amendment, copyright, and entertainment law issues (see www.swlaw.edu/faculty/faculty_listing/facultybio/323217 for a complete list). In 2009, he and co-author Lee Levine wrote the textbook *Media and the Law*.

A tireless worker on behalf of the Forum on Communications

Law, Dave served on the Forum's Governing Committee from 1993 to 1996 and as Western Division co-chair from 2003 to 2006. In 2006, Dave helped launch the *Journal of International Media & Entertainment Law*, published jointly by the ABA and the Biederman Institute, and supervised the publication of the *Journal's* first four editions.

Without question, he was a superb lawyer but a dry recitation of facts does little to capture the essence of Dave Kohler. Toward that end, *Communications Lawyer* asked his friends and colleagues to write the following tributes, in which he is fondly remembered for, among other things, his fascination with *Star Wars*, his ability to secure speakers gratis, and his passion for golf.

CONSUMMATE FRIEND, TRUSTED COLLEAGUE, AND PASSIONATE GOLFER Steven W. Korn

In the fall of 1990, I was sitting in my office at CNN Center when a guy came in to interview for a job as our First Amendment counsel. He was a partner in a Richmond, Virginia, law firm and had flown down to Atlanta that afternoon for a round of interviews in the Turner Broadcasting Legal Department. The guy who showed up was tall and bearded. He wore a bow tie and carried a pocket watch. My initial reaction was that Jefferson Davis had been

resurrected and was masquerading as a lawyer. That was the first time I met Dave Kohler.

It quickly became evident that we had quite a bit in common. While Dave was born in Richmond and practiced law there, both of us were raised on Long Island. As we talked, we discovered that we were the same age (actually he was six months older, a fact I never let him forget), grew up about ten miles apart, and had competed against each other in high school sports. We started talking about all of the guys we knew in common and all of the great athletes of our vintage against whom we had competed. We talked for hours about all manner of things. At

some point, we might have even talked about the law and the job. I don't remember. It didn't seem important at the time; nor does it seem important in retrospect.

We went to dinner that evening. I know that others joined us, but I don't know if they had a chance to actually speak with Dave. After dinner, I drove Dave to his hotel and on the way I made him an offer to join the company. There was no point interviewing others. I knew he was the one we needed.

There was, of course, the technicality of persuading his wife to uproot their family and move to Atlanta, but I had little doubt of the outcome.

While we worked out the details of

his move and to guard against a change of heart, I decided to retain Dave and his firm on a high profile and fast paced case that we had involving telecast of recordings of jail house phone calls between former Panamanian dictator Manuel Antonio Noriega and his lawyer. The idea was to make sure Dave stayed committed to moving to Atlanta by feeding him the catnip of a high profile prior restraint case. My plan worked like a charm.

Dave's first official day on the job was January 16, 1991. I'm certain of the exact date, because it was the first day of the Gulf War. That was the night Bernie Shaw, John Holliman, and Peter Arnett made broadcasting history from a hotel room in Baghdad. Dave and I sat in my office until late that night watching our coverage and talking intermittently with the control room. I knew by the end of the evening that Dave was unalterably intoxicated with his new job. He never had a second thought about whether he made the right career decision after that first day in the office.

We were partners from day one. Our trust in each other's judgment was without reservation. We worked together on matters big and small, exciting and mundane, consequential and trivial. We traveled the world. During the last twenty-six weeks of 1992, we made fourteen trips to Germany together.

I realized quickly that Dave was one of those rare lawyers whose judgment was as good as his knowledge of the law. He loved the news business and believed deeply in the importance and nobility of journalism in our democracy. He was a steady hand in a crisis and the wisest of counselors.

Ours was never merely a business relationship. We were friends. Golf was a consuming passion for both of us, and we rarely missed a chance to play. While we became serious about the sport at the same time, he was a better golfer than I. When I improved, he improved more. When he improved, I never was able to match his progress. Over the years, we played hundreds of rounds of golf together. In all those rounds of golf I never beat him. Not once. His record against me stands unblemished for all time. I kind of like that and I think he would like it as well.

We both left CNN in June 2000 and formed a partnership to buy television

stations. He suggested the name, K2 Media Partners. We raised quite a bit of capital and moved pretty far down the road toward our goal, but for a variety of reasons, mostly having to do with the effect of regulatory changes on our acquisition strategy, we abandoned our effort. The only thing I have to show for our efforts, besides some great memories, is a K2 Media Partners Avis card, which I still use whenever I rent a car.

About five years ago, Dave and I were walking to lunch in downtown Atlanta when he told me that lunch would be his last meal for twenty-four hours because he was having a colonoscopy the next morning. It was routine. He was over fifty and his doctor wanted him to have the procedure because he had never had one. When the results indicated Dave had colon cancer, we were all shocked. He was completely symptom free.

He had surgery and went through chemotherapy. He was in remission, and he was strong and healthy. The cancer returned three-and-a-half years later. One year after that he was gone.

It's hard to write those words. I suppose I'm still in denial. I refuse to take his number off my speed dial. I still expect him to call and say, as he always did, "Just checking in. What's going on?" Dave was my colleague, business partner, and golf partner, but most important, he was my friend and his passing leaves a void that will not be filled.

—Steven W. Korn

Steve Korn is the former Vice Chairman and Chief Operating Officer of CNN. He is currently active in the private equity business and serves on several corporate boards.

DAVE KOHLER'S STAR WARS TREK

Lee Levine

I have been asked to contribute to this collection of tributes from some of Dave Kohler's many friends and professional colleagues. During the last several days, from the first news that he had taken a turn for the worse to the word that he had passed, pretty much all I have done is think about my many cherished moments with Dave.

Picking just one to represent our friendship is not easy, especially when convention calls for a recollection about his contributions to the law. There were, needless to say, many. But my mind refuses to let go of the personal experiences having no relevance to the law at all. So, I'll leave the professional accomplishments to others and tell a tale of the Dave Kohler that I loved and will never forget.

It was May 2005. The greatly anticipated final film in the *Star Wars* series was set to open in theaters across the country. Dave and I were in Oregon, just finishing a memorable three days of golf at Bandon Dunes (in 40 m.p.h. winds and temperatures in the mid-40s) and flying off to Palm Springs (via Salt Lake City if I remember correctly) to speak together on a panel at the Central District of California Judicial Conference. We arrived in Palm Springs late in the afternoon on the day before the conference began, and had just checked into our hotel when Dave suggested that we go see the premiere of the new *Star Wars* movie. I told him that he was crazy and turned on the television, where CNN was filled with stories of people camping out for days at theaters in major cities across the country waiting for Opening Night.

Dave was, however, undeterred. He purchased a newspaper, found the listing for the nearest theater and the time of the next show. We drove over, purchased tickets without difficulty and, to my amazement, were two of exactly seven people in the entire theater. It appears that the Palm Springs demographic skews a tad older than the prototypical *Star Wars* aficionado.

Two days later, following the conference and two rounds of golf in the desert (temperatures hovering around 103 in the shade), we drove to Santa Monica, where Dave was renting an apartment at the time. As we drove, Dave said, "You know what we should do tonight?" He proceeded to propose that we rent the original *Star Wars* movie and see how faithfully it linked up with the so-called "prequel" we had just seen. We stopped at three Blockbusters, all of which not only had no rental copies in stock but were also sold out of the boxed sets of the first three *Star Wars* films that were otherwise available for purchase. Apparently, we were not the only ones who had come up with this idea.

Once again, however, Dave was not to be stopped. He started calling various Barnes & Noble and Borders outlets and kept going until he found one that said it had a single box set left for purchase. We dashed out, bought it, picked up a couple of pizzas at California Pizza Kitchen, and watched the original *Star Wars* intently that evening.

We discovered that, although George Lucas had done a remarkable job synchronizing the details of the first and last of the films, he had slipped on at least one. In the first film, “Darth” was the familiar first name of the evil “Vader”—as in, “Hello Darth, it’s been a long time.” By the final film, “Darth” had become a title—like “General” or “Governor”—for a long line of evil doers on the “Dark Side,” including that one named “Vader.”

I could pretend that I have related this tale because it reflects some of the qualities that made Dave such a great lawyer—tenacity, creativity, attention to detail, etc. That would, however, be bull. To be sure, Dave was a tenacious, creative, and careful lawyer, not to mention a thoughtful, scrupulously honest and principled one. But that’s not why I’m writing about *Star Wars*.

Two weeks before he died, I saw Dave for the last time. We sat in his home in Newport Beach, eating pizza from California Pizza Kitchen and talking about the things we always talked about – our families, our friends and colleagues, the state of the media and, of course, golf. When I drove to the airport the next morning, and again and again over the last few days, I haven’t been able to stop thinking about our *Star Wars* escapade, or about a hundred similar adventures we shared together, from eating sorbet in Wales to watching the Super Bowl in Lanai, from teeing off on the first hole at Bethpage Black to sinking our final putts on the 18th hole at Pebble Beach. I can’t stop thinking that all of those moments with Dave were the best of moments, and that I better savor the memory of them, because there

won’t be anymore. May the force be with you, my friend, I miss you terribly.
—Lee Levine

Lee Levine is a partner in the Washington, D.C., office of Levine Sullivan Koch & Schulz, L.L.P.

DAVE KOHLER AND THE DOCTRINE OF FREE SPEECH

Kelli L. Sager

In an odd way, O.J. Simpson may be responsible for my long-lasting friendship with Dave Kohler. I’d worked with Dave a few times before Nicole Brown Simpson and Ron Goldman were murdered in June 1994. He had already been at CNN roughly three years at that point. But during the media explosion that surrounded the Simpson case, it seemed as though I was talking to Dave at least once a week and sometimes every day. There were a lot of media issues surrounding the case—closed hearings, sealed documents, camera access battles—and CNN was a major player in the media consortium I represented. But there also were many behind-the-scenes conversations about things that were unique to CNN’s investigative work and coverage. It was a very intense time, but Dave always managed to inject some levity into the circumstances.

One example of his sense of humor came at the end of a conversation about a Simpson-related legal issue, when he paused and said he had another subject he needed to raise with me. In a serious voice, he said, “Listen, Kelli, I have to ask—do you believe in free speech?”

“Of course I do!” I responded, surprised at the question and his grave tone.

“Great!,” Dave exclaimed, all seriousness gone. “I’ve told the State Bar that you’ll come give one in Atlanta next month!” What could I say? I was caught—and Dave’s joke became the opening line for my gratis speech to the

Georgia State Bar.

Dave’s sense of humor was one of his most notable qualities. The national media bar includes a lot of intelligent, knowledgeable lawyers, and Dave was certainly among them. But Dave’s enthusiasm and fun-loving nature set him apart. Whether he was setting up his media lawyer colleagues to be the victims of a hidden recording device at a cocktail reception—thus bringing home to all of us what it feels like to be surreptitiously recorded—or entertaining his friends with a self-deprecating anecdote about a golf outing, it was clear that he was thoroughly enjoying himself.

A few days ago, in looking through some old email exchanges I’d had with Dave, I came across the following note:

Personally, I will miss his infectious enthusiasm for everything he did in life. Whether it was rousting us out of bed to catch the first lift up the mountain (which of course didn’t mean we could quit skiing early), ... or savoring a good meal and a great bottle of wine, [he] threw himself into everything he did. And for those of us lucky enough to have been pulled along in his wake, ... our lives are the richer for it.

Dave wrote those words almost exactly a year ago in a remembrance of Cam DeVore. If you substitute golf for skiing, the words are just as appropriately used to describe Dave. He brought enthusiasm and passion to every aspect of his life, whether it was as a First Amendment advocate, a dedicated professor, a proud father, or an avid golfer.

Both Dave and Cam had such engaging vitality that they will always live in our memories. I like to think that they are sitting together now, laughing at each other’s jokes and sharing a good bottle of wine.

—Kelli L. Sager

Kelli L. Sager is a partner in the Los Angeles office of Wright Davis Tremaine LLP and chair of the firm’s media practice.