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Remarks for Allan Farnsworth Memorial

Carol Sanger
Columbia Law School, csanger@law.columbia.edu

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REMARKS FOR ALLAN FARNSWORTH MEMORIAL

*Carol Sanger**

I first met Allan Farnsworth in 1972. I was a first year law student at the University of Michigan and we were introduced by my own Contracts professor, a young blond fellow who had just joined the faculty named Lee Bollinger. The meeting between Allan and me is what would now be called “virtual”—I bought *Contracts: Cases and Materials*, 2d edition.¹ Still, the introduction turned into an intense commitment. For an entire year Farnsworth was my constant companion. I stayed up late at night with Farnsworth and come April, Farnsworth never left my side. I had never seen the man but I was caught up entirely with the charms and challenges of the book and of the subject his name has come to represent.

Since 1972, it is fair to say that both Professor Bollinger and I have made something of ourselves. Lee is now the President of Columbia University and I am the Barbara Aronstein Black Professor at Columbia Law School. Allan’s trajectory was different: He was great back then and great he remained.

It is, of course, difficult as a first-year student to take the exact measure of those who stand before you or whose names shine from the spines of casebooks: *Everyone* seems important. Again Allan is different. When Allan’s death was announced on the Contracts Professors listserv, the on-line spot where the contracts-obsessed go to argue with one another, many tributes were posted and each explained aspects of his greatness. Many spoke about his intellectual contributions to the field. Allan’s place in Contracts Law is undisputed. A tribute from Joe Perillo at Fordham Law School puts it clearly: “Every generation seems to produce a leader in our field of contract law. There was Samuel Williston, then Arthur Corbin, and in our time, Allan Farnsworth.” And as Mark Gergen of the University of Texas Law School wrote, “Allan truly was the premiere figure in American Contracts law scholarship since the passing of Corbin and Dawson. The treatise and his half of the Second Restatement would be quite a contribution if there was nothing else.” (As some of us would say, “Dayenu.”) But, continued Gergen, “there were also the articles and books, some of which remain among the freshest insights on a topic. He never stopped reimagining the field.”

Allan is one of the few among us whose name stands for the field. When judges and lawyers start sentences and answer questions with the phrase “Farnsworth says . . .” the matter is settled and the Contracts gods relax in their heavens.

* Barbara Aronstein Black Professor, Columbia Law School.

1. E. Allan Farnsworth & William F. Young, *Contracts: Cases and Materials* (2d ed. 1972)

But many Contracts professors also wanted to speak about Allan at a deeply personal level. By his carriage, his voice, his elegance, Allan conveyed not only his enormous authority but his characteristic graciousness. He was, in the words of several law professors, “the epitome of the gentleman-scholar.” In addition to his being—and looking like—a gentleman many discussed Allan’s generosity. Allan “sent me comments even though we had never met”; he “promptly returned my emails”; “he made me feel welcome although at the time I was a lowly associate”; and finally, “unlike other distinguished scholars, Allan went out of his way to seek out and showcase talent in a wholly unselfish way.” There were many tributes along these lines.

One of the nicest images of Allan came from Charles Knapp at U.C. Hastings Law School. Chuck wrote: “Many of you have alluded to Allan’s elegance and sophistication. As a small town kid from Ohio, I was always somewhat dazzled by that. He once was kind enough to praise some writing of mine as being, among other things, urbane. I treasured that comment. It always seemed to me that was a little like hearing Fred Astaire say to you, ‘You know, kid, you dance pretty well.’” I understand this exactly, having turned in many paragraphs to Allan for review after he and Bill Young, the other half of the Farnsworth I kept by my side back in Ann Arbor, invited me to join their famous casebook in 1999.

I was awed by this invitation and working with Allan and Bill has been a tremendous honor, a huge addition to my education, and a daunting assignment. I will not go into much detail about the various corrections I received from Allan regarding my prose style. Suffice it to say that his desire for—insistence on—clarity was the only standard he knew how to set and both the casebook—and its third author—are the better for it. And the pleasures of the scribbled “this is good” were lovely.

I became the third author in part because of real estate. When I first arrived at Columbia, I was assigned the office next to Allan’s. We would greet one another formally in traditional visitor-to-icon manner, though I later came to understand that Allan was comfortable and could make others feel comfortable in his formality. I was then using the 5th edition of the casebook, supplementing it with handouts of my own which students picked up from a box outside my office. One morning I opened my door to find Allan sifting through the handouts. This led to discussions about why I had added a particular case or article, what I omitted from the casebook materials, and how I tailored the text to fit the miserly four credit course that Contracts had become (a reduction which Allan never quite forgave). During these conversations, I started calling Allan by his first name, and remembering how to spell it. And while I remained in awe of him and everything he knew—there is still a little 1L in all of us—it was terrific to move from consumer to colleague and collaborator.

What I learned from working on the casebook is that Allan cared not just about prose style (*and* corny note headings) but about structure and form. He loved the subject of Contracts at many levels, starting with his

mastery of every development in the field—Allan trailed advance sheets wherever he went. But it also included the satisfactions of figuring out how to teach the subject. The casebook certainly provides students with the vocabulary and concepts of Contracts. But Allan sought other goals as well. He wanted to offer up the history, the tensions, and the progress of doctrine, to pay attention to the rest of the world, to use cases with “meat on their bones.” He knew that old chestnuts sometimes have to die and he always wanted to keep the book under 1000 pages. I may have learned the subject thoroughly as a student, but only when I joined the casebook did I begin to learn it inside out. I also learned how to order caviar at Petrossian at the occasional special lunches that Allan, Bill, and I thought were good for our morale.

In the last year I had the great pleasure of reading Allan’s last book, published by Oxford in 2004, on the law of mistake. Allan had wanted to call this book “Oops!” but the press was a bit stodgy and so it is called *Alleviating Mistake: Reversal and Forgiveness for Flawed Perceptions*.² I was surprised when Allan first told me he was writing a book on mistake: It is a concept few people associate with Allan. Allan was a man who did and looked and got things *right*. Allan got this book right too, starting with his clever and ironic use of Munch’s *The Scream* on the cover. The image, commonly associated with panic and horror—things cannot get worse than *this*—welcomes us into Allan’s contemplation of behavior that is, after all, only mistaken.

The book begins with a typology of mistakes in a section assuringly titled, “Winnowing Our Myriad Mishaps.”³ Allan observes that some mistakes might properly be considered “happy”—the discovery of America and champagne resulted from mistaken beliefs by both Columbus and Dom Perignon.⁴ But only *some* mistaken beliefs will qualify as mistakes—those with serious untoward consequences for the mistaken person—and only some of these will deserve relief. These are the “alleviating mistakes” with which Allan is concerned. In addition to presenting the great familiar cases on mistake, he also engages throughout with the role of psychology and economics in its production; its treatment in tort and criminal law; and the vexing problem of *proving* a misperception.⁵ For Allan was interested in the phenomenon of mistakes or misperceptions in broad and deeply humanistic ways. Thus *Oops!*, as I like to think of it, is filled not just with cases on mistake but with examples from opera, philosophy, and literature, each enriching the legal concept under examination. Faust provides the opening motto: “Man errs ‘till his strife is over”; more cheerfully, Rip Van Winkle illustrates the topic of the relation between

2. E. Allan Farnsworth, *Alleviating Mistake: Reversal and Forgiveness for Flawed Perceptions* (2004).

3. *Id.*

4. Farnsworth, *Alleviating Mistake*, *supra* note 2, at 9. Ever the careful scholar, Allan notes that the Dom Perignon “story” may have been just that.

5. *Id.* at 75–84.

ignorance and mistake.⁶ *Alleviating Mistake* is a wonderful book that goes far beyond doctrine in trying to understand the law's relationship not only to error but to forgiveness."

My remarks would not be complete without some mention of Allan's slide show, or what he sometimes called "The Show and Tell." This was a wonderful, engaging slide presentation that Allan had assembled of artifacts and trinkets from famous contracts cases, photos of famous judges, and with a particular emphasis on the important role of Columbia in the development of American Contract law, including a small footnote on Soia Mentschikoff's assessment of her future husband's teaching skills. Allan presented the slide show to his students yearly and to the Contracts professoriate at a large mid-year AALS Contracts meeting a few years ago. Many among us may not have appreciated just how to wear a carbolic smokeball,⁷ or what Poussain had to do with Contract law.⁸ All was revealed by the slide show.

I close with a comment from one last e-mail I received. Many of these tributes express the grand sentiments which are so easily Allan's due. He was indeed a giant in his field and the times *are* a-changing. We are unlikely to see his likes again: his command, his courtliness, his character. But Allan was also playful and so it is on that note I end. One of Allan's former research assistants, Peggy Cross, wrote: "I was lucky to get to work with such a legend. He has joined some of Columbia's other contracts legends now. And I am sure *they* are enjoying the Show and Tell."

6. Es irrt der Mensch, solang' er strebt. Id. at Prologue to Part I.

7. Referring to *Carlill v. Carbolic Smokeball Co.*, [1893] 1 Q.B. 256 (C.A. 1892).

8. See id. at 30 (describing the seller's entitlement to return of painting due to mistake).