Allan Farnsworth, Ali Reporter

Lance Liebman
Columbia Law School, lliebman@law.columbia.edu

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ALLAN FARNSWORTH, ALI REPORTER

Lance Liebman*

For my five years as Dean of Columbia Law School, I only occasion-
ally worked with Professor Farnsworth. He was not a faculty member who
needed the Dean's help or wanted the Dean's attention. But once he
came to my office, a mischievous twinkle in his eye, to share the news that
on that day, the recorded number of citations to Farnsworth on Contracts
had moved into first place among all legal publications, displacing
Williston.

When I acquired in 1998 a new employer, the American Law Insti-
tute (ALI), Allan became more interested in me. He scheduled lunch
and presented the arguments why there was no need for a Restatement
(Third) of Contracts. I hastened to respond that no expert with whom I
had spoken thought there was such a need. All agreed that the Restate-
ment Second, the work first of my own teacher Robert Braucher1 and
then, for ten years, of E. Allan Farnsworth, needed little modernization.

My new job placed me in regular contact with Allan. I frequently
received suggestions for ALI work about which Allan was the perfect con-
sultant. He was almost always right about the law, about opportunities for
law reform, and about available talent. Until his death he participated
passionately in Andrew Kull's work on Restitution.2 He helped us initiate
the work on Software Licensing that is now beginning with Robert Hill-
man and Maureen O'Rourke as Reporters. And he gave me amused but
helpful advice on the many issues that have recently arisen concerning
amendments to the Uniform Commercial Code and the strain those is-
ues have placed on the long-standing relationship between the ALI and
the Conference of Commissioners on Uniform State Laws.

Of course Allan's great work for the ALI and for world law was the
Restatement (Second) of Contracts, a product of his knowledge, wisdom,
judgment, and patience. He was a great teacher as he guided the ALI's
Advisers, Council, and membership through this magisterial accomplish-
ment. No ALI work comes closer to the goals of the Institute's founders,

* William S. Beinecke Professor, Columbia Law School; Director, American Law
Institute.

1. Bob Braucher stepped down as Reporter when he was appointed to the Supreme
Judicial Court of Massachusetts in 1971.

2. Restatement (Third) of Restitution and Unjust Enrichment (Proposed Draft No. 6
2004). If Restitution was mentioned during my law school days or my first twenty-five years
as a professor, I don't remember it. Now, thanks to Allan Farnsworth, William Young, and
of course the ALI's Reporter Andrew Kull, I know Restitution is substantive law, not (only)
a remedy, and that it supplies judge-made solutions to important social puzzles that cannot
be resolved through tort or contract.
who sought in 1923 "to promote the clarification and simplification of
the law and its better adaptation to social needs." 3

Allan Farnsworth was the great contemporary American scholar, and
one of a handful of great world scholars, of the law of agreement. Profe-
sor Austin Scott once told me that to be great, a law professor must ac-
complish a casebook, a treatise, and a Restatement. 4 Allan knew every
case, every law review article, every new trend in theoretical scholarship,
and every argument that contemporary values require reconsideration
of traditional doctrine. He knew the law of every common law jurisdict-
ion and of many civil law countries. His work as an arbitrator kept him aware
of—and made him a contributor to—global developments in commercial
law. He was the leading American participant in UNIDROIT, a vital or-
organization working to improve private law worldwide. Columbia students
flocked to his courses. 5

For this tribute, I looked closely at one of Allan's final publications,
an endowed lecture with a characteristically humorous title: Oops! The
Waxing of Alleviating Mistakes. 6 In this paper, Allan declares that
"[a]lleviating mistakes differ from other mistakes in that only a poten-
tially alleviating mistake poses the question: When should one's own mis-
take entitle one to relief from its untoward consequences?" 7 I was re-
cently party to an alleviating mistake. Michael Greenwald, my ALI
colleague, bought online four tickets to a Broadway show. When we got
to the theater for a Saturday matinee, we learned that our tickets had
been for the performance seven days earlier. The show we thought we
were entitled to see was sold out, but the theater waited until they could
identify no-show seats and gave those seats to us. I wish I could discuss
with Allan whether we were legally entitled to that alleviation.

Legal knowledge and brilliance speak from every paragraph and
from many of the footnotes in Oops!. Famous and obscure English and
American cases are examined, allowing an appearance on stage by Rose
of Aberlone. A large serious point is stated, explained, and proved with a
light touch. Allan quotes Nietsche, Shakespeare, Johnny Carson, Dryden,
Bill Clinton, Ollie North, George Eliot, and the Marquis de Laplace. (He
also quotes, over and over, Farnsworth on Contracts and the Restatement

www.ali.org/ali/AR99_Certificate.htm (last visited Apr. 6, 2005) (on file with the Columbia
Law Review).

4. Mr. Scott's point was that his dear friend Warren Seavey had only done a casebook
and a Restatement (actually two Restatements). Even Scott, a tough grader, would have
had to give an A+ to Farnsworth.

5. Here is one recent student evaluation: "Professor Farnsworth just loves teaching
and it shows in his unflagging enthusiasm for the material in every class. His mastery of
the subject is obviously unmatched, his ability to present it with clarity is remarkable, and
the interest he shows in being with a small group of 1L students for almost four hours a
week is both generous and highly memorable."


7. Id. at 167.
(Second) of Contracts.) The work is grounded in the author's religious faith that judge-made law evolves with social circumstances and community values and that legal scholars can play a positive role through study, analysis, and recommendation. Allan believed in his work and practiced it from his first day as a Columbia law student to his death as a Columbia Professor.

In the English tradition, no scholar was an Authority until he dies.8 Allan Farnsworth was an Authority, and perhaps The Authority, on the law of contracts and much more. Legal Realism, Critical Legal Studies, Law and Economics, other “Law and” movements, the increased importance of statutes and administrative agencies, and a dozen other changes—on balance necessary and positive—have altered the law and the law schools. Given these evolutions, we will not soon see the next Farnsworth, making his untimely death an even greater loss.

8. See Sir Robert Megarry, who cited: “Professor X, who is happily not an Authority . . . .” The Times of London reporter, understandably, got it wrong: “Professor X, who is unhappily not an Authority . . . .”