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## Allan Farnsworth, Ali Reporter

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## ALLAN FARNSWORTH, ALI REPORTER

*Lance Liebman\**

For my five years as Dean of Columbia Law School, I only occasionally 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 Institute (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 Restatement Second, the work first of my own teacher Robert Braucher<sup>1</sup> 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 consultant. 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.<sup>2</sup> He helped us initiate the work on Software Licensing that is now beginning with Robert Hillman 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 issues 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 accomplishment. No ALI work comes closer to the goals of the Institute's founders,

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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.”<sup>3</sup>

Allan Farnsworth was the great contemporary American scholar, and one of a handful of great world scholars, of the law of agreement. Professor Austin Scott once told me that to be great, a law professor must accomplish a casebook, a treatise, and a Restatement.<sup>4</sup> 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 jurisdiction 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 organization working to improve private law worldwide. Columbia students flocked to his courses.<sup>5</sup>

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*.<sup>6</sup> In this paper, Allan declares that “[a]lleviating mistakes differ from other mistakes in that only a potentially alleviating mistake poses the question: When should one’s own mistake entitle one to relief from its untoward consequences?”<sup>7</sup> I was recently 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 Nietzsche, 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

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3. American Law Institute, Certificate of Incorporation (1923), available at [http://www.ali.org/ali/AR99\\_Certificate.htm](http://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 unflinching 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.”

6. 30 Ohio N.U. L. Rev. 167 (2004).

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.<sup>8</sup> 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.

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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 . . ."