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## Gedenkschrift in Honor of E. Allan Farnsworth (1928-2005)

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**FOREWORD**

**GEDENKSCHRIFT IN HONOR OF  
E. ALLAN FARNSWORTH (1928 – 2005)**

**Karen Einsidler\***

My goal for this introduction is to both celebrate Professor E. Allan Farnsworth's contributions to the world of contract law and the legal community as a whole, as well as provide the reader with some insight into the man behind the accomplishments that maybe only a daughter can give.

My father's memorial service at Columbia University looked at the different legal communities that he impacted over the years, including the academic community, the international legal community and the private sector. I believed this approach worked then and I will follow such an approach again in this introduction.

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\* The author graduated from Columbia Law School in 1981. Her father was always proud of her family and swimming accomplishments. She is the mother of triplets and, at one time, held the American record for fastest person to swim around Manhattan Island. The first time she swam around Manhattan, her father was in her boat and a picture which included the two of them made the cover of the Law School newsletter. She swam the English Channel in 1987. She currently serves as Vice President, Investment and Real Estate Counsel of The Guardian Life Insurance Company of America.

Since my father's career really started as a Columbia School of Law student, I will begin with two stories about him as a student that have been told to me over the years. My father had completed his master's degree in physics at Yale in 1949 after receiving his bachelor's degree in math from the University of Michigan. He decided not to pursue his Ph.D. in physics because he wanted to work with people and not spend so much of his time in a laboratory. He followed his father's advice and decided to pursue law school. I once asked him why he chose Columbia out of all the Ivy League schools. He explained that he also had gotten into Harvard and Yale, but chose Columbia because it was the only school that had midterm exams. He was not sure whether he would do well in law school and, at least at Columbia, he would not have to wait an entire year to find out. He supposedly did not unpack his bags until he received his midterm grades, at which point he realized that he was good enough to stay. He also is one of the only students, if not the only student, to get an A++ in a course. The professor's rationale was: what else could you give to a student who not only answered the questions, but also made the professor think? Not surprisingly, he graduated as a Kent Scholar and won the Ordonaux Prize for scholastic excellence.

My intention is not to make light of my father's choice of Columbia, as he clearly fell in love with the school; he taught there for 50 years. He chose teaching after serving in the Air Force as a captain in the JAG Corps. A great story my mother likes to tell is about the first case he tried as a Judge Advocate. My father had bookmarked all of his references in his materials and, while he and his colleagues were out to lunch, his adversary decided to remove all of them. Well the joke was on my father's opponent since my father's memory and talent for synthesizing material prevailed that day and he still managed to win the case. He worked briefly at a law firm, but realized at a young age that he wanted control of his career and decided he could do that more readily in an academic environment. In 1954, at the age of 26, he joined the faculty at Columbia School of Law. As is the case for most first year law professors, he taught courses covering several different disciplines including admiralty, legal aspects of foreign trade, and contracts. The latter soon became his passion. He was fortunate to be taken

under the wing of Professor Edwin Patterson at Columbia, an expert in the field of contracts.

It was clear early on in his career that he would survive the “publish or perish” dilemma that faces all those who choose academia. During his first ten years as a law professor, he published three casebooks: *Negotiable Instruments* in 1959, *Contracts* (with Professor Patterson) in 1965, and *Commercial Law* that same year. In 1970, he was named the Alfred McCormack Professor of Law, a chair he held his entire career.

My father’s work on the *Restatement (Second) of Contracts* is one of his legacies to the world of practicing lawyers. It spanned a nine-year period and covered such topics as Conditions, Performance and Nonperformance, Impracticability and Frustration of Purpose, Mistake (the central focus of a book he would write later in his career), Fraud and Misrepresentation, Duress and Undue Influence, Contracts against Public Policy, Discharge of Obligations, and Remedies. As Professor Jean Braucher pointed out at my father’s memorial service, it is nearly a quarter of a century since the publication of the *Restatement (Second) of Contracts* and it still “works well as a vehicle for thinking through knotty problems.”

Lance Liebman, who was the Dean of Columbia Law School for five years, enjoys telling the story about when my father came to his office to share some important news: *Farnsworth on Contracts* had finally displaced Williston as being the most often cited.

To be sure to capture the essence of the man, it is important to examine his writings and lectures that go beyond the case books and the treatise. One of his early books, written in 1963, was in part the brainchild of lectures he gave in Istanbul, Turkey. The book, entitled *Introduction to the Legal System of the United States*, has been translated into many languages, including Portuguese and Arabic. He has two other books as well, one called *Changing Your Mind* and his last book titled *Alleviating Mistakes: Reversal and Forgiveness For Flawed Perceptions*, which he was able to see in final form before he died. The painting on the cover of his last book, *The Scream* by Edvard Monk, is indicative of the breadth of his appreciation and knowledge of the world outside of law. He loved all things beautiful, which for him included the arts. His knowledge of the arts and litera-

ture as well as world events always amazed me. The scope of his knowledge came through loudly and clearly in the last book he wrote and in his famous lecture on the same topic entitled *Oops!*, in which he quoted Nietzsche, Shakespeare, Johnny Carson, Bill Clinton, Ollie North, and George Eliot.

My father loved teaching. He looked forward to each year and to the crop of new law students. Having been in his class, I can tell you first hand that he had a style that was meant to both educate and entertain. It was common knowledge that if the case being covered in class was decided by a court in the state where you either grew up or went to college, you had better be prepared, since there was a high probability you would get called on. As the makeup of the student body changed, the conversation at the dinner table frequently centered on whether or not his teaching style was politically correct. He was concerned about the impact he had on his students long before it became the standard in the educational world.

His talents as a teacher and lecturer resulted in his receiving numerous honors and honorary degrees from places such as the University of Paris, University of Louvain and Dickinson School of Law.

My father did not only have an impact on the academic community in the United States. His insights and work had an impact on the international academic community as well.

My childhood is somewhat of a geographic blur: this I owe in part to my father's interests and his early career, which quickly extended beyond Columbia University and the United States borders. In the United States, he was a visiting law professor at the University of Chicago, Harvard, and Stetson. He was always somewhat of a Francophile as he was a lover of all things beautiful, which included French culture, art, and cuisine. I sometimes wondered if he started teaching courses in international commercial transactions just so that he could see the world. As early as 1960, he was invited to teach at the University of Istanbul. He was a visiting professor and guest lecturer in many countries all over the world, including France, Germany, China, Italy, Japan, Turkey, Belgium, the Netherlands, Australia, Singapore, Poland, the former Soviet Union, Hungary, Romania, Austria, Senegal, Rwanda, Canada, Mexico, Argentina, and Brazil.

It was not only my father's teaching prowess that allowed him to travel to exotic places while he claimed to be working. His talents as an expert witness, as well as his work with the United Nations, also resulted in frequent trips overseas. Unlike those lawyers in private practice who are ruled by the wishes of their clients, my father had the luxury of choosing to work only on those cases that interested him or with those law firms that he enjoyed working with. The cases he worked on ranged from those involving Fortune 500 multi-national corporations, to a pop-star who had failed to perform, to an NHL player who decided to sit out a season, to Iranian frozen assets, and even to 9/11 (the issue there being how many events occurred, which was of particular interest to me since I work for an insurance company). Never one to miss a good opportunity, at the conclusion of a consulting job in Rome, he came home with an Alfa Romeo Spider.

I alluded earlier to my father's work with the United Nations. Between 1966 and 1972, he served as the American member of an international committee drafting a uniform law on the validity of international sales contracts. From 1970 to 1980, he was the United States representative to the United Nations Commission on International Trade Law. He represented the United States at diplomatic conferences on international agency and international sales. For two decades, until 1998, he was a member of the governing council of the International Institute for the Unification of Private Law and was a member of the working group on UNIDROIT Principles of International Commercial Contracts. UNIDROIT is based in Rome and is an independent intergovernmental organization whose purpose is to study the needs and methods of harmonizing commercial law between states.

One of the speakers at my father's memorial was Rayner M. Hamilton, a retired partner from the law firm of White & Case, who had retained my father as an expert witness on several occasions. His description of my father as an expert witness captures the essence of the man so well. At the memorial, Mr. Hamilton described the three elements needed in an expert witness. First was "substantive expertise." Second was "innate intelligence: a very quick mind, the ability to respond instantly and effectively." Third was "theatrical flair: the ability to 'per-

form,' a sense of timing." My father had all of these qualities, which made him not only a great expert witness but also a much sought after professor and lecturer. He loved the arts and quite often in a public arena my father was the consummate performer.

The first quality that Rayner M. Hamilton described as being important was that of "substantive expertise." My father attained credibility in the field of contracts not only because of his writings but also due in large part to his work as the Reporter for the Restatement since he was appointed to that position in 1971. Several of Professor Jean Braucher's remarks at my father's memorial describing his approach to the Restatement rang true as to how he approached much of what he worked on. She talked about the "elegance of this Restatement," his "painstaking attention to detail," and how he "appeared with grace on the dais eight years in a row." Having seen him in action over the years, whether it was relative to writing a book, teaching a class, lecturing, or hosting an event, Mr. Hamilton and Ms. Braucher captured some of the essence of my father with their remarks.

The second quality was "innate intelligence: a very quick mind, the ability to respond instantly and effectively." In this regard, Mr. Hamilton gave my father one of the highest compliments. Mr. Hamilton described a speech he gave at Ernst & Young regarding expert witnesses. He apparently told several anecdotes during his speech about my father's abilities as an expert witness, leading the audience to ask what he would do on cross-examination if my father were the expert witness for the opposition. He explained that regardless of the state of the record at the end of my father's testimony, Mr. Hamilton would respond with no further questions. Mr. Hamilton believed that my father was the best expert witness he had ever seen in his long and distinguished career. He was subtle and devastating, his innate intelligence was so far superior to anyone else in the courtroom that to think you could win on cross-examination would be foolish. At the same time, my father never appeared superior or obnoxious.

The third quality was a "theatrical flair." If you ever had the good fortune of being in one of my father's classes, in attendance at one of his lectures, or seeing him perform as an expert

witness, you would have seen first hand the “theatrical flair” of which Mr. Hamilton spoke. I had the honor of introducing my father when he received the Law School’s Medal of Excellence in 2004 from the Columbia Law School alumni. His speech included an inventory of past and present muses; the most memorable muse was his last, the Energizer Bunny. My father, ever the entertainer, produced a larger than life sized version of the pink rabbit with drum at the podium, much to everyone’s amusement.

In addition to his legal accomplishments, my father was a fellow of the British Academy and a member of the American Philosophical Society, which was a rare honor. One of my father’s colleagues described my father best when being interviewed for an article in a local magazine, using only two words: “Renaissance Man.”

In closing, I want to express how fortunate I feel for having had this man as my father. He has influenced much of my life in a very positive way; after all, I am a lawyer. In between all of his accomplishments, he still had time for his family. It seems like yesterday that he was showing me the sites of Europe or walking up and down the side of the pool during my swimming meets cheering me on. All of the speakers at my father’s memorial acknowledged that they and the legal community would miss him. He is certainly missed by his family as well.