

SAMUEL WILLISTON

Arthur L. Corbin *

SAMUEL Williston was to me like an older brother, and, although for some years no word has come to me from him, his death leaves me saddened and bereft. This will be a personal tribute from a full heart. Never actually in his classroom, except once as a visitor at his opening lecture in October, fifty-five years ago, he was nevertheless my chief teacher in the law of Contracts. As a beginning instructor in that subject at Yale, sixty years ago, it was to his articles and his edition of Pollock that I had to go for instruction. When, in 1906, he published his casebook in two volumes, I adopted it at once as the subject of class discussion, four times a week through the year. It so remained until my own casebook was published thirteen years later.

As time went on, without our ever meeting personally, differences arose, in both theory and expression. When the first volume of his great work on Contracts was published, it was reviewed by me in the *Yale Law Journal*, in the course of which I wrote that I would risk the making of several criticisms, adding: "Only the best deserves so much, and there is no doubt that *Williston on Contracts* will be the best." No criticism of mine ever gave offense; and when in 1923 he was made Reporter for the American Law Institute, he chose me as his chief critic and adviser, and later on as his Co-Reporter. For ten years, from 1923 to 1932, we worked together over every Section of the *Restatement of the Law of Contracts*. His Committee had at least four yearly conferences, one week in the summer at Northeast Harbor, Maine, near the home of the Director, William Draper Lewis, another week near Pinehurst, North Carolina, during the Christmas vacation, with intervening meetings of three or four days each.

During conferences all day long, with three meals together daily, the Committee became close and understanding friends. With appreciation, a fine sense of humor, and never-failing charm, Williston was an ideal leader and companion. Defending his own position with vigor and success, he always welcomed critical suggestions and yearned for alternative drafts. A draftsman is al-

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ways the defender, with each adviser choosing his own point of attack. One who suddenly changes his position from adviser to Reporter is in for a distinct shock. On rare occasions, he was difficult to move. Once, after having defended his position through three conferences and at last yielding at the fourth, he turned to Director Lewis and said: "Does not this destroy my usefulness as a Reporter? Having written the contrary for years, they will always be quoting Philip drunk against Philip sober." He was half serious in this; but the others had suffered so many defeats themselves that they could merely smile with affectionate derision. Another time he refused to yield, saying: "A man has a right to be a mule once in a while."

On one topic, Williston had had a controversy with Walter Cook, publishing two articles each. Walter could seldom criticize without giving some offense. On that topic, Williston said to me that he wished to reduce those past differences to a minimum, and that he thought the best way to do that was to have me write the first draft. He promised to accept my draft as fully as his mind would let him. Having improved my draft in various ways, the result was that almost no differences remained. He felt some surprise when I told him that the man who proposed his name for the degree of LL.D. in the Yale Law Faculty was Walter Cook, who had said: "Let's give the degree once on the ground of scholarship."

Williston was by nature reserved and not inclined to be confidential; but before long we achieved a first-name basis; to me he has long been "Sam." Once he told me that his own name by inheritance would be "Richards." His grandfather Richards, a noted missionary and adviser to the king of Hawaii, sent a son to be educated in Massachusetts. The son lived with and was finally adopted by a family named Williston, for whom Williston Academy was named. In order to spike some incorrect publicity, he published an interesting little biography of his grandfather.

As the years went on, he became well aware that his treatise on Contracts needed revision to express the results of judicial evolution and of the work of the Institute. But he told me that because of years he would never undertake the labor himself. He turned the work over to George Thompson of Cornell, one of his advisers and a competent man. Much later, he said regretfully that he would have to take a hand, because George was working on such an extensive scale that he might go bankrupt. He had no criticism of the work done; but he hastened the completion. Also, he made such arrangements that George was assured of a financial return.

The *Restatement* made for the Institute is now itself, after 30 more years, in process of revision. Though founded on the first *Restatement*, and by no means wholly inconsistent with it in substance, it will show many differences, sometimes in substance, and throughout in forms of expression. Life marches on, with new conditions and interests, causing constant judicial development. Other times, other mores; other mores, other laws.

After 1932, our contacts were less frequent, although I had many meals with him and his sister Emily in the home in which his father had once conducted a private school. They visited me in Maine. Finally, he wrote with a trembling hand that he was bedridden and could invite me no more. Once he had attended a *Yale Law Journal* dinner given for me in New Haven, there describing himself as an alumnus of Yale. Although always cheerful, with ready quips and quotations, he was not pleased with what he foresaw in the future. It was not his wish to live so long.

Probably no legal scholar has been a more successful teacher of law or has been held in higher affection and esteem by the Bench and Bar of the United States. To me, he was above all an affectionate and lovable elder brother.