THE RICHARDSON ESCUELA: LAW AS POLITICS

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I. INTRODUCTION

International law—as a theory and practice—has been a discipline of the Empire. In fact, early European scholars of international law argued that the discipline was providential and gave Europeans the right to colonize "lesser" peoples as a matter of right.² The origins, sources, and philosophy of international law do not make a secret of its European heritage.³ It is, therefore, a matter of no little irony that one of the preeminent international legal scholars of our time— Henry J. Richardson—is himself a part of the African Diaspora in America. He is of that African Diaspora that was a direct consequence of the transatlantic slave trade of Africans. It is an irony because he mastered the language of the empire, but only in subterfuge. He did it at a time when it was uncommon for a Black man to walk the corridors of an American law school as a professor. Nor were there many Black students when he entered the law school classroom. However, it was from those beginnings that he rose to become one of the most iconic international legal scholars of our age. His memoirs—and I hope he gets to write them—will tell a story of grit, disappointment, and triumph. In these few pages, I only hope to capture a slice of the "escuela"—the school of thought—that Hank Richardson has constructed. Known among his confidantes as the Dean of International Law, Hank personifies the superior African brain.

Hank comes from an African-American tradition steeped in the history of the struggle. He grew up in an era of great civil and political ferment—much of it

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^{1.} See Antony Anghie, Francisco de Vitoria and the Colonial Origins of International Law, 5 Soc. & Legal Stud. 321 (1996) (exploring the relationship between colonialism and international law, cultural difference, and sovereignty doctrine).

^{2.} See JOHN NORTON POMEROY, LECTURES ON INTERNATIONAL LAW IN TIME OF PEACE 96–97 (Theodore Salisbury Woolsey ed., 1886) ("[T]he discovered territory must be . . . inhabited . . . only by persons who are not recognized as belonging to the great family of states to whom the international law applies,—in other words, by savage, barbarous tribes.").

^{3.} See 3 SIBA N'ZATIOULA GROVOGUI, SOVEREIGNS, QUASI SOVEREIGNS, AND AFRICANS: RACE AND SELF-DETERMINATION IN INTERNATIONAL LAW (David Campbell & Michael J. Shapiro eds., 1996) (arguing that international law has failed to adequately address the issues surrounding African self-determination); see Surya Prakash Sinha, Legal Polycentricity and International Law (1996) (arguing that the proper role of international law is to ensure that in culture-specific matters, such as human rights, the state adheres to the normative ideals of the civilization to which it belongs); see James Thuo Gathii, International Law and Eurocentricity, 9 Eur. J. Int'l L. 184, 184–211 (1998) (exploring anti-colonial international law scholarship).

driven by narratives of race in America—when politics was front and center at the kitchen table. It is not too much to claim that Hank's home was a political classroom. His early education at Antioch and later at Yale Law School gave intellectual panache to a life committed to change. He has been thinking and acting—and acting and thinking—all his life. In this reflection on what I call Hank's "escuela"—I focus on several facets of his incredible career in the law as an intellectual, an actor in the discipline, and as a teacher and mentor. I do not list those attributes in any order of importance because I believe Hank values all three. However, his pioneering research and scholarship in international law informs much of his work as an actor in international law, and as a teacher and mentor. His work—in all three dimensions—has been a labor of the intellect. Those who have known Hank are not surprised that every idea in international law seduces him and impels him to interrogate it with the passion of a man of letters. Today, he tackles legal and political questions with the same intellectual acuity and zest that he exhibited when I first met him more than two decades ago.

Hank has been a pioneer in many vistas. There could not have been many African-Americans at Yale Law School in the 1960s. He underscored his early commitment to Pan-Africanism when, after graduation from Yale Law School, he took a job as a legal advisor to the newly independent government of Malawi, the southern African nation, under founding President Hastings Kamuzu Banda. In that role, Hank helped the nascent republic navigate the complex legal questions on colonial inherited treaties and a broad range of legal matters involving the region. He later went on to play important roles in the government of the United States (U.S.), as an advisor to African governments, the academy, academic professional associations, think tanks, and in the global world of non-governmental organizations (NGOs) or civil society. He paved the way for many, especially for young aspiring international legal academics and policy-makers among persons of the African extraction and descent. The rotundity of his life's example is without peer in contemporary international legal education for African peoples.

II. RESEARCH AND SCHOLARSHIP

The hallmarks of a great scholar and intellect are rigor in research and interrogation, and a boldness to challenge the frontiers of knowledge without regard to convention. A great scholar realizes that scholarship serves a social purpose. Indeed, scholarship can never truly be bias-free, or fully neutral. The very choice itself to focus on a particular subject matter or topic is irrefutable evidence of bias. Bias is not in itself a bad thing. However, bias does not connote freedom from facts, or an evidence-free exercise. It is not an accident, therefore, that Hank's scholarship has largely focused on international law and the human condition—whether it be in human rights, public international law, or the relationship between race, identity, and the state. Although largely an international legal scholar, Hank's work rises out of the intellectual and activist struggle for the

^{4.} See *Henry J. Richardson III*, TEMPLE UNIVERSITY, https://www.law.temple.edu/contact/henry-j-richardson-iii/ (last visited March 21, 2017), for a brief faculty profile of Professor Henry J. Richardson III.

empowerment of African-Americans—and people of color in general—in the U.S. He does not share or espouse the hegemonic DNA or proclivities of many American international legal scholars. In fact, his work has often been a sharp critique of the hegemonist policies of the U.S. In that sense, Hank is the true global citizen. Many of us in the school of thought known as Third World Approaches to International Law, or TWAIL, regard him as an early pioneer and forefather of our movement.

Hank is the quintessential academic. I cannot remember a time when Hank was not thinking and challenging us to think boldly along with him. I first met the man while we were on a mission to South Africa in March 1994. The pre-election reconnaissance trip was organized under the aegis of the Southern Africa Project of the Lawyers Committee for Civil Rights under Law, then run by Gay McDougall, who served as one of five international members of the sixteen-person South African Independent Electoral Commission. That commission oversaw the first allrace democratic elections, which formally ended apartheid and installed Nelson Mandela as president. Gay and Hank, among the first few Black alums of Yale Law School, were both steeped in the larger struggle for the liberation of peoples of African descent the world over. Hank's and Gay's involvement in the antiapartheid struggle was a vindication of their Pan-Africanist convictions. Nevertheless, it was during this pre-election trip to Apartheid South Africa—and then the mission a month later in 1994—to observe the first democratic elections in South Africa that I had the privilege of forging a brotherly bond with Hank. I call the bond brotherly, although it should be accurately described as a mentor-mentee relationship. Over car rides and meals during both missions, Hank and I spoke endlessly about the African condition. He is a man of great intellectual ambition and he challenged me—mercilessly—to bear out my arguments. I listened to and absorbed his wisdom. At the time, I was preparing to become a full-time legal academic. Engaging with Hank during those trips to South Africa left no doubt in my mind that I wanted to follow his path in the academy.

The exchanges with Hank in South Africa were a window into his fierce intellect. A survey of his academic output reveals a curious and vastly complex mind. He has written a large canvas of international legal scholarship. In that canvas, he has created what I call a school of thought in international law. That

^{5.} See MAKAU MUTUA, HUMAN RIGHTS STANDARDS: HEGEMONY, LAW, AND POLITICS 162–64 (David C. Earnest ed., 2016) (discussing norm setting and standards in international law); Antony Anghie, What is TWAIL?: Comment, 94 AM. Soc'y Int'l L. Proc. 39 (2000) ("One of the important characteristics of TWAIL . . . [is] the unpacking of the uses of international law as 'a medium for the creation and perpetuation of racialized hierarchies.'"); James Thuo Gathii, TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography, 3 TRADE L. & DEV. 26 (2011) (tracing the origins of Third World Approaches to International Law (TWAIL)); Makau Mutua, What is TWAIL?, 94 AM. Soc'y Int'l L. Proc. 31 (2000) ("The regime of international law is illegitimate. It is a predatory system that legitimizes, reproduces and sustains the plunder and subordination of the Third World by the West.").

For a profile of Gay McDougall, see https://www.macfound.org/fellows/617/, accessed March 23, 2017.

"escuela" is deeply Pan-Africanist and uncompromisingly liberatory as both a project of the intellect and politics. It is anti-hegemony and rejects the excesses of crass mercantilism that are the anchors of the Empire. He articulates a counterhegemonic project that is driven by values of human dignity, human rights, and anti-discrimination. It is a school of thought that sits uncomfortably with American establishment scholarship within the corridors of power. Yet Hank has done it in a way that has earned the respect of foe and the admiration of friend. That is why even in the milieu of the American Society of International Law, the flagship professional organization for thinkers and practitioners of international law in America and like-minded international colleagues, Hank's work has been a highly valued contribution to the accepted fund of knowledge. This ability—to speak truth to power without making a mortal enemy of the powerful—is a quality I have deeply admired in Hank. Never once have I ever seen him dissemble, back pedal, or sell out a position to win favor, or make an establishment figure comfortable in casual conversation, or on a panel discussion. He has always said what he meant, and meant what he said. He left it up to others to deal with the truth and their own conscience.

There are many ways one can group and categorize Hank's research and scholarship. However, whichever way one systemizes his written work, it falls under one overarching canopy—knowledge as power in liberation. Much of his work is informed by the historical moment, or era, of his engagement as a scholar. He came of age in the 1960s when African states were in the anti-colonial struggle of decolonization and African-Americans were in the throes of the civil rights movement, the equivalent of the fight for African dignity on the land of his forebears. Hank has engaged both struggles with an uncommon vigor and devoted his life to both. He knew then, as he does now, that the destinies of the peoples of African descent were intertwined no matter which continent they were domiciled. Even when he wrote about normative international legal problems—which he has often done—it was to advance the project of decolonization, liberation, and antidiscrimination. Hank's coming of age in perhaps the epochal moment of the greatest ferment in the long history of Black liberation was an intellectual crucible like no other. It is from this age that he springs as a man of the African renaissance in the American academy. He is an heir to the intellectual traditions of the great Pan-Africanists of yesteryear such as John Henry Clarke of Hunter College and Cornell, Chancellor Williams, W. E. B. Dubois, Manning Marable, Henry Louis Gates, Maya Angelou, Bell Hooks, Langston Hughes, Aimee Cesaire, Franz Fanon, Julius Nyerere, Goler Butcher, Kwame Nkrumah, George Padmore, and Paul Robeson, among others. You can tell from Hank's works that he writes with the inspiration and the political and intellectual tradition of these Pan-Africanist historical greats. Here I make a distinction between Hank, the Pan-Africanist, and the general college of Africanists. I emphatically do not regard Hank as an Africanist, a term that in my mind describes scholars of White descent who study Africa.

First, I focus on Hank's scholarship on Africa. Much of Hank's early work on international law dealt primarily with the project of liberation in Southern Africa. He wrote about the uses that African colonies, or those under White minority rule,

could make of international law in their quest for liberation. He critiqued U.S. foreign policy towards Africa, and more specifically those countries that were still unfree of White domination.8 He wrote about the ethics and the law of sanctions towards South Africa and he advanced arguments for self-determination of African peoples under international law. In these works, he forcefully argued, often at the annual meetings of the American Society of International Law (ASIL), for a reading of international law that would accommodate the aspirations of liberation and freedom. 10 He even pushed ASIL to divest its stock from companies doing business in Apartheid South Africa. 11 His work did not just dwell on South Africa proper, but it addressed other colonial or White-ruled states in the region. In these, he continued his crusade for freedom against oppressive, alien rule. 12 Hank's work on Africa did not stop at decolonization. He has written about the project of democratization and the creation of viable self-reliant post-colonial African states, including the crucial role of the Organization of African Unity, now the African Union, in this project.¹³ In these and other works, Hank sought to guide both intellectual conversations and policy-making towards an informed and progressive agenda. He has been a tireless and persistent advocate in advancing the cause of self-determination for African peoples. Elsewhere, Hank has shown that Africa is not simply a consumer of the ideas of others. The continent has added to the intellectual fund and practice of international law on the International Criminal

^{7.} Henry J. Richardson, III et al., International Law Implications for the Transition in South Africa, 86 ASIL PROC. 287 (1992); Henry J. Richardson, III et. al., The Appropriateness of Continuing International Sanctions against South Africa, 84 ASIL PROC. 315 (1990).

^{8.} Henry J. Richardson III, US Policy towards Namibia: Weaknesses and Contradictions, The Jurist 18 (1982).

^{9.} Henry J. Richardson III, International Law and the Continuation of Sanctions against South Africa, 3 TEMP. INT'L & COMP. L. J 249 (1989); Henry Richardson III, Reverend Leon Sullivan's Principles, Race, and International Law: A Comment, 15 TEMP. INT'L. & COMP. L.J. 55 (2001); Henry J. Richardson, III, Self-Determination, International Law and the South African Bantustan Policy, 17 COLUM. J. TRANSNAT'L. L. 185 (1978); Henry J. Richardson, III, Speculations on the Relevance of International Law to the Needs of Black Southern Africa, UFAHAMU: A J. OF AFR. STUD. 22 (1970).

^{10.} Henry J. Richardson, III, The Obligation to Withdraw Recognition from Pretoria as the Government of South Africa, 1 TEMP. INT'L & COMP. L.J. 153 (1987); Henry J. Richardson, III, Permissible Measures and Obligations for Outside States and Internal Peoples Towards Minority Rule in South Africa, 80 ASIL PROC. 308 (1986).

Henry J. Richardson, Divestment of the Stock Portfolio of the Society, 81 AM. J. INT'L. L 688, 744 (1987).

^{12.} Henry J. Richardson, III & Lisa Peterson, *The Price of Namibian Independence*, FOCUS, March 1989, at 5; Henry J. Richardson, III, *Recent Struggles for Democracy Under Protocols I and II to the Geneva Conventions*, 6 TEMP. INT'L. & COMP. L.J. 13 (1992); Henry J. Richardson, III, *Constitutive Questions in the Negotiations for Namibian Independence*, 78 AM. J. INT'L. L. 76 (1984); Henry J. Richardson, *International Law and the Protection of Namibia's Territorial Integrity: Boundaries and Territorial Claims*, 93 AM. J. INT'L. L. 988 (1999) (book review).

^{13.} See, e.g., Henry J. Richardson, The Danger of Oligarchy within the Pan-Africanist Authority of the African Union, 13 TRANSNAT'L. L. & CONTEMP. PROBS. 255 (2003); Mark P. Francher, Henry J. Richardson, Shanon Muir & Demitrus Evans, Government Land Acquisition in Zimbabwe: An Essential Element of the Right to Self-Determination, 59 GUILD PRAC. 186 (2002).

Court, peacekeeping, and international constitutional jurisprudence.¹⁴

The second, and equally important, area of scholarship for Hank has involved African-Americans in the context of civil and human rights and international law. He has written several works on Black America's contribution to the freedom project, including its intersection with Africa. Some of these works explore the contributions of Martin Luther King, Jr., among others, in Black liberation. ¹⁵ He shows the global penetration, example, and power of King and the African-American civil rights movement. ¹⁶ In a number of works, Hank zeroes in on African-American influence and contribution to legal thought, business, and political activism in Africa. ¹⁷ In these writings, Hank shows the kinship between Africa and Black America, a subject that is often hidden in established scholarship and in the rendering of the relationship between the two kindred peoples.

In my view, one of Hank's most important intellectual contributions involves the legacy and imprint of African-Americans in international law. His seminal book on the subject, *The Origins of African-American Interests in International Law*, is the gold standard by which all other works in the field must be measured. The book culminates a life's work on the subject and is preceded by several scholarly articles. The book, which spans the late 1500s to 1820, places an African flag on the landscape of international law. The book dispels any notion of historical amnesia about the inextricable link between international law and African-Americans. A tour de force, the book demonstrates how international law and the fate of Black people are inherently intertwined through the transatlantic slave trade and the levers and influences of enslaved Africans on the development and contours of international law, including their struggle and claims for freedom. The book is an original based on the most thorough and clear-headed research on

^{14.} Henry J. Richardson, III, Patrolling the Resource Transfer Frontier: Economic Rights and the South African Constitutional Court's Contributions to International Justice, AFR. STUD. Q., 9.4 (Fall 2007); Henry J. Richardson, Peacemaking Practices "From the South": Africa's Influence, 96 AM. SOC'Y INT'L PROC. 135 (2002).

^{15.} Henry J. Richardson, III, From Birmingham's Jail to Beyond the Riverside Church: Martin Luther King's Global Authority, 59 How. L. J. 169 (2015).

^{16.} Henry J. Richardson, *Dr. Martin Luther King Jr. as an International Human Rights Leader*, 52 VILL. L. REV. 471 (2007); Henry J. Richardson, III, *Two Treaties, and Global Influences of the American Civil Rights Movement, Trough the Black International Tradition*, 18 VA. J. SOC. POL'Y & L. 59 (2010).

^{17.} See, e.g., Henry J. Richardson, III, The Black International Tradition and African American Business in Africa, 34 N.C. CENT. L. REV. 170 (2012); Henry Richardson, Book Review, 28 L. & HIS. REV. 558 (2010) (reviewing MARY DUDZIAK, EXPORTING AMERICAN DREAMS: THURGOOD MARSHALL'S AFRICAN JOURNEY (2008)).

^{18.} Henry J. Richardson, III, The Origins of African-American Interests in International Law (2008).

^{19.} See, e.g., J. Clay Smith, Jr., United States Foreign Policy and Goler Teal Butcher, 37 How. L. J. 139 (1994); Henry J. Richardson, III, African-Americans and International Law: For Professor Goler Teal Butcher, with Appreciation, 37 How. L. J. 217 (1994); Henry J. Richardson, III, The Gulf Crisis and African-American Interests under International Law, 87 Am. J. INT'L. L. 42 (1993); Henry J. Richardson, III, The International Implications of the Los Angeles Riots, 70 DENV. U. L. REV. 213 (1993); Henry J. Richardson, III, Women and Minorities in International Law, 81 ASIL PROC. 519 (1987).

the subject. It establishes, finally, the symbiotic link between international law and African-Americans in its formulation, application, and development. As in other works that touch on race, Hank here writes with the voice of a critical race theorist. I had the privilege in 2010 to hear Hank bring the central themes of the book to life at the exhilarating Mitchell Lecture, the annual signature event at SUNY Buffalo Law School.²⁰

Hank's scholarship spans the spread of the discipline of international law. Whereas much of his work has focused on race and international law, he has also written extensively on other normative and institutional questions on international law. These have included: questions on new legal colonialism, the perils of intervention, and a host of other contemporary and pressing matters in international law. The point is that Hank is a scholar's scholar in our discipline. He has made an original and indelible mark on the scholarship in the field. For a long time, his was the only voice of a person of color—and an African-American in particular—to have access to the key gatherings of academics and practitioners in the discipline. Even in that lonely environment, it is evident from his work that as a trailblazer he never flinched. His written word has given us a template to which we can proudly aspire. He has given reason to all students of international law—and especially those of color—to come to international law and make it the professional career of their choice.

III. PRACTICE, POLICY, AND MENTORSHIP

Hank Richardson long realized that one could not act without thinking, and think without acting. He is one of the best theorists of international law of his age. However, Hank believes that thought and action are inherently symbiotic. In this sense, he is not—in a manner of speaking—all talk and no action. A core tenet of TWAIL, which Hank pioneered, is the project of deconstruction of an unjust and scandalous global order.²³ TWAIL would be an irresponsible school of thought without its essential component of the project of reconstruction.²⁴ As I have written

^{20.} For the news story about Prof. Richardson's Mitchell Lecture at SUNY Buffalo Law School on October 27, 2010, see http://www.law.buffalo.edu/news/mitchell/2010.html, (accessed on March 21 2017). For the full lecture, see Hank J. Richardson, *Mitchell Lecture*, 17 BUFF. HUM, RTS. L. REV. 1 (2011).

^{21.} See Henry J. Richardson, III, *The Danger of New Legal Colonialism*, 104 AM. SOC'Y INT'L L. PROC. 393, 394 (2010) (exploring the 2003 U.S. invasion of Iraq through the lens of colonial conquest).

^{22.} See Henry J. Richardson, III, Critical Perspectives on Intervention, 29 MD. J. INT'L. L. 12, 13–14 (2014) (questioning whether international law dictates current practices of intervention or if the current practices shape international law).

^{23.} MOHAMMED BEDJAOUI, TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER 12 (1979) ("The gradual institution of a new economic and legal order is the aim to which the Third World countries are bending their efforts in order to protect their newly-won independence and sovereignty in the precarious circumstances of the present system of international relations . . . ").

^{24.} Anghie, *supra* note 1, at 39. Here, Anghie writes that "I must reiterate Professor Mutua's emphasis on TWAIL as being a reconstructive project which aims at eradicating the 'conditions of underdevelopment in the Third World.' Third World jurists, for decades now, have

elsewhere:

TWAIL is driven by three basic, interrelated and purposeful objectives. The first is to understand, deconstruct, and unpack the uses of international law as a medium for the creation and perpetuation of a racialized hierarchy of international norms and institutions that subordinate non-Europeans to Europeans. Second, it seeks to construct and present an alternative normative legal edifice for international governance. Finally, TWAIL seeks through scholarship, policy, and politics to eradicate the conditions of underdevelopment in the Third World.²⁵

In connecting theory and practice—and living his life as an example—Hank has borne out this TWAIL truism. The kernel of which is that scholars from communities of color in the Global North and scholars from the Global South as a class cannot afford to simply think without acting. This model of the scholaractivist recognizes the responsibility of scholarship to serve a social and political purpose. As noted earlier, Hank went to work as a legal advisor to the nascent, independent Republic of Malawi after his graduation from law school. That stint, which lasted over two years, was evidence of the political commitment that has shaped his career. It was formative for a young African-American from a position of privilege to spend his early professional life working in Malawi. Even today, whenever Hank talks about Malawi, the nostalgia and the country's lasting impressions on him are loudly written on the inflections of his voice. After Malawi and some more graduate legal education, Hank joined the National Security Council in charge of African Policy and United Nations under the Carter Administration from 1977–1979. He then became Senior Foreign Policy Advisor to the Congressional Black Caucus. Before he joined Temple University Beasley School of Law—where he has been since 1981—he served as an attorney in the Office of the General Counsel in the Department of Defense. He has continually drawn on this rich practice experience and his knowledge of government, international institutions, and Africa to advance the project of the emancipation of persons of color.

Many students and scholars have seen Hank in countless academic, professional, and social spaces. For students and scholars of color, Hank's presence—and guidance—in professional and academic spaces has been calming. He has been the voice of wisdom and good counsel to us. Whether it was at ASIL meetings, where he has been a fixture for as long as I can remember, or at the annual meetings of the Council of Foreign Relations (CFR) in New York City, his presence assured all of us that we belong. He rose within the ASIL hierarchy to become one of the first Black Vice Presidents of the organization. Personally, I confess that sometimes I attend CFR annual meetings just to hang out with Hank. The same with ASIL—you know he is the magnet that draws TWAILians together for at least one large dinner party in the course of the organization's annual meetings in Washington, D.C. That is why we call him the Dean of International

a number of proposals for the reform of the international system..." Id.

^{25.} MUTUA, supra note 5, at 31.

Law. He is a mentor and the reason many of us are in the international law academy.

IV. HANK'S "ESCUELA"

A school of thought is a pioneering labor of the intellect that brings together a concrete and discernible tradition of scholarship and practice. I have attempted to sketch above the large repertoire of Hank's life work that is animated by a generational commitment to Pan-Africanism and international law. I cannot think of any other international legal academic who has—in scholarship and practice—done more to advance the cause of Pan-Africanism than Hank. He has written work that is etched on the sands of time. He has mentored hundreds of students and scholars. He has inspired and guided many international law faculty of color, including Africans, African-Americans, and Blacks from the larger African Diaspora. He has taught us how to perform international legal scholarship. In so doing, he has coalesced a school of thought—and action—whose echoes will be felt for decades to come. He is a true TWAIL pioneer.

I need to add a personal note to this piece. In international law, Hank is my most influential mentor. From that long ago, when he and I were on missions for the Lawyers Committee for Civil Rights under Law to the South African pre-election prep and the first democratic multi-racial election to end apartheid, Hank adopted me as his intellectual and political scion. He is a giant among us on whose broad shoulders we have been privileged to stand. I know that he gave me direction and confidence that I could succeed in the academy. He watched my every step and encouraged me along. He would call me and talk with me for hours about the finest points of international law. However, he would never forget to admonish me to stay out of trouble in Kenya. On this last one, he completely failed. That is because he chastised me tongue-in-cheek. He became a great friend to my wife Athena and introduced us both to Renee, the love of his life. That is our privilege. I could not attend the festschrift in person because of a prior commitment. The loss was clearly mine, but I was there in all but body.