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IN MEMORIAM

HOWARD J. TAUBENFELD
(1924-1996)

On February 25, 1996, The SMU Law School and our *NAFTA Law and Business Review* lost one of our dearest friends and supporters, Professor Howard J. Taubenfeld.

Howard was an internationally renowned professor of public international law, having cut his teeth at Columbia University with Philip Jessup, with whom he co-authored the 1959 classic on *Controls for Outer Space*. In this respect, Howard was always at the forefront of public international law issues. He was also at the forefront of weather modification law, race and law in South Africa and the status of women in international law. More generally, he was a fervent student of the implications of law and ethnicity, having gained a deep knowledge of numerous world cultures, including those of Mexico and Latin America. His research, particularly with his beloved wife, Dr. Rita Falk Taubenfeld, was prodigious.

Howard's presence was worldwide. He taught in South Africa, Germany, the Baltic countries, Central Eastern European countries, Japan, Tunisia, France, Greece, Mexico and Israel. He was a true citizen of the world.

For us at SMU, we knew and loved Howard for being one of our most outstanding professors, having joined the faculty in 1961. Howard was revered by decades of students and faculty colleagues as the true "Kingsfield" of our Faculty. The only differences were that our Kingsfield had an enormous heart, wit, and zest for life that he brought into his teaching and into his relationship with his students. Right to end, Howard was in the classroom with great energy and skill, bringing out the best in his students. He was the winner of numerous teaching excellence awards during his tenure with us, and was honored as our Vinson & Elkins Distinguished Fellow and Professor of Law.

Howard greatly assisted the SMU Law School by bringing to it the distinguished *Journal of Air Law and Commerce* back in the 1960s, serving as its Senior Editor for over a decade. He was also highly instrumental in helping and encouraging us to bring *The International Lawyer* to our Law School and in founding our *NAFTA: Law and Business Review of the Americas*.

We will all miss Howard very dearly, but we shall not forget him.

In closing, I would like to borrow a tribute paid to Howard in our companion publication, *The International Lawyer*, by my colleague, Professor Peter Winship. Peter closed his remarks with an excerpt from a thoughtful essay Howard wrote in 1990 entitled: "Some Thoughts on Problems of Designing Stable Democracies."¹ These reflections are highly relevant to the entire NAFTA and FTAA processes within our Hemisphere:

"The lessons of constitutional experience can be useful, and we are exploring them in detail elsewhere. But, as noted, no one institutional formula has assured success

1. 29 INT'L LAW. 689, 709-710 (1990).

historically. The most important question then, for any emerging democracy with diverse constituencies is: Are the citizens and their leaders ready to undertake the mutual commitment to make whatever constitution they negotiate work democratically? There are no constitutional gimmicks that will cure the problem. The appropriate immediate action issue is not what specific mechanism or exact wording they should adopt at a constitutional convention, but rather what can they do to learn to work together to prepare themselves for workable democracy.

We have found constitutional promises surprisingly similar, yet whether or not a people's goal, their reach, should "exceed their grasp," it is true that few countries can claim to fully live up to the glorious general aspirations expressed in their constitutions. Indeed, in principle, since constitutional provisions are likely to imply competing claims on limited national opportunities and resources, not all potentially legitimate claims or claimants could be satisfied.

Whatever the constitution, the economic problem remains. Resources and opportunities are limited. Not everybody who wants to lead the band or to be president can be satisfied. Furthermore, quite likely, many potentially highly qualified competitors exist simultaneously. Most must acquiesce in not being chosen. In a broadly based democracy they, the unchosen, will have to get something too. Thus the stress on the importance of sharing and shared commitment to democracy.

Ideas have power; constitutional ideas sanctified as the principal political compact between a people and their government are very important in the ideological life of that community. Although perfect democracy is in principle undefinable and unattainable, citizens prove willing to support ongoing approximations to good democratic government if the process seems adequately fair.

If constitutional promises are important, they are obviously not enough. If we were forced to produce an operational guideline for leaders seeking to maintain stable, broadly consensual democracies, on either the British or the U.S. model, the first three rules would probably be: "co-opt, co-opt, co-opt," the politically operational meaning of broad sharing in open democracy. This review of current constitutions reminds us again that no one formula assures success. The most essential constitutional building block for the creation of stable democracy remains a common commitment to sharing and a firm intention to make stable democracy work."
