

Jon Van Dyke Was My Teacher

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These words are printed as delivered at the memorial on the East-West Center lānai in hopes that all who were there will remember the amazing sight of Jon Van Dyke's students rising, one by one, in witness of his teaching. First one, then two, then a dozen, then well over a hundred people rose to their feet as they were called on to exemplify the panoply of ways in which Jon Van Dyke left a legacy as a teacher. It was a cool, sunny day, with a gentle breeze blowing down from the back of the valley, touching the faces of those who stood, who wept, who remembered.

Jon Van Dyke was my teacher. To the Van Dyke/Broder family, we bear witness to your deep, sharp grief for the loss of one who was Dad, husband, brother. What has surprised many of us is the shape of the grief one feels upon losing a teacher. Jon Van Dyke was the kind of teacher who becomes a part of other people's autobiographies. In losing him, we lose a chapter of our lives.

There are many people here today who would not be where they are if our Con Law professor had not pushed the fledgling out of the nest.

Could you please stand if you got your name in print because Jon Van Dyke included you as a co-author.¹

* The author thanks the Van Dyke/Broder family for the deep honor of sharing in the memorial service, and Fawn Jade Koopman, Kaleo Nacapoy, Daylin-Rose Gibson, and Tiffany Dare for their outstanding research assistance for this piece.

¹ It is not the normal practice in legal publications to credit research assistants with authorship status, even when their contributions are significant. Jon's ethic was of collaboration and recognition. Over fifty individuals were honored to share co-author status with Jon Van Dyke over the years. Of those individuals, at least twenty-five were Jon's students and alumni of the William S. Richardson School of Law. These former students include: Melody MacKenzie '76, Robert S.N. Young '78, Judge Riki Amano '79, Kenneth K. Takenaka '79, Nathan Aipa '80, Robert Brooks '80, Faye T. Kimura '80, Douglas Marsden '80, Susan L. Heftel-Liquido '81, David Teichman '82, Christopher J. Yuen '82, Kathy K. Higham '84, Jonathon Gurish '86, Ted N. Pettit '86, Jennifer L. Cook Clark '87, Carolyn E. Nicol '88, Dale L. Bennett '89, Carmen T. DiAmore-Siah '89, Gerald W. Berkley-Coats '91, Noelle M. Kahanu '92, Marilyn M.L. Chung '93, Teri Y. Kondo Ohta '93, David M. Forman '93, Emily A. Gardner '96, Maile Osika '12. Interview by Fawn Jade Koopman with Laurie Tochiki, Lecturer at Law, Director of Child Welfare Projects, William S. Richardson Sch. of Law, Univ. of Haw. at Mānoa, in Honolulu, Haw. (Apr. 11, 2012) (if anyone was inadvertently left off this list, the author welcomes your correction).

Could you please stand if you ever got a letter from Jon Van Dyke telling you that you did a good job in class and should keep your aspirations high.²

Could you please stand if Jon Van Dyke promoted you so you could get a job.³

Could you please stand if you ran for office at his urging.

Could you stand if you learned Constitutional Law in the quarry from Jon Van Dyke.

Could you stand if you learned after the quarry but before laptops.

And finally, the youngsters, will you stand if you learned from a legendary JVD PowerPoint.

Ladies and gentlemen, I present to you the history of this state as it passed before a great teacher's eyes.

If you learned Constitutional Law from Jon Van Dyke, you learned it well. The easiest thing for the professor to do with a simplistic or fuzzy answer in class is to fix it up and move on.

Not in JVD's class. A tension filled the room as he stayed with the student who gave an inadequate answer, gently asking yet another question, sending a message to every person present: you are a Richardson lawyer, and I expect an intelligent answer. This mattered because our students have

² Jon Van Dyke is the only teacher I have ever had who wrote me a personal letter of congratulations when I did well on an exam in his class.

³ William S. Richardson School of Law class of 1980. Professor Matsuda reports: My first job after graduation was clerking for Judge Herbert Choy of the Ninth Circuit United States Court of Appeals. At that time, Judge Choy had never hired a woman, never hired a Richardson graduate, never hired anyone "local," i.e. who had gone to high school in Hawai'i. His clerks, like most clerks in the federal courts, were typically "Harvard Men," with Ivy League law review pedigrees. Jon Van Dyke had attended the Ninth Circuit judicial conference at which Judge James Robert Browning announced that it was time for judges who had never hired women to consider it. At Jon's urging, I applied for the clerkship that everyone had assumed was out of reach for a Richardson graduate. He wrote a strong letter of recommendation, a copy of which I still have. He next inquired about my plans after the clerkship ended. My plan to practice labor law was not ambitious enough, in his view. The diversity movement taking form at law schools across the nation made it particularly important, he believed, that Hawai'i lead and not follow. The absence of women on the law school faculty was a problem, as was the predominantly *haole* character of the faculty in a racially diverse state. I had never thought of myself as a professor. I had never seen someone who looked like me in the front of a law school classroom. "Think about it," Jon said. "Do you have something you want to write about? Start writing." By the time my clerkship ended, I had a modest article on civil rights litigation accepted for publication, and had submitted my first application for a teaching position. When I was finally hired after obtaining an L.L.M., I was the only Asian American woman in a tenure track position at any U.S. law school. None of this would have happened if Jon had not pushed me. His ambitions for me were larger than my own. It is hard to know at twenty-three what one can accomplish. Without a teacher/champion, I would never have taken a chance on the dream job that I have held, and loved, for over thirty years.

faced skepticism about their talents. As the most diverse law school in the country, and the first to admit equal numbers of women right from its inception, our students have not always fit the traditional conception of what a lawyer looks like.⁴ And our professors—including the longhaired, bearded young west coast *haole* who showed up to teach Constitutional Law—did not always fit the traditional conception either. When someone is waiting for you to prove your inadequacy, you cannot give a fuzzy answer. Professor Van Dyke sent students out prepared to meet and vanquish all doubters.

Others will speak today of his prodigious scholarship, his international reputation. I want to speak about specifics. About someone who was tortured and disappeared in the Philippines in a time when such victims were forgotten, and about how the Van Dyke and Broder team made it a permanent part of our legal system that we will not forget.⁵ Even years

⁴ In 1976, full-time and part-time student enrollment in ABA-approved law schools numbered 29,343 women, 83,058 men, 112,401 total. Donna Fossum, *Women in the Legal Profession: A Progress Report*, 67 *WOMEN LAW. J.*, no. 4, at 1, 3 (1981). In 1975, only 6.6% of all lawyers were women. *Id.* By 1979 this figure rose to 11%. *Id.* The gender ratio of the William S. Richardson School of Law entering class of 1977 was 47% women and 53% men. Interview by Fawn Jade Koopman with Laurie Tochiki, Lecturer at Law, Director of Child Welfare Projects, William S. Richardson Sch. of Law, Univ. of Haw. at Mānoa, in Honolulu, Haw. (Oct. 7, 2010). The entire student body included 232 students, 142 women and 90 men. *Id.* The three largest ethnic groups in that entering class of 1977 were Japanese (40%), Hawaiian (23%), and Caucasian (23%). There were also Chinese (8%), Filipino (7%), and Black (1%). *Id.* Other represented ethnic groups included non-Hawaiian Pacific Islanders and Koreans. *Id.* There was also a separate category in those days for Portuguese students. *Id.*

⁵ Jon Van Dyke and Sherry Broder were co-counsel in “the biggest human-rights case ever certified in U.S. courts: the Estate of Ferdinand Marcos Human Rights Litigation.” Ceil Sinnex, *Sherry P. Broder: Fighting for the Underdog*, *MIDWEEK* (Oct. 7, 1992), <http://www.sherrybroder.com/fighting-for-the-underdog?PHPSESSID=8bdde5b64a268b17303dd9c451b7696f>. Broder sued the Marcos estate “on behalf of 10,000 victims of alleged torture, summary execution, and disappearances. . . .” *Id.* Their work on the Marcos Human Rights Litigation began in 1986 when the former Philippine dictator, Ferdinand Marcos, fled from the Philippines to Hawai’i shortly after the Edsa Revolution. E-mail from Sherry P. Broder, Att’y, to Daylin-Rose Gibson (Apr. 4, 2013, 5:18pm) (on file with author). After 25 years of work on this single case, a \$10 million settlement was reached and the money was distributed to the claimants, a “majority of whom live in poverty in the Philippines.” Chris Fleck, *Sherry P. Broder, Old Friends*, *MIDWEEK* (Mar. 2, 2011), http://archives.midweek.com/content/columns/oldfriends_article/sherry_p_broder/. Broder stated, “It is very important to hold these dictators accountable. They use their positions not just for power, but also to be corrupt and to take money from a country that belongs to the people.” *Id.* Broder has also “received numerous awards and accolades for work throughout her career. She is most proud of the Ved Nanda Center for International Law Human Rights Award,” received in 2007. *Id.* This award was the first human rights award given by Nanda Center, and was given for her collective work on the Marcos case and other national social

later, the law will track down torturers and hidden assets and create justice. This week, as innocents are tortured and disappeared somewhere in Syria,⁶ somewhere in Sudan,⁷ those responsible act with the knowledge that the law will not forget.

I want to speak about a time when there were fewer Native Hawaiian lawyers than you can count on your fingers, when Jon pushed his students to run for the Constitutional Convention, and stayed up late into the night with them as they strategized about making Kanaka Maoli rights an integral part of state constitutional law.⁸ This is a lasting legacy; it will be here after all of us are gone.⁹

These radical changes in what law was capable of were not the product of a radical. Jon once said to me with an apologetic smile, "I am a liberal." This was in the context of a theoretical discussion over the radical views of the Critical Legal Studies movement.¹⁰ Students today are accustomed to the usage equating "liberal" with left wing radicals. Jon's was the 60's usage, when liberals, derided on the left, were associated with the political philosophy of liberalism, with moderate and pragmatic commitment to

justice issues. *Id.*

⁶ At the time of this address, reports of torture and disappearances in Syria were regularly in the news. See Kareem Fahim, *Hundreds Tortured in Syria, Human Rights Group Says*, NEW YORK TIMES (Jan. 5, 2012), <http://www.nytimes.com/2012/01/06/world/middleeast/hundreds-tortured-in-syria-human-rights-group-says.html?scp=15&sq=syria&st=nyt&r=0>; Anthony Shadid, *As Syria Offers Amnesty, U.N. Urges End to Killing*, NEW YORK TIMES (Jan. 15, 2012), <http://www.nytimes.com/2012/01/16/world/middleeast/syria-issues-amnesty-as-un-calls-for-end-to-violence.html>.

⁷ Reports on Human Rights violations in Sudan include: Int'l Comm'n of Inquiry on Darfur, *Report of the Int'l Comm'n of Inquiry on Darfur to the United Nations Secretary-General* (Jan. 25, 2005), available at http://www.un.org/news/dh/sudan/com_inq_darfur.pdf.

⁸ According to Governor Waihee, the 1978 Constitutional Convention was an opportunity to further Native Hawaiian Rights. Jon Van Dyke was the lawyer for the entire movement and he supported the creation of the Native Hawaiian Legal Corporation. Through the Constitutional Convention, Van Dyke taught young Hawaiians how to use the Constitution to resolve pertinent Hawaiian Rights issues, such as gathering rights and Hawaiian homelands. There were not many Hawaiian lawyers at that time. These activists came from all different backgrounds but their central goal was to further Kanaka Maoli rights and to further the representation of those rights in the law. According to some, Van Dyke is the reason that the amendments that came out of the convention still stand today. Interview by Fawn Jade Koopman with Gov. Waihee (Apr. 14, 2012).

⁹ HAW. CONST. art. XII, § 7. In addition to the constitution, Hawaii Revised Statutes (HRS) § 7-1 protects gathering rights, and for rights not specifically enumerated by HRS § 7-1, there are the traditional gathering rights that are protected by HRS § 1-1.

¹⁰ See DAVID KAIRYS, *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (3d ed. 1998). This book is an introduction to the Critical Legal Studies worldview. Jon Van Dyke appreciated the value of a left critique of law as a tool of capitalism, but he held fast to his liberal view that law was a means of promoting an orderly, democratic society.

enlightenment values. When Jon self-identified as liberal, he meant a commitment to the rule of law, democracy, and the sometimes slow movements of the legal process. His study of the jury system,¹¹ his commitment to international law,¹² his unheralded work in the area of students' rights to freedom from unreasonable locker searches,¹³ all came out of this liberal worldview. Jon held on to this view when it was hard. During the cold war, and post 9-11, we saw a hundred different ways to abandon the rule of law in the name of some greater good.¹⁴ Jon taught by example, taking on public battles to uphold the constitution in the middle of the Vietnam era,¹⁵ the war on drugs,¹⁶ the war on terror¹⁷—the flashpoints of his lifetime.

¹¹ E-mail from Sherry P. Broder, Att'y, to Kaleo Nacapoy (Apr. 5, 2012, 05:10 HST) (on file with author). See also JON M. VAN DYKE, *JURY SELECTION PROCEDURES: OUR UNCERTAIN COMMITMENT TO REPRESENTATIVE PANELS* (Ballinger, 1977) (defending the role of the jury in American law). This book is an introduction to the protection of a jury's integrity in a judicial system that is slowly losing the respect of its citizens. The role of the jury system in America is analyzed and problems with this system are discussed to reorganize the view of the public at large to regain support for the once-respected system. Jon Van Dyke "documented with statistics collected from many states the racial, ethnic, economic and gender discrimination in American jury selection." E-mail from Sherry P. Broder, Att'y, to Kaleo Nacapoy (Apr. 5, 2012, 05:10 HST) (on file with author).

¹² Jon Van Dyke viewed "customary international law [a]s an essential part of the international legal system" and "U.S. courts have always utilized it as a source of law when applicable to the controversies presented to them." Jon M. Van Dyke, *The Role of Customary International Law in Federal and State Court Litigation*, 26 U. HAW. L. REV. 361, 361 (2004). Jon Van Dyke also supported the role customary international law played when relevant and appropriate in U.S. federal courts. See *id.* at 373-74, 384.

¹³ Jon Van Dyke argued that Hawai'i's Board of Education should "change its new rule permitting unlimited searches of lockers without cause." Jon M. Van Dyke, *The Privacy Rights of Public School Students*, 32 U. HAW. L. REV. 306, 306 (2010). Jon Van Dyke viewed the adoption of this rule change as a "rejection of the values of individual freedom that citizens of the United States and of Hawai'i have fought and died for during previous generations, and sends a completely inappropriate message to our students, who will soon become active members of our political community." *Id.* at 322.

¹⁴ See generally ANTHONY ROMERO, *IN DEFENSE OF OUR AMERICA: THE FIGHT FOR CIVIL LIBERTIES IN THE AGE OF TERROR* (2007).

¹⁵ See, e.g., JON M. VAN DYKE, *NORTH VIETNAM STRATEGY FOR SURVIVAL* (1972). This book is the clearest picture the general public has "of the effect of the bombing on North Vietnam and the Vietnamese response to it." E-mail from Sherry P. Broder, Att'y, to Kaleo Nacapoy (Apr. 5, 2012, 05:10 HST) (on file with author). The book is a contribution to the "current reassessment of American policies in East Asia, which in turn will do so much to determine the future not only of that part of the world but most of the United States itself." *Id.* One of the most important factors into the reassessment of Asian policies is "the failure of the United States to achieve its objectives in the bombing of North Vietnam between 1965 and 1968, particularly its objective of forcing Hanoi to the conference table on American terms." *Id.*

If we exalt today, it is for a lawyer's life well lived, and the thought that we, his students, might follow this example. If we mourn, it is for the loss of a friend. Who among us does not remember that quiet, thoughtful, humble demeanor? Yes, so quiet, that some fell asleep in class. That a fierce fighter for human rights came in such a modest, soft-spoken package is yet another teaching. Speak quietly, litigate boldly, love deeply. Our teacher, who, after that barefoot hippie beach wedding, stayed happily married in a fully equal feminist marriage, who raised three beautiful children who walk with his same humility, taught us something about the private side of life as well. Thank you Jon, I am a professor because you pushed me, we are better lawyers because you demanded it, we grieve that you are gone too soon. You were our teacher, and you are teaching us still.

¹⁶ See Jon M. Van Dyke, *The Privacy Rights of Public School Students*, 32 U. HAW. L. REV. 306 (2010) (arguing that the need to keep drugs out of schools, while important, does not invalidate the right to privacy).

¹⁷ See Jon M. Van Dyke, *Dark Days for the Constitution*, HONOLULU ADVERTISER (Sept. 9, 2007), <http://the.honoluluadvertiser.com/article/2007/Sep/09/op/Hawaii709090341.html> (arguing that the government's reactions during the war on terror "restrict[ed] our constitutional rights" and "ignor[ed] the principles established by international law").