

For CJ Richardson: Hawai‘i’s Bold and Gentle Dreamer

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In February 2008, chaos reigned at the Mānoa Elementary School Democratic Party caucus. Long lines of people snaked around outside and one woman even held a flashlight as she diligently tried to check precinct records. Many hundreds waited happily to vote in what seemed like a raucous but very friendly giant block party—as well as a huge celebration of the improving chances for Hawai‘i’s own Barack Obama to become president. Mānoa is home to many University of Hawai‘i faculty and staff members, and several of them jumped on tables to try to funnel the exuberant crowd and to make sure that everyone ultimately got to vote. Soon all the ballots were gone, however, and voters received pieces of paper ripped on the spot as ballots. Future Governor Neil Abercrombie and others shouted directions, only to countermand what they had said minutes before.

A very handsome man sat beaming at the edge of this electoral scrum. CJ Richardson was overjoyed at the scene. After all, this was democracy in action, spelled with either a capital or a small “d,” and the state he dearly loved seemed poised to provide the entire world with a leader steeped in Hawai‘i’s unique cultural fluency. CJ was among friends. Then again: CJ was among friends wherever he went.

To walk into a Zippy’s restaurant or the Hawai‘i State Capitol or anywhere else with CJ was to witness an outpouring of affection that genuinely came from everyone he encountered, from the busboys and custodians to the elected leaders of the state. CJ always seemed to know a parent or a cousin of anyone who grabbed his hand or patted him gently on the back, and he conversed quietly, directly, and with unhurried and unflappable genuine warmth.

I am hugely blessed, as well as greatly honored, to have been given the chance to talk and write about our beloved CJ Richardson in the days and months after his death. But it remains very humbling to be an inadequate representative for so many others who also loved him. Others loved to talk

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about the time they played ball together, or the Filipino unit with which he served in the South Pacific during World War II, or the struggle to transform the Territory of Hawai'i into a state with very different politics. Some were teammates who swam with him when he was the captain of the University of Hawai'i swimming team in 1938, and many were accustomed to cheering with him regularly for the Wahine Volleyball team or for the women law students and alumnae teams in the annual Ete Bowl's vigorous flag football contests.

The chance to get to know this remarkable man and to witness and enjoy his humble greatness close up has been one of the greatest treats in my life. After we made sure that CJ had an office at the law school, our entire community got to hang out with him and to listen and learn first-hand about law and the history of Hawai'i. We were boosted regularly by his infectious enthusiasm. This great but very gentle man personally bridged the period beginning not many years after the overthrow of the Hawaiian Kingdom through the election of a United States president from Hawai'i—and he personally greatly influenced the shape of Hawai'i from the years before statehood into the future.

Many people are lucky to be described as “beloved” when they die, and most of them were in fact beloved by at least small groups of people in addition to their families. But William S. Richardson—widely known as “CJ” ever since he served as Chief Justice of the Hawai'i Supreme Court from 1966 to 1982—truly has been beloved over many years by multitudes of people reaching far beyond his family and even beyond the large community that is proudly connected to him through the law school that bears his name. A rainbow of connecting circles radiated from this extraordinary man.

This is in large measure because CJ knew who he was and was very comfortable within himself. We truly loved him for that. I have asked many people over the years, but no one could remember ever seeing him angry. In fact, none of us knows anyone who came close to CJ in melding genuine greatness and remarkable humility in such a cheerful, graceful package. It can truly be said that they did not, do not, and will not make any like him. And CJ proved repeatedly that even extremely nice guys can and do sometimes finish first.

Whenever in a tough spot or in doubt, many people will still try to figure out what CJ would have done. Because of him, there is now an entire law school 'ohana—an 'ohana made up of people who more likely than most do the right thing. That is because he exemplified the importance of saying or doing the right thing naturally, in any particular context.

In trying to find the right words to describe such an indescribably gracious man, I remembered that CJ often relied on the wisdom of his wife, Amy, and other women close to him—and so I thought to do the same.

My mother, for example, is a rather critical sort of person who did not know CJ well, but she was entirely charmed each time that she talked with the man she called “the Silver Fox.” After his passing, my mother wrote: “He was always so charming and courteous, always with a twinkle in his eye, and with an alert, knowing, and engaged awareness of the nuances of whatever was occurring, both immediately and long range.”

My wife, Marlene Booth, with her documentary filmmaker’s exceptionally perceptive eye and ear, also loved CJ. She pointed out that the wonderful, ebullient photograph of CJ at his ninetieth birthday—the one in which he is standing in front of the “Realizing the Dream” banner with his arms stretched wide and his amazing smile appearing to be even wider than usual—actually encapsulates some of CJ’s greatest gifts.

Standing there, CJ seems to embody a bridge stretching back to his beginnings—a time when Queen Lili’uokalani, whom his grandfather officially represented in Washington, had been gone only two years. CJ liked to talk about hearing whispered conversations about Hawaiian sovereignty that he did not wholly understand when he was a young boy. He recalled the details of hawking newspapers during the 1931-32 Massie trials and how it was important that these sensational trials were good for business because it was during the Depression, and CJ’s family was so hard-pressed that he would not go home until he had sold every last paper. He never dwelled on his somewhat threadbare childhood on Fifth Avenue in Kaimukī except to recount how it featured a shared poi bowl with enough for everyone and wonderful nights of music, when the great mixture of neighbors joined in and sang all kinds of different songs.

But that ninetieth birthday photograph also shows that, even at ninety years old, CJ vigorously reached forward, connecting with joyous ease to the future. He never tired of trying to help us all—and those lucky enough to be part of his law school in particular—to move ahead and to continue to realize his dream.

This connectedness helps explain how CJ accomplished so many important things in his unusually gentle and upbeat way. He vigorously fought for the law school that would not exist but for him. In his last years, he regularly came to the law school, sat in on classes, and talked to students and faculty and staff members about anything and everything. Through the law and the legal training that CJ brought about, those who follow him will look out for the entire community, not least the little guy downstream and the powerless who still desperately need legal protection.

To know this “Everyman” and to begin to grasp his uncommon gifts stretched us all in the very best way. His family members, who clearly take after him in wonderful ways, also generously stretched to share him with us all. Thanks to CJ, there are marvelous opportunities for many people that were unimaginable not many years ago.

CJ's grandchildren recently described their “Puna” as “cool and contemporary,” and that he surely was. But he was also a dreamer: the rare kind of dreamer who managed to realize dreams anchored both in great joy in the moment and in significant efforts to improve the future. And anyone who witnessed CJ's particular joy in singing with the law school's Casualettes—or in singing with anyone, for that matter—experienced CJ's amazing grace in connecting to others and his deep affection for life's simple pleasures.

How did a soft-spoken, genuinely humble man reach so many and accomplish so much? More specifically, how did a Hawai'i Supreme Court chief justice—occupying a position more elevated and more isolated from everyday life than practically any other—connect with and affect so many different people? Undoubtedly, in the words of Hawai'i's wonderful columnist Lee Cataluna, it was in large measure because the theme of CJ's entire legal career was “that the law should be used to protect and fight for people who don't have the power to fight for themselves.”¹ Throughout his career, both on and off the bench, CJ was an exemplary down-to-earth dreamer. He saw the law as a promising mixture of fairness and opportunity. His judicial decisions did not forget those without access to justice, the people below the battles between big corporations and other powerful entities, or those excluded from beaches that his opinions made public. And his successful efforts to offer opportunity to those who otherwise could not go to law school created a remarkable legacy.

Today the sobriquet “activist judge” has virtually lost all meaning. “Activist” now serves almost exclusively as a pejorative word, used to condemn any decision one does not like. The current United States Supreme Court and its immediate predecessor led by Chief Justice Rehnquist have combined to invalidate a remarkable number of federal laws and regulations.² Yet the justices in the majority on these very activist

¹ Lee Cataluna, *Isles' 'Little People' Kept Closest To Judge's Heart*, HONOLULU STAR-ADVERTISER, June 22, 2010, http://www.staradvertiser.com/columnists/20100622_isles_little_people_kept_closest_to_judges_heart.html.

² See, e.g., *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876 (2010) (invalidating provisions of the Bipartisan Campaign Reform Act and overruling *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990), and *McCConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003), on the grounds that the First Amendment does not permit Congress to suppress speech based on corporate identity); *District of Columbia v. Heller*,

courts are unusually conservative as well.³ Nonetheless, it is still meaningful to describe and applaud Chief Justice Richardson's court as an activist court in much the same way that the United States Supreme Court led by Chief Justice Earl Warren was activist. Both courts demonstrated a basic commitment to justice for all, and not least for the dispossessed, in very specific and practical ways, even if it meant shaking up the patterns of entrenched power.

William S. Richardson's Supreme Court was uniquely activist in another way as well, however. It recognized that Native Hawaiian law and tradition could and should play a major role in developing the new state's common law. CJ and his fellow justices asked repeatedly, in essence, "Why follow only Anglo-American law when Hawai'i has its own traditions, customs, and usages?" CJ's opinions managed to blend generous aloha with the eternally tough search for justice. This was so, for example, whether a case involved the intricacies of gathering rights,⁴ beach access,⁵ or water rights.⁶

554 U.S. 570 (2008) (invalidating the District of Columbia's ban on handgun possession in private residences by finding an individual Second Amendment right to possess firearms); *United States v. Morrison*, 529 U.S. 598 (2000) (finding insufficient congressional authority to promulgate the civil damages provision of the Violence Against Women Act because cumulative noneconomic activity is not a sufficient basis for Congress to exercise its Commerce Clause power nor may Congress appropriately use its authority under Section 5 of the Fourteenth Amendment); *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627 (1999) (holding that the abrogation of sovereign immunity in the Patent Variety Protection Remedy Clarification Act, derived from Congress' Article I powers, is invalid); *Printz v. United States*, 521 U.S. 898 (1997) (regarding the Tenth Amendment as a limitation on congressional power and invalidating the Brady Handgun Violence Prevention Act for impermissibly commandeering state officials); *United States v. Lopez*, 514 U.S. 549 (1995) (limiting Congress's power to enact the Gun-Free School Zones Act under the Commerce Clause). See generally Neil S. Siegel, *Interring the Rhetoric of Judicial Activism*, 59 DEPAUL L. REV. 555 (2010); Craig Green, *An Intellectual History of Judicial Activism*, 58 EMORY L.J. 1195 (2009); Caprice L. Roberts, *In Search of Judicial Activism: Dangers in Quantifying the Qualitative*, 74 TENN. L. REV. 567 (2007).

³ See, e.g., THOMAS M. KECK, *THE MOST ACTIVIST SUPREME COURT IN HISTORY* (2004); CASS R. SUNSTEIN, *RADICALS IN ROBES: WHY EXTREME RIGHT-WING COURTS ARE WRONG FOR AMERICA* (2005); Adam Liptak, *Justices Offer Receptive Ear to Business Interests*, N.Y. TIMES, Dec. 19, 2010, at A1.

⁴ *Kalipi v. Hawaiian Trust Co.*, 66 Haw. 1, 656 P.2d 745 (1982) (recognizing traditional gathering rights if exercised in the ahupua'a in which one lives).

⁵ *In re Ashford*, 50 Haw. 314, 440 P.2d 76 (1968) (allowing public access to beaches "according to ancient tradition, custom and usage" and finding that "the location of a public and private boundary dividing private land and public beaches was along the upper reaches of the waves as represented by the edge of vegetation or the line of debris").

⁶ *Robinson v. Ariyoshi*, 65 Haw. 641, 658 P.2d 287 (1982) (holding that the Kingdom of Hawai'i reserved title to all waters when the land passed from the Kingdom to private owners).

This unique blend goes far to explain why Hawai'i Supreme Court Associate Justice Simeon R. Acoba, Jr., who long ago served as one of CJ's law clerks, recently described CJ's time on the bench as "the Golden Age of Law in Hawai'i."⁷

CJ was, in fact, a quintessential activist for the good. One may define "activist" as: "1. In action, moving; 2. Causing or initiating change; 3. Engaging, contributing, participating."⁸ And one basic definition of "the good" is: "CJ William S. Richardson."

CJ's most enduring qualities were deeply rooted in the land and people of Hawai'i. Yet CJ uniquely blended head, heart, and spirit with unfailing ebullience and warmth, low-key humor, and exquisitely attuned common sense. This, too, remains a crucial part of his living legacy.

In CJ's memory, we remain deeply committed to realizing his dream of offering a first-rate legal education to all who qualify and to serving Hawai'i and the world beyond our shores. We do so in the spirit of someone who was truly beloved—a remarkably gentle man who was also a rare sort of gentleman.

On the occasion of CJ's ninetieth birthday celebration in December 2009, the law school compiled and published a book of his selected judicial opinions. In the Introduction in which I joined—but whose words were mainly written by Professor Melody Kapilialoha MacKenzie, an alumna of our first graduating class in 1976 and one of CJ's law clerks—we described CJ as a "compelling embodiment of a life well lived—and lived with exemplary grace and humble nobility."⁹ We tried to express our gratitude and deepest aloha to him "for standing as a torch of wisdom for us all."¹⁰ These words might seem a bit flowery. As we thought and talked about CJ, however, we came to believe that we had understated what he accomplished and what his legacy will continue to be.

As a veteran of World War II in the South Pacific and as a key player in the rugged political battles that followed in Hawai'i, CJ obviously understood the importance of fighting for principles. Yet for CJ and his colleagues—and for several thousand alumni of his law school—those ideals included an abiding public commitment to open up access to the kind

⁷ Mary Vorsino & Ken Kobayashi, *A Legal Giant: Decades-long legacy of mentorship had a major influence on students and education*, HONOLULU STAR-ADVERTISER, June 22, 2010, http://www.staradvertiser.com/news/hawaiinews/20100622_a_legal_giant.html.

⁸ STUDES TERKEL, *HOPE DIES LAST* xvi (2003).

⁹ Melody Kapilialoha MacKenzie & Aviam Soifer, *Introduction to KA LAMA KŪ O KA NO'EAU: THE STANDING TORCH OF WISDOM: SELECTED OPINIONS OF WILLIAM S. RICHARDSON, CHIEF JUSTICE, HAWAII SUPREME COURT, 1966-1982*, at xiv (2009).

¹⁰ *Id.*

of legal education that would be most likely to produce the right kind of lawyers.

Within CJ's vision, such lawyers must be able to combine outstanding craftsmanship with kind yet determined advocacy. They should demonstrate unusual empathy for others, particularly those in need, as well as substantial devotion to the public interest and great appreciation for fun. That the very diverse but also very cohesive William S. Richardson School of Law strives to realize CJ's dream suggests that it is still possible to stand for principles and to advocate for ideals as well as to enjoy life fully. In Hawai'i, that dream remains inextricably linked for all time to the life and legacy of CJ—a determined visionary who, with humble nobility and generous humanity, sought to secure rights and opportunities for all.

We already miss CJ hugely, but there is considerable comfort in knowing that we are part of his legacy, even if we will no longer see his exuberant yet dignified wave. In all future Ete Bowls, we will save his favorite spot on the grass, where he cheered for the women on both sides, and we will be sure that he keeps his rightful place at graduation. His gentle but bold vision will continue to launch just the right kinds of leaders. Our search for justice still will emulate CJ's unequalled blend of commitment and vision and of thoughtfulness, optimism, and aloha.

Aloha palena 'ole.

