

Ā Mau Loa:¹ A Tribute to Jon Markham Van Dyke

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In 1995, my husband Kahikūkalā Hoe helped compose Oli Kuamo‘o, a traditional Hawaiian chant to honor the voyaging canoe Hōkūle‘a as it returned home to Hakipu‘u after traveling the Pacific. This oli is a call to action. It describes the past, present, and future, and explains that although our stories will always be intertwined, the times are changing. It came to mind immediately when pondering how one could even begin to honor a man like Jon Markham Van Dyke.

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|-----------------------|---------------------|
| Iwi o ku‘u iwi | Bones of my bones |
| Eō! | Here I am! |
| Koko o ku‘u koko | Blood of my blood |
| Eō! | Here I am! |
| Pili ka mo‘o | Our stories are one |
| Ā mau loa! | Forever and ever! |
| Kū ka manawa hakipu‘u | Times are changing |
| Kū! ² | Rise up! |

JVD, as most of us called him, was larger than life. A Professor at the William S. Richardson School of Law since 1976, and legal scholar and litigator on everything from Constitutional Law and Native Hawaiian Rights to the Law of the Sea, he touched countless lives. Given all that he stood for and accomplished, the two years that I spent working with him as a Research Assistant (RA) and the five or so years that we toiled side-by-side on impact litigation to restore stream flow to communities in Nā Wai ‘Ehā, Maui, seems trivial. Upon reflection, I am deeply grateful that our mutual commitment to seeking justice for underserved communities, and Kānaka Maoli³ in particular, allowed me to share in a small part of his impressive story.

¹ “Ā mau loa” is a line from Oli Kuamo‘o, which means “forever and ever.” Oli Kuamo‘o, Hakipu‘u ‘Ohana (1995) (on file with author; translation by Kahikūkalā Hoe).

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² Oli Kuamo‘o, *supra*, note 1. Oli Kuamo‘o is usually recited as a group with an alaka‘i (leader) calling out the initial lines of the chant and the collective responding.

³ Kānaka Maoli refers to the Indigenous population inhabiting Hawai‘i at the time of

Our paths first intersected in the Spring of 1996, when a small typewritten notice was posted on the Law School bulletin board seeking RAs to help research and draft what would become *Who Owns The Crown Lands of Hawai'i*.⁴ I couldn't believe it. That was precisely why I had come to Law School: to learn about and help craft legal redress for my people while also framing these issues from a Kanaka Maoli perspective.

Rhoda Kealoha Spencer and I worked with JVD through the summer researching and drafting one chapter each week. It was a blistering pace, but we were up for it. When school resumed, I continued working with JVD on the book until I graduated. Although I learned a ton about the history of our Crown Lands and legal research and scholarship in general, what stands out most relates less to legal issues and more to personal ones.

JVD truly valued our mana'o⁵—both as law students and as Kānaka Maoli—and considered and incorporated our suggestions about the historical, cultural, and legal context and analysis. He invited us to participate in strategy meetings with the project's funder, Dwayne Steele, so that we could collectively craft issues and perspectives. He was also extremely generous. When the project began, JVD committed to having Rhoda and me co-author the book. And although it was in production for over a decade, he was determined to list us as co-authors. I declined because although I had invested years of work and drafted various sections, JVD had invested much more. He contacted me several times and attempted to convince me to put my name back on—especially because I was transitioning to the Law School and co-authoring a book was helpful for an academic career. That's just the kind of person that he was: a mentor; a respectful colleague; and magnanimous with his work. And that's just one example.

In 2004, while I was working full-time at Earthjustice, we filed a petition with the State Commission on Water Resource Management (Water Commission) on behalf of a coalition of grassroots groups to restore continuous mauka to makai flow (from the mountains into the ocean) to communities whose streams were drained dry to subsidize sugar cultivation on Maui's central plain.⁶ The case raised issues of environmental justice,

Western contact in the late 1700s without reference to blood quantum. See MARY KAWENA PUKU'I & SAMUEL H. ELBERT, HAWAIIAN DICTIONARY 127 (1986) [hereinafter HAWAIIAN DICTIONARY] (noting that Kānaka Maoli historically referred to a "full-blooded Hawaiian person").

⁴ See JON M. VAN DYKE, WHO OWNS THE CROWN LANDS OF HAWAI'I? (2008).

⁵ HAWAIIAN DICTIONARY, *supra* note 3, at 236 (mana'o means "thought, idea, belief, opinion, [or] theory[.]").

⁶ For more on Nā Wai 'Ehā see D. Kapua'ala Sproat, *Wai Through Kānāwai: Water*

cultural sovereignty, and the public trust, and will both shape the future of water law in Hawai‘i and decide the fate of Central Maui communities, including whether Waihe‘e, Waiehu, ‘Āao, and Waikapū Streams will be restored to support public trust and other community uses or will continue to be hoarded by two privately-held companies. The Water Commission’s 2010 decision, which was highly contentious and politicized, was reversed by the Hawai‘i Supreme Court in 2012 and is still on remand.⁷

In 2007, an extensive administrative trial began, and JVD was appointed Special Deputy Corporation Counsel for Maui County. Pamela Bunn, the attorney for the Office of Hawaiian Affairs in the proceeding, reflected:

The opportunity to work alongside JVD on the Nā Wai ‘Ehā litigation was a rare gift. It goes without saying that JVD’s exceptional legal scholarship in the areas of water law and Native Hawaiian rights, and his decades of litigation experience, were huge assets on our side of the case. What was more remarkable to me and his other former students in the lawsuit was his generous spirit and infectious confidence. Despite his world-renowned expertise, JVD treated us as respected colleagues and genuinely meant it. He never doubted that we were up to the task, or that we would ultimately prevail. It was his unshakable confidence in us, even more than his sage legal and practical advice, that made us better lawyers.⁸

Jane Lovell, former Maui County Deputy Corporation Counsel, shared:

[A]s time passes, it will not be Jon’s prodigious professional accomplishments or scholarship that I will remember most. Instead, my lasting memories will be of Jon’s kind and generous heart, and his wry sense of humor. I was honored to be Jon’s co-counsel in the Nā Wai ‘Ehā litigation, but was even more fortunate to be Jon’s student, colleague, and friend.⁹

I’ll always remember JVD walking into the hearing room with bottles of orange juice or soda in his pants’ pockets and a kapa portfolio from the South Pacific. Always unassuming and smiling, with a kind word or compliment about how you handled a witness or issue – no matter what time of the day it was; or, whether it was the first week or tenth month of

for Hawai‘i’s Streams and Justice for Hawaiian Communities, 95 MARQ. LAW REV. 127 (2011).

⁷ See *In re ‘Āao Ground Water Management Area High-Level Source Water Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihe‘e River and Waiehu, ‘Āao, and Waikapū Streams Contested Case Hearing*, 128 Hawai‘i 228, 287 P.3d 129 (2012).

⁸ E-mail from Pamela Bunn, Attorney, Alston Hunt Floyd & Ing, to author (Apr. 26, 2012, 7:40 HST) (on file with author).

⁹ E-mail from Jane Lovell, Deputy Corporation Counsel, County of Maui, to author (Apr. 20, 2012, 15:32 HST) (on file with author).

trial. He brought a higher level of civility and aloha and could extract concessions in his own unique way because of his deep respect, style, and grace.

Both in Nā Wai 'Ehā and beyond, as a Kanaka Maoli, I am deeply grateful for JVD's work on behalf of our natural and cultural resources, not to mention our inherent rights and sovereignty. Though we now have academic centers dedicated to Native Hawaiian Law and attorneys and scholars specializing in these issues, as Former Governor John Waihe'e III pointed out during his December 2011 eulogy, JVD brought legitimacy to our issues when few were willing to stand up on our behalf.

Now that JVD has left us, we must continue to stand up on behalf of Hawai'i's Indigenous People and resources and the things that make these islands truly special. In much of the same way that Oli Kuamo'o is a call to action, inviting supporters to rise up, my tribute to JVD will not be in my memories of time spent working with him on projects or litigating cases. My tribute to JVD will be in my work and scholarship on justice issues ā mau loa, forever and ever. Although he leaves rubber slippers that are impossible for any one person to fill, collectively, all of us who have had the great privilege of sharing his story and benefitting from his generosity and investment in us must carry on this work and legacy ā mau loa. Kū ka manawa hakiu'u; Kū!¹⁰

¹⁰ "Kū ka manawa hakiu'u; Kū" is from Oli Kuamo'o, and means "times are changing; rise up." Oli Kuamo'o, *supra*, note 1.