

# Hali‘a Aloha: A Tribute to Jon M. Van Dyke

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I was very privileged to have known and worked with Jon M. Van Dyke for more than thirty-five years on many issues affecting the Hawaiian community. Jon stood so strongly for justice. He was not afraid to speak out and express his opinions, but always did so with respect and aloha for others. Soon after Jon came to Hawai‘i in 1976, he began his work with the Hawaiian community, encouraging Native Hawaiians to become involved in the growing native rights movement nationally and to seek redress for their historical claims.

Jon was instrumental in the success of the Native Hawaiian Legal Corporation (NHLC),<sup>1</sup> a public interest law firm advancing the rights of the Hawaiian community, serving on its board during a crucial reorganization time in the late 1970s. It was his involvement, along with that of several Hawaiian leaders that led me to accept an offer to become a staff attorney at the organization in 1981. Over the years, Jon stayed involved in NHLC and he and I collaborated on several projects as a result. In 1982, the Office of Hawaiian Affairs (OHA) asked us to go to Washington, D.C., to sit in on the final decision-making meeting of the Native Hawaiians Study Commission, established to study and report on “the culture, needs, and concerns” of the Native Hawaiian community.<sup>2</sup> Jon and I published a commentary describing our experience, sitting through days of jockeying and maneuvering in which it became clear that the majority of the commissioners had no interest in the Native Hawaiian community, but instead sought to protect the United States from any possible liability for the U.S. role in the 1893 overthrow of the Hawaiian Kingdom.<sup>3</sup> Jon and I, along with OHA staff and other community members, drafted major sections of the Minority Report for the Native Hawaiian members of the commission.

In the late 1980s, Jon and I also worked together on the *OHA Draft Blueprint for Native Hawaiian Entitlements*,<sup>4</sup> a discussion paper that

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<sup>1</sup> For information on the Native Hawaiian Legal Corporation, see [www.nhlchi.org/](http://www.nhlchi.org/).

<sup>2</sup> Act of December 22, 1980, Pub. L. No. 96-565, § 303 (1980).

<sup>3</sup> For a version of the commentary, see *Native Hawaiians Study Commission: Hearings Before the S. Comm. on Energy and Natural Resources*, 98th Cong. 132-41 (1984) (statement of Jon Van Dyke, Prof. of Law, Univ. of Haw.).

<sup>4</sup> See discussion of the Draft Blueprint in NATIVE HAWAIIAN RIGHTS HANDBOOK 91-2 (Melody Kapilialoha MacKenzie ed., 1991).

presented a plan for seeking return of native lands and recognition of self-governing rights. Jon was also the spark for the *Native Hawaiian Rights Handbook*,<sup>5</sup> an initiative that grew from the pleas of frustrated students at the Law School who wanted a text for their Native Hawaiian Rights class. The original idea was to gather the relevant laws and cases into one book. It was Jon, however, who told me that it was insufficient to just copy all of the relevant materials and that much more—context, history, and perspective—was necessary. As I remember, his exact words were, “You don’t want to be just a copying service!” Of course, Jon was right and the resulting work product owed much to Jon’s mentorship and advice.

Jon’s research and scholarship on Native Hawaiian issues has been enormously influential. In 1995, Jon co-authored his first major article on Native Hawaiian sovereignty.<sup>6</sup> Three years later, Jon’s seminal article on the political status of the Native Hawaiian community was published<sup>7</sup> and then cited by the U.S. Supreme Court in the 2000 *Rice v. Cayetano*<sup>8</sup> case. In the article, Jon set forth the historical relationship between the Native Hawaiian people and the federal government, arguing that the special relationship doctrine, which underpins the federal-tribal relationship, had already been applied to Native Hawaiians through numerous federal laws recognizing the unique status of both the native people and lands of Hawai‘i.

Jon’s 2008 book, *Who Owns the Crown Lands of Hawai‘i?*,<sup>9</sup> brought together his more than thirty years of research and expertise on Hawaiian land issues. In this original work examining the complex history—from a legal and cultural perspective—of Hawai‘i’s Crown lands, Jon recognized that the unique status and responsibility of the ali‘i in Hawaiian society should be a focal point in understanding the Crown lands. Jon argued that Government lands provided for the needs of the general citizenry of the Hawaiian Kingdom; in contrast, the Crown lands were the personal holdings of Kamehameha III. They supported the King who, according to the traditional Hawaiian world-view, had a responsibility and duty in turn to benefit the Hawaiian people. Thus, Jon reframed the discussion on the very nature of the Crown lands—the lands were not held “personally” by the reigning monarch in the Western fee simple sense, but were held in trust for the Hawaiian people. The status of the Crown lands is an issue of

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<sup>5</sup> *Id.*

<sup>6</sup> Noelle M. Kahanu and Jon M. Van Dyke, *Native Hawaiian Entitlement to Sovereignty: An Overview*, 7 U. HAW. L. REV. 427 (1995).

<sup>7</sup> Jon M. Van Dyke, *The Political Status of the Native Hawaiian People*, 17 YALE L. & POL’Y REV. 95 (1998).

<sup>8</sup> *Rice v. Cayetano*, 528 U.S. 495, 518 (2000).

<sup>9</sup> JON M. VAN DYKE, *WHO OWNS THE CROWN LANDS OF HAWAI‘I?* (2008)

enormous significance to the Hawaiian community as it pursues self-determination and sovereignty and Jon's original research on the Crown lands and his detailed analysis of the seminal cases<sup>10</sup> involving the lands, provide a new perspective from which to discuss the "ownership" question.

I worked with Jon and his wife, Sherry Broder, on the landmark *Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawai'i*<sup>11</sup> case in which the Hawai'i Supreme Court placed a moratorium of the sale of ceded lands—the Government and Crown lands of the Hawaiian Kingdom—until the unrelinquished claims of the Native Hawaiian people could be resolved. The U.S. Supreme Court eventually heard the case and, since I was not licensed to practice in the Court, Jon sponsored my admission. We lost the case in the U.S. Supreme Court.<sup>12</sup> The one fond memory I have of the experience, however, is Jon's voice addressing the Court, vouching for my character as he asked for my admission, faltering as he reached my Hawaiian middle name, and then saying it perfectly.

I am forever grateful for Jon's advocacy on behalf of Native Hawaiians and his willingness to engage with the community, to think through problems, and to believe that there were solutions. He believed in us as a people and he believed that we could resolve our differences, come together, and create a government that would serve our interests and needs—and that as a result, we would create a better Hawai'i for all of us.

I was honored to present an oli (chant) at Jon's memorial service. The oli I chose was *'Ike iā Kaukini he Lawai'a Manu*, which exhorts us to follow the example of the birdcatcher, Kaukini, of Waipi'o Valley on Hawai'i Island.<sup>13</sup> Kaukini and his wife, Pōkahi, were given the task of raising the sacred child Lauka'ie'ie. It was their responsibility to protect and care for her—and they did this with great devotion—nurturing her through childhood until she grew into an accomplished young woman. Their devotion to Lauka'ie'ie is symbolic of dedicated serve to a person or ideal of great value. Such service can be characterized as tiring, but it is "always inspired and rejuvenated by love, and it is always its own best reward."<sup>14</sup> The chant calls on us to follow Kaukini's lead by identifying and serving our own greatly valued person or ideal with the same "joyful

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<sup>10</sup> *In re Kamehameha IV*, 2 Haw. 715 (1864); *Liliuokalani v. U.S.*, 45 Ct. Cl. 481 (1910).

<sup>11</sup> *Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Haw.*, 177 P.3d 884 (2008).

<sup>12</sup> *Hawaii v. Office of Hawaiian Affairs*, 566 U.S. 163 (2009).

<sup>13</sup> For a discussion of this chant, classified as a mele pai ali'i or a chant expressing admiration for a chief, see Kīhei de Silva, *An Essay on 'Ike iā Kaukini he Lawai'a Manu*, available at [http://www.halaumohalailima.com/HMI/Ike\\_ia\\_Kaukini.html](http://www.halaumohalailima.com/HMI/Ike_ia_Kaukini.html).

<sup>14</sup> *Id.*

sense of purpose.”<sup>15</sup> Jon used his intelligence, insight, and wisdom in joyful service of justice, and for the good of our community and world. We could do no better than to follow his example.

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<sup>15</sup> *Id.*