

Ka Lama Kū O Ka No‘eau: The Standing Torch of Wisdom

Melody Kapilialoha MacKenzie*

In Hawaiian tradition, admiration for a wise person is expressed using the phrase “ka lama kū o ka no‘eau,” literally meaning “the standing torch of wisdom.”¹ This is indeed a fitting description of former Hawai‘i Supreme Court Chief Justice (CJ) William S. Richardson. Here at the law school that bears his name and especially for those of us who have benefited from his decisions—both in his role as a jurist and as a wise mentor and leader—the loss of CJ Richardson’s physical presence is deeply felt. Nowhere is CJ Richardson’s wisdom expressed with more eloquence and force than in the opinions that he wrote over the course of his sixteen-year tenure on the bench. His opinions reflect his humble background, his commitment to a more open society with equal opportunity for Hawai‘i’s multi-ethnic population, and his strong belief in looking to Hawai‘i’s rich past as a source of today’s law.²

Born into a working-class Hawaiian, Chinese, and Caucasian family, CJ Richardson understood social, economic, and political deprivations, and he committed himself to social justice. A graduate of Roosevelt High School and the University of Hawai‘i, CJ Richardson left Hawai‘i to attend law school at the University of Cincinnati. After his return from service in World War II, CJ Richardson aligned himself with the revitalized Democratic Party, helping in

* Associate Professor of Law and Director of Ka Huli Ao Center for Excellence in Native Hawaiian Law, William S. Richardson School of Law. I am a beneficiary—three times over—of Chief Justice Richardson’s vision and commitment to the people of Hawai‘i. I graduated in the law school’s first class in 1976, clerked for CJ Richardson for four years, and now teach at the law school that bears his name.

In celebration of Chief Justice Richardson’s ninetieth birthday in December 2009, and in honor of the significant role he played in shaping Hawai‘i’s current jurisprudence and legal environment, selected opinions authored by CJ Richardson were gathered into one volume entitled *Ka Lama Kū O Ka No‘eau: The Standing Torch of Wisdom: Selected Opinions of William S. Richardson, Chief Justice, Hawai‘i Supreme Court, 1966-1982*. This is an expanded version of the introduction to that volume. Dean Avi Soifer contributed to that introduction and has graciously allowed me to expand our work in this essay. I also wish to express my gratitude to Nathaniel T. Noda, Ka Huli Ao Post-JD Research & Scholarship Fellow. Mahalo nunui to 2005 WSRSL graduate, Kahikino Noa Dettweiler, for his beautiful Oli Aloha for CJ Richardson.

¹ MARY KAWENA PUKUI, ‘ŌLELO NO‘EAU: HAWAIIAN PROVERBS & POETICAL SAYINGS 155 (1983).

² See generally CAROL S. DODD, *THE RICHARDSON YEARS: 1966-1982* (1985) for a detailed biography of Chief Justice Richardson and the factors that influenced his judicial decisions, much of which is referenced in this article.

particular to mobilize the Hawaiian community in support of Democratic candidates. He subsequently served as Chief Clerk of the State Senate and as Lieutenant Governor. In 1966, Governor John A. Burns appointed him Chief Justice of the Hawai'i Supreme Court where he served for the next sixteen years. Throughout his career, CJ Richardson encouraged Native Hawaiians and other under-represented groups to work within the legal system to bring about positive change for all of Hawai'i's people.

CJ Richardson was a staunch advocate of an independent judiciary, even authoring an article in the *University of Hawai'i Law Review* discussing his views on judicial independence.³ Although he had many friends and colleagues in the legislative and executive branches of government, he fiercely defended the Supreme Court's authority to promulgate rules of practice and procedure for the state courts and to regulate the admission of new lawyers. He fought to ensure that judges were protected from undue political pressures, which in his mind also meant guaranteeing that judges made a decent living. During his tenure, CJ Richardson established a unified judiciary and oversaw the implementation of the 1978 amendments to the Hawai'i State Constitution that created both an Intermediate Court of Appeals and a new judicial selection process.

In addition to his role as a jurist, CJ Richardson was an astute administrator. One of his major efforts was to oversee the funding and construction of new buildings for the judiciary—on O'ahu, Ka'ahumanu Hale to house the circuit courts and Kauikeaouli Hale for the district courts. He also secured funding for new judiciary buildings on the neighbor islands. The project closest to his heart, however, was renovating Ali'iōlani Hale, the current Supreme Court building. CJ Richardson clearly wanted to restore the building to its earlier glory and to reclaim it for Hawai'i's people. After all, Ali'iōlani Hale had been the seat of the Hawaiian Kingdom's Legislative Assembly. Moreover, it was from the steps of Ali'iōlani Hale that the provisional government had declared the abrogation of the Hawaiian monarchy. It was thus particularly fitting that a Native Hawaiian Chief Justice ensured that the building, and in many senses the judiciary itself, would once again belong to the people of Hawai'i.

CJ Richardson mentored countless young attorneys, including the forty law clerks who worked for him during his tenure on the court. As one of his law clerks, I had the privilege of working closely with him for almost four years, staying on past my initial one-year commitment to help with the expanding caseload and as CJ sought to implement changes in the judiciary.

CJ Richardson gave his law clerks wide latitude to freely express their opinions about cases, both before and after oral argument. Once the court had

³ See William S. Richardson, *Judicial Independence: The Hawaii Experience*, 2 U. HAW. L. REV. 1 (1979).

met and decided a case, CJ would call one of us into his chambers and say something like, “Well, I think we’re going to be in the majority on this one—maybe even a unanimous one.” He would outline his thinking on the case and an exchange of ideas would follow; sometimes he would call two of his clerks in to see which one was most interested in writing the decision. And then, armed with general directions and principles, it was up to the law clerk to give those ideas real meat in a decision. If, at any time during the drafting process, a clerk was stuck, felt that perhaps the wrong decision was being made, or found facts in the record that made it impossible to rule as CJ and the court wished, CJ’s door was always open. A first draft was often followed by a second and third. You could always feel CJ’s calm, but persistent, guidance.

Always generous with his time, CJ Richardson sat and talked to each of us about the more mundane aspects of our lives as well as the big decisions we had to make. CJ also allowed us great flexibility in our schedules. After ensuring that there would be no conflicts, he let me work in my off hours on the defense for those charged with federal trespass on the island of Kaho‘olawe and later allowed me to take a leave of absence to work at the 1978 Constitutional Convention. One of my most memorable experiences was when he bundled a group of Supreme Court clerks into his car to go to Ala Moana Park for the first homecoming of the Hawaiian voyaging canoe, Hōkūle‘a.

CJ took an ongoing interest in the lives and careers of his law clerks. He was delighted when we succeeded and he comforted us when we did not. When one of the clerks became a judge (as several did), ran for office, became a partner in a law firm, or received recognition for community service, CJ Richardson was there. With a wide grin and a gentle nod of his head, he let us know how much he supported us and how proud he was of our accomplishments.

Nothing is more striking about CJ Richardson’s achievements than his longstanding and continuing commitment to opening educational and professional avenues for the islands’ most disadvantaged groups. This commitment led to the 1973 establishment of the law school that now bears his name. He understood that those with the greatest stake in building a more just and equitable society were often denied the opportunity to go to law school because of the prohibitive cost and distance. Determined that all in Hawai‘i should have the chance to obtain an excellent legal education, he fought an uphill battle over many years to create and help shape Hawai‘i’s only law school.

Because of CJ Richardson’s perseverance, nearly 2500 men and women—many from underrepresented, minority, and Native Hawaiian communities—are now practicing law in the public and private sectors, holding elected office, leading community and legal services organizations, teaching law, and serving in the judiciary.

In 1966, as he was beginning his tenure on the Supreme Court, CJ Richardson reflected on his new role as a jurist:

The man who is Chief Justice must balance the rules of the past to conform with the state of society today He must bring the old rules in line with modern times. He must remember that those rules were made under a different structure.

He must live in the past—but not only the past. He must adopt the fundamental principles of the past and bring them into focus with the present. And in Hawaii, the present—like the past—is a time of migration.⁴

For CJ Richardson, the past included more than the principles of Anglo-American law; it also included the principles of Hawaiian custom and tradition. For him, the past, present, and future all encompassed concern for the common person and for the dispossessed and disadvantaged. CJ Richardson understood and accepted, even embraced, his responsibility. He knew that he and his fellow jurists had the opportunity to make major changes, and he grasped that opportunity.

Working closely with the other members of the court, CJ Richardson helped to reincorporate Native Hawaiian tradition and custom into state law and expanded public rights. His decisions show his successful efforts to balance competing factors: the past and the future; Western law and Hawaiian law and tradition; the rights of the individual and the rights of the collective; and public and private interests.

At times, this new yet old way of thinking drew criticism from government officials and the legal profession, but it has become recognized as an enlightened approach for our distinctive, multi-cultural homeland. Recently, CJ Richardson reflected on his court's approach:

Hawai'i has a unique legal system, a system of laws that was originally built on an ancient and traditional culture. While that ancient culture had largely been displaced, nevertheless many of the underlying guiding principles remained. During the years after the illegal overthrow of the Hawaiian Kingdom in 1893 and through Hawai'i's territorial period, the decisions of our highest court reflected a primarily Western orientation and sensibility that wasn't a comfortable fit with Hawai'i's indigenous people and its immigrant population. We set about returning control of interpreting the law to those with deep roots in and profound love for Hawai'i. The result can be found in the decisions of our Supreme Court beginning after Statehood. Thus, we made a conscious effort to look to Hawaiian custom and tradition in deciding our cases—and consistent with Hawaiian practice, our court held that the beaches were free to all, that access to

⁴ Gene Hunter, *Democrat Richardson Has His Heart in Hawaii*, HONOLULU ADVERTISER, Feb. 26, 1966, at A1.

the mountains and shoreline must be provided to the people, and that water resources could not be privately owned.⁵

The decisions of the Richardson court relating to water are undoubtedly the most widely known and the most controversial. CJ Richardson did not write the seminal water rights opinion, *McBryde Sugar Co. v. Robinson*,⁶ but he was in strong agreement with the majority and defended and reaffirmed this earlier decision in subsequent opinions. In *McBryde*, the court clarified Hawai'i law and held that water flowing in natural watercourses belongs to the State. The court concluded that in the Māhele—the conversion to fee simple titles in the mid-1800s—King Kamehameha III intended to reserve the right to use water to himself as sovereign for the common good.⁷ No right to private ownership of water had been conveyed with any land title grants.⁸ Therefore, the State, as successor to the king, owned all waters flowing in natural watercourses and held water in trust for the people.⁹ The *McBryde* decision also pointed to the 1850 Kuleana Act, which allowed native tenants to obtain fee simple title to land. The Kuleana Act, the court stated, guaranteed the right to “drinking water and running water,” thereby giving riparian water rights to land owners adjoining natural watercourses.¹⁰

In 1982, in *Robinson v. Ariyoshi*,¹¹ CJ Richardson responded to six questions certified by the Ninth Circuit Court of Appeals in appeals related to the *McBryde* decision. *Robinson* provided important clarifications regarding water law in Hawai'i, including strongly reaffirming the role of the public trust doctrine in both traditional Hawaiian and modern usage. *Robinson* reiterated that the *McBryde* decision *clarified* ambiguous aspects of Hawai'i water law and did not depart from settled legal principles.¹² It was also instrumental in affirming the role of the riparian doctrine in Hawai'i water law.

CJ Richardson decided a second important water rights case the same year. *Reppun v. Board of Water Supply*¹³ involved a dispute over the water in Waihe'e Stream on O'ahu and the impact of the Board of Water Supply's wells on the rights of downstream kalo (taro) farmers. The court's opinion helped

⁵ William S. Richardson, Spirit of Excellence Award Acceptance Speech at the ABA Spirit of Excellence Awards Luncheon (Miami, Fla., February 10, 2007).

⁶ 54 Haw. 174, 504 P.2d 1330 (Abe, J.), *aff'd on reh'g*, 55 Haw. 260, 517 P.2d 26 (1973) (per curiam).

⁷ *Id.* at 185-87, 504 P.2d at 1338-39.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 191-99, 504 P.2d at 1341-45.

¹¹ 65 Haw. 641, 658 P.2d 287 (1982).

¹² *Id.* at 673-76, 658 P.2d at 309-12.

¹³ 65 Haw. 531, 656 P.2d 57 (1982).

explain the doctrines of appurtenant and riparian rights, including whether such rights may be transferred or extinguished.

CJ Richardson has identified *In re Ashford*¹⁴ as the decision of which he was most proud and the one that he believed had the most significant impact. In *Ashford*, the court was called upon to determine the boundary between public beaches and private property. At issue was an original grant from the Māhele describing the shoreline boundary using the phrase “ma ke kai,” or “along the sea.”¹⁵ The meaning of this term was established in *Ashford*, when the court allowed kama'āina witness testimony¹⁶ on the location of shoreline boundaries according to ancient Hawaiian tradition, custom, and usage. The court then determined that based on Hawaiian custom and usage, seaward boundaries described as “ma ke kai” are located along the upper reaches of the wash of waves, as evidenced by the edge of vegetation or line of debris left by the wash of waves.¹⁷

In two subsequent cases, *County of Hawaii v. Sotomura*¹⁸ and *In re Sanborn*,¹⁹ the court affirmed and refined the *Ashford* decision. In *Sotomura*, the court applied the *Ashford* standard to property that had been registered in Land Court and also determined that where seaward boundaries are evidenced by both a debris line and a vegetation line lying further mauka, or inland, the boundary is presumed to be at the vegetation line.²⁰ This meant that more of the beach would be available for public use and the court specifically noted that “[p]ublic policy . . . favors extending to public use and ownership as much of Hawaii's shoreline as is reasonably possible.”²¹ In *Sanborn*, another case involving property registered in Land Court, the Hawai'i Supreme Court reaffirmed its earlier holdings and also ruled that in construing land court decrees, natural monuments such as “along the high water mark” are controlling over azimuth and distance measurements.²² Citing *Sotomura*, the court stated, “land below high water mark is held in public trust by the State, whose ownership may not be relinquished, except where relinquishment is consistent with certain public purposes.”²³

¹⁴ 50 Haw. 314, 440 P.2d 76 (1968).

¹⁵ *Id.* at 314, 440 P.2d at 77.

¹⁶ In a footnote, the court quoted an earlier Hawai'i case to define a kama'āina witness as “a person familiar from childhood with any locality.” *Id.* at 315 n.2, 440 P.2d at 77 n.2 (quoting *In re Boundaries of Pulehunui*, 4 Haw. 239, 245 (1879)).

¹⁷ *Id.* at 315, 440 P.2d at 77.

¹⁸ 55 Haw. 176, 517 P.2d 57 (1973).

¹⁹ 57 Haw. 585, 562 P.2d 771 (1977).

²⁰ *Sotomura*, 55 Haw. at 182, 517 P.2d at 62.

²¹ *Id.* at 189, 517 P.2d at 66.

²² *Sanborn*, 57 Haw. at 590, 562 P.2d at 774.

²³ *Id.* at 593-94, 562 P.2d at 776 (quoting *Sotomura*, 55 Haw. at 183-84, 517 P.2d at 63).

In another landmark case, *State ex rel. Kobayashi v. Zimring*,²⁴ the court was called upon to resolve a dispute over whether new lands created by a lava flow were public or private property. After a detailed examination of the Māhele and the State Admission Act, as well as Hawaiian precedent, to determine how lava extensions were treated under Hawaiian custom and applicable law, CJ Richardson held that lands created by lava extensions are owned by the State of Hawai‘i.²⁵ Finding no prior Hawaiian custom or judicial precedent, he reasoned that “equity and sound public policy demand that such land inure to the benefit of all the people of Hawaii, in whose behalf the government acts as trustee Thus we hold that lava extensions vest when created in the people of Hawaii, held in public trust by the government for the benefit, use and enjoyment of all the people.”²⁶

Two other decisions further demonstrate the Richardson court’s view that resources should be held for the benefit of the public. In the 1966 case *In re Robinson*, the court held that a reservation of the government’s rights to “all mineral or metallic mines, of every description,” in a royal patent controlled even where the original Land Commission Award did not contain the reservation.²⁷ Two years later, the court decided *In re Kelley*, holding that a private road, abandoned to the government prior to an 1892 act designating all trails, roads and highways as public, automatically became a public highway upon passage of the act—even without formal acceptance by the government.²⁸

It would be a mistake to conclude, however, that the Richardson court always acted to give resources to the public. In the 1978 case *In re Kamakana*, the justices looked to Hawaiian practice and custom to determine that the grant of an ahupua‘a, a traditional Hawaiian land unit, would naturally include the fishpond attached to the ahupua‘a.²⁹ The court reasoned that because Hawaiians viewed fishponds in the same way that they viewed ‘āina or land, the private claimant, not the State, owned a Moloka‘i fishpond.³⁰ In another case decided the same year, *United Congregational Churches v. Kamamalu*, the court established that continuous occupation of state lands by the churches afforded them an equitable right to use the property, until abandoned, for those purposes.³¹

²⁴ 58 Haw. 106, 566 P.2d 725 (1977).

²⁵ *Id.* at 124-25, 566 P.2d at 736-38.

²⁶ *Id.* at 121, 566 P.2d at 735 (citations omitted).

²⁷ 49 Haw. 429, 440-41, 421 P.2d 570, 577-78 (1966).

²⁸ 50 Haw. 567, 579-80, 445 P.2d 538, 546-47 (1968).

²⁹ 58 Haw. 632, 640-41, 574 P.2d 1346, 1350-51 (1978).

³⁰ *Id.* at 638-41, 574 P.2d at 1349-51.

³¹ 59 Haw. 334, 341-43, 582 P.2d 208, 213-14 (1978).

CJ Richardson also expressed concern for the loss of Hawaiian lands through adverse possession. In *Yin v. Midkiff*³² and *City and County of Honolulu v. Bennett*,³³ his court determined that a co-tenant must show good faith in adversely possessing property. In most instances, CJ Richardson noted, the requirement of good faith in turn mandates that the tenant acting adversely must *actually notify* co-tenants of the claim against them.³⁴ The court acknowledged that there may be exceptional circumstances where good faith is satisfied by less than actual notice,³⁵ but this basic good faith requirement has remained the standard for adverse possession claims against co-tenants in Hawai'i.³⁶

In another key decision, CJ Richardson set forth the standard by which state actions should be judged when dealing with beneficiaries of the Hawaiian Homes Commission Act,³⁷ a law establishing homestead lands for Native Hawaiians of not less than fifty percent Hawaiian ancestry. In *Ahuna v. Department of Hawaiian Home Lands*, the court drew the analogy between the federal government's relationship with Native American peoples and the State's relationship with Hawaiian home lands beneficiaries, declaring that the State must "adhere to high fiduciary duties normally owed by a trustee to its beneficiaries."³⁸ CJ's opinion added that the State should thus be judged by "the most exacting fiduciary standards."³⁹ These duties included the duty to act solely in the interests of the beneficiaries and to exercise reasonable care and skill in dealing with trust property.⁴⁰

The lasting value of the *Ahuna* court's explication of these trust duties is evident in current Hawai'i case law. The Hawai'i Supreme Court has adopted the *Ahuna* standard in two landmark cases⁴¹ related to the public land trust, the former Hawaiian Kingdom Government and Crown Lands ceded to the United States by the Republic of Hawai'i in 1898 and then transferred to the State of Hawai'i in the 1959 Admission Act. The court has applied these same strict

³² 52 Haw. 537, 481 P.2d 109 (1971).

³³ 57 Haw. 195, 552 P.2d 1380 (1976).

³⁴ *Id.* at 209-10, 552 P.2d at 1390.

³⁵ *Id.*

³⁶ See *Wailuku Agribusiness Co. v. Ah Sam*, 114 Haw. 24, 34, 155 P.3d 1125, 1135 (2007); *Morinoue v. Roy*, 86 Haw. 76, 82-83, 947 P.2d 944, 950-51 (1997); *Hana Ranch v. Kanakaole*, 66 Haw. 643, 645-46, 672 P.2d 550, 551-52 (1983).

³⁷ 42 Stat. 108 (1921), *reprinted in* 1 HAW. REV. STAT. 261 (2009).

³⁸ 64 Haw. 327, 338, 640 P.2d 1161, 1168 (1982).

³⁹ *Id.* at 339, 640 P.2d at 1169 (quoting *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942)) (emphasis omitted).

⁴⁰ *Id.* at 340, 640 P.2d at 1169.

⁴¹ *Pele Def. Fund v. Paty*, 73 Haw. 578, 605 n.18, 837 P.2d 1247, 1274 n.18 (1992); *Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Haw.*, 117 Haw. 174, 195, 177 P.3d 884, 905 (2008), *rev'd sub nom.* *Hawaii v. Office of Hawaiian Affairs*, 129 S. Ct. 1436 (2009).

fiduciary standards to the State’s dealings with public trust lands, stating that “such duty is consistent with the State’s obligation to use reasonable skill and care in managing the public lands trust” and that the State’s conduct should be judged “by the most exacting fiduciary standards.”⁴²

CJ Richardson once again looked to early Hawaiian law and custom in *Palama v. Sheehan*.⁴³ In *Palama*, his opinion found a right of access to a kuleana parcel based, in part, on language in early Hawai‘i deeds reserving the rights of native tenants as well as the 1850 Kuleana Act’s provision reserving the “right of way” on all lands granted in fee simple.⁴⁴ The decision also relied on kama‘āina testimony in the trial court showing that the road was an ancient Hawaiian right of way.⁴⁵

Turning to Hawaiian custom and practice again, and bolstered by a 1978 amendment to the Hawai‘i State Constitution, CJ Richardson’s 1982 decision in *Kalipi v. Hawaiian Trust Co.*,⁴⁶ dealing with Native Hawaiian gathering rights, broke new ground. The court stated that pursuant to article XII, section 7 of the amended constitution, courts are obligated “to preserve and enforce such traditional rights.”⁴⁷ Recognizing that gathering rights are protected by three sources in Hawai‘i law—Hawai‘i Revised Statutes (H.R.S.) sections 1-1 and 7-1, and article XII, section 7 of the Hawai‘i State Constitution—the court determined that lawful residents of an ahupua‘a may, for the purpose of practicing Native Hawaiian customs and traditions, enter undeveloped lands within the ahupua‘a to gather the items enumerated in H.R.S. section 7-1.⁴⁸ The court further stated that H.R.S. section 1-1 ensures the continuation of Native Hawaiian customs and traditions not specifically enumerated in H.R.S. section 7-1 that may have been practiced in certain ahupua‘a “for so long as no actual harm is done thereby.”⁴⁹ It noted that the “retention of a Hawaiian tradition should in each case be determined by balancing the respective interests and harm once it is established that the application of the custom has continued in a particular area.”⁵⁰

The *Kalipi* decision set the foundation for more recent cases affirming traditional and customary rights. Ten years after *Kalipi*, the Hawai‘i Supreme Court, in *Pele Defense Fund v. Paty*, recognized that “native Hawaiian rights

⁴² *Office of Hawaiian Affairs*, 117 Haw. at 195, 177 P.3d at 905 (internal quotation marks omitted).

⁴³ 50 Haw. 298, 440 P.2d 95 (1968).

⁴⁴ *See id.* at 300, 440 P.2d at 97.

⁴⁵ *Id.* at 301, 440 P.2d at 97-98.

⁴⁶ 66 Haw. 1, 656 P.2d 745 (1982).

⁴⁷ *Id.* at 4, 656 P.2d at 748.

⁴⁸ *Id.* at 7-8, 656 P.2d at 749.

⁴⁹ *Id.* at 10, 656 P.2d at 751.

⁵⁰ *Id.*

protected by article XII, section 7 [of the Hawai'i Constitution] may extend beyond the ahupua'a in which a native Hawaiian resides where such rights have been customarily and traditionally exercised in this manner."⁵¹ The court explained that although Kalipi had gathering rights under H.R.S. section 7-1 limited to the ahupua'a in which he lived as a native tenant, H.R.S. section 1-1's "'Hawaiian usage' clause may establish certain customary Hawaiian rights beyond those found in section 7-1."⁵² In 1995, in *Public Access Shoreline Hawaii v. Hawai'i County Planning Commission (PASH)*, the court rejected the argument that gathering rights disappear when an owner develops land, holding instead that the State is obligated to protect the reasonable exercise of traditional and customary rights to the extent feasible.⁵³ The court based its decision on H.R.S. section 1-1, tracing its origins to an 1847 law authorizing the adoption of common law principles "not in conflict with the laws and usages of this kingdom."⁵⁴ The *PASH* court further stressed, "the precise nature and scope of the rights retained by [H.R.S.] § 1-1 . . . depend upon the particular circumstances of each case"⁵⁵ and noted that *Kalipi* specifically refused to decide the "ultimate scope" of traditional rights under that statute.⁵⁶

Two decisions of the Richardson era illustrate the court's general approach to public education. In *Spears v. Honda*, a 1968 case, the court ruled that the State lacked the constitutional authority to use public funds to provide bus transportation subsidies for sectarian and private school students.⁵⁷ In *Medeiros v. Kiyosaki*, decided in 1970, the court found that the use of a family life and sex education film series in a non-compulsory state sex education program did not contravene the right of privacy and autonomy claimed by parents.⁵⁸

The court was frequently called upon to decide cases relating to the rights of the electorate. In the 1969 case *Akizaki v. Fong*, the court determined that the commingling of valid and invalid absentee ballots invalidated the election results for a representative to the State House, necessitating another election.⁵⁹ In *County of Kauai v. Pacific Standard Life Insurance Co.*, the court resolved "a conflict between the private interest of the landowners to develop their

⁵¹ 73 Haw. 578, 620, 837 P.2d 1247, 1272 (1992).

⁵² *Id.* at 618, 837 P.2d at 1275 (citing *Kalipi*, 66 Haw. at 9-10, 656 P.2d at 750).

⁵³ 79 Haw. 425, 448-49, 903 P.2d 1246, 1269-70 (1995) (holding that "common law rights ordinarily associated with tenancy do not limit customary rights existing under the laws of this state") (citation and internal quotation marks omitted).

⁵⁴ *Id.* at 437 n.21, 903 P.2d at 1258 n.21 (internal quotation marks omitted).

⁵⁵ *Id.* at 438, 440, 903 P.2d at 1259, 1261 (citing *Pele Def. Fund v. Paty*, 73 Haw. at 619, 837 P.2d at 1271) (internal quotation marks omitted).

⁵⁶ *Id.* at 439, 903 P.2d at 1260.

⁵⁷ 51 Haw. 1, 15-16, 449 P.2d 130, 139 (1968).

⁵⁸ 52 Haw. 436, 438-41, 478 P.2d 314, 315-17 (1970).

⁵⁹ 51 Haw. 354, 360, 461 P.2d 221, 224-25 (1968).

property and the public interest of the electorate to effectively determine . . . land use policy.”⁶⁰ The court held for the electorate and determined that zoning estoppel does not apply where certification of a prohibiting referendum precedes final discretionary action by the government.⁶¹

The Richardson court also opened the way for greater public access to both the administrative process and the courts. In *Life of the Land v. Land Use Commission*⁶² and later in *Akau v. Olohana*,⁶³ the court adopted progressive standing requirements, allowing organizations and individuals to challenge land use decisions and to assert environmental and other important public rights. Since their initial adoption, the Hawai‘i Supreme Court has consistently reaffirmed these standing requirements in cases involving environmental and public rights.⁶⁴

Consistent with CJ Richardson’s concern for working people, his court liberally interpreted the statutory presumption in favor of a causal connection between employment activity and an employee’s death in *Akamine v. Hawaiian Packing & Crating Co.*⁶⁵ According to CJ Richardson, it was legally irrelevant that an employee’s heart attack, which occurred at work, could just as easily have occurred when the employee was not working: “The only [legal] consideration should have been whether the attack in fact was aggravated or accelerated by . . . work activity.”⁶⁶

Finally, in another important series of cases, the Hawai‘i Supreme Court examined negligent infliction of emotional distress claims. In the 1970 case *Rodrigues v. State*, the court had to decide if the plaintiff could recover for emotional distress when his newly-built house was flooded after the State failed to clear a drainage culvert.⁶⁷ The court determined that “the interest in freedom from negligent infliction of *serious* mental distress is entitled to independent legal protection”⁶⁸ and held that “there is a duty to refrain from the negligent infliction of serious mental distress.”⁶⁹ The duty, however, runs “only to those

⁶⁰ 65 Haw. 318, 323, 653 P.2d 766, 771 (1982).

⁶¹ *Id.* at 335-36, 653 P.2d at 778-79.

⁶² 61 Haw. 3, 594 P.2d 1079 (1979).

⁶³ 65 Haw. 383, 653 P.2d 1130 (1982).

⁶⁴ Cases citing *Life of the Land* include *E & J Lounge Operating Co. v. Liquor Commission of City & County of Honolulu*, 118 Haw. 320, 346, 189 P.3d 432, 458 (2008), and *Ka Pa ‘akai O Ka ‘Aina v. Land Use Commission*, 94 Haw. 31, 43, 7 P.3d 1068, 1080 (2000); cases citing *Akau* include *Office of Hawaiian Affairs v. Housing & Community Development Corp. of Hawai‘i*, 121 Haw. 324, 331, 219 P.3d 1111, 1118 (2009), and *Sierra Club v. Department of Transportation (Superferry I)*, 115 Haw. 299, 314, 167 P.3d 292, 321 (2007).

⁶⁵ 53 Haw. 406, 495 P.2d 1164 (1972).

⁶⁶ *Id.* at 413, 495 P.2d at 1169.

⁶⁷ 52 Haw. 156, 157-61, 472 P.2d 509, 512-14 (1970).

⁶⁸ *Id.* at 174, 472 P.2d at 520 (emphasis added).

⁶⁹ *Id.*

who are foreseeably endangered by the conduct and only with respect to those risks or hazards whose likelihood made the conduct unreasonably dangerous.”⁷⁰

Four years later, in *Leong v. Takasaki*, by looking to the concepts of ‘ohana (extended family) and ho‘okama (a form of customary adoption), CJ Richardson found that a blood relationship may not be necessary in order to recover for emotional distress caused by seeing a step-grandmother hit by a car.⁷¹ His opinion stated: “Hawaiian and Asian families of this state have long maintained strong ties among members of the same extended family group. The Hawaiian word ohana has been used to express this concept.”⁷² In 1975, CJ Richardson dissented in *Kelley v. Kokua Sales*,⁷³ another case involving the bounds of liability in negligent infliction of serious mental distress cases. He argued eloquently against the majority’s retreat from the precedent set by *Rodrigues*.⁷⁴

Necessarily, any review of CJ Richardson’s judicial opinions can give only a hint of his enormous influence. It does not begin to touch upon the extraordinary personal qualities—his optimism, his empathy, his uniquely generous blend of heart and spirit and head, his warmth and humor, and his rare common sense—that are so securely anchored in the land and people of Hawai‘i. It also cannot convey how CJ Richardson’s many deeds, stretching far beyond his judicial opinions, have greatly influenced and improved Hawai‘i as well as the world beyond our shores.

For the law school’s 2005 graduation ceremony, graduate Kahikino Noa Dettweiler wrote and presented an Oli Aloha, a chant honoring CJ Richardson.⁷⁵ As Noa explained, the chant compares CJ Richardson to the lehua blossom, a poetic reference for a person of profound skill and wisdom.⁷⁶

The Oli Aloha alludes to Kamehameha’s Law of the Splintered Paddle, the law that declared: “Let the old men, the old women and the children go and sleep by the wayside; let them be not molested.”⁷⁷ Although there are several versions of the mo‘olelo (story) about this law,⁷⁸ they all recount that some of

⁷⁰ *Id.* at 174, 472 P.2d at 521.

⁷¹ 55 Haw. 398, 410-11, 520 P.2d 758, 766 (1974).

⁷² *Id.* at 410, 520 P.2d at 766.

⁷³ 56 Haw. 204, 532 P.2d 673 (1975).

⁷⁴ *See id.* at 210-14, 532 P.2d at 677-79 (Richardson, C.J., dissenting).

⁷⁵ *See* Kahikino Noa Dettweiler, *Oli Aloha No William S. Richardson*, 33 U. HAW. L. REV. 1 (2010).

⁷⁶ *Id.*

⁷⁷ PUKUI, *supra* note 1, at 35.

⁷⁸ *See* SAMUEL M. KAMAKAU, RULING CHIEFS OF HAWAII 125-26 (rev. ed. 1992); W.D. WESTERVELT, HAWAIIAN HISTORICAL LEGENDS 162-175 (1923); JULIE STEWART WILLIAMS, KAMEHAMEHA THE GREAT 58-59, 86-87 (rev. ed. 1993); *see also* STEPHEN L. DESHA, KAMEHAMEHA AND HIS WARRIOR KEKŪHAUPI‘O 205-16 (Frances N. Frazier trans., 2000), for a complete account of one version of the mo‘olelo along with a summary of several other

the common people of Puna were fishing when the young chief Kamehameha came upon them.⁷⁹ Knowing only that a stranger and a chief approached, the men feared trouble and fled; Kamehameha pursued. When Kamehameha’s ankle was caught in a lava crevice, Kaleleiki, one of the fishermen, turned back and with his paddle, hit Kamehameha on the head, splitting the paddle in two.⁸⁰ Years later, when Kaleleiki and his companions were brought before Kamehameha for punishment, instead of putting them to death, Kamehameha recognized his own responsibility in causing the incident.⁸¹ He proclaimed the Law of the Splintered Paddle, protecting even the most defenseless from oppression by those with more power and authority.⁸²

Thus, in Noa’s tribute to CJ Richardson, I was reminded that the law school’s graduates fulfill CJ Richardson’s highest aspirations for us when we protect those who are powerless from those who have power, when we fight for those who lack economic security and life’s basic necessities, and when we seek justice for Hawai‘i’s native people and, indeed, for all people in our homeland.

But for CJ Richardson’s endeavors, so many of us would have lacked the opportunity to learn the law and to seek justice through its practice. Without our beloved CJ, we would have had no such compelling embodiment of a life well lived—and lived with exemplary grace and humble nobility.

Ka Lama Kū O Ka No‘eau—the standing torch of wisdom. Indeed!

versions.

⁷⁹ DESHA, *supra* note 78, at 206-07; WESTERVELT, *supra* note 78, at 167-68; WILLIAMS, *supra* note 78, at 58.

⁸⁰ DESHA, *supra* note 78, at 208-09.

⁸¹ WESTERVELT, *supra* note 78, at 174-75; WILLIAMS, *supra* note 78, at 86-87.

⁸² WILLIAMS, *supra* note 78, at 86-87; DESHA, *supra* note 78, at 216.

