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Foreword: Occupying Our Hearts

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INTRODUCTION

Keith Aoki foresaw a dystopian future and tried to stop it. The future he prophesied distributed money and power to the very few — the people whom some have more recently described as the “one percent.”

He saw the makings of this dystopia in the present, documenting for example how a handful of corporations have come to control the world’s food supply, squeezing farmers and consumers throughout the world.¹ He observed the battle to take over the public domain.² He bemoaned the unequal treatment of racial and sexual minorities, women, immigrants, and the poor.³ He warned of an armed no-man’s-land at the Mexican-American border, with checkpoints more appropriate to East Germany than a democracy publicly committed to liberty and justice.⁴ He worried about the ways that urban spaces are managed for the benefit of a narrow class.⁵

For Keith, these subjects overlapped. Jurisprudentially, his writings traversed geography, immigration, food security, trademarks, copyrights, patents, brands, local government, race, property, history, globalization, LatCrit, and Asian American Jurisprudence. Keith saw the matrix of power and domination that encompassed all these

¹ See, e.g., KEITH AOKI, *SEED WARS CASES AND MATERIALS ON INTELLECTUAL PROPERTY AND PLANT GENETIC RESOURCES* (2008); Keith Aoki, *Food Forethought: Intergenerational Equity and Global Food Supply — Past, Present, and Future*, 2011 WIS. L. REV. 399 (2011) [hereinafter *Food Forethought*].

² See, e.g., KEITH AOKI, JAMES BOYLE & JENNIFER JENKINS, *BOUND BY LAW: TALES FROM THE PUBLIC DOMAIN* (2006) (teaching and critiquing copyright law through adventure of documentary filmmaker); Keith Aoki, *Authors, Inventors and Trademark Owners: Private Intellectual Property and the Public Domain*, 18 COLUM. J.L. & ARTS 1 (1993–94).

³ See, e.g., Keith Aoki, “Foreign-ness & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes,” 4 UCLA ASIAN PAC. AM. L.J. 1 (1996); Keith Aoki & Kevin R. Johnson, *Latinos and the Law: Cases and Materials: The Need for Focus in Critical Analysis*, 12 HARV. LATINO L. REV. 73 (2009); Robert S. Chang & Keith Aoki, *Centering the Immigrant in the International Imagination*, 10 LA RAZA L.J. 309 (1998); Ibrahim J. Gassama, Robert S. Chang & Keith Aoki, *Citizenship and its Discontents: Centering the Immigrant in the Inter/National Imagination*, 76 OR. L. REV. 207 (1997).

⁴ Keith Aoki & John Shuford, *Welcome to Amerizona — Immigrants Out!: Assessing “Dystopian Dreams” and “Usable Futures” of Immigration Reform, and Considering Whether “Immigration Regionalism” Is An Idea Whose Time Has Come*, 38 FORDHAM URB. L.J. 1, 16–17 (2010).

⁵ Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699 (1992–1993).

subjects. Only Keith could have anticipated the connections between an anti-brand movement and the claims of Occupy Wall Street.⁶

Both the range and volume of Keith's scholarship, not to mention the modes of his work, are astonishing. But his scholarship was yet only a part of his gift to the world. He was a teacher to teachers — a *mensch*; a guru. Keith served as a mentor for a generation of legal academics. After Keith's passing, we heard from countless now-mid-career law professors who described how, when they were beginning their academic career, Keith would seek them out and give them encouragement and describe the value of their work to the literature. In her memorial tribute, Hari Osofsky cogently suggests that the beneficiaries of Keith's kindness have a duty to "pay it forward."⁷

It is not surprising that his passing has occasioned countless tributes. The Society of American Law Teachers ("SALT") gave him their Great Teacher Award; the Conference of Asian Pacific American Law Faculty awarded him the Asian Pacific American Jurisprudence Award; and the Minority Section of the Association of American Law Schools ("AALS") honored Keith with its Clyde Ferguson Award for a lifetime of service to the legal academy and to the cause of social justice. He was celebrated in symposia and tribute events at UC Davis in May 2011, the University of Oregon in October 2011, the Conference of Asian Pacific American Law Faculty in November 2011, and the AALS Annual Meeting and SALT meeting in January 2012. Three different symposia in his honor will be published this year — in the *UC Davis Law Review*, in the *Oregon Law Review*, and the *Asian Pacific American Law Journal*. Three festschrifts to mark this man seem barely adequate. His passing was recorded in venues as diverse as the popular blog *Boing Boing*⁸ and the esteemed academic newspaper the *Chronicle of Higher Education*.⁹ The loss felt to the artistic community was noted in the *Motown Review of Art* by Vince Carducci, who

⁶ See William Yardley, *The Branding Of the Occupy Movement*, N.Y. TIMES, Nov. 27, 2011, at B1.

⁷ Hari M. Osofsky, *Keith Aoki — Darth Remainder, Duck, and Ninja for Social Justice: A Model of Being There for People in Moments of Vulnerability*, 45 UC DAVIS L. REV. 1699, 1700 (2012).

⁸ Cory Doctorow, *RIP Keith Aoki, Copyfighting Law Prof, Comics Illustrator, Musician and Writer*, BOING BOING (Apr. 28, 2011, 8:47 AM), <http://boingboing.net/2011/04/28/rip-keith-aoki-copyf.html>.

⁹ Katherine Mangan, *Law Professor Created Comic Books in Crusade to Limit Copyright*, CHRON. HIGHER EDUC. (May 15, 2011), <http://chronicle.com/article/Law-Professors-Legacy/127547>.

described Keith as “a pioneer of the new pedagogy that uses pop culture for didactic purposes.”¹⁰

In the pages of this issue of the *UC Davis Law Review*, some of the nation’s leading scholars of intellectual property law, local government, immigration, and race, celebrate Keith. Reading these papers together, one begins to piece together the puzzle of Keith Aoki. Some figures reappear in these pages and in his writing and art — haunting ghost-like apparitions: the Normative Chameleon; the Ninja; Mr. Death. Most of those who knew him saw him as an optimist, a man with an ever-present smile or grin, an ebullient attitude, and a ready set of hands to help with any heavy lifting. But he saw himself in a more subversive, liminal role — a character who always had one foot on the other side, inserting himself strategically, changing himself for the moment, ever-performing and reforming. Yet even if he cast himself in these terms, there was a unity to the vision and the person — a deep caring for the world and a consistent championing of the underdog in social and economic relations. In Ibrahim Gassama’s words: “We are talking about a man whose scholarship, teaching, and everyday interactions demonstrated and exalted love.”¹¹

In this Article, we introduce the brilliant scholarly papers inspired by Keith’s work and the moving essays honoring his life. We seek also to connect Keith’s work and life to the Occupy Movement that sprang up like wildfire across the nation shortly after his passing.

I. THE WORK

The Malian writer Amadou Hampâté Bâ observed that, “In Africa, when an old man dies, it is a library burning.”¹² Keith did not have the good fortune to become an old man, but he carried with him a depth and scope of knowledge that would take most people many lifetimes to accumulate. More importantly, Keith’s passing at the young age of fifty-five represents a significant loss of knowledge that he would yet create. In the age of Wikipedia and other Internet databases, Keith’s work will persist, accessible to future generations.¹³ But the work that

¹⁰ Vince Carducci, *In Memoriam: Keith Aoki*, *Motown Rev. Art* (Apr. 28, 2011, 6:16 PM), <http://motownreviewofart.blogspot.com/2011/04/in-memoriam-keith-aoki.html>.

¹¹ Ibrahim Gassama, *In Memoriam—Keith Aoki*, 45 *UC DAVIS L. REV.* 1893, 1895 (2012).

¹² Margaret Chon, *Sticky Knowledge and Copyright*, 2011 *WIS. L. REV.* 177, 178 n.2 (2011).

¹³ Even here, copyright law becomes important. While copyright law gives Keith’s family the right to enjoy any royalties to the few writings that he did not, like most academics, give away for free, the law also prevents us from posting many of his

would have come from that storehouse of knowledge and the synthesis and innovation that Keith would have offered is lost forever. The central theme found in the tributes and articles herein is a call to carry on that work in our own ways, to fill the enormous void created by Keith's early passing. Again and again we hear in these pages of the collaborations that might have been. Steve Bender's act of homage in these pages is to write the piece that he and Keith spoke of authoring together: "Gringo Alley."¹⁴ Bob Chang tells us about the co-authored paper on "Racial Microclimes" that never was.¹⁵ Madhavi's own such collaboration was "Sex, Drugs, and Copyright: Copyright as Anti-Miscegenation Law." Anupam and Keith were planning a paper on visual images and copyright. John Shuford is determined to complete the book he and Keith were to have authored together, a book on "Immigration Regionalism."¹⁶

As we noted earlier, the range of Keith's expertise as reflected in his writing is nothing less than dazzling. Consider the areas in which Keith wrote: housing, intellectual property law, food law, immigration, LatCrit, Asian American jurisprudence, critical legal studies, legal history, property, international law, environmental law, and constitutional law. He even published a guide to the United States's regulation of encryption technology!¹⁷ As Rick Su writes, "Given Keith's deep interest in the global and the international, it is interesting to think that his foray into legal academics began with such an intense focus on the local."¹⁸ His methodologies varied from history, to philosophy, to legislative interpretation, to case law, to geography, to satire, to steampunk.

The wide range and sheer volume of Keith's work makes it hard to summarize. Nonetheless, we might offer three themes that animate his work: concern for the marginalized in society, concern for privatization, and concern for distribution. To riff on Keith's own

papers online. The contracts Keith signed with his myriad publishers over decades are misplaced or lost. We do not know who the copyright holder is for much of the work and what rights Keith retained in his own work.

¹⁴ Steven Bender, *Gringo Alley*, 45 UC DAVIS L. REV. 1925, 1928 (2012).

¹⁵ Robert Chang, *Keith Aoki's Theory of Racial Microclimes*, 45 UC DAVIS L. REV. 1913, 1917 (2012).

¹⁶ John Shuford says that it might be better to characterize this work as an "unfinished album" because of its musical nature. John Shuford, *In the Key of Aoki: Immigration Regionalism* (eco), 45 UC DAVIS L. REV. 1655, 1658 (2012).

¹⁷ Keith Aoki, *Privacy And Encryption Export Controls: A Crypto Trilogy* (Bernstein, Junger & Karn) (Sept. 24, 2000), <http://www.cyberspacelaw.org/aoki/index.html>.

¹⁸ Rick Su, *Locating Keith Aoki: Space, Geography, and Local Government Law*, 45 UC DAVIS L. REV. 1637, 1637-38 (2012).

words from his first major article, we might restate this as “race, space, and knowing your place.”¹⁹ This might suggest an ideal typology in which to divide Keith’s work — the makings of an ideal subdivision for a festschrift, for example. However, these themes were not separable, but instead permeated each work — defying any ready taxonomy. In an email to Rose Villazor, Keith boiled down his work somewhat differently: “[M]y two principle[s] are (1) anti-essentialism, and (2) anti-subordination.”²⁰ He summed up anti-subordination in a way that would have made his critical legal studies teachers proud: “[T]o the extent that an illegitimate hierarchy can be defined as one person [with] their foot on another person’s neck, I would try and intervene . . . to readjust the power imbalance”²¹ That rhetorical flourish was followed by Keith’s typical humility: “Not fancy French philosophy, but them’s the words I live by :).”²²

Consider two papers of Keith’s written in his last year of life. In *The Yellow Pacific*, written for the *UC Davis Law Review*, Keith demonstrated his mastery of issues of globalization over time, connecting the history of Asian American immigration to today’s transnational debates.²³ In *Food Forethought*, written for the *Wisconsin Law Review*, Keith demonstrated his mastery of theories of distributive justice, international intellectual property law, and food science, showing how the world’s food supply has come to be dominated by a global oligopoly. He showed how “emerging global food markets concentrate power in the hands of transnational corporations that make decisions based on . . . the corporate bottom line.”²⁴ The article describes the role of intellectual property rights in regulating access to food around the world.²⁵ The paper requires exposition of the International Treaty on Plant Genetic Resources for Food and Agriculture (“ITPGR/FA”), the Convention on Biological Diversity (“CBD”), and the Trade Related Aspects of Intellectual Property (“TRIPS”) agreement, as well as theories of intergenerational equity.²⁶

¹⁹ Aoki, *supra* note 5.

²⁰ Rose Villazor, *Remembering Keith Aoki: Teacher, Mentor, And Friend*, 45 UC DAVIS L. REV. 1623, 1635 (2012).

²¹ *Id.* (ellipses in original).

²² *Id.*

²³ Keith Aoki, *The Yellow Pacific: Transnational Identities, Diasporic Racialization, and Myth(s) of the “Asian Century,”* 44 UC DAVIS L. REV. 897, 900-01 (2011).

²⁴ Aoki, *Food Forethought*, *supra* note 1, at 470.

²⁵ *Id.* at 402.

²⁶ Keith often worked closely with brilliant and admiring students such as Camille Barr, Emilio Camacho, and Esmeralda Soria, who contributed their own expertise to the work.

We cannot think of anyone else who would have been able to write that paper.

In his work, there was no suggestion of a magic bullet, but rather a complex of issues, or “layers of ideological struggles,” as Rick Su more incisively describes them.²⁷ Keith was always cognizant of the fact that social reform projects can go awry — sometimes with tragic effects. Urban renewal, for example, can displace the most vulnerable in society.²⁸ Witnessing the effects of direct initiatives on the tax system in Oregon, Keith would admit to an evolution of his views on direct democracy, as Su reveals: “Rather than describing myself as a neo-Jeffersonian, nowadays I guess I would call myself a born-again but somewhat chastened Madisonian.”²⁹ Keith tried to uncover all the layers — of race, of place, of gender, of immigration, of economics, and of politics — and to see the matrix these formed. Anti-essentialism, indeed!

In the 1990s, Keith was one of the pioneers in introducing critical legal thought to the emergent field of intellectual property. Till then the field was largely dominated by law and economics scholarship. One of us (Madhavi) was a law student at Stanford Law School and an editor of the *Stanford Law Review* when she read Keith’s stunning 1996 article, “Toward a Cultural Geography of Authorship,” published in the *Stanford Law Review*.³⁰ Madhavi explains:

As an academic work, it was a *tour de force* and crowning achievement. In one fell swoop, Keith smashed the dominant master economic narrative and thrust a host of interdisciplinary approaches into the mix, from geography studies to cultural studies. Rosemary Coombe was a kindred intellectual spirit broadening the conversation to attend to distributive and global concerns. But Keith was the only legal scholar in the U.S. academy to break through. I was certainly profoundly influenced by his work during my formative years. Since then, my intellectual property work has been “Chasing Aoki.”

²⁷ Su, *supra* note 18, at 1638.

²⁸ See Aoki, *supra* note 5.

²⁹ Keith Aoki, *Direct Democracy, Racial Group Agency, Local Government Law, and Residential Racial Segregation: Some Reflections on Radical and Plural Democracy*, 33 CAL. W. L. REV. 185, 186 (1997).

³⁰ See Keith Aoki, *(Intellectual) Property Sovereignty: Notes Toward a Cultural Geography of Authorship*, 48 STAN. L. REV. 1293 (1996).

Keith's *Stanford* piece made him an academic rockstar — and I was one of Keith's intellectual groupies. I read everything Keith wrote. To make matters worse, one of my classmates at Stanford had transferred from Oregon Law and happened to know Keith well. My friend told me how Keith wore leather jackets and had long hair. In short: I wanted to marry him! (Later I learned he had a wife, Mona Aoki, to whom he was devoted. Keith dedicated the *Stanford Law Review* article to her.)

Like Madhavi, many of the authors in this volume take inspiration from Keith's work — and like Keith, the authors freely mix different concerns and genres, incorporating music, comics, and a critical sensibility into their legal scholarship. Keith would have been humbled by the outpouring of brilliant and affecting art, scholarship, and insight that appears in these pages. This is epitomized in Kit Young's sketch of the "Die Chart" pie chart, which lampoons the commodification of "dead things."³¹

Jennifer Jenkins, Keith's co-author on two comic books on intellectual property and the public domain, observes that Keith's own experiences as an artist informed his work on intellectual property, giving it nuance and complexity. Perhaps this was best illustrated through a segment in their forthcoming work, *Theft!: A History of Music*, in which Keith the artist reveals himself as torn by "an artist's split-personality struggle with the conflicting impulses of freedom and control." Keith's character in the book literally becomes two — one freedom-loving, eager to riff off the works of his peers and mentors, the other aghast at losing control.³² Jenkins acutely notes that Keith's own work, rife with homages and references, simultaneously revealed Keith's own genius and creativity. As she concludes: "Keith did not create ex nihilo, indeed his scholarship denied the possibility, but he was no less a brilliant 'author.'"³³ Even in his work on music and the law, Keith was particularly focused on the intersections of these fields with both race and issues of distributive justice. Jenkins describes Keith's artistic renderings of the musical DNA of the blues; his work saw the benefits of freely shared music among black artists alongside

³¹ For a beautiful sketch of Luke Cole by Kit Young, see Angela Harris & Kit Young, *Class War Comics: Volume 1*, 45 UC DAVIS L. REV. 1849, 1865 (2012).

³² Jennifer Jenkins, *The Humble Meta-Genius*, 45 UC DAVIS L. REV. 1835, 1837-38 (2012).

³³ *Id.* at 1839.

legal protections vis a vis a white music industry that would exploit them.³⁴

Keith was committed to social justice, but he was not utopian. David Barron picks up on Keith's article "Race, Space, and Place," highlighting its prescience in predicting the dissolution of the boundaries between urban renewal and gentrification. Keith pointed out that both urban renewal and gentrification ended up paradoxically displacing the poor and disempowered — precisely the opposite of what they intended.³⁵ But Keith did more than this, too. He challenged the simple dichotomies used to describe these projects, showing that gentrification both involved a teleological vision of the "good city" (and was thus planned), and that it often depended upon the use of eminent domain.³⁶ Gentrification must then be understood as a consequence of public action, not simply atomistic decision-making by individuals. As Barron incisively observes, this was made most clear in the Supreme Court's decision in *Kelo v. City of New London*, where the premise of urban renewal — blight — was missing.³⁷

Robert Chang continues this theme of the relevance of geography in his essay introducing the concept of "racial microclimates."³⁸ Chang observes that Keith sought to pay attention to the local even in race relations where one might imagine a more national frame. Borrowing the geographic/meteorological notion of small geographic spaces with distinct weather conditions, Chang introduces Keith's and his concept of a racial microclimate. Keith shows us how the local and race mixed. In his article *No Right to Own* (a work celebrated by Rose Villazor in these pages), Keith had showed how racism arises out of efforts to drive out local competition from highly successful Japanese-American farmers.³⁹ Understanding racial variation through "racial microclimates" might lay "the groundwork for a new theory of equal protection,"⁴⁰

³⁴ *Id.* at 1840-41.

³⁵ Aoki, *supra* note 5, at 757 (noting that "urban revitalization and gentrification frequently caused displacement of lower-income residents").

³⁶ Keith observed the relationship between gentrification and urban renewal as follows: "[p]redatory market forces like gentrification were hailed in the late 1970s as 'privatized urban renewal,' but the question 'urban renewal for whom?' was not asked until much later." *Id.* at 795-96.

³⁷ *Kelo v. City of New London*, 545 U.S. 469, 475 (2005); David J. Barron, *Keith and the Good City*, 45 UC DAVIS L. REV. 1945, 1950 (2012).

³⁸ Chang, *supra* note 15, at 1913-15.

³⁹ Keith Aoki, *No Right to Own?: The Early Twentieth-Century "Alien Land Laws" As a Prelude To Internment*, 40 B.C. L. REV. 37, 39-40 (1998-1999).

⁴⁰ Chang, *supra* note 15, at 1924.

carefully attentive to history and context rather than to bare racial signifiers alone.

Racial microclimates get extensive treatment formulated under the rubric of “immigration regionalism,” proposed by Keith and John Shuford.⁴¹ In his contribution, Shuford celebrates Keith by exploring their concept of immigration regionalism. Shuford offers both a personal story of Keith and an exposition of the concept of immigration regionalism.

In *Gringo Alley*, Steve Bender shares the nightmarish story that he and Keith had imagined depicting a completely militarized southern border for the United States.⁴² Their vision of a possible American future is chilling. Gerald Lopez’s contribution to this tribute issue provides the material fuel for Keith and Steve’s dystopian fears.⁴³ Lopez recounts some alarming recent statements by elected officials:

Representative Mo Brooks (R-Ala) promised his constituents that he would “do anything short of shooting them.” Tennessee State Representative Curry Todd likened undocumented immigrants to rats multiplying, and Kansas State Representative Virgil Peck said that illegal immigrants should be shot from helicopters like hogs.⁴⁴

Lopez describes the increasing presence of deadly force on the U.S. side of the Mexican border: “President Bush continued Clinton’s massive militarization of the border. His Administration sent large deployments of National Guard troops (6,000 at the peak) to help build fences and assist Border Patrol agents under a program called ‘Operation Jump Start.’”⁴⁵ Lopez’s fundamental point is that despite these occasional alarming public statements and actions, the United States and Mexico have mutually benefited from the free flow of undocumented Mexican workers to the United States. Lopez writes, “[B]oth countries should understand undocumented Mexicans as transnational people they have brought into being.”⁴⁶ Bender describes the 2008 science fiction film *Sleep Dealer*, by Alex Rivera, which imagines another dystopia — where the United States and Mexico are interconnected economically in a shocking manner. In the film, the borders are solid, impassable for people, but porous for work,

⁴¹ Aoki & Shuford, *supra* note 4, at 2.

⁴² Bender, *supra* note 14, at 1929-32 (2012).

⁴³ Gerald Lopez, *Don’t We Like Them Illegal?*, 45 UC DAVIS L. REV. 1711 (2012).

⁴⁴ *Id.* at 1802-03.

⁴⁵ *Id.* at 1783-84.

⁴⁶ *Id.* at 1719-20.

performed through digital networks. Mexican “cyber-braceros” are connected cybernetically to robots that perform work in the United States.

Why imagine such dystopian futures? Perhaps they serve to warn us about a future that might yet be in our power to avoid, a future that might befall us if we do not mobilize. The dystopia serves as one logical extension of our current reality. This is the suggestion arising out of the pairing of Steve Bender’s and Gerald Lopez’s contributions to this tribute issue. We must work to prevent such dark futures.

This explains what might otherwise seem incongruous for someone who worried about dystopias around the corner: Keith’s optimism, or what Bender describes as his “immunity from discouragement.” In his last year of life, Keith worked feverishly, even while fighting the actual fevers raging within. He published five articles,⁴⁷ taught a full load of courses, volunteered for organizational work, and continued drawing for his last major comic book, *Theft! A History of Music*. Indeed, it was his drawings for *Theft!*, another brilliant collaboration with Jamie Boyle and Jennifer Jenkins, that ultimately let the cat out of the bag for his disease. He had to confess to Jamie Boyle and Jennifer Jenkins that he would not be able to finish the art.

II. THE MAN

Keith Aoki was born to Japanese-American parents in 1955 at the Henry Ford Hospital in Detroit, Michigan. His parents, as he tells Chancellor Frank Wu in the interview published in these pages, arrived in Detroit as a result of the dislocations of Internment. After high school, he spent some time playing music north of Malibu, California. Keith returned to Detroit to attend Wayne State, a public university, where he received a Bachelor of Fine Arts. He then pursued a Masters in Fine Arts at Hunter College in New York. In both Detroit and New York, he was a part of the art scene and, at turns, the music scene as well. He once even stood in as Chuck Berry’s bass player.⁴⁸ He received a National Endowment for the Arts Fellowship in 1979–80.

⁴⁷ See Keith Aoki, *Pictures Within Pictures*, 26 OHIO N.U. L. REV. 805 (2010); Aoki, *supra* note 23, at 897; Keith Aoki, *Food Forethought*, *supra* note 1; Keith Aoki, John Shuford, Esmeralda Soria, & Emilio Camacho, *Pastures of Peonage?: Agricultural Concentration and Labor Migration: The Case of North America in the Early 21st Century*, 4 N.E. U. L.J. (forthcoming spring 2012); Aoki & Shuford, *Welcome to Amerizona*, *supra* note 4, at 16-17; KEITH AOKI, JAMES BOYLE & JENNIFER JENKINS, *THEFT! A HISTORY OF MUSIC FROM PLATO TO HIP HOP* (forthcoming 2012) (manuscript on file with James Boyle and Jennifer Jenkins).

⁴⁸ Shuford, *supra* note 16, 1663.

Keith entered Harvard Law School in 1987, at a time of substantial debates at that school about its *raison d'être*. After two years as an associate at the prestigious Boston law firm of Hale and Dorr, he joined the University of Oregon law faculty, obtaining tenure in 1998. In Spring 1999, he taught Asian American Jurisprudence as an adjunct professor at Columbia Law School. In 2004, he was named the Philip H. Knight University Professor at the University of Oregon, the most distinguished chair at that university. He left for UC Davis in 2006, where he immediately immersed himself in teaching, scholarship, and administration, including chairing the Faculty Appointments Committee. We did not know it till too late — unable to treasure it sufficiently — but we would have the privilege of being his colleagues for the last five years of his life.

Law professors usually do not insert themselves explicitly in their work, preferring personal privacy even while relishing their role as public intellectuals. While Keith was very private in many ways, he revealed a little about himself through his art. In his comic books, he would appear as a character, along with other people around him. In this way, he left clues — “Easter eggs,” James Boyle calls them⁴⁹ — about himself.

During law school, Keith drew upon his background as an artist to critique the power structure at Harvard Law School. Keith attended Harvard Law School at a time of great upheaval at the Law School, when the conservatives had successfully reduced the power of the emergent critical legal scholars. Keith and fellow law student Luke Cole⁵⁰ self-published a comic satire, *Casual Legal Studies*, with an introduction by Duncan Kennedy. The comic lampooned the heavy-handed tactics and ideology of the conservative Harvard Law faculty and poked fun at his fellow left students’ distraction by law firm bonuses. Peter Goodrich classifies Keith’s work during this period as “samizdat,” which seems fitting, given that it presents a Harvard Law student’s challenge to the Harvard Law School Dean.⁵¹ In the pages that follow, Duncan Kennedy trenchantly reviews the comics that

⁴⁹ James Boyle et al., *Keith Aoki: Life As The Art of Kindness A Remembrance*, THEPUBLICDOMAIN.ORG, 14, <http://www.thepublicdomain.org/KeithAokiRemembrance.pdf> (last visited Apr. 7, 2012).

⁵⁰ In his tribute to Keith, Duncan Kennedy notes sadly that “like Keith [Luke Cole was] fated to die (in a car accident in Kenya) before he should have died, to put it as mildly as possible.” Duncan Kennedy, *Remembering Keith Aoki’s Casual Legal Studies: Art During Law School*, 45 UC DAVIS L. REV. 1817, 1820 (2012); Michael Taylor, *Luke Cole — environmental justice lawyer — dies*, S.F. CHRON., June 9, 2009, at B4.

⁵¹ Peter Goodrich, *Satirical Legal Studies: From the Legists to the Lizard*, 103 MICH. L. REV. 397, 397 n.* (2004).

Keith produced during law school and ruminates on Keith's construction of himself in those comics. Kennedy compares the "simply brilliant" comics to Russian constructivist propaganda art.⁵²

We describe aspects of Keith's life through the depictions he used for himself — the normative chameleon, the ninja, and Mr. Death. But we add two other images that also describe Keith — the rock star professor and the giving tree.

A. *The Normative Chameleon*

In the pages of his Harvard Law School comics, Keith professed to be the "Normative Chameleon," making his own views suspect, unstable.⁵³ This description suggests that he was simply performing, taking on the norms of his milieu. But this was too pejorative an account of a deep and unique ability — a desire to understand what everyone had to say, and an ability to digest it, remember it, and locate it in socio-historical or jurisprudential context. Despite his claims to being a chameleon, his normative commitments were clear throughout his academic life, and in all his writings: simply put, equality and decency for all. The notion of a chameleon suggests inauthenticity, of playing dress-up, or passing;⁵⁴ but everyone who knew Keith understood him as sincere, as true and honest.

However, there was one striking metamorphosis. Like a chameleon, Keith himself changed color, he tells us. In the interview with Frank Wu, he reveals that, growing up in Detroit, he saw himself as white — so white that he played along with his friends to kill "Japs" until his mother informed him that he was Japanese.⁵⁵ As Keith tells it, he was "white" until about the age of 35.⁵⁶ Lisa Ikemoto recounts that as a law professor, Keith even recast the 1960s television theme song "Secret Agent Man" as "Secret Asian Man."⁵⁷ Neil Gotanda offers an important insight on Keith's racial metamorphosis: "Keith — like me — was of a

⁵² Kennedy, *supra* note 50, at 1820-21.

⁵³ KEITH AOKI & LUKE W. COLE, CASUAL LEGAL STUDIES: ART DURING LAW SCHOOL (1989) (Introduction by Duncan Kennedy; 1990 Supplement); Keith Aoki & Garrett Epps, *Dead Lines, Break Downs, & Troubling the Legal Subject or "Anything You Can Do, I Can Do Meta,"* 73 OR. L. REV. 551, 551 (1994).

⁵⁴ KENJI YOSHINO, COVERING: THE HIDDEN ASSAULT ON OUR CIVIL RIGHTS 18 (2007) (defining "passing" as trying to downplay a trait by hiding one's identity from others).

⁵⁵ Frank Wu, *Becoming Asian American: An Interview with Keith Aoki*, 45 UC DAVIS L. REV. 1609, 1610 n. 3 (2012).

⁵⁶ Wu, *supra* note 55, at 1610; cf. KEVIN R. JOHNSON, HOW DID YOU GET TO BE MEXICAN?: A WHITE/BROWN MAN'S SEARCH FOR IDENTITY (1999).

⁵⁷ Lisa Ikemoto, *Secret Asian Man*, 45 UC DAVIS L. REV. 1847, 1848 (2012).

generation *before* Asian Americans.”⁵⁸ Keith could not have conceived himself as Asian American when he grew up because the category was not available to him. Of course, Keith grew up in Detroit *because* he was of Japanese ancestry — a connection Keith himself understood and shared with Frank Wu. Though his father’s family had had successful farms in California (in Woodland, near Davis, in fact), his father had been forced to relocate, first interned, and then paroled to the Midwest, where he had to begin life anew.⁵⁹ Keith saw himself against the grand narrative of history — to understand the forces that led him to be who he is. (This again reflects his ability to see the Matrix.)

He was a chameleon in other ways as well. As John Shuford notes, in the 1980s, he was a member of a New York City rock band, the Chameleons.⁶⁰ On a website describing the band’s work, he is listed as playing both violin and guitar for the band.

Maggie Chon tells us in her contribution to this volume that as he grew older, Keith was fascinated with the concept of syncretism. Indeed, syncretic may be in many ways more apt than chameleon to capture Keith’s ability to absorb and synthesize. Keith himself describes a fascinating syncretic move, noting how, in the Caribbean, African slaves forced to adopt Christianity recast their own gods as saints.⁶¹

B. *Ninja*

Yet another recurring theme in the contributions is the ninja — a subversive fighting the powers-that-be from within power structures. In her contribution to this festschrift, Hari Osofsky describes the “ninja network”⁶² that Keith hoped would help young academics navigate their career — while also supporting them to challenge the system from within. Supporting scholars required Keith to read extensively. Indeed, we do not know anyone who was so diligent in reading the work of scholars, senior and junior alike. His work is full of citations to a dazzling array of academics, transcending disciplinary boundaries. The citation counts for “F.O.K.,” Friends of Keith, will

⁵⁸ Neil Gotanda, *Inventing Asian American*, 45 UC DAVIS L. REV. 1885, 1886 (2012).

⁵⁹ Wu, *supra* note 55, at 1610, 1612, 1614, 1618.

⁶⁰ CHAMELEONS, <http://www.roberthuot.com/chameleons.htm> (last visited March 10, 2012).

⁶¹ Keith Aoki, *Distributive and Syncretic Motives*, 40 UC DAVIS L. REV. 717, 720 n. 2 (2007).

⁶² Osofsky, *supra* note 7, at 1708.

suffer from Keith's absence. Keith was remarkably generous in citing and highlighting the work of both senior and junior scholars. Rose Villazor expresses this beautifully, closing her tribute to Keith as follows:

As I looked through the footnotes of his article [*Welcome to Amerizona*, published in 2010], I noticed that he cited three of my articles. A senior scholar like Keith surely did not need to cite my work. Yet he did. I would later find out that he was already sick by this time. Despite his illness, Keith was steadfast in his support of me and many other junior faculty in his scholarship.⁶³

The last email from Keith in Madhavi's inbox is one asking for the citation to her forthcoming book, so he could include it in the footnotes of his law review article before sending it to press.

In his contribution to this collection, Tom Joo finds that in Keith's endless recitations of his colleagues' work, the medium was the message. Keith was a master of writing the intellectual histories of his time as they were unfolding, "practically in real time."⁶⁴ Keith did this at Harvard Law School, and then again of the emergent "public domain" movement in 1993. Keith did this in the field of local government, anticipating *Kelo*. And, of course, he did this with respect to Occupy Wall Street. Joo also notes that how Keith, in publicizing others' ideas, refined them and made the ideas themselves more important. Joo writes: "Plato did it for Socrates. Engels did it for Marx. Dylan did it for Guthrie. Lasseter did it for Miyazaki. And Keith did it for just about anyone he thought had a really good idea."⁶⁵

We see in Margaret Chon's account that the ninja is also a more subversive figure — a good Samaritan who sneaks onto the stage to set things right. "In this guise," Chon tells us, "he was a warrior often operating behind the scenes to help others succeed, often against the odds."⁶⁶ He inspired Shubha Ghosh to believe that as law professors, we are all ninjas: "What Keith's life teaches me is how being a law professor involves a series of creative and therefore criminal acts. A law school is the scene of the crime, and what we do as law professors is the *actus reus*."⁶⁷

⁶³ Villazor, *supra* note 20, at 1635.

⁶⁴ Thomas W. Joo, *True Believer*, 45 UC DAVIS L. REV. 1823, 1827 (2012).

⁶⁵ *Id.* at 1826 (citations omitted).

⁶⁶ Margaret Chon, *Supercolleague*, 45 UC DAVIS L. REV. 1901, 1907 (2012).

⁶⁷ Shubha Ghosh, *CSI: Aoki*, 45 UC DAVIS L. REV. 1889, 1890 (2012).

C. *Mr. Death*

Even in law school at the end of the 1980s, Keith represented himself as a spectre called Mr. Death. Duncan Kennedy elegantly traces Keith's evolution in the two volumes of *Casual Legal Studies*, not only situating Keith's critique in legal terms, but also offering a deconstruction of the art itself.⁶⁸

Perhaps one reason for Keith's decision to depict himself as a skeleton was to remove his skin, and therefore his race. Stripped to the skeleton, human beings are perhaps more equal. When we began collaborating on a comic book on the life of Fred Korematsu, Keith told us that drawing race was tricky, that it was hard to include racial markers without resorting to stereotype.

Or perhaps Keith foresaw his own fate succumbing to stomach cancer as his father, grandfather, and uncle had done before him. Is this vision what led him to such Herculean feats of productivity, collegiality, and generosity? As Keith wrote, "You can't avoid the void."⁶⁹

D. *The Rock Star Professor*

Lisa Ikemoto recalls how Keith "burst onto the scene" of the legal academy in 1993, suddenly making it possible for a "bunch of nerdy, self-conscious law professors, to imagine ourselves as part of anything so hip as a 'scene.'" ⁷⁰ The Professor Aoki sporting the leather jacket and long hair at Oregon morphed into a three-piece suit-wearing senior professor at UC Davis. By 2006, when he joined our faculty at UC Davis, Keith was one of the most respected law professors in the country. He chaired and was a member of numerous AALS committees. He became the chair of our faculty appointments committee. But the rebel in him was always itching to get out. He was planning to re-form the band and lined up our new colleague Angela Harris to sing.

John Shuford observes that Keith approached his scholarly "work with a musician's sensibilities: riffing, paying homage, and layering compositions with the counter-melodic texture of alternative voices lending ironic perspective."⁷¹

⁶⁸ Kennedy, *supra* note 50.

⁶⁹ Aoki, *Pictures within Pictures*, *supra* note 47, at 818.

⁷⁰ Ikemoto, *supra* note 57, at 1847.

⁷¹ Shuford, *supra* note 16, at 1662.

It is no exaggeration to say that Keith's death rocked the legal academy. The outpouring of grief over his sudden and tragic passing cemented Keith's rock star status. In passing, Keith was Kurt Cobain. He reached out and touched people. He loved and was loved. Simply put, we know of no law professor in our generation who touched so many people, from students to junior professors, to the most senior scholars in the academy, and in fields so diverse.

E. *The Giving Tree*

We had the great privilege to spend Keith's last few days with him. He was, during those final days, just as he always was — smiling, cracking jokes, and even when he could barely get a word out, determined to use those words to make his friends smile and feel good about themselves.

"If I had more time, I would draw a picture of you, Devon."

These were the last words we heard Keith speak, directed at his former student from the Oregon Law School, a student who later became a member of Keith's band. Devon Spickard had driven down from Eugene the moment he heard about Keith's illness. Devon came to be with his teacher, his bandmate, his friend. But even then, Keith wanted to give something to Devon.

And you give, and you give, and you give yourself away.⁷²

Keith selflessly served on administrative committees, taking on burden after burden. He served on AALS accreditation committees and posted outside his door a photo of the accreditation committee chaired by Iowa law professor Adrienne Wing. Margaret Chon dubs Keith "Supercolleague."⁷³

In the end, Keith really was living a secret life. He knew for almost a year that he was dying and yet continued to play the part of mild-mannered law professor by day. At night he was a true superhero, illustrating an epic comic book on the history of music, writing five law review articles, and grading independent writing papers and exams while recovering from chemotherapy. Imagine the heroism it takes to confront the reality of having to leave one's wife and nine-year-old daughters so suddenly and so soon. Keith was so strong — skin and bones Keith, who wore three-piece suits that, intentionally or not, helped disguise his illness.

⁷² U2, *With or Without You*, on THE JOSHUA TREE (Island Records 1987).

⁷³ Chon, *supra* note 66, at 1901.

III. OCCUPYING OUR HEARTS AND MINDS

Keith Aoki barely missed a movement that captured much of his critique. Keith died on April 26, 2011, and the Occupy Wall Street protestors pitched tents in “Zucotti” Park on September 17, 2011. Keith was an atheist, but if he was reborn according to the beliefs of the land of his forbearers, he was reborn as a spirit in the Occupy camps. Keith himself would not have chosen to be rebirthed as a baby, but might have chosen to depict himself as a spectre, an apparition that might at turns urge on the Occupiers and needle the authorities, all the while self-consciously poking fun at his own predicament.

In many ways, Keith’s fundamental concerns match those of the Occupy Movement. As *The Economist* characterized the various Occupy movements across the world, they “feel that capitalism’s pains and gains are unfairly shared.”⁷⁴ Like Keith, they are concerned with those left behind in the economic and political structures today — the police officer, the longshore worker, the homeless family, the teachers, the custodians, and the sanitation workers.⁷⁵ The Occupiers are concerned with increasing inequality characterizing American society. A study of tax returns from 2010 concludes that some ninety-three percent of gains in income went to just one percent of Americans.⁷⁶ More than a third of the gains in national income went to just the top one-tenth of one-percent of Americans. One newspaper pithily characterized this as “[a] tide that lifts all yachts.”⁷⁷

This suggests that there is reason for protest. Corporations have taken over our public spaces and our public discourse, and now they seek to take over government itself.⁷⁸ Rather than government for the people and by the people, we risk a government for corporations and by corporations. Speech is propertized. Property is speech. *Citizens United v. FEC* has transformed “our electoral system into a silent auction,” in the words of Senator Michael Bennet.⁷⁹ The First

⁷⁴ *Not quite together*, *ECONOMIST*, Oct. 22, 2011, at 73-75, available at <http://www.economist.com/node/21533377>.

⁷⁵ Roger Lowenstein, *Occupy Wall Street: It's not a Hippie Thing*, *BUSINESSWEEK*, Oct. 27, 2011, at 69.

⁷⁶ Robert B. Reich, *The most lopsided recovery on record*, *CHI. TRIB.*, Apr. 3, 2012.

⁷⁷ Harold Meyerson, *A tide that lifts all yachts*, *L.A. TIMES* (Apr. 1, 2012), <http://www.miamiherald.com/2012/04/01/2723703/a-tide-that-lifts-all-yachts.html>.

⁷⁸ See generally *Citizens United v. FEC*, 130 S. Ct. 876 (2010) (holding unconstitutional certain restrictions on political expenditures by corporations and unions).

⁷⁹ Josh Lederman, *Two years after Citizens United, candidates forge a path around outside spending*, *HILL'S BALLOT BOX* (Jan. 21, 2012, 8:15 AM), <http://thehill.com/blogs/ballot-box/senate-races/205541-2-years-after-citizens-united-candidates-forge-a>

Amendment serves to protect corporate speech, but is surprisingly less helpful to the efforts of Occupy protesters to use public spaces to bring attention to their claims.⁸⁰ Owen Fiss worried about this a quarter century ago.⁸¹ Keith too worried about the dalliance between corporations and media: “[U]nder the surface of the cheerful headlines announcing the marriage of Disney and ABC Network lies the unreported and malignant illness that has afflicted the First Amendment.”⁸²

Keith’s concern with the local and with space was echoed in the Occupy Movement’s turn to public grounds. Occupy Wall Street actually occupied Zuccotti Park, which was until recently known as “Liberty Plaza Park.” Liberty Plaza would seem closer to the spirit of the movement, which found inspiration in Tahrir — Liberation — Square. As lawyers on Wall Street, we would go to the falafel truck in this park to have lunch, leaving our offices on the thirty-ninth and forty-fourth floors overlooking the Statue of Liberty in a skyscraper named for the park and the statue: One Liberty Plaza. Thankfully, the proprietors of that building have not renamed their building after its owner, most likely because they would fear the rebellion of their wealthy tenants. But the private proprietor of the park, Brookfield Office Properties, renamed it in 2006 after its chair, John Zuccotti.⁸³ This poses a question of local governance that would have been perfect for Keith to puzzle over. Does private property include the right to the public name of that property? Do we give private landlords control over public speech?

Keith’s concern with governance, too, was reflected in the Occupy Movement’s unusual attempt to “create a nonhierarchical, egalitarian, consensus-driven process — the purest kind of democracy.”⁸⁴ That consensus-driven process included a “General Assembly” that was “a hodgepodge of procedures and hand signals with origins as various as

path-around-outside-spending (quoting Sen. Michael Bennet).

⁸⁰ Bruce Ackerman & Yochai Benkler, *Occupying the First Amendment*, HUFFINGTON POST (Oct. 21, 2012), http://www.huffingtonpost.com/bruce-ackerman/occupy-wall-street-first-amendment-_b_1023709.html.

⁸¹ Owen Fiss, *Free Speech and Social Structure*, 71 IOWA L. REV. 1405, 1406-07, 1415-16 (1986). *Casual Legal Studies* reveals that Fiss himself had become a target of the Harvard crits. Aoki, *supra* note 53.

⁸² Keith Aoki, *How the World Dreams Itself to Be American: Reflections on the Relationship between the Expanding Scope of Trademark Protection and Free Speech Norms*, 17 LOY. L.A. ENT. L. REV. 523, 525-26 (1997).

⁸³ Nathan Schneider, *From Occupy Wall Street to Occupy Everywhere*, NATION, Oct. 31, 2011, at 14.

⁸⁴ *Id.* at 13.

Quakerism, ancient Athens, the indignados of Spain (some of whom were present), and the spokescouncils of the 1999 anti-globalization movement.”⁸⁵

In many ways then, Keith anticipated Occupy. In his foreword to Keith and Luke Cole’s *Casual Legal Studies* in 1989, Duncan Kennedy dryly notes, “Well, it’s a dirty job being ahead of your time, but someone’s got to do it.”⁸⁶

In many cities across the country, those occupying central squares have been rousted, their tents unstaked.⁸⁷ The battle to control the public spaces has been lost in many cities, most visibly in New York City.⁸⁸ Efforts to retake Wall Street’s Liberty Park have been rebuffed.⁸⁹ At the moment, at least, the battle to take over public spaces to press for a more egalitarian society appears largely lost.

The rare exception is UC Davis itself, where tents continued to occupy the central Quad until quite recently.⁹⁰ The Davis exception arose because of the outrageous tactics used against protestors seated on the ground; these tactics were published to the web, from which the scene of police officers seemingly nonchalantly using military grade pepper spray on students sitting cross-legged on the ground were widely viewed across the world. If he had lived, Keith would likely have spent time with the protestors on campus, perhaps bringing one of his many guitars and joining them in song.

We wrote part of this introduction while teaching in Brazil. The hillsides of Rio are occupied by poor people who claimed public spaces for their own, largely out of desperation. Favelas thus represent another kind of occupy movement, one that arises in urban areas around the world — from the largest incarnation in the Dharavi section of Mumbai, to the Kibera slum of Nairobi. A few weeks before we arrived, the Brazilian military had entered into some large favelas to wrest control over them from powerful, armed drug gangs. While

⁸⁵ *Id.*

⁸⁶ COLE & AOKI, *supra* note 52, at i (1989).

⁸⁷ Adam Nagourney, ‘Occupy’ Protesters Evicted in Two Cities, N.Y. TIMES, Nov. 30, 2011.

⁸⁸ Al Baker, *After an Earlier Misstep, a Minutely Planned Raid*, N.Y. TIMES, Nov. 15, 2011.

⁸⁹ Colin Moynihan & Elizabeth Harris, *Surging Back Into Zuccotti Park, Protesters are Cleared by Police*, N.Y. TIMES BLOG (Dec. 31, 2011, 9:58 PM), <http://cityroom.blogs.nytimes.com/2011/12/31/protesters-surge-back-into-zuccotti-park>.

⁹⁰ The students in Occupy Davis briefly expanded their occupation, taking over a vacant building on campus. Ed Fletcher, *Occupy protest seizes UC Davis building, blocks bank*, SACRAMENTO BEE, Jan. 27, 2012, at 1B.

this might make our pepper-spraying cops and chanting students seem relatively benign, we should view both contests as serious reflections of underlying problems in society.

CONCLUSION

Anupam visited Keith early one morning, immediately after learning that Keith was in the hospital. Anupam recalls:

I visited Keith in the hospital in his last few days, I believe the first friend to see him in person after learning of his mortal illness. I arrived at the hospital at 6:00 a.m., and waited outside his door for him to wake. He was sharing the room with one other person. I entered the hospital room on the heels of the nurse who woke him for his morning check up at 7 a.m. I wept when I saw him, his cheeks sunken, and he reached over to put his hand on my shoulder. Upending the usual logic, Keith was comforting me, rather than I comforting the terminally ill patient.

Keith and I spoke for a few hours, with many pauses for rest. As always, he praised my work (as he did the work of countless academics junior to him), complimenting especially my work on diasporas and transnationalism.

The entire time I was in Keith's hospital room, the machine regulating the intravenous flow was beeping, with a few electronic tweets. Of the do-re-me notes, Keith observed, "It has some proto-copyright elements." He compared its seemingly randomized beeps to a composition by John Cage.

Keith seemed prepared for death, not railing against the dying of the light. And he remained his usual witty self. On the hospital bed, he joked, "Cruz [our colleague Justice Cruz Reynoso] always asked me where I got my three piece suits. Tell him that I know where he can get some now." A bit of macabre humor perhaps, but a graceful embrace of his fate.

That morning he told me, with evident and well-deserved pride, that he had written five articles this last year. It appears that he put all his last energies into his writing and his teaching, without ever seeking the concessions that we all would have readily offered to a gravely ill person.

Keith offered the antidote to Yeats's rough beast slouching towards Bethlehem. Keith showed us that the best could also be full of passionate intensity.