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## ESSAY

# Keith Aoki — Darth Remainder, Duck, and Ninja for Social Justice: A Model of Being There for People in Moments of Vulnerability

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I am tremendously grateful for the time that I had Keith Aoki in my life. He deeply shaped who I am and how I approach my job as a legal academic. Most importantly, he was there for me, as he was for so many others, during the times at which I was most vulnerable. I am

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\* Copyright © 2012 Hari M. Osofsky. Associate Professor and 2011 Lampert Fesler Research Fellow, University of Minnesota Law School; Associate Director of Law, Geography & Environment, Consortium on Law and Values in Health, Environment & the Life Sciences; Affiliated Faculty, Geography & Conservation Biology; Fellow, Institute on the Environment. I am grateful for the helpful input of Steven Bender, Ibrahim Gassama, Lillian Miranda, Joy Osofsky, and Erin Ryan on this project, particularly with respect to the difficult questions of framing and of how to handle confidentiality. I also appreciate the thoughtful editorial work of Austin Baumgarten of the UC Davis Law Review. As always, I thank Josh, Oz, and Scarlet Gitelson for their love, support, and patience. In addition to being a tribute to Keith Aoki and being dedicated to him and his family, this piece honors the many “ninjas” who have been and continue to be there for people in moments of vulnerability, generally with no public recognition of their immense contribution of time, energy, and warmth.

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not sure that I would have stayed in the legal academy through those difficult times without his presence, encouragement, and help. Many colleagues, both publicly and privately, have shared similar sentiments with me. Keith had an unusual ability to help people believe in themselves and find pathways to excellence at the very times at which they most doubted themselves.

This Essay celebrates that quality of Keith and asks how we all can pay it forward.<sup>1</sup> It does so by focusing on three images/characters/metaphors — Darth Remainder, Ducks, and Ninjas — that Keith chose to embody (sometimes physically!) and the lessons that each has taught me through Keith about why and how to be there for others. It draws from hundreds of email exchanges over several years between Keith and me to try to capture some of Keith's thoughts on these subjects, and to describe how he mentored so effectively.

In so characterizing Keith and using these emails, I want to acknowledge a core difficulty in writing such an essay about someone posthumously: Keith is not here to correct me or give me permission. In fact, Keith was so deeply humble that I was never able to thank him enough; he would cut me off rapidly and decisively whenever I tried to do so.<sup>2</sup> So, I do my best in this Essay to be true to my lived experience of Keith, knowing that I can never capture his unique ways of interweaving image and idea, and to only reveal aspects of our exchanges that would not violate his confidence.

I write this Essay both as a tribute to Keith and because I feel sadness and anger about how many people, often perhaps unintentionally, are made to feel afraid by their colleagues. I know what that fear feels like and how debilitating it is. I have had to struggle to regain my sense of internal self-confidence during and after such periods. Even now, protected by tenure at an institution where I am very happy, I feel afraid to admit to that fear — a fear that I see mirrored anew on a weekly basis as yet another vulnerable person tells me their story — publicly because some people may judge me for having struggled. But I think that the only way to make progress on how we treat vulnerable people in the academy is to acknowledge how widespread the fear and struggles are. I am very lucky to have tenure

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<sup>1</sup> The concept of paying it forward was popularized in the movie *PAY IT FORWARD* (Warner Brothers (U.S.) 2000). The Pay it Forward Foundation works to try to operationalize this concept. See *PAY IT FORWARD FOUND.*, <http://www.pifexperience.org/> (last visited Feb. 24, 2012).

<sup>2</sup> As I write this, I picture Keith rolling his eyes at me and the “liberal” optimism expressed here.

at a school that is a good fit and makes me feel valued (and which has a remarkably transparent and supportive tenure process). I feel an obligation with such security of position to honor my memory of Keith with honesty and am inspired by those who have had the courage to tell their stories of vulnerability.<sup>3</sup>

I. DARTH REMAINDER: EMBRACING CREATIVE PASSION AND  
ENCOURAGING OTHERS TO DO THE SAME

Many people have celebrated Keith's creativity with ideas and his intertwining of art with scholarship, especially in his comics. One of the earliest of those comics is *Casual Legal Studies*,<sup>4</sup> which Keith co-wrote with Luke Cole while they were students together at Harvard Law School; I display a copy of that comic that Keith sent to me with a kind note mourning Luke's untimely loss on my office shelf. Keith's artistic contributions predated his decision to pursue law though. I wish I had known Keith when he was a performance artist, especially once he told me about wrapping himself in cellophane in one of the projects. I would love to just once attend a conference of law professors in which people wrap themselves in cellophane (at least figuratively) and direct their seriousness into playful creativity. Imagine the conceptual breakthroughs we could achieve. Keith modeled them.

Keith's embrace of the creative as a law professor extended far beyond his writing. In my first year at the University of Oregon School of Law, I taught property for the first time and was terrified. Keith was there to walk me through it, generously giving me his syllabus, teaching notes, and PowerPoints. He also suggested that for future interests and estates, we co-teach; after all, Keith, like any experienced property professor, had a system for that somewhat daunting section of the course, and he wanted to make sure that my first time teaching it was effective.

Keith's classroom approach was, however, a bit different from that of any other property professor in the country — something that has

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<sup>3</sup> This is an essay about Keith rather than about me, and so I focus on interactions with him rather than on an in-depth account of all of those moments. For examples of work that shows such courage, see LOUISE HARMON & DEBORAH W. POST, *CULTIVATING INTELLIGENCE: POWER, LAW, AND THE POLITICS OF TEACHING* (1996), and Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange: Making Up is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1 (2010).

<sup>4</sup> LUKE COLE & KEITH AOKI, *CASUAL LEGAL STUDIES: ART DURING LAW SCHOOL* (1989) (introduction by Duncan Kennedy).

only become fully clear to me over the several years since then. On the day we taught the Rule Against Perpetuities, Keith showed up with his Darth Vader mask with voice changer and hid in the electronics closet. Here is the script, created by Keith, from my teaching notes:

I say: “First there was Darth Maul, then Darth Sidious, then Darth Vader, now there is . . . Darth Remainder”

Then Keith steps out of the side room and says, “Obi-wan to Anakin for life, then to Jabba the Hutt if he loses 1000 pounds, if not then to Yoda on the condition that he shave the hair from his ears. Don’t make me destroy you . . . name the estates and interests.”

Then I say, “the chart is with you”<sup>5</sup>

My teaching of future interests has never been as interesting as it was that year. I have never felt like I can pull off Darth Remainder without Keith; maybe I will be brave enough to try this spring. I have found it very healing since Keith’s death to get roomfuls of people to stand up on desks and yell “moo ha ha” the way that Keith used to when he discussed power in property class.

Keith’s fearless embrace of creativity inspired me, and so many others, to stretch ourselves in ways that we would not have otherwise. For instance, my Ph.D. in geography came about directly from Keith exposing me to new ideas. I was writing my first article on climate change litigation, and he stopped by my office to drop off a reprint of a piece that he humbly suggested might be helpful as I thought about sovereignty. When I told him that it was the most interesting thing I had ever read about mapping, he reacted by introducing me to the discipline of geography: first handing me piles of books that our colleague Alec Murphy had given him to read, and then talking me through them and how they might relate to law.<sup>6</sup>

What made those of us who were lucky enough to have Keith in our lives capable of such stretching is that he was always there to help us, both through his warmth and through his seemingly encyclopedic knowledge of a vast swath of scholarly literature. When I was trying to understand why the disciplines of law and geography have had such different institutional trajectories in the United States, I would call

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<sup>5</sup> Hari M. Osofsky, Lecture Notes, Property Law, Class 14 at the University of Oregon School of Law (Feb. 27, 2006) (on file with author).

<sup>6</sup> I discuss Keith’s contribution to critical geography in more depth in my other tribute to him. See Hari M. Osofsky, *The Geography of Moo Ha Ha: Keith Aoki’s Contributions to Critical Geography*, 91 OR. L. REV. (forthcoming 2012).

Keith, and he would rattle off lists of texts for me to read and digest, and then would excitedly discuss them with me once I did. After one such exchange, here are Keith's four "points" about the ideas I should incorporate into my draft:

1. Where is postmodernism and its critique of modernist essentialism (including foucault's denunciation of totalizing narratives and contending that there are only local struggles for power, there is NO day after the 'revolution'—power always engenders resistance)
2. where is the constitutive debate between those who see law as science vs. those who see law as politics (Law and Econ v. CLS; hegemonic histories vs. disruptive local knowledge, including race, identity, sexualities, culture, etc.
3. Where is the NAIL attach on traditional int'l and comparative law (nicely laid out in Raj's Int'l Law From Below and David Kennedy's very quirky "The Dark Side of Virtue")
4. Where is either the rebuttal or assessment of neo-marxist accounts of globalization, such as David Harvey, which follows the means of production but finds that things like identity and culture are epiphenomenal<sup>7</sup>

Keith made it seem possible to actually be a Renaissance scholar because he moved so seamlessly through ideas and interconnected them. He helped me to be less afraid to embrace complexity, to put concepts together in new ways, and to play in my writing.

Imagination is something that the world desperately needs to face complex problems effectively, but that the academy does not always reward. Especially pre-tenure, many people feel pressure to conform to models that their institutions or fields give them, or to write narrowly in order to demonstrate a clear mastery of their specific subject matter. I have felt such pressure at various moments in my pre-tenure career, and it made finding my voice and producing my best work much more difficult. I was lucky as I tried to spread my wings and play with ideas, methodology, and form during my time at the University of Oregon to have Keith there to guide me, at first in person and later via email and phone, as well as to be at an institution where I felt safe to experiment.

Our early experiments may sometimes be more clumsy than what follows, but we need them, and mentors and institutional safety as we

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<sup>7</sup> Email from Keith Aoki to Hari Osofsky (Jan. 27, 2007) (on file with author).

engage in them, to get to our best work. As I said to Keith and Alec Murphy via email in January 2007:

One of the hardest things at my stage is knowing what you don't know and need to read to cover intellectual ground. I credit much of my scholarly development in the past year to the conceptual mentoring you all have given me. It has given me the grounding that I need to be able to attempt more ambitious — though rather daunting — projects like this one.<sup>8</sup>

Keith helped to foster and protect these kinds of experiments in so many ways. He exposed people to ideas, modeled in his own work and mentored people directly on their interconnection, and worked tirelessly to keep junior scholars safe as they grew and took risks.

## II. DUCK: PADDLING FRANTICALLY UNDER THE WATER WHILE THE SURFACE REMAINS SMOOTH

One afternoon, as I sat in Keith's office feeling a bit overwhelmed and unsure during my first year at the University of Oregon, he shared with me the value of being a duck. For those unfamiliar, the University of Oregon's mascot is a duck — an appropriate choice given Eugene, Oregon's rainy climate. Even though Keith ultimately left the University of Oregon for UC Davis in response to university decisionmaking processes he found unjust, it was a place to which he remained deeply connected; he had planned to return to visit as a Wayne Morse Fellow the semester after he died. The celebration of Keith there in fall 2011 was warm and moving in ways that reflected that intensity of connection. Where else could a diverse room of people share their love of Keith by dancing to the Garden Weasels while drinking Keith's favorite beer, Pabst Blue Ribbon?

Keith explained to me that afternoon in Eugene in 2006 that ducks provide a good model for how one should comport oneself professionally: while their feet paddle frantically underwater, the surface remains smooth. In his view, one should work extremely hard, but not spend a lot of time telling the world about that hard work. While Keith reserved his strongest negative reactions for the places he saw injustice, he also disliked self-promotion. He only expressed excitement about his projects or accomplishments within a small circle of trusted friends, and even then with his signature humility.

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<sup>8</sup> Email from Hari Osofsky to Keith Aoki & Alexander Murphy (Jan. 27, 2007) (on file with author).

Keith's "smooth" surface was part of what made him such an important faculty leader at the University of Oregon — and nationally. As he paddled away, spending the countless hours needed to produce brilliant work of prodigious volume and complexity, while writing the kind of tenure letters that really matter because they capture scholarship's nuances, he contributed to the public discourse through hours of service on key committees, where he was a calming, "glue" voice. People rarely felt competitive with Keith or resented his many accomplishments because he did not advertise them. He had the internal self-confidence to make his contributions without waving them in the world's face and the humility not to take himself or what he could accomplish too seriously. Whenever I tried to convince him that he was working to make the world a better place, he insisted that he was a crit, anarchist, or nihilist and dismissed my progress narrative as liberalism.

In my experience of Keith, being a duck for him extended well beyond just being humble about scholarly accomplishments and the immense effort that went into creating them. Keith's frantic paddling encompassed not only an extraordinary scholarly output and comics that could only emerge from his brain, but scores of tenure letters, emails, and quiet conversations. In the outpouring following his death, which continues, people have little-by-little found the courage, especially in safe, semi-public spaces, to share some of what lay beneath the surface in their relationships with Keith.

As I reread hundreds of emails between Keith and me following his death, a clear pattern emerged. Many of them, beginning in fall 2004 in response to my thank you note during the University of Oregon's first consideration of me for a faculty position, consisted of Keith, as only Keith could, telling me how terrific I was at every key vulnerable moment in my career since. Another large cluster involved Keith teaching me through introducing me to new ideas and organizations and through pushing me to dig deeper and find my voice. A final cluster pertained to Keith's efforts to help others. He would connect me to a new person teaching a course for the first time so I could share materials with them, express his frustration about situations he found unjust and was trying to address, or give me advice on my efforts to do the same.

Every so often, Keith's emails would provide a window into the nuances of his mental processes underneath his stunning final products. For example, in one of our earliest exchanges, I asked him about the layered story in his first comic book-law review article,

*P.I.E.R.R.E. and the Agents of R.E.A.S.O.N.*,<sup>9</sup> and to what extent his interactions with the law review editors at the University of Miami Law Review influenced that strip within a strip. He replied:

actually the editors were really friendly and cooperative, the comic came out of symposium organized by prof michael fischl of miami entitled “beyond right and reason” about the work of pierre schlag. because schlag is an outright anarchist/surrealist (he wrote a harvard law review piece on law and phrenology—the 19th century study of bumps on one’s head arguing that both law and phrenology were internally consistent ‘rational’ systems with the implication that law has as much to do with ‘reality’ as phrenology) so i wanted to one-up him in terms of absurdity—what could be more absurd than a superhero type comic in a law review? The framing of Pierre came about from Prof Martha Ertman of Utah introducing me to Maurice Sendak’s delightful children’s book about a recalcitrant boy named Pierre who said “No” to everything his parents wanted him to do. I’ve been a fan of Goya’s etchings for a long time as well and have loved the 1960s slam bang-James Bond type of comic book since i was a kid. i I guess I tossed all of it into the mental blender and came up with my contribution to the symposium.<sup>10</sup>

Keith had a mental blender like no other, and it always was churning at high speed to produce novel combinations of ideas and artistic expression that challenge our conceptual boxes.

These emails themselves represent another surface though. Almost all of my most important exchanges with Keith were far away from the confining, permanent imprint of the written word. As I re-experience my time with Keith, as Bob Chang encouraged us to do in his tribute to him at the 2012 SALT<sup>11</sup> dinner, I remember . . . sitting in my first Oregon office during the year I visited there from Whittier Law School with Keith telling me not to give up hope as the appointments committee is meeting to decide my fate, . . . sitting in my Oregon living room looking at Keith perched on the edge of the fireplace towards the end of a long dinner party as he energetically debates with me what it means to be a liberal or a crit, . . . sitting at a table in a Davis, California

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<sup>9</sup> Keith Aoki, *P.I.E.R.R.E. and the Agents of R.E.A.S.O.N.*, 57 U. MIAMI L. REV. 743 (2003).

<sup>10</sup> Email from Keith Aoki to Hari Osofsky (Jan. 5, 2005) (on file with author).

<sup>11</sup> SOC’Y AM. L. TCHRS., <http://www.saltlaw.org/>.



noodle house with Keith praising the homemade noodles and talking animatedly about the legal world of Second Life and avatars, . . . sitting in my home office in Lexington, Virginia, during what would have been my final semester before coming up for tenure at Washington and Lee University had I not moved, with Keith on the phone (likely right around the time he found out he was ill) providing critical advice on how I should handle numerous aspects of the hiring process at the University of Minnesota and my pre-tenure process at Washington and Lee, . . . walking in my neighborhood in Saint Paul, Minnesota, as Keith on the other end of a cell helps me strategize about how to help particular junior scholars around the country in vulnerable situations in their institutions (all while he was dealing with his illness), . . . talking with Keith a month before he died, when I still did not know he was ill, while he explains with characteristic energy how excited he is about the new hires at UC Davis.

Keith's combination of "smooth" (at least Keith-style) surface and frantic paddling was a core piece of both his scholarly and human contributions. The way in which he comported himself on the surface allowed him to reach more people. So many stories have emerged since he died of how his warmth and humble demeanor made him approachable for very junior scholars just starting out. He broke down the barriers between a renowned, chaired professor like him, and newbies like me, both by reaching out and by taking the time to find and express the value that he saw in our work and in us as people. For so many of us, as we faced the often judgmental world of academics — depicted so well by the students voting whether or not to accept the comic strip law review article within Keith's comic strip law review article<sup>12</sup> — Keith gave us that boost of feeling less alone and more capable.

### III. NINJA: GLIDING THROUGH THE INTERSTICES TO DEFEAT THE AGENTS OF R.E.A.S.O.N. AND SUPPORT VULNERABLE PEOPLE

What makes this profession so scary, especially early on, is not simply the challenge of trying to contribute something worthwhile (and if one is oriented towards social justice as Keith was, having that contribution make the world a little better). Many people's fears also result from experiencing that the legal academy's interstices and power structures, just like those of the broader world, are not always transparent or fair. Keith explored these issues of power in his work, but he also lived them. He dedicated enormous time to helping people

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<sup>12</sup> See Aoki, *supra* note 9, at 744, 752.

navigate these complexities and to trying to make the academy better in the process.

For many people, including me, these early career feelings of vulnerability are enhanced by a sense in which our colleagues are not just judging our work, but judging us. Whenever I note this feeling to junior scholars and those on the market, they nod in recognition and sometimes suppress a slight shudder as they remember or tune into that loneliness of worrying that they simply are not good enough for the job.<sup>13</sup> In each of our institutions, right now, there are students, staff, and faculty who feel vulnerable, who feel like they cannot be public about their vulnerability for fear of being judged, and who feel lonely and afraid. It is hard to reach out when you feel that way. And the world tends to surround us with support and affirmation more easily in our less vulnerable moments. Keith knew that and was always there to lend a hand.

Keith modeled how to build supportive community to help people through those times. He deeply believed in the value of something he playfully termed “the ninja network,” a group of people who are there to help others quietly navigate the interstices. A critical race scholar with a particular expertise on Asian Americans in the law, Keith was well aware of the complexities of using the word “ninja,” with its somewhat racialized implications, and embraced them. Knowing his love of creative imagery, I cannot even begin to picture fully what these ninjas looked like in Keith’s head, gliding through the shadows in their slightly menacing way to do battle with Agents of R.E.A.S.O.N., depicted in one of Keith’s comic strips as saying: “After all, we are the voices of R.E.A.S.O.N. and we must defend the grid at all cost!!”<sup>14</sup>

Part of Keith’s contribution to the “ninja network” was individual. Even as he produced staggering intellectual contributions and energetically taught his students (jumping on the table during class and shouting “moo ha ha” to explain power dynamics in property), he spent countless hours advising, writing tenure letters, making calls for people, sending emails to celebrate and connect people, and creating a

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<sup>13</sup> I often refer to the Marriot Wardman Park Hotel, site of the annual law faculty hiring conference, as the P.T.S.D. Hotel. To this day, whenever I set foot in there for a meeting, memories of mad dashes between rooms in different towers surrounded by people in conservative suits radiating nervous energy come flashing back, as do the moments of judgment and kindness in those interviews. I will always feel warmth for Alta Charo, then Associate Dean at Wisconsin, and Nell Newton, then Dean at Connecticut, for insisting on making me tea during my interviews with their schools when I had severe laryngitis while participating in the “meat market” for the first time.

<sup>14</sup> Aoki, *supra* note 9, at 748.

safe space. He always intuitively knew how to provide support in the most important, practical ways that people need as they navigate the sometimes lonely world of legal academia. I would sit with or call Keith in those moments when I was unsure and afraid, and he would not just comfort me but give me unfailingly wise advice on how to move forward or how to help someone else who he had never met do so. Keith never wanted credit or recognition for this immense expenditure of time, energy, and political capital. He acted because he wanted to help and thought providing this kind of support was the right thing to do. As others have said as well, the only times that I ever saw Keith angry were in reaction to injustice.

Just as importantly, Keith mentored others in how to be supportive to people in moments of vulnerability, such as during transitions into and within institutions, tenure and promotion, difficult situations, etc. He frequently used his copious network of colleague-friends to help those in need, whether directly or through others he trusted. This past year has been the first time that I have tried to help people in the academy in those moments without Keith's wisdom illuminating my path through a friendly call or email. It has been sad and lonely, and what has gotten me through is trying to find the place from which Keith was there for others, and rehearsing in my head what he would say. What has helped me most has been being able to participate in remembrances of him at UC Davis and Oregon, and feeling the way in which his loving kindness, embrace of hard reality, and unique artistic, intellectual capacity continues to touch the world through the way he changed those who were lucky enough to have had him be there for them.

Especially for those of us privileged to be in faculty positions with the security of tenure, I hope that we can honor Keith's memory in part by channeling his capacity to support vulnerable people. Sometimes in our rush to judge excellence, we forget to believe in people in ways that allow them to reach their potential and, in the process, leave deep scars. I know from Keith that we can simultaneously demand excellence and help people get there. For every tenure denial, there are countless people who are made to feel unnecessarily afraid and inadequate before they pass through that ring of fire upon which so much hinges personally and professionally. Or, as Keith put it when I asked him in an early email about his *P.I.E.R.R.E* comic strip, "Is their close vote to reject the strip at the end a sign that the legal academy is still ruled by R.E.A.S.O.N. in its various guises?":

“look around you, the Agents of R.E.A.S.O.N. are EVERYWHERE (I feel like Inspector Closeau:-)).”<sup>15</sup>

As I take the hours to talk with those feeling variations on what I once felt and to try to write tenure letters that really grapple with the nuances of people’s work, Keith is always there for me. I will never be as “smooth,” or generous, or creatively capable as he was, but as I continue to mourn Keith’s untimely loss, I am reminded of the urgency of living our values and thanking those who are there for us in moments of vulnerability. Life is simply too fleeting for us to live it in fear or to ignore others who are suffering. As Keith said to me when I was thinking about writing an op-ed in response to something that deeply troubled me: “Do it ASAP, if you don’t do it, who will?”<sup>16</sup>

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<sup>15</sup> Email from Keith Aoki to Hari Osofsky (Jan. 5, 2005) (on file with author).

<sup>16</sup> Email from Keith Aoki to Hari Osofsky (June 25, 2006) (on file with author).