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## In Memoriam — Keith Aoki

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*The extinction of a young life of signal goodness and promise crystallized the whole religious, ethical, and metaphysical problem: is there a purpose, a reality, behind the flux of life? Is the world a divine order or is it a meaningless chaos under the sway of blind Nature?*<sup>1</sup>

Years ago, early in our friendship, I mentioned to Keith Aoki in a late night email conversation that Tennyson was my favorite poet.<sup>2</sup> That brief exchange was long forgotten by me until after Keith's shocking passing. Desperate to find every snippet of communication between us, I searched my email library. I discovered a folder with a barrage of emails from Keith to me about Tennyson. That discovery led me to seek some solace and understanding from the Victorian poet as I tried to cope with the sudden loss of my dearest friend, collaborator, mentor, and so much more.

Tennyson was only twenty-four years old when he experienced the loss of a close childhood friend, Arthur Hallam, and the process of dealing with grief provided the inspiration and material for many of his most celebrated poems.<sup>3</sup> Those poems relentlessly probed themes of love, friendship, and loss as the poet sought to make sense of what may be termed "the burden of living."<sup>4</sup>

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<sup>1</sup> Douglas Bush, *Introduction* to THE SELECTED POETRY OF TENNYSON, at x (The Modern Library/Random House, 1951).

<sup>2</sup> Alfred Lord Tennyson (1809-92), Poet Laureate of England from 1850 until his death, is considered among the greatest poets of the Victorian era. As was often the case, our mutual friend, David Munsey, offered the subject of this conversation. Unsurprisingly, while I found communication from David and his spouse, Anne Fujita, about their favorite poets, Keith's emails said nothing about himself.

<sup>3</sup> See Alfred Lord Tennyson, *In Memoriam A.H.H.* (1850). Arthur Hallam, a brilliant colleague and beloved friend of Tennyson died suddenly in 1833 at the age of 23.

<sup>4</sup> See Bush, *supra* note 1, at x; see also Alfred Lord Tennyson, *Ulysses* (1842); Alfred Lord Tennyson, *Tithonus* (1860).

It was Tennyson who helped me capture one particularly frustrating aspect of my response to the loss of my friend. I had experienced a fundamental inability to describe in any public manner what his life had meant to me. My ability to articulate the enormity of the loss I was experiencing had seemingly escaped me. Tennyson offered an explanation:

*I sometimes hold it half a sin  
To put in words the grief I feel;  
For words, like Nature, half reveal  
And half conceal the Soul within.<sup>5</sup>*

Truth was that there was a rage within me and it actually grew as I listened to all the wondrous things said about my friend. Generous words, effusive praise and poignant recollections inevitably confined him to memory. Keith became a “was,” discussed in the past. My spirits worsened.<sup>6</sup> I needed with each passing moment to hold on to the person — the brilliant, vibrant, irrepressible, and incomparably kind brother, friend and colleague — that had infused so much of my life for nearly two decades. Moreover, the encomiums, heartfelt as they were, in many ways, and with the best of intentions, also betrayed what had been Keith’s signature desire to hide in plain sight and shy any direct attention from himself. It was strange seeing Keith Aoki as the subject of public conversation, revealed. I felt that every word I could utter to explain him, even if in praise, would violate an implicit trust between us.

*I leave thy praises unexpress’d  
In verse that brings myself relief,  
And by the measure of my grief  
I leave thy greatness to be guessed.<sup>7</sup>*

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<sup>5</sup> Tennyson, *supra* note 3.

<sup>6</sup> Tennyson was also unsatisfied with the usual efforts to put loss in perspective:

*One writes, that ‘Other Friends remain,’  
“That Loss is common to the race”-  
And common is the commonplace  
And vacant chaff well meant for grain.  
That loss is common would not make  
My own less bitter, rather more”  
Too common! Never morning wore  
To evening, but some heart did break.*

*Id.*

<sup>7</sup> *Id.*

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Yet it was Tennyson who also provided me with a partially acceptable emotional rationale that I needed to begin expressing the magnitude of Keith's loss to me and, yes, to our community of friends, colleagues, acquaintances, scholars, and others, the direct and indirect beneficiaries of his too brief time on earth. Tennyson had urged: "Let Love clasp Grief lest both be drown'd."<sup>8</sup>

With full appreciation of my amateurish association with poetry, I embrace the task of speaking about how I believe Keith understood and lived love. I do so even in the wake of nature's treacherous demonstration of its unrelenting refusal to discriminate. [Surely, you could have spared him for just a little longer? There is so much to be done and, goodness, who was more in the thick of it? Who was ready always to give more? Ask his students of nearly two decades if he ever held anything back or if ever a hint of disrespect found a place in his response to any of their requests? Did he not leave his hospital bed in a vain attempt to teach those last few classes of the term?]

*But what of that? My darken'd ways  
Shall ring with music all the same;  
To breathe my loss is more than fame,  
To utter love more sweet than praise.*<sup>9</sup>

Enough already. The journey to acceptance of overwhelming loss begins with love. Besides, I am absolutely convinced that Keith, ever the stoic, would have found these musings about death rather excessive. I can even imagine the grin on his face, the twinkle in his eyes, and the sound of his voice as he would gently parry off any suggestion that he, even in death, deserved special consideration. Nor would he countenance the thought that there should be rhyme or reason to the process of life. If I should ever need confirmation of this attitude, I need only look at the years of communication between us chronicling the myriad ways humans have demonstrated their disregard or contempt for each other and their environment.

Perhaps, I reason, Tennyson's point is that the consequence of grief unleavened by love is a descent into despair. Whatever attraction despair may have for me at this moment, it would surely betray Keith's legacy. We are talking about a man whose scholarship, teaching, and everyday interactions demonstrated and exalted love. In this context, love should be understood, as Immanuel Kant describes it, "as a maxim of benevolence (practical love), which has beneficence as its

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<sup>8</sup> See *id.*

<sup>9</sup> *Id.*

consequence.”<sup>10</sup> Keith lived the Kantian expectation that “it is every man’s duty to be beneficent—that is, to promote, according to his means, the happiness of others who are in need, and this without hope of gaining anything by it.”<sup>11</sup> Keith applied himself to this task with righteous alacrity, a combination of cheerful eagerness and programmatic dedication fueled by a sort of moral duty. Others have testified to the breadth and depth of his engagement. I offer one representative instance. Barely minutes before he lapsed in irretrievable unconsciousness, Keith deflected a question about his condition and labored to describe with characteristic brilliance a book project I had discussed with him years ago. I received that particular moment as I have done all the others over the years. His unmitigated confidence in me as a person and as an academic helped to secure my soul from self-doubt.

But there was a difficult aspect to Keith’s beneficence. Keith would not allow his record of assistance to others to be elevated or celebrated. And on the rare moments he benefited from another person’s efforts, he would overwhelm them with gratitude. His sudden departure left in many the sense of substantial debts unpaid.

In his academic life, Keith was a Crit.<sup>12</sup> His critical approaches to law and policy merged with his appreciation of the politics of everyday life. Keith not only stood in solidarity with those who needed his help or sought a way out of the bottom of the well but he reveled in his association with their circumstances. However, Keith combined an unimpeachable capacity to empathize with individuals in the moment with a deep skepticism of the priorities of humans working in any combination. It is therefore difficult to point to a particular group or movement as his home base. I am tempted to invoke the image of a humble happy warrior, a homage to the late Hubert Humphrey<sup>13</sup>, but I

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<sup>10</sup> IMMANUEL KANT, *THE DOCTRINE OF VIRTUE, THE METAPHYSIC OF MORALS* ¶ 25 (Harper Torchbooks NY 1964) (1797).

<sup>11</sup> *Id.* at ¶ 30.

<sup>12</sup> Short for critical legal theorist or a member of the Critical Legal Studies Movement (CLS). CLS took root in the late nineteen seventies promoting an understanding of the political nature of law and its role in maintaining structures of power and injustice. Among other things, CLS scholarship exposes weaknesses in the faith that law is objective, non-political, neutral, and determinate. See Keith Aoki, *Critical Legal Studies, Asian-Americans in U.S. Law & Culture, Neil Gotanda, and Me*, 4 *ASIAN L.J.* 19 (1997); Keith Aoki, *The Stakes of Intellectual Property Law in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 259 (David Kairys ed., 3rd ed. 1998). See generally *THE POLITICS OF LAW*. (David Kairys ed., 3rd ed. 1998) (examining the area of critical legal studies); JAMES BOYLE, *CRITICAL LEGAL STUDIES* (1992) (same); ROBERTO M. UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT* (1986) (same).

<sup>13</sup> The late Hubert Humphrey, former U.S. Senator from Minnesota was Vice

suspect Keith would demur. Humphrey was a Liberal who wanted to be president of the United States. And for such ambition, Humphrey made compromises, the sort that Keith detested with a rage that was a sight to behold.

A better image is probably that of a stoic progressive, an unapologetic radical with a happy, humble, and positive disposition. Keith Aoki was on a mission to change the world and he was going to do so by bringing together as many of those whom he saw as engaged in this enterprise as he could, build them into a network, while rejecting any credit for his role. He wanted to unleash, not the “dogs of war” to rip apart an unjust social order, but generations of hardworking, cooperative yet non-conforming scholars and activists, committed to the best that humans can conceive.

*So many worlds, so much to do,  
So little done, such things to be . . .*<sup>14</sup>

A mutual friend, Professor Hope Lewis<sup>15</sup>, suggested that Keith was the consummate promoter, who regarded those in his ever expanding spheres as all stars or very soon to be stars. Thus, Keith the promoter went to all the conferences, took copious notes of presentations, made no distinction based on rank or time served in the legal academy, remembered names, introduced everyone to everyone, read every piece of literature offered to him, dutifully read tenure files, wrote letters of recommendation, and more. His intellectual engagement was an everyday, indeed a seemingly every moment, endeavor. He loved to help, loved to make concrete contributions to those similarly engaged, and loved to praise their success. It helped that he was exceptionally disciplined with an amazing capacity to synthesize ideas, recall conversations, produce scholarship, and deflect all praise away from himself.

So what now that he is gone from us? How may we best honor his legacy? In one of his last publications, a graphic article entitled “Pictures within Pictures,”<sup>16</sup> Keith employed comic form to discuss

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President of the United States under President Lyndon B. Johnson. He lost to Richard Nixon in the 1968 elections. An ardent champion of human rights, his optimism and sunny disposition earned him the nickname, Happy Warrior. His legacy was marred by his support of the Vietnam War. See Derek Walbank, *Happy Birthday ‘Happy Warrior’: Senate Honors Hubert Humphrey*, MINNPOST, (May 26, 2011), <http://www.minnpost.com/dc-dispatches/2011/05/happy-birthday-happy-warrior-senate-honors-hubert-humphrey>.

<sup>14</sup> Tennyson, *supra* note 3.

<sup>15</sup> Hope Lewis is professor of law at Northeastern University School of Law.

<sup>16</sup> See Keith Aoki, *Pictures Within Pictures*, 36 OHIO N.U. L. REV. 805 (2010).

ostensibly the core themes of intellectual property. But the article could also be seen as both a summation of his life, his “Apologia Pro Vita Sua,”<sup>17</sup> and a final appeal told in the form of a cautionary fairy tale. You get the first clue when Keith began the article with a simple declaration that was a curious and unusual reference to himself: “Hello There. My name is Keith Aoki. I am a law professor.”<sup>18</sup> The suggested retort, “Big, deal, so what?” should leap from the page. He then offered one explanation of the term “pictures within pictures” as “mise en abyme” or “pictures into the abyss. . .infinity.”<sup>19</sup> This is an invitation to readers to unhinge from the interpretation offered by the professor and strike out on their own. As if to assist the process of liberation, Keith introduced two colleagues, James (Jamie) Boyle and Jennifer Jenkins, who had played central roles in his development as a legal academic.<sup>20</sup> The three of them had authored a path-breaking “comic book,” on copyright and fair use called “Bound by Law,” and worked on a sequel, “Theft: A History of Music.”<sup>21</sup> The remainder of the graphic essay is a brief excursion through familiar themes: control versus freedom, the sacred versus the secular, race, culture, creative production, ownership, and distributive choices.<sup>22</sup>

Keith closed the exercise abruptly, stating “Well, I’ll have to be going shortly . . . .” He then offered up “a fairy tale of sorts” about “a kindly old tinkerer who loved books and music but worried that there wasn’t enough creative works in the world for people to experience . . . .”<sup>23</sup> The Tinkerer’s identification of the problem of course required a solution. The solution was to create a robot to

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<sup>17</sup> This is a general reference to the celebrated autobiography of John Henry Cardinal Newman, Victorian theologian and public intellectual. A convert to Catholicism, Cardinal Newman wrote his autobiography, *Apologia Pro Vita Sua* (Explanation of his Life) (1864), to defend himself and the Catholic Church in England against sectarian attacks.

<sup>18</sup> Aoki, *supra* note 16, at 805.

<sup>19</sup> *Id.* at 806.

<sup>20</sup> James Boyle is the William Reynolds Professor of Law and co-founder of the Center for the Study of the Public Domain at Duke Law School. Keith considered Jamie Boyle a great intellectual influence in his life. Professor Boyle helped to guide his introduction to the legal academy and nurture his contributions to field of intellectual property. Jennifer Jenkins is a Senior Lecturing Fellow at Duke University Law School and director of the Center for the Study of the Public Domain. She co-authored, filmed and edited “Nuestra Hernandez,” a fictional documentary on intellectual property issues.

<sup>21</sup> See KEITH AOKI, JAMES BOYLE & JENNIFER JENKINS, *BOUND BY LAW* (Duke Center for the Study of the Public Domain, 2006).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 816.

promote his vision. The intervention was successful so more robots came. Soon robots begat robots. And then came the counter robots. Tension, confrontation and crisis followed. “This was it. . . Ragnarok, High Noon, Apocalypse now. . .” said Keith with deliberate exaggeration.<sup>24</sup>

Keith ended the story there by asking: “How did this all end? Which robot won? For that matter, who are the ‘good’ guys? the ‘bad’ guys? Is this one of those postmodern anti-hero stories? What’s the moral of this story anyway??” He then declared rather abruptly, “it may be a cliché, my friends, how this story ends is up to you!! So . . . choose wisely and . . . Adios Amigos.”

Examining these same images, Professor Boyle said, “But Keith wouldn’t be Keith if he didn’t leave us one last little message, one last ‘Easter Egg’ to discover.”<sup>25</sup> Boyle directed us to look closely at the phrase on the T shirt Keith’s character was wearing: “You can’t avoid the void.” Boyle continued: “No, we can’t avoid the void. But some of us shine so very, very brightly that the shadows are dispelled.”<sup>26</sup>

*The hills are shadow, and they flow  
From form to form, and nothing stands;  
They melt like mist, the solid lands,  
Like clouds they shape themselves and go.*<sup>27</sup>

Yes, the shadows are dispelled and we are revealed for what we are, the limits of our collective imagination. Like the Sorcerer of Jorge Luis Borges’ the Circular Ruins<sup>28</sup>, Keith Aoki the consummate promoter, the professor, the inescapable friend and colleague, strove mightily to construct, coordinate and expand a reality of critique and awareness. Yet Keith was under no illusion that his was a reality unconnected to the imagination of those before and those to come. The tinkerer’s robots were only as real as the imagination that created them and indeed created the tinkerer himself in the first place. Yes, Keith, how this story ends is up to us. We have our imagination fueled by the intensity of our too brief experience of your life.

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<sup>24</sup> *Id.* at 818.

<sup>25</sup> See JAMES BOYLE, KEITH AOKI 1955-2011: LIFE AS THE ART OF KINDNESS — A REMEMBRANCE 71 (2011), available at [www.thepublicdomain.org/KeithAokiRemembrance.pdf](http://www.thepublicdomain.org/KeithAokiRemembrance.pdf).

<sup>26</sup> *Id.*

<sup>27</sup> See Tennyson, *supra* note 3.

<sup>28</sup> See Jorge L. Borges, *The Circular Ruins*, in COLLECTED FICTIONS (Andrew Hurley trans., 1999).

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*“Come, my friends, ‘Tis not too late to seek a newer world.”*<sup>29</sup>

You helped us develop and hone our power and the capacity to dream, to imagine a better world, one where “Hope had never lost her youth.”<sup>30</sup> In that crucial moment of disruption, an interlude, for the indomitable spirit that had found a home in your imagination, dear friend, I saw no shadow of the “relief, humiliation, or terror” experienced by the Sorcerer as he understood that he also was an illusion, the product of another’s imagination.<sup>31</sup> You already told us that it was all pictures within pictures, into infinity. In your acceptance, I understood grace and embraced hope. And

*. . . in my spirit will I dwell,  
And dream my dream, and hold it true;  
For tho’ my lips may breathe adieu,  
I cannot think the thing farewell.*<sup>32</sup>

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<sup>29</sup> Tennyson, *supra* note 3.

<sup>30</sup> *See id.*

<sup>31</sup> Borges, *supra* note 28.

<sup>32</sup> *See* Tennyson, *supra* note 3.