

Hon. Samuel P. King

J u d g e s P r o f i l e

By
**Doug Moore and
Julie China**

He may be the only sitting U.S. judge with Hawaiian blood. He is a solid player of the Japanese game Go and has authored a book on the subject. His extensive private library includes a varied range of topics from Hawaiiana to the Pacific and Asia, general history, women's studies, and much more. He is Hon. Samuel Pailthorpe King, a U.S. District Court judge for the District of Hawaii since 1972.

"Laws are made for people, and we pass too many laws," Judge King counsels. "People need to get together more to solve problems." His sentiments reflect the Hawaiian philosophy for problem-solving: working together, sharing ideas, coming to win-win compromises, and effectively resolving disputes with honor and dignity.

He was born in China, where his father, only the second Hawaiian appointed to Annapolis, commanded a gunboat on the Yangtze River. The family returned to Hawaii where he attended the prestigious Punahou School. As a child he was blinded in an accident, completely losing his left eye.

Judge King recalls the notorious 1930s Thalia Massie case in which a caucasian Naval officer's wife claimed she had been raped by several local men. Five local men of Japanese and Hawaiian ancestry were charged with the crime. The Massie family took the law into their own hands, beating one man and killing another. The famous lawyer Clarence Darrow took up the accused murderers' defense. Though convicted, because of pressure from the Navy and the caucasian business community, the governor of Hawaii subsequently commuted the murderers' sentences. The community was outraged at the blatant racism. The case and its racist origins left an indelible impression on young Sam King which helped to shape his ideals and vision of justice. Judge King is opposed to the death penalty because it is barbaric, ineffective, and sometimes applied to the wrong people.

After graduating from Punahou School, Judge King went off to Yale University to study mathematics and astronomy. But fate steered him to the law and he enrolled in Yale University Law School. After graduating in 1940, he returned to Hawaii to take the Hawaii bar examination with nine other hopefuls. Judge King passed and went to work for the attorney general's office. On Dec. 7, 1941, he

was asleep when the Japanese launched their surprise attack on Pearl Harbor. Answering the call to service, Judge King joined the U.S. Navy and served out World War II as a Japanese interpreter in military intelligence.

After World War II, Judge King opened his own law office doing plaintiff's work, corporate work, criminal defense, and divorces. Appointed to the state of Hawaii circuit courts in 1961 and assigned to its family court in 1966, he was instrumental in the court's adoption of uniform model family court law and rules. In 1970, Judge King returned to private law practice. Dissatisfied with the direction the state of Hawaii was going in, Judge King threw his hat into the governor's race. He won the Republican primary, but lost to the Democratic incumbent in a raucous campaign.

In 1972, while Judge King was serving as Hawaii's GOP chair to the Republican National Committee, Hawaii's U.S. Sen. Hiram Fong suggested Judge King for a federal judgeship to President Richard Nixon who was in Hawaii returning from his historical trip to China. Shortly thereafter, Judge King was nominated for and confirmed as a U.S. District Court judge for the District of Hawaii.

Judge King is a caring and compassionate man. Although he may be best known as the trial judge in the infamous Palmyra Island double-murder case,¹ he will be remembered for his numerous federal court decisions which bespeak well of his care and compassion. Among his many decisions, Judge King was instrumental in saving a species of bird from extinction. In *Palila v. Hawaii Dept. of Land and Natural Resources*, 471 F.Supp. 985 (D.Haw. 1979), *aff'd*, 639 F.2d 495 (9th Cir. 1981), a case involving the Endangered Species Act of 1973 (16 U.S.C.A. § 1531 *et seq.*), Judge King held the Hawaii's Department of Land and Natural Resources could be ordered and enjoined to eradicate feral sheep (*Ovis aries*) and goats (*Capra hircus*) from the slopes of Mauna Kea on the island of Hawaii because they were harming the Palila (*Loxioides bailleui*), an endangered species of bird. The Palila are found only in a small area on the upper slopes of Mauna Kea. The Palila are dependent on the mamane-naio forest for their survival. The mamane trees provide food, shelter, and nesting sites for the Palila. Unfortunately for the Palila, its habitat is located entirely within a state game management area used for sport hunting, and the hunting targets, feral sheep and feral goats, were destroying the mamane-naio forest. Hovering between 1,400 to 1,600 birds, the Palila were close to the minimum number of individuals below which a population cannot drop if the species is to survive when the case of *Palila* came before Judge King. Environmental groups brought an action for declaratory and injunctive relief under the Endan-



gered Species Act of 1973. The Endangered Species Act provides that when a species has been listed as endangered, it is unlawful for any person to "take" the species. It defines "taking" to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct." Judge King found feral sheep and feral goats were harming the Palila in contravention of the Endangered Species Act and ordered their removal from the Palila's habitat. Judge King subsequently extended his order to include mouflon sheep (*Ovis musimon*) in *Palila v. Hawaii Department of Land and Natural Resources*, 649 F.Supp. 1070 (D.Haw. 1986), *aff'd*, 852 F.2d 1106 (9th Cir. 1988).

A second very significant decision is the far-reaching Hawaii land condemnation case, *Midkiff v. Tom*, 483 F.Supp. 62 (D.Haw. 1979). Historically in Hawaii, a few landowners, including the Bishop Estate (a multi-billion dollar private trust²), owned large tracts of residential land. Instead of selling the land, these landowners offered long-term leases to lessees. In the seminal *Midkiff* case, Bishop Estate trustees filed suit against the commission

and executive director of the Hawaii Housing Authority and the Hawaii Housing Authority itself, claiming the Hawaii Land Reform Act of 1967, Chapter 516 of the Hawaii Revised Statutes, was unconstitutional. The Hawaii Land Reform Act allows the state of Hawaii to use its eminent domain power to condemn residential land and then sell it to lessee homeowners, giving them the opportunity to purchase their leased land in fee. Judge King found the Hawaii Legislature had the right to conclude that Hawaii's system of landholding was injurious to the social economic health of the community, and ruled the Legislature had the right to use the state's eminent domain power to condemn residential land and sell it to the residential lessees. Reversing the Ninth Circuit Court of Appeals' decision in *Midkiff v. Tom*, 702 F.2d 788 (9th Cir. 1983), Judge King's decision was subsequently upheld by the U.S. Supreme Court in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984).

Subsequently in 1991, the city council for the city and county of Honolulu passed an ordinance based on the Hawaii Land Reform Act extending the scope of leasehold to fee simple conversion for condominium units.³ Bishop Estate again challenged the ordinance and lost.⁴ "The people of Hawaii [through legislation and ordinance] attempted, much as the settlers of the original 13 colonies did, to reduce the perceived social and economic evils of a land oligopoly traceable to their monarchs[.]"⁵ and it was Judge King's earlier decision which decisively altered the history of land ownership in Hawaii.

It therefore comes as no surprise that Judge King has called Bishop Estate trusteeship a "nice place to rip off the Hawaiians."⁶ Valued at anywhere between \$5 billion and \$10 billion dollars, Bishop Estate, which was created by the will of Princess Bernice Pauahi Bishop,⁷ is the largest private landowner in the state of Hawaii and one of the richest educational trusts in the world. The Bishop Estate is a perpetual educational trust for the support of two schools, one for boys and one for girls, known as the Kamehameha Schools. On Aug. 9, 1997, Judge King and four other Hawaii community leaders penned a controversial newspaper editorial detailing impropriety in the inner sanctum of the Bishop Estate titled "Broken Trust."⁸ "Broken Trust" begins, "[t]he time has come to say 'no more.' The web of relationships between the judiciary and our beloved Kamehameha Schools/Bishop Estate has pushed two great institutions to an absolute critical point. Immediate action must be taken." The article goes on to speak of Bishop Estate trustees' abuse of trust and their lack of accountability. It speaks of inappropriate links between

(continued on page 18)

■ Judges Profile (cont. from page 17)

the justices of the Supreme Court of the state of Hawaii, members of the Judicial Selection Commission and Bishop Estate trustees.

Because of who the authors are, a senior federal district court judge, a former state appellate court judge, a law professor, an educator, and a Catholic priest, and because they spoke with one voice, the article became a catalyst to change. "Broken Trust" brought the Bishop Estate under public scrutiny as well as the scrutiny of the state attorney general and the Internal Revenue Service.⁹ Subsequently, two of the trustees petitioned to remove one of their own, and the state Supreme Court justices have said they will no longer select trustees.¹⁰ The following year, the *Honolulu Star Bulletin*, the newspaper that published the editorial, accorded the authors of "Broken Trust" the honor of "Ten Who Make A Difference" for 1997.¹¹

The single thread running through his life has been his commitment to Hawaii, its land, and its people. Through his caring and compassion, Senior Judge Samuel Pailthorpe King has made a difference for Hawaii. ■



Doug Moore is a solo practitioner specializing in contracts, real estate, corporations, intellectual property, social security, personal injury, and workers' compensation. He practices in Honolulu, and has worked for the Hawaii state Senate

and as a political consultant. He is also a member of The Federal Lawyer editorial board.

Julie China is an associate with Alcantara, Frame & Formby in Honolulu, specializing in admiralty/maritime litigation and corporations, and insurance coverage law. She received her J.D. from the University of Washington School of Law and is a member of the FBA.

Endnotes

¹This famous case was later made into a book and television miniseries titled *And The Sea Will Tell*, by Vincent T. Bugliosi.

²See discussion *infra*.

³Honolulu City Ordinance 91-95. See also: Mary Adamski, *City Lease-To-Fee Conversion Law Upheld On Appeal*, HONOLULU STAR BULLETIN, Sept. 9, 1997.

⁴*Richardson v. City and County of Honolulu*, 802 F.Supp. 326 (D.Haw. 1993), *aff'd* 124 F.3d 1150 (9th Cir. 1997), *cert. denied* 119 S.Ct. 168, 119 S.Ct. 275 and 119 S.Ct. 544 (1998).

⁵*Hawaii Housing Authority*, 467 U.S. at 241-42.

⁶Sandi M. Skousen, *The Five Behind "Broken Trust,"* PACIFIC BUSINESS NEWS, Feb. 9, 1998.

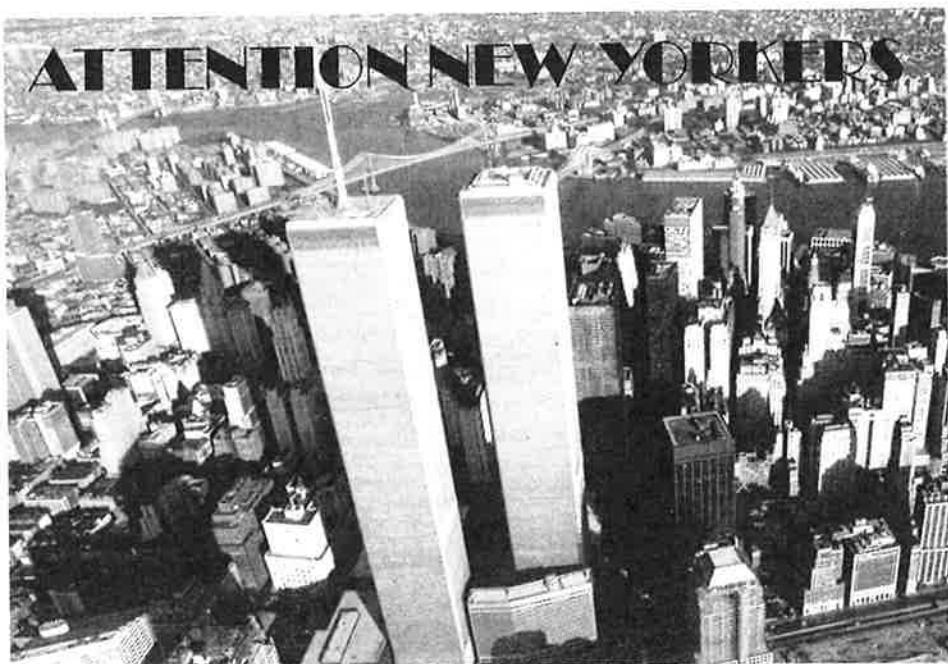
⁷Princess Bernice Pauahi Bishop was the last lineal descendant of King Kamehameha the Great.

⁸Samuel King, Charles Kekumano, Walter Heen, Gladys Brandt, Randall Roth, *Broken Trust*, HONOLULU STAR BULLETIN, Aug. 9, 1997. *Broken Trust* can also be found in its entirety at: <http://starbulletin.com/specials/bishop/story2.html>

⁹Craig T. Kojima, *Ten Who Made A Difference*, HONOLULU STAR-BULLETIN, Jan. 1, 1998.

¹⁰Lori Tighe, *Broken Trust Authors Support Trustee Petition*, HONOLULU STAR-BULLETIN, Jan. 1, 1998.

¹¹*Ten Who Made A Difference* at *Id.*



The Federal Bar Association's 1999 and 1998 continuing legal education programs have been approved for credit by the New York State Continuing Legal Education Board. To obtain credit for attendance at any one of our programs, you must have our official certificate of attendance and follow the New York State reporting guidelines. To obtain an attendance certificate, contact the FBA's Meetings and Education Department at (202) 785-1614 or by e-mail at cle@fedbar.org. The certificates can be faxed, so be sure to include your fax number with your request. For information on New York State reporting guidelines, you must contact the New York State Continuing Legal Education Board directly at (212) 428-2105 or consult the web page: www.nysba.org.