

## THE BISHOP ESTATE—A BROKEN TRUST†

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The title of the last speech before mine was "You Can't Make Up Stuff Like This," and that would have been appropriate for my talk, too, because the events and issues that I am about to discuss with you are nearly unbelievable. Let me begin with a bit of background. I was appointed attorney general four years ago, and at that time I had been living in Hawaii for less than six years. I applied for the job just after Governor Cayetano was elected in 1994. I didn't really expect to get the job because most appointed attorneys general are close friends of the governors, but I applied and got an interview with the Governor and twenty people whom I had never met before, the members of his transition team. Not knowing the Governor, I didn't know what he expected, so I couldn't answer the questions as he expected or wanted them answered. I just had to answer them the best way I could. At one point, he asked me, "So what do you think of being my lawyer?" This probably was not the wisest answer, but I said to him, "Governor, the way I read the state constitution, I am not only the lawyer for the governor, but I am the lawyer for the entire state. I am the lawyer for all eighteen departments of the state government. I am the lawyer for the judiciary as well as for the legislature. Basically, I view myself as being the lawyer for the people in the state of Hawaii." Dead silence followed. Not one person on that transition team could believe that those words had come out of my mouth. I'm sure they thought when the interview ended that they were glad they wouldn't have to deal with me for the next four years.

The next day I was sitting in my office, and the receptionist said, "Margery, there is someone on the phone who claims to be the Governor." The Governor offered me the job, and I was so stunned that I couldn't answer. He said, "Well, you wouldn't have applied for the job if you didn't want it, would you?" I was still too stunned to give him a decision. Finally, he said, "Perhaps you want to take a little time before you answer, but make sure you do it by the end of the day." By the end of the day I thought about it: was I really crazy enough to want this job? I decided I was.

I worked for a couple of years, and everything seemed to be going smoothly. At any given time, I have about 50,000 matters in my office. My

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staff numbers 575 people, with 171 lawyers, and I have a budget of more than \$50 million a year. It's a pretty big law firm. Still, nothing prepared me for what happened two years ago when the Bishop Estate matter presented itself.

#### THE BISHOP ESTATE

Bishop Estate is the largest private property owner in the state of Hawaii. It owns approximately ten percent of all land in this state. The trust was set up about 115 years ago by Princess Bernice Pauahi Bishop and is now worth, conservatively, about \$10 billion. It is managed by five trustees who are appointed, as provided in the Princess's will, by the justices of the state supreme court acting in their individual capacities. The sole purpose of the estate has been and still is to support a school—actually, two schools, one for girls and one for boys—for the education of Hawaiian children. In its 115 years, the Kamehameha Schools have educated approximately 18,000 children, so this school with ten billion dollars behind it has a relatively limited reach.

The trustees who have been managing this trust have been doing so virtually without accountability for years and years. The probate court has appointed a master each year to go in and look at the books and records, but until recently the master was allowed to look at the records but was not allowed to copy anything, and the master was allowed to ask a few questions of the employees but was not allowed to get any help from outside experts. Then the master would write a report—and usually that report was reviewed by the trustees before it was submitted to the probate court.

#### STIRRINGS OF DISCONTENT

Two years ago, the students, alumni, and faculty of the Kamehameha Schools started getting upset because the trustees wouldn't talk to them. The trustees wouldn't give the teachers contracts that lasted, so two months before school started each year, the teachers didn't know whether they had jobs. The students were upset with how things were being run but got no response to their questions and complaints. So in May of 1997, a group of students, parents, and alumni decided to march to the offices of the Bishop Estate to try to find out why they couldn't get an audience. Instead of listening, the trustees hired private investigators to take pictures of all the people who participated in that march. A group by the name of Na Pua, made up of some of the students and alumni, then called for the appointment by the court of a fact finder to go into the schools and find out what was really happening. The trustees thought perhaps they should go along with having a fact finder—so they handpicked one: a retired judge who had

been a probate court judge and who had approved the trust account year after year after year!

One of the trustees, Oswald Stender, was very unhappy. He called the me and said, "Attorney General, you don't know me, and I cannot be seen going into your offices, and you cannot be seen coming into my office. Perhaps we can find a quiet place to meet." We did, and he told me that there were some serious problems—abuse of power, misuse of funds, other actions he didn't think were right. He asked me to look into them. I thought about it and felt that my office was running smoothly enough that I could take a look at the situation.

About a week after that meeting, a group of five prominent people decided that it was time to go public with an article about some of the allegations concerning the Bishop Estate. The article was called "Broken Trust." It talked about the \$900,000 a year that each trustee was receiving in compensation. It talked about the trustees entering into contracts and deals, here and abroad, solely because their friends or family said to do so. It talked about the trust hiring attorneys to represent the trustees' personal interests when there was no benefit for the trust. It talked about monetary gifts—legal and illegal—to politicians in order to affect the estate. It asserted that there was something amiss in the selection of these trustees.

Let's focus more specifically on the trustees who have become the handlers of this multibillion dollar estate. One is Henry Peters, a former speaker of the house of the state legislature. In fact, Henry Peters was both the speaker of the house and a Bishop Estate trustee for a number of years. Another trustee, Richard "Dickie" Wong, became a Bishop Estate trustee when he finished serving as the president of the state senate. The third trustee, Oz Stender, actually was the trustee of a private trust. The fourth, Lokelani Lindsey, had been with the department of education and is a relative of a former governor. Finally, Gerard Jervis is a lawyer and heads our judicial selection commission.

As I indicated a moment ago, a concern of many people was how the Bishop Estate trustees were selected. From the beginning, they had been selected by the supreme court justices. The supreme court justices, in turn, were selected by the governor from a list prepared by the judicial selection commission. Even before the various complaints surfaced in 1997, questions had been raised as to whether people became supreme court justices so that they in turn could designate certain people as Bishop Estate trustees. Back in 1993 there was a big hue and cry over this. As a result, the supreme court justices decided to set up a blue ribbon panel that would conduct interviews of potential trustees and prepare a list from which the supreme court justices would select any new trustees. The blue ribbon panel was composed of community

leaders and business leaders, and they spent months culling through resumé's, doing interviews, and calling people. Proud of the work they had done, they prepared their list for the supreme court. Gladys Brandt, one of the members of the panel and a former head of the girls' school of the Kamehameha Schools, went to see the chief justice of the supreme court and handed him the list. The words out of his mouth when he saw it were, "Where is his name?"—referring to the name of our former governor John Waihee, whom many had expected to be the next Bishop Estate trustee. That name was not on the list. The chief justice flung the list down on the desk and walked out.

All of this and more came out in the "Broken Trust" article. Governor Cayetano said to me, "Margery, would you please investigate? And, by the way, get back to me in a week."

#### OUR INVESTIGATION AND PROCEEDINGS

The first thing I had to determine was whether I had any authority to investigate. This much I managed to do in a week! I found that the attorney general acts as *parens patriae* on behalf of all of the unnamed beneficiaries of charitable trusts: that is true not just in Hawaii but throughout the fifty states.

So I started an investigation. Little did I know that in order to conduct the investigation, and in order to use my subpoena power, I would have to file thousands of pages of motions and appeals. It was a fight every step of the way to get information out of a public charitable trust whose terms, in the Princess's own words, mandated that it "be open for public inspection." I had to use subpoenas for the most basic information, such as minutes of trustee meetings. I could not get them for months.

I realized, from the first, that one of the things I had to investigate was the selection process, so I went to the supreme court justices and said, "At some point in this process, I am going to have to interview you." They did not take kindly to that; the justices said, "No, you won't." I replied, "Well, I'm afraid I have subpoena power, and it's clearly within the realm of the investigation that I have been ordered to conduct." And they responded, "We'll just see whether your subpoena power goes so far. If we're the ones to decide it, we don't think so."

In light of that conversation, you can imagine my discomfort when the very first appeal that went up to the supreme court involved the scope of my subpoena power. I thought perhaps they would realize that they didn't want to rule on something related to a discussion they had already had with one of the participants, so I wrote them a letter suggesting that they might want to recuse themselves from hearing that particular issue. They answered, "You want us to recuse ourselves, you make a motion." They probably thought I'd

wise up and go away, but I did make that motion. They sat on it for a couple of months, and finally they sent it off to the judicial conduct commission, with a suggestion that the "appearance of impropriety" justified or necessitated recusal. The judicial conduct commission agreed; but nobody seemed to mention the fact that these conversations had occurred. Luckily, the justices did recuse themselves, as they have in twelve out of thirteen appeals that have gone up to the supreme court. We're still waiting for number thirteen.

The substitute justices who considered the first appeal did decide that we were entitled to all the information we had requested. And what was some of the information we discovered? We found that despite the fact that they were paying themselves \$8-900,000 a year, the trustees were not taking even the most basic steps to fulfill their fiduciary duties. They were not bothering to do basic due diligence on their deals. They were hiring friends and relatives.

Let me give you just one specific example. The trustees decided to invest trust funds in an internet company called "KDP." KDP was an internet company with a twofold purpose: It ran a dating service called Love Mate, and it was an online talent agency. How did the Bishop Estate get into this deal? A friend of Lokelani Lindsey had decided that this would be a good investment for approximately \$2 million of Bishop Estate funds. (Lindsey and this same friend previously had jointly invested in Philippine gold futures and had jointly lost \$400,000.) The deal also justified putting on the payroll, at about \$100,000 a year, the brother-in-law of one of the other trustees who was a talent scout. I decided to go online one day to take a look at KDP and was absolutely astounded to see pictures of half-naked kids. It was appalling. The money of the princess whose purpose was to educate Hawaiian children was supporting some internet kiddie porn project! (And we learned that the Bishop Estate people knew this.)

The Bishop Estate trustees did decide to get out of that project—I don't know whether their decision stemmed from my office showing up online or from the federal indictment of the head of KDP on other charges—but that project was not alone. It was only one of many questionable investments. The investigation is ongoing.

#### OTHER PROCEEDINGS AND CONCLUSION

The I.R.S., we now know, also has been investigating and conducting an audit, which is useful, because the I.R.S. has powerful tools with which to stop people from deriving private benefit from public charitable organizations. The most recent probate court master has uncovered tremendous examples of wrongdoing that he has brought to the attention of the probate court. Two of the trustees, Gerard Jervis and Oz Stender, have sued to remove Loke-

lani Lindsey. We have sued to remove all of the trustees who have been responsible for the wrongs and for failing to spend the money on the purposes of the trust.

Each day, the local newspapers have something new to report about the Bishop Estate. It is a long fight, which I hope to see through. We have not tried in any way, shape, or form to hurt this trust. In fact, it is our goal to make sure that the trust is put into the hands of people who are responsible, people who are caring, and people who understand their fiduciary responsibilities to the legacy of Princess Bernice Pauahi Bishop and the education of Hawaii's children.