

Scandal in Paradise

Broken Trust by Samuel P. King and Randall W. Roth is a pageturner, particularly for advisors—who'll be amazed how the looting of a multibillion dollar trust in Hawaii went unchecked for decades and how it was finally stopped



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When I agreed to review *Broken Trust: Greed, Mismanagement, And Political Manipulation at America's Largest Charitable Trust*, I accepted the assignment as the sort of obligation that accompanies the responsibilities of a contributing editor. Resigning myself to that task, I dug into the book's 344 pages. To my great surprise, what I uncovered was a fascinating and engaging tale of greed, corruption, favoritism, and very ugly politics that would rival most books on the bestseller list. Perhaps the reason it did not make such a list is the main character in *Broken Trust* is a Hawaiian charitable trust—a page-turner for you and me (I suggest wealth advisors take it on vacation), though certainly not for the average layperson (it was the 46,076th seller on Barnes & Noble's Web site in June.)

The book, just out in paperback from the University of Hawaii Press, began as a 6,400-word essay written by five people, including the book's authors, Randall W. Roth, a professor at the University of Hawaii William S. Richardson School of Law, and Samuel P. King, a senior U.S. district court judge for the District of Hawaii. Reflecting the angry sentiments of a huge section of the Hawaiian public, the essay was first offered to the *Honolulu Advertiser*, one of the largest newspapers in Hawaii. The *Advertiser* turned the story down. Turning to the *Star-Bulletin*, the *Advertiser's* next largest competitor, Roth, King and their group found an outlet for their message. And it's a message that would shock and reverberate through the Hawaiian legislature, government, courts, legal profession and media—right up to *60 Minutes*.

The story begins with the death of a princess. When she died in 1884, Princess Bernice Pauahi Bishop, perhaps the last in the line of the original Hawaiian royalty, left to a charitable trust nearly 380,000 acres of land, or about 10

percent of all the titled land in Hawaii. Her will provided that the residue of her estate would be held in trust by five trustees to build and maintain in the Hawaiian Islands two schools, one for boys and another for girls, to be called The Kamekameha Schools; her goal was to create good and industrious men and women. Administration of the trust was to be carried out by majority vote of the trustees, and vacancies were to be filled by a majority vote of the five justices of the Hawaii Supreme Court. Although not normally required to be stated but very significant in this case, the will also provided that the trustees file an annual "full and complete report of all receipts and expenditures," as well as an inventory of trust assets, to the chief justice of the Hawaiian Supreme Court. It also required the accountings and inventory should be published in "some" Honolulu newspaper. In recognition of her married name as used in her will, the princess' charitable trust was and is referred to as the "Bishop Estate."

At the time of her death, the Bishop estate (consisting primarily of the land) was valued at only \$470,000, with an expected annual income of \$36,000. That value eventually would grow to more than \$10 billion, and as King and Roth effectively show, the trust's problems grew correspondingly.

The first group of five trustees, handpicked by the princess, were reputable and honorable men of high moral character who carried out their responsibilities exactly as she envisioned. Their focus, appropriately, was on the schools. The first Kamekameha graduating class in 1897 consisted of 14 students. By the mid-1940s more than 1,000 students were expected, so plans were made for a new campus, constructed on Bishop Estate land of course, an idyllic 600 acres of it high above Honolulu.

As members of the board of trustees retired and died, however, and as the *corpus*

(and income) of the trust grew, things began to change. In the 1940s for instance, two Hawaiian territorial senators formally complained about the way the trustees were managing the Kamekameha schools, as well as what they felt were excessive trustee fees. At the time, the trustees, who met only twice a week and some of whom had full-time jobs elsewhere, were taking annual fees of \$10,250 each, six times the average full-time wage in Hawaii. Yet these ratios would someday look modest in comparison to what Bishop Estate trustees would later demand.

Hawaii's admission to statehood in 1959 marked the beginning of massive economic changes. Along with tourism and large U.S. military expansion of Hawaiian bases, property values skyrocketed to astronomic levels. The Bishop Estate, as the largest single private landowner in the state, directly benefited. The problem was, however, how to administer this huge wealth in accordance with the original charitable mission set down by Bishop. While at first the trustees made at least some effort to deal with this problem by hiring a mainland consulting firm to devise a plan, and while some steps were taken to follow the plan, management of the trust's vast holdings and the financial opportunities (plus their benefits and power) that accompanied this proved too much for the trustees in several respects. Another factor that compounded the problem seemed to be that the trustees themselves, for the most part, were inexperienced and almost totally unequipped for the position. This led to serious mismanagement of the trust and reckless abuse of its assets.

As noted, selection of succession of trustees was to be made by the justices of the Hawaiian Supreme Court.

Unfortunately and almost unbelievably (especially for any member of the legal profession), for the period in question the Supreme Court judges virtually never made an objective, considered selection. Appointments to such a juicy position were regularly rigged and almost always influenced by politics and favoritism. For instance, in a situation all too typi-

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cal of the Bishop Estate, the authors report that Hawaiian governor Jack Burns appointed his lieutenant governor, William Richardson, as chief justice of the Supreme Court. Burns also had appointed the other four sitting justices. In 1971, there became a trustee vacancy in the Bishop Estate and Burns had a specific candidate in mind—a political pal named Matsuo Takabuki. The five justices rubber-stamped the governor's nominee, who was generally considered to be such a bad choice that it spurred a protest march by a thousand Hawaiians, proclaiming that Takabuki was a political appointee and the worst possible selection for the Bishop Estate. Worse, according to King and Roth, Takabuki's appointment "was the first of what would prove to be an almost unbroken string of political insiders who would be put on The Bishop Estate board." It also changed the way the trust would be administered for years to come.

Takabuki, whose critics, according to Roth and King, pronounced his name, "Take-a-bucky," took it upon himself to function as "lead trustee." Thereafter, other "lead trustees" were named to singularly control certain trust operations. As any law school student is taught, co-trustees must consider matters unanimously, even though a majority may carry a vote. For one trustee of five to influence and make decisions is clearly a breach of trust. But any breach of trust question became a non-issue as time went by. In one case, for instance, the authors report that Lokelani Lindsey, as lead trustee for education and communications, "could spend \$128,000 from the (Kamekameha) school's staff development budget on a special diet program for herself and her friends without board approval or even the school president's knowledge."

Often the trustees kept no minutes of meetings, and other times there would be several sets of minutes for the same meeting. For things that were put in writing, "anything sensitive would be stamped, 'Confidential —Attorney Client Privilege,'" and given to their in-house attorney. Thus, when a court-appointed master or other inquirer sought information, the trustees maintained that these documents were privileged and could be kept secret. So much for the public trust.

Finally, one trustee, Oz Stender, began to recognize the seriousness of their total disregard for their fiduciary duties and so arranged for a "workshop" on basic trust law and trustee responsibility. Stender engaged Edward Halbach, one of the most respected and knowledgeable trust lawyers in the country, to come to Hawaii *pro bono*

for the discussion. The plan had to be scrapped when the other trustees refused to attend any such discussion.

King and Roth repeatedly point out that it wasn't as if people outside the Bishop Estate failed to notice what was going on. On numerous occasions formal complaints would be filed and the waters stirred. More than once, however, the Hawaii Attorney General simply failed to act on complaints, but occasionally, the court would appoint a master to review matters and report to the court. Then material documents, reports, and information were unavailable to the master, and at least one such court-appointed master later testified that, unbelievably, the "[t]rustees had editing rights over that stuff" (that is to say over the master's report!) But the trustees were quite diligent about one matter: their fees. At one point, trustees were each being paid upwards of \$1 million annually for their "services," not to mention any "incidental" benefits, and there were some. In fact, one of the biggest problems I have reviewing this book is deciding which of the dozens upon dozens of outrageous, incredible and blatant breaches of fiduciary duty to relate. For instance, there were reports of no-bid contract awarded to friends, trust investments in inappropriate projects in which individual trustees had invested, concealment or distortion of trust asset values to allow for lower or indeterminable trust distributions and improper accumulation of income, the filing of incomplete, outright misleading accounts, and on and on, all carried out with apparent impunity. It's scandal heaped upon scandal.

Finally, in August of 1997, the bombshell essay by the King/Roth group was published in the *Honolulu Star Bulletin* under the heading "Broken Trust." In effect, it was a stinging expose of the trustees, the politicians, the judges and lawyers who were involved. And it included, for example, a report on

how Governor John Waihe'e "manipulated the judicial selection process to get his men on to the Supreme Court," and how that governor, after failing to be appointed as trustee himself, went straight from the governor's office to a law firm that was paid seven-figure legal fees to preserve the right of the Bishop Estate trustees to pay themselves excessive compensation.

How could such activities go on for so long and so publicly?

As a direct result of the "Broken Trust" essay, things began to happen. Three days after the essay appeared, Governor Benjamin J. Cayetano announced that he had instructed his state attorney general, Margery Bronster, to begin an investigation of the trustees' administration of the Bishop Estate. Other good news was that the Internal Revenue Service had for some time been conducting its own investigation of the trust and its related companies.

As for Attorney General Bronster's investigation, it was met at every turn with a barrage of legal maneuvers by batteries of high-powered (and expensive) law firms. After all, with \$10 billion at their disposal, the trustees had more than enough money to defend themselves, even though it was not their money. Undaunted, and a hero by any measure of this monumental and bitter battle, Bronster pressed forward. Meanwhile, a previously appointed master, Colbert Matsumoto, had been reviewing the trustees' annual accounts. Although at first Matsumoto was viewed as another political appointee and his report was expected to be just another rubber stamp of approval, he surprised everyone. First, he engaged his former law school professor, Edward Halbach (yes the same renowned Edward Halbach) to assist in the review and advise him. Next, he hired a local certified public accountant, Steven Sakamaki, to analyze the reports. As with Matsumoto,

most people felt that Sakamaki was a small time pencil pusher who would be unable to understand and analyze the complex operations of the trust. Like Matsumoto, however, Sakamaki also surprised his critics. Third, in studying Hawaiian probate law, Matsumoto discovered that as a court-appointed master, he had authority to inspect anything and everything to do with the Bishop Estate, whether or not the trustees objected. He proceeded to exercise this power, and this, they did not like.

Thus, while Attorney General Bronster was nearly drowning in a whirlpool of legal motions and hearings, Matsumoto and the IRS were forging ahead with their investigations. In November of 1997, Matsumoto submitted for the court's consideration a 119-page "preliminary" report condemning the Bishop Estate trustees. At around the same time, the IRS was concluding its audit of the estate (trust) and preparing its own formidable report. Later, the litigation and trial matters also took a drastic turn.

So, what happened? Are the trustees still serving? Was anyone punished for all the outrageous wrongdoing or was there just more rubber-stamping? Did the trust survive the IRS audit? Did Attorney General Bronster ever get her day in court? Were the Kamekameha schools forced to close?

I feel it would be unfair to King and Roth to disclose the answers to these questions or the ending, if you can call it an ending, to this incredible epic. Their dedication and efforts in researching, compiling, and neatly distilling volumes of information to tell this remarkable story are truly historic. *Broken Trust* is stimulating, challenging, engaging, enlightening, and extremely well written. Although trust and estate attorneys may react somewhat more to the behavior of the Bishop Estate trustees, anyone would understand and relate to the human if not the legal issues presented here and truly enjoy this book. ■