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King & Roth/Broken Trust

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Introduction  David Shapiro

When Randall Roth came to the Honolulu Star-Bulletin late on the afternoon of August 7, 1997, and asked editorial page editor Diane Chang and me to publish the essay that would become known as “Broken Trust,” I sensed I was looking at something of monumental importance. This essay was a bare-knuckled attack on the trustees of Kamehameha Schools/Bishop Estate, a charitable trust of unprecedented power, with lines tracing back to Hawai‘i’s monarchy as the century-old bequest of a Hawaiian princess who desired to improve the lives of Hawaiian children.

A 1995 Wall Street Journal article described Bishop Estate as “the nation’s wealthiest charity,” with an endowment estimated at $10 billion—greater than the combined endowments of Harvard and Yale universities. With vast land holdings in a small island state, Bishop Estate wasn’t bashful about flexing its muscles, and its influence reached deep into Hawai‘i’s government, judiciary, and business communities in incestuous relationships that increasingly reeked of corruption.

The opening of “Broken Trust” was blunt: “The community has lost faith in Bishop Estate trustees, in how they are chosen, how much they are paid, how they govern. The time has come to say ‘no more.’” Strong words, but the essay was more than just rhetoric. It went on to document the misdealings surrounding Bishop Estate—and their devastating impact on beneficiaries of the trust—as never before. It detailed how trustee appointments, which paid nearly $1 million a year, were rigged by politicians and judges; how trustees lined their pockets at the expense of the institution’s bottom line; how the supposed protectors of the trust, the attorney general and courts, looked the other way; how investment results were manipulated to Mislead, with no accountability; and how Kamehameha Schools, the core of the trust’s mission, was being scandalously shortchanged at every step. The essay concluded, “The princess intended a sacred trust. What we ended up with is a political
plum.” Many of these violations had long been suspected, but they had never been publicly spelled out in a community where even honorable people were reluctant to tangle with the immensely powerful trustees and their legion of loyal supporters among native Hawaiians.

As important as what “Broken Trust” said was who was saying it. Roth was a respected professor of trust law at the University of Hawai‘i, but it was his four co-authors—importantly, all of native Hawaiian ancestry—who carried the weight: Samuel King, a Senior U.S. District Court judge; Monsignor Charles Kekumano, a Catholic priest, chairman of the Queen Lili‘uokalani Trust, and former chairman of the Honolulu Police Commission; Walter Heen, a retired state appeals court judge and former Democratic state legislator and Honolulu city councilman; and Gladys Brandt, a retired principal of Kamehameha School for Girls and a former chair of the University of Hawai‘i board of regents. These were not bomb-throwers, but the most solid of citizens, venerable community leaders who enjoyed wide respect among Hawaiians and non-Hawaiians alike.

Roth brought the essay to the Star-Bulletin after first offering it to our larger competitor, The Honolulu Advertiser, where the authors had been unable to reach agreement with editors on either a form or a time frame for publication. At the time, there was a major controversy swirling in the Hawaiian community over a trustee’s micromanagement of Kamehameha Schools, and the authors of “Broken Trust” wanted to get their essay into print before the trustees moved to purge the school of its popular president, Michael Chun, and of four Kamehameha teachers who had dared to question the trustees publicly.

I could understand why the essay had caused the Advertiser’s editors concern. At more than 6,400 words, it was far longer than anything a mid-sized daily newspaper would normally publish, and it was structured as an unusual hybrid of factual reporting and opinion. But I thought Advertiser editors had failed to take into account the stature of the authors. It didn’t matter whether “Broken Trust” was reporting or opinion; the weighty concerns of these pillars of the community constituted big news that we needed to bring to the attention of our readers. Significantly, no key point of “Broken Trust” has ever been shown to be false.

I had a clear sense of what was the right thing to do in my position as managing editor of the Star-Bulletin, but I had to swallow hard when I approved the immediate publication of “Broken Trust” at its full length. I had crossed the powerful trustees before and knew them to be vindic-
tive and relentless. I told my wife that night that if this blew up in my face, I’d probably have to look for work on the Mainland. And I took little comfort from Roth’s assurances.

“I’ll bet the farm that one or more trustees will be removed,” he predicted.

“That would be like moving a mountain,” I replied. “I’d save a few acres of the farm for your old age.”

What motivated Roth more than anything else was that the manipulations by the trustees—in what he called “a world record for breaches of trust”—had occurred in plain view of people with the power and the legal obligation to do something about it. I had to admit that my own newspaper was aware of many of these questionable dealings but seldom investigated the stories aggressively. But we weren’t alone. Historically, all of Hawai‘i had generally maintained a hands-off attitude when it came to Bishop Estate. Some feared invoking the wrath of the trustees and their loyal native Hawaiian supporters. But mostly, the reluctance to get involved sprang from the view that Kamehameha Schools was a sacred Hawaiian institution, and even honest citizens and public officials were disinclined to interfere in its affairs if Hawaiians weren’t complaining.

And Hawaiians hardly ever complained. To the contrary, they were fiercely protective of the Bishop Estate and its trustees, having been persuaded that attacks on the trustees were really attacks on the legacy of Princess Pauahi, who had created the trust, and on all Hawaiians. Whenever legislative efforts were afoot to rein in trustee pay, reform residential leasing policies, or more closely monitor investment and educational performance, trustees could turn out Hawaiians by the busload to protest. A newspaper that reported critically on Bishop Estate or Kamehameha Schools could expect to be bombarded with angry calls and letters from Hawaiians.

By 1997, however, this was changing. Supreme Court justices increasingly were filling trustee vacancies with elective politicians who lacked humility in dealing with the Kamehameha community, an attitude that created widespread resentment. Bishop Estate appointments had always been political, and the high compensation, speculative deals, and self-serving manipulation of information about the trust had existed to some extent before the group of trustees who were finally held to account came along.

But the earlier generations of trustees were a different breed of political cat—top government executives, well-connected businessmen, and...
wealthy patricians from prominent local families who knew their way around a boardroom and could comport themselves with some finesse in the diverse circles in which trustees traveled. These trustees took pains to cultivate support from the Kamehameha Schools community and to present themselves as humble servants of the princess.

But a 1978 constitutional convention changed the way trustees were appointed by creating a Judicial Selection Commission to play a leading role in the appointment of Hawai‘i’s judges. The bar elected two members of the Judicial Selection Commission, and the remaining seven were appointed by the speaker of the house of representatives, the president of the senate, the chief justice of the Supreme Court, and the governor. It seemed no coincidence that subsequent appointments to Bishop Estate included a house speaker, a senate president, a chief justice, and a chairman of the Judicial Selection Commission. There was even an aborted attempt to appoint Governor John Waihe‘e. Grounded in politics, these new trustees knew little of the collegiality of a boardroom or the fiduciary duties owed by trustees. They were about gaining power by lining up voting majorities and divvying up personal fiefdoms. The lead trustees, as they were called, were given unprecedented individual authority over investments, education, and trust administration. They operated much like legislative committee chairs and had unbridled control of their domains. Most important was the different way these trustees viewed themselves—not as servants of the princess, but as feudal lords, accountable to nobody. In their own minds, they could do no wrong, and their word could not be questioned. The beneficiaries of the trust were there to serve them.

In a 1995 legal brief, attorneys for the trustees in a dispute over water rights on Bishop Estate land argued that the trustees had inherited the absolute power of Hawaiian ʻaliʻi (royalty) going back to the beginning of the Kamehameha dynasty. The trustees contended, “Kamehameha I, by right of conquest, became lord paramount of these islands. He was an absolute monarch. His will was law. He was the lord of life and death. . . . Then logically to the same extent, if not more, the trust of Bernice Pauahi, the legacy of the Kamehamehas, must be entitled to those traditional and customary prerogatives enjoyed by the Kamehameha ʻaliʻi.” With such a heady view of themselves, it was no surprise that the trustees fell prey to Lord Acton’s observation that absolute power corrupts absolutely.

A turning point came in 1993, when the trustee board included two political heavyweights, former house Speaker Henry Peters and former

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senate President Richard “Dickie” Wong, and two old-school trustees, Myron “Pinky” Thompson and Oswald “Oz” Stender. The swing trustee was Lokelani Lindsey, a career bureaucrat in the Department of Education who had recently run unsuccessfully as the Democratic candidate for mayor of Maui. Justices appointed Lindsey shortly after appointing Wong in the apparent hope that as an educator and the first woman ever named to the board, she would deflect criticism of the perceived political payoffs in Bishop Estate appointments. Peters and Wong wanted to control the estate and its billions without the interference of Thompson and Stender. They needed Lindsey’s vote to solidify their power, and to get it they named her lead trustee for education, which gave her absolute authority over Kamehameha Schools.

Unfortunately, neither the justices nor Peters and Wong had done their homework on Lindsey, who would soon become the public embodiment of everything that was broken about the trust. She was crude, imperious, and unpleasant, with controversial notions about education. Her own background was in physical education, and she distinguished herself in the DOE more as a political opportunist than an education theorist as she rose through the bureaucracy. She held a low opinion of the Kamehameha Schools administration and staff and had little interest in what alumni had to say. Her capricious dictates were not open to discussion, and her power tool of choice was intimidation.

At first the Kamehameha ‘ohana—teachers, students, alumni, and parents—tried to heal the unpleasantness with respectful requests to the trustees to talk things out, as is the Hawaiian way. But when the trustees stubbornly refused to “talk story,” the ‘ohana banded together in a group that called itself Na Pua a Ke Ali’i Pauahi—the Children of Princess Pauahi—and staged an emotional and unprecedented march on Bishop Estate headquarters at Kawaiaha’o Plaza in May 1997. The fight was on.

Around the same time, Roth was lining up co-authors for a hard-hitting exposé that would support Na Pua’s efforts. Each co-author also had broader issues with the management of Bishop Estate and the tainted involvement of the judiciary. King was a leading critic of the Judicial Selection Commission and believed that instead of removing politics from judgeship appointments, as it was intended to do, it had only moved the politics out of public view at the expense of accountability. Brandt and Kekumano were deeply concerned about the impact Lindsey was having on campus and had felt betrayed when the blue-ribbon panel for trustee selection on which they served was manipulated and

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deceived by Supreme Court justices. Heen, a onetime candidate for the Supreme Court, had been taken aback when asked during the selection process whom he would appoint to Bishop Estate, a question he considered inappropriate.

Until the “Broken Trust” authors weighed in, the trustees faced a limited battlefront—Lindsey’s micromanagement of Kamehameha Schools. The trustees could have ended the dispute at any time by simply reining in Lindsey and restoring respectful communications with the ‘ohana. In those early days, the possibility of a trustee’s being removed from office was barely imaginable, and Na Pua’s lawyer said this was not their goal. “Broken Trust” changed everything by demanding that the trustees be held accountable for the breaches of trust that had occurred throughout Bishop Estate operations, moving the conflict beyond Lindsey and Kamehameha Schools. It was devastating in its indictment, not only of the trustees, but also of the judiciary and Hawai’i’s political establishment. The authors pressed the attorney general to investigate the obvious wrongdoing and then to seek the trustees’ removal, if it was warranted. The authors also called upon the justices to remove themselves from trustee selection and to support the development of objective procedures for selecting future trustees on merit.

“Broken Trust” brought the controversy to critical mass. In short order, the governor asked the attorney general to investigate, Supreme Court justices reluctantly agreed to stop appointing trustees, a court-appointed master confirmed the charges about trustee misconduct, and a retired judge hired at the request of the trustees to whitewash problems at Kamehameha Schools instead indicted Lindsey for everything she had been accused of and more.

It took nearly two years of often chaotic legal wrangling, but in May 1999 the Internal Revenue Service forced the hand of local courts by threatening to revoke Bishop Estate’s tax-exempt status if the current trustees stayed on the job. Brandt, Kekumano, Heen, King, Roth, and all of the Kamehameha ‘ohana, who had risked everything in pursuit of justice and respect, had moved their mountain.

Change came fast at Kamehameha Schools. The probate court imposed term limits on trustees and drastically reduced their compensation. A court order forced trustees to appoint a chief executive officer and to nominally step away from daily operations to fulfill the more traditional oversight role expected of the boards of charitable trusts. Investment policies were cleaned up, and spending on the core mission of educating Hawaiian children increased dramatically. New campuses
opened on Maui and the Big Island, and trustees restored innovative outreach programs and cooperative efforts with public schools—policies that had been eliminated by the previous board.

Still, elements of the resolution were ominous for the future. Once the trustees were removed, their replacements pressed for “closure and healing,” with no apparent concern for accountability. Judges and other public officials, who felt they had aired enough of their dirty laundry and wanted nothing more than for it to be over, gladly embraced the call for “healing.” Legal proceedings were concluded quickly, and no attempt was made to assess damages or collect restitution from the trustees—or from their lawyers and contractors—for the millions of dollars in losses attributable to the breaches of trust. Nor was there any organized inquiry by the new trustees or the judiciary to get to the bottom of what went wrong and determine how to prevent it from happening again.

Trustee compensation, though reduced, remained high for part-time overseers of a charitable trust. The chairman was paid $120,000 and other members $97,500, compared to a national average of $6,500 for trustees of charities with assets of more than $500 million. But even then a court-appointed salary panel subsequently recommended that Bishop Estate trustee pay be nearly doubled. Another public outcry led the new trustees to reject the raises, but compensation clearly seemed headed back up.

Trustee selection was shifted from the Supreme Court to the probate court; critics, however, saw potential for continued political favoritism, with an unchanged judicial selection process, compensation still temptingly high, and an absence of transparent criteria for choosing trustees. The new trustees remained secretive in their actions, and the attorney general and probate court reverted to their pre-scandal reluctance to provide close oversight of trustees.

The impact of the Bishop Estate scandal in the broad community was far-reaching and profound. It exposed Hawai‘i’s political rot and helped set the stage for putting a new party in the governor’s office for the first time in forty years. It showed Hawaiians what they could accomplish when they worked together, raising hopes of forward movement on other important issues. It demonstrated the wisdom and value of the federal intermediate sanctions law that Bishop Estate trustees had so opposed, which allowed the IRS to deal with serious irregularities by going after the trustees responsible for the mismanagement instead of punishing the trust’s beneficiaries.
“Broken Trust” proved the value of having two competing newspapers in a city and was recognized as a major reason for the public outrage and landmark litigation that forced owners who tried to shut down the Star-Bulletin in 1999 to instead sell to a new owner, who kept it publishing. Trustee Henry Peters told CBS’s 60 Minutes that his biggest regret was not buying the Star-Bulletin when it was first offered for sale in 1992, so that trustees could have stopped “Broken Trust” and controlled the coverage of the scandal.

The Bishop Estate scandal shined a harsh spotlight on Hawai’i’s legal profession, revealing conniving justices, in-house attorneys who provided legal cover for the trustees’ breaches, and outside counsel who collected millions from the charitable trust to defend the trustees’ personal interests. All of these lawyers had a professional obligation under Hawai’i law to report serious breaches of trust, not to enable them; but no sanctions were ever sought. The saving grace for the profession was that attorneys also were prominent among the heroes who stepped up to protect the Pauahi legacy—Heen, King, and Roth from “Broken Trust”; Attorney General Margery Bronster; court master Colbert Matsumoto; the court-appointed fact-finder Patrick Yim; and Na Pua attorney Beadie Dawson, among others.

By far the most important effect of the fall of the Bishop Estate trustees was to energize the community spirit and elevate public expectations, ending the pervasive and demoralizing perception that official corruption was an inescapable fact of life in Hawai’i—the price of living in paradise. As Matsumoto put it, “This story is really about the democratic process—people standing up to do the right thing despite odds and intimidation.”

The Bishop Estate scandal inspired a chorus of “no mores” that reverberated through other power centers in Hawai’i. Two members of the Honolulu City Council and four state legislators were sentenced to prison for corruption—two of them for offenses directly related to Bishop Estate—as federal and state prosecutors became newly aggressive in weeding out public corruption. Airport employees and city liquor inspectors were prosecuted in kickback schemes. Gary Rodrigues, one of the state’s most politically powerful labor leaders and a member of both the Judicial Selection Commission and the Supreme Court’s blue-ribbon panel to screen Bishop Estate candidates, was convicted of multiple counts of fraud and sentenced to federal prison. A five-year investigation by the state Campaign Spending Commission and the Honolulu prosecutor broke up a corrupt system of political money laundering in
which local businesses donated large sums to leading elected officials in the hope of being rewarded with lucrative government contracts. Dozens of prominent contractors were convicted for making illegal contributions. A lawyer was sentenced to jail for his role in hiding the true source of a political contribution, an activity one witness described as “a business tradition” in Hawai‘i.

Before the Bishop Estate trustees fell, corrupt officials felt confident they could act with impunity; after, they had to seriously fear being caught and punished.

The era of the Bishop Estate scandal will be remembered as one of the most exciting and pivotal times in Hawai‘i’s short history as a state, and nobody is better qualified than two of the authors of the “Broken Trust” essay to place these watershed events in their sharpest focus yet, capturing all of the human drama along the way. This book should serve as a reminder of the positive things that can happen when good and industrious people stand up to do the right thing. Appropriately, the story begins with a respectful remembrance of the Hawaiian princess who left her people the blessed gift that inspired such courage in her name.