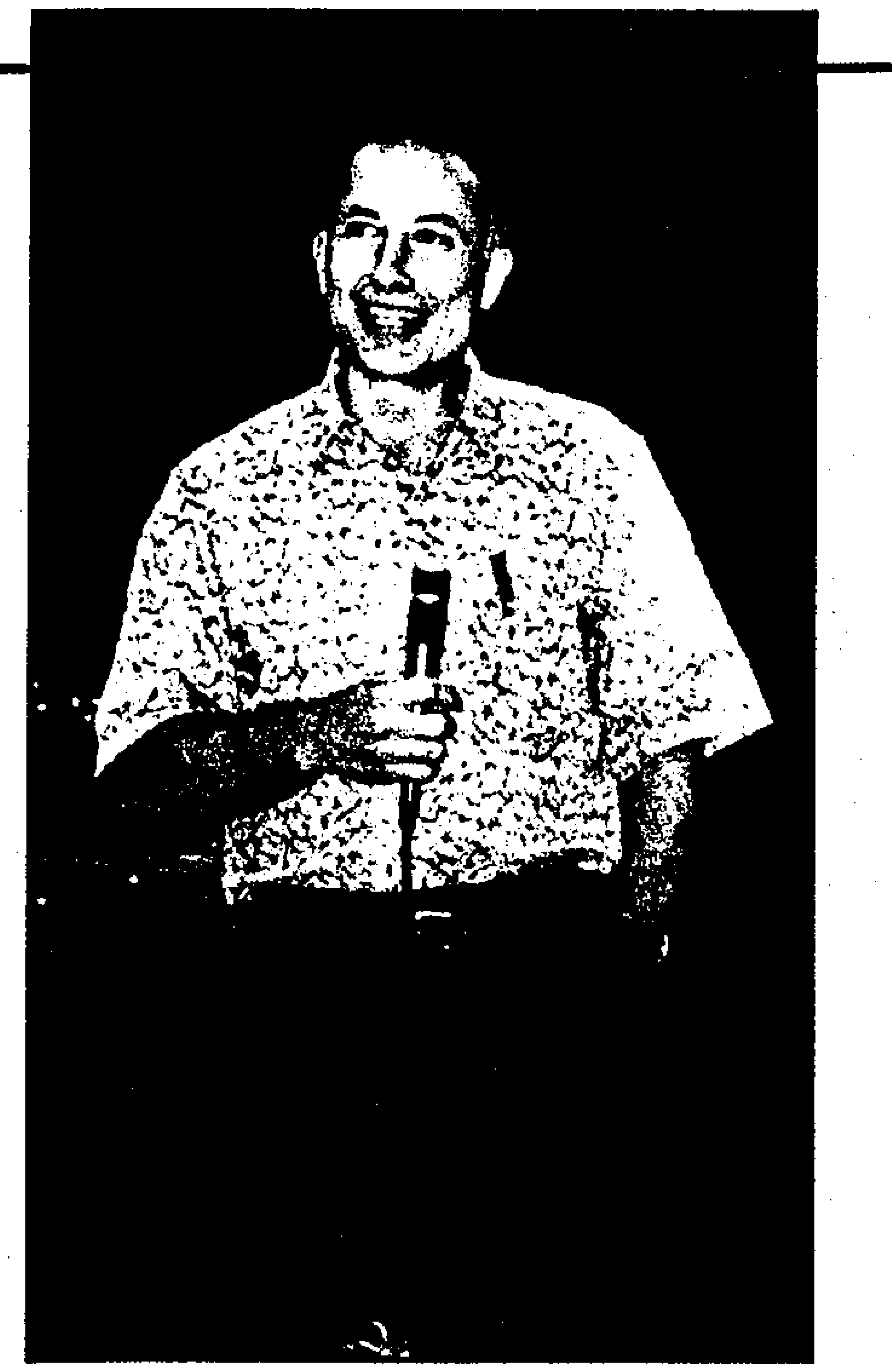
Hawaii bar president pursues justice beyond classroom, bar

By Anna Marie Kukec



Randall Roth broke the story that created a statewide scandal.

While bar presidents have the opportunity to create or avoid controversy during their term, Randall Roth carried controversy boldly into office. The law school professor pursued justice beyond the classroom to tumble trustees of Bishop Estate, Hawaii's oldest educational institution and public charity.

Roth helped to uncover Hawaii's greatest scandal, which involved breaches of fiduciary duty, improper investments, insider trading and political corruption arising from the governance of Bishop Estates' multibillion-dollar trust. Resignations and criminal indictments of two Bishop Estate trustees, their relatives and business associates ensued as the story made headlines in local news outlets, as well as the *Wall Street Journal* and *The New York Times*. The fallout created tensions between school trustees, politicians and state Supreme Court justices who selected the trustees.

At the center of the ongoing headlines was the Hawaii State Bar Association when Roth became its president this year. While balancing an obligation to his community and to his own family, Roth pursued what he believed was right while defining his role separately as bar president.

"Bishop Estate has been a very high profile issue. It affects a very high percentage of the community, and they're aware of it. I can't go into public without people saying something to me," says Roth of the controversy that is still rumbling throughout Honolulu after two years.

The scandal touched hundreds of thousands of Hawaiians because generations have attended Bishop Estate schools for boys and girls, which were viewed with tradition and respect.

Bishop Estate is one of the largest owners of prime land in the state—about 10 percent of the Hawaiian islands—with a multi-billion dollar trust that began in 1884 by Princess Bernice Pauahi Bishop, the last descendant of Hawaii's Kamehameha line. (About 200 years ago, Kamehameha was a warrior who unified the islands and became the first king. His descendants continued to rule until the death of Kamehameha V. Bishop declined to succeed Kamehameha V, and others led Hawaii until its monarchy ended in 1893.)

The princess's trust was established for the education of the children of Hawaii, and it created Kamehameha School, which separated boys and girls. Today, the school is co-ed and serves more than 3,700 students of Hawaiian descent from preschool through high school. The private school is funded through Bishop Estate. The main campus is in Honolulu, and a new smaller campus opened this year in Maui. The trust also provides scholarships and educational programs outside of the school.

Scandal makes headlines

The Bishop Estate trust is estimated between \$9 and \$10 billion, according to a court-appointed accounting firm. However, interim trustees estimate the trust at \$6 billion. How those trustees, who earned \$1 million salaries, were appointed by Supreme Court justices and the alleged mismanagement of funds were detailed in 1997 articles co-written by Roth and published in the *Hawaii Star Bulletin*.

The first article called "Broken Trust" was published in August 1997 and "Broken Trust II" followed in November 1997. They detailed relationships linking the estate's trustees with the state Supreme Court and other state officials, questions about the estate's investments, and alleged insider deals and mismanagement of funds.

"Broken Trust" questioned the appropriateness of having the trustees selected by Supreme Court justices, who acted as individuals and not as part of the Supreme Court itself. This procedure was stipulated at the time when the princess's will was written and the justices had jurisdiction over probate matters. Later when Hawaii evolved into a republic, then a territory and finally a state, the justices continued their selection of trustees. Jurisdiction over individual trustees, wills and trusts then shifted to Probate Court under the Circuit Courts. While the justices selected the Bishop Estate trustees, the justices themselves were appointed by the Judicial Selection Commission, whose members were chosen by the president of the state senate, the speaker of the house, the chief justice and the governor.

"It was obvious for a long time that the trustee process was politicized. It was not the people with credentials and experience that were expected to be appointed," Roth recalls.

Roth gets involved

The Kansas-born Roth, who is a former Jesuit seminarian, followed the Bishop Estate for the 17 years he has lived in Honolulu. As a professor at the University of Hawaii School of Law specializing in tax, trusts and estate law, Roth watched how the public charity worked under a shroud of secrecy. He became fascinated with its structure and its impact on generations of students.

He also watched as parents of students became upset in 1994 when the school canceled many programs, cut the staff and reduced the duties of the school president as cost-saving measures. (To date, none of the programs or staff has been reinstated.) Ill feelings continued to fester among generations of Hawaiians who were sending their children to be educated at the school.

By May 1997, parents became even angrier when Bishop Estate trustee Lokelani Lindsey took charge of the school with a micro management style and intimidation, according to Roth. That's when the *ohana* (Hawaiian for the family community) marched on the Supreme Court and demanded justice at the school.

"I realized then how badly things had degenerated, and how much reform was needed," Roth notes.

Watching the upset parents inspired Roth to gather four of Hawaii's most respected leaders to look at Bishop Estate and to write articles about their findings. Co-authors were senior U.S. District Court Judge Samuel King; retired state Appellate Judge Walter Heen; Gladys Brandt; former Kamehameha School for Girls Principal and former chair of the University of Hawaii Board of Regents; and Monsignor Charles Kekumano (who died last year).

"Randy is quite a mover and shaker. I don't know how he does as much as he does. He's also a true believer, and cannot understand why others don't get as excited about wrongdoing," King says of Roth.

Roth and his co-authors found a publisher in the *Hawaii Star Bulletin*. Afterward, "Broken Trust" generated a deluge of other related articles, commentaries and letters to the editor. The articles also alerted the Internal Revenue Service and the Hawaii Attorney General's Office to alleged mismanagement of funds and investments that appeared to be inappropriate for a tax-exempt charity.

As a result of the investigations, one trustee resigned and the remaining four were ousted through different hearings in the Circuit Court, which has authority over actions of individual trustees. Of that four, two were temporarily removed and were seeking reinstatement through the Circuit Court.

Those ousted trustees included a former speaker of the house, a former president of the senate, a former chair of the Judicial Selection Commission, a former campaign chief of the governor, and the former chief executive officer of the $2 billion Campbell Estate land-based private trust.

Since "Broken Trust," the Supreme Court justices who selected the trustees have voluntarily recused themselves from future Bishop Estate matters that come before them. In addition, four of the five justices agreed not to participate in the selection of future trustees. The Probate Court then appointed five interim trustees to handle issues with the IRS and to replace the incumbent trustees because they had violated their trust.

"No one held the trustees accountable, and that is what was so controversial about them. Only the Attorney General or a fellow trustee could take action in circuit or probate court," says Roth.

Fallout continues

Today, two years after the articles, Roth is bar president and still responding to media inquiries regarding the Bishop Estate as the political fallout continues. Fallout involved the state Attorney General, who initiated a formal investigation into Bishop Estate and then was not reconfirmed by the state Senate for another four-year term. Also, a state senator is now under investigation by a federal grand jury for the alleged misuse of a Bishop Estate credit card for personal entertainment in Las Vegas and at Honolulu strip joints.

The investigation by the Hawaii Attorney General Office's into Bishop Estate is still pending. However, the IRS this fall proposed a settlement with the interim trustees. The Circuit Court provides final approval of the settlement, which is a $13 million payment in taxes and interest to the IRS and the permanent removal of all original trustees, including the two now seeking reinstatement.

Roth's term has been unlike any other Hawaii bar president, notes Executive Director Coralie Chun Matayoshi of Honolulu who has known Roth through bar work for about 10 years.

"The board was initially worried that comments Randy made regarding Bishop Estate might be attributed to the bar. However, Randy has been very careful to tell the press that he is speaking in his individual capacity, and not as representative of the bar.

"Since Randy is well known in our community more for his role in the Bishop Estate situation than as Hawaii bar president, we have to be careful to keep these roles separate," Matayoshi says.

Despite the external controversies, Roth has worked well with bar staff and other volunteer leaders, says the bar's president-elect, Joel August of Honolulu.

"Randy is a communicator who looks for responses from the people he works with. Thus, even when I have differed from his approach to certain matters, there has never been a problem discussing the various viewpoints in an objective manner. He has been an excellent recruiter of volunteer talent for the bar. The various task forces that Randy has spearheaded have been filled with talented and dedicated attorneys," August says.

Roth has stimulated discussion about judicial evaluation, access to justice, technology services and continuing legal education. And he intends to have task forces examine the disciplinary system, mandatory malpractice insurance and mandatory continuing legal education. Coincidentally, he also wants the bar to conduct judicial evaluations for public review.

To focus on these issues, the 51-year-old Roth put his KHPR radio show, "The Price of Paradise," on hold during his bar presidency. The Sunday morning talk show discussed economic, social and political life in Hawaii. For five years, it was co-produced with his wife of 26 years, Susie, and their four children. Also on hold is a companion newspaper column in *The Honolulu Advertiser* that mirrored the radio program.

While Roth's criticism of the Supreme Court justices' roles in appointing Bishop Estate trustees has caused some discomfort, but the bar's relationship with the justices remains cordial, says Matayoshi.

"I've been quite critical of the justices and the process in which they became justices. It's not surprising that they don't appreciate that. It's put quite a strain on our working relationship," Roth notes. □

The author is the reporter for Bar Leader.