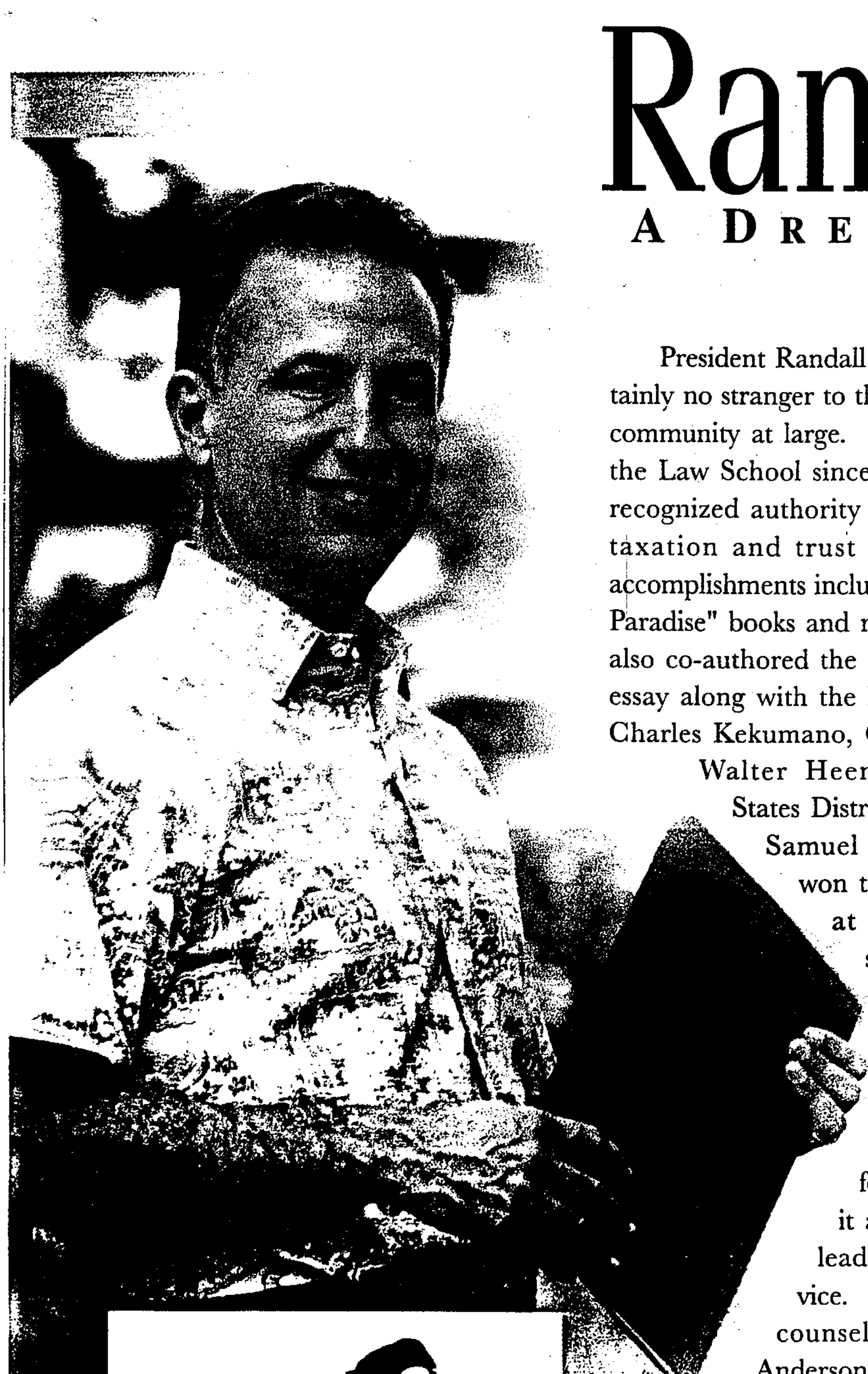


Randall Roth

A DREAMER OF CHANGE

by David Farmer



President Randall W. Roth is certainly no stranger to the Bar or to the community at large. He has been at the Law School since 1982 and is a recognized authority in the fields of taxation and trust law. Recent accomplishments include the "Price of Paradise" books and radio show. He also co-authored the "Broken Trust" essay along with the late Monsignor Charles Kekumano, Gladys Brandt,

Walter Heen and United States District Court Judge Samuel King. He has

won teaching awards

at three law

schools and

been hon-

ored by

local and

national

organizations

for his non-prof-

it and community

leadership and ser-

vice. He has been of

counsel with Goodsill

Anderson Quinn & Stifel

since 1985. Recently,

Randy was an advisor to and

public supporter of Linda Lingle's gubernatorial campaign.

Randy grew up with his three brothers in the small Kansas town of Ellinwood, an almost exclusively German farming community of about 2,000 residents. His father rose from teller/bookkeeper to chairman and president of the town's only bank, Peoples State Bank. His homemaker mother was active in the Democratic Party. He graduated from Regis College, a small liberal arts college in Denver, and worked for a year in the

tax department of the Big Eight accounting firm of Touche Ross & Co.

He then entered the Society of Jesus (the Jesuits), but left after only a year, finding the vow of unquestioning obedience an impossible hurdle. After that, he joined the Regis faculty as a lecturer in economics, a way not only to pay for law school, but also to do what he truly loved.

Shortly before his final year at the University of Denver Law School, Randy met his wife Susie on a city bus and proposed several months later. They describe their first encounter as "A Fare to Remember." Susie has worked as a professional circus clown and Spanish teacher. The Roths have four children. Daughter Cassie is a Y2K computer consultant with Peat Marwick in Baltimore, where her husband Matt Nielsen attends Johns Hopkins Medical School. Oldest son Walter is a third-year engineering student at the University of Wisconsin. Youngest sons John and Tom are a senior and in the sixth grade, respectively, at Punahou.

In addition to coaching youth team sports, Randy enjoys and has excelled at long-distance running. He has to date completed about 50 marathons, with a personal best time of two hours, 43 minutes. Hawaii Bar Journal editor David Farmer met with Randy at his Kahala home the Saturday following the November election.

HBJ: What do you hope to accomplish this year as President of the Bar?

ROTH: I would like to help make us lawyers feel better about ourselves and about our stature in the community.





We need to help the public better understand what we are already doing to improve the system of justice in Hawaii. We also need to make changes that will improve both the system and the public's perception of the system.

I think the Office of Disciplinary Counsel is doing a good job of policing the profession. But the public seems to see us as somewhat of a club whose members are watching out for each other. Simply opening up the disciplinary process in a way that enables the public to see what we are already doing would be a step in the right direction.

HBJ: Do you see the Legislature's recent interest in specialization as symptomatic of the public's lack of confidence in our profession?

ROTH: Absolutely. The Legislature is hearing from its constituents that something is wrong with the legal profession. The public-image surveys that put us somewhere between used car salesmen and convicted felons speak volumes. While the reality is terribly important, we have to be equally concerned with the public's perception. It's not enough for us to know we are good people, doing a good job. We have to give the public reason to believe that.

HBJ: What substantive changes are you considering?

ROTH: Once the ODC has made an

initial determination either to dismiss the complaint or that there is probable cause, it might be appropriate to make this information available to the public.

If somebody made a groundless complaint about me, I wouldn't mind if the public heard about it, as long as the report included the fact that it had been dismissed. The public would see that a process is in place to deal responsibly with complaints and that it is reasonably open.

To me, the beauty of transparency is that, if we are doing a good job of policing ourselves, we want the public to see it. We don't want to cloak the process in secrecy, because the human tendency is to assume that there is some sinister or self-serving reason why information isn't being made public.

Now obviously, a balance must be achieved. We certainly don't want-for no reason whatsoever-to subject an attorney who has made an honest mistake to public ridicule. By the same token, it certainly gives the public reason to trust that we're not functioning as a club when we're willing to air our dirty linen.

The changes I intend to encourage-and this is just one of many-won't go anywhere unless lawyers want badly enough for the public to have more confidence in us. One of my jobs, I think, is to convince others that this sort of thing is the right thing to do. I really believe having a license to practice law imposes great responsibility on us. I would even describe it as a fiduciary responsibility-to do what we can to inspire public confidence in lawyers and in the system of justice.

HBJ: What about the Judiciary?

ROTH: There are an awful lot of people who right now, for whatever reason, lack the level of confidence in the Judiciary that we want the public to have. One of the reasons is a perception that a person can be a "bad

judge," whatever that means, without accountability.

We can do a better job of explaining the role of the Judicial Selection Commission, so far as the retention of judges is concerned. I do believe that the Commission itself can be significantly improved, though what we have already is much better than what the public realizes.

HBJ: In other words, it's working.

ROTH: It's working, but it could work better. We need to do a better job of insisting that the process not be politicized. To silently watch a Gary Rodrigues, for example, appointed to the Commission, when he is so closely identified with a specific special interest, one that's been very much involved in key cases in front of various courts, including the Supreme Court . . . well, common sense alone tells you that's going to lessen the public's confidence in the Commission. They naturally are going to see it as a triumph of special-interest politics over what is supposed to be merit-based selection of judges.

There also ought to be additional ways for lawyers to evaluate judges. The results of an annual Bar-wide evaluation-whether a judge comes off looking great or looking less than great-would be information worth looking at. Maybe we as a Bar would decide that the results go only to the CJ and the individual judges, so that it would be a self-help sort of thing. Perhaps they should also go to the Judicial Selection Commission or even be made public . . . not during the first year or two that a person is a judge, but at some point in time.

As a professor at the law school, I don't particularly enjoy being evaluated, but those evaluations, especially the written comments, are very helpful to me in making occasional adjustments in how I go about doing my job. The fact that the results of those evaluations are available to others is not something that I enjoy, but it does

give the whole system more credibility.

The judges who are equipped to do the job and are trying their best to do it well would enjoy being held in higher regard by the public. Others, I think, would tend to move on to other endeavors. The public, through its representatives in the Legislature, might then be much more receptive to paying judges what they are worth.

It's an absolute scandal, in my opinion, that our judges have not had a raise of any kind for eight years.

HBJ: Why do you think there have been no raises?

ROTH: Part of it is that the public doesn't have a lot of confidence in the selection process. They sometimes think that politics plays a bigger role than does merit.

I personally believe that we have a reasonably strong Judiciary. There are a few weak ones who ought to be doing something else, but the majority are quite good. Another part of it, I think, is that the Legislature doesn't like that the Supreme Court has, on more than just a couple occasions, tossed a hot potato in their direction. Same-sex marriage, PASH and privatization immediately come to mind. The fact that the judges have different retirement benefits is another factor. But frankly, that's more of a distraction than a good explanation as to why they haven't had a raise in eight years. I think it's outrageous, and I plan to make that point loudly and clearly when the Legislature convenes.

HBJ: What about electing or some other direct public evaluation of judges?

ROTH: I personally don't like the idea of electing judges or voting on retention. The public simply isn't situated to evaluate the job that the judges are doing.

HBJ: Do you think the Bench Bar committee is a good tool?

ROTH: It's a wonderful forum for

the exchange of ideas between lawyers and judges. My time will be well spent if I can help members of the Bar understand that it's there, make them comfortable taking their concerns to this group, and give it as much credibility with the judges as possible. It's a great concept, but it's in the early stages.

HBJ: Any specific public education goals?

ROTH: I intend to work hard at building up a speakers' bureau for the Bar Association. I want to encourage lawyers to get in front of school or community groups and talk about, not just what lawyers do, but what the system of justice is all about.

Also, it's important to ask the public about their concerns. Not that we necessarily will do exactly what somebody tells us to do, but we will at least give it some thought.

Sometimes the public is unduly critical of judges, justices or lawyers because they don't really understand how the legal system works or why it's designed to work a certain way. In such cases, the Bar Association can step forward and provide enlightenment.

But when it's controversial, what the Bar Association might do is to provide pro-con discussions in a way that's understandable to non-lawyers. We can help people appreciate the nature of a philosophical fork in the road, which direction the court went and why . . . and that sort of thing.

HBJ: As President of the Bar, do you see yourself staying involved with the Bishop Estate controversy?

ROTH: I do . . . but not because I'm President of the Bar. As a professor at the only law school in the State, I feel a responsibility to use my expertise to benefit the public directly. I like to think that I've done a reasonably good job of helping people understand the many legal issues inherent in this particular controversy.



HBJ: How did you react to the criticism about your public endorsement of Linda Lingle and your remark quoted in the New York Times article?

ROTH: When I first saw The Times article, I thought someone else's comment had erroneously been attributed to me. I wasn't even sure what it was supposed to convey.

What I remember talking about was that Hawaii has been a one-party state for a long time and that its political culture reflects that. I distinctly remember telling that reporter that I would be just as critical of this condition if it were the Republicans that had been in total control for this long and the Republicans who held absolute power, as they did prior to 1954. My point was that too much political power held for too long ends up being focussed on maintaining the status quo rather than doing what is in the best interest of the public.

The bigger issue is to what extent should a person who is President-elect of the Bar get involved in a political campaign, like that of Linda Lingle, or take controversial positions, such as mine regarding the Bishop Estate Trustees? Is-n't there a possibility that people are going to mistake my position for that of the Bar or its members?

These are important questions to

The President is constantly before the public, making statements on behalf of the Bar and its members.

When I announced my endorsement of Linda Lingle, I was really quite confident that no one in this State would mistake that for the endorsement of the Bar Association or of lawyers generally. I say this partly because I bent over backwards to make clear that I was doing it as an individual, but mostly because the public did not at that time think of me first and foremost, or maybe even at all, as the representative of lawyers or their interests.

Media accounts often noted that I was a professor at the Law School, co-author of "Broken Trust" or President-elect of the Bar simply to describe me-who I was-not to suggest I was speaking for others. If what some people are saying is that no one in a leadership position should ever take a position on a controversial issue or endorse a political candidate ...

HBJ: ...as the price of prominence...?

ROTH: ... whatever you call it, I just strongly disagree with that kind of thinking. Obviously, I had a right to endorse a candidate and to speak my piece.

The real issue for some was the possibility that it would adversely affect my effectiveness if Cayetano

ask, and they don't have obvious answers, at least not in the abstract. It really depends on the circumstances.

There is a big difference between being the President and a President-elect.

won. I just think we have to operate on the assumption that any given Governor will be big enough to treat an organization fairly, even if he or she doesn't particularly like the individual who heads it.

HBJ: Isn't that the problem with having any one party in power over a long period of time? There gets to be a mentality of brooking no opposition...?

ROTH: Various high-profile politicians have actually said that the way government works in Hawaii is that you help your friends and punish your enemies. If that's the reality, it's intolerable. Even if it's just the perception and the reality is different, it's intolerable. I refuse to behave the way a "help your friends, punish your enemies" culture is intended to make people behave.

The fact is that a Bar President's relationship with the CJ is far more important to the Association than is his or her relationship with the Governor. I was elected by an overwhelming majority of the voters, in a three-person race, shortly after co-authoring an article that was highly critical of the Justices. This suggests that our members don't necessarily think it's a bad thing for a future Bar President to take controversial positions.

I have enjoyed an excellent working relationship with CJ Moon over the past few months. He's either put aside any negative thoughts he might have had about me, or he's hidden them very well. The Justices, except for Klein, have removed themselves from the Trustee-selection process. Since I was very critical publicly before, I want to say that this decision was not just the right thing to do, it was the honorable thing to do, the courageous thing to do.

Our probate court has been asked to remove the Trustees, at least on a temporary basis. I'm hoping that

Judge Hirai will do the right thing, the honorable thing, the courageous thing, which is to do what the law calls for under these circumstances.

HBJ: Do you think you were fairly treated during the campaign?

ROTH: You know the adage about the "the nail that sticks up?" Well, it's true. I had heard that "The Art of War" was a sort of political bible in Hawaii. Now I believe it. From my vantage point, the campaign felt like war. People that I used to get along with quite well treated me as an enemy. I watched them turn a blind eye to war-like tactics that I'm sure would have troubled them greatly in any other context.

But, I don't want you to get the wrong impression. Working on behalf of Linda was one of the most exciting and satisfying experiences of my life. I believed totally in her quest and thoroughly enjoyed working with people whose only real connection was that they all were dreamers like me. Even knowing the outcome, I'd go back and do it all again.

HBJ: What about those rumors that you were motivated by a desire to be Attorney General or a Justice of the Supreme Court?

ROTH: Bob Rees suggested in Honolulu Weekly that I was endorsing Linda Lingle because I was interested in being Attorney General. Bob Jones speculated in MidWeek that I was doing it because I wanted to be a Justice. Not to be outdone, The Honolulu Advertiser, in a front-page story, without asking me for a comment, put into the minds of the readers that I wanted one or both of these jobs.

Hey, I like what I'm doing. I have no interest in either of those positions and would never support a candidate that I thought would use such an appointment simply to gain someone's political support. Yet in a front-page article, they give readers the impres-

sion that anything I say about Linda Lingle, hey, forget it, I'm not saying it because I believe it, I'm saying it because I want a powerful job. It's a very effective way to discredit a person. It happened in the closing days of the campaign, and I was very busy with other things, so I didn't publicly complain. Now that the campaign is pau, maybe I should write something. But you know, telling people I'm not self-serving wouldn't prove anything. All it would do is restate the accusation.

HBJ: What prompted you to do the "Price of Paradise" books and radio show?

ROTH: As the Law School's only tax professor, I felt a civic duty to serve on the Tax Review Commission when it was formed in 1988. I remember being impressed that our State Constitution would actually mandate a periodic review of the tax laws. I took the job seriously and assumed that all of Hawaii's political leaders would welcome new ideas for improving the system.

My first shock came when the Commission had forced on it an executive director who really wasn't qualified for the job. It seemed obvious that his appointment was just a favor to someone. We had to hire an "assistant" to do what needed to be done. It was terribly wasteful. And getting data from the Tax Department at that time was like investigating the CIA. The attitude seemed to be, "Stonewall long enough, and these do-gooders will go away." More wasted resources.

Then, when we presented our recommendations to the Legislature, instead of lively and informed dialogue, it was the "stonewall" attitude all over again. Dreamer that I am, I thought the media would pounce on these glaring abuses of public trust. After all, the Commission was acting in accordance with a Constitutional mandate; yet our efforts had been undermined, then ignored by elected

and appointed officials. The story got some coverage, but was quickly forgotten. That's what prompted me to start work on "The Price of Paradise." The whole idea was to generate lively and informed dialogue that wasn't happening in any political arena. The more I studied the situation, the more convinced I became that Hawaii's entrenched leadership was incapable of meaningful change.

HBJ: What about the recent underground rumble in the legal community about the quality of recent Supreme Court decisions, coupled with an obvious reticence to criticize the Court publicly?

ROTH: I've practiced law in three jurisdictions and have been a visiting or permanent member of six different law school faculties. In my experience, Hawaii is unique in the degree to which our lawyers fear expressing any form of criticism of the Judiciary. There is a perception-and I don't know if there's any reality behind it or not-but there is a clear-cut perception that, if you stick your head out of the fox hole, as a lawyer, by criticizing the Judiciary, you or your firm will get hurt. To me, that's intolerable. My hope is that it's intolerable to the Judiciary. I hope we can work hand-in-hand in doing whatever it takes to change that.

HBJ: Any final thoughts?

ROTH: I feel both honored and humbled by this opportunity to serve. My hope is that lots of members will get actively involved, whether to support something that I might initiate or to oppose it. I have great confidence in the collective wisdom of our members. Working together, I know we can be effective stewards of justice in Hawaii. —