September 26, 1999, p. B1

Trustee selection debate centered on spirit of will

Honoring true will of princess requires some interpretation

Within the next several weeks, Probate Court Judge Kevin Chang will hear proposals on a new selection process for trustees of the Bishop Estate.

The hearing has been forced by the decision in late 1997 by four of the five Hawaii Supreme Court Justices that they would no longer participate in selecting trustees of the multibillion-dollar estate. Hawaii Supreme Court justices had been choosing trustees for more than a century under the terms of the will of founder Princess Bernice Pauahi Bishop.

Trustee selection is considered one of the most significant issues involved in a two-year controversy surrounding the estate trustees' financial activities and supervision of the Kamehameha Schools.

By Randall Roth, et al.

Princess Bernice Pauahi gave the power to select Bishop Estate trustees to a majority of the three justices of the Supreme Court of the Kingdom of Hawaii.

Presumably, she wanted them to act in their "official" capacity, since in those days Supreme Court justices handled all probate matters (wills & trusts).

As the kingdom evolved into a republic, then a territory and finally a state, Supreme Court justices continued to select Bishop Estate trustees, though jurisdiction over probate matters shifted to a separate probate court. They attempted to justify their continuing involvement by describing it as "unofficial."

Without question, Pauahi's will should be honored. This is true from a moral, as well as legal, point of view. But because of developments since Pauahi's death, her will has not been, and cannot be, followed literally.

First, the Supreme Court that Pauahi had in mind ceased to exist with the overthrow of the monarchy.

Second, Pauahi instructed justices to select only members of the Protestant religion. However, federal and state constitutions now prohibit judges and justices from discriminating on the basis of religion, even when supposedly acting in an unofficial capacity. That's why Chief Justice Ronald Moon announced some years ago that he and the other justices had no choice but to ignore Pauahi's instruction that all trustees be Protestant.

Third, all but one of the five current justices have decided not to participate in the selection of future trustees.

Judges and justices cannot assume any responsibility in an unofficial capacity that would prevent them from fully carrying out their official duties. This canon of judicial ethics presents them with a "Catch-22" in the case of the Bishop Estate — they cannot decide controversies involving trustees they handpick, and they cannot handpick trustees if it prevents them from deciding controversies.

The attorney general has now proposed that trustee selection be shifted from the five justices of the state Supreme Court to the four judges of the Intermediate Court of Appeals. As part of this proposal, the intermediate court would be permanently disqualified from all cases involving the Bishop Estate.

But substituting one group of judges for another simply is not good enough. It fails to address what the attorney general describes as "a perception of political influence (that) may be incurable and may exist at all levels of the judiciary . . ."

See TRUST, B4

Randall Roth is a University of Hawaii law professor and co-author of the "Broken Trust" essay that criticized management of the Bishop Estate. This article represents the opinion of the "Broken Trust" authors, the Kamehameha Alumni Association Board of Presidents and Na Pua A Ke Ali'i Pauahi.

The whole world knows that politics nearly capsized the Bishop Estate. The attorney general's proposal amounts to little more than "rearranging deck chairs." It would be bad for the judiciary and even worse for the estate.

The current dilemma is best resolved by making a distinction between selection and appointment of trustees.

The selection of trustees should be done by a blue-ribbon panel of individuals who represent diverse and relevant interests.

One member of the selection panel perhaps should be chosen by members of the Business Roundtable. Others perhaps ought to be chosen by members of organizations such as the Hawaii Association of Independent Schools, Hawaii Community Foundation, Kamehameha Alumni Association Board of Presidents, Na Pua a Ke Alii Pauahi, and Na Kumu o Kamehameha.

As long as the process is reasonably open and includes mechanisms for accountability, it is likely to generate names based on the needs of the trust and merits of the individual candidates.

The appointment of trustees (as distinct from selection) should be done by the Probate Court.

Today's probate judges have the same relationship to estate matters as did Supreme Court justices when Pauahi wrote her will — they officially interpret wills, and officially appoint trustees when vacancies need to be filled.

If a selection panel chose to submit just one name to fill a vacancy on the Bishop Estate's board of trustees, the probate judge could automatically appoint that person, or be required to explain in writing a refusal to do so.

Now that four justices of the state Supreme Court have stepped aside, something has to be developed. We previously submitted to the Probate Court a specific plan for trustee selection, and we encourage others to do likewise.

Regardless of what eventually is adopted, it will be good first to have lively public discussion. All we ask is that everyone do their best to follow the spirit of Pauahi's will. We think this is only right, and we know it to be the law.

Honolulu Advertiser
October 3, 1999, p. B3

NOT JUST ONE PERSON

Many joined statement on trustee selection

The Advertiser recently printed a statement on trustee selection that had been submitted by three groups: the "Broken Trust" authors, Kamehameha Schools Alumni Association Board of Presidents and Na Pua A Ke Alii Pauahi. Unfortunately, it bore a byline of "Randall Roth, et al." and was placed next to a former trustee's critique that began with a direct reference to me. ("Trustee selection debate centered on spirit of will," Sept. 28, Page B1).

These editorial decisions gave me more credit than I deserved and perhaps caused some readers to think that this former trustee and I were engaged in a one-on-one debate.

The real message is far more exciting.

People passionate about preserving Pauahi's legacy were able to come together and speak with one voice on the pivotal, emotionally charged issue of trustee selection. Naturally, not everyone will agree with this or any other position. The fact that an ousted trustee would not is almost reassuring.

Shortly after the joint statement was submitted to The Advertiser, it was embraced by Na Kumu O Kamehameha, the 220-member association of Kamehameha Schools teachers and staff.

Randy Roth

CONCLUSIONS PREMATURE

Bishop Estate trustees not permanently ousted

The three remaining trustees of the Bishop Estate seem to have been buried prematurely by Mike Crozier ("We can't tamper with the will of Princess," Advertiser, Sept. 30).

True, they are indeed three corpses who refuse to admit they are dead, but technically they are still breathing. Lokelani Lindsey's "permanent" removal by Judge Bambi Weil is on appeal. Henry Peters and Richard Wong have, so far, only been removed temporarily by Judge Chang. Judge Hirai's removal order is pending.

When the time comes to select new trustees, the most important consideration is the process by which individuals are selected. Even the so-called Justice's Working Group, which included Crozier, agrees that "process" is vital to a credible appointment.

But all five Justices admit that they can act only "in their individual capacities" (this bit of logical nonsense was invented by the Justices of the Supreme Court of the territory of Hawaii). The ethical problems in this proposition, especially now that Hawaii is a state, are what led four of our current Justices to say they will not act in this matter any longer.

Trying to fathom Princess Pauahi's wishes over 100 years later is not a rational exercise for an intelligent person. I feel sure, however, that she would not have wanted the setup of her trust to be moved out of Hawaii or the charitable educational purpose behind her trust to be turned into an enterprise for profit, both of which were investigated by the removed trustees.

The Bishop Estate trustees agreed over a year ago to institute a CEO-managed operation. The fact that they ignored this agreement was one of the reasons for their removal.

Attempts to interject racial prejudice into this situation forget that the Kamehameha students, parents, alumni and teachers were the ones who in 1997 finally rose up against what they perceived as the arrogance, greed and incompetence of the then majority trustees. Any involvement I have had in this matter has been only to help them.

Incidentally, I am not retired and I not only proofread the final version of the statement on trustee selection but I also personally wrote the first draft.

Samuel P. King

Peters erred in claims about Pauahi's will

Statements recently attributed by The Advertiser to former Bishop Estate trustee Henry Peters prompt us to write ("Peters defends his large salary," Aug. 18).

Statement No. 1: "Pauahi knew that her trustees would be well compensated."

Correction: At the time Bernice Pauahi signed her will, trustees were allowed to receive compensation only if the governing instrument specifically provided for the payment of compensation. Pauahi's will is silent about compensation. The expectation in those days was that trustees of a charitable trust would serve without compensation.

Statement No. 2: "She recognized that the management of a Hawaiian land-based trust would require full-time trustees who were committed 100 percent to the estate and not to another job."

Correction: None of the trustees named in Pauahi's will devoted full-time efforts to the Bishop Estate. There is no provision in the will regarding the amount of time the trustees are expected to spend on her estate. Trustees did not make this assignment their sole career occupation until relatively recent years.

Statement No. 3: " . . . a percentage of revenues" should be the basis for trustee compensation because the job is "performance-driven."

Correction: Court-appointed master Colbert Matsumoto determined that the former trustees generated a total return of *minus* 1 percent during the most recent period reviewed by the Probate Court (1993-95). This calculation takes into account the income from Goldman Sachs. Losses from other investments totaled nearly $300 million.

Samuel P. King
Walter Heen
Gladys Brandt
Randall Roth
Authors of "Broken Trust"

Honolulu Advertiser
May 6, 1999, p. A12

Picking the next trustees

Selection committee overseen by the Probate Court would best serve Bishop Estate.

ISLAND VOICES

GLADYS BRANDT, SAMUEL P. KING, WALTER HEEN AND RANDALL ROTH

Gladys Brandt, Samuel P. King, Walter Heen and Randall Roth authored the "Broken Trust" essay.

Probate Judge Kevin Chang has ordered the Bishop Estate trustees to "show cause" as to why they should not be removed from office. As a practical matter, this means that replacement trustees soon will be needed.

In the short run, the court could simply broaden the responsibilities currently assigned to the special-purpose trustees.

Permanent replacements eventually will be needed, perhaps soon. Rather than debate the merits of specific candidates, we think the immediate focus should be on identifying the best process for selecting trustees.

The will of Princess Pauahi directed that replacement trustees be selected by "a majority of the justices" of the Supreme Court of the Kingdom of Hawaii. When that was written in 1883, the Supreme Court and the Probate Court were the same thing.

But for many years, a separate Probate Court has had general jurisdiction over trusts and estates. That's why state Supreme Court justices have not been able to select trustees in their official capacity as justices.

Pointing to the language of the will, they've said that they were selecting trustees in their individual capacity (i.e., not as justices). But the current code of judicial ethics does not allow justices to select trustees in any capacity when doing so requires that they recuse themselves from cases involving the trust.

Four of the five current justices have acknowledged this by announcing that they will no longer involve themselves in the selection of trustees. Regardless of what the fifth justice might like, neither the law nor the will permits him to select trustees "as a majority of one." Consequently, the task of selecting future trustees automatically falls to the Probate Court.

Rather than simply select trustees himself, we think the probate judge should appoint a selection committee and work with it to establish comprehensive criteria and procedures to be used in choosing each new trustee. Public input should be solicited where appropriate.

Presumably, the selection committee would look for persons of unquestioned integrity and character who meet other specific requirements, perhaps along the lines of the following: "Person of the Protestant religion," as required by Pauahi's will. Knowledge and appreciation of Hawaiian history, language and culture. Relevant experience and demonstrated competence in areas important to the trust. Reputation for honesty, humility, creativity and collegiality. Keen sense of humor and ability to work with others toward a common goal. Demonstrated leadership in community and civic affairs. Ability to understand fiduciary duties and willingness to take them seriously.

We suggest that each trustee be appointed for a specified term of years, with the possibility of reappointment.

Under no circumstances should a member of the selection committee be considered as a candidate for trustee.

Technically, the entire public is the beneficiary of every charitable trust. However, given the Bishop Estate's unique history and tradition, we suggest that it be thought of as a primarily Hawaiian organization, and that the Kamehameha Schools ohana play the major role in the selection process. Other voices should be heard as well.

Once the selection committee has been formed, the Probate Court's primary function should be to satisfy itself that prescribed procedures were followed and published criteria applied. Absent compelling reasons explained in a written ruling, the court should appoint the person nominated by the committee.

At least by the time the court makes the appointment, the entire list of persons considered by the committee should be made a part of the public record. A trustee-selection process that stresses accountability and openness has the best chance of identifying candidates with the ability and desire to serve as true stewards.

Honolulu Advertiser
March 16, 1999, p. A8

Remove the trustees — now

Probate Court must put an end to the dysfunctional board at Bishop Estate.

ISLAND VOICES

WALTER HEEN, ET AL.

Walter Heen, Samuel P. King, Gladys Brandt and Randall Roth were four of the authors of the "Broken Trust" essay critical of the Bishop Estate board of trustees.

If the Bishop Estate trustees truly cared about the trust and its beneficiaries, they would have stepped aside long ago.

They don't want to give up the money and power and are worried that their successors will cooperate with the attorney general and others investigating their management of the trust.

Clearly, the current mess will have to be resolved in the courts.

This leaves us feeling uneasy. After all, it was justices of our Supreme Court who selected these trustees, more on the basis of political payback than on merit, and the judiciary in Hawaii has a sad track record when it comes to holding Bishop Estate trustees accountable.

It's hard to feel good about the ongoing lawsuit against Lokelani Lindsey. She should be removed, but not because she micromanaged the school, exercised poor judgment or was mean to people. She should be removed for the same reasons other trustees should be removed: serious and repeated breaches of fiduciary duty.

Though we have no sympathy for trustee Lindsey, among other unfortunate consequences, this trial has provided the Probate Court with an excuse to defer doing its job.

Only the probate judge has the power to remove all five trustees immediately. He or she can do that whenever doing so would be in the best interests of the trust and its beneficiaries.

Fundamental notions of fairness require that the trustees be given a chance to respond to allegations of wrongdoing before being removed permanently, but these notions don't apply in the case of temporary removal.

Judge Colleen Hirai took the question of temporary removal "under advisement" six months ago. Her failure to make a decision, one way or the other, is troubling in that she has for quite some time had scathing reports of fact-finders, and the law in this area is quite clear.

Judge Kevin Chang recently was assigned to the Probate Court. Hopefully, he will be less reticent to make a decision.

How many outside evaluators have to call the trustees' rule "dysfunctional" before a probate judge puts them aside? How many trustees have to be indicted? How obvious must it be that these trustees can't possibly be devoting their undivided attention to the needs of the trust?

Picture a bus packed with children, careening down a dangerous hillside. Five individuals are fighting with others and among themselves over the steering of the bus. Don't you think the interests of the children require new drivers?

Of course, removing trustees is just half the equation. Replacements would have to be named. Four of the Supreme Court justices have said they will not participate, while the fifth, Justice Robert Klein, reportedly thinks that he alone can select new trustees, "as a majority of one."

Klein's position ignores the letter and spirit of the princess' will, as well as judicial ethics and public policy. Clearly, the law requires that replacement Bishop Estate trustees be appointed by the probate judge.

Many have wondered if one lower-court judge would do any better than five Supreme Court justices. The answer is that he or she might not . . . but hopefully that one judge at least will follow an open process that promotes public confidence and permits accountability.

One such approach would involve enlisting the assistance of a blue-ribbon panel of community leaders and limiting the court's involvement to making sure that the panel follows its own published procedures and applies its own published criteria. Of course, such a panel should adequately reflect and represent the Hawaiian community.

To most people both here and outside Hawaii, our Probate Court's failure to remove these trustees, at least temporarily, is as inexplicable as is the fact that this mess can be traced back to justices of our Supreme Court. The whole sordid affair seems like something out of a banana republic rather than a state of the union.

It cannot be allowed to continue any longer.

Honolulu Star-Bulletin
March 15, 1999, p. A-9

Trustees must be removed — now

If the Bishop Estate trustees truly cared about the trust and its beneficiaries, they would have stepped aside long ago. Yet they don't want to give up money and power, and are worried that their successors will cooperate with the attorney general and others investigating their management of the trust.

Clearly, the current mess will have to be resolved in the courts. This leaves us feeling uneasy. After all, it was the justices of Hawaii's Supreme Court who selected these trustees, more on the basis of political payback than on merit. Also, the judiciary in Hawaii has a sad track record when it comes to holding accountable the Bishop Estate trustees.

It's hard to feel good about the ongoing lawsuit against trustee Lokelani Lindsey. She should be removed, but not because she micro-managed Kamehameha Schools, exercises poor judgment or was mean to people. She should be removed for the same reasons the other trustees must be removed: serious and repeated breaches of fiduciary duty.

Only the probate judge has the power to remove all five trustees immediately. He or she can do so when it is in the best interests of the trust and its beneficiaries. Fundamental notions of fairness require that the trustees be given a chance to respond to allegations of wrongdoing before being removed permanently, but these notions don't apply in the case of temporary removal.

Judge Colleen Hirai took the question of temporary removal "under advisement" six months ago. Her failure to make a decision, one way or the other, is troubling in that she has had — for quite some time — scathing reports of fact-finders. The law in this area is quite clear.

How many outside evaluators have to call the trustees' rule "dysfunctional" before a probate judge puts them aside? How many trustees have to be indicted? How obvious must it be that these trustees can't possibly be devoting their undivided attention to the needs of the trust?

Recently, Judge Kevin Chang was assigned to the probate court. Hopefully, he will be less reticent to make a decision.

Of course, removing the trustees is just half the equation. Replacements would have to be named. Four of the justices have said that they will not participate in this process, while the fifth, Justice Robert Klein, reportedly thinks that he alone can select new trustees as a "majority of one."

Klein's position ignores the letter and spirit of the princess' will, as well as judicial ethics and public policy. Clearly, the law requires that replacement Bishop Estate trustees be appointed by the probate judge.

Some have wondered if a lower court judge would do any better than five justices. Maybe or maybe not. But we hope that the one judge at least will follow an open, honest process which promotes public confidence and permits accountability.

One such approach would involve enlisting the assistance of a blue-ribbon panel of community leaders, and limiting the court's involvement to making sure that the panel follows its own published procedures and applies its own published criteria. Of course, such a panel should adequately reflect and represent the Hawaiian community.

To most people both here and outside Hawaii, our probate court's failure to remove these trustees, at least temporarily, is as inexplicable as the fact that this mess can be traced back to our Supreme Court justices.

This whole sordid affair seems like something out of a banana republic rather than a state of the union. It cannot be allowed to continue.

Picture a bus packed with children, careening down a hillside. Five individuals are fighting with others and among themselves over the steering of the bus. Don't you think the interests of the children require new drivers?

GLADYS BRANDT, WALTER HEEN,
SAMUEL P. KING, RANDALL ROTH
"Broken Trust" authors

Letters

Delaying justice

The Bishop Estate trustees are under siege: One of them has been indicted on a charge of first-degree theft and another has told friends that he expects to be next. The master has recommended that all five be assessed fines that easily could total millions of dollars each. The attorney general has asked that the court also order the repayment of millions in excessive compensation. The IRS is expected to insist upon that itself, and to assess its own fines in any event. Federal and state grand juries are contemplating additional indictments based on an array of alleged transgressions, including use of estate funds to pay political debts. Two trustees are in court trying to get a third fired, and stories abound about unproductive trustee meetings that end in shouting and near-physical altercations.

We are at a loss to explain why trustees have not yet been removed.

Calls for undue process are totally misplaced. A trusteeship confers duties, not rights. Trustees serve at the pleasure of the probate court. They can and should be removed whenever that is in the best interests of the trust and its beneficiaries.

The Hawaii Supreme Court has upheld a trustee's removal based on a master's finding that the trustee had not been "sufficiently careful and diligent in the performance of his duties." The United States Supreme Court has upheld a trustee's removal solely on the basis of "disharmony" with a co-trustee.

If these trustees truly cared about Pauahi's legacy and took seriously their fiduciary duties, they would step aside on their own, at least until they had resolved their personal legal problems. This is not likely to happen. These trustees have grown accustomed to excessive fees and unchecked power. Some of them also like being in a position to intimidate witnesses, obstruct investigations and "borrow" trust funds for personal use.

The attorney general has asked for the removal of four trustees. The probate court has the power and responsibility to do exactly that, as long as it is in the best interests of the trust and its beneficiaries. From our perspective, this should not be a difficult call.

The court has everything it needs to make a decision. There is no good reason to wait any longer. Justice delayed is justice denied.

Samuel King, Walter Heen,
Gladys Brandt and Randall Roth

The Honolulu Advertiser
January 3, 1999, p. B2

High court justices must step aside

LETTERS

All judges, including Supreme Court justices, are supposed to step aside when faced with a conflict of interest, or even just the appearance of it. Any other approach would undermine the public's confidence in our system of justice.

We previously called upon Hawaii's Supreme Court justices to step aside in all matters relating to the Bishop Estate, and thought that they had heeded our advice. But last week we watched in horror as the justices "qualified" their recusal decision.

According to their spokesperson, the justices now are saying that they will step aside only on matters arising from the attorney general's investigation, and not from related controversies like the current attempt to oust trustee Lokelani Lindsey. At best, this is legalistic hair-splitting that makes a mockery of the principles underlying judicial ethics.

This inexplicable development is all the more troubling now that the attorney general has uncovered evidence of secret contacts between Supreme Court justices and Bishop Estate trustees. Such extrajudicial behavior would be logical and appropriate if the justices' first and foremost duty were contained in the will of Bernice Pauahi Bishop.

But Hawaii's Code of Judicial Conduct provides otherwise: "The judicial duties of a judge take precedence over all the judge's other activities . . . (T)he judge shall conduct all of the judge's extrajudicial activities so that they do not . . . cast reasonable doubt on the judge's capacity to act impartially as a judge . . ."

How would a litigant feel upon discovering that a judge has a special relationship with the opposing party, or that the judge has a personal stake in the case?

We are not suggesting that Hawaii's justices are dishonest or that they would be partial in deciding matters related to the Bishop Estate. It is enough simply to point out the special relationship between these justices and these trustees, and the very real possibility that these justices someday will be sued personally on a negligent-hire theory for damages and surcharges that can't be collected from these trustees.

Under the circumstances, the justices' refusal to let other judges decide all issues related to the Bishop Estate does great damage to the public's confidence in the integrity of the judiciary.

Samuel King
Gladys Brandt
Walter Heen
Randall Roth
"Broken Trust" authors

The Honolulu Adveriser
December 8, 1998, p. A9

Why haven't Bishop trustees been removed?

The Bishop Estate trustees are under siege:

■ One of them has been indicted on a charge of first-degree theft and another has told friends that he expects to be next.

■ The master has recommended that all five be assessed fines that easily could total millions of dollars each.

■ The attorney general has asked that the court also order the repayment of millions in excessive compensation. The IRS is expected to insist upon that itself, and to assess its own fines in any event.

■ Federal and state grand juries are contemplating additional indictments based on an array of alleged transgressions, including use of estate funds to pay political debts.

■ Two trustees are in court trying to get a third fired, and stories abound about unproductive trustee meetings that end in shouting and near-physical altercations.

We are at a loss to explain why trustees have not yet been removed.

Calls for due process are totally misplaced. A trusteeship confers duties, not rights. Trustees serve at the pleasure of the probate court. They can and should be removed whenever that is in the best interest of the trust and its beneficiaries.

The Hawaii Supreme Court has upheld a trustee's removal based on a master's finding that the trustee has not been "sufficiently careful and diligent in the performance of his duties." The U.S. Supreme Court has upheld a trustee's removal solely on the basis of disharmony with a co-trustee.

If these trustees truly cared about Pauahi's legacy and took seriously their fiduciary duties, they would step aside on their own, until at least they had resolved their personal legal problems. This is not likely to happen. These trustees have grown accustomed to excessive fees and unchecked power. Some of them also like being in a position to intimidate witnesses, obstruct investigations and "borrow" trust funds for personal use.

The attorney general has asked for the removal of four trustees. The probate court has the power and responsibility to do exactly that, as long as it is in the best interests of the trust and its beneficiaries. From our perspective, this should not be a difficult call.

The court has everything it needs to make a decision. There is no good reason to wait any longer. Justice delayed is justice denied.

Samuel King
Walter Heen
Gladys Brandt
Randall Roth
Authors of "Broken Trust" essay

Honolulu Star-Bulletin
December 5, 1998, p. A-13

There's no need to delay removal of trustees

The Bishop Estate trustees have failed to properly carry out their fiduciary duties. Anyone who has read the fact-finder's reports knows this. So why have they not been removed?

The trustees have cited two principles of American jurisprudence: People should be considered innocent until proven guilty, and not being denied a right or suffering property loss without due process of law.

But the first principle ("innocent until proven guilty") applies only in criminal trials. The removal of trustees is a civil action. The second principle ("due process") also does not apply. A trusteeship confers fiduciary duties, not civil or property rights.

The word "trustee" says that a person has been trusted to hold property, not for his or her own benefit, but for the benefit of others. Trustees are required to carry out their duties in ways that will inspire confidence in their ability, integrity and commitment to serve others. If for any reason a trustee ceases to inspire that confidence, it's time for a change.

The probate court has the power to remove all five trustees permanently. But we're talking now only about temporary removal. If one or more of these trustees eventually is vindicated, that one or ones can and should be reinstated.

The trustees' reluctance to give up unchecked power and exorbitant fees might be understandable, but it's not legally or morally relevant. Trust law and common sense dictate that the probate court do what is in the best interests of the trust and its beneficiaries, and that it do so in a timely fashion.

The probate court has everything it needs to make a decision. The most recently stated reason for not acting is the trial in which attorneys for trustees Oswald Stender and Gerard Jervis are asking the Circuit Court to remove only trustee Lokelani Lindsey. To us, this is not a good reason for delaying the probate court's decision.

Those attorneys are ethically bound to watch out primarily for their clients, Jervis and Stender. And that's exactly what they are doing by focusing exclusively on Lindsey's inept style and poor judgment. Presumably, they will continue to steer clear of fiduciary issues that directly implicate their clients. The conflict of interest inherent in this proceeding should be obvious.

The criminal indictments against two trustees are added reasons for temporary removal. But the record already is overwhelming. These trustees should have been removed long ago. Better late than never.

GLADYS BRANDT,
SAMUEL KING, WALTER HEEN
AND RANDALL ROTH

Editor's note: These writers are co-authors of "Broken Trust," the essay printed in the Star-Bulletin Aug. 9, 1997, that prompted Governor Cayetano to order an investigation of Bishop Estate.

The Honolulu Advertiser
December 2, 1998, p. A21

OHA leader wrong in criticizing estate probe

The new leader of the Office of Hawaiian Affairs recently voiced her disapproval of the Bishop Estate investigation, saying "I don't know of any other state where the attorney general is given free rein to go into a private agency and look for things" (Advertiser, Nov 28). This statement reflects two misconceptions:

- The Bishop Estate is not a private agency. It's a charitable trust.
- There is nothing unusual about our attorney general's ability to conduct this investigation. In fact, the opposite is true. Attorneys general in every state have not just the authority but the responsibility to do exactly what this attorney general is doing. It's called *parens patriae* and has been an integral part of English and American trust law for centuries.

Perhaps the new OHA leader was just expressing in her own way what her predecessor has opined on many occasions — that the investigation is taking something away from Hawaiians. If so, they are wrong.

The current trustees all are part-Hawaiian, but it's primarily the Hawaiian community that has been shortchanged already and that would be hurt further if the estate were to lose its tax-exempt status.

Ethnicity does not explain why these trustees are being investigated by the attorney general and four other law-enforcement agencies any more than it explains their behavior. With the exception of Oswald Stender, they were selected because of their political pedigrees. Is anyone really surprised that recipients of political plums would treat Pauahi's legacy like their own fiefdom rather than a sacred trust?

Sooner or later, the probate court will remove some trustees. When that happens, each replacement (temporary or permanent) should be a person not only of unquestionable integrity, competence and commitment, but also thoroughly versed in (perhaps even passionate about) Hawaiian history, language and culture. This would be consistent with the princess' will.

Randall W. Roth
University of Hawaii
Law Professor

The Honolulu Advertiser
September 30, 1998, p. A12

Remove all trustees now

Island Voices

NA PUA, ET AL.

The attorney general has asked the probate court to remove all five Bishop Estate trustees. That hearing is scheduled for Oct. 23 and probably will be assigned to Judge Colleen Hirai.

In a separate action, trustees Oswald Stender and Gerald Jervis are seeking the removal of trustee Lokelani Lindsey. That one is scheduled for Nov. 2 in Judge Kevin Chang's courtroom.

There is a hearing Friday in Hirai's courtroom involving a third legal action. This one was initiated by all five trustees years ago when they asked the probate judge to approve their annual accounting for fiscal year 1993-94.

This matter has moved slowly, primarily because of difficulties encountered by the court-appointed master in getting access to essential information. But it heated up several months ago when the master submitted a 145-page report detailing a multitude of serious breaches of trust. The following are selected highlights:

- Improper diversion of $350 million of income that was supposed to be spent educating Hawaiian children. This was in direct violation of court orders and the terms of Bernice Pauahi's will. Also, it was done without proper disclosure.
- Failure to develop a comprehensive investment plan, failure to properly investigate investment opportunities and failure to properly monitor existing investments.
- Failure to properly account to the court and to follow a provision in Pauahi's will that mandates annual disclosure to beneficiaries.
- Improper expenditure of $1 million of trust funds to fight federal legislation that posed a threat to only the trustees.
- Failure to properly monitor each other's actions.

Trust law empowers the probate court to remove one or more trustees on its own initiative whenever circumstances warrant such action. The standard to be applied is "whatever will be most beneficial to the interests of the beneficiaries."

What this means is that Hirai has the power and authority to remove these trustees as soon as Friday.

There is ample precedent for such action, including a state Supreme Court decision (Estate of George H. Holt, 33 Hawaii 352 (1935). Case law indicates that trustees can be removed for any of these reasons:

- Failure to follow directions in the governing document.
- Failure to obey court orders.
- Failure to properly account to beneficiaries or the court.
- Active concealment of important information from beneficiaries or the court.
- Failure to properly monitor the actions of a co-trustee.
- Lack of mutual confidence and cooperation among trustees.
- Failure to invest prudently.
- Failure to recognize and effectively address conflicts of interest.
- Failure to understand or to pursue in good faith the central mission of the trust.

Based solely on a reading of the master's report, all of the above appear to apply. According to trust-law professor Randall Roth: "On a scale of 1 to 10, the case for removal appears to be an 11."

We strongly believe that the interests of Kamehameha Schools/Bishop Estate would be best served by the temporary removal of all five trustees at Friday's hearing.

In many ways it does not seem fair that Stender initially will be treated the same as the others, but this is the only way to get the court to remove the others now. The sorting out of individual levels of merit and culpability will take time, and our primary concern has to be the best interests of the beneficiaries. Our devotion to Pauahi and responsibility to protect her legacy requires no less.

We love and admire Stender and expect that he eventually will be reinstated as a trustee and recognized by Hawaii as the hero we know him to be.

We are not asking that the other trustees be removed permanently, without any opportunity to fully present their side of the situation. Each of them should be free to seek reinstatement. But it could be years before that is fully and finally litigated, and too much is at stake to leave them in power during what for them is likely to be a challenging process.

A majority of trustees has squandered estate funds over the past year in a transparent attempt to derail the attorney general's investigation and to improperly influence public opinion. We are particularly troubled by the $85,000 to $100,000 reportedly being paid out of trust funds to the McCorriston law firm each month. This and similar examples of apparent abuse are likely to continue until trustees have been removed.

We are concerned about what will follow the removal of trustees. But we would rather place our faith in the ability and good will of Judges Chang and Hirai, Master Colbert Matsumoto and Attorney General Margery Bronster, than to suffer any longer from the incompetence and self-serving behavior of certain trustees.

This article was prepared by:
Na Pua a Ke Ali'i Pauahi Inc.
The Broken Trust authors
Na Kumu O Kamehameha
Kamehameha Schools Faculty Association
Kamehameha Schools Alumni Association,
Board of Presidents

The Honolulu Advertiser
September 6, 1998, p. B3

Bishop Estate trustees pursued profit excessively

By Walter Heen, Gladys Brandt, Samuel King and Randall Roth

The will of Princess Bernice Pauahi Bishop does not instruct the trustees of the Bishop Estate to create a financial empire. Instead, it orders them to spend all trust income on charitable purposes, primarily the education of Hawaii's children.

That doesn't mean investments must be made with a sole goal of generating income (as opposed to building up the size of the estate), or that each and every penny of income has to be spent before midnight on the last day of the year in which it was earned.

Instead, trust law allows the trustees to invest partly for growth (to avoid erosion due to inflation), and the probate court has said that Bishop Estate trustees may accumulate income temporarily whenever it doesn't make sense to spend it right away.

But trust law and probate court orders require that all of this be done in accordance with a comprehensive, up-to-date plan.

Perhaps the most damning revelation in the recent master's report is that the trustees have for many years ignored not just trust law and specific court orders, but the will itself.

Basically, they've been focusing far more on building up their financial empire than on educating children. They've done this through inappropriate investments and by secretly diverting hundreds of millions of dollars, five times the annual operating budget of Kamehameha Schools, away from its intended use.

Think about it this way. Let's say your favorite aunt just died and left her entire estate in trust, primarily for your benefit. All income is supposed to go to you for as long as you live. Your distant cousin Jack, by the way, somehow has managed to get the judge to name him as trustee, despite not having any relevant experience.

How would you react if Jack were to tell you that he plans to invest trust funds with a primary goal of enlarging the estate rather than producing income? Remember, you only get income.

Why would Jack take this approach? Well, perhaps it's because a bigger estate will justify bigger trustee fees and expand Jack's personal opportunities (the bigger the trust, the greater the number of doors that will be opened for Jack).

It gets worse. After years of paltry distributions, you accidentally discover that Jack has not been distributing all the income. Instead, he secretly has been using your income to build up "his" estate.

Besides being outraged at Jack, you probably would be wondering why your lawyer and the trust's independent accountant didn't point this out to you. You also might be wondering why the probate court approved Jack's accounting year after year.

Perhaps now you can begin to appreciate why the Bishop Estate trustees' self-serving choice of investments and unauthorized diversion of trust income were egregious breaches of trust.

And what do the trustees have to say about this? So far, the sole attempt to explain it has come from Bill McCorriston, a lawyer who in theory is watching out for the best interests of the beneficiaries rather than those of the trustees. He's said this all boils down to a difference of opinion between accounting firms as to how best to report gain from land sales.

But no one has ever suggested that gain from involuntary land sales should be treated as income and spent. That's why McCorriston's explanation makes absolutely no sense. He either doesn't understand basic trust accounting rules or he's dissembling.

Walter Heen, Gladys Brandt, Samuel King and Randall Roth are authors of the "Broken Trust" essay that sparked inquiries into the finances and school policies of the Kamehameha Schools-Bishop Estate.

The Honolulu Advertiser
8/16/98, p. B-3

LETTERS

BISHOP ESTATE

Master's report shows dismal truth

Court-appointed master Colbert Matsumoto and the accounting firm of Arthur Anderson recently revealed that the Bishop Estate trustees' investment performance during fiscal years 1994, 1995 and 1996 was dismal.

During a period when large foundations and educational trusts throughout the nation were generating total returns in the vicinity of 20 percent, the Bishop Estate trustees' overall return was MINUS 1 percent.

This squarely contradicts estate-paid ads in which the trustees have claimed outstanding returns. The latest such ad appeared in the August 13, 1998 Honolulu Advertiser on page A-8.

Immediately below an eye-catching banner headline: "The True Bottom Line at KSBE" — was a graphic that seemed to suggest that the estate has had a sizable "bottom line" in each of three recent years, and that the trend is upward.

The trustees' figures inappropriately combined investment losses with gains from the involuntary sale of land. The latter tell us nothing about the investment performance of trustees who did not acquire the land and did nothing to enhance its value. Also, the second and third figures in the ad represent three-year and four-year results.

So what at first glance appears to be a meaningful illustration, actually amounts to a "one apple to three oranges" comparison.

Hopefully, readers have learned by now to take with the grain of salt anything these trustees claim in the way of investment results.

Gladys Brandt, Walter Heen
Sam King, Randall Roth

The Honolulu Advertiser
August 27, 1998, p. A22

Trustees must go despite investment success

It appears likely Bishop Estate will realize a big profit when Goldman Sachs goes public. We are delighted but continue to feel strongly that the trustees must be replaced.

Fiduciary responsibility requires that trustees do their homework before making investment decisions, and that each decision fit into an overall plan. Realistic goals (benchmarks) and ongoing monitoring also are required. Any other approach leaves too much to chance and lends itself to abuse.

According to the court-appointed master, these trustees have yet to develop a comprehensive investment plan. And their "highly unusual" practices include deficient investigation of potential investments and failure to properly record and monitor decisions.

The 145-page master's report paints a picture of decisions being made on little more than a hunch, with no thought given to risk of loss.

Perhaps this helps explain investment losses every year from 1992 through 1996. The $393 million total was offset by gains from involuntary land sales, but not by much.

A side note that would be humorous if it were not so sad has to do with the amount of investment losses for 1994 (the year in which the trustees decided to eliminate all outreach programs). The trustees had voluntarily reported losses of only $23 million that year, but the master initially put the figure at $264 million. When the accounting firm of Arthur Anderson finally pegged the loss at $135 million, one of the trustees claimed "vindication."

It's hard for us to see one-year investment losses of $135 million as vindication.

We also are bothered by that trustee's failure to explain that almost all of the $129 million difference in loss figures was just a matter of timing (i.e., the losses were actually incurred, but some were immediately before 1994 and others just after). We don't know if he was trying to pull a fast one on the public, or he simply didn't understand it himself.

Trustees are not supposed to gamble with trust funds. Five years of sizable investment losses during the greatest bull market in history is intolerable.

Gladys Brandt
Walter Heen
Randall Roth
Samuel King
"Broken Trust" Authors

The Honolulu Advertiser
FOCUS

Bishop trustees unmoved

This commentary was prepared by a committee representing four groups: the authors of "Broken Trust," the essay that exposed problems at Kamehameha Schools Bishop Estate; Na Pua a Ke Ali'i Pauahi, the school alumni and supporters; Na Kumu o Kamehameha, the teachers; and the Kamehameha Schools Faculty Association, the teachers' union.

We have voiced common concerns in our efforts to move Kamehameha Schools Bishop Estate out of crisis, with the common goal of improving KSBE and its ability to best serve its Hawaiian students.

Today we join our voices in addressing an issue that exemplifies and underlines the ongoing abuses by the trustee majority, Richard Wong, Henry Peters and Lokelani Lindsey.

Contrary to specific Western Association of Schools and Colleges recommendations, the trustee majority continues to intimidate and bully staff members.

A restraining order has temporarily stopped the trustee majority from interrogating selected staff members about a release to the press of the association report on the Kamehameha Secondary School (Grades 9-12).

We contend that the interrogations serve only the trustee majority and were initiated for these reasons:

- As a form of harassment and punishment for criticisms of the actions of certain trustees. Significantly, two of the individuals to be questioned played a pivotal role in the ongoing controversy.
- To maintain the atmosphere of fear and intimidation among the staff. This is part of the trustee majority's efforts to obstruct the attorney general's investigation.

This latest round of trustee majority heavy-handedness most egregiously demonstrates the trustee majority's utter disrespect for the mission of Pauahi's trust. The interrogations in no way help to improve the education of Hawaiian students. Indeed, the intimidation involved provides a poor model to students of moral and ethical behavior.

These interrogations illustrate the sad reality that the trustee majority's approach has not changed. They continue to ignore all calls for reform.

We believe that the trustee majority has long since ceased to care about the well being of Kamehameha Schools. Their actions illustrate what the Western Association report described as "dysfunctional" governance and what court fact-finder Patrick Yim's report referred to as "oppressive" management.

In the coming days there will be no restraining order to prevent the trustee majority from resuming the interrogations. Without legal protections, the only safeguard for the Kamehameha 'ohana and the legacy of Pauahi is the moral force of public opinion

The Honolulu Advertiser Tuesday, March 10, 1998 A7

Bishop case: Justice delayed is justice denied

A judge or justice is supposed to step aside and let someone else decide a specific matter or case whenever he or she has a conflict of interest, or even when there is just the appearance of a conflict.

It's called recusal, and it is done so that all parties affected by the decision will know that it was made by someone who did not have a personal stake in the outcome.

There are three main reasons why recusal is indicated here, each of which is sufficient in itself:

■ The Supreme Court justices' selected the trustees of the Bishop Estate whose actions are being questioned.

■ The justices have been notified that they are likely to be called as witnesses in the attorney general's investigation.

■ Individual justices could face personal liability for losses suffered by the Bishop Estate through the actions of the trustees selected by them.

When it was informally suggested that they recuse themselves from matters involving the Bishop Estate, the justices took no action. The attorney general then filed a formal motion for recusal, which was fully briefed and argued and ready for decision on Jan. 27. That was more than five weeks ago.

The Supreme Court has recently referred the matter to the Commission on Judicial Conduct for an advisory opinion. That commission is a creature of the Supreme Court and established solely by rule of the court and appointed by the court. It is not a formal judicial body. It has no authority to issue a binding judgment. Already, three members of the commission have recused themselves for reasons that should have been obvious to the Supreme Court in the first place. The referral to this group in any case is both illogical and counterproductive.

The effect of the Supreme Court's action is to stop the attorney general's investigative subpoena. The implications are troubling. The longer the justices take, the longer the investigation will be stalled.

All this plays into the hands of the very trustees who are being investigated. The foxes are being left in charge of the hen house.

Justice delayed is justice denied.

Walter Heen
Sam King
Randy Roth

The Honolulu Advertiser
May 13, 1998, p. A14

Trustee bill is dramatic

Island Voices

GLADYS BRANDT, et al.

Who would have believed a year ago that this year's Legislature would almost unanimously take steps to rein in the Bishop Estate trustees? The fact that anything got passed is itself a great victory for the people of Hawaii.

This bill is a dramatic improvement over prior law:

■ It codifies the common-law rule that trustees are entitled to compensation that is reasonable under the circumstances. Even common sense sometimes needs to be spelled out.

■ It got rid of a flawed statutory formula that had been relied upon by Bishop Estate trustees to pay themselves unreasonably high compensation. (The nation's pre-eminent authority on the law of trusts, University of Hawaii Professor Ed Halbach, called it "idiotic . . . practically incomprehensible . . . an awful statute.")

■ It clarifies that the attorney general has the authority and responsibility to question compensation that she believes to be unreasonably high.

■ It clarifies the conflict that existed between the trustee compensation statute and the common law of trusts, federal intermediate sanctions law and probate rules dealing with compensation of other fiduciaries.

There were those who are disappointed that the bill does not include a cap. This would have dramatically reduced the compensation of Bishop Estate trustees, but it also would have created a presumption that anything up to the cap was reasonable. Such a presumption could have created substantial problems with respect to other charitable trusts.

Besides, a policy-making body like the Legislature shouldn't be setting compensation for one particular trust. To have done so would have been micromanagement of the worst kind.

The probate court is the proper place for such decisions. A judge can listen to arguments on both sides of the issue, and then craft a decision that is tailored to the circumstances. The process doesn't have to be time-consuming or expensive.

Granted, the probate court in past years has not exactly distinguished itself in matters involving the Bishop Estate. But the same could be said about the Legislature, Supreme Court, governor and attorney general.

Every indication is that each of these institutions and individuals now is "on track."

As a community, our job is to make sure this doesn't change.

Gladys Brandt, Walter Heen, Samuel King and Randall Roth are four of the authors of the "Broken Trust" essay.

Attorney general should set guidelines

By Gladys Brandt, Walter Heen, Monsignor Charles Kekumano, Samuel King and Randall Roth

Our August "Broken Trust" essay was inspired by the courageous actions of the Na Pua and Na Kumu groups, and was intended to support their efforts. It is in the same spirit that we offer our thoughts on the selection of future Bishop Estate trustees. (*Na Pua a Ke Ali'i* is a group of Kamehameha Schools students, parents and alumni. *Na Kumu o Kamehameha* is a faculty organization.)

Unquestionably, the probate court has the authority to appoint trustees without first establishing criteria or consulting with others. But that's how the Supreme Court too often performed the function, and the results in recent years were disastrous. We are hopeful that the probate court will not make the same mistakes.

To avoid doing so, the probate court should order the attorney general to develop criteria and procedures for the selection of future trustees. The attorney general, in turn, should solicit many views, especially those of Native Hawaiians, individually and as members of native Hawaiian organizations.

In theory, the public is the beneficiary of every charitable trust. But it would be foolish to ignore the history and tradition of this particular charity. We believe the Bishop Estate should be thought of as a Native Hawaiian organization, and that the Kamehameha Schools ohana should be considered the primary voice of the beneficiaries.

History has shown that in every controversy involving the Bishop Estate, the Native Hawaiian community has stood united. The current controversy is unique only in that this is the first time the perceived threat has been from within the estate. We anticipate that the Native Hawaiian community will make the most of this opportunity to assist in selecting future trustees.

When it comes to process, we suggest that openness be the watchword. Absolutely no meeting or process should be shrouded in secrecy. It is essential that every interested member of the public know what's going on and why.

As for qualifications, we think future trustees, first and foremost, should be individuals of unquestionable integrity and character. That said, the following specific criteria perhaps could be used in evaluating candidates for Bishop Estate trustee:

as required by Princess Pauahi's will. (In this connection, there has never been a judicial determination that this requirement is unconstitutional. Gratuitous statements by justices acting in their individual capacities do not qualify as reasoned decision based upon a full presentation of the arguments pro and con in a judicial proceeding. Until that has been heard, the terms of the will should be honored.)

- Appreciates the value of preserving Hawaiian culture and language.
- Mature and has lived in Hawaii for at least 10 years. (We think it was a mistake to change Princess Pauahi's will by imposing an age limitation. A better way to ensure new blood and fresh ideas is to appoint individuals of whatever age for a term of years, with the possibility of reappointment.)
- Relevant experience and demonstrated competence in one or more specific areas important to the trust.
- A reputation for honesty, creativity and a sense of humor.
- Listens to others, is sensitive to diverse points of view and knows when to seek advice from knowledgeable advisers.
- Active in community and civic affairs.
- Understands fiduciary duties and takes them seriously.
- Not a member of the selection committee.
- Committed to honoring the spirit of Princess Pauahi's will.

Our suggestions are based on the estate's current structure of five full-time trustees. However, we strongly suspect that a different organizational structure would better serve the princess' primary goal of educating children.

(When interpreting a document that was written 100 years ago, one must start by determining which provisions are primary and which are merely means to those primary ends. In this regard, we think the princess' use of a trust was incidental to her overarching goal of educating children.)

Whatever the structure, we believe compensation should not be arbitrarily capped. It is essential that the estate be able to compete for top talent. For this reason, any new legislation should limit trustee compensation only to whatever is "reasonable" under the circumstances. That's basically what the federal Intermediate Sanctions law does.

One last thought. While native Hawaiians should play the central role in the development of criteria and procedures, not to mention the actual selection of trustees, all future appointments should be based strictly on competence and character. A person's ethnicity should not preclude him or her from consideration.

Gladys Brandt is former principal of Kamehameha School for Girls. Walter Heen is retired judge of the state Intermediate Court of Appeals and a former legislator. Monsignor Charles Kekumano is a retired Catholic priest and chairman of the Liliuokalani Trust. Samuel King is a senior federal District Court Judge. Randall Roth is a University of Hawaii law professor.

COMMENTARY

The Honolulu Advertiser Sunda ecember 28, 1997

p-B-3

Gladys Brandt, Walter Heen, Samuel King Randall Roth will discuss the Bishop Estate issues on the "Price of Paradise Radio Show." Listen from 8 to 9 a.m. on KHPR (88.1 FM) or KKUA (90.7 FM). The program will be rebroadcast from 8 to 9 p.m. on KIFO (1380 AM).

The Honolulu Advertiser
3/5/98 p. A10

Trustees, high court must be held accountable

Island Voices

W. HEEN
S. KING
G. BRANDT
R. ROTH

According to retired Judge Patrick Yim, trustee Lokelani Lindsey should not have summoned Kamehameha student body president Kamani Kuala'au to her downtown office for any reason. In Yim's words, it was "threatening and inappropriate."

Rather than admit her mistake, Lindsey has defended her actions by describing her relationship with the student as a long-time friendship involving many "informal chats."

She also believes, or at least has asserted, that Kuala'au never was intimidated or threatened and immediately after the meeting was "quite at ease with himself."

Now we read in a letter written by Kuala'au that he felt "intimidated" and "terrified" during the two-hour session.

According to Kuala'au, the meeting left his stomach "wrenched with pain." Afterward, he cried alone in his room, believing for a long time that he had "done something wrong."

According to Yim: "Trustee Lindsey has not expressed any remorse or regret for summoning this student to her office. She does not appear to appreciate the power of her position as a trustee and the absolute lack of power on the part of a student. Trustee Lindsey's lack of insight in this situation, coupled with her present justification for engaging in this conduct, calls into question her judgment."

Of course Lindsey's actions are inexcusable, but it should be remembered that she was put in charge of education by the other four trustees. They, too, should be held accountable.

According to Yim: "The (other) trustees knew or should have known that Lindsey was engaged in actions that were detrimental to Kamehameha School."

It also should be remembered that Lindsey and the others were appointed to their high-paying positions by the justices of Hawaii's Supreme Court. They, too, should be held accountable, in their case for appointments based on political connections rather than merit.

In summary, the spotlight of public scrutiny should not shine solely on trustee Lindsey. The time has come for all five trustees and all five justices to be held accountable for damages done to Pauahi's legacy.

The public's job is to make sure that happens. We are not powerless.

Walter Heen, Samuel King, Gladys Brandt and Randall Roth are authors of the "Broken Trust" essay on the Bishop Estate.

BISHOP ESTATE

Now, employees safe from retaliation

Bishop Estate trustees have agreed to a court order that forbids the destruction of documents and prevents the estate from retaliating against employees who give information to the attorney general ("Bishop hearing averted," Advertiser, Oct. 30).

Trustees' lawyer Bill McCorriston said the agreement wasn't necessary "because Bishop Estate already had ordered its employees to retain records and files." But what he didn't say is that the trustees have never promised not to retaliate against employees who cooperate with the attorney general's investigation.

In past months, teachers have been threatened with loss of job. Other employees have been threatened with both loss of job and lawsuits. The student body president has been hauled out of class to be interrogated and threatened.

The resulting atmosphere of fear and intimidation has made the attorney general's investigation extremely difficult to pursue.

That's why the court's prohibition against retaliation is so important. Knowing that they finally have protection under the law should encourage employees with relevant information to come forward.

It would be even better if the trustees would voluntarily encourage cooperation — and cooperate themselves.

Walter Heen
Samuel P. King
Randall Roth