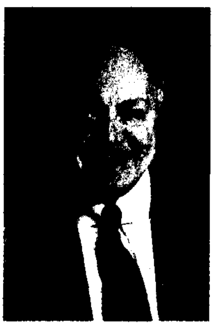
Justice in Hawaii?

A state attorney general—and the IRS—sought to hold culprits accountable for looting a princess' multi-billion dollar trust. This is what they accomplished



By Alexander A. Bove, Jr., principal, Bove & Langa, P.C., Boston

Sometimes we like to see the bad guys win for a while—who wasn't rooting in a way for Tony Soprano? But we always feel better when the good guys emerge victorious in the end. That's essentially the plot of every action blockbuster. Unfortunately, life isn't a James Bond movie.

Broken Trust—the true story of a multibillion dollar charitable trust established by a Hawaiian princess and looted by its trustees—seemed to have all the ingredients of a promising morality tale. For years, terrible wrongs were done: trustees, lawyers and even justices of the Hawaiian Supreme Court openly committed unethical, underhanded and often illegal acts.

But then Samuel P. King, a senior federal district court judge, and Randall W. Roth, a University of Hawaii law school professor, did a heroic job of shining a light on the outrages. Their explosive exposé, *Broken Trust*, published in March 2006 by The University of Hawaii Press, compellingly chronicled the abuses.

As a result of their efforts, the governor of Hawaii instructed the attorney general to begin an investigation, which she did immediately. A court-appointed master diligently compiled the necessary information to condemn the trustees. And the feared Internal Revenue Service intensified its own investigation and audit of the trust.

It looked like justice would be served.

So I telephoned authors King and Roth a few months ago to find out what happened next. And what they told me is shocking.

The trust in question was established by the will of Bernice Pauahi Bishop, a princess, last in the line of King Kamehameha, the warrior chief who unified the islands politically. As a result of the succession of the royalty-owned land down through the generations, the princess' estate included nearly 380,000 acres, or about 10 percent of all the titled land in Hawaii. The princess left virtually her entire estate to a trust for the purpose of building and maintaining two schools in the Hawaiian Islands, called the Kamehameha Schools. She named five trustees to administer the trust and provided that vacancies in the trusteeship were to be filled by vote of the then-three justices of the Hawaiian Supreme Court.

Although the land was valued at only about $470,000 in 1884 when the princess died, its worth skyrocketed beginning in 1959 with Hawaii's admission to statehood. This explosion of wealth changed the entire character of the trust, which became known as "The Bishop Estate" and was by far the largest private landowner in Hawaii. By some estimates, the trust's assets were into the billions.

Apparently the egos of the then-serving trustees—and their fees—grew along with the land values. At one point, each of the five was taking an annual trustee fee of more than $1 million. Meanwhile, no accounts (or embarrassingly incomplete accounts) were filed, the trustees were causing the trust to pay huge personal expenses of the trustees (including legal fees unrelated to trust matters), and the trust was making improper investments for a charitable trust. For instance, some of the trustees were directly or indirectly involved in the very same investments. Yet the now-five Supreme Court justices merrily rubber-stamped political appointees to fill vacancies in the juicy trusteeship positions.

Enter King and Roth; then the governor with his investigation. Two separate masters recommended that the court surcharge the trustees millions of dollars for the numerous breaches. The attorney general filed a lawsuit against the trustees seeking $200 million in damages for breaches of fiduciary duty.

By all indications it appeared to be the beginning of the end for the bad guys and everyone expected the caped crusader to swoop down and fly them off to jail.

There's at least one positive outcome of the Bishop debacle: the new procedure for filling trustee vacancies.

But—astoundingly—King and Roth report that the trustees have never paid a penny of their own money in surcharges, damages or reimbursements to the trust.

That's the financial outcome.

What about the criminal or other disciplinary charges? One trustee served a six-month sentence in a federal prison, but for a totally unrelated crime. Two of the other trustees were indicted, then re-indicted, then indicted once again on charges directly related to their service as trustees. But they never faced a trial on the merits of the charges. The judge kept finding procedural errors. Ultimately, the court ruled the trustees could not be re-indicted again "in the interests of justice."

What about IRS vengeance? Surely, IRS agents can't be influenced by political pressure. And we all know how strict the tax code is about the administration of tax-exempt organizations according to the rules and regulations, the huge fines and penalties imposed on such trusts and trustees for offenses like self-dealing, using trust funds for personal benefit and getting involved in unrelated business activities.

The Bishop debacle should have been a field day for the Service—yet it fizzled into a brief, harmless outing. The IRS asked the multibillion dollar trust to pay only $85 million to settle the audit. The trust's insurance company paid a mere $14 million to the trust on behalf of the former trustees.

With the IRS out of the way, a Hawaiian court ordered an end to the various legal actions and sealed key files, all in the name of "closure" and "healing."

As for the attorneys who represented the trustees in their commission of the obvious breaches of duty, not one of them was ever held accountable. This, despite Hawaiian probate rules requiring lawyers who represent trustees to report illegal trustee acts to the beneficiaries and to report nonfeasance of trustees of charitable trusts to the probate court. What a sad statement about the courts in Hawaii and these members of the state's bar.

If there is any positive outcome from the Bishop debacle, it may be in the way trustee vacancies are filled and the fees the trustees now are allowed to take. These days, a probate judge appoints the trustees, choosing from a list of names provided by an independent panel. The trustee's fees are set at $100,000 a year, except for the chairperson, who receives $125,000 a year.

As for our heroes, King and Roth, they remain active in their attempts to see that the trust operates properly and that additional safeguards are put in place. They are currently seeking to reform the trust into a corporation similar to the Harvard model, which would offer public oversight in the trust's operation and a more economical administration. You'd think that lots of people would be behind this effort—especially the thousands of Kamehameha Schools' alumni. Alas, that's not so. King and Roth seem to be part of a very small and dedicated group.

I asked King and Roth how they would summarize this experience. This is what they have to say: "The Bishop Estate saga reminds us that power tends to corrupt, and that absolute power corrupts absolutely. Follow-up reports like this one [that you're writing] give us hope that the public will demand greater transparency and accountability."