

Appendix C

Broken Trust*

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The community has lost faith in Bishop Estate trustees, in how they are chosen, how much they are paid, how they govern. The time has come to say "no more." The web of relationships between the Judiciary and our beloved Kamehameha Schools/Bishop Estate has pushed two great institutions to an absolute critical point. Immediate action must be taken. To understand the underlying causes, readers must piece together the following stories. Think of them as puzzle parts.

TRUSTEE COMPENSATION

Some people think the Bishop Estate trustees are highly compensated because that's what Princess Bernice Pauahi Bishop provided for in her will. Actually, the will is silent on this issue, and the princess probably expected her trustees to serve without compensation. That was the tradition for charitable trusts then, as it is now, not just in Hawaii, but in every other jurisdiction with an English common law tradition. As stated in a 1945 Supreme Court opinion, "the law in Hawaii in existence prior to Jan. 1, 1928 made no provision for compensation of trustees." Clearly, the princess intended a sacred trust. But what we ended up with is a political plum.

Since 1987, the year in which the trustees were forced to make public the amount of their fees, they have received in excess of \$40 million. Fees paid over the past three years have averaged \$900,000 per trustee, per year.

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The distracting thing about this piece of the mosaic is that people made responsible for preserving \$5 to \$10 billion of wealth, and carrying out an educational mission that is as important as it is unique, arguably ought to be highly paid.

We think the more important issue is the credentials of the specific individuals who are being paid these large sums of money. Given the estate's ability to pay big-league compensation, one would expect to find an array of phenomenally talented trustees. Yet somehow, with the exception of Oswald Stender, the Bishop Estate trustees simply don't measure up to the job.

TRUSTEE SELECTION

Many people are under the impression that the justices of Hawaii's Supreme Court are legally obligated to select Bishop Estate trustees because that's what the princess put into her. Not so. Clearly, they don't have to do it. The justices acknowledged as much in 1989 when they refused the request of a woman named Sadie Smith to pick the trustees of her charitable trust.

Acknowledging the obvious impropriety of making trustee selections in their official capacity, the justices tell us they are acting as individuals when they select Bishop Estate trustees. This is a distinction without meaning. To be blunt, it's a dodge.

The reality is that Bishop Estate trustees are selected by five individuals who through no coincidence are also justices of the state Supreme Court. The further reality is that these same five individuals are virtually certain to be called upon to decide cases involving the trustees they select (the estate has been before the Supreme Court at least 18 times in the last 13 years). At a minimum, this creates the appearance of a conflict.

Some people wonder why the justices would stretch logic and judicial ethics to the breaking point just to do something they clearly don't have to do, and then do it poorly.

Can we be blamed for questioning the justices' collective judgment in other areas? After all, if the justices exercise questionable judgment in their individual capacity when selecting trustees, why shouldn't we expect equally questionable decisions in their official capacity? Worse, if selection of trustees is influenced by politics (as we believe it is), why shouldn't the public assume that judicial decisions are equally political?

It is imperative that the Supreme Court enjoy the trust and respect of the entire community. According to Democratic Rep. Ed Case, "The Supreme Court's trustee appointment role has the real potential of undermining and perverting our judicial system, starting with the judicial selection process. Getting out of the Bishop Estate trustee selection business is the single biggest

thing the court could do to enhance the court's standing with the public." We agree.

BECAUSE THAT'S WHAT THE WILL SAYS

More than 100 years have passed since Mrs. Bishop's death, and if she were here today, she unquestionably would decide some things differently. For example, the princess named five men, who happened to be haole, as the initial trustees of her trust. Does that mean she wanted all future trustees to be of that same make up? Of course not.

In fact, the justices and trustees have themselves occasionally ignored the language of the will—perhaps with good cause. For example, the will says the schools should be primarily vocational, and only secondarily college preparatory. That's changed. The will also specifically expresses a desire that the schools benefit orphans and others in indigent circumstances, and makes no mention of admissions based on academic ability. Again, the will's instructions have been modified to deal with the demands of the time.

The will specifically provides that the trustees must be "persons of the Protestant religion," and no court case has said that such a requirement is invalid. Yet the current justices of Hawaii's Supreme Court, acting as individuals and not as a court, have indicated that they will ignore the will in this respect when selecting new trustees.

Taking refuge in the literal words of the will is more of an excuse than a reason.

JUDICIAL SELECTION COMMISSION

To understand why each member of the court would insist upon doing something that we consider unethical, it helps to consider the circumstances of their own selection. The Judicial Selection Commission is an attempt to take politics out of the selection of judges and justices. A "reform" idea out of the 1978 Constitutional Convention, the commission is a bipartisan group that reviews potential applicants and submits a list to the governor for selection. Previously, the governor alone nominated judges.

One of the most powerful duties of the commission is to decide—by itself—whether any judge, or justice, will be retained for another term of 10 years. We believe that most of the people who served on the commission over the years have been public spirited, well intentioned and capable. But no process, no matter how well designed, will work properly when individuals are determined to manipulate it. For instance, we believe that during the period John Waihee was governor it was common for him to confer ahead of

time with several commission members who then would strive to get a predetermined name on each list.

In the words of someone who served on the commission during those years, "If a few members decided ahead of time to do their best to get a particular name on a list, they probably were able to do that. No one is so naive as to think there isn't a certain amount of horse trading going on."

According to a prominent Democratic politician, "The commission always seemed to have at least a few people whose first and foremost allegiance was to Governor Waihee. With people like Warren Price, Tom Enomoto, Michael Hare and Gerry Jervis on the commission, it was easy to get one particular name on a list. The thing, though, is that it already had been determined who was going to get the appointment."

This was the era when the commission put 36-year-old Sharon Himeno on a list for the Supreme Court, from which she was selected by Governor Waihee. It bothered some people that Himeno was Attorney General Warren Price's wife and that she wasn't considered an exceptional lawyer.

But the bigger concern for many was an allegation of a serious ethical lapse in connection with a family corporation's apparent \$3 million profit on a back-to-back purchase/sale of a mainland golf course involving Himeno's client, the state Employees' Retirement System. Her nomination to the state's highest court seemed to be based on the fact that she and Price had directed their good friend John Waihee's gubernatorial campaign.

When Judge Walter Heen was interviewed as an applicant for the Hawaii Supreme Court, he was asked by Hare "what kind of person" he might select as Bishop Estate trustee, if he ever had the opportunity to do so. According to David Fairbanks, a current member of the commission, such a question, if asked, would have been "totally improper."

That this question was asked of a candidate for the Supreme Court, by a member of the Judicial Selection Commission, illustrates how the trustee-selection power of justices played a significant role (with respect to some members of the commission) in the consideration of candidates for the state's highest court.

Hare's law firm has been paid more than \$10 million in legal fees by the Bishop Estate since 1992. It's an excellent firm, but we find it hard to believe that's the reason it was selected by the trustees.

HOW JUSTICES GET CHOSEN

When there is an opening on the state Supreme Court, the Judicial Selection Commission agrees upon a list of up to six names. The governor then selects someone from this list, and the Senate either confirms or rejects that selection. At least that is the way it's supposed to work.

A little known fact is that when Justices Robert G. Klein and Steven H. Levinson were selected in 1992, both names were not on the first list submitted by the commission. According to our sources, Waihee simply sent the list back, saying he wanted either a new list or an expanded one. A number of commission members were bothered by this, but Gerard Jervis insisted that the group give in to the governor's demands, and in the end, his importuning prevailed. Both names were on the revised list and they were the ones who got appointed. Several years later, Jervis was selected by the justices to be a Bishop Estate trustee. Other trustees selected during this era include former Speaker of the House of Representatives Henry Peters and former President of the Senate Dickie Wong, who by virtue of their positions had a hand in the selection of individual commission members.

We would like to believe that a primary ingredient in the nomination and selection of Supreme Court justices has never been how willing they would be to appoint the "right" person to the Bishop Estate, but the circumstantial evidence to the contrary seems overwhelming.

AN UNPREDICTABLE COURT

The current justices are issuing decisions that often surprise and sometimes shock observers. A retired Supreme Court justice expressed it this way, "Nobody has any idea how these justices will rule. It's disgraceful. There's absolutely no predictability, absolutely none. They are heightening conflicts rather than resolving them. They don't understand the importance of precedent and restraint—they just do what they want."

Some of the people we polled, including a retired Supreme Court justice, attributed this unpredictability to a perceived lack of ability. Others, including a different retired Supreme Court justice, expressed a belief that these justices "aren't independent—at least not when it comes to the selection of Bishop Estate trustees."

We believe this unpredictability stems more from the way these five justices view the world than it does from any lack of ability or independence on their part. And we support Chief Justice Ronald Moon's attempts to improve the judiciary and its reputation with the public. That's a big reason why we believe the justices should stop selecting trustees. We are convinced that their role in selecting trustees undermines public confidence in the Supreme Court and the entire judiciary.

HOW TRUSTEES GET SELECTED

In the words of a former Supreme Court justice, here's how the process worked: "The way we went about picking trustees was different each time.

The time we named Chief Justice Richardson, for example, Justice Lum suggested that we select him, and we all agreed. It was just that simple. Another time, we must have gotten over 100 applications. It was pretty informal then too, but we did read through everything. It's really hard to generalize about how we did things because it just depended on the circumstances."

In the words of a different former justice, "When Os Stender was picked, we got lucky. Two of the justices wanted Larry Mehau very badly, another two were just as adamant about Anthony Ramos. The fifth justice, who was for Jimmy Ahloy, refused to switch to either of the other two candidates. Once it became crystal clear that we had a stalemate, someone—and I wish I could remember who—brought up Os' name. We all knew he was Hawaiian and that he was the CEO at Campbell Estate, and it didn't take long to agree on him. Chief Justice Lum immediately called and asked him to come over right away. When Os arrived 10 minutes later, we told him he had just been chosen to be a Bishop Estate trustee. He just sat there for a good minute. You know, a minute is a pretty long time to just sit there in a situation like that. Anyway, after that long pause, he just said thank you,' and that was that. Just about everyone agrees that Os has been a great trustee. Like I said, we got lucky."

Here's the same scene as seen through the eyes of Os Stender: "You know, when they picked me, they practically picked my name out of a hat. Can you believe it? There was no process, not even an interview. I was speechless."

We can't knock good luck, but would rather rely upon clearly articulated criteria and a coherent selection process. Otherwise, the selectors cannot effectively be held accountable.

THE BLUE-RIBBON PANEL

We believe the justices intended to name Waihee to replace Myron "Pinky" Thompson when his term as a Bishop Estate trustee expired in 1994. But this was sure to strike many as being too obviously political. After all, Waihee had personally appointed every one of the justices. So, rather than just do it and take all the heat, the justices decided to ask a blue-ribbon panel of community leaders to provide a list from which a selection could be made. It never occurred to them that Waihee's name would not be on that list.

When Chief Justice Moon first met with the panel, one of its members, Bobby Pfeiffer, asked him, "Will you choose from the list we submit even if we have only five names on it?" Moon said "yes," and the panel took him at his word. They then proceeded to work hard, eventually coming up with the names of five very impressive people. Putting the list together was a relatively smooth, harmonious process, except for their discussion of Waihee. Most of

the panel members said “no” but a few (primarily United Public Workers union chief Gary Rodrigues and Al Shim, a partner in the law firm of Shim, Tam, Kirimitsu & Chang), fought long and hard to get the then-governor’s name on the list. Rodrigues, in particular, got quite irritated with the others, but they stood firm. Most of them simply felt there already were too many politicians as trustees.

The next day, the panel’s chairperson, Gladys Brandt, walked the list over to the court, intending to just drop it off. But the justices were there and assembled, so she gave each of them a copy and sat quietly to the side. A complete silence fell over the room as they stared at the list. Finally, one of them said simply: “Where’s his name?”

The justices refused to use that list, and eventually chose Waihee’s friend and confidant, Gerard Jervis.

While Waihee didn’t get appointed, he did manage to establish lucrative ties to the estate. Shortly after leaving office in 1995, he joined the Washington, D.C.-based law firm, Verner Liipfert Bernhard McPherson & Hand, which already was doing some legal work for the estate in Washington. Since then, this firm has been paid millions of dollars by the Bishop Estate, mostly for lobbying activity in opposition to the Intermediate Sanctions law (among other things, this law empowers the IRS to force individuals to repay any charity that is found to have paid them excessive compensation). The word “intermediate” reflects the fact that the sanction would be something short of revoking the charity’s tax-exempt status.

We think money spent in opposition to this particular law cannot possibly be seen as being in the best interests of the estate’s beneficiaries, as opposed to those of the trustees. In fact, repeal of the law easily could backfire on the estate. Without an “intermediate sanction” at its disposal, if the IRS were to conclude that excessive compensation was being paid, it might be forced to bring out the heavy artillery—revocation of the estate’s tax exempt status.

In a letter dated May 29, 1990, a deputy attorney general, Cynthia Unwin, stated that “any lobbying by the trustees against legislation to reduce trustee commissions could be a misuse of estate property for the personal benefit of the trustees, and thus, a violation of the trustees’ duty of loyalty to the trust’s beneficiaries.”

FIDUCIARY AND RELATED DUTIES

Trustees have what is called a “fiduciary” responsibility. This means, among other things, that they must act at all times solely in the beneficiaries’ best interests and that they will be held to an unusually high standard of care and conduct in doing so.

The first of these duties often is expressed in terms of a duty of undivided loyalty and an absolute prohibition against self-dealing. Because the responsibility and legal exposure is so great, the law of trusts everywhere provides that no one can be forced to serve as a trustee of any trust.

It's not at all clear that most of the current trustees understand their fiduciary duties. For example, the Bishop Estate trustees in 1989 personally invested more than \$2 million in a Texas methane gas deal in which the estate also invested. Eventually, the estate's investment grew to \$85 million. The estate's lawyer in Texas was quoted as saying that the estate can only hope to recover \$20 million, at most, of its \$85 million investment. He went on to call it a "disaster," according to court records.

The trustees' decisions regarding the estate's investment might have been influenced by their desire not to see their own investments go bad. Even if that was not the case, people with a fiduciary duty are legally prohibited from putting themselves into that kind of situation. Eventually, the probate court ordered the trustees never again to invest personally in estate deals.

In a more recent transaction, this one involving a golf course, trustee Henry Peters actually found himself negotiating a multimillion-dollar deal in which the Bishop Estate was the other party. One can only wonder if he gave any thought to the obvious ethical and serious legal implications of someone with a fiduciary duty moving from one side of the table to the other.

In reaction to situations like the methane gas and golf course deals, a nationally recognized authority on the law of trusts and fiduciary duties was asked several years ago if he would be willing to meet with Bishop Estate trustees to help them understand their duties. He indicated his willingness to do so, yet for reasons never explained, the meeting was never scheduled. To this day, the current trustees have not had a single session in which their fiduciary duties have been systematically explained to them. This strikes us as reckless, at the least.

JUSTICES HAVE DUTIES TOO

Before moving on from the subject of legal liability, it needs to be pointed out that the trustees are not the only ones in this mosaic who could potentially be held personally liable for damages incurred by the estate.

Anyone who agrees to select trustees also owes a duty to trust beneficiaries. If, for example, selections are made based on considerations other than what's in the best interests of trust beneficiaries, the ones who select a trustee could find themselves legally liable for any harm caused by that trustee. Since Hawaii's justices are acting in their individual capacity when they select trustees, judicial immunity would not apply.

What this means is that Hawaii's five justices have a vested interest of sorts in each trustee that they select. It makes it unlikely that the five justices will be perceived as objective and even-handed (even if they are) when the estate has a matter in front of them, as is regularly and predictably the case.

ACCOUNTABILITY

In the case of the Bishop Estate, we believe that accountability is almost totally missing. For instance, many charitable trusts are held accountable through contributions. That's a powerful mechanism: If the people who run them don't do a good job, donations will stop. But this doesn't apply to the Bishop Estate since its trustees do not solicit contributions.

It's true that each year a court-appointed master reviews the trustees' performance. But about all this is designed to do is determine if the trustees have committed a crime. The job is simply overwhelming. According to former Bishop Estate master Jim Duffy, "You really can't get your arms around everything, especially the mainland deals. It really isn't a feasible way to review the performance of the trustees. Plus, there is a feeling that the trustees can simply outlast any master, and they really can."

Not surprisingly, the master's report has not been an effective mechanism of accountability. For example, Duffy recommended in his 1992 report, and again in 1993, that the trustees develop a long-term financial and educational plan, and that they stop using the statutory compensation scheme in setting their own fees. The next master, Ben Matsubara, reiterated Duffy's call for a "strategic" plan in his 1995 biennial report (the next biennial master's report is expected to be made public soon). To this day, the trustees have not adopted a strategic plan. Given that the trustees have been able to repeatedly ignore these and other recommendations, we question if any master can be expected to make the trustees accountable.

How about a lawsuit? Historically, individual beneficiaries of a charitable trust have not been able to sue. Standing to do so typically has resided in the state attorney general, or in fellow trustees if a breach is serious enough. Hawaii is one of only six states with an appointed attorney general and it's a plain fact that no attorney general has initiated a lawsuit to sanction or remove a trustee.

Some members of the public seem to think the Supreme Court has the power to hold the trustees' feet to the fire. This might have been the case at the time of the princess' death since in those days the Supreme Court had jurisdiction over all probate matters.

But that changed many years ago. Consequently, if a lawsuit to sanction or remove a trustee is to be filed now, it must originate in the probate court.

One possible way to make the trustees accountable would be a lawsuit by a group of individuals who fall within the class of intended beneficiaries. Normally, the courts only permit charities to be sued by a state attorney general, but it's not unheard of that they would grant "standing" (the legal ability to sue) to groups of individuals when that appears to be the only way to achieve accountability. Our Supreme Court did this in a 1989 case involving Kapiolani Park and Honolulu County, but hasn't yet been asked to do it in a case involving the Bishop Estate.

To whom do the trustees think they are accountable? Alan Murakami, a highly regarded lawyer with the Native Hawaiian Legal Corp., recently put it this way: "The trustees say they just have a fiduciary duty to the school, and not to the students, faculty, alumni or even to native Hawaiians as a group. If that's true, it means no one can hold them accountable. How do they have the nerve to even say that?"

NA PUA A PAUHI

We admire the way members of the Na Pua a Pauhi group have conducted themselves during the recent, on-going difficulties at Kamehameha Schools. Their courageous actions have been widely reported by the media. What has not been fully communicated yet, at least not publicly, is the anguish they feel over the situation. To them, Kamehameha Schools is more than an educational institution. It's a dream, a beacon, a promise to future generations of Hawaiian children.

The specific requests made of the trustees by the Na Pua group are surprisingly modest: (1) formulate a plan for the school, but do so only after having listened to the concerns of affected parties, (2) reinstate "talk story" sessions to facilitate better communications, and (3) agree not to take punitive action against students, faculty and others who participated in the walk or voiced concerns publicly. Nevertheless, say several of the Na Pua leaders, the group has been "stonewalled and lied to."

Why are the trustees fighting this group? In the words of Na Pua's lawyer, Beadie Dawson, "The trustees are fighting hard now because if they lose on the standing issue, they're afraid that will lead to other suits, and, of course, they are right. They've never had to be accountable to anyone, and they don't want to start now."

ATTITUDE PROBLEMS

Rather than hire a top-notch chief executive officer (CEO) to run the day-to-day affairs of the estate, each of the trustees tends to function as a separate CEO of a separate part of the estate's activities. They actually brag about it.

In the words of Ed Halbach, the nation's preeminent authority on the law of trusts and fiduciary duties, "This might not be an impermissible delegation, but it certainly isn't a sound practice in a trust of this scale."

What about the manner in which the trustees go about doing their jobs?

We asked many people, who have had to work with or for them, how they would describe the trustees' management style. To us, the responses boil down to "secretive," "dictatorial" and "vindictive."

High-level staff members have had individual trustees walk into their offices, giving orders to do something that required majority approval without first having submitted it to a vote. (Even if a majority of trustees would have voted to approve that matter, it's still a breach of trust to overlook that essential step.) Staff members have been left in the unenviable position of either refusing to carry out the order, or following the order and thereby participating in what they believe to be a breach. The level of intimidation at the estate is such that staffers routinely have chosen to go along with the order.

It's been widely reported that trustee Lokelani Lindsey used Bishop Estate people to survey her North Shore property, process her permits and supervise the rebuilding of her house. To our knowledge, she hasn't repaid the estate. More so than any other charitable trust, the Bishop Estate has been quick to engage in deal making, as opposed to plain old investing. For example, how many charities have tried to develop a championship-caliber golf course for the rich and famous? We're talking about one with initiation fees of \$70,000, annual dues of \$4,000, and a membership list that reads like a "Who's Who" publication. This one must have been exciting for the trustees, at least for a while, but eventually it got into financial trouble. That's when the trustees decided to sell the course to the club's members.

Henry Peters negotiated the transaction, not on behalf of the Bishop Estate, but on behalf of the buying members, of whom he was one. According to Peters, this was perfectly appropriate since he had "recused" himself from negotiating on behalf of the selling Bishop Estate. Disgruntled members have since sued the estate, alleging fraud, conflict of interest and breach of fiduciary duty.

The most recent Master's Report (made public in 1995) states that the estate had "\$44 million of write-offs and reserves for troubled investments for the fiscal year." To appreciate the magnitude and meaning of these losses, one must know that educational and other charitable expenditures for that year totaled just \$84 million. Just imagine what could have been accomplished with another 50 percent.

Buried in a footnote to the estate's 1996 financial statements (made public just two weeks ago): "During fiscal 1996, a study was conducted which necessitated a reduction in carrying value of . . . working interest investments

by \$21,015,037, which is net of taxes of \$13,436,000." This means the trustees were forced to acknowledge that investments in their deal-making subsidiary have gone down in value by \$34,451,037.

After some effort, we determined that this \$34 million loss is on top of the \$44 million write-off mentioned in the 1995 Master's Report. Bishop Estate financial statements are notoriously difficult to interpret, largely because the trustees have been slow to adopt generally accepted accounting principles and, in fact, still haven't completely done so. Besides rendering the statements unnecessarily hard to understand, this makes meaningful comparison to other organizations virtually impossible.

Seeing these huge losses is especially painful for those of us who last year watched as the trustees completely eliminated the estate's early education program, among others. We felt at the time that many of the decisions about which programs to keep, and which to cut, had been made more on the basis of personalities than merits. The trustees insisted that it all had to do with conserving resources but, to our knowledge, neglected to mention these staggering losses.

YUKIO, TOM AND THE BOYS

We are greatly disturbed that the trustees would hire Yukio Takemoto as their director of Budget and Review after he left the state as director of Budget and Finance under Waihee. This was in the wake of serious questions involving investments of the \$5 billion state Employees' Retirement System and a \$150,000 airport consulting contract that was increased to \$52 million without competitive bidding or outside review.

Here's how Oswald Stender has described the circumstances and consequences of Takemoto's hiring: "When Dickie indicated that he wanted to hire Yukio Takemoto for Gil Tam's old job, I told him I didn't think it was a good fit. That was true, but I also was thinking of the fact that Yukio had just left the state under a cloud.

"Besides, we already had some really good people on staff and I like to hire from within when possible. But as I raised these additional objections, Dickie got upset and said, hey, I've already hired him, so none of that matters.' It didn't take Yukio long to hire a bunch of 'his people.' Can you believe it, now he's got it up to 13 people and an operating budget of \$1.6 million.

"Already, I've spotted a few nonbid contracts involving Dura (Tom Enomoto's company) for over a million dollars each. Usually something like that would go out for a bid. It's the same kind of stuff they did when Yukio was director of the state budget."

AN OUTSIDE EXPERT'S THOUGHTS

Ed Halbach, the nation's foremost authority on the law of trusts and fiduciary duties, has this to say about the Bishop Estate: "I'm very troubled by what I've heard and read. The trustees appear to have a low total return and particularly a low income yield to be spent on the schools.

"This aspect of the estate's management needs to be thoroughly reviewed now, and periodically in the future, to determine current value of assets. Only then could someone ascertain the rates of income yield and principal growth, both of which need to be known in order to evaluate the critical matter of investment performance.

"At a minimum, when trustees rely on the active management of assets, as opposed to passive investing, they have a greater burden to justify the resulting increase in management and transaction costs. Furthermore, there's far more potential for patronage, unnecessary or unwise expenditures and that sort of thing than if they invested mainly in the stock market for example.

"On the other hand, the performance and integrity of the investment programs of some other trusts show that properly managed active investment and development of property can pay off well. The attorney general needs to find a way to look into these aspects of management periodically to determine overall investment performance and efficiency.

"It's entirely conceivable that the estate is not effectively serving its charitable purpose. The mere fact that it funds the school doesn't immunize it from IRS scrutiny. I cannot help but wonder if the estate is generating the income that it should, and if all of the properly determined trust accounting income is being spent for the school as directed by the terms of the princess' will.

"As an outsider, it's hard for me to understand why the people of Hawaii, not to mention its public officials, haven't been more concerned about all of these matters."

RECENT ACTION IN NEW YORK

Adelphi University, like the Bishop Estate, is a nonprofit educational organization that enjoys various public benefits such as tax-exempt status. Last year, an irate group of faculty, students, alumni and former trustees of Adelphi accused the current trustees of neglect of duty, misconduct and failure to carry out the educational purposes of the school. Allegations included failure to implement an educational plan, conflict of interest and excessive compensation to the school's president (\$837,113).

On Feb. 5, after an investigation, the state agency that oversees educational organizations removed 18 of the school's 19 trustees and referred the case to

the state attorney general to determine if additional civil proceedings against the trustees are in order. The ousted trustees included an educator and former speaker of the state legislature.

Less than two months later, the attorney general filed a lawsuit "to hold (the former trustees) financially accountable for mismanagement of assets and violation of fiduciary duties." One of the attorneys close to the matter has stated that this case awakened the public to "the high degree of care, diligence and loyalty required of trustees of nonprofit educational institutions."

If it can happen in New York, why not in Hawaii?

CONCLUSION

Hawaii has a tradition of tolerance and quiet acceptance of others. In the island way, it often is considered disruptive—even rude—to speak out. So silence is understandable.

But we recently were moved by Kamehameha President Michael Chun's remarks to this year's graduating class: "As I look at you now, I see a maturity that allows you to recognize problems when you see them, and a determination to be a part of their solution. You are willing to speak up and take risks. You are ready to stand by the people and the institutions in which you believe. And for this, I am forever proud of you."

By demanding accountability now, the community can illustrate to all the keiki o ka aina the true meaning of these inspiring words.

STEPS TO REGAIN THE TRUST

Recommendations made by the authors of this article:

1. The Bishop Estate trustees should draft and widely distribute a strategic plan with clearly stated vision, goals and objectives for both protection of the endowment and operation of Kamehameha Schools. The planning process should be marked by openness and a genuine interest in input from those individuals most directly affected by the legacy of Princess Bernice Pauahi Bishop.
2. The state attorney general, and the Supreme Court justices, if they elect to participate, should authorize a blue-ribbon panel of community leaders to develop written criteria and procedures for the selection of future Bishop Estate trustees.
3. The state attorney general immediately should begin a comprehensive review of trustee conduct and trust performance in recent years, with respect to both operation of Kamehameha Schools and management of the Bishop Estate endowment. If the trustees do not cooperate fully, a

lawsuit should be filed and subpoenas issued. If it is determined that one or more trustees have violated a fiduciary duty, such trustee or trustees should be held personally accountable for any damages and, if the violations were serious or repeated, removed from office.

4. The term of appointment for trustees of charitable trusts should be limited to a fixed number of years, with no expectation of reappointment. These are supposed to be public institutions, not personal fiefdoms.
5. The Hawaii state Legislature should repeal the current statutory scheme for determining trustee compensation (with respect to all trusts in Hawaii), and replace it with a statute providing for reasonable compensation, as is prevalent in other states. This already is the law in Hawaii with respect to the administration of private estates, and there is no reason to have a different rule for trustees of trusts, especially charitable trusts.
6. The Legislature also should appoint and adequately fund an independent watchdog (perhaps patterned along the lines of the legislative auditor) whose sole function is to regularly monitor the performance of all charitable trusts in Hawaii.

