APPENDIX A

This appendix contains a more expansive description of the findings and conclusions in the following sources: Judge Weil's Findings of Fact and Conclusions of Law with Respect to Judge Weil's Order Reaffirming the May 6, 1999 Order Granting the Petition for the Removal of Trustee Marion Mae Lokelani Lindsey (June 10, 1999); Patrick Yim's Final Report of Fact Finder (December 4, 1997); The Report of the Visiting Committee of the Western Association of Schools and Colleges, March 9-12, 1998; and Court-Appointed Master Colbert M. Matsumoto's Consolidated Report on the 109th, 110th, and 111th Annual Accounts of the Trustees (August 7, 1998) and Master's First Supplemental Report on the 109th, 110th, and 111th Annual Accounts of the Trustees (September 29, 1998). With respect to Master Matsumoto's Reports, page number references are to the Master's Consolidated Report; section number references are to the Master's First Supplemental Report. This Appendix does not present the facts on a source-by-source basis, but rather according to how they substantively relate to what we anticipate would be the Service's litigating position.

In addition to the sources cited in our opinion letter, we also make occasional reference to the following additional sources, to the extent that they are relevant to what we anticipate would be the Service's litigating position, and to the extent that they are not duplicative of the findings in the sources listed above: Cambridge Associates, Inc.'s Kamehameha Schools/Bishop Estate Strategic Asset Allocation Plans, (March 12, 1996 and September 16, 1997); Peterson Consulting's Kamehameha Schools/Bishop Estate Evaluation Report (June 30, 1998); and Arthur Andersen's Management Audit Findings Report (July 1998).

I. The Lead Trustee System

The Incumbent Trustees employed a lead trustee system, which essentially divides responsibility for the Estate's affairs into various subject areas and designates one KSBE Trustee to provide oversight with respect to his or her appointed area. (Yim at § VI.C.) At the time of Trustee Lindsey's appointment as a KSBE Trustee on February 26, 1993, the other serving KSBE Trustees were Henry Peters, Oswald Stender, Myron Thompson, and Richard S.H. Wong. (Weil at 2, ¶ 1.) Gerard A. Jervis replaced Trustee Thompson as a KSBE Trustee on December 1, 1994. (Weil at 2, ¶ 1.) Within six months of her appointment, Trustee Lindsey was designated lead trustee for Education Affairs, which essentially consisted of the oversight of the Kamehameha Schools. (Weil at 4, ¶ 9; Yim at § VI.C.) Trustee Peters was the lead trustee for Asset Management, Trustee Wong was the lead trustee for Governmental Affairs, and Trustee Stender was assigned "special responsibility for specific investments," but otherwise had no specific oversight responsibilities. (Weil at 4-5, ¶ 10; Yim at § VI.C.) On his appointment to the Board, Trustee Jervis became the lead trustee for Legal Affairs. (Weil at 4, ¶ 10; Yim at § VI.C.)

The lead trustee system employed by the Incumbent Trustees was fraught with inherent systemic flaws. (Yim at § VI.D.; Matsumoto at 107.) Although it was understood among the Incumbent Trustees that final decision-making authority rested with the full Board, the Board failed to adopt any guidelines or criteria as to how specific oversight was to be exercised by the lead trustees. (Yim at §§ VI.D and VII.C.; Matsumoto at 105-6.) There was also no procedure for holding individuals accountable. (Matsumoto at 105.) The Incumbent Trustees were reluctant to review performance of lead trustees in an objective and appropriate manner. (Matsumoto at 110.)

Consequently, each lead trustee exercised broad, *ad hoc*, decision-making power over his or her area and each carried out his or her responsibilities in their assigned area in a highly individualistic manner. (Yim at § VI.D.; Matsumoto at 105-6.) This created confusion among the KSBE staff as to whether the actions of an individual Incumbent Trustee represented individual actions or decisions approved by the full Board. (Yim at §§ VI.D and VII.B.; Matsumoto at 106.) When clarification of a requested or demanded action was sought, there was a reluctance or refusal by the Incumbent Trustees to put responses in writing, which meant that directives were, for the most part, issued verbally. (Yim at § VI.D.; Matsumoto at 106.) Although consensus decisions were recorded in the KSBE Board minutes if and when they were actually discussed by the Incumbent Trustees, dissents were not. (Yim at § VI.E.)

The lead trustee system contributed to a climate of confusion and often led to misunderstandings, misdirections, miscommunications, misperceptions, and frustration on the part of those staff members charged with responsibility for implementing the Board's actions. (Yim at §§ VI.D and VII.B.; Matsumoto at 106-7.) The lead trustee system was inappropriate for a Board of Trustees to adopt as a means of oversight for the Kamehameha Schools. (Yim at § VII.B; Matsumoto at 111.) Based on its management audit, Arthur Andersen concluded that the lead trustee system of governance "weakened leadership and destroyed professional morale leaving a perceived leadership vacuum and lack of management procedures responsive to the needs of the staff." (Arthur Andersen Report at 28; WASC Report at 16.)

II. Trustee Lindsey's Conduct as Lead Trustee for Education

Operating within this lead trustee system, Trustee Lindsey carried out her role as lead trustee for education according to a flawed perception of the role and duties of a trustee of an independent private school. (Weil at 63, ¶ 201.) Trustee Lindsey mistakenly viewed her role as a KSBE Trustee to be no different than that of a CEO or superintendent of a public school district. (Weil at 63, ¶ 201.) The role of a public school superintendent, or of a CEO, however, is equivalent to the role of a private school president, which is supposed to be different from the role of the trustee. (Weil at 63, ¶ 201 n.10.) According to KSBE policy, and consistent with principles of good practice for independent private schools, Trustee Lindsey's role as lead trustee for education was to act as a facilitator between the Board and the Education Group, thereby enabling the full Board to set policy for the Kamehameha Schools. (Weil at 37-38, ¶ 117.)

Contrary to KSBE policies and applicable principles of good practice, however, Trustee Lindsey became involved in specific management, personnel, and curricular issues of the Kamehameha Schools and thereby interfered with the operational and management decisions of the Education Group. (Weil at 37, ¶ 116; 48, ¶ 148; 78, ¶ 249; Peterson Report at 18; Matsumoto at 107.) Trustee Lindsey bypassed the chain of command within the Schools on a regular basis. (Weil at 77, ¶ 243; Yim at § VII.D.) By giving directives to administrative staff who would normally report to the president of the Schools, Trustee Lindsey caused confusion in the administration of the Schools and undermined the president and the established hierarchy of the Education Group. (Weil at 77, ¶ 243; 79, ¶ 251; 181 at ¶ 25; Yim at §§ VI.F. and VII.D.) Without regard for the impact of this intervention on staff and students, Trustee Lindsey also interfered with the day-to-day operation of the Schools by: (1) making unscheduled, unannounced visits to classrooms during class time (Weil at 159, ¶¶ 486-87; Yim at § VII.Z.); (2) intervening with coaches and teachers on behalf of her grandson (Weil at 162-63; ¶¶ 493-498); (3) becoming directly involved in student discipline issues, rather than asking the president to investigate the matter and get back to the Board with an explanation (Weil at 171, ¶ 524; Yim at § VII.H.); (4) publicly reprimanding teachers and staff (Yim at § VII.O.); and (5) along with Trustee Jervis, undermining the Kamehameha Schools' "zero tolerance" policy as to drugs and theft by intervening on behalf of students who were either relatives or children of friends (Yim at § VII.G.). Trustee Lindsey's inappropriate use of her authority resulted in "management by intimidation." (Yim at § VII.P.)

By disregarding the proper chain of command, Trustee Lindsey diminished the effectiveness of President Chun and effectively stripped him of the authority to run the Schools. (Weil at 78, ¶¶ 247-48.) Trustee Lindsey's actions violated the fundamental principle of good practice for an independent school trustee that gives the trustee the responsibility to support the school and its head and to demonstrate that support within the community. (Weil at 78, ¶ 248.) Trustee Lindsey's undermining of the president of the Schools created hostility between the Incumbent Trustees and the Estate's beneficiaries, and caused extreme confusion among virtually all subordinates, including teachers, students, support staff, and alumni—all of which interfered with the proper administration of the Kamehameha Schools. (Weil at 186, ¶ 36; Yim at § VII.D.; Matsumoto at 112.) This situation was exacerbated by Trustee Lindsey's special relationship with certain staff members, who by virtue of this special relationship were permitted to exercise power and influence beyond their level of actual authority, thereby creating an environment of control, favoritism, and oppressiveness, and blurring the lines of authority at the Schools. (Yim at §§ VII.K. and N.) The duties, responsibilities, and functions of the president were further undermined by the sense of "direct supervision" of the Schools by the Incumbent Trustees that was created by the physical existence on campus of an office for the Incumbent Trustees and a parking stall. (Yim at § VII.E.) Trustee Lindsey's actions, which disenfranchised, ignored, and failed to empower faculty and staff, were the "igniting spark" for the decision of the Kamehameha Schools teachers to unionize in March of 1998. (Weil at 158, ¶ 484; WASC Report at 23.)

Trustee Lindsey's interference with the operation and management of the Kamehameha Schools went as far as micromanagement of issues and activities that were inappropriate for trustee involvement. (Yim at § VII.J.6.) For example, she insisted on reviewing and approving all external school communications such as programs, fliers, and T-shirt designs. (Weil at 68-69, ¶ 213; Yim at VII.J.) Her review included such matters as writing style, design, spelling, syntax, and formatting. (Yim at § VII.J.3.) Before Trustee Lindsey's involvement, approval of such school communications was handled by department heads and the Dean of Student activities. (Weil at 69, ¶ 215.) Trustee Lindsey's review of communications resulted in needless anxiety, frustration, and disappointment on the part of teachers, staff, alumni, parents and students, undermined student and faculty confidence in their ability to complete tasks on time, and caused additional costs to be incurred on occasion. (Weil at 70, ¶ 216; Yim at §§ VII.J.5. and 6.) Moreover, since her appointment as lead trustee for education, the Board allowed Trustee Lindsey to assume final authority on all Kamehameha Schools hiring, which authority she exercised. (Yim at § VII.F.; Weil at 73, ¶ 230; 76, ¶ 239.) Trustee Lindsey's review of communications and her insistence on reviewing in detail all aspects of the hiring process resulted in many delays, which had a detrimental effect on students, staff, and the School itself. (Weil at 66-75, ¶¶ 205-236; Yim at §§ VII.F. and J.4.) Trustee Lindsey's micromanagement of the Kamehameha Schools contributed to the dysfunctional governance of the Schools and the resulting public controversy and hostility in the community. (Weil at 83, ¶ 267; 148, ¶ 453.)

Public controversy surrounding the Schools, and community hostility toward the Incumbent Trustees regarding their mismanagement of the Schools, were intensified by Trustee Lindsey's release of her biased, inaccurate, and incomplete report of educational quality and personnel at Kamehameha Schools. (Weil at 181, ¶ 25.) At the time she released her educational report, Trustee Lindsey knew it would damage the reputation of the Kamehameha Schools; before her unilateral decision to release the report, she emphasized to her fellow Incumbent Trustees the need to keep it strictly confidential. (Weil at 100-101, ¶¶ 315-22; 181, ¶ 25.) The report was unbalanced, failed to incorporate all of the available performance information that would have provided balance, cited as problems matters already resolved by the Board, contained inaccurate, damaging statistics on student performance, and alleged improprieties by President Chun and his wife. (Weil at 113, ¶ 350; 117-44, ¶¶ 363-444.) The release of the document before receiving or considering President Chun's response, who along with his wife was personally attacked by the report, broke the most fundamental rules of fairness. (Weil at 113, ¶ 350.) Her deliberate release of the highly critical report, one day after releasing a panicked response to the Yim report, and without logical explanation, was an imprudent, self-interested decision that she knew risked harm to Kamehameha Schools personnel, students and reputation. (Weil at 113, ¶ 349; 183, ¶ 28.) Despite the damage caused by Trustee Lindsey's education report, as of May 1999, the Board had still not formally considered the contents of her report or President Chun's responses. (Weil at 112, ¶ 347.)

According to KSBE policy, which requires decisions by majority vote, and according to applicable principles of good practice, authority for major decisions with respect to the Schools is vested in the Board as a whole. (Weil at 2, ¶ 2.) A trustee who learns of an issue facing the Kamehameha Schools has an obligation to bring it to the attention of the head of the Schools, or to the Board Chair, but must not deal with the situation individually. Trustee Lindsey, however, unilaterally made major decisions concerning the management and operation of the Kamehameha Schools, which should have been brought to the attention of the full Board. (Weil at 41-63, ¶¶ 125-200.) These major decisions included: (1) mandating that secondary and elementary school curricula be changed, without allowing sufficient time in which to change it, and without providing reasonable instructions as to how it was to be done, which occasioned numerous revisions (Weil at 42-49, ¶¶ 127-48; Yim at § VI.I.); (2) changing the school schedule from a trimester to a quarter system (Weil at 49-50, ¶¶ 149-56); (3) deciding, without the input of the Kamehameha Schools' experienced Hawaiian language department, that faculty must teach only "traditional" Hawaiian language and confine the teaching vocabulary to words in the Pukui-Elbert dictionary (despite the fact that Trustee Lindsey knew nothing about the study of the

Hawaiian language) (Weil at 51-56, ¶¶ 157-72; Yim at §§ VII.J.4. and S.); (4) expending funds from the Kamehameha Schools' staff development budget on two sessions of the Shintani diet, in both of which she participated (Weil at 56-61, ¶¶ 174-93); (5) releasing funds from escrow in connection with the purchase of the Baker-Van Dyke collection (Weil at 55-56, ¶ 173; Yim at VII.DD.); and (6) disapproving plans and ending work on the Hawaiian Cultural Center project (Weil at 61-63, ¶ 200).

As with other instances of Trustee Lindsey's interference with the management of the Kamehameha Schools, these unauthorized unilateral actions led to public controversy and hostility. (Weil at 83, ¶ 267.) Trustee Lindsey converted her authority as lead trustee for education to investigate matters at the Kamehameha Schools into one of control over major education decisions, inserting herself as a separate and independent decision-maker between the President of Kamehameha Schools and the Board. (Weil at 178, ¶ 17.) She held a de facto veto over school operational, budgetary, and policy matters intended for decision by the full Board and exercised that de facto power without consulting or informing other Incumbent Trustees. (Weil at 178, ¶ 17.)

In part, Trustee Lindsey applied to the Kamehameha Schools the assumptions, testing and teaching methods, curricula formats, management style, and philosophy that had brought her success as a district superintendent of public schools for the Maui district. Trustee Lindsey had no experience, however, with private schools when she was appointed to serve as a KSBE Trustee. (Weil at 4, ¶ 6). Following her appointment as lead trustee for education, Trustee Lindsey did not attend trustee education workshops or other workshops sponsored by the Hawaii Association of Independent Schools to learn about the proper role of a trustee for an independent private school. (Weil at 39, ¶ 120.) She was ignorant of theories taught in introductory education research courses, such as the theory of regression to the mean. (Weil at 129, ¶ 398 n.27.) Although she claimed to have special skills as an educator, she acted contrary to the manner in which such expertise would be exercised. (Weil at 181, ¶ 25.) Moreover, she failed to recognize the inappropriateness and ineffectiveness of those educational skills she did possess as applied in the new and different context of the Kamehameha Schools. (Weil at 181, ¶ 25.)

When applied to Kamehameha Schools—a significantly endowed, world class private school with a unique mission and college preparatory standards, faculty, and staff—Trustee Lindsey's prior experience became a crippling limitation rather than an asset. (Weil at 63-65, ¶ 201.) Her approach to her duties was ineffective, inappropriate for a private school community, and led her to violate fundamental principles of good practice. (Weil at 65-66, ¶ 204.) Her top-down approach promoted mutual disrespect between her and the faculty and staff of the Kamehameha Schools. (Weil at 65, ¶ 201; Yim at § VII.CC.) Hostility between Trustee Lindsey and the faculty, staff, students, and alumni of the Kamehameha Schools was extensive, pervasive, and interfered with the proper administration of the Estate. (Weil at 186, ¶ 36; Yim at § VII.BB.) Her flawed perception as to her proper role as a trustee, combined with the Board's designation of her as lead trustee for education, had tragic consequences for the ability of the Kamehameha Schools to carry out KSBE's educational mission. (Weil at 63, ¶ 201.)

Despite the detrimental effect of Trustee Lindsey's actions on the Kamehameha Schools, Trustees Wong and Peters opposed the petition by Trustees Stender and Jervis to have Trustee Lindsey removed. (Weil at 1.) Notwithstanding the opposition of Trustees Wong and Peters, Judge Weil held that Trustees Stender and Jervis demonstrated by clear and convincing evidence that Trustee Lindsey should be removed because: (1) she failed to act and to administer the trust solely in the interest of the trust and its beneficiaries—the Kamehameha Schools; (2) she failed to inform her fellow Incumbent Trustees of all material facts relating to the administration of the trust and made unilateral decisions without the knowledge or approval of her fellow Incumbent Trustees; (3) she used Estate property and personnel for her personal benefit; and (4) she mismanaged Estate property and the Kamehameha Schools. (Weil at 190, ¶ 44.) Her actions constituted breaches of the duty of loyalty, the duty to comply with the trust instrument, the duty of due care, and the duty to exercise sound discretion. (Weil at 190, ¶ 44.) Consequently, effective May 6, 1999, Judge Weil removed Trustee Lindsey as a KSBE Trustee. (Weil, Order Reaffirming May 6, 1999 Order Granting Petition for Removal of Trustee Marion Mae Lokelani Lindsey.)

III. The Incumbent Trustees' Response to Trustee Lindsey's Actions

The Incumbent Trustees acquiesced in Trustee Lindsey's oversight of the Kamehameha Schools, and were either inexplicably oblivious to or ignored the specific actions of Trustee Lindsey that impacted negatively on the administration of the Schools. (Yim at §§ VI.F. and VII.A.) A number of Trustee Lindsey's actions were or should have been known to her fellow Incumbent Trustees. (Yim at § VII.T.) Given the problems on the campus, the Board knew or should have known that Trustee Lindsey was engaged in actions that were detrimental to the Kamehameha Schools and reflected poorly on the Board. (Yim at § VII.T.) It is inconceivable that her fellow Incumbent Trustees acting in concert could not find out what Trustee Lindsey was doing on campus. (Yim at § VII.T.) "Though the alarms were being sounded by the actions of one of the Trustees [Trustee Stender], the others either ignored it, or failed to grasp the consequences of it." (Yim at § VII.T.) Moreover, there were actions by the full Board that also contributed to the hostile environment at the Kamehameha Schools. (WASC Report at 17.) For example, the Incumbent Trustees decided to change multi-year faculty contracts to one-year contracts and delayed tendering teacher contracts until approximately two weeks prior to the commencement of instruction at the Schools. (WASC Report at 17; Yim at § VII.W.) This action constituted the exercise of a subtle form of control over the teachers and contributed to the fostering of the hostile environment at the Schools. (Yim at § VII.W.)

Trustee Stender had raised concerns about the management of the Schools on various occasions dating back to 1994, but these concerns were ignored by the Board. (Weil at 112, ¶ 347 n.22.) By April of 1997, however, the morale problem and the issues raised by Trustee Lindsey's micromanagement of the campus had reached such a head that Trustee Stender insisted that the problem be addressed immediately. (Weil at 84-85, ¶ 273.) Trustee Stender recommended to the Board that the management of the Schools be returned to the president and his staff, but the Board took no action on this recommendation. (Weil at 85-86, ¶¶ 273 and 276.) Finally, in May of 1997, the hostility and unrest created by Trustee Lindsey's mismanagement of the Kamehameha Schools culminated in the Board's petition to the Probate Court for the appointment of a Fact Finder to investigate problems at the Schools and problems with the community. (Weil at 89, ¶ 287.) In the court order empowering retired Judge Patrick Yim to act as a fact finder, it was necessary to include a confidentiality guarantee to respond to issues of confidentiality and fear of retaliation raised by faculty, staff, alumni and students. (Weil at 92, ¶ 294.)

Judge Yim met with the Board on November 10, 1997, to discuss the recommendations that his report would contain. (Weil at 93, ¶ 297; Yim at § VII.II.) Specifically, the recommendations discussed were: (1) the inappropriateness of the practice of having a lead trustee for education; (2) the need for Trustee Lindsey to immediately relinquish her oversight of the Education Group; and (3) the advisability of the Incumbent Trustees engaging an organization or foundation above reproach and beyond KSBE's influence to independently conduct an audit of both the management and the educational components of the Kamehameha Schools to determine strengths and weaknesses of, and make recommendations for improving, the Education Group. (Weil at 93, ¶ 297; Yim at § VII.II.) Despite subsequent urgings by Trustees Stender and Jervis, Trustees Lindsey, Wong, and Peters vehemently rejected Judge Yim's recommendation to mediate these matters and decided to resolve them internally rather than through court filings. (Weil at 95, ¶ 301.) Trustee Lindsey did not relinquish her role as lead trustee for education until after Judge Yim filed his report on December 4, 1997. (Weil at 94, ¶ 300.)

The Probate Court adopted Judge Yim's recommendation that the Incumbent Trustees be required to engage an educational consultant to perform an evaluation of the Schools. (Weil at 135, ¶ 418 n.32.) Trustees Lindsey, Wong and Peters, at Trustee Peters' recommendation, chose Peterson Consulting, LLC ("Peterson") to undertake the study. (Weil at 135, ¶ 418 n.32.) The majority Incumbent Trustees selected Peterson to perform the study over the objections of Trustees Stender and Jervis, who preferred instead to engage more recognizable educational consultants, such as Stanford University, UCLA, or Booz-Allen & Hamilton. (Weil at 135, ¶ 418 n.32.) Peterson conducted a comprehensive evaluation of the KSBE Education Group and the Kamehameha Schools, pursuant to which Peterson made 99 factual findings and 151 recommendations regarding the management, organization, and educational programs of Education Group and the Schools. (Peterson at 1.) The Peterson Report cited examples where the Incumbent Trustees violated principles of good practice and demonstrated poor judgment through their lack of public support for the President, faculty, and institution. (Peterson Report at 16.) The Peterson Report states that President Chun "lacks the educational background and leadership skills the Schools need to take them successfully into the next century," but notes that his last performance appraisal was conducted in 1997, pursuant to which he received only verbal comments from Trustee Lindsey (not the full Board), who told him that his performance "was considered below expectations." (Peterson Report at 17-18, 22.) The Peterson Report states that since this review, the Board has "failed to provide [President Chun] with anything in writing for his response or indicated how he should improve his performance." (Peterson Report at 22.)

The Incumbent Trustees' governance of Kamehameha Secondary School ("KSS") was sharply criticized in the 1998 Accreditation Report issued by the Western Association of Schools and Colleges ("WASC"). (Weil at 147, ¶ 451.) The WASC Report notes that "[f]or many months preceding the visiting committee's service at Kamehameha, the [Incumbent Trustees] were in a swirl of public controversy regarding budgets, expenditures, governance, relations with personnel, programs and oversight." (WASC Report at 4.) The WASC Visiting Committee "endeavored to focus its professional attention on student learning and the professional climate within the school, intending to avoid the external political struggle among the [Incumbent Trustees] and other elements of the school and greater community." (WASC Report at 4.) The WASC Visiting Committee did not succeed in this endeavor, however, "because the school's self-study and the visiting committee's evidence gathering revealed that the governance issues permeated the school's entire operations." (WASC Report at 4.) The WASC Report also notes that KSS's self-study of governance "was complicated by the lack of trustee involvement in the process." (WASC Report at 16.) Although the nature of KSS and the governance role of the Incumbent Trustees made participation by the Incumbent Trustees in the self-study process "essential," the Incumbent Trustee [Trustee Lindsey] who was invited to serve on the focus group addressing organization for student learning "declined to serve." (WASC Report at 12.)

Although the report generally praised the quality of KSS's programs and the professionalism and commitment of KSS's "highly qualified, dedicated, and conscientious staff" to the students, the report described the Incumbent Trustees' form of governance as "a perverse application of top-down decision-making which has openly undervalued, if not scorned, the professional expertise, talent, and commitment of the non-administrative staff." (WASC Report at 16 and 19; Weil at 146, ¶ 450; 147, ¶ 451.) According to the WASC Report, the self-study and related documentation provide many examples of "top-down decisions" made by the Incumbent Trustees "without adequate knowledge of the consequences of these decisions or their impact on the on-going responsibilities of faculty and their use of time." (WASC Report at 17.) In particular, the WASC Report cited seven Incumbent Trustees decisions which negatively affected KSS: (1) Trustee Lindsey's mandate to use only those Hawaiian words in the Pukui-Elbert Dictionary, to the exclusion of words in the modern Hawaiian language; (2) the Board's non-recognition of administration and staff planning efforts in the early 1990s; (3) Trustee Lindsey's suddenly mandated curriculum project while the faculty was in the middle of self-study work required for WASC's review of KSS; (4) a suddenly mandated change in KSS's standardized testing program without consultation with faculty; (5) appointment of an extra administrator as an additional management layer between the president and KSS administrators; (6) purchase of an expensive collection of Hawaiiana (the Baker-Van Dyke Collection) for the library without consulting the staff or considering other financial priorities after Trustee Stender had judged the collection to be duplicative and not worth the investment; and (7) Trustee Lindsey's involvement in such minutia as T-shirt designs and communications between KSS and constituents. (WASC Report at 17; Weil at 147, ¶ 451.)

The WASC Report further notes that there is a "documentable lack of congruence between several of the Hawaiian values espoused by the Board ... and elements in governance and decision-making," notably with regard to "Pono" (to be moral and proper), "Laulima" (to work cooperatively), "Na`au Pono" (to possess a deep sense of justice), and "Malama" (to care for each other). (WASC Report at 23.) The faculty regarded the Incumbent Trustees' incorporation of such values into the Mission Statement of the Schools with "cynicism," because "they do not see these values represented in governance and decision-making." (WASC Report at 15.)

The result of the Incumbent Trustees' approach to school governance was "an oppressive, intimidating, and fearful professional climate at the school." (WASC Report at 16; Weil at 147, ¶ 451.) More specific "results of the [Incumbent Trustees'] dysfunctional governance and decision-making" that the WASC Report found to be "documentable" include: (1) "[s]choolwide confusion over roles and responsibilities of the Board, administration, and faculty"; (2) "[d]elayed, unwieldy responses to issues and problems when they arise"; and (3) the placing of mid-level administrators in the "untenable position" of "having to enforce some top-down decisions they themselves do not understand and cannot justify." (WASC Report at 17-18.) The governance issues raised in the WASC Report precipitated a reduced period of accreditation of three years—from the six-year period that KSS had received since 1975—and prescribed a follow-up self-study in the areas of governance and decision-making. (Weil at 157, ¶ 479.)

The investigation by the majority Incumbent Trustees (*i.e.*, Trustees Lindsey, Wong, and Peters) into the subsequent disclosure of the WASC Report to the public was a significant waste of KSBE assets that produced additional ill will on the campus and reduced campus morale. (Weil at 156, ¶ 478.) The majority Incumbent Trustees authorized private counsel William McCorriston to investigate the release of the WASC Report. (Weil at 150, ¶ 458.) Trustees Stender and Jervis felt the investigation was inappropriate because the release of the WASC Report caused no discernible harm to KSS and glowingly praised the KSS's performance. (Weil at 150, ¶ 458.) In the presence of a court reporter, attorneys from the McCorriston firm questioned KSS employees, who were not represented by counsel, regarding the release of the WASC Report. (Weil at 151, ¶ 460.) Interviewees were asked whether they would submit to a polygraph test. (Weil at 151, ¶ 460.) After Trustee Jervis ordered that the questioning be stopped, Trustees Lindsey, Wong, and Peters voted to continue the investigation with the assistance of McCorriston, with Trustees Stender and Jervis dissenting. (Weil at 152, ¶ 465.) After reiterating their objection to the pursuit of the WASC investigation, Trustees Stender and Jervis filed for a temporary restraining order, which was granted by the First Circuit Court. (Weil at 153-4, ¶¶ 467-69.) After the Probate Court issued the temporary restraining order, the Incumbent Trustees agreed that the use of the McCorriston firm would be discontinued and the investigation would be continued using KSBE's in-house staff. (Weil at 154, ¶ 470.) Trustees Lindsey, Wong, and Peters subsequently expanded the scope of the investigation, however, to include an inquiry into whether faculty and campus staff had manipulated students to sign a petition in support of the Attorney General's petition to remove all five Incumbent Trustees. (Weil at 155, ¶ 474-75.)

The initial method of conducting the WASC investigation, using the McCorriston firm, fueled controversy on the campus and caused morale problems. (Weil at 154, ¶ 471.) The subsequent investigation of the student petition did not promote any legitimate KSBE interest. (Weil at 156, ¶ 478.) The investigations were mandated to suppress critics of the Incumbent Trustees, the motivations behind them were wholly self-interested, and they were conducted to the detriment of the Estate's beneficiaries. (Weil at 156, ¶ 478; 183, ¶ 28.) The alacrity with which the majority Incumbent Trustees acted to investigate the student petition situation, along with the diligence they showed in trying to discover the individuals who leaked the WASC Report, contrasts sharply with their failure to actively address in any Board meeting or in any other meaningful way the many substantive issues regarding education and presidential leadership at the Kamehameha Schools. (Weil at 156, ¶ 478.)

IV. The Incumbent Trustees' Conduct with Respect to Financial and Educational Planning for the Schools

The Arthur Andersen Report notes that the documentation reviewed in the course of the management audit of KSBE "seems to suggest that the Trustees spend minimal meeting time on the Estate's educational activities—its tax-exempt purpose." (Arthur Andersen Report at 285.) According to the Arthur Andersen Report, educational strategic planning since 1960 "has been performed sporadically and on a piecemeal basis." (Arthur Andersen Report at 12.) From 1992 to July 1997, the Incumbent Trustees failed to adopt an education strategic plan. (Weil at 141, ¶ 434.) Kamehameha Schools completed an education strategic plan in 1992, which was submitted by President Chun to the Board for approval, but was not acted on or approved. (Weil at 137, ¶¶ 423-24; Matsumoto at 91-92; WASC Report at 10.) The Board members at that time explained to school administrators that they were deferring action because three new KSBE Trustees (*i.e.*, Wong, Lindsey, and Jervis) would be appointed in the next few years. (Weil at 137, ¶ 424.) With the exception of planning for the *Go Forward* expansion program, planning for the existing schools was left de facto to school staff and administration. (Weil at 138, ¶ 426; 141, ¶ 434.) The Arthur Andersen Report observes that the Incumbent Trustees' "practice of fragmented strategic planning does not clearly support [the Estate's educational] mission." (Arthur Andersen Report at 57.)

In June of 1996, the Board instructed President Chun to prepare another strategic plan, but an unreasonable deadline for the completion of the plan, and a lack of guidance as to the particulars of what the Board expected in the strategic plan, doomed its completion from the outset. (Yim at § VII.R.) Despite the unreasonable time constraints and lack of guidance, President Chun ultimately developed a strategic plan with the assistance of Dr. Richard Kosaki and Ms. Mildred Kosaki, two highly respected educators in Hawaii, which was rejected by the Board as being "inadequate." (Weil at 139, ¶¶ 428-29; 140, ¶ 431; Yim at § VII.R.) Instead, in July 1997, a team led by Trustee Lindsey developed the "Kamehameha Schools' Strategic Education Plan." (Peterson Report at 48.) This team included the KSBE Principal Executives, President Chun, and other key administrators, but "the Schools' faculty and staff did not actively participate in the development of this plan." (Peterson Report at 48; WASC Report at 43.) The Peterson Report concluded that the failure to include these stakeholders in the development of this plan will make its implementation difficult "because of inaccurate estimates, overlooked work, or lack of commitment." (Peterson Report at 49.) In addition, the Peterson Report concluded that "the Education Strategic Plan will be resisted because the [Incumbent] Trustees demonstrate no ownership [of] or commitment to the goals" specified in the plan. (Peterson Report at 50; Weil at 142, ¶ 436 n.36.) The decision to exclude faculty and staff from the 1997 educational strategic planing process "was a ringing message to faculty that they had no valuable vision, ideas, or expertise to contribute to the planning process." (WASC Report at 17.)

Although the Estate enjoyed significant appreciation in its net assets from fiscal years 1994 to 1996, education program expenditures (which include both direct and indirect education expenses for all education programs, including scholarship and financial aid) remained relatively level at $91,141,305, $102,408,296, and $99,819,224, for fiscal years 1994 through 1996, respectively. (Matsumoto at 17-18 and 18 n.6.) The Peterson Report notes that the Incumbent Trustees directed the Education Group to budget on a "zero growth" basis for the 1995-96 through 1997-98 school years. (Peterson Report at 40.) The WASC Report cites the zero growth budget as "an area of concern," because it "prohibits staff from planning ahead and from including equipment needs." (WASC Report at 43.) Consequently, "[i]n view of increased enrollment and inflation, departments may have to forgo some learning resource needs in order to operate within allocated amounts." (WASC Report at 43.) The Peterson Report found that the budget in fact had not "kept pace with enrollment," which is consistent with Cambridge Associates' 1996 conclusion that "projected School operating expense growth may be conservative based on projected enrollment expansion." (Peterson Report at 40; Cambridge Report (1996) at 6.)

According to the Will of Princess Bernice Pauahi Bishop, the annual income of the Trust is to be expended on the maintenance of the Schools. (Matsumoto at 27-8.) Thus, maintaining the distinction between the corpus account and the income account is critical to the fulfillment of the express direction of the Will as to how its educational purpose is to be provided for. (Matsumoto at 27.) From 1992 until 1997, however, the Incumbent Trustees annually depleted the Estate's revenue account as of the end of the fiscal year and directed that the unexpended income balance in the revenue account be transferred to the corpus account. A zero unrestricted income balance in the revenue account was thereby maintained at the end of each fiscal year. (Matsumoto at 32.)

This practice of transferring income to corpus was unauthorized, improperly documented, and inadequately disclosed to the Probate Court during its review of the Estate's annual accounts. (Matsumoto at 33.) The method of accounting for income and corpus that the Incumbent Trustees purported to employ is suspect and undermined the ability of the Probate Court to properly exercise its oversight function with respect to the Estate. (Matsumoto at 33.) The extent of the accumulation of income—approximately $350 million by fiscal year-end 1997- raises a grave question regarding compliance with the Will's dictates regarding spending for education. (Matsumoto at 34.) Moreover, the Incumbent Trustees also established "replacement cost reserves" within the annual revenue accounts, which include amounts allocated for the replacement cost of facilities. (Matsumoto at 34.) Under the Will, these costs are properly chargeable to corpus. (Matsumoto at 34.) Thus, charging the revenue account for the replacement cost of existing facilities further limits the amount of unrestricted income available for the maintenance of the Schools. (Matsumoto at 34.)

In addition to the lack of an education strategic plan, the Incumbent Trustees lacked a clearly defined policy to guide them in expending Estate resources for educational purposes. (Matsumoto at 40.) Such a policy is fundamental to the development of a strategic plan for investments and educational expenditures. (Matsumoto at 40.) Since at least 1985, the Incumbent Trustees have been under specific direction from the Probate Court to plan for the expenditure of accumulated income for educational purposes consistent with the educational mission of the Estate. (Matsumoto at 37-38.) Notwithstanding this specific direction, the ten-year projections provided to the Master in connection with the strategic plan adopted by the Incumbent Trustees in 1997 did not so much as hint at planning for the expenditure of the substantial accumulated income balance held by the Estate. (Matsumoto at 39.) Even without taking into account the accumulated income balance as of fiscal year end 1997, the ten-year projections forecasted an accumulated income balance by the year 2006 in excess of one billion dollars after expenses related to the *Go Forward* initiative. (Matsumoto at 39 n.19.)

The *Go Forward* initiative, an educational expansion program designed to create neighboring-island campuses, was publicly announced by the Incumbent Trustees in April of 1995. (Weil at 81, ¶ 259.) As approved, *Go Forward* would add four new satellite elementary school campuses on the islands of Maui, Hawaii, and Oahu, expand the center-based preschool program to accommodate an eventual student enrollment of 1,840, and terminate almost all of KSBE's community outreach programs. (Weil at 80-81, ¶¶ 255, 256 and 259-60; Matsumoto at 85, 94-95.) Although touted as representing a bold new strategic vision for the Estate, there is no integrated planning document that clearly sets out the specific objectives of *Go Forward* and the analysis underlying the development of the initiative. (Matsumoto at 91.) Instead, *Go Forward* appears to be based on a disparate assortment of forty studies, surveys and reports. (Matsumoto at 91.) There is no contemporaneous documentation of the bases for the Incumbent Trustees' decisions with respect to either *Go Forward* or the cancellation of the community outreach programs. (Matsumoto at 71.) Critical and fundamental planning considerations were inadequately analyzed by the Incumbent Trustees. (Matsumoto at 97.) A financial model to estimate the operating and capital costs for the proposed satellite Schools was not developed by Ernst & Young until April 16, 1996—almost one year after *Go Forward* was announced. (Matsumoto at 95.)

Instead of hiring a strategic planning firm, the Incumbent Trustees decided to direct the strategic planning process leading up to *Go Forward* themselves and hired Dr. Paul Ahr and Ernst & Young, LLP to assist in the strategic planning process. (Matsumoto at 92.) The Incumbent Trustees did not seek input and comment regarding the strategic planning process from faculty, staff, or key management employees at the Kamehameha Schools, which led to frustration and disappointment on the part of staff members and employees. (WASC Report at 21; Matsumoto at 98.) There is no evidence that the Incumbent Trustees obtained the benefit of critical analysis by educational experts. (Matsumoto at 93.) Neither Dr. Ahr nor Ernst & Young had expertise in educational strategic planning; moreover, both denied claiming such expertise or that the scope of their engagement encompassed strategic planning services for the Incumbent Trustees. (Matsumoto at 91-92.) Dr. Ahr and Ernst & Young engaged in fact finding that produced two reports: one that established various financial measures for the cost-efficiency of various educational programs, and another that discussed improvement plans and exit strategies for the educational programs. (Matsumoto at 93.)

The *Go Forward* planning process was undertaken on a "budget neutral" basis, which meant that all planned programs, old and new, had to fit within the then-current annual direct educational expense budget of $55 million. (Matsumoto at 85.) In order to add new programs, such as the center-based preschool program, choices had to be made to eliminate or scale back existing programs. (Matsumoto at 85.) The Incumbent Trustees took this approach despite the fact that, in fiscal year 1994, when *Go Forward* was in its nascent stages, the Estate had an accumulated income balance of more than $316 million and the ten-year projections showed considerable additional surplus income projected during the initial ten-year period in which *Go Forward* was to be implemented. (Matsumoto at 85.) The decision to terminate the community outreach programs was based on a projected cost savings of $49 million from 1995-2002 and a projected severance cost of $5 million for phase out of those programs. (Weil at 81, ¶ 260.) Although Trustee Stender asked the other Incumbent Trustees to reconsider the termination of certain community outreach programs, including the summer school program, the adult education programs, the traveling pre-school program, the alternative education program, and financial aid for special needs students, the other four Incumbent Trustees refused. (Weil at 138, ¶ 426 n.34.)

The demise of these community programs greatly reduced the number of Hawaiians served by KSBE from approximately 30,000 in 1992 to 3,200 in 1996. (Weil at 82, ¶ 262.) The public announcement of the decision to terminate the bulk of KSBE's community outreach programs in the Summer of 1995 had an immediate impact on faculty, staff, and the community—approximately fourteen percent of the KSBE workforce was laid off. (Weil at 82, ¶ 263; Matsumoto at 99.) These layoffs—the first in Kamehameha Schools history—resulted in anger in the community and anxiety on the part of the continuing workforce. (Weil at 82, ¶ 264.) The turmoil that was engendered by the strategic planning and implementation of the *Go Forward* initiative turned what should have been welcomed as the most significant and ambitious educational venture for the Estate in decades into an episode clouded by mistrust, misunderstanding, and antagonism that continues today. (Matsumoto at 99.)

V. The Incumbent Trustees' Conduct with Respect to Asset Management

The infusion of enormous amounts of cash into the Estate over the past decade and one-half, resulting from the liquidation of residential land holdings under the threat of public condemnation, has transformed the Estate into a complex business organization. (Matsumoto at 11.) Unlike earlier periods in its history, the Estate now regularly has substantial income sufficient to meet the cost of its educational endeavors. (Matsumoto at 50.) The mere fact that the Estate has gross revenues in the hundreds of millions of dollars, however, is not a sufficient basis on which to evaluate whether investment decisions are being made in a manner appropriate for an entity such as the Estate, which has a defined social mission. (Matsumoto at 50 and 67.) When the Incumbent Trustees' investment decisions are examined, it is apparent that the Incumbent Trustees have failed to develop a coherent overall investment plan based on sound investment principles. (Matsumoto at 84.) Moreover, there has been inadequate coordination between educational strategic planning and investment planning resulting in a disconnect between the two key components of an overall plan. (Matsumoto at 84 and 87.) Owing to the investment practices of the Incumbent Trustees, the bulk of the Estate's assets are tied up in long-term, illiquid investments, which makes planning for educational spending difficult. (Matsumoto at 86.)

Despite the relatively constant level of educational spending from fiscal years 1994 to 1996, investment-related and professional expenses grew during this period. (Matsumoto at 73.) Investment-related expenses grew from $9,560,344 for fiscal year 1994 to $13,105,041 for fiscal year 1996. (Matsumoto at 73.) The Estate's expenditures on professional services grew from $6,100,000 for fiscal year 1994, to $11,300,000 for fiscal year 1995, to $12,500,000 for fiscal year 1996. (Matsumoto at 73.) During the same period, management and general expenses rose from $41,934,000 in fiscal year 1994 to $61,147,000 in fiscal year 1996. (Matsumoto at 21-22.) This growth in expenses impacted investment performance, and prompted the Master to recommend that the Incumbent Trustees "exercise care in maintaining an appropriate ratio between direct education expenses and non-education expenses." (Matsumoto at 73.)

The analyses provided by the Incumbent Trustees to the Master, which use a time-weighted return measurement (one of the accepted standards in the industry for measuring total return), reveal a total return for the Estate of 10.2%, 4.4%, -2.7%, 0.3%, and -0.6% for fiscal years 1992 through 1996, respectively. (Matsumoto at 52-54.) This translates into an average rate of return of -1.0% for the three year period from fiscal year 1994 to 1996, and 2.4% for the five-year period from fiscal year 1992 to 1996. (Matsumoto at 54.)

For fiscal years 1992 through 1996, the Estate had losses and loss reserves totaling ($107,000,000) in fiscal year 1992, ($44,000,000) in fiscal year 1993, ($135,518,139) in fiscal year 1994, ($51,645,991) in fiscal year 1995, and ($55,205,242) in fiscal year 1996. (Matsumoto at 57-58 and 59 n.27.) In fiscal year 1994, without the benefit of gains from land sales of $199,563,000 and from accounting adjustments due to changes in accounting principles of $35,607,000, the Estate would have sustained an operating loss of $42,355,000. For fiscal years 1994 through 1996 combined, without the benefit of land sales of $334,372,000 and changes in accounting principles of $77,287,000, the Estate would have actually sustained a net operating loss over the three-year period of $18,530,000. (Matsumoto at § IX.)

The losses and loss reserves from fiscal years 1994 through 1996 were sufficient to warrant the Master's concern and suggest that a careful review of the investment practices of the Incumbent Trustees in selecting the Estate's investments was warranted to determine whether appropriate safeguards were in place to avoid such adverse consequences. (Matsumoto at 56 and 59.) Pursuant to the Master's recommendations, the Probate Court ordered that an international accounting firm be retained to conduct a full financial and management audit of the Estate. (Matsumoto at 9.) Arthur Andersen was retained for this purpose. (Matsumoto at 9.)

In virtually all areas of investment and management decision-making by the Incumbent Trustees, there was a lack of appropriate investment planning. (Matsumoto at 60; Arthur Andersen Report at 15-17.) Even more problematic, to the extent that there was a semblance of an investment plan, there was a weak commitment to abide by the plan. (Matsumoto at 60.) Documentation of investment and management decisions has been lacking and due diligence has been conducted in an inconsistent or deficient manner. (Matsumoto at 68-70; Arthur Andersen

Report at 210.) Recommendations by KSBE staff aimed at establishing overall strategic planning objectives for the Estate were not implemented by the Incumbent Trustees. (Matsumoto at 61; Arthur Andersen Report at 16.) The Incumbent Trustees also failed to pursue investment categories recommended by Cambridge Associates, Inc. (a nationally known educational endowment consulting firm engaged by the Incumbent Trustees), which would have provided more diversification and liquidity in the portfolio. (Matsumoto at 61.) Both Cambridge Associates, Inc. and the Andersen Report point to the need for additional diversification of the Estate's non-core (*i.e.*, non-real-estate) assets. (Matsumoto at 62 and 66; Cambridge Report (1996) at 31-32; Arthur Andersen Report at 17.)

The Incumbent Trustees had no clear asset-allocation policy incorporating risk and return objectives. (Matsumoto at 62.) Instead, the Incumbent Trustees engaged in investment practices that were opportunistic and highly unusual for a perpetual endowment. (Matsumoto at 61-62.) Many of the investments required extensive allocations of human resources to unique individual investments, which, among other things, have significant exposures to permanent principal impairment and liquidity risks. (Matsumoto at 62; Arthur Andersen Report at 176; Cambridge Report (1997), Transmittal Memorandum at 1.) For example, the Estate's commercial paper program requires it to maintain large cash reserves—$50 million plus 15% of outstanding commercial paper debt, according to Cambridge Associate's 1996 Report. (Matsumoto at 16-17; Cambridge Associates (1996) at 14.) These types of investments place a severe limitation on any attempt to arrange an orderly diversification program and result in undependable cash-flow forecasts. (Matsumoto at 62.) Moreover, the Estate lacked a satisfactory system of monitoring and evaluating investment performance against appropriate benchmarks. (Matsumoto at 51; Arthur Andersen Report at 20.) This lack of reasonably frequent measurement against appropriate benchmarks precluded the Incumbent Trustees from making informed management decisions. (Matsumoto at 51.)

Despite the fact that the Estate already has a disproportionately large real estate component to its investment portfolio, the Incumbent Trustees continued to invest substantial amounts in real estate investments both inside and outside of Hawaii. (Matsumoto at 67.) Such investments detract from the goals of diversification and liquidity, which the Incumbent Trustees are required to consider under the Prudent Investor Rule. (Matsumoto at 66-67.) Such investments are also contrary to the advice of Cambridge Associates, Inc., which recommended an asset allocation strategy that "de-emphasize[s] additional non-core real estate" holdings. (Cambridge Report (1996) at 32; Cambridge Report (1997) at 25.) With respect to Hawaiian real estate, there was a lack of appropriate comprehensive strategic planning that was aligned with the Estate's educational mission and overall strategic objectives. (Matsumoto at 76; Arthur Andersen Report at 234.) A staff-prepared planning document summarizing the Estate's real estate strategies for Hawaiian real estate was not used or adopted by the Incumbent Trustees. (Matsumoto at 76.)

Similarly, with respect to non-Hawaiian real estate, there was a lack of appropriate comprehensive strategic planning for direct mainland real estate investments. (Matsumoto at 79; Arthur Andersen Report at 234.) Investments were evaluated and considered based on opportunities presented from various sources rather than being targeted to fit within an approved overall portfolio strategy. (Matsumoto at 79; Arthur Andersen Report at 230.) The quality of due diligence performed with respect to these investments was inconsistent, as was documentation of relevant information in KSBE staff reports. (Matsumoto at 79.) Information was sometimes insufficient to make and support prudent investment decisions and justifications for investment decisions made by Incumbent Trustees that were contrary to staff recommendations were not adequately documented and supported. (Matsumoto at 79.)

The Incumbent Trustees' investments outside of real estate were largely illiquid rather than liquid investments. (Matsumoto at 67.) Cambridge Associates, Inc. recommended that the Incumbent Trustees "[d]e-emphasize additional ... illiquid financial investment assets, unless exceptional opportunities are offered by proven joint venture partners." (Cambridge Report (1996) at 32.) Contrary to this recommendation, and contrary to best practices for entities with a defined social mission, the bulk of the cash infused into the Estate from the sale of leasehold fee interests has been invested in illiquid private equity investments. (Matsumoto at 62 and 67.) Although private equity investments promise a high rate of return, that promise is usually fueled by a high risk exposure. (Matsumoto at 67.) Because the bulk of the investments that the Incumbent Trustees made were illiquid, their ability to plan for future educational expenditures was hampered by the uncertainty connected with such investments and the income they generate. (Matsumoto at 86.) These investment practices therefore draw the criticism that the Incumbent Trustees too heavily emphasized long-term capital appreciation at the expense of current income. (Matsumoto at 41.) Moreover, the proportion of such investments was substantially higher than the norm for comparable educational endowments. (Matsumoto at 67; Cambridge Report (1997) at 21.)

The Incumbent Trustees were responsible for the following:

- *The Incumbent Trustees' purchase of the Baker-Van Dyke Collection.* With the exception of Trustee Stender, who was not in attendance, the Board approved the purchase of the Baker-Van Dyke Collection at a Board meeting on July 16, 1996. (Weil at 16, ¶¶ 48-49.) The Board approved the purchase for "educational purposes," subject to total or partial cancellation after the completion of due diligence, which was to include, at a minimum, an inventory and an appraisal of items in the collection. (Weil at 16, ¶ 49; Yim at § VII.V.) An escrow account was required to be created in connection with the purchase. (Weil at 16, ¶ 50; Yim at § VII.V.) In her drive to complete the transaction, Trustee Lindsey changed material provisions of the purchase agreement, ordered that escrow payments be made prematurely and contrary to the provisions of the sale contract, disregarded minimal requirements of due diligence, and rejected advice of KSBE counsel that the sale be recorded—all to KSBE's disadvantage. (Weil at 20, ¶ 59; Yim at § VII.V.) The collection was of negligible educational value: (1) Ms. Southworth, the Hawaiian Collection librarian, found only one item out of 23,000 for which she had been actively searching (Weil at 20-21, ¶ 62); (2) Ms. Southworth had previously recommended to Trustee Stender that KSBE not purchase the collection, which recommendation Trustee Stender followed and thereafter informed the seller that KSBE was not interested (Weil at 14,

¶ 41; Yim at § VII.V.); (3) Ms. Southworth's recommendation was based on her review of a sampling of forty-five titles from the collection, of which KSBE already held fifty-five percent of the titles, and only one book out of the remaining forty-five percent was educationally appropriate for the Hawaiian Collection (Weil at 14, ¶ 41; Yim at § VII.V.). The costs to KSBE of the collection to date include: (1) the purchase price of approximately $422,000 (Weil at 15, ¶ 43; Yim at § VII.V.); (2) approximately $174,886 to inventory, treat, and move the books and documents in the collection; (3) storage costs for the collection; and (4) approximately $125,000 to inventory the Jerome Baker photographs from the collection. (Weil at 21-22, ¶ 65; Yim at § VII.V.). Good title to the photograph collection remains undetermined. (Weil at 22, ¶ 65; 189, ¶ 43.)

- *The Incumbent Trustees' KDP Technologies.* KDP Technologies was a fledgling software development and production company trying to develop an Internet database for aspiring models, actors and entertainers to showcase their talents over the Internet. (Weil at 23, ¶ 69.) KSBE invested a total of $1,338,000 in KDP: $500,000 as a direct loan from KSBE, and $838,000 as debt and equity from KSBE's for-profit subsidiary, Pauahi Management Corp. (Weil at 29, ¶ 88.) KSBE has received no return on this investment and faces potential lender liability claims arising out of it. (Weil at 29, ¶ 88.) The investment opportunity was presented to KSBE by Ben Bush III, who was one of five shareholders in KDP and owned a two percent share. (Weil at 23, ¶ 69.) Trustee Lindsey had prior business dealings with Mr. Bush and at the time that the investment was presented, was a co-plaintiff with Mr. Bush in litigation arising out of a previous co-investment with Mr. Bush. (Weil at 24, ¶ 71.) Although she was required by KSBE's conflict of interest policy to disclose to her fellow Incumbent Trustees any potential conflicts of interest, Trustee Lindsey did not advise them of her past and present relationships with Mr. Bush. (Weil at 24, ¶ 71; 25, ¶ 75.) Moreover, despite her obligation to protect the interests of the Estate while an officer and manager of the KDP entities, Trustee Lindsey failed to timely disclose her knowledge that Bush was a target of a criminal investigation. (Weil at 27, ¶ 83; 176, ¶ 10.) The failure to disclose came at a time when she knew the investment was in trouble and yet was receiving additional funding from KSBE sources. (Weil at 176, ¶ 10.) Moreover, Trustees Lindsey, Wong and Peters all had knowledge of a consulting contract between KDP and Mr. Randy Stone, Trustee Wong's brother-in-law, although this was not brought to the attention of the other two Incumbent Trustees. (Weil at 28, ¶¶ 84-85.)

- *The Incumbent Trustees' Contracts with Educational Management Group.* EMG submitted a proposal to provide computer technology for the Kamehameha Schools. (Weil at 29-30, ¶ 90.) Mr. Lance Tachino, a systems analyst supervisor in the Education Technology Production Division at Kamehameha Schools, concluded that the initial EMG proposal was too vague and too expensive. (Weil at 30, ¶ 92.) Trustee Lindsey suppressed Tachino's attempts to objectively conduct a cost-benefit analysis of the proposed contract and to bring forward concerns about the relative costliness of the hardware and the recurring annual program costs. (Weil at 180, ¶ 24; Yim at § VII.U.) Over a five-year period (1994-1998), KSBE disbursed to EMG between $5 and $6 million for hardware, software, satellite time, and annual maintenance costs. (Weil at 180, ¶ 24.) Payments were made out of the $18 million budget that the Board approved for technology at Kamehameha Schools. (Weil at 31-32, ¶ 97.) The project was ultimately scrapped at the end of 1998. (Weil at 35, ¶ 108.)

VI. The Incumbent Trustees' Conduct with Respect to Trustee Compensation

Until January 1, 1999, the compensation of the Incumbent Trustees was limited by state statute, which sets forth a percentage schedule prescribing the maximum commissions payable to trustees based on varying percentages of revenue or income during a calculation period of not less than one year. (Matsumoto at 114-15.) Because of major growth in the Estate's revenues since the early 1980s, the statutory formula had consistently yielded a maximum permitted commission substantially in excess of what KSBE Trustees actually received. (Matsumoto at 115.) Applying the statutory schedule, the Incumbent Trustees as a group were entitled to a statutory maximum of $11,377,484 for fiscal year 1994, $7,514,218 for fiscal year 1995, and $5,810,214 for fiscal year 1996. (Matsumoto at 116.) For many years, the Incumbent Trustees have "waived" commissions and have paid themselves amounts less than the maximum amounts permitted by statute. (Matsumoto at 115.) This practice presumably reflects an attempt by the Incumbent Trustees to pay themselves a "reasonable" compensation, notwithstanding what the statutory formula may permit. (Matsumoto at 115.) After such waivers, the Incumbent Trustees as a group were actually paid $4,576,192 for fiscal year 1994, $4,690,236 for fiscal year 1995, and $4,215,546 for fiscal year 1996. (Matsumoto at 116.)

Pursuant to a court order, the Incumbent Trustees were required, beginning with fiscal year 1993, to commission compensation studies every three years. (Matsumoto at 117.) In 1993, the KSBE Trustees commissioned an assessment of trustee compensation by Strategic Compensation Associates ("SCA"); SCA issued its report on trustee compensation on April 30, 1993. (Matsumoto at 117.) During fiscal year 1996, the Incumbent Trustees commissioned two compensation studies: the Towers Perrin Report (March 14, 1996), and the SCA Consulting Report (June 1996). (Matsumoto at 117.) The Master was unable to determine why two compensation studies were commissioned and paid for at considerable expense to the Estate for fiscal year 1996. (Matsumoto at 117-18 n.39.) Pursuant to the applicable order of the Probate Court, KSBE Trustees were to commission "a single study to be done by one or more experts." (Matsumoto at § XII.C.)

The Towers Perrin Report opined that "the competitive annual compensation for KSBE Trustees" was within a range of $683,000 to $758,000 at the median (or 50th percentile) and $921,000 to $1,021,000 at the 75th percentile for each of the five Incumbent Trustees. (Matsumoto at 118.) The SCA Consulting report concluded that "a cumulative annual compensation range of $3.5 million to $5.5 million [for the five Incumbent Trustees as a group] appears reasonable and appropriate." (Matsumoto at 118.) Both studies employed measures based on an aggregation of governance and management functions by the Incumbent Trustees.

(Matsumoto at 118.) The SCA Consulting Report is premised on the Incumbent Trustees functioning as "both senior operating executives and as a Board of Directors." (Matsumoto at 118.) The Towers Perrin Report is premised on the Incumbent Trustees collectively performing "what would be five distinct and separate roles in other organizations: Board of Directors; Chief Executive Officer (CEO); Chief Operating Officer (COO); Chief Financial Officer (CFO); and Treasurer (investment function)." (Matsumoto at 118.) The conclusion of each study is therefore premised on the assumption that the Incumbent Trustees actually perform roles comparable to those of the CEO, COO, CFO, and Corporate Treasurer of large and complex business organizations. (Matsumoto at 119.) It is apparent that in the absence of that premise, the conclusion reached by the two studies would be different. (Matsumoto at 119.)

Neither report examined qualifications, experience, or performance as a criterion for compensation. (Matsumoto at 118 n.40; Arthur Andersen Report at 320.) In implementing the lead trustee system, the Incumbent Trustees have not screened and selected specific lead trustee candidates based upon qualifications and whether the person selected is best able to carry out the duties and responsibilities involved for each lead trustee position. (Matsumoto at 104.) The Incumbent Trustees failed to identify qualification requirements for these various positions, failed to define the duties and responsibilities of the positions, and failed to integrate them into the formal organizational hierarchy of the Estate and its divisions. (Matsumoto at 104.) The lead trustee system as implemented by the Incumbent Trustees contains no procedure for monitoring or reviewing performance. (Matsumoto at 105.)

The SCA Consulting Report notes that the total compensation paid to the top five administrators of the Estate was $875,226. (Matsumoto at 119-20.) This was less than the total amount paid to a single Incumbent Trustee during the period studied. (Matsumoto at 120.) Moreover, the SCA Consulting Report also noted that total compensation paid to the fourteen senior management employees on the asset management staff was $1,320,055. (Matsumoto at 120.) The combined compensation paid to the top five Estate administrators and the senior asset management staff was less than half of the total amount paid to the five Incumbent Trustees as a group. (Matsumoto at 120.) Moreover, unlike their peers in other tax-exempt organizations and taxable entities performing similar functions, the investment professionals within the Estate's Asset Management Group receive no performance-based compensation. (Matsumoto at 120 n.43.) The Incumbent Trustees are the only individuals who receive compensation that is based in part on the investment performance of the Estate. (Matsumoto at 120 n.43.)

The Master concluded that the lack of such performance-based incentives, which would serve to attract and retain the best qualified and most competent investment professionals, is in part attributable to the potential impact such costs would have on the determination of what constitutes reasonable compensation for the Incumbent Trustees as analyzed in the SCA Consulting and Towers Perrin Reports. (Matsumoto at 120 n.43.) Furthermore, combined with the fundamental premise upon which each compensation study is based, these facts support an inference that the issue of compensation may influence decision-making by the Incumbent Trustees regarding what constitutes the most appropriate and effective organizational structure for the management and operation of the Estate. (Matsumoto at 119-21.) For example, the establishment of a CEO-based management structure would have a direct impact on what constitutes a reasonable level of compensation. (Matsumoto at 110.) Given the impact that such decisions could have on the level of their compensation, the Incumbent Trustees face an inherent conflict of interest in making organizational decisions affecting the management and operation of the Estate. (Matsumoto at 121.)

VII. The Incumbent Trustees' Conduct with Respect to the Intermediate Sanctions Legislation

The Incumbent Trustees spent a substantial amount of Estate funds in an attempt to influence the United States Congress with respect to the proposed intermediate sanctions legislation, now codified in I.R.C. § 4958. (Matsumoto at 135.) In cases in which a person is in a position to exercise substantial influence over an organization, such as a trustee, the law places a tax directly on such individual to the extent they receive an excess benefit from the organization, such as unreasonable compensation. (Matsumoto at 135-36.) In general, this tax is in lieu of a penalty imposed on the organization, *i.e.*, in the form of a revocation of the organization's tax-exempt status, which prior law permitted in cases in which an organization's net earnings were found to inure to an insider through unreasonable compensation or otherwise. (Matsumoto at 135-36.) Consequently, this proposed legislation was beneficial to the Estate in that it would better insulate the Estate's tax-exempt status from the consequences of any improper actions by its Trustees. (Matsumoto at 136.) Without prior court approval, however, the Incumbent Trustees engaged the services of lobbyists and otherwise expended Estate funds to oppose enactment of the intermediate sanctions legislation. (Matsumoto at 136.)

Later, the Incumbent Trustees modified their position to oppose certain aspects of the proposed law and sought to influence the drafting of the legislative history through changes in the House Committee Report. (Matsumoto at 136.) First, the Incumbent Trustees unsuccessfully attempted to eliminate language in the Committee Report that clarified that, for purposes of determining whether their compensation was reasonable, "the fact that a State or local legislative or agency body may have authorized or approved of a particular compensation package ... would not be determinative of the reasonableness of the compensation paid." (Matsumoto at 137.) Second, the Incumbent Trustees unsuccessfully sought to add language to the Committee Report that would have established a rebuttable presumption that the compensation paid to them was reasonable if it was approved by an entity that was "comparable" to an independent board of directors—apparently with the procedure of the Probate Court's approval of their annual account in mind. (Matsumoto at 137.) Finally, they were successful in suggesting language in the Committee Report that would allow the reasonableness of compensation to be measured against compensation levels paid by similarly situated taxable entities, in addition to tax-exempt organizations, for functionally comparable positions. (Matsumoto at 137.)

The Master sought information from the Incumbent Trustees to evaluate whether the expenditure of funds and other Estate resources for the purposes of initially opposing enactment of the intermediate sanctions provision of the Code and later seeking modifications to the Committee Report were necessary, or appropriate and reasonable, to carrying out the educational purposes of the Estate. In response, the Master received two letters from Ms. Susan Tempkin, dated August 3, 1998 and September 18, 1988, but was not successful in obtaining the pertinent documents related to the legislative efforts of the Incumbent Trustees. Based upon these responses, and other information obtained by the Master, the Master concluded that the legislative efforts of the Incumbent Trustees with respect to the intermediate sanctions provision of the Code were "predominately directed at preserving the historical procedure for determining compensation of trustees under state statutory law and minimizing the potentially adverse impact that the intermediate sanctions legislation would have on their continued ability to receive compensation in accordance with and at the levels permitted under state law." The Master found that the expenditures of funds and other Estate resources for such efforts were therefore not necessary, or appropriate and reasonable, to carrying out the purposes of the Estate and, consequently, recommended that the Incumbent Trustees be surcharged for these expenses. (Matsumoto at § XIV.)

VIII. Trustee Lindsey's Use of Estate Assets for Personal Benefit

Judge Weil concluded that Trustee Lindsey used trust assets for her own advantage or benefit, including family travels and using Estate employees for personal services. (Weil at 175, ¶¶ 6 and 8.) This included, specifically, her use of KSBE staff and resources to conduct various activities with respect to her Punaluu beach home, including the use of KSBE employees to: process and apply for permits and other government certifications or determinations with respect to the property; supervise the survey of the property; and perform various inspections of the property. (Weil at 5-9, ¶¶ 13-26.) Credible evidence shows that Trustee Lindsey made no offers to reimburse KSBE before the Service's inquiry into her use of KSBE employees for personal matters. (Weil at 11, ¶ 33.)

Trustee Lindsey also used KSBE charge cards, expense accounts, and vendors to pay for her personal (or family-related) travel and expenses, including a trip to the 1994 Rose Bowl Parade, a 1996 trip to the Olympics in Atlanta, Georgia, and at least sixteen trips to Las Vegas. (Weil at 35-36, ¶¶ 109-113.) Trustee Lindsey testified that some of the Las Vegas trips were to review KSBE properties or investment opportunities in or around Las Vegas, but she never provided the Board with any written reports or memoranda concerning the information gathered on these trips. (Weil at 36, ¶ 113.)

APPENDIX B

The factual allegations described below have been made in a variety of contexts, including the draft Forms 5701 issued by the Service and petitions filed by the Hawaii State Attorney General's office relating to the permanent removal of the Incumbent Trustees. Because the Service's core arguments with respect to its proposed revocation of KSBE's tax-exempt status can be based sufficiently on the findings discussed in Appendix A, we have not discussed the Attorney General's additional allegations in our opinion letter. The Service may, however, choose to bring such facts to the attention of a trier of fact if the issue is litigated.

- **Inappropriate Political Activities**

  - *Failure to Accurately Report Lobbying Expenditures.* The Service has alleged that expenses incurred in connection with a rally organized and held by KSBE on March 13, 1996 (including the provision of free lunches and T-shirts) constituted grass-roots lobbying expenditures that should have been, but were not, reported on KSBE's Form 990. The Service has asserted that the rally was held to oppose the Honolulu City Council's actions with respect to lease-to-fee conversions. The Service has alleged that Kamehameha Schools students were transported to and from the school in order to participate in the rally, and that some students testified at a related hearing. (Primary Purpose NOPA at 134-138.)

  - *Illegal Campaign Contributions.* The Attorney General has alleged that the Estate participated in a scheme of illegal campaign contributions benefiting Marshall Ige and Milton Holt. The Attorney General has asserted that various vendors, which had provided campaign goods and services to Messrs. Holt and Ige, were instructed by the Estate to send false invoices for those services to firms that were receiving, have received, and continue to receive lucrative non-bid contracts from the Estate. The Attorney General has asserted that these false invoices were paid by these non-bid contracting firms in exchange for receiving past and future non-bid contracts with the Estate. The Attorney General has alleged that all or some of the Incumbent Trustees had knowledge of the Estate's participation in this scheme, but failed to act to correct the illegal behavior.

- **Further Allegations of Private Inurement to the Incumbent Trustees**

  - *Trustee Peters' Cellular Phone Expenditures.* The Service has alleged that $22,849 paid by the Estate on behalf of Trustee Peters for his cellular phone usage for the period June 30, 1992 through June 30, 1996 constituted prohibited private inurement. The Service has asserted that KSBE and/or Trustee Peters have failed to document how the payment of Trustee Peters' cellular phone expenses contributed to the program services of the exempt organization. (Inurement NOPA at II.B.3.)

  - *Trustee Peters' Mid Ocean Ltd. Expenditures.* The Service has alleged that $26,450 paid by the Estate for Trustee Peters' travel to and from Mid Ocean Ltd. board of director meetings constitutes prohibited private inurement. The Service has asserted that, because Trustee Peters' position as a member of Mid Ocean's board of directors was personal (that is, not as a result of his position as a KSBE Trustee), expenses related to travel to such meetings were personal and therefore their payment by the Estate constituted private inurement to Trustee Peters. (Inurement NOPA at II.B.4.) Although the Service's position assumes that Trustee Peters held his directorship in an individual capacity, the Attorney General has alleged that Trustee Peters' service as a Mid Ocean director was an Estate opportunity that Trustee Peters usurped. Accordingly, the Attorney General has asserted that the substantial fees and stock options received by Trustee Peters for serving as a director belong to the Estate, not to Trustee Peters.

  - *Use of Trust Employees for Personal Matters.* The Service has alleged that the fair market value of the services performed by KSBE employees to obtain zoning variances for Trustee Lindsey's private residence constitutes prohibited private inurement to Trustee Lindsey in the amount of $12,000 (or $6,123, after partial reimbursement for the value of the services). The Service has further asserted that by failing to require Trustee Lindsey to reimburse KSBE for such personal services prior to press coverage of the issue, Trustees Peters, Wong, Jervis, and Stender "by their silence have accented [*sic.*] to and/or condoned this transaction." (Inurement NOPA at II.B.5.) The Attorney General has alleged that all of the Incumbent Trustees have used Estate employees, equipment, supplies, and resources at various times for their personal benefit.

  - *Towers Perrin Professional Fees.* The Service has alleged that professional fees paid to Towers Perrin by KSBE for the fiscal year ending June 30, 1996 constituted prohibited private inurement to the Incumbent Trustees in the amount of $64,075. The Service has asserted that the payment of professional fees to have a second study on the reasonableness of trustee compensation performed, at considerable expense to the Estate, served only to benefit the

Incumbent Trustees by attempting "to justify the amount of compensation they are currently being paid." This duplication of professional fees, according to the Service, provided no corresponding value to the Estate and therefore resulted in prohibited private inurement. (Inurement NOPA at II.B.6.)

- *Certain Travel and Entertainment Expenditures.* The Service has alleged that KSBE paid $331,139 for unsubstantiated travel and entertainment expenses and non-reimbursable personal expenses (*e.g.*, personal phone calls, personal car rentals, and in-room movies) of the Incumbent Trustees, which constituted prohibited private inurement.

- *Trustee Jervis' Use of Estate Funds for Personal Matters.* The Attorney General has alleged that Trustee Jervis used Estate funds to subsidize a personal relationship with a female employee of Kamehameha Investment Corporation ("KIC"), a wholly owned subsidiary of KSBE of which Trustee Jervis served as chairman of the board of directors. According to the Attorney General, Trustee Jervis authorized certain expenses related to the personal relationship to be charged to the employee's KIC credit card.

- **Allegations of Private Benefit to Associates and Family Members of the Incumbent Trustees**

  - *Contract with Hawaii Protective Association Ltd.* In July 1996, the Trust entered into a nonbid contract, worth an estimated $40,000 per month, with Hawaii Protective Association Ltd. ("HPA") for security services at the entry gates to the Kapalama Heights campus. Trustees Stender and Jervis alleged in documents filed with Judge Hirai in December 1997 that they were not included in the decision to contract with HPA, that the details of the agreement with HPA were not included in any KSBE board minutes, and that copies of such agreement were not provided to them. HPA is controlled by Larry Mehau, who is reportedly a longtime friend of Rockne Freitas, Vice President of the Schools, and of Trustees Wong and Peters.

  - *HAK Partnerships.* The Attorney General has alleged that the Trustees created conflicts of interests between the Trustees' personal interests and those of the Trust and its beneficiaries by participating in several investments in which the Trust had a substantial stake. These co-investments, according to the Attorney General, included investments in a golf course and club in Virginia and a methane gas operation in Texas. The Service similarly asserted that certain Incumbent Trustees in their individual capacities, as well as KSBE staff, invested in a series of methane gas programs in Texas through various entities known as the HAK Partnerships. KSBE's initial investment in these programs totaled approximately $61.7 million; the Trustees and KSBE staff collectively invested over $2 million in the same venture. (Asset Transfer NOPA at 115.)

- *Payment of Milton Holt's Personal Expenses*. The Service has alleged that $42,875 paid by KSBE for the personal and unsubstantiated expenses of Milton Holt, a former Hawaii State Representative and Senator, constituted prohibited private inurement. The Service has asserted that payments were made for charges to Mr. Holt's KSBE Visa card made in restaurants, strip clubs, and Las Vegas casinos. (Private Benefit NOPA at II.C.4.) The Attorney General has asserted that, by allowing Mr. Holt to have unrestricted use of the Estate's credit card, the Incumbent Trustees have breached their fiduciary duty to preserve and protect the Estate's assets.

- *Kalele Kai*. In 1990, the Trust leased certain land in Hawaii Kai to Kapalele Associates ("Kapalele"), a Hawaiian limited partnership, for development of a leasehold condominium project to be known as Kalele Kai. The Trust later exchanged its fee simple interest with Kapalele for a $21.9 million recourse note. The development was completed in 1993, but condominium units did not sell at the anticipated rate. Kapalele conveyed the improvements on the property to One Keahole Partners ("OKP") for $36.5 million in 1995. Jeffrey Stone, Trustee Wong's brother-in-law, owns Pacific Northwest, Ltd. ("Pacific Northwest"), which owns a 50 percent interest in OKP. OKP's purchase of the Kalele Kai condominium project was partially financed through a restructuring of the note held by the Trust. The Attorney General has alleged that the value of the restructured note to the Trust was millions of dollars less than that of the original note and, therefore, that the restructuring conferred a significant personal benefit on OKP and Jeffrey Stone.

- *1015 Wilder*. The Attorney General has further alleged that OKP and Pacific Northwest paid Trustees Peters and Wong inflated prices for their condominiums at 1015 Wilder as a quid pro quo for conferring financial benefits on Trustee Wong's brother-in-law, Jeffrey Stone, in connection with the Kalele Kai project.

- *Stone's Consulting Contract with KDP Technologies*. The Attorney General has alleged that Trustees Peters and Wong used their positions as Trustees to help Trustee Wong's brother-in-law, Jeffrey Stone, obtain a consulting contract with KDP-Technologies, LLC, an Internet-based start-up company in which the Estate had an investment. The Attorney General has asserted that $50,000 of the consulting fees paid to Mr. Stone were from a $150,000 loan from an Estate subsidiary to KDP Technologies, LLC, which Trustee Peters arranged and which was never repaid.

- *Benefiting Other Friends, Family, and Former Politicians with Estate Contracts and Employment.* The Attorney General has alleged that the Incumbent Trustees misused their positions as Trustees, misused Estate assets, and benefited themselves by directing the Estate to hire or contract (without competitive bidding) with other friends and relatives (*e.g.*, Al Jeremiah, Jr., Clayton Hee, Terrance Tom, Mona Ryan, Hoku Haiku, Dura Constructors, Inc., and Rhino Roofing). The Attorney General has asserted that such hiring and consulting decisions were made without regard to qualifications and without regard to the relationship between the compensation paid and the work actually performed. The Service also has alleged, in its NOPA on Private Benefit, that certain of these and other similar relationships gave rise to prohibited private benefits (*e.g.*, Guido Giacometti, Terrance Tom, George Lindsey, Jr., Albert Jeremiah, Jr., and Milton Holt).

- **Criminal Proceedings Involving the Incumbent Trustees**

  - *Indictments of Trustees Wong and Peters.*

    - Indictment of Trustee Wong. The Attorney General's office filed a Notice of Appeal of Circuit Judge Michael Town's June 16 order dismissing, without prejudice, criminal indictments against Trustee Wong, his wife, and his brother-in-law Jeffrey Stone. In April, a grand jury had indicted Trustee Wong for criminal theft, Jeffrey Stone for commercial bribery and conspiracy, and Trustee Wong's wife for hindering prosecution with respect to the alleged kickback scheme involving the Estate's fee interest in the Kalele Kai condominium project.

    - Indictment of Trustee Peters. Trustee Peters was also indicted for theft with respect to the alleged kickback scheme. Trustee Peters' indictment was also dismissed, without prejudice, by Circuit Judge Michael Town in June, 1999. Trustee Peters was again indicted for theft on August 4, 1999, however, by an Oahu grand jury that also indicted Jeffrey Stone for commercial bribery and perjury in connection with the alleged kickback scheme.

  - *Potential Obstruction of Attorney General's Investigation.* In October 1997, the Attorney General was provided with information from an Estate employee suggesting that Trustee Lindsey's secretary was destroying Estate computer files. The Attorney General sought and received an order from Judge Chang barring Estate employees from destroying or removing documents from the Estate's office connected to the Attorney General's investigation. The Estate subsequently entered into an agreement with the Attorney General's office that prohibited the destruction or removal of any Estate documents, including computer records, and banned retaliation against any employee who provides the Attorney General with information to the contrary. The Attorney General recently asserted that Trustee Jervis destroyed or directed the destruction of certain documents in violation of the October 1997 court order and a subpoena issued by the Attorney General.

- **Trustees Wong and Peters' Opposition to the Lindsey Removal Petition.** The Attorney General's office has filed documents with the Probate Court seeking to charge Trustees Wong and Peters with the costs incurred by Trustee Stender in successfully removing Trustee Lindsey because they opposed Trustee Stender's petition for removal.