

Questions Submitted and Answered by Randall Roth Prior to Talks for the Hawaii State Bar Association Leadership Institute and Center For Tomorrow's Leaders

1. Is "doing the right thing" purely black or white, or are there grey areas?

This question reminds me of the time I asked Judge King what he thought was the meaning of life. He answered, but only after preparing me for a less-than-satisfying answer. I'll do the same by describing a cartoon my youngest son recently sent to me: Two monks had just received an invitation to a birthday party, and one monk asks the other, "What do I get a person who already has nothing?"

Regarding the question about recognizing "the right thing," I think it begins with knowing your core beliefs and values, and then living your life as though everything you believe is true. But here's the catch: you have to do this humbly. That is, keep an open mind and regularly remind yourself that you could be wrong about everything. It also means you should seek the opinions of people whose core beliefs, moral compasses, and opinions differ from yours. Also, regularly compare what you think are your beliefs, values, and opinions with decisions you are making in your own life (i.e., trite as it may sound, actions really do speak louder than words).

Finally, just because you've figured out the right thing to do doesn't necessarily mean you should do it. For reasons mentioned below, it's important to pick your battles carefully and only after balancing what are sure to be competing interests.

2. What does "doing the right thing" look like during the current pandemic, and how can attorneys step up to address the most pressing needs in our community?

I believe in the concept of a "calling." Not the passive kind where you wait for voices to tell you to do something, but the kind that comes from paying attention to the needs of others and concluding "the right thing" involves action on your part. There are billions of people in some kind of need at any given time, so before committing to a particular need, I suggest considering people or communities you feel a calling to help, taking into account your unique talents, including leadership skills. If you are particularly well-suited to do X, then do X. If your time, energy, skills, etc. are a better fit to do Y, then do Y. If more than enough people are already doing X but not Y, then do Y. Sometimes a calling comes down to asking yourself "if not me, who," and "if not now, when?"

3. What served as the impetus for each of you to make the commitment to become leaders in serving the community, and how did you go about acting on this commitment? What advice can you give to attorneys who want to become more

involved but don't know where to begin, or where their skills/resources could be best utilized?

Each time I've made a major commitment to a community-oriented task such as my role in the Broken Trust story, Price of Paradise books and radio show, opposition to heavy rail on Oahu, or efforts to restructure public education in Hawaii, I've done so in response to what I've described above as a calling. Each task fit my talents and was unlikely to get done, if not by me.

As for advice before committing to a community-oriented task, begin by being brutally honest with yourself about your motivations and priorities. Part of the human condition is the need to make choices. It's one thing to say my family, health, career, financial situation, and reputation as a leader are all important, but sooner or later difficult choices have to be made. Does career advancement and financial circumstances come before your health ... or relationships? How might all of those be impacted by a decision to take on a community-oriented task? The only answer that matters to such questions is yours.

One last thing, regardless of your choices don't be too hard on yourself. I'm not exaggerating when I say my wife and I told our kids at least a thousand times, "it's important not to be perfect." Please write that down and look at it from time to time.

4. The overview and the August 9, 1997 "Broken Trust" article emphasize the importance of transparency and accountability, do you think these issues have been adequately addressed during the last twenty years?

Briefly, no. Anyone wanting a long answer is welcome to read a magazine article I wrote about the lack of adequate transparency and accountability in Hawaii's government. It can be accessed at <http://www.honolulumagazine.com/Honolulu-Magazine/May-2008/Politics-in-Hawaii-Is-Something-Broken508/index.php?cparticle=1&siarticle=0#artanc>.

5. Why did it take so long for someone, anyone, to come forward regarding these issues given that they appeared to be present for decades?

I will address this in some depth during the program, but the quick answer is that Hawaii is an island community long dominated by a single political party. The identity of the party is irrelevant. The same thing would have happened (with different players, of course) if it had been Republicans, Libertarians, or members of the Green Party who held total dominance during the relevant time frame (i.e., the 1980s and 1990s).

6. Were there any characteristics or attributes common to this set of trustees that made them particularly prone to abuse their power?

There were a lot of bad things going on, but to the extent possible, I intend to focus on legal, ethical, political, moral, and social aspects of the Broken Trust story, and not talk about what I might perceive as personal shortcomings of the people. Regardless of who's in power, I believe the adage, "power tends to corrupt, and absolute power corrupts absolutely" ... and I define absolute power as "power without transparency and accountability."

7. What should we make of all the people who did nothing in response to the abuses of the trustees, ~~like~~ the Hawaii Supreme Court, the Attorneys General, the special masters, and Bishop Estate's in-house counsel?

This is a good question that would be made even better by deleting the word "like," to spotlight my belief that the trustees were not alone in abusing their positions. I believe many people in the Broken Trust story not just failed to do the right thing, but repeatedly did the wrong thing ... often in circumstances where they had a duty not to do what I just called the wrong thing. These abuses include behavior that qualifies as unethical, unprofessional, illegal or, in a limited number of cases, even criminal.

What do I make of that now? Hmmm. What do you make of our legal community's head-in-the-sand posture over the many years since Broken Trust? Does it surprise you that I got strong pushback from several colleagues at the law school, or that while many law schools across the country continue to use the Broken Trust story pedagogically. Had I not used it in my own classes at the law school, I suspect most UH law students from 2000 to 2020 would have never heard of the book, much less been encouraged to read it. Maybe the explanation is as simple as the law school having been named after the person most responsible for politicizing Bishop Estate.

8. How has Broken Trust impacted your career path, and how has it affected the way you approach different ethical issues?

Other than consuming a huge amount of time and requiring that I disassociate prematurely from my role as counsel at the Goodsill firm, I'd say it hasn't had much impact on my career path. I don't think it affected how I approach ethical issues or anything else of substance in my life. It's something I did and I'm glad I did it. As corny as it might sound, I sensed a calling to do it, and so I did. Had I not done what I did, I think that decision to ignore the calling would have hounded me for the rest of my life. I was a tenured professor who taught all the legal and ethical issues involved in Broken Trust. If I didn't step forward and explain things to the public, who would? And if not then, when? It was that simple.

I don't think my actions in the Broken Trust story changed my life or self-image significantly. The reaction of others to the role I played has been overwhelmingly

positive, but there's a relatively small percentage of the public, most of whom are lawyers, who in one way or another have made their displeasure known to me or members of my family. To say that doesn't bother me would be a lie; it does. One lawyer, whose firm's role I had criticized repeatedly, took me to lunch one day and literally cried as he begged me to stop publicly criticizing his firm. He and I had been good friends for a long time. I felt terrible for him and gave serious thought to his request. Eventually, however, I decided the right thing for me to do, was to keep on doing what I had been doing. As I look back, I'm anything but sure it was the right thing to do. He never forgave me.

9. Do you find that there is an intersection between journalism and the legal profession in your work, and if so, could you please tell us how you use the two to approach and address different ethical issues?

I don't think of myself as a journalist. Instead, I consider myself an academic who likes reaching a general audience that will find my work easy to understand, relevant to their lives, and helpful to them in considering and debating current challenges in their communities. Admittedly, most law professors view such commentaries as non-scholarship. They might even think of me as more a journalist or community activist, or whatever, rather than academic.

10. I see that since Broken Trust, you have also written articles on rail and public education. What do you think are the most pressing issues currently facing the State and how do you think they can be best addressed?

In a word, corruption. Mostly non-criminal, and in many cases boiling down to an island way of defining loyalty, but corruption nonetheless. Invariably in such cases you'll find a lack of adequate transparency and accountability in government. Rail is Exhibit A. Public Education is Exhibit B. I could go on. The problem is not a people problem. The people of Hawaii are at least as good and industrious as the people in any of the other places I've lived. Think of it as systemic. For example, I view the people in the DOE as victims of a dysfunctional system, not the reason for it. I can elaborate on this during the session.

11. What is your advice to attorneys who seek to do the right thing, but who may be intimidated or not know where to start?

Try hard to understand why others might see the situation differently (i.e., maybe you are overreacting). Maybe you have an ethical or legal duty not to do what you are feeling an urge to do—that might not by itself answer your question, but it's a major consideration. Never confuse your own moral compass with your ethical or legal duties. Your moral compass is important, of course, but never forget that it's based on YOUR core beliefs, about which you could always be wrong.

Be honest with yourself about your motives. Some motives are more uplifting than others, but the key is to know what yours are in any given situation. Also, ask yourself who might be impacted by what you are thinking about doing. Might others suffer collateral damage? If so, maybe it's time to step back.

Finally, open your eyes wide to the fact that many, perhaps most, whistleblowers end up feeling screwed or at least underappreciated, given their personal costs.

12. What oversight could there have been over the Hawaii Supreme Court? Could there have been any relief sought from the federal government as to the issues of the Justices' conflict?

The feds made all the difference as far as the trustees were concerned. Without the IRS, the whole story would have ended differently or taken much, much longer. As for judicial oversight, we have a system in place (e.g., JCC, JSC, HSBA, AJS). Why it failed and lawyers pretended not to notice is the question I keep asking.

13. The last paragraph of the book encourages "to keep talking –to discuss and debate the issues and insights this story provides for our lives." Since this book was published do you believe that this has happened? What kind of impact has this had on our legal and political community?

The fact that the Broken Trust book has been a best seller is good. I've given many community talks, etc. I like to think the impact has been good and lasting. My nose is admittedly pressed against the trees on this one. What does the forest look like to you?

14. Were there any claims of professional misconduct brought to the Office of Disciplinary Counsel involving the attorneys in this case? If so what was the outcome?

Not to my knowledge—despite a probate rule requiring the reporting of trustee misconduct in specific circumstances.

15. Do you think the events surrounding Broken Trust would occur today and why?

Yes, but with different players at different institutions.

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1. If the system is corrupt, and people in power would have appointed themselves Bishop Estate trustees either way, was the broken trust scandal inevitable? Is there any way this could have been avoided?

The abuse had gone on for several decades and ended only when individuals like Oz Stender, Nona Beamer, Kamani Kualaa, Karen Keawehawaii Farias, and leaders of the Na Pua and Na Kumu groups took principled stands at huge personal risk. But for such individual acts of courage, change would not have come. Such courage is rare. Consider the relatively recent scandals involving a now-former police chief, members of the police department's criminal intelligence unit, chief prosecutor, senior deputy prosecutor, city attorney, city manager, and others. How could it have gone on for so long *undetected*? The police department, prosecutors office, and city administration were all filled with intelligent people, many of whom had extensive training and experience identifying criminal activity, yet there were no reported whistleblowers.

2. Knowing the damage previous trustees did, how did the interim board move forward with transparency and trust directly after the scandal to repair the estate's reputation?

I believe the Interim Trustees put far too much emphasis on achieving "closure and healing," as opposed to holding people accountable for their wrongdoing. I was particularly troubled by many of their hiring decisions and refusal to meaningfully assist efforts by the Attorney General's Office, and others, to seek accountability. This is explained further in the book's Chapter 20, "Closure & Healing."

3. In Hawaii, local culture often says that "family comes first" and that we must protect our family and friends at all costs. While this can be seen as caring for others, how might this culture have become toxic, enabling the corrupt actions of the Bishop Estate at the time? And can local culture be all to blame?

I'm particularly fascinated by these questions and look forward to discussing them during our session together. Anyone with some free time before then might want to skim the final section of an article I wrote some years ago. The section I have in mind is entitled, "On the Importance of Speaking Out—and the Cost." <https://www.honolulumagazine.com/politics-in-hawaii-is-something-broken/>

4. In the 60 Minute segment about the Bishop Estate, Steve Kroft interviews two trustees, both of which firmly believe they were innocent and deny any wrongdoing. Do you believe the trustees were aware, at the time, of the extent of their crimes, or did they truly believe they were operating within the law and in the best interest of the trust's beneficiaries?

I don't know what they were thinking. I considered them exceptionally accomplished and not inherently bad people. Even so, they managed to set what I and many other law professors consider a world record for breaches of trust. I don't know if they knew it at the time, came to believe it later, or actually believe they did nothing wrong.

5. How can a mission left by Princess Bernice Pauahi Bishop to always have the children of Hawaii's interest be so opposing?

I admire Princess Pauahi greatly. I believe her will was exceptionally well thought-out and equally well written, and the charitable mission she spelled out strikes me as incredibly wise. That things have not always gone smoothly says a lot about the human condition and nothing about her, IMHO.

6. With the subtitle of your book in mind, what would you characterize as greedy?

Regardless of the topic, I think many disagreements end up at least partially attributable to how each person is defining key terms. And even when they agree on a particular term's definition in the abstract, how they apply it can vary widely. I suspect greed, like beauty or fairness, tends to be highly subjective, as opposed to the objective truth of whatever is being described as greedy. In short, when someone uses the word greedy to describe something or someone else, it probably tells us at least as much about the speaker's values and judgment as it does the thing or person being described as greedy. I think it was greedy of the trustees to spend lavishly on themselves and their political cronies while terminating programs and rejecting applicants to Kamehameha Schools. It also breached various fiduciary duties and may in some cases have been criminal. Thanks to your excellent question, I'm now thinking self-seeking would have been better than greedy.

7. Why did the Hawaiian state senate not appreciate Margery S. Bronster's investigation and reject to confirm her nomination for a second term?

I initially thought it was all about her interaction with Bishop Estate trustees. After conversations with people from the legislature and AG's office, I came to view the reasons for her rejection as more complicated and nuanced than I had originally thought. She was roundly perceived as a poor manager who let many important matters fall through a crack during her term in office.

8. Years later, how have the Bishop Estate and Kamehameha schools recovered from the turmoil and secrecy within the estate's trustees?

I haven't been keeping up with trust or school activities, other than to read the news. That said, I was delighted a few years ago when the trustees agreed to pay the entire cost of making Open Access electronic and audio versions of the Broken Trust book. I particularly liked hearing their reasons included a collective desire to make the book readily accessible by students.

9. During the peak of the controversy when Broken Trust was published, how did you and your co-authors maintain your resiliency and integrity when criticized by the trustees and justices?

I don't mind when people disagree with me, but I hate being attacked personally—and there was a lot of that following publication of the Broken Trust essay. Fortunately, my early teachers taught me the differences between sticks and stones that can hurt me, and words, which hurt me only if I let them. I also recall when someone told Gladys Brandt that one of the trustees had derided four of the five Broken Trust authors as "senile." She smiled sweetly at said, "the person who said that must not realize that senile is the most dangerous kind." Gladys and Monsignor Kekumano always found ways to keep the five of us in bright spirits, even when the personal attacks were at their height.

10. What processes/assessments are in place to ensure that what happened with Broken Trust does not happen again?

I can point to all sorts of laws, processes and watchdog agencies, but the existence of those ensures nothing. Laws, codes of ethics, internal controls, etc., matter, but at the end of the day it all depends on the integrity and courage of individuals who see that something is awry.

11. What was it like to write the Broken Trust book as a group? Were there conflicting interests? Different goals and visions? How did that help or hinder the writing of Broken Trust?

It took many years to gather information for the book and then to write it. Had it not been a labor of love, we never would have started, much less finished it. It consumed approximately 10,000 hours of my time alone. Judge King and I assigned all book royalties to local charities to illustrate that our goal in writing the book was not to enrich ourselves. Several others worked long and hard with us for several years, but they eventually decided to redirect their efforts to a book project that would focus on what was happening on the Kamehameha campus during the years of controversy, rather than legal issues Judge King and I wanted to highlight in Broken Trust.

12. I understand that you wanted to be a Jesuit priest following graduation from college. Why did you decide to do that, and why did you later change your mind?

I thought being a Jesuit would facilitate my desire to work for social justice. I left the Jesuits after a year when it became clear to me that I wanted to live my life as a husband and father rather than a member of a religious order. Several years later I was riding Bus #6 in downtown Denver when a young woman sat next to me, smiled, and introduced herself. We started dating and several months later I asked, "what would you say if I asked you to marry me?" Her response: "Are you asking?" We had a big

church wedding two months later and celebrated our 50th wedding anniversary in 2023. Looking back, the decision to leave the Jesuits was a good one for me. Susie and our kids (and grandkids) mean the world to me.

My short stint in the Jesuit novitiate was highly instructive, magnified, I think, by my growing understanding of what the vows of poverty, chastity, and obedience—that is, their impact on my spiritual growth. The more I understood the vow of obedience, the less value I saw in it, as applied to me. By comparison, a growing understanding of the vow of poverty was eye-opening. Here's how I describe it many years ago: "I've always been fascinated by the way power--especially unearned power--can so easily and quickly adversely affect the folks who are stricken with it. I also find interesting the degree to which having nothing to lose can empower a person spiritually. The year I spent living under a vow of poverty was liberating in ways I never would have predicted. I went in thinking of self-imposed poverty as a giving up of something, a loss, but it wasn't that way at all. I ended up feeling as if I had spent my prior life wearing one of those little tubes that you put your index fingers in ... the kind that gets tighter and tighter the harder you try to pull your fingers apart--I think they're called Chinese finger locks or traps, or something like that. Anyway, living under a vow of poverty felt to me the way it feels when instead of pulling, you push your fingers together in order to get them apart. It's counterintuitive, but it works. When I entered the Jesuits I was afraid of death, a borderless universe, eternity, stuff like that. Maybe not any more than normal, maybe more. Can't say. But then I found myself caring for terminally ill priests who lived with us, as they awaited death ... and eventually helping to prepare their bodies for burial, burying them, and then wearing the clothes they no longer needed, including socks and underwear. I'm sure the thought of such things would make some people uncomfortable, to say the least. For sure, my first reaction was to see it as a terrific sacrifice on my part. But it ended up being indescribably satisfying and liberating."

13. I would think that the root of the problem would be the trustees themselves as they are the ones that directly made decisions and abused their power, but who gave them that power? Could it be argued that the trustees aren't to blame, but rather the corrupt system for which the trustees were appointed?

I believe there are underlying conditions that help explain why so many people abused Princess Pauahi's charitable trust (then known as Bishop Estate) and why government officials with the power and responsibility to investigate such abuse did not do so (such as a succession of state attorneys general and probate judges).