

Responsive Philanthropy

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Photo by Rich Pilling/MLB Photos via Getty Images

Foundation Money on the Mound

Bradley Foundation Helps Brewers with Baseball Stadium

By Rick Cohen

Politics and philanthropy rarely intersect on a baseball diamond, but they have in Milwaukee's new ballpark.

Home to the Milwaukee Brewers, Miller Park is an impressive structure. Considered to be one of the best venues in Major League Baseball, the convertible domed baseball-only stadium with 70 luxury suites can hold some 43,000 fans.

Like many new professional baseball stadiums, Miller Park rests on a fusion of public and private financing, with the emphasis certainly on public. Baltimore's Camden Yards, for example, is 100 percent publicly financed. Although reports from the Wisconsin Legislative Audit Bureau suggest that the cost of the stadium topped \$413 million as of December 2001,¹ most of the official descriptions of Miller Park describe it as a \$400 million construction job. Some \$310 million is termed public, largely derived from a 10-cent sales tax levied by the Southeast Wisconsin Professional Baseball District.

The other \$90 million of the financing is "private," described as "from the Brewers owners." Unlike professional

"Foundation Money on the Mound" continued on page 19.

MILWAUKEE - APRIL 6: Major League Baseball Commissioner Bud Selig throws out the first pitch on opening day at Miller Park, The Milwaukee Brewers new \$396 million dollar stadium on April 6, 2001 in Milwaukee, Wisconsin.



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Abramoff: Well-Connected to the Well-Heeled of the Right

Penn Ave. lobbyist's strong ties to right initiatives is proof that the strongest ties aren't the most visible

By Rick Cohen

The cross fertilization of two-stepping politicians and questionable philanthropy is a daily phenomenon, but it takes a little digging to follow the relationships. One worth examining is the nonprofit and philanthropic work of Washington, D.C., lobbyist Jack Abramoff, a longtime associate of House Majority Leader Tom DeLay.

Abramoff has long been the epicenter of critical attention for his distinctive ability to attract lobbying fees from Indian tribes, amounting to more than \$45 million over three years to Abramoff and his associate, Mike Scanlon, another DeLay intimate. Not surprisingly, the tribes' hiring of Abramoff resulted in a huge shift of their political contributions to the Republican Party and Republican candidates. Abramoff's success and the consequent unhappiness of many tribal members garnered the uber-lobbyist a hearing on Sept. 29 in front of Sen. John McCain's Indian Affairs Committee to face charges that he swindled the tribes and misused their contributions.

What elevates this from simply another sordid story of sleazy politics is Abramoff's role with nonprofits. The *Washington Post's* front-page September 28 story revealed that the nonprofit Capital Athletic Foundation, located in the District of Columbia, had collected almost \$6 million ostensibly for "needy and deserving" sportsmanship programs, but spent only 1 percent of its revenues toward sports-related programs for youths. The other 99 percent of CAF expenditures went to items such as a memorial dinner for Angolan rebel Jonas Savimbi and a golf trip to St. Andrews, Scotland, on a private jet for lobbyists and lawmakers such as the Christian Coalition's Ralph Reed and House Administration Committee Chairman Robert Ney (R-Ohio).

The connection? The Capital Athletic Foundation (CAF) is run by Jack Abramoff and is co-located in Abramoff's office, and its expenditures include buying a house in Silver



Rick Cohen

Spring, Md., titled in the name of a company directed by Abramoff, and grants of some \$4 million (between 2001 and 2003) to the Eshkol Academy in Columbia, Md., where Abramoff sent his kids for schooling (before the school went bankrupt this past

spring). The *Post* cited e-mails from Abramoff describing the Eshkol school as a "front group," though it isn't clear for what. With the CAF donations, Eshkol bought two Zamboni ice-cleaning machines, though the school lacked a hockey rink.

The CAF Web site (<http://www.capathletic.org/>) lists programs such as the "Spirit of America" awards and the National Sportsmanship Hall of Fame and grants to 16 schools and Scout troops, generally recipients of CAF's typical \$500 grants, but not the Eshkol Academy or Kollel Ohel Tiferet in Israel (\$97,500 from CAF in 2002 alone) or PTACH, a Jewish children's services agency in Brooklyn (\$300,000 in 2002). With no trace on the website about the conservative Jewish and Israeli grants, it may come as a surprise that Abramoff has been a longtime pro-Israel lobbyist.

You need Sherlock Holmes to connect all the dots in the Abramoff case. The Christian Coalition connection? Abramoff and his partners got some \$4 million from the Tigua tribe in Texas to keep its casino open while Abramoff and Scanlon simultaneously worked with former Christian Coalition leader Ralph Reed, now a high functionary in the Bush re-election campaign, to block the Tigua casino and several others in the South, paying Reed just about \$4 million to do so.

Abramoff's perfidy toward his Indian clients is all too clear in an e-mail he sent Reed in 2002: "I wish those moronic Tiguas were smarter in their political contributions. I'd love us to get our mitts on that moolah!! Oh well, stupid folks get wiped out." One might have guessed that the Tiguas would have testified at the Indian Affairs Committee hearing.

Then there's the connection to NCRP's research on conservative foundations and conservative think tanks. Abramoff is on the board of Toward Tradition, a 501(c)(3) devoted to promoting "traditional Judeo-Christian values," including the "faith-based American principles of constitutional and limited government, ... free markets, a strong military, and a moral public culture." Toward Tradition's founder and president, Rabbi Daniel Lapin, got more than \$60,000 as a consultant in 2002 from the Capital Athletic Foundation. Abramoff is a director of the National Security Caucus Foundation, the educational arm of the Congressional National Security Caucus, a pro-defense nonprofit.

Abramoff is also the former executive director of Citizens for America (CFA), a "grassroots lobbying organization" founded in 1983 by conservative activists such as Lewis Lehrman and Jack Hume to promote President Reagan's "pet projects" such as the "Star Wars" Strategic Defense Initiative and support for the "contras" in Nicaragua. One of CFA's initiatives (as well as an initiative of the Conservative Caucus, whose PAC Abramoff also directed at one time) was in 1986 to give Jonas Savimbi "freedom fighter" status to make him eligible for U.S. government aid. Almost two decades later, Abramoff uses his sports philanthropy to memorialize the right wing Angolan rebel. His connection to African politics goes back to his co-founding of the International Freedom Foundation, which lobbied against Nelson Mandela and in favor of the apartheid regime.

You'll currently find Abramoff serving as a director of the National Center for Public Policy Research (NCPFR), which is funded by the Lynde and Harry Bradley Foundation, the Carthage Foundation, the John M. Olin Foundation, the Earhart Foundation, and the Sarah Scaife Foundation, among others, all getting mentions in NCRP's *Axis of Ideology* study of the public policy grantmaking of conservative foundations. Abramoff and NCPFR's executive director, Amy Moritz Ridenour, go back decades to when he was chair and she was deputy direc-

tor of the College Republican National Committee. NCPFR is notable for at least two major initiatives, its Project 21 affiliate promoting black conservatives and its Envirotruth Web site attacking the so-called "jihad" of environmental activists against corporations. NCPFR's strong support for deregulation and free market principles matches Abramoff's lobbying successes, which include helping—with his friend Tom DeLay—the Marianas Islands fight against minimum wage and other labor protections for sweatshop workers.

The connection to Sen. Bill Frist's Republican National Convention fundraiser? One of the large donors to Frist's charitable endeavor was Pharmaceutical Research and Manufacturers Association of America (PhRMA), an industry trade association. PhRMA has made an "unrestricted educational grant" to the United Seniors Association (USA), a conservative grassroots organization for the elderly, and USA has in turn run issue ads on TV supporting President Bush's Medicare prescription drug plan (which would prevent Medicare from negotiating with the drug companies to get deep price discounts on prescription drugs), and then aired ads thanking legislators who voted for the president's plan—in all, it ran nearly \$10 million in advertising. USA also ran issue ads in 2001 and 2002 costing over \$2 million that advocated for the Bush administration's \$1.3 trillion tax cut. No surprise, but Jack Abramoff—a "Pioneer" fundraiser for the 2004 Bush-Cheney campaign—is on the board of the United Seniors Association. ○

Rick Cohen is executive director of the National Committee for Responsive Philanthropy (NCRP). NCRP is an independent nonprofit organization founded in 1976 by nonprofit leaders across the nation who recognized that traditional philanthropy was falling short of addressing critical public needs. NCRP's founders encouraged foundations to provide resources and opportunities to help equalize the uneven playing field that decades of economic inequality and pervasive discrimination had created. Today NCRP conducts research on and advocates for philanthropic policies and practices that are responsive to public needs. For more information on NCRP or to join, please visit www.ncrp.org, call (202) 387-9177 or use the enclosed membership form.

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Affinity Groups

Joining an Exclusive Club

By Marissa Guananja

There is great utility in organizing groups or individuals around similar interests and goals. Ideas are generated and efforts are combined with the intention of furthering a cause or attaining a common objective. This organizing tactic has been used to build and strengthen social movements throughout history. More recently, employers have been using the concept to provide employees with a type of support network in the workplace, in an era of widespread corporate scandals and layoffs.

In the philanthropic sector, grantmaking institutions—whether foundations or corporations—and individual donors also communicate, collaborate and network around shared concerns and common interests with the hopes of influencing grantmaking in order to become more responsive to the needs of a particular group or area of interest. In the case of the philanthropic sector, this convening of “like-minded” institutions and individuals takes place under the guise of what the Council on Foundations has come to call affinity groups.

Currently the Council on Foundations recognizes 39 affinity groups that encompass a wide range of issues and population groups.¹ The first Council on Foundations-recognized affinity group was the Association of Black Foundation Executives in 1971, with a majority of the remaining 38 groups forming and gaining recognition in the 1990s. But not only has the number of affinity groups been steadily increasing, so, too, has the number of populations or interests represented by more than one affinity group.² For example, both the Women’s Funding Network and Women and Philanthropy seek to encourage recognition of the importance of the full engagement and participation of women and girls in society. In fact, both of these organizations have sponsored a number of joint programs and reports.

Similarly, the National Office on Philanthropy, the Black Church and the Association of Black Foundation Executives work toward increasing philanthropy and effective

grantmaking to black communities. Native Americans in Philanthropy, along with International Funders for Indigenous People, seek to “strengthen” indigenous communities through effective grantmaking. Finally, the Funders Committee for Civic Participation and Philanthropy for Active Civic Engagement encourage service and volunteering through increased and more effective grantmaking to programs that support civic engagement.

Aside from the overarching goal of seeking to improve the effectiveness of grantmaking to some degree, the missions and purposes of many of the affinity groups are often difficult to discern. Deciphering the range of organizational structures is an equally daunting task: Some are organized as volunteer-run networking and information exchange forums, others as formal and professional organizations with full-time staff that offer a range of professional services from consulting to technical assistance.

Essentially, affinity groups seek to impact grantmaking by coordinating efforts among and within members of the philanthropic sector—foundation staffs and trustees, employees at other grantmaking institutions—and individual donors are invited to join these groups and participate in their events. For the most part, however, those affected by the dialogue taking place—i.e., nonprofit organizations and the people they serve and represent—should seek advice and guidance elsewhere. Within the mission statements and purposes of the affinity groups, a grand illusion is created: While the groups’ goals may be commendable—to improve and generate effective grantmaking to organizations that fall within their area of interest—their approach falls incredibly short of achieving such an end.

One of the major criticisms of the philanthropic sector is its exclusivity—a huge barrier exists between the philanthropic and nonprofit sectors, due, in part to the power imbalance between foundations and nonprofits. Grantmaking, in every instance, involves at the

very least two parties, whether institutions or individuals: the donor and the grantee. Affinity groups, as a catalyst for effective grantmaking in target areas, should facilitate communication and dialogue between donors and grantees. Unfortunately, what has occurred, given the current structure of many of the affinity groups, is that the relationship between grantmakers and donees has been further stratified. Participation in affinity groups is limited to grantmaking institutions and funders, and to that end, affinity groups are encouraged to limit the participation of nonprofits.

This notion is demonstrated by the following criteria that the Council on Foundations has set forth for obtaining recognition of the council:³

- The group should be composed primarily of grantmakers, and the services/programs offered are primarily for the benefit of grantmakers.
- Three members of the Council on Foundations must sponsor the group, and sponsorship requires a written statement confirming that council members belong to the group and consider its program/services worthwhile.
- Membership and access to the group's programs must be open to all council members (i.e., foundations).
- The group must have had at least one organizational meeting including representatives from the three sponsoring foundations to establish clear goals and objectives for the organization, and the group must be organized and active (i.e. hold, sponsor or organize issue briefings, workshops, conferences, etc.).
- The group must have a minimum of 20 members (individuals/organizations), at least 10 of which are members of the Council on Foundations. A list must be provided at the time of application.
- The group must identify a main contact person for purposes of mail and telephone com-

munication with council staff and with other affinity groups. This contact must be a council member, unless the affinity group has a permanent staff.

Aside from the criteria that the Council on Foundations has set forth to guarantee that it and the interest of its members are represented within these affinity groups, there are no guidelines that state what an affinity group's purpose should be; there are no principles by which to judge their usefulness; and, in short, there is no way to bring order to the pandemonium that is the wonderful world of affinity groups.

Affinity groups are not philanthropic institutions in the sense that they are not grantmaking institutions—they do not directly give money to nonprofits or benefit them in any tangible way. In fact, affinity groups have entered into direct competition with the nonprofits that they claim to assist by becoming grantseeking institutions themselves, applying for grants to cover programmatic expenses for conferences, meetings, publications and research, among other things.

Of the 39 affinity groups recognized by the Council on Foundations, 20—which clearly had to incur some expenses to operate—did not have any financial information available, and they are not required to, because they are not formally incorporated nonprofit organizations. An examination of the most recent IRS Form 990s for the 19 affinity groups that are incorporated, and therefore required to file with the IRS, revealed that \$16,518,427 of the organizations' revenue came from direct public support—from foundations, other grantmaking institutions or individual donors.⁴ These grants awarded to Council on Foundation affinity groups count toward a foundation's 5 percent annual payout requirement. In other words, a requirement that is meant to directly benefit nonprofits is essentially compensating the philanthropic sector itself, since affinity groups almost exclusively engage foundation staff and trustees. In 2002, executive compensation and benefits for the 19 affinity groups that

Affinity groups, as a catalyst for effective grantmaking in target areas, should facilitate communication and dialogue between donors and grantees. Unfortunately, what has occurred, given the current structure of many of the affinity groups, is that the relationship between grantmakers and donees has been further stratified.

The latest attempt and trend toward effective grantmaking has been the sudden rise in the number of, and interest in, affinity groups. Organizing, or forming informal networks according to issue area of interest, could be useful, since it provides a forum for dialogue and an exchange of ideas.

had 990s available totaled \$2,035,178. That is in addition to the \$3,744,818 listed under additional salaries and wages and the \$869,244 listed for travel expenses.

One would assume that effective grantmaking—which is what the affinity groups claim to be trying to achieve or foster—would involve actually knowing what nonprofit grantees need and want from funders. Program expenses for the 19 organizations on file with the IRS totaled \$14,951,976 in 2002. Of the programs supported by those expenses, few directly solicit or invite nonprofits to participate. If participation is allowed, it is almost always at a very limited level and higher registration or membership fee than foundation member organizations of the affinity group, a confounding approach for foundations that are supposedly trying to seek to improve their grantmaking programs and practices.

The claim that affinity groups allow grantmaking institutions and foundations to focus or improve their grantmaking has not been substantiated by a comprehensive analysis that shows added value to the quality of the grantmaking of participating institutions. In fact, many of the populations these affinity groups claim to serve have seen stagnant or decreasing levels of foundation support in recent years. While foundation funding for children and youth has steadily increased, funding to the economically disadvantaged, women and girls, the disabled, aging/elderly/senior citizens, and ethnic or racial minorities has, at best, remained stagnant.⁵ Increasing the dollars given to these target populations certainly is not the only way to seek change, but on a broader scale, considering the troubling socioeconomic indicators for these populations, the philanthropic sector has not been more responsive to the public's needs since the formation of affinity groups.

According to the Council on Foundations, its Affinity Group Network is "composed of a variety of organizations covering a range of issues and population groups. Affinity groups provide needed resources, information and expertise to enhance the effectiveness of philanthropic dollars."⁶ The philanthropic sector has, for years, struggled with the ever persistent issue of effective grantmaking. The Council on Foundations, along with other membership organizations such as Independent Sector, has instituted guidelines to which all current members and prospective members must adhere. Of course, none of these guidelines are enforceable; in fact, one may look

at them as mere suggestions of what grantmaking institutions should be striving toward.

The latest attempt and trend toward effective grantmaking has been the sudden rise in the number of, and interest in, affinity groups. Organizing, or forming informal networks according to issue area of interest, could be useful, since it provides a forum for dialogue and an exchange of ideas. However, the current structure of affinity groups diverts grants from nonprofits that actually serve the populations that are in need, conceals myriad administrative costs under the guise of grants, and purports to reach out to the nonprofit sector, but actually just adds more barriers to those that already exist between grantmakers and grantseekers.

The affinity group club is exclusive, and those without the appropriate status and financial wealth—but who hold the key to philanthropic effectiveness—need not apply. ○

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Notes

1. For the purposes of this report, the focus will be exclusively on affinity groups recognized by the Council on Foundations. See <http://www.cof.org/Content/General/Display.cfm?contentID=1560> for the affinity group network of the Council on Foundations.
2. In 2003, various reports cited that there are 37 Council recognized affinity groups, including: <http://www.tgci.com/magazine/00summer/affinity.asp>, <http://www.disabilityfunders.org/news/v2n3.htm>, and http://www.cof.org/files/Documents/International_Programs/intlaffinitygroupreport.pdf
3. <http://www.cof.org/files/Documents/Networking/Affinity%20Groups/AGNcriteria-application4-2004.doc>
4. Of the 39 affinity groups, only 19 had financial information available: Eighteen had 2002 990 forms and one had a 2001 990 form available on Guidestar. One affinity group had just recently been incorporated and would not have 990 information available until the following filing period.
5. Foundation Giving Trends 2003 edition.
6. <http://www.cof.org/index.cfm?containerID=26&menuContainerID=&crumb=2&navID=43&navID=43>

Felonious Philanthropists

By John Barkhamer, Jeff Krehely, and Rick Cohen

In the wake of June's Senate Finance Committee hearings on corruption and malfeasance among some of the nation's private foundations, one might think that foundations do not want to be associated with corporate leaders whose questionable behaviors gave rise to the Sarbanes-Oxley corporate accountability legislation and now serve as grist for weekly jury deliberations.

NCRP recently released "Serving Time ... on Foundation Boards," a report that provides a list of individuals who have been accused or convicted of committing some type of corporate fraud, yet who are still serving on foundation boards of directors. It also discusses recent federal legislation designed to clean up the scandals plaguing the nation's for-profit organizations, as well as New York state's proposed efforts to better regulate its foundation and nonprofit sectors.

Actions by the Ford Foundation during the summer of 2003 prompted this research. The New York Times reported last year that Ford decided to retain Paul Allaire on its board of directors, even after the Securities and Exchange Commission (SEC) had fined him for questionable financial reporting and accounting practices as the chief executive officer of the Xerox Corporation and barred him from serving on the board of any publicly traded company (Allaire finally resigned from Ford's board in May 2004). This story raised the question of how many other individuals involved with the torrent of recent corporate scandals were still serving on foundation boards of directors.

To answer this question, a list of 80 recently alleged, confessed, or convicted corporate criminals was compiled from a range of sources, including SEC press releases from 2002 to the present. Each name was then searched for in the Foundation Center's Foundation Directory Online.¹ This search found the following, based on the Foundation Center's data:

- Nine corporate reprobates serving on boards of personal/family foundations;

- Two corporate malefactors serving on boards of both personal/family and independent foundations; and
- Two corporate rogues serving on boards of independent foundations.

Some of the individuals found serving on foundation boards have become household names, such as Enron's Kenneth Lay and Jeffrey Skilling, and Tyco's Dennis Kozlowski, while others are less familiar. Not including Ford, the foundations involved have assets that range from a relatively paltry \$200,000 up to nearly \$500 million, and total about \$1 billion.

The report acknowledges that this handful of individuals does not constitute the entirety of corporate scofflaws engaged in private philanthropy, either their own or as a member of a governing board of an independent foundation. Indeed, they represent the continuation of a dynamic of some of the less admirable players in the U.S. private market system—building or bolstering their good name and image through philanthropy—with nary a raised eyebrow from the philanthropic sector.

Unfortunately, current laws and regulations do not require those who commit corporate fraud to be removed from private corporations, such as foundations. They generally only bar people from serving with publicly traded companies. When the potential for corporate fraud exists, the SEC investigates the matter and, if necessary, seeks (from a federal judge or SEC administrative law judge) an officer-and-director (O&D) bar for the person in question. Bars are also agreed to as parts of settlements, in which an individual may agree to a settlement with no admission of guilt or the formal finding of facts related to a case.

Recent corporate scandals and their impact on the nation's economy and workforce have motivated the SEC to remove more corporate criminals from leadership positions at the nation's publicly traded companies. The recent increase in the number of O&D bars reflects

this interest, as well as the impact of relatively new regulations that make O&D bar rulings easier to obtain. In particular, under Sections 305 and 1105 of the Sarbanes-Oxley Act, passed in the wake of the Enron scandal, the SEC can seek an O&D bar in administrative proceedings before the SEC's own administrative law judges. Previously, the SEC could seek a bar only in federal court, a process that requires full-fledged discovery, as opposed to an administrative proceeding, which is expedited and has very limited discovery. The act also lowers the standard the SEC must meet for obtaining the bar from "substantially unfit" to "unfit." In 2000, there were 38 O&D bars; in 2001, 51; and in 2002 (the last year for which data are available), 126.²

SEC records indicate that the following individuals are either temporarily or permanently barred or sought to be barred from serving as board members or officers of publicly traded companies. Except for Allaire, all of the people listed appear to be still serving on foundation boards.

- Paul A. Allaire (5-year bar).
- Dean L. Buntrock
(term undisclosed/sought to be barred).
- Andrew S. Fastow (permanent bar).
- L. Dennis Kozlowski (permanent/sought).
- Phillip B. Rooney (term unknown/sought).
- Richard Scrushy (permanent/sought).
- Jeffrey K. Skilling (permanent/sought).
- Mark H. Swartz (permanent/sought).
- Frank E. Walsh (permanent).

By virtue of the comparative SEC actions, Allaire is hardly the worst of corporate leaders parading in front of the commission, much less those whose fates are being decided by judges and juries.

Currently, only the SEC possesses the power to seek O&D bars, and—once again—only has authority to bar people from serving as leaders of publicly traded companies. Considering that

foundations have no shareholders who can exert pressure on executive and board leadership to behave legally and ethically, and that experts estimate 45 percent of foundation assets (including family foundations) can be considered public dollars—thanks to tax breaks related to establishing and operating a foundation—the government needs to have authority to protect and defend the public's interest.

Quite simply, coverage of O&D bars needs to be expanded to include the nonprofit and foundation sectors. It is logical to believe that if individuals are barred from serving as an officer or director of a publicly traded corporation, then they should also be barred from serving as an officer or director of a private foundation or other nonprofit organization.

Options for expanding O&D bars to include foundations and nonprofit organizations include the following:

- Expand SEC O&D rulings to foundations and nonprofit organizations, effectively expanding the mandate of the SEC outside of publicly traded companies;
- Empower a current agency (aside from the SEC) to seek and issue O&D bars in the foundation and nonprofit sectors; or
- Create a standard that strongly encourages and recommends—but does not require—foundations and nonprofit organizations to bar individuals who have received an SEC O&D bar from serving as officers, directors, or trustees.

The SEC currently has no jurisdiction over private foundations and nonprofit organizations, which would make the first option difficult to implement. And based on the tendency of foundation leaders to defend and protect their colleagues when they face public scrutiny, as well as the failure of the foundation sector to police itself in recent years, the third option is not feasible.

Considering that the Internal Revenue Service is currently charged with regulating foundations and nonprofit organizations, the second option appears to be the most logical to legislate and implement. Legislation could be proposed that simply mandates that whenever individuals receive an O&D bar from the SEC, then they are also barred from serving as an officer, director or trustee of a foundation or nonprofit organization. The SEC would be required to notify the IRS when individuals have received an O&D bar, and the IRS would then conduct a search to see if those individuals are on the board of a registered foundation or nonprofit organization. If they are, then the IRS notifies the individuals (and other executives, directors and trustees of the foundation or nonprofit organization) that they must cease involvement with the foundation or organization within a predetermined period of time. A follow-up audit would check to ensure that the individuals have in fact ceased involvement with the foundation or nonprofit organization.

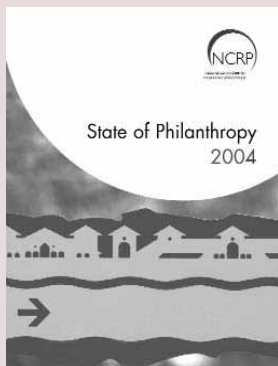
Unlike for-profit companies, there is no body of shareholders to provide oversight of a foundation. Similarly, the public does not get a

chance to vote foundation leaders out of office. Consequently, the government has an obligation to make sure that foundations are using and managing their resources effectively and legally. Expanding O&D bars to the foundation and nonprofit sectors is one way for the government to do just that. But the major responsibility lies with the foundation sector itself to steer clear of felonious philanthropists and to boot them out of the philanthropic communities whenever they sneak through the door.

Foundations often tap individuals from the for-profit sector for board service because of their specialized skills and abilities. Since an individual's skills and abilities can be so easily transferred from a for-profit corporation to a private foundation, it is easy to assume—and fear—that their illegal and unethical behavior can be transferred as well.

Notes

1. These searches took place during January 2004.
2. Based on fiscal years that begin on October 1 and end on September 30.



Just Released!

State of Philanthropy 2004

We are proud to release *State of Philanthropy 2004*, the second edition of our signature biennial publication that presents current and diverse perspectives from nonprofit, academic, foundation, and advocacy leaders, and discusses how philanthropic institutions can assist the nonprofit sector in securing social and economic justice for the nation.

State of Philanthropy 2004 provides a much needed collection of analyses on the accomplishments and shortcomings of foundation, corporate, and workplace philanthropy, with a focus on the social justice arena.

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Self-Auditing—A Futile Endeavor or a Credible Safeguard against Scandal for New York Nonprofits?

By Sarah S. Miller

After several financial improprieties were exposed at national and New York-based nonprofit organizations, New York Attorney General Elliot Spitzer encouraged legislation mandating that nonprofit organizations establish audit committees. It is the expectation that the audit committees would act as a self-monitoring mechanism and deter any potentially inappropriate financial transactions from taking place that could violate the integrity of the organizations.

Recent events such as the Statue of Liberty Foundation paying its executives excessive amounts of money while the Statue of Liberty remained unopened and the unethical financial transactions by the former leader of the United Way of the National Capital Area added to the public's faltering confidence in nonprofit accounting procedures. The exorbitant compensation given to Richard Grasso, the former chief executive officer of the New York Stock Exchange, a registered nonprofit organization, was the latest transaction that spurred the New York state Attorney General to propose new mandates in auditing procedures for nonprofits. The proposed changes were brought to the chairs of the Corporations, Authorities, and Commissions Committee in both the New York State Senate and Assembly. The chair of the committee in the Senate, Vincent L. Leibell III, and the chair of the committee in the Assembly, Richard L. Brodsky, sponsored the attorney general's proposed bill, SR 4836.

SR 4836 would require nonprofit corporations with at least \$3 million in assets or those that receive more than \$1 million in annual revenue to create an audit committee. The president or chief executive officer, and the treasurer or chief financial officer, would have to sign the annual report and verify the financial information presented. The legislation, as it stands, is for the most part positive, but its effectiveness and enforceability remain uncertain should the bill pass the New York Legislature and become law.

The proposed legislation places increased responsibility on nonprofit board members to be knowledgeable about the organization's financial

transactions and controls. In particular, the members chosen for the audit committee need to be aware of an organization's staff compensation, paid professional services and other financial matters. Such requirements appear to be good, basic board practices that should already be in place.

But all too often, boards are unaware of their organization's financial situation and transactions. Members may serve on a board because they feel the organization's mission is worthwhile for the community, without paying attention to the board's internal activities that could potentially take away from that mission. A mandate for the establishment of an audit committee emphasizes the vital role board members can play in ensuring the longevity and good reputation of an organization through sound financial practices. Fiscal accountability is vital to a strong organization if it is to operate effectively and efficiently to meet its target goals. Strengthening the internal controls of the organization would strengthen the organization as a whole and instill confidence in the organization's charitable mission.

Other states have introduced legislation similar to SR4836, with varying requirements for nonprofit corporations. The proposed legislation in New York could benefit from incorporating some of those requirements, including rotating audit committee members every three to five years and barring chief executive officers and chief financial officers from serving on the committee. While chief executive officers and chief financial officers should approve audit committee reports, barring them from sitting on the committees would serve as a check and balance to prevent any inappropriate financial transactions from taking place at the executive level.

Some critics may argue that such legislation would place additional stress on nonprofit organizations that already have stretched resources and are held accountable to other standards. The establishment of audit committees, however, should not require any large additional outlay of resources. In addition, the pro-

(Continued on page 18.)

Not Much to Cheer About

California Legislature Passes Ineffective Accountability Bill

By Pete Manzo

NCRP, its board of directors and its members firmly believe that legislation mandating standards of behavior and transparency, coupled with effective enforcement, is necessary to ensure that foundations and other nonprofit organizations be held accountable.

Unfortunately, advocates for increased accountability will not find much to cheer in the Nonprofit Integrity Act (Senate Bill 1262), recently passed by the California Legislature and signed into law by Gov. Arnold Schwarzenegger.

SB 1262 has two major prongs—a section dealing with governance aims to tighten the role of the board and outside auditors, while another section, much longer and involved, imposes significant new rules and disclosure requirements for the use of paid fundraising counsel by nonprofits. Since simply trying to summarize those fundraising provisions would exhaust the space we have for this report, and since they also are in many respects less objectionable, we'll focus here solely on the governance provisions.

At first blush, SB 1262's oversight provisions seem like pretty standard stuff. The bill applies to public benefit nonprofits, referred to in the bill as "Reporting Nonprofits," that are required to register and file periodic reports with the Attorney General's Office.¹ According to the bill, Reporting Nonprofits with gross revenues of more than \$2 million, not including revenues from government grants or contracts, must

- ensure that the board of directors reviews and approves the compensation, including benefits, of the corporation's president or chief executive officer, and its treasurer or chief financial officer, to ensure it is "just and reasonable";
- have an annual audit done by an independent CPA, using generally accepted accounting principles;
- make the audit available to the public in the same manner as IRS Form 990, no later than nine months following the end of the prior fiscal year;

- have an audit committee that
 - > is appointed by the board of directors from members of the board or the public,
 - > is separate from the finance committee,
 - > is chaired by someone not on the finance committee, with a majority of members also not from the finance committee,
 - > excludes members of the staff, including the president or CEO, and the treasurer or CFO,
 - > is composed of members not receiving any compensation from the corporation, other than perhaps as members of the Board of Directors, and with no material financial interest in any entity doing business with the corporation, and
 - > is responsible for retaining, supervising and reviewing the auditor and approving the audit.

Who could be against things like independent audits, overseen by independent audit committees approved by boards, and making audits available to the public? In the details, though, the bill's oversight provisions dictate how boards should meet their fiduciary duties in ways that certainly will be difficult for many nonprofits to match. It is hard enough to find volunteers, even among board members, to serve on finance committees, and the new provisions mean other board members not on the finance committee, or outsiders, have to be recruited to make up the majority of the audit committee, thereby likely sapping more energy from the staff and board that might be better used in other ways. The bill's oversight provisions also force boards of directors to get involved in reviewing the compensation and, therefore, inevitably the performance of the chief financial officer. In all likelihood, these mandates affecting boards will not detectably improve the effectiveness of their financial oversight.

More important is what the bill does **not** include:

- Although hospitals, universities and pri-

vate schools account for the lion's share of total revenue, they are not covered by the bill.

- The bill does nothing to increase the enforcement capabilities of the attorney general (AG). While it significantly increases reporting to the AG's Registrar of Charitable Trusts section, comprising 12 attorneys who valiantly try to protect the public's interest in the honest and effective operations of more than 90,000 public benefit nonprofits in the state, it makes no provision to increase or even maintain this level of staffing. (As of this writing, the AG's office has announced that it may be forced to lay off staff attorneys with less than 3 years' experience, although this may be posturing in labor negotiations.)
- The bill does not require public disclosure of transactions between nonprofits and directors or officers, which are easily hidden in 990 filings and audits.
- The bill's governance requirements do not apply to organizations with budgets of less than \$2 million and, oddly, also exclude audited government grant and contract funding from the calculation of the \$2 million gross revenue audit trigger. In a rare move, the bill's sponsor amended his bill to move the threshold up from \$500,000 to \$2 million during hearings, in response to testimony by nonprofit representatives. (Some witnesses advocated an even higher threshold of \$5 million, citing a shortage of CPAs qualified to perform nonprofit audits.) This move conflicts with the recommendations of

many nonprofit management experts that all nonprofits with gross revenues of more than \$300,000 to 500,000 have independent audits.

- The bill offers no positive inducements for nonprofits to invest in improving their oversight systems (more on this below), a fault common to other regulatory efforts.

It's hard not to conclude that SB 1262 is a remarkable missed opportunity to increase philanthropic accountability in the nation's most populous state. At its birth, however, this effort to boost accountability seemed to have everything in its favor:

- several prominent local and national scandals that made nonprofit accountability a high-profile issue;
- local and national nonprofit leaders beginning to embrace the need for reform;
- a senior state senator sponsoring the bill who has strong ties to the nonprofit environmental community and is serving his last legislative term, adding a sentimental legacy factor to the deliberations;
- the public commitment of an elected attorney general who previously was a former president pro tempore of the state Senate;
- a track record of good working relations between the Attorney General's Office and a committee of expert nonprofit lawyers from the state bar that in prior years had worked closely with the AG to revise the state's laws governing unincorporated associations; and



NEW! Serving Time on Foundation Boards

Serving Time on Foundation Boards, released in June 2004, provides a list of fraudulent corporate executives who are still serving on foundation boards of directors. It also discusses recent federal legislation that is designed to clean up the scandals plaguing the nation's for-profit organizations, as well as New York state's proposed efforts to better regulate its foundation and nonprofit sectors. The report concludes with policy recommendations and options that will improve foundation governance and help restore the public's faith in institutional philanthropy.

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- an advisory committee of nonprofit and foundation representatives, and accountants and lawyers specializing in serving nonprofits sponsored by the California Association of Nonprofits (CAN).

Certainly this mix could have produced a much better bill, one more likely to actually improve the ethical behavior of nonprofits.

So what went wrong? Perhaps not so incredibly, the small-gauge politics of the legislative process. The attorney general announced that his office was pushing an accountability bill last November, without consulting with the advisory committee led by the California Association of Nonprofits or the state bar's section of exempt-organization lawyers. In fact, some close to the negotiations believe that the announcement came before the bill's provisions had been drafted and without input from the office's section overseeing nonprofits, though an attorney from the Attorney General's Office denied this in a meeting with the state bar's exempt-organization lawyers. However the bill came to be proposed, once the first draft was introduced, nonprofit advocates were put in the uncomfortable position of seeking numerous amendments (SB 1262 has been amended nine times, with more than 50 changes to its provisions), while maintaining their support for increased accountability. After weeks of negotiations, the AG's office finally requested that CAN and others support the bill. Some nonprofit advocates pondered lending their support, in hopes of preserving influence with the AG in future negotiations. Others were sufficiently relieved by the removal of so many of the bill's burdensome original provisions that they withdrew their opposition, fearful that those provisions might return next year in new legislation if the AG didn't get at least some of what he wanted this session. In the end, CAN's Nonprofit Policy Council, the nonprofit lawyers groups and many others remained opposed to the bill.

As the bill sat on Gov. Schwarzenegger's desk, CAN's Nonprofit Policy Council and others urged him to veto it on the grounds that it would not be effective in preventing fraud or mismanagement and that its requirements were too intrusive; the *San Jose Mercury News*, which has been at the forefront of covering philanthropic scandals and demanding reform, also urged a veto in a recent editorial.² Now that the bill has been signed into law, nonprofit advocates hope they will be able to improve upon its

provisions with future legislation, but given that the most powerful nonprofits are out of the bill's reach, nonprofit advocates may well be unable to do so.

Sadly the passage of the proposal, coupled with the official opposition to the bill by leading California nonprofit advocates, will not likely boost the public's already tenuous confidence in the nonprofit sector. And now that the bill has become law, chances of improving on its provisions are slim.

One final note about the shortcomings of SB 1262 and the debate surrounding it: From this author's point of view, the lack of a "carrot" for improving oversight systems is a glaring fault of accountability proposals like SB 1262, the bill proposed and later abandoned by New York Attorney General Elliot Spitzer, and some of the measures raised in the U.S. Senate Finance Committee's white paper. Assuring the public that nonprofits manage their resources faithfully and well is critical. Unfortunately, regulatory efforts almost always add burdens to many small and midsized nonprofits where they are weakest—in their infrastructure and in staff capabilities. These kinds of "overhead," or indirect costs, are precisely the ones that government and private funders do not want to support. One solution might be if government funders offered either bonus points on competitive bids or even bonus contract amounts for demonstrated or planned improvements in oversight. The cause of better governance, and better grantmaking, may well go further if legislators and funders would explore positive incentives to help nonprofits improve their accountability, rather than rely only on threats of enforcement. At the same time, as NCRP has forcefully argued, the government's enforcement capabilities must be increased if those threats are to be effective. ○

Notes

1. Reporting Nonprofits are public benefit organizations exempt from income tax under IRS Section 501(c)(3), not including religious organizations—which report to no state authorities—or hospitals and universities and private schools, which report to different state departments regulating health services and education.
2. "Bill to rein in nonprofits just saddles them with hassles; Schwarzenegger should veto it," Sept. 13, 2004 (<http://www.mercurynews.com/mld/mercurynews/news/opinion/9650583.htm>).

Nonprofits and Philanthropy in the Land of Enchantment, New Mexico

By M. Carlota Baca and Teresa J. Odendahl

Welcome to paradise. New Mexico, physically the fifth-largest state in the United States, is known for its multiculturalism, museums, opera, sunny skies and gorgeous vistas of high desert, mesas and mountains. Like anyplace else, we also have a host of problems. At last count, there were roughly 6,000 nonprofit organizations registered in New Mexico. These nonprofits are extremely diverse, but most are under capacity and cannot meet the pressing needs. Not even half have budgets over \$250,000 a year. A meager 24 classify themselves as civil rights, social action or advocacy groups.

According to Frank Sanchez Sr., program officer at the Needmor Fund and a lifetime resident of Roswell, New Mexico, “Unfortunately, philanthropy in New Mexico has not seen its role as one that supports progressive advocacy. It could play a critical part in influencing progressive social change.”

With only 1.9 million people, much of New Mexico’s land base is public or rural. In the northern part of the state, an ancient *acequia* irrigation system is still practiced on family farms, although development pressure is intense. About 42 percent of New Mexico’s population is of Hispanic origin (both with ancestry dating back to Spanish colonists and generations of more recent immigrants), 9.5 percent is of American Indian heritage, and 44 percent is “Anglo” (which in New Mexico means “everyone else”).

New Mexico is home to the fourth-largest number of Native Americans in the country. Nineteen pueblos and four Indian reservations are located in the state. This ethnic demographic places New Mexico as one of the leading “majority-minority” states. Thus, New Mexico is both unique in its cultural mix and, with its universities, colleges and national scientific laboratories, a microcosm of the wider world.

For years, New Mexico has been consistently near the bottom of the rankings of the nation’s statistical indicators of well-being. Over 18 percent of New Mexico’s population lives in poverty. Per capita income is less than \$25,000 annually. The number of medically uninsured has been climbing and exceeds 25 percent. More than a quarter

of New Mexicans are less than 18 years old, and one-third of all families begin while the mother is still a teen. Fully 25 percent of New Mexico’s population age 25 and older lacks a high school diploma or the equivalent, and in four rural counties that statistic is 45 percent.

In the new *2004 Kids Count Data Book*, released by the Annie E. Casey Foundation, New Mexico once again has the dubious distinction of ranking in the basement. For example:

- For high school dropouts, New Mexico ranks 43rd.
- For teen birth rates, 48th.
- For percent of families with children headed by a single parent, 49th.
- For percent of children in poverty, 50th.

Clearly, there is something wrong in paradise. Even the pristine landscape that attracts visitors is at risk due to urban sprawl and rampant mining, and oil and gas development. Efforts to address these and other problems, as well as seek to improve the general quality of life, have led to the plethora of charitable efforts in the state.

New Mexico’s Nonprofit Sector

Because of effective public relations, New Mexico is considered an oasis of high art. There are scores of museums, many devoted to American Indian art; a large number to fine and folk art; some to themes, such as museums focused on farms, ranches and nuclear energy; and some to individuals, such as the Georgia O’Keeffe Museum.

In the summers, Santa Fe’s renowned opera and Chamber Music Festival are among the prestigious nonprofit organizations that attract visitors. In addition to agriculture, tourism is a mainstay of New Mexico’s economy, and the nonprofit contribution is significant, although somewhat unmeasured. The number of nonprofits in the small capital city of Santa Fe (population 65,000), for example, is over 600. Some scrutiny has been applied recently just to the arts and cultural industries in Santa Fe County only, and the numbers are remarkable for such a low population region.

Here are a few findings:

- In 2002, Santa Fe's cultural industries and cultural tourism generated over \$1 billion in receipts.
- These industries employed 12,567 workers, or 17 percent of total employment in Santa Fe County.
- These industries paid \$231.5 million in wages and salaries, and \$81.6 million in self-employment earnings.
- Of the total revenues attributed to these industries (\$814 million), 78 percent are drawn from other geographic areas.
- These industries produce an estimated \$22.6 million in taxes and other revenues for the city of Santa Fe, and generate \$2 out of every \$5 that flows into Santa Fe County.
- There is a 500 percent return on the city's spending on arts and culture.

Many of the visitors bringing these dollars into the state have increasingly been choosing to move here, and those with means have been remodeling older haciendas and building new homes. In addition to bringing their money, they are bringing their attitudes, such as an inclination to water-guzzling golf courses and a strong idea about "Santa Fe style" that often puts the older traditional citizens at loggerheads with the *arriviste* style arbiters. As in the rest of the country, the distribution of wealth is skewed, with a small number of people, many of them newcomers, holding the vast proportion of assets. Perhaps because of New Mexico's small population and traditional land-based economy, this discrepancy is particularly marked.

Not only has New Mexico suffered from the devolution and federal defunding of basic human services, but also the state government is limited by a voluntary legislature that meets only one to two months every year. Like the rest of the country, New Mexico's nonprofits are stretched to the limit.

After failed efforts in the past, nonprofits are organizing an association called NGO-New Mexico with 350 charter members. Their mission is to build the capacity, power and influence of New Mexico's nonprofit sector. According to Anne Hays Egan, consultant to NGO-NM, "Our nonprofits are the keepers of the social contract. A strong state association means stronger nonprofits, and better communities."

NGO-NM committees and task forces have been working to plan a conference, initiate policy positions, and provide benefits packages that have not been available before. One of its first initiatives

was to advocate *successfully* against an attempt to remove the "gross receipts tax exemption" from nonprofits.

The nonprofit "sector," and certainly the progressive component, has not been mapped in New Mexico. Nonprofits are concentrated in urban areas—especially Bernalillo County, which encompasses Albuquerque, the state's largest city, with a quarter of the population. NGO-NM's 2003 fact sheet, "The New Mexico Nonprofit Sector," indicates that the highest number of nonprofit organizations are in the field of education (583), the arts (554), human services (515) and community development (416). Religious nonprofits (385) is next, followed by active grantmaking groups (237).

Philanthropy in New Mexico

Founded in 1991, the New Mexico Association of Grantmakers (NMAG) seeks to increase the effectiveness and impact of organized philanthropy in the state. NMAG has emerged as one of the more progressive forces in the state. Its conference in November 2003 was widely touted for bringing together funders, nonprofit leaders and policymakers from New Mexico and around the nation. Secondly, it scheduled sessions to discuss such issues as the funding of social justice (with the speaker from the Open Society Institute of the Soros Foundation) and the funding of advocacy (a talk delivered by Nan Aron of The Alliance for Justice).

This year, NMAG completed the state's first *Giving Survey*. Consistent with its ranking on



many other issues, New Mexico was 43rd in actual grantmaking, but its foundations still managed to exceed \$52 million in grants in 2001. Following a national trend, since 1997, more than 60 new private foundations have been formed, and assets reported on Form 990PF have more than doubled to \$940 million in 2003. New Mexico's Lannan Foundation, the J.F. Maddox Foundation and the McCune Charitable Foundation each have assets over \$100 million and more than half the total assets of all other private foundations in the state. Most private foundations in New Mexico hold endowments between \$1 million and \$5 million.

As mentioned above, a lot of money has moved into the state, and this is true for most private foundations that relocated here from other parts of the country. More than anything else, they have changed for the better the philanthropic landscape of the state. The seven largest New Mexico funders are private foundations. Our community foundations are still young and few, with only seven in the whole state, but four of them are among the top 25 grantmakers. Donor-advised philanthropy has been growing, both in numbers of funds and amounts dispersed.

Substantially more funding comes to New Mexico nonprofits from out-of-state philanthropies (\$61.5 million) than from in-state grantmakers (\$24.7 million). Out-of-state funders tended to favor arts and cultural organizations (27 percent), compared with in-state foundations (17 percent). In-state funders delivered more grants to education and children and youth (36 percent and 6 percent) than outside funders (30 percent and 1 percent). Similarly, in-state funders aimed more grants at social and human services (14 percent) than out-of-state funders (6 percent).

This disparity is fairly easy to explain if one simply peruses the donor lists at the end of the Santa Fe Opera and other performing arts program books. We see major national corporate funders subsidizing Rossini and Mozart, ballet performances and concerts of baroque music. Those funders, however, never show up on the donor lists for substance abuse treatment centers or food distribution depots. An admirable exception to out-of-state funder avoidance of social services is the Kellogg Foundation, which has pumped a lot of money into the state for youth initiatives, using the New Mexico Community Foundation as its funnel.

So far, there has been only one nonprofit to for-profit health care conversion, and this occurred three years ago when Blue Cross Blue Shield of New Mexico was sold, yielding about \$20 million for the new Con Alma Foundation. More of these

conversions are expected, however, as nonprofit hospitals go on the block.

According to Linda Lane Rigsby, a member of Con Alma's Advisory and Planning Committee and the first chair of its Community Advisory Committee (CAC), "One of the biggest strengths of the Board of Directors and CAC is our diversity, ethnically and geographically." In addition to ensuring community input, "The CAC has a watchdog function, to make sure that Con Alma does not stray from its mission and values."

Capacity Building

If we had to pinpoint a particular need of our nonprofit community, it would be technical assistance. Our funding community is becoming more and more reluctant to fund nonprofits that—while earnest, essential, and respected—are not perceived as "tight ships." Loose financial stewardship, weak boards and unsophisticated fundraising techniques plague most of the small to medium-sized nonprofits in New Mexico.

The local funding community has tried to respond by providing technical assistance (TA) grants for the hiring of consultants. A new nonprofit consulting firm, the Institute for Collaborative Change, which we directed and chaired, is another response. ICChange is a bit different from most TA efforts in the state, in that its focus will be on those nonprofits engaged in public policy issues. The mission of ICChange is to serve funders, nonprofit and public entities by providing them with analysis, capacity development, technical assistance and comprehensive training that lead to more effective organizations, advocacy and public policy activism.

We probably won't be doing too many contracts for arts groups unless they have a progressive social change agenda. So far, the contracts have been coming in steadily, and the firm has received a healthy start-up operations grant of \$40,000 from the McCune Charitable Foundation to: (1) develop the new organization with the usual start-up activity; (2) map the New Mexico nonprofit sector (economic development, employment, grantmaking, organizational capacity factors, and need); and (3) provide technical assistance to selected progressive nonprofits in New Mexico.

In the first year, ICChange board and staff will also continue to develop strategic relationships with NGO-New Mexico, with TA providers throughout the state and national trainers, as well as with funders and other potential partners. ICChange is also working to bridge the digital

(Continued on page 23.)

Policymaking by Consensus?

By Jeff Krehely

After months of rumors—and much hand-wringing in the nonprofit and philanthropic sectors—the U.S. Senate Finance Committee finally held hearings on the string of recent scandals plaguing both nonprofits and foundations alike, and the current state of government oversight of the sectors. On June 22, 2004, 13 individuals on three different panels testified before the committee. Those testifying included Internal Revenue Service Commissioner Mark Everson, state-level charity officials, witnesses whose identities were kept hidden, and executives from mostly national nonprofit organizations, including NCRP Executive Director Rick Cohen.

The several-hour-long event was congenial—no one was raked over the proverbial senatorial coals. Most of the committee's members did not even attend the hearings, or attended only for a few minutes. Sen. Olympia Snowe might have set a record for the briefest attendance at a committee hearing ever when she walked in, turned her nameplate up, came within inches of actually sitting in her chair, and then stood up and walked out. Apparently, she is still a contender for the Senate's perfect attendance award at the end of this session.

Considering the marked absence of most of their colleagues, the Republican chair of the committee, Sen. Charles Grassley of Iowa, and the ranking Democrat, Max Baucus of Montana, ran the show. Nothing new or terribly controversial was revealed over the course of the hearings, which concluded with Grassley stating that he would like to introduce legislation to toughen regulation of the nonprofit and philanthropic sectors, perhaps within months. But considering that it is an election year and the ongoing political stalemate in the Senate, the chance of anything significant happening this ses-

sion seems rather small, at best.

In an effort not to lose whatever momentum the formal hearings generated, the Finance Committee staff, led by Dean Zerbe, produced a white paper that provides an overview of the various reforms being considered. Zerbe also organized a round-table discussion in late July to allow other nonprofit and philanthropic experts to put their spin on the issues discussed at the hearings and in the white paper. NCRP was initially invited to submit a paper and make a presentation at the round table, but was uninvited at the last minute, because this event was supposed to be an opportunity for people and organizations that had not testified at the formal hearings to speak out on the issue. Apparently the committee staffer who caught Rick Cohen's name on the list of speakers for the round table did not also notice that of Independent Sector's chief executive officer, Diana Aviv, who testified on June 22 and was also allowed to submit a paper and address the round table in July.

Considering that 18 people provided their opinions at the round table, an entire issue of *RP*—let alone one article—would not be able to capture all of the commentary provided. As of this writing, each of the papers submitted by these individuals is still available at the Senate Finance Committee's Web site (<http://www.senate.gov/~finance/>). Unfortunately, no one who spoke was from an organization that represented the interests of smaller nonprofit organizations and their constituents in the nation's communities and neighborhoods. If and when another round table is scheduled, perhaps its organizers will be mindful of the lack of input from the kinds of organizations that make up the majority of the sector. It is cause for concern that the Senate has asked Independent Sector—which represents the interests of national and very large nonprofits and foundations—to play a lead role in articulating the sector's feelings on the proposed accountability and oversight reforms.

At the same time, however, the hearings and round table raise the question of how much input

Senate Finance Committee Chairman Charles Grassley (R-Iowa) talks to ranking member Sen. Max Baucus (D-Mont.) before a 2003 hearing.



and feedback are needed before this process can move from discussion to action. Considering the remarkable diversity of the organizations in the nonprofit and philanthropic sectors, it is impossible for lawmakers to translate the wide-ranging needs, concerns and priorities of these organizations into policy with which everyone agrees. Most policy decisions—i.e., lawmaking and rule-making—produce winners and losers.

Of course, it's not politically palatable for lawmakers to appear to be punishing nonprofits and foundations—especially in an election year. Most members of the media and public assume that these organizations are do-gooders, and imagine that the groups are run by individuals with halos on their heads and wings on their backs. Most of us who work within the sector know that these notions are simply untrue, and that tax status does not determine whether an organization is run and managed in an ethical and law-abiding manner. The easy thing for Congress to do at this point is to jump on the “self-regulation” bandwagon, which would make the leaders of the trade groups that represent the sector quite happy.

But it's not the right thing to do. The abuses in both nonprofits and foundations that caught the Senate's eye are real. More importantly, they violate the public's trust and, in some cases, state and federal laws. They've taken place because savvy people know that the ability of the Internal Revenue Service and state governments to regulate these organizations is laughable. Congress has effectively defunded the IRS's oversight function, and some state governments do not have enough funding to devote even one full-time employee to tax-exempt oversight.

Policymakers face a stark choice. They can continue to allow leaders of national, multimillion-dollar organizations to weaken efforts to strengthen government oversight of foundations and nonprofits. Or they can reassert the government's right and duty to police the nonprofit and philanthropic sectors and the sectors' control of trillions of tax-exempt, quasi-public dollars. It's not an exaggeration to say that the path taken will impact the lives of millions of the nation's most disadvantaged people and communities, as well as show just how responsible—or dysfunctional—Congress has become. ○

New York Nonprofit Self-Auditing (Continued from page 10.)

posed legislation in New York is directed at nonprofit corporations of a certain size—those with at least \$3 million in assets or that receive more than \$1 million in annual revenue. In nonprofit organizations of that size, any additional outlay of time, energy or funds would be minimal compared with the potential benefits of establishing an audit committee. An audit committee would safeguard an organization from inappropriate financial transactions that could potentially hurt the integrity of the organization's mission and its fiscal health and sustainability.

If the proposed legislation is to be effective, it must also be enforceable. While the mandate alone should help to at least partially restore the public's confidence in New York's charitable sector, few nonprofit corporations may actually follow through with the new law if they believe it will not be enforced. It is highly possible that this will be the case, as the New York State Charities Bureau, like most state-level nonprofit regulatory agencies, is severely understaffed and lacking in resources comparable with the number of charitable corporations it is required to monitor. William Josephson, the assistant attorney general for oversight of charities in New York, operates on a shoestring budget and outdated resources.

If the attorney general's proposals regarding the financial accountability of nonprofit corporations are to be taken seriously, additional resources will be needed to bolster the efficacy of the Charities Bureau and instill public confidence in its watchdog capabilities.

Of course, the attorney general's recent actions to bring attention to nonprofit organizations' financial accounting practices may quickly dissipate if the legislation is not passed. As it currently stands, the legislation is still in the Corporations, Authorities, and Commissions Committee of both the New York State Senate and Assembly. It is unlikely, however, that the bill will move forward this year.

If the bill is to gain any momentum, it would most likely be at next year's general legislative session, where it would have to be reintroduced. Perhaps by that time, additional discussion among other charity watchdog groups and nonprofit corporations themselves can enhance the proposed legislation to ensure its efficacy in strengthening the integrity of nonprofit fiscal accountability and accounting practices in New York state. ○

Sarah S. Miller is an independent nonprofit consultant.

Foundation Dollars for For-Profit Venture

"Foundation Money on the Mound" (continued from page 1)

football's nearby Green Bay Packers, the Brewers are not publicly owned and do not qualify as a nonprofit. The team is owned by Major League Baseball commissioner Bud Selig (the ownership group he heads recently entered into a letter of intent to sell the ballclub), although the team is run by Wendy Selig-Prieb, his daughter.

Odd thing about the private financing. It's not really all from the Brewers owners. In the \$90 million, you won't really find a nickel from Selig or his family, but you will find \$20 million from the Lynde and Harry Bradley Foundation and another \$1 million from the Helfaer Foundation. The for-profit Milwaukee Brewers receiving grant support from nonprofit foundations? The for-profit Selig family receiving philanthropic largesse? What made Bud Selig, the Milwaukee Brewers and Miller Park an eligible charity for tax-exempt foundation grantmaking?

As owner of the Brewers and commissioner of Major League Baseball (MLB), Selig garners admiration and revulsion in almost equal proportions from baseball aficionados. MLB's, and thus Selig's, near monopolistic control over relocations² recently served to prevent a team from moving to Washington, D.C., until Major League Baseball guaranteed major profits to Peter Angelos, majority owner of the nearby Baltimore Orioles, and wrangled a massive public financing commitment from Mayor Anthony Williams and the Washington, D.C., City Council. D.C.'s politicians caved to MLB's subsidy demands, notwithstanding a scathing three-part series in the *Washington Post* on Selig's baseball leadership, highlighting Selig's manipulation of Milwaukee government and business interests to put together the public and private capital for the new Brewers ballpark—and even to quietly pay for servicing some of the Brewers' pre-existing debt.³

Pitching for a Foundation Loan to a For-Profit Baseball Team

Required to come up with a \$90 million contribution to leverage the public investment, Selig sold the naming rights to the stadium to Miller Brewing Co. for \$40 million and got the then-Wisconsin governor, now Health and Human

Services Secretary Tommy Thompson, to push through legislation permitting the Wisconsin Housing and Economic Development Authority (WHEDA), known for low-income housing and small-business loans, to lend the Brewers \$50 million. After investigating the Brewers' finances, the head of WHEDA learned that instead of collateral, "The only thing the Brewers were going to be able to give us was a hearty handshake."⁴ Faced with risking an uncollateralized \$50 million in public debt, with the servicing to be paid for from a diversion of \$3.85 million annually in stadium maintenance payments, WHEDA nixed the deal.

To replace the WHEDA financing, the Brewers put together \$50 million in private financing (still to be serviced by the annual stadium maintenance payments), including \$15 million from the Milwaukee Economic Development Corporation, \$14 million from the "Milwaukee business community," and the \$21 million from the two foundations.

A foundation loan is generally categorized as a "program-related investment" (PRI). A PRI is defined in the tax code as "an investment that (1) has the primary purpose of accomplishing one or more of the charitable purposes described in the Code, (2) doesn't have as a significant purpose the production of income or the appreciation of property, and (3) isn't intended to accomplish any purpose relating to legislative or political activity."⁵ Distinguished from a foundation grant, a foundation PRI may be awarded to an entity that is not a tax-exempt organization as long as it is consistent with the charitable mission of the foundation. Many PRIs go as below-market interest loans to small businesses and to for-profit affordable housing developers, justified by the intended neighborhood improvements, job creation, and poverty reduction of the transactions.

How would the loans to the for-profit Brewers have qualified? Treasury regulations offer examples that lay out a game plan for the Bradley PRI to the Brewers: "Example (3). A loan made to a business enterprise that's of continued importance to the economic well-being of a deteriorated urban area because it employs a substantial number of low-income persons for

such area, and conventional sources of funds at reasonable interest rates are unavailable.”⁶ With no collateral and no cash on the table, conventional banks were likely to follow WHEDA and reject financing for Miller Park. Bradley and Helfaer could have justified their PRIs as necessary funding to support Milwaukee downtown development—through a stadium—with the benefit of employing lots of low-income people.

The economic benefits of baseball stadiums are promoted by the owners, but roundly rejected by almost all of the expert research.⁷ Observers on the left and right converge to question whether stadiums merit their public subsidies. Research by Paul Gessing of the National Taxpayer Union concluded that new stadiums show little net economic benefit: basically displacing other commercial activity, but helping team owners maintain their profit margins.”⁸ From the Brookings Institution, Noll and Zimbalist reach similar conclusions:

“A new sports facility has an extremely small (perhaps even negative) effect on overall economic activity and employment. No recent facility appears to have earned anything approaching a reasonable return on investment. No recent facility has been self-financing in terms of its impact on net tax revenues. Regardless of whether the unit of analysis is a local neighborhood, a city or an entire metropolitan area, the economic benefits of sports facilities are de minimus.”⁹

Political Curveballs And Sliders

The Bradley Foundation 990-PFs for 1998 and 1999 list the loan as a “refundable grant,” meaning that if the loan is not repaid, it will be reclassified as a grant. The IRS filings do not describe the rationale for the foundation subsidy of the Milwaukee Brewers, but it is likely that the Bradley Foundation could have cited promised economic benefits, notwithstanding the tidal wave of expert economic analysis, plus the added city and regional concerns of maintaining Milwaukee’s prestige and retaining its baseball team (it lost the Milwaukee Braves to Atlanta in the mid-1960s).

A former Bradley Foundation executive has written of the foundation’s commitment—in fact, of conservative philanthropy’s commitment—to funding small organizations or community-based organizations, which are the mainstays of grassroots civic activism. The Bradley Foundation, he contends, “supports groups that cultivate, within local civic institu-

tions, the everyday, citizenly virtues of self-governance so essential to the nation’s flourishing.”¹⁰ Within every multimillion-dollar foundation’s grantmaking are going to be grants and loans that don’t quite fit the foundation’s mission ideal. Bradley’s loan to Selig’s stadium venture, while not the Bradley ideal of supporting grassroots self-governance, could have just as easily been made by any other mainstream or liberal foundation, with the same underlying questions of the charitable purpose and benefits.

Bradley’s ideologically conservative credentials, described in detail in two NCRP reports,¹¹ factor into the Miller Park scenario in some odd ways, however. One of Selig’s most vocal boosters is the erudite syndicated conservative columnist and baseball fan George Will, who has described Selig as the “greatest” baseball commissioner ever.¹² The connection between Will and Selig isn’t simply the relationship of a journalist and his subject matter. In 1999, Selig named Will one of the four “independent” members of the commissioner’s Blue Ribbon Panel on Baseball Economics,¹³ in which the free market-oriented Will became the most vocal adherent of “baseball socialism,”¹⁴ which would benefit the financially weakest and perhaps most mismanaged teams, with Selig’s Brewers arguably at the top—or bottom, depending on one’s perspective—of the list.

A corollary of baseball socialism is “reverse welfare” or “corporate welfare,” as the team owners demand, and increasingly receive, public—and now philanthropic—subsidies for stadiums, else they threaten to move their franchises.¹⁵ In Selig’s case, until the collapse of the WHEDA deal, Selig had recruited conservative Republican Gov. Tommy Thompson and conservative radio talk-show personality Charlie Sykes to campaign for public subsidization of the stadium, though both now apparently regret their support for “corporate welfare” for the Brewers.¹⁶

Recruiting the Bradley Foundation’s support and financing for the project also links to a political connection between conservative politicians and the Selig baseball apparatus. When Bradley’s visible and nationally respected chief executive officer, Michael Joyce, resigned from the foundation in 2001 to start a nonprofit to promote the Bush administration’s faith-based initiative, the foundation recruited former Republican National Committee counsel Michael Grebe to take over. Grebe had been on the Bradley Foundation board of trustees for the

previous five years.¹⁷ As the CEO of Foley & Lardner, the Milwaukee-based law firm ranking 15th in the United States, Grebe was also counsel to the Milwaukee Brewers' board of directors at the time that the Miller Park PRI was approved, and Grebe subsequently joined the Brewers' board itself.¹⁸

While some people believe that foundation grants and loans to charities—or in this case, a for-profit with, it is hoped, charitable benefits—might be questionable where there are board or staff interrelationships, there is nothing that necessarily makes such foundation disbursements illegal as long as there is no direct personal benefit from the transaction. Grebe's reputation for personal and professional probity is a common sentiment in the widespread newspaper coverage he has received in Milwaukee and nationally as a result of his high profile in national Republican Party politics, especially in the Dole campaign, and his subsequent involvement in the Brewers' multiyear stadium financing melee. But the appearance of foundation board members linked to the recipients of their foundation grants (or loans) does little to convince struggling grassroots nonprofits that they face a fair shake when competing against more connected nonprofits—or in this case, particularly well-connected and well-heeled private sector operators like the Seligs and the Brewers.

The Bradley Foundation's connections with the Brewers weren't limited to Grebe. Bradley was a more than occasional supporter of Millers Charities Inc., the philanthropic arm of the cash-strapped Milwaukee Brewers. Brewers Charities started 2002 with \$190,000 in the bank, but ended the year with \$1.1 million, not including the \$350,000 the organization put out as grants or awards for youth- and athletics-related programs. Included in the organization's 2002 fundraising totals was a grant of \$185,000 from the Bradley Foundation for Millers Charities' 2002 Student Achiever Program. No one should have been all that surprised that the Bradley Foundation—with its long-standing civic leadership in a relatively small metropolitan area like Milwaukee, regardless of Bradley's local and national ideologically conservative politics—would step in to save the Brewers and their stadium. Many local observers have long agonized Milwaukee's second-tier metropolitan status, and notwithstanding the dubious economics of sports stadiums, it would have been unlikely that a key local institution like the Bradley Foundation, the state's largest philanthropic

entity, would rebuff filling the final financial gap to building the stadium and keeping the Brewers—even if the action served to resuscitate the economic value of the team and, thus, enhance Selig's net worth.

Lessons For Philanthropy's Baseball Rule Book

NCRP's *Axis of Ideology* report on the public policy grantmaking strategies of 79 conservative foundations described not just the convergent values and politics of right wing foundations and their grantees, but also the frequent cases of overlapping staff and board members, much like Grebe's simultaneous service as the legal "point man"¹⁹ for the Brewers' stadium negotiations and as a trustee of the Bradley Foundation during the stadium financing machinations. Even if individuals recuse themselves from decision-making on either end of a transaction, the occasions of overlapping institutional memberships make some foundation grant and PRI decisions look questionable even when they are legal. Here, it is reasonable to question a foundation's loan to the Brewers with minimal or no collateral—a below-market loan to be serviced by funds intended for stadium maintenance, saving Selig millions of dollars in interest payments compared with a conventional loan.²⁰

Perhaps this is all "inside baseball" for people engrossed in the machinations of private foundations. But are there lessons for philanthropy and for the public in the Selig family's access to philanthropic capital?

One obvious lesson is a reaffirmation of the finding in Teresa Odendahl's 1990 research that foundation grantmaking in most cases tends to support the charities—or interests—that are connected to foundation managers and trustees.²¹ Most foundation boards, like Bradley's, are composed of local civic elites. In Milwaukee's case, the community's civic elite had in 1998 and 1999 come together to finance and build a new stadium to keep the Milwaukee Brewers afloat. It should be no surprise that the part of the civic elite representing the state's largest foundation was part of that consensus.

A second lesson is that the scope of charitable mission and purpose to justify some foundation activities is quite large. A subsidy to the Selig family's for-profit venture under the guise of civic support, downtown economic development, job creation or whatever is still a subsidy to one of MLB's 30 team owners, none of whom can be called charities, and many of whom have

found plenty of ways of enriching themselves while crying poverty and demanding subsidies.²²

Finally, there is the breadth of activity foundations can undertake that, despite their tax-exempt status, should remind the public of the need for effective scrutiny and oversight. The state government loans to Selig could not pass public muster, despite sweetheart legislation pushed through by Gov. Thompson that would have enabled a state agency—WHEDA—to finance the Brewers' stadium rather than the low-income housing of WHEDA's mission. Though the loans ultimately couldn't pass public scrutiny, they could be awarded—without public scrutiny—by a private foundation using tax-exempt money. Who was going to question the Bradley Foundation's loans for Miller Park and the dubious repayment schemes? Who could have voted the Bradley Foundation's trustees, each paid between \$22,000 and \$39,000 in fees for attending Bradley board meetings, out of office for having made the Selig loan that WHEDA wouldn't?

In Washington, D.C., the deal for the soon-to-be-renamed Montreal Expos includes a new \$400 million stadium—to all outward appearances, paid for by municipal bonds and new business taxes. But if a financing gap turns up requiring additional subsidy for yet another baseball stadium boondoggle, metro Washington's philanthropic sector should heed Yogi Berra's warning that it might be déjà vu—or Milwaukee's Miller Park—all over again. ○

Notes

1. *Milwaukee Brewers Stadium Costs, Report 02-8* (May 2002), <http://www.legis.state.wi.us/lab/Reports/02-8tear.htm>.
2. Selig's relocation committee includes his personal attorney (and MLB president and COO), Robert DuPuy; Selig's daughter, Wendy Selig-Prieb; Chicago White Sox owner Jerry Reinsdorf; and Texas Rangers owner Tom Hicks.
3. Steve Fainaru, "Selig Plays Hardball on Stadium Deals," *Washington Post* (June 27, 2004).
4. Fritz Ruf quoted in "Selig Plays Hardball."
5. Cf. generally Treasury Regulation section 53.4944-3.
6. Milton Cerny, "Creative Uses of Program Related Investments" (International Center for Not-for-Profit Law, 1999, revised May 14, 2001).
7. Andrew Zimbalist, *May the Best Team Win: Baseball Economics and Public Policy* (Washington, D.C.: Brookings Institution Press, 2003). In Bruce Murphy, "Our Million-Dollar Baby," *Milwaukee Magazine* (April 2001), University of Wisconsin-Milwaukee professor Marc Levine is quoted as saying, "There's overwhelming evidence that there is no economic impact. ...This conclusion has almost reached the truism of the Surgeon General's warning that cigarettes are hazardous to your health."
8. Paul Gessing, *Public Funding of Sports Stadiums: Ballpark Boondoggle, NTUF Policy Paper 133* (National Taxpayers Union Foundation, Feb. 28, 2001).
9. Roger G. Noll and Andrew Zimbalist, "Sports, Jobs, & Taxes: Are New Stadiums Worth the Cost?" in *The Brookings Review* (Summer 1997, Vol. 15, No. 3).
10. William A. Schambra, "The Vision Thing: Conservative Philanthropy's 'Vision' Is to Make Grants with the American Grain—Not Against It," *Philanthropy Magazine* (May/June, 2004), <http://www.philanthropy-roundtable.org/magazines/2004/mayjune/thevisionthing-text.html>.
11. Cites for *Moving a Public Policy Agenda and Axis of Ideology*.
12. George Will, "You Just Can't Kill Off Baseball," *Bergen Record* (April 5, 2004); Kathleen Arenz, "Will Holds Forth on Selig, Takes Five," *Milwaukee Journal Sentinel* (June 15, 2004).
13. Cf. Richard C. Levin, George J. Mitchell, Paul A. Volcker, and George F. Will, *The Report of the Independent Members of the Commissioner's Blue Ribbon Panel on Baseball Economics* (Major League Baseball, July 2000).
14. Cf. Michael Lewis, *Moneyball* (W.W. Norton & Co., 2003).
15. D. Stanley Eitzen, "Public Teams, Private Profits: How Pro Sports Owners Run Up the Score on Fans and Taxpayers," *Dollars & Sense* (March-April 2000).
16. Fainaru, op. cit.
17. Alan J. Borsuk and Avram D. Lank, "Grebe to Head Bradley Foundation," *Milwaukee Journal Sentinel* (Nov. 20, 2001) <http://www.jsonline.com/bym/News/nov01/grebe21112001a.asp>.
18. Grebe has also served as president of the University of Wisconsin Board of Regents, chairman of West Point's board of visitors,

and trustee of Stanford University's Hoover Institution. *Milwaukee Magazine* listed Grebe among the 10 most powerful men in Milwaukee (April 2002), and the *National Law Journal* ranked him among the 100 most influential lawyers in the nation (April 28, 1997).

19. Thomas W. Still, "Wisconsin's Grebe Manages the Managers," *Wisconsin State Journal* (Aug. 11, 1996).
20. In 1998, the Southeast Wisconsin Professional Baseball Park District was assigned the Milwaukee Economic Development Corporation's loan, and in 2002, the district purchased the Bradley Foundation and Helfaer Foundation notes and immediately negotiated the cancellation of the debt, saving Selig's Brewers over \$41 million in financing costs. Cf. the state of Wisconsin Legislative Audit Bureau's

"limited scope review" of the Milwaukee Brewers finances (<http://www.legis.state.wi.us/lab/reports/04-Brewers.pdf>, May 6, 2004). As a consequence, the foundations were repaid their recoverable grants in full, but the district's cancellation of the assumed debt means that the public paid the Seligs' loan in the end.

21. Teresa Odendahl, *Charity Begins at Home: Generosity and Self-Interest Among the Philanthropic Elite* (New York: Basic Books, 1990).
22. Eitzen, op. cit, provides numerous examples, one of the most outrageous being the \$25 million fee for negotiating the team's cable TV contract that the New York Yankees' George Steinbrenner paid himself in the early 1980s.

Nonprofits and Philanthropy in New Mexico (Continued from page 16.)

divide that exists for New Mexico nonprofits by providing technologies and training that enable the effective use of online communications.

Profile of the State

Because of its unique demographics, landscape, history and cultures, New Mexico is probably not a model that can be easily emulated. Nonetheless, it has some qualities that should be exported: intercultural respect, a general tolerance for difference, a passionate and sizable core of environmental activists, a willingness to try new ideas—such as alternative energy resources—and a very active engagement and fluency with aesthetic values. Most New Mexicans can talk to a tiresome extent about art, and some of the state's most extreme and heated debates have revolved around public sculpture.

But New Mexico can also serve as a warning. We've got problems. Our unbridled tourism and the subsequent immigration of money that spawns McMansions all over the landscape are a disaster waiting to happen, simply because no one wants to talk about water. The disparity between the haves and the have-nots is getting wider, and the resentment is getting uglier. Our reputation as a place to retire but not to engage is hurting public education and the necessary commitment that a citizenry must have for its civic and social infrastructure.

Other states wanting to boost their tourism have come here to learn. But be careful what you wish for. We're a poor state with a heavy dollop of *nouveau riche*, and in some quarters, you can't find a middle class. We're a very old place, with permanent settlements continually inhabited since 1000 A.D., but we still have to fight hard to protect the old things and the old ways, because it's often cheaper and easier to go with the new.

But quality of life is a big deal here. We love our difference, and we love the creativity that surrounds us. It is possible that we even love our problems. Maybe the most telling thing is that those of us who come here never leave. And those of us who leave always return. ☺

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