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Time for a New Commission on Philanthropy

By Rick Cohen

At this year's annual meeting of the Council on Foundations, the tenor of the discussion was different than in the past. As the meeting convened, the *San Jose Mercury News* published a story about the James Irvine Foundation, detailing some appalling if not downright scandalous practices associated with the compensation and benefits given to the foundation's longtime CEO before and at his retirement.

In a well-researched and balanced story, the *Mercury News* revealed such practices as:

- The former CEO had received a salary 78 percent higher than average for heads of similar foundations, plus $600,000 in one year alone to retain him as a foundation adviser;
- The former CEO enjoyed lavish "farewell" parties, plus money to travel the world with his wife for rest and regeneration;
- Nonprofits applying for Irvine Foundation grants hired an executive search firm owned by the CEO and his wife, creating at least the appearance of a serious conflict of interest; and
- The foundation showed patterns of profligate compensation spending at a time when it lost $1.6 billion in assets, laid off 20 percent of its staff and cut grantmaking by $20 million.

Legally, Irvine is likely to be cleared. The IRS's toothless "intermediate sanctions" standards fall short of preventing or remedying the Irvine excesses, even though the *Mercury News* cites unidentified legal experts suggesting that the compensation package, particularly an enormous deferred compensation deal that increased the CEO's salary from $437,000 in 1998 to $717,000 in 1999, warrants scrutiny. Irvine's actions may not have been illegal—though who knows what a real audit would find compared to a journalist's investigations, but the IRS never did an audit.

Audit or no audit, Irvine's practices serve as the poster child for bad judgment and seriously deficient board performance. Entrusted to manage Irvine's philanthropic resources for the benefit of the public, these tone-deaf trustees simply blew it. Nonprofits around the nation were shocked and befuddled at the *Mercury News* report on Irvine. Imagine the reaction of an average reader searching online for stories on philanthropy and stumbling on the Irvine brouhaha.


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It was clear to the astute observers at the Council meeting that the debacle was no minor aberration by a fly-by-night foundation. Although its assets plunged in the market during the past year, Irvine ranked as the 34th largest among U.S. foundations at the end of fiscal 2001. This is not just any scandal. It taints a respected foundation, addressing the practices of a top leader in the nonprofit sector, including his current position on the board of directors of Independent Sector, which purports to be concerned with nonprofit accountability through self-regulation and self-policing.

In the midst of all this, the news came that the new CEO of Irvine, recruited from the world of public television, resigned after only a year or so on the job. The public statements from Irvine provided the usual pap that she had completed a new strategic plan for the board and her job was done, and so forth. You've heard such stories before to cover the early exit of a high-profile executive recruit.

At the Council meeting, the Irvine uproar hit home. Some foundation spokespersons said it's not just foundations like Irvine or the King Foundation in Texas misbehaving, it's nonprofits too—just look at the United Way scandals in Washington and Lansing, Mich. And if Congress is going to look at foundation payout rates and the inclusion of administrative costs in qualifying distributions, why not look at all endowed nonprofits, including universities and hospitals, instead of just focusing on foundations?

The King Foundation? It was appropriate that the Council met in Dallas this year. In late 2002, the Texas attorney general cited the Dallas-based Carl B. and Florence E. King Foundation for "unreasonable and egregious" salaries and expenses. The state ordered the foundation's CEO and trustees to return more than $9 million they had overpaid themselves between 1989 and 2000. It wasn't an IRS audit or the self-policing of the Council on Foundations that exposed the CEO's salary and benefits of over $1 million in 2000. Neither was it that the foundation's $2.8 million in operating and administrative expenses exceeded the comparatively paltry $1.8 million the foundation paid in grants and gifts. It was reportedly the CEO's sister who ratted him out, leading to his resignation in 2003.

It's not just an issue of foundation probity, but the public's necessary faith in the nonprofit sector. Many obvious improvements are needed, including beefed-up IRS oversight and tougher self-policing by foundations, as the Council on Foundations has suggested. But the bigger problem is how to bolster the accountability and credibility of the nonprofit sector—while protecting and expanding the role of nonprofits and foundations as social change agents instead of substitutes for public resources.

Concerns over accountability are intensifying even as the Bush administration boldly proceeds to dismantle the social safety net. By supporting the CARE Act's nonitemizer tax deduction and other incentives, the administration has shown its intent to shift the burden of funding and delivering public services away from government and onto foundations and nonprofits. In addition—and for the first time in years—Congress is turning its attention more seriously to questions involving the composition of qualifying distributions of foundation grants payout as well as the foundation excise tax.

With all this as a backdrop, the time has come to take stock of our sector. NCRP is calling for a new Commission on Private Philanthropy and Public Needs, which had been known as the Filer Commission, for its chair, the late John Filer of Aetna. Unfortunately, just as in the 1970s when the Filer Commission convened, the misbehavior of a tiny portion of our sector may make the call for a new commission resonate. But the issues are bigger than simply preventing Irvine-like overcompensation, National Capital United Way-like accounting and accountability lapses, and the obviously inadequate oversight of both entities' boards of directors.

Philanthropy faces at least two converging threats. First are the scandals that undermine the integrity of foundations and consequently their abilities to perform philanthropy's vital functions in society. Second—and equally ominous—are attempts by legislators of both parties to shift to charitable foundations and nonprofits the responsibility for providing a social safety net for disadvantaged Americans. To bolster civil society, philanthropy must do all it can—but it cannot do it all.

Three years ago, in the pages of *The Chronicle of Philanthropy* (Feb. 10, 2000), Pablo Eisenberg outlined an agenda for a new Filer Commission, including issues of accountability, tax-system fairness and protecting and bolstering the advocacy of nonprofit public policy. Indiana University's Robert Payton has also written publicly about the need for a Filer Commission II.

To quote Eisenberg, "We need a clearer definition of the values, nature, and structure of the nonprofit world; updated regulations to govern nonprofit activity; and accountability mechanisms that will preserve the integrity of the sector. Those will enable charities and foundations to meet the demanding challenges of the coming century." That century is upon us. In the wake of a massive retrenchment of the public sector's domestic commitments, and our government's new preference for unilateral action in place of international cooperation and collaboration, the challenges Eisenberg foresaw are hurtling at the nonprofit sector right now.

If now is not the right time to establish a successor to the Filer Commission to help our sector navigate these unprecedented challenges, when is? Foundations and their delivery system of nonprofit activists, advocates and organizers must take the lead in charting the answers. Otherwise, people with little knowledge of or commitment to philanthropy's potential will define the future of philanthropy for the sector, with disastrous consequences for foundations and our country.

Rick Cohen is executive director of the National Committee for Responsive Philanthropy (NCRP). NCRP was founded in 1976 and is dedicated to helping the philanthropic community advance the traditional values of social and economic justice for all Americans. Committed to helping funders more effectively serve the most disadvantaged Americans, NCRP is a national watchdog, research and advocacy organization that promotes public accountability and accessibility among foundations, corporate grantmakers, individual donors and workplace giving programs. To obtain more information on NCRP or to join, please visit www.ncrp.org, call (202) 387-9177 or use the enclosed membership form.

The time has come to take stock of our sector. NCRP is calling for a new Commission on Private Philanthropy and Public Needs.