PERSPECTIVE

Nonprofits Mobilize against CFC's Terror List Check Requirements

Combined Federal Campaign requires participants to check employees against terror watch lists

By Alan Rabinowitz

After a season of complex relationships between federal authorities, the Ford Foundation, the ACLU and many other groups, the Associated Press reported on Nov. 11, 2004, that "the American Civil Liberties Union and a dozen nonprofit groups are suing the government over new rules requiring organizations that receive money for a federal employees' charitable drive to check their staffs against terrorist watch lists."

So what are the implications now for individuals, for charities and for our civil society? No one wants to be blown up by terrorists. No one wants to be called unpatriotic. And those of us who remember the harm done to our society by the McCarthy era's proliferation of guilt by association do not like the smell of what is transpiring for the world of nonprofit organizations. I intend this piece to provide some useful background to the issues as they have now been framed by the ACLU's suit.

The current stories do not yet indicate that the present situation has reached the proportions of Senator McCarthy's investigations in the late 1940s and early 1950s. During that period, even you might have found yourself shying away from any contact with an old friend who happened to turn up on an FBI list of attendees at a public meeting or in the address book of someone brought in for questioning concerning activity with known communists. But I fear that the United States is entering another time when constructive relationships between government, organizations and individuals are threatened and even altered to the detriment of our democratic and pluralistic heritage.

The first set of governmental activities involved in the present situation are the so-called no-fly lists, which consist of an assortment of names garnered from a new set of unidentified sources. In an Aug. 17, 2004, article in *The Washington Post*, Anthony Romero wrote that "you, too, could be a suspected terrorist" if by chance your name, or a variation of your name, was found on this list, and you were hauled off for questioning and not allowed to fly. In his article, Romero, ACLU's executive director, provided an essential bit of background to both the controversies about the no-fly lists and the obviously closely related issues arising from the new Combined Federal Campaign (CFC) regulation:

> *Under a little-known law from 1977, the International Emergency Economic Powers Act, serious potential sanctions apply to all employers and people in the United States, not just to CFC recipients. With the expansion of terrorist watch lists since Sept.11, the implications of this policy have grown exponentially, but its existence and broad reach remain largely unknown. U.S. law forbids employers from hiring any individual designated on various governmental lists. If they hire someone from these lists unknowingly, the person or organization may be liable for civil sanctions, and if intentionally, criminal sanctions may be imposed.*

I have not read any explanation of why the head of the Combined Federal Campaign (which entices federal employees to contribute to one or more in a long list of charitable and tax-exempt educational/advocacy organizations such as the ACLU) waited until October 2003, so many years after 1977 and two years after September 11, 2001, to begin requiring those designated CFC grantees to certify that "they do not knowingly employ individuals or contribute funds to organizations found on terrorist related lists promulgated by the U.S. government, the United Nations, or the European Union."[1]

The MacArthur Foundation's grant letter (as reported by the ACLU) points grantees to "any list of suspected terrorists or blocked individuals maintained by the U.S. government, including but not limited to (a) the Annex to Executive Order No. 13224 (2201) (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or (b) the List of Specially Designated Nationals and Blocked Persons

maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury."

Pity the nonprofit organization that tries to comply with this kind of ukase.[2] First of all, how does one definitively and affirmatively know who in one's life might be committing, threatening to commit, or supporting terrorism, especially employees and all sorts of third parties connected in one way or another to one's nonprofit work? The McCarthyite stain of guilt by association pales in significance to the work of sniffing out the kind of unpatriotic activities proscribed by President's Bush's 2001 executive order cited above (which was issued before the Patriot Act was passed and signed).

As for current lists, while there was originally confusion over which lists to check (among other things), OPM has clarified this with a memorandum on its Web site.[3] The memorandum states that there are only two lists to check, but shows links to five other "relevant Web sites." Once any false matches are eliminated, the organization is to report the person to the Office of CFC Operations (OCFCO). Here is what OMB Watch had to say in its Nov. 15, 2004, statement on this set of problems:

> *This active obligation is misguided, unduly burdensome, and vulnerable to abuse for political purposes. The lists are notoriously fraught with inaccuracies and ambiguities, so there is no way to verify whether a name on the list is actually the individual encountered (they may coincidentally have the same name or may be using a different name but still be the person listed). Government watch lists change continually, so charities would have to check them continually, which they don't have time and resources to do. Compliance is simply impossible.*

At one end of the spectrum, the CFC director, Mara Patermaster, naturally expects the affected charities to take affirmative action in the form of checking the lists. At the other end are the ACLU and whatever organizations follow its lead in withdrawing from the federal campaign. In between are the foundations that are now requiring compliance from their grantees, as seen in the following examples collected by the ACLU:

> Ford Foundation: *By countersigning this grant letter, you agree that your organization will not promote or engage in violence, terrorism, bigotry or the destruction of any State, nor will it make subgrants to any entity that engages in these activities.*
>
> Rockefeller Foundation: *In accepting these funds, you certify that your organization does not directly or indirectly engage in, promote, or support other organizations or individuals who engage in or promise terrorism activity. [no countersignature required]*

Similar language appears in grant letters from MacArthur, CS Mott and other foundations. The ACLU has refused to countersign the Ford Foundation's letter but has acknowledged that Ford has the right to decide for itself to whom it wishes to give a grant and with what conditions. The issues presented are fundamental to our liberties and complex beyond this space and my abilities to deal with them. The media will certainly be full of commentary on the situation as it unfolds, and one can anticipate that the voices on the Fox network will be different from those on a more independent path . For those who want to delve more deeply, there will be the legal briefs and the analytic articles that will pepper the philanthropic press and academic journals (for embedded in much of the complexity inherent in this situation is academic freedom itself and, heaven help us, ultimately the possibility of the kind of shameful controversy about loyalty oaths that besmirched the academy in the 1950s).

At least 12 organizations, including OMB Watch, are plaintiffs along with the ACLU in the suit challenging the CFC's requirements. The board of the National Committee for Responsive Philanthropy voted to "publicly show support for the ACLU suit," and I do not know how many other organizations will do the same. While all this is going on, the U.S. Congress has before it various proposals that would affect the organization, activities, tax status and reporting requirements of what we currently refer to as the nonprofit charitable tax-exempt philanthropic sector. Apparently NCRP, the Council on Foundations, and Independent Sector have differing opinions on the multivariate issues to be legislated; the issue for this article is how such new legislation may handle the manifest implications of terrorism and the fear of terrorism reflected in the paragraphs above.

So the barriers set forth for the Combined Federal Campaign and the ACLU's suit claiming they are unconstitutional are merely part of a larger tapestry. I do not think I am the only one who is worried about how fears of terrorism (as revealed in this controversy), intrusions into our

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be concerned not with fashionable funding but with making changes through sustained, reliable support. All donors interested in impacting social justice movements could learn a few lessons from this small but well-executed grantmaking initiative.

Advancing Social Justice Research

Though NCRP usually concentrates its efforts on research and policy affecting the American nonprofit sector, a recent request from an NCRP partner and supporter of the Green Belt Movement inspired a case study of this social and environmental justice organization abroad. NCRP is committed to studying domestic social justice movements and conducting research that will educate the foundation world and greater nonprofit community on the indispensable activities and subsequent needs of these organizations. Nonprofit advocates for social justice take on deep-seated systemic issues, incorporating service delivery and negotiating public policy in their work. Because advocacy is such a large component of their day-to-day operations, social justice groups require liberal core operating support to navigate between their policy and service delivery responsibilities.

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personal lives by advanced technology, economic and social change, and militarist adventurism abroad are tearing the heart out of our communal life and threatening our constitutional liberties. As I end this article, I am unable to set aside my memories of the McCarthy period in order to assure myself and my readers that the only thing we have to fear is fear itself, as the nation was able to reassure itself when hearing that call to action in FDR's inaugural address. Perhaps fear itself, when institutionalized by government and used as a building block for legislation, is a more formidable foe than even FDR imagined.

Notes

1. (I have quoted here from a position statement by the National Council of Nonprofit Associations.)
2. which as you know is a proclamation by a [Russian] emperor with the force of law .
3. http://www.opm.gov/cfc/opmmemos/2004/2004-12.asp

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sure, and foundation staffs' discomfort or lack of expertise or experience with the mechanics of advocacy. Given this reluctance to support 501(c)(3) advocacy, it is not probable that foundations will help these groups establish 501(c)(4)s. But if foundation board and staff members want to use their grant dollars to eliminate basic social and economic inequities, then putting more resources into supporting advocacy organizations and programs is critical.

Based on the record amount of money that people gave to candidates for public office in this past election—and the deep ideological divide across the United States—this is clearly one of the most politically charged eras in the nation's history. The nearly 1 million charitable nonprofit organizations in the United States come into contact more frequently with people and communities most in need than any other type of institution. Giving them the capacity to maximize their voices at this time in the policy process is a responsibility to which foundations should give more serious thought and consideration. Providing technical assistance that really matters—related to advocacy, lobbying and political representation—is a good place to start.

Notes

1. Organizations should consult attorneys for specific legal advice. 501(c)(4) organizations are governed by both FEC and IRS regulations which can sometimes be competing and confusing. Recently, the FEC has threatened to limit the activities of 501(c)(4)s in an effort to increase campaign finance regulation.
2. The IRS defines "lobbying" as a specific activity that ultimately involves urging lawmakers to take specific positions on specific pieces of legislation. See the IRS's instructions for Schedule A (Form 990 or 990-EZ) at http://www.irs.gov/pub/irs-03/i990sa.pdf.

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