

BEYOND JEWISH COMMUNAL SERVICE

The Not-for-Profit Field at Risk

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At the very time when the nonprofit sector is under growing attack by every level of government, the general media, and the public, the Jewish communal enterprise has become increasingly insular. To position itself to respond to the challenges facing the nonprofit sector, the Jewish community must strengthen the accountability of its boards and become more involved in those organizations that represent the interests of the nonprofit sector.

The vast communal enterprise of the North American Jewish community has, by any measure, been among the leaders in the field of philanthropy and service delivery. In the past decade, the internal challenges facing this enterprise have been many, namely, rescuing and resettling hundreds of thousands of Jews from countries in which they were at risk, establishing Jewish identity building and continuity as a firm communal priority, coping with a changing marketplace and campaign results that, on an inflation-adjusted basis, have been declining, and facing the challenges of a new Israel-Diaspora relation based on Israel emerging as an economic power at peace with her neighbors. These challenges have fostered an insularity at the very time when the not-for-profit sector is under unprecedented attack by every level of government, the general media, and the public. In addition, this is the very time when there is a need for shaping the community's perception of our integrity in the efficient and effective stewardship of hundreds of millions of dollars annually given voluntarily, based on shared values and vision and the donors' sense of trust.

The voluntary sector has joined family, government, religion and the economy as a key pillar of American society. Its imprint on every citizen's quality of life needs to be understood in the context of a valuable per-

vasiveness—from the hospital in which one is born to the university that expands one's mind and from the agencies that relieve hunger to those that enhance our quest for art and music.

This article examines several challenges facing the not-for-profit sector, including Jewish communal service. It suggests a series of opportunities that may exist to better position ourselves for these challenges and for the legitimate questioning of our sector that is inevitable at this time. Indeed, today the sector is in transition from one with relatively little oversight and regulation to one that may become as overregulated as other components of contemporary society.

CHARACTERISTICS OF THE NOT-FOR-PROFIT SECTOR

Currently, there are one million not-for-profit entities in the United States, employing 8.7 million employees with total expenditures of \$295 billion, representing 6% of the gross national product. Volunteer time represents 41% additional value or \$110.4 billion of services that are not recorded as costs. Private donations comprise 18% of the revenue stream of these entities, with government providing another 31% and fees/charges 51%. Twenty-five percent of all government expenses in those areas in which not-for-profits operate services are channeled to not-for-profit agencies (Board Member, 1994).

The size of the sector can also be understood by its impact in various communities. In Philadelphia, five of the ten largest em-

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ployers are not-for-profit entities. Not-for-profits in Baltimore spend more than the City of Baltimore and its five surrounding counties combined (Board Member, 1994). In New York City, one of five workers is employed by not-for-profit entities (Haycock, 1992). In the borough of the Bronx, for example, the UJA-Federation network alone is the largest employer.

CHALLENGES FACING THE SECTOR

The most dramatic change in the relationship between the charitable sector and the general community is the growing loss of trust by the public in that sector. Scandals, such as those uncovered at the United Way of America, Covenant House, and those reported in a series in the *Philadelphia Inquirer* (Gaul & Borowski, 1993), which highlighted abuses at tax-exempt organizations, have begun to erode the previously positive attitude toward voluntary agencies. At the United Way of America, William Aramony, its long-standing chief professional officer, and two other executives were indicted and convicted of a series of crimes in which he personally obtained substantial financial gain from the charity through a series of conspiratorial criminal acts. Much critical comment in the press concerning the lack of trustee oversight and accountability and his excessive compensatory package followed. At Covenant House, Father Bruce Ritter, its founder and executive director, was charged with a series of personal and organizational misdeeds, which deeply affected the community's trust in that organization's ability to perform its mission of serving troubled youth. This erosion of positive attitudes is dramatically documented in the most recent study of public perceptions by the Independent Sector which, for the first time in the history of this annual research, shows a 10% reduction in respect for charities by the general population (Hodgkinson et al., 1994).

This perception is not the only major challenge faced by the field. As was demonstrated in the 1994 election, the nation is suffering from a serious case of compassion

fatigue—a sense that the nation's problems are intractable and traditional approaches have failed.

Government has posed key challenges to the nonprofit sector as well. Increased and often conflicting regulations between various government levels and entities that provide support in the not-for-profit sector often create confusion, unnecessary duplication and waste, and Catch 22s that inevitably have and will lead to serious audit exceptions.

The search for tax levy revenue has also had its impact on the field. PILOTs (payments in lieu of tax) and SILOTs (services in lieu of tax) are increasingly being sought at both local and state levels. UJA-Federation of New York has affiliated camps in four states and finds these camps in negotiation and litigation on a regular basis. The property taxation issue is part of a more general component of the current landscape, that of competition with small businesses. Tax exemption is a long-standing legal privilege given those organizations serving the public good. As communities increasingly need revenue enhancement, they seek these revenues from all entities receiving public services. Nonprofit agencies use police, fire, sanitation, and other governmental services and are primary targets of many financially impaired jurisdictions. The Jewish Community Centers, as serious competitors to proprietary, tax-paying health and fitness clubs, are the subject of litigation, taxation, and PILOTs in various parts of the country. For many years, those Jewish vocational service agencies with sheltered workshops were under attack from the small business sector as having an unfair competitive advantage, especially with the disability set-asides for government purchasing authorized by the Javits-Wagner-O'Day Act. The City of Chicago proposed to eliminate the 23 tax exemptions that not-for-profits currently receive. The legislation (which was defeated) would have eliminated the city's authority to waive fees for such ongoing services as water and sewer, annual licenses, registration and inspection fees, as

well as non-recurring waivers for building and other types of special permits and filing fees (Jewish Federation of Metropolitan Chicago, 1994). And *Crains New York*, a weekly business publication, has attacked the relationship between not-for-profits and government as "the new Tammany Hall," an anti-citizen, anti-business collaboration that does not serve the public interest (Kamin & Malanga, 1994).

Indeed, there are serious and legitimate issues in this regard, and many responsible tax-exempt entities will pay unrelated business income tax and establish for-profit subsidiaries where services beyond their mission are provided. Hospitals and pharmaceutical companies that engage in joint ventures, health care facilities that open commercial laundries, and the new alliances with managed care entities are but examples of the increased complexity of this issue. Last year, a holding subsidiary of UJA-Federation took an equity interest in a preferred provider organization, which was owned primarily by affiliated hospitals, in order to perform the central planning role more effectively for mental health, aging and long-term care affiliates. The risk management/claims management insurance network of the 128 UJA-Federation beneficiaries is a model of sophistication in the management of the community's precious resources, resulting in annual savings of millions of dollars that are then able to be used for additional services to the community.

The increased proportion of government funding received by Jewish communal agencies has also complicated this issue. There are inherent conflicts between being a Jewish communal agency and becoming the public utility that substantial government funding requires of agencies. Government funding sources are increasingly seeking diversification of the boards of the agencies and challenging the mission of the agencies in their appropriate role as funders seeking to fulfill a public benefit.

With the reinvention and shrinking of government, there is significant resentment against not-for-profits as the government

employment pool shrinks and the not-for-profit employment pool is stable or increasing. Finally, the changes in the revenue needs of government have resulted in a new form of hidden taxation to agencies that by definition are to be tax exempt. Excise taxes, government fees, and non-end user taxes have become a substantial part of the budget for not-for-profit agencies, and little progress has been made in excluding tax-exempt organizations from these "taxes."

Finally, the issue of executive compensation has become an important lightning rod in this debate. The public's reaction to William Aramony's compensation package was more relevant than his eventual indictment for a range of crimes. There is serious cognitive dissonance in the very act of charity and in the discovery that the charity offers its management and staff salaries that are competitive in this field. Yet, the increasing size and complexity of the agencies in this sector require leadership skills that were heretofore unknown.

OPPORTUNITIES

In order to take advantage of the opportunities to position the nonprofit field for the challenges outlined above there must first be an acceptance of the legitimacy of accountability for the not-for-profit sector. The tax exemption with which the sector is blessed is worth an estimated \$30 billion annually. Although nonprofit organizations in the tax-exempt sector have been an important core component of American society, tax exemption is neither a universal right nor a universal experience. Many governments do not permit tax exemption, and many societies are not benefiting from the extraordinary value of organizations that touch the very souls of our being, from education to health care, the environment to the arts. Therefore, if we accept the validity of the need for greater accountability, opportunities exist for us both for internal actions that can and should be taken within the Jewish communal structure and actions that we as a component for the nonprofit field should be taking outside our insular

perspective.

The major internal thrust should be our recognition that the governance of our agencies is a sacred trust and those who govern have a responsibility for the stewardship of these precious community assets. This sector is different from other sectors. Business leaders are responsible to stockholders. Government officials are responsible to the electorate. Not-for-profit board members are vested with sole responsibility, an acknowledgment of the moral responsibility to perform for the public good. Within Jewish communal service, we often confuse governance and involvement. In our desire to involve key community stakeholders, significant donors, or different components of our community, we are often left with governing boards that are particularistic in their view, having greater loyalty to only one constituency and that are not equipped with the skills, seriousness, and commitment to fulfill this sacred trust properly.

There has been increasing recognition that the historical trustee responsibility of nonprofits has become analogous to the director responsibility of corporate boards:

For many years, board members of nonprofit organizations were bounced between the corporate and trust models. It was not until 1973, in the well-known *Sibley Hospital* case, that U.S. District Judge Gerhard A. Gesell (of Watergate fame) decided the nature of nonprofit boards by favoring the corporate model. Judge Gesell determined that nonprofit board members were running a business, and therefore were held to the same standard as business director—that is, they were to operate as reasonable business directors, not as trustees. Most states today have nonprofit corporation laws modeled after business corporation laws, holding board members to a “reasonable person” standard. Some may still object to the corporate model and lament that charity, like everything else, has become nothing more than another business. From the point of view of the board members, however, the corporate model

should be seen as a positive step, allowing directors to act without fear of unwarranted liability (Lascell & Jensen, 1993).

The National Center for Not-for-Profit Boards was established in recognition that trustee development in the not-for-profit sector is a critical component to maintaining the strength and vitality of the sector. Very few Jewish communal agencies use the rich resources of the National Center, nor is the National Center highlighted at the meetings of the various components of the Jewish communal enterprise. In a recent publication, “Fulfilling the Public Trust: Ten Ways to Help Not-for-Profit Boards Maintain Accountability” (Bell, 1993) the National Center has identified some principles that should become the hallmarks of our boards’ performance:

1. Clearly determine mission and purpose. Mission should energize and drive the organization.
2. Carefully select the chief executive.
3. Ensure effective goal-setting, strategic planning, and program monitoring.
4. Ensure effective feedback and evaluation regarding programs and services.
5. Regularly review the performance and compensation of the CEO.
6. Oversee the effective use of the resources of the organization.
7. Serve as a court of last resort for complainants.
8. Insist on the transparency of the organization.
9. Organize the board to be efficient and effective.
10. Establish a board and organizational culture of openness and candor.

Although each of these principles is important, several merit comment in the context of the current attack on the sector. The selection of the chief executive is one of the key responsibilities of a board. Yet, in a 1987 study, it was found that not-for-profit boards are notoriously ineffective in this area (Hartogs, 1988). Search committees tend to be too large to enable crisp decision

making. The lack of confidentiality in the search process discourages qualified and competent professionals from applying. Too little time is spent in defining the position and the vision of that position, and, often, there is a lack of coherence on the part of the selection committee and board, leaving the new chief executive with his or her first task being the restoration of homeostasis among the board members directly related to the selection process.

The issue of executive compensation merits comment as it has provoked much controversy. Both the United Way of America and local United Ways reacted to questions of executive compensation with a Jackie Mason-like response: "I didn't know he earned so much," "I wasn't at the meeting," "They never told me," "Am I making that much?," "She'll take a salary cut," "I'll take a salary cut," "Mea culpa. Mea culpa." This might be contrasted to the experience of those New York UJA-Federation agencies with mental health contracts whose staff salaries were studied by the New York State Comptroller at the request of a legislative committee chair interested in excessive compensation. UJA-Federation took the lead in retaining the Hay Group, well-respected compensation experts, to analyze the compensation of the key staffs at the agencies in question. It discovered that, based on the size and complexity of these nine organizations, the salaries were 26% below that of comparable executives and the total remuneration packages were 35% below. When measured only against other not-for-profits, the salaries were 12% below, and the total remuneration packages were 6% below comparable organizations (Hay Group, 1993). This analysis provided an external, open, and honest review of the facts. Those agency's presidents and executives were then brought together in a training program with a well-respected public relations consultant so as to manage the press reaction that was inevitable after the release of the comptrollers report. When a reporter called the president of UJA-Federation for comment after the report's release,

instead of his saying "I didn't know," or "It's too high," he was able to provide the information with assurance and confidence and make the arguments necessary to interpret this complex and emotionally laden issue, including defending the salary of the most highly compensated agency executive. Needless to say, this was an activity that improved agency-federation relations as it brought the issues of nonprofit accountability into an appropriate venue.

Those national agencies that represent the federated American Jewish community have been ineffective in responding to the challenges to the nonprofit sector. There is little contact between the executives of the national Jewish agencies and their counterparts throughout the not-for-profit sector regarding "industry" issues. Of the more than 400 sessions at the 1994 Council of Jewish Federations (CJF) General Assembly program, only two were devoted to issues affecting the nonprofit sector. One focused on the public-private partnership and the other on the changes in the tax laws that became effective this year. It is interesting to note that these changes will have a deleterious effect on some of the most effective initiatives of the federation movement, such as Israel missions, which will require substantial changes to meet the new tax laws. Neither the UJA nor the CJF was maximally effective in protecting some of these initiatives, which were not at the heart of the congressional intent in imposing the substantiality requirements included in the legislation.

It is imperative that we reinvest ourselves in nonprofit agency issues and in organizations that represent our interests and those of our colleagues in the field. For example in the last session of Congress, a lobby disclosure act was proposed that would increase (beyond the current 47 pages of regulations) the requirements of not-for-profit organizations engaging in lobbying activities. Many of our agencies would be required to report their activities under these provisions. Other proposals included increased disclosure to donors and

potential donors through an expanded IRS 990 return that provides government and the public with a picture of each tax-exempt organization; regulations on telemarketing, which could well include Super Sunday activities; and intermediate sanctions; that is permitting the Internal Revenue Service to use a sanction other than the removal of the tax exemption (i.e. monetary fines) for infractions.

CONCLUSION

The not-for-profit sector is very complex. We run the risk of creating a hierarchy of values if we separate the universities and hospitals from the social service sector. Yet, many argue that such a separation might be of advantage to the social service sector, which is not seen as negatively as the health care and academic institutions. Yet, this is a small issue compared to the unique interface between American values and systems and Jewish values and systems that has resulted in the evolution of our enterprise. For if we are to ensure those key values of *Kol Yisrael Arevim zeh lazeh, tikkun olam*, and the infinite value of every human life, then we have to protect the very precious resource that American law, history, and custom have developed in the not-for-profit sector.

Alexis de Tocqueville (1835) defined this sector as being uniquely American during an early 19th-century visit. Democracy is not only engendered and nourished by voluntary associations but also these associations are required for its survival. "If men living in democratic countries had no right and no inclination to associate for political purposes, their independence would be in great jeopardy, but they might long preserve their wealth and their cultivation; whereas if they never acquired the habit of forming associations in ordinary life, civilizations itself would be endangered."

American life began with volunteers choosing to redefine the fate of the nation by declaring independence. Every aspect of human endeavor, from education to health care, the eradication of poverty to the appre-

ciation of the arts, has been enhanced by the voluntary association of citizens forging efforts together to improve the commonweal. It becomes increasingly important for us to examine our Jewish community efforts in the context of these American attributes in order to ensure our collective strength as we strive to achieve our potential.

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