

**OPENING AND INTRODUCTION:
ENGAGING PUBLIC TRUST AND DONOR LOYALTY:
ICFO AGM Meeting
Building Donor Trust in Cross-Border Philanthropy
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I join Mr. H. E. Koning, and the Centraal Bureau Fondsenwerving (CBF) in welcoming you to this public session of the ICFO annual general membership meeting. It is a real privilege to join CBF in presenting this public session as part of our annual membership business meeting here in Amsterdam, which will meet in formal session tomorrow. This morning's session for invited experts and guests on more technical topics proved to be quite educational and informative. Now, you honor us, both ICFO and CBF, with your presence here for an update on some of the events and activities that are shaping the nonprofit sector today. We thank you, our Dutch hosts, for making this visit to your city so great.

There are several themes that are emerging from this conference today. The first is the subject of cross border fundraising. For those who attended this morning's session, we looked at the European Court of Justice decision in the *Persche* case. In that case, the issue was the tax deductibility in Germany of a gift in kind made in Germany to a charity recognized as such in Portugal. ICFO has been dealing for some time with the matter of cross border fundraising. The ICFO international assessment program for major fundraising organizations operating internationally is another example of how this issue arises. Later this afternoon, Nilda Bullain will discuss the oversight mechanisms of charities, and if she addresses the report that the European Center for Not-for-Profit Law presented to the European Commission, she will address the issue of independent charity monitoring models. Essentially, what we are dealing with here, is the second theme in this conference: the importance of integrity and transparency and accountability in achieving donors' trust. It is also closely related to achieving the public trust. The third theme is the theme of government vs. independent monitoring, and government regimes for regulating charitable activity.

But first, a little bit of history. Fifteen years ago, Yale University law professor Stephen Carter wrote a book, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION*: This book was, and is important for a number of reasons, including the consequences to a society that excludes religion and religious belief and dialogue from the public square. As Professor Carter wrote, there is one trend in our political and legal cultures toward treating religious beliefs as arbitrary and unimportant, supported by rhetoric, that implies that there is something wrong with religious devotion. Religion and religious belief have been treated as fads and hobbies rather than as fundamentals upon which the devout build their lives and a society builds communities in which all can seek and contribute to the public good and happiness, to use a quaint ancient philosophical expression.

However, apropos to our discussion here was Professor Carter's description of what has happened to the charity sector in American society because public policies that diminished the role of religious thought and organizations from addressing some of society's persistent problems. As Professor Carter pointed out, when Alexis de Tocqueville visited the United States in the early 19th Century and wrote his classic book, *DEMOCRACY IN AMERICA*, he noted that the first thing that struck him was that religions provided Americans with the strong moral character without which democracy cannot function; but also perhaps as important, religions help fill the vast space between the people and their government, a space the government might otherwise fill. In too many places and countries, people rely on the government to solve all problems and in the process lose their liberty. In America, however, Tocqueville found the plenitude of private associations in civil life which had no political object. Religious and private associations not only created the space between the people and the government, but also took care of many or most of the needs of society, such as education, medical care, poverty, homelessness, and hunger, for example. As government grew and grew more important, it competed with these private religious associations and squeezed them out of the public square because of the government's vastly more significant resources and its power of legislation and regulation. As a bone to keep charity involved in society, but in a reduced capacity, government provided tax advantages to charities and donors, and minimal regulation. When, national and state budgets were no longer able to provide all the services that the people demanded as rights to which they were entitled, governments attempted to cast the so called safety net to the charitable sector to provide those services that government was no longer able to provide. In the United States, we are seeing a return to the prior 20th century model in which the government was to be the provider of all such charitable and welfare services, with increased regulation of the not-for-profit sector thereby creating obstacles to its effectiveness. This has increased significance in this era of international economic distress where governments are creating long-term national debt, and donors are not giving as in the past because of economic insecurity and diminished portfolios.

The topic on everyone's mind in the United States, and I believe in the world, is the state of the economy. There has been much written and much discussion in the United States, particularly over the past three months, concerning the effect of the economy on the nonprofit sector, and on the various initiatives being considered to address the economic crisis as they might affect the nonprofit sector and the donor public. While a special report published in the *CHRONICLE OF PHILANTHROPY* late last year was written in the context of the United States experience, I believe that it has broader application. With the globalization of the economy and the globalization of so much of the charity sector and its funding, particularly in the context of the current economic crisis, building donor trust in cross-border philanthropy is more important than ever. With increasing insecurity over the economic situation, and skepticism common to post-modernity and our age, there is greater demand for transparency, both with respect to government programs and the private sector, including the nonprofit sector.

Now, both in the United States and around the world, we face economic challenges unlike those faced in recent years. Notwithstanding that, the most recent statistics for giving in the United States are really quite remarkable. It seems that Americans are unrivaled in their generosity, and there may be some explanations for this which I will explore shortly. In 2007,

Americans gave a staggering sum of \$306 billion to charity, as compared with \$295 billion in 2006. This included \$3 billion for education, nearly \$30 billion for human services, and \$23 billion for health related activities. This figure did not include more than \$100 billion for religious organizations, such as churches and many foreign mission organizations and church operated local food kitchens and homeless shelters, camps, and large religious institutions such as the Salvation Army and denominational efforts. The Salvation Army, for example, is categorized as a church, and the giving to Salvation Army approximately \$4.24 billion with expenditures for both religious activities and worship, and for human services. The Roman Catholic Church, and its charitable activities, and the Church of Jesus Christ of the Latter Day Saints, or Mormon Church as it is generally known are further examples of the billions of dollars given to the Church and its charitable activities. As I reported in the U.S. Country Report, the donated income in 2008 for ECFA accredited members was \$18 billion and the total assets held by ECFA's accredited members was \$36 billion in 2008.

The largest percentage of giving reflected in these statistics was from individuals, with 85 percent of all households in the United States giving to charity, of which the total number of givers in the United States with annual incomes lower than \$100,000 was 65 percent of the entire U.S. population. Moreover, 44 percent of all adult Americans provided volunteer services to charities. That is, 83.9 million American adults volunteered, thus representing 9 million full time workers at a value of \$239 billion. Additionally, there are 12 million workers employed by nonprofit organizations. The total value of U.S. nonprofit endowments exceeds \$1 trillion in stocks, bonds and real estates. The combined annual expenditures of all nonprofit organizations exceed \$1 trillion, or equal to approximately one half of the U.S. Budget excluding Defense spending. The Charity or nonprofit sector is not an insignificant economic force in American society. The sheer scale of this growth, even in an era of economic downturn, is hard to ignore.

The special report in the recent CHRONICLE OF PHILANTHROPY identified a number of survival strategies. Thus, for example, charities to survive the current economic situation must focus on providing services that meet critical local community needs. They must build relationships with donors and prominent townspeople, including those who have moved away from the community. They must raise money from a variety of sources, not just grant making bodies, such as foundations. They must capitalize on timely and newsworthy issues that require local charitable attention for reaching out to new sources of revenue. They must collaborate with other organizations and make the most of local resources and relationships to meet local needs. While this addresses smaller and locally directed charities more than the larger charities, our interest here is engaging public and donor trust in the context of cross border fundraising. The topic becomes much more complex at that level.

What we have seen in the United States over the past three to six months has been a decrease in giving from the public for a number of reasons. This decrease in giving results from wealthy donors waiting for clearer signs of the direction from the stock markets before making significant donations to charity, and reductions in giving by those that do not have the resources to make regular contributions because of uncertainty in the economic situation and employment insecurity. There have also been losses of value of the portfolios of non-government public

benefit organizations, attention to reducing the expense side of the balance sheet, the closing of charities for lack of resources, and mergers of compatible charitable organizations.

While major public benefit organizations that operate nationally and internationally may require more than this kind of local attention and emphasis, some of these survival strategies still apply. What we are really dealing with here is the motivation for giving and participation in the work of charities. Yet, in the midst of these challenges, the sector continues to grow and expand in the United States, both with respect to giving and volunteered labor. With over 1.4 million charitable and religious organizations providing a huge range of services that improve lives, from meeting immediate need to funding medical research to assuring the future of the arts or educational institutions, how does one explain the massive growth of the nonprofit sector in the United States? The question arises with respect to the meaning and use of money: what are the deepest motives for giving and volunteering? Why should we care about those outside our own groups, especially the poor, the needy, the disenfranchised, those suffering from the absence of social justice, those who have experienced calamities in the form of earthquakes, floods, famine, and disease?

The contemporary focus on institutional philanthropy has a secular cast that simply ignores any beliefs and attitudes that give rise to a culture of giving and to those ideas that are required to sustain it. As Tocqueville opined in his book, *DEMOCRACY IN AMERICA*, a society that fails to do this, does so at its own risk and at the risk of loss of individual freedoms. Yet, fewer than five percent of research projects on philanthropy dealt with religion, religious based charities, and religious motivations for giving. Religious organizations are the largest recipients of giving, and religious motivation is one of the strongest impulses for giving. Whereas individual giving and support for charity stresses the efforts to help the poor and needy and work toward alleviating the present situation, supporters of philanthropy see their efforts directed toward society and the future, and in addressing long-term solutions. The former take their model from Jesus and the religious concept of love. In the Western Christian Tradition, there is also the concept of stewardship, in which we as individuals have a duty to manage our resources and time on the basis that everything we have and do or are ultimately belongs to God and that we are responsible as agents of God for how we care for those less fortunate. The latter take their model from the limited imperatives of ancient Greece and the examples of Prometheus and the distinct concept of *philanthropia*. Thus, philanthropy tends to be targeted to narrowly defined causes that address recognizable changes in social conditions. As such, they tend to require larger financial commitments, mainly from the wealthy and foundations. The recipients of philanthropy tend to be educational and arts institutions and organizations, medical research, and organizations that direct their activities toward promoting and improving the quality of human life.

There are different motivations in these two categories of public benefit activity. Whereas philanthropic organizations generally draw resources from wealthy donors and organizational foundations, the charitable organizations and religiously based organizations and churches draw their resources, both financial and volunteer labor, from individuals or small groups of individuals. If the published statistics are accurate, giving by individuals comprise 75 percent of all charitable giving in the United States, totaling more than \$222.89 billion. Moreover, as

recently reported by Independent Sector, 85 percent of all religious-giving households support secular organizations. Those households account for 81 percent of all donations to charities. Similarly, patterns of volunteering between both religiously based organizations and secular charitable organization are much the same. What this tells the researchers is that the connection of the donor with a church tends to define the donor's heart and character. The conclusion of this study was that faith-based generosity, whether measured in terms of dollars or time, is real, measurable, and carries considerable impact.

These statistics paint a picture of what is going on in the United States, and as the statistics demonstrate, most of the charitable organizations are small, that is, with annual revenues under \$2 million per year. Having been involved in leadership capacity in the sector for the last 35 years, I believe that something is going on in the charitable community that is more than mere compliance with standards issued by a monitoring organization. Our observation in ECFA bears out the fact that most donors give financial and in-kind donations, and volunteer time to those charities with objectives and programs matching the interests of the donors. Similarly, the vast majority of individual donors give to those organizations with which they have some ongoing relationship, either with the leadership of the organization, or with the charitable organization itself. Most of these charities target either immediate local community needs with which the donors are familiar and about which they care. Donors giving to a charity for the first time, and only once or twice a year, generally give because of some need to which they feel the impulse to give. Studies seem to suggest that only approximately 35 percent of first time donors continue to give beyond the first year, and the evidence strongly suggests that whether or not the charity has been monitored or given a seal is of no consequence to either the first time gift, other than to simply confirm the donor's decision to give to that particular charity. Those that continue to give to the same charity into the second year and beyond tend to be more loyal with retention rates of between 60 and 70 percent. Thus, while the vast majority of donors to these charities are loyal, those that drop off generally do so because their relationship with the organization or its leaders was not nurtured, or because of some change in their personal financial situation.

Giving always increases significantly when there are widely published reports of disasters, such as hurricanes, tsunamis, earthquakes and fires, for example. Many donors to these special needs arising out of the widely published disasters, simply respond to that need without major thought of the charity to which they are giving, and then do not continue the pattern of regular giving to the charity to which they gave for disaster relief. Depending the level of publicity and the reputation of the charity soliciting funds for such major disasters, the existence of a monitoring organizations and the granting of a seal may have some influence on what charity is to receive the gift. The influence generally, however, is to merely confirm the legitimacy and accountability of the charity receiving the donation.

What was interesting about the special report series in THE CHRONICLE OF PHILANTHROPY on coping with the current economic situation was that almost all of these articles talked about the importance of developing trust between the charity, and by implication, between the public benefit sector and the larger general public. To do this, the sector must be transparent in its communications with the public and with donors.

The emphasis is not simply between the charity and the donor, although that is certainly a major factor. Rather, embodied in the Standards issued by both ECFA and BBB Wise Giving Alliance is the idea of transparency to the larger public, not just the donors or potential donors. Indeed, from the beginning of its history, almost all of the questions to which ECFA has been required to respond, come from the general public and from the television, radio, newspaper, and other media, not from specific donors or potential donors to a specific charity. Thus, the Standards require accredited members of ECFA to be fully open in their disclosures to any inquiry received from anyone in the general public without regard to whether the inquiry comes from anyone who has a history with the charity. Similarly, almost all of the complaints leading to investigations and possible sanctions against an ECFA accredited charity have come from outside the donor base of that charity.

It would seem that charity monitoring standards and independent, or self-regulation monitoring organizations, serve a useful purpose for engaging trust between donor and charitable organization, and might, therefore, have some role in promoting loyalty on the part of donors to their charities. However, there is no strong data in the U.S. to support this correlation. Our experience in the United States supports the view that real benefit for independent monitoring relates to the public trust of the charitable sector and to its trust and confidence in specific charities.

It is almost always that it is to ECFA and the Wise Giving Alliance, both monitoring organizations, that individuals in the general public, and representatives of the news media organizations come to register complaints, or to ask questions about specific charities, standards, and monitoring activities. As a result, ECFA frequently, if not generally, upon concluding its investigation, has been called to explain what the investigation revealed, including the sanctions imposed on the charity, or to defend the particular charity against false accusations.

Moreover, in the United States, the BBB Wise Giving Alliance, ECFA, and other associations involved with charity standards and monitoring all have standards and best practices relating to boards and board governance, requirements for independently audited financial statements, the requirement for truthfulness in all communications with donors and the general public, and disclosure of financial information upon request. Indeed, ICFO, the International Committee on Fundraising Organizations, has agreed on International Standards, which address these same issues.

However, it is important to recognize the context in which these standards are issued, and charities monitored for compliance with those standards. In the United States, the BBB Wise Giving Alliance Standards for Charity Accountability states in the preamble that the standards were developed “to assist donors in making sound giving decisions *and to foster public confidence in charitable organizations.*” [Emphasis added] Here, both the potential donors are targeted, and the need to foster public confidence is emphasized. The mission statement of ECFA states that ECFA is “committed to helping Christ-centered organizations earn the public’s trust through developing and maintaining standards of accountability that convey God-honoring ethical practices.” Again, the emphasis is on assisting charities to gain public confidence in their

operations, transparency, and how they solicit funds for their charitable purposes. Just a word about ECFA's Standards of Responsible Stewardship, the glue that holds the religious nonprofit sector together in the United States is the religious beliefs and commitments of those charities that seek accreditation and monitoring by ECFA. Thus, the commitment to adherence to a set of standards and a regulatory structure is based, not simply on following a set of rules established by some independent body, but is based on the importance of conducting its operations and maintaining its relationships with donors that are absolutely above board and sincere before God.

While we may think of this in terms of accountability, frequently to some charity monitoring organization or the government, what we are really dealing with is transparency. I have saved fundraising solicitation appeals over a period of time to see what trends, if any, there might be. What I have generally found, and what the data we see in ECFA shows, are some trends that are important in the context of both charity monitoring, and in particular, the monitoring performed by ECFA over its membership. First, whether or not a charity is a religious charity, the methods of fundraising are modeled after secular marketing transactional practices, doing whatever it takes to achieve the financial bottom line, whether through urgent headlines, underlining, premiums promised, and emotional manipulation. In the United States, these methods barely raise 2 percent per household income. While the data demonstrates religious people give more to charity, barely 3 to 4 percent, what is missing in all of the figures is a sense of generosity and loyalty to the particular charity on the part of the givers. What is important is that this does not simply occur in the life of the donor or charity, but that it occurs in the context of the general public.

It is important, also, to realize the context in which ECFA was organized. Prior to the mid-1970, there was no monitoring of the charitable sector, other than the initial certification that a specific organization had qualified for tax-exempt status. The requirements for such certification were minimal. There are national and state constitutional prohibitions against government promoting or interfering in the free exercise of religion. Thus, there was a long tradition of the separation of church and state, and the legal regimes that enforced that separation. Since most of the sector tended to be religiously based, there was a reluctance to establish a legal regulatory scheme for the public benefit or independent sector. Moreover, there was a long history in the United States of the sector providing most of the public benefit services to the general public, such medical care, education, social services for the needy and disenfranchised, and care for the elderly and the poor. Over much of the history of the United States until the early 20th century, this was the case. In the early 20th Century, the government started taking over these public benefit and welfare responsibilities, thereby reducing the prominence of the charitable sector to the general well-being of society. However, to recognize the public need for services from the charitable sector, tax laws provided for tax exempt status to public benefit private, or non-governmental organizations that qualified under the tax laws.

What ECFA uniquely brings to the table is this. Whereas the philosophical model for philanthropy is improving the common good, the ECFA model is based on the concept of stewardship, that is, that we as individuals, and the charity as a public benefit organization, are charged with managing what God owns and has provided. Where the focus is on raising money in the philanthropic sector, the focus of ECFA is to facilitate stewards to be generous with what

God has provided for their management. Where the ethical framework within the general public and sector is minimalist, that is whether an action is minimally legal, the framework in ECFA is a commitment to Christian values of truth, integrity, and love. The ideal outcome for the sector generally is that the donor meets organizational needs, whereas the ideal outcome for those accredited member organizations of ECFA is that the giver becomes generous because he or she is trying to honor God in his or her generosity. Whereas the general thrust in the nonprofit community in its fundraising or solicitation activities is manipulative business sales and marketing techniques, in the ECFA world, it is presenting the opportunity to partner with the particular charity in its called mission. With respect to accountability, the general model is the accountability to the organization and to law, whereas in ECFA, the ultimate accountability is to God and His eternal values.

While many may disagree with the approach of ECFA, and perhaps in this audience, not understand it, ECFA and its members have gained a reputation for the integrity and transparency and donor loyalty throughout its history. When there have been noncompliance issues raised, and when there have been scandals in the public eye, ECFA is almost always the first one to whom these questions are posed. Indeed, the compliance process has been recognized both for the legal fairness and competence in the investigation, and the transparency in its reporting the results to the public and news services.

Indeed, the entire thrust of ECFA's core program and objective since its earliest years has been to encourage donor loyalty to the charities the donors have chosen to support, either financially or through volunteer services. ECFA has long recognized that far more expense is required to generate new donors than to keep those donors that have been cultivated and encouraged to be loyal givers. Fundraising or solicitation costs and administrative cost increase in the process of donor acquisition, and the ratios of administrative costs to mission costs are unfavorable to the financial balance sheets which are disclosed either publically through ECFA's website, informational tax returns, or charity reporting organizations, such as GuideStar.

Well, what does all of this have to do with cross border fundraising, the importance of integrity and transparency in achieving donors' and public trust, and government or independent monitoring schemes for regulating charitable activity? Assuming there are any sovereign rights and jurisdiction in individual states, managing the integrity and transparency and accountability of charities, their operations and activities, including financial accounts and fundraising practices, and the deductibility for tax purposes of donations, would be virtually impossible. The *Persche* decision, it seems to me, does not address how one state is to be assured of the complete legitimacy of a charity operating in another state, when there is no assurance of standards and monitoring activities in the state of the charity that would provide some assurance of integrity, transparency, and accountability of the charity in that state. As I read the *Persche* decision, I see nothing in it that requires a charitable organization soliciting funds cross border to be legitimate in its integrity, transparency, and operations other than to have satisfied the minimal requirements for legal registration or recognition as a charity on some tax exempt registration roll. This hardly can be represented as legitimate means for engaging donor and public trust and loyalty. What *Persche* does it simply treat the matter of cross border fundraising as a tax question that bears little import to the legitimacy and accountability of the fundraising organizations that

are operating outside the jurisdiction of the state required to provide the acceptable tax treatment to donations, financial or gifts in kind, which are much more difficult to value and treat on financial statements.

Secondly, engaging donors' trust and public trust, and donor loyalty, it seems to me, require standards that are easily understood and monitoring activities that are credible with the public that are close to the affected public and fundraising organization. In a global economy, with charities operating globally, or at least engaged in solicitation of funds on a regional basis, such fundraising organizations will not be accountable to either a monitoring body or the public in a state in which it is raising donations. As we learned in ICFO over the years, the monitoring organizations must have some credibility, both in terms of its capability to address a changing environment for the nonprofit sector, or civil society movement, with appropriate standards and the integrity and transparency with which those standards are enforced.

And thirdly, in a post-modern era with a global economy that is experiencing turmoil and crises that even governments working together cannot solve, there is little chance that the public will put its trust in government to issue standards and properly monitor the activities of thousands, and perhaps millions of charities. Moreover, government cannot address the motivations for giving and volunteering, as it attempts to treat fundraising activities as nothing more than financial transactions. It cannot force private charitable associations to engage in preferred public benefit activities except through coercive legislation by providing certain tax consequences to both the fundraising organization and donor. Similarly, the warrant for any regulation in this sector is based on consumer protection and prevention of fraud. Accordingly, every violation or asserted violation of a standard legislated by the government becomes a potential criminal matter with investigations and prosecutions. As such, fundraising organizations will be required to obtain accounting and legal professional counsel and service to protect themselves and to ensure compliance with the law. This raises the overhead expenses of the organization and reduces the amount available for the public benefit purposes for which the organization is established.

It seems to me that if the *Persche* decision and any legal requirements with respect to cross border fundraising are to be effective and credible in the civil society and public benefit fundraising sector, any such requirements should be implemented nationally by the establishment and maintenance of effective and credible monitoring organizations, such as those which are members of ICFO and engage in the cooperative enterprise of exchanging information and resolving cross border fundraising issues.

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