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The Public Has a Right to Know

By Pablo Eisenberg

Small is beautiful — except at the Smithsonian Institution, in Washington.

There, Lawrence M. Small, the former top official of the institution, resigned last week, after he came under fire for inappropriate expenditures, lavish personal spending, and a disregard for established Smithsonian rules.

The Smithsonian experience offers major lessons for nonprofit boards of all kinds and for lawmakers and regulators who want to find effective ways to wipe away abuses. The Smithsonian case is hardly an unusual one. In past years, we have had a display of the lives of the nonprofit rich and infamous, with numerous charity chief executives larding their pockets with inappropriate expenditures, excessive benefits and perks, and downright thievery.

Not only are these nonprofit leaders undermining the public trust, but they are also using money donated by the public, as well as government funds, to benefit themselves and their friends and relatives.

The major culprit in the scandals that have rocked not only the Smithsonian but also American University, the Getty Trust, the Shriners, the Nature Conservancy, and other organizations are the board members of these institutions who have failed to exercise their fiduciary and oversight responsibilities.

The 17-member Board of Regents that is supposed to oversee the Smithsonian operations is designed for failure. It is encouraging that the organization is appointing a committee to examine its governance in the wake of the scandal, but why wasn't this done many years ago, given the number of controversies that have flared during Mr. Small's tenure?

The chair of the board is the chief justice of the Supreme Court and the vice chair is the vice president of the United States, officials who don't have time to do anything but fulfill the duties demanded by their jobs. Such is also the case with the six members of Congress who are regents.

The remaining nine board members comprise five corporate executives; Patty Stonesifer, the president of the Bill & Melinda Gates Foundation who was formerly a top Microsoft executive; two university presidents; and the head of the Philadelphia Museum of Art.

That is hardly a diverse board that can best represent the public's interest.

While 70 percent of the Smithsonian budget comes from the federal government, there is no need for the Board of Regents to have more than one or two board members, if that, from the government. Nor does it make much sense to appoint six of the remaining regents from the corporate world. Are they the only ones who can interpret budgets, read audits, and understand the operations of nonprofit institutions?

One might also ask if the business executives are the best protectors of a nonprofit organization's integrity. Accustomed to meeting a profit bottom line, sometimes by questionable means, and steeped in a culture where generous compensation and personal expenditures are the norm, corporate leaders are not programmed to oversee the more-modest budgets of charities and the taxpayers' interests.

The audit committee of the Smithsonian's board — made up of four people, three of whom had much experience in corporate America — was willing to overlook Mr. Small's unauthorized expenditures and then write new rules to legitimize them. Roger W. Sant, the committee's chair and co-founder of the AES Corporation, seemed to excuse these infractions by saying that, after all, Mr. Small was a terrific fund raiser. Now there's a rationale for unethical behavior.

What the Smithsonian requires, and the American public deserves, is a Board of Regents whose focus is on protecting the public's trust in the institution rather than the fortunes of its executive staff members. Good board members aren't hard to find; one just has to reach beyond the small pool of the people who are deemed "suitable."

And that is the rub. There is an assumption in arts and cultural circles, certainly in foundations and perhaps in higher education, that wealthy, corporate, highly paid professionals or celebrities have an inherent right to board membership.

It is taken for granted that they, by virtue of their status, make the best board members.

No doubt part of this perspective is motivated by the belief that wealthy people can raise big money through their connections and donate large amounts of money from their personal wealth. Sometimes they do that job well, but too often trustees' fund raising is not nearly sufficient to sustain their organizations. Major arts institutions and universities would die if they depended only on the fund raising of their wealthy board members.

Some institutions also seem to believe that art collectors should sit on their boards because they have expertise in the arts. But it not clear that wealthy collectors are any more expert in art than many other people. Tens of thousands of art connoisseurs and enthusiasts live in the United States, and many have a deep understanding of the arts and artists but are never asked to sit on a museum board.

The reason they are excluded from consideration is simply that they don't have money and social status. The wealthy collectors do. Should that be the basis for the crucial stewardship of public institutions as well as private organizations that depend on tax-deductible funds for their sustenance?

Arts and cultural institutions tend to have a small group of wealthy patrons who sit on multiple boards.

In Washington, Victoria P. Sant (who is married to Roger Sant of the Smithsonian board) is both the president of the National Gallery of Art and former chairman of the board of the Phillips Collection, also in Washington. Sharon Percy Rockefeller, head of the WETA public-broadcasting network, is a member of the boards of both the National Gallery of Art and the Museum of Modern Art, in New York.

That concentration of like-minded people — no matter how well intentioned or capable they are — is not healthy for the institutions or the cause of greater public accountability. We need boards that are more diverse and more attuned to the public trust.

In almost all the cases of nonprofit mismanagement, inappropriate expenditures, and excessive compensation that have recently surfaced, what is surprising is that so little information about their budgets and operational costs was publicly known.

It took reporters from *The Washington Post* to uncover the facts about the Smithsonian, either from audits, other documents, or internal staff and board members. Why is so much important information hidden from public scrutiny? And why didn't the board or other government officials release this information first? Was it in part because Mr. Small apparently tried to intimidate the inspector general of the Smithsonian when she tried to investigate the organization's business ventures?

There appear to be two answers to those questions. The first is that the culture of many large nonprofit organizations — as well as many smaller ones — does not lend itself to openness. Staff members, supported by boards that are overly trusting or derelict in their oversight, don't want the public to know what is going on inside their organizations. Too much sunshine is deemed an intrusion into their internal affairs.

The second answer is simply that federal and state laws and regulations have not demanded sufficient openness and accountability. Both foundations and nonprofit groups have lobbied frenetically against new regulations and said that charity groups should be able to police themselves. The demand for self-regulation seems to be an addiction of nonprofit leaders opposed to change.

But the number of nonprofit scandals the nation has seen show that without regulation, abuses will persist. Nor is it possible for citizen watchdog groups to monitor institutions when the fact remains that much of the information the public needs to assess nonprofit operations is rarely available.

The details of compensation contracts negotiated by the board with an organization's CEO should be public information. Some nonprofit groups have tried to hide the full value of a chief executive's compensation package by granting a contract to another organization to assume a portion of the CEO's compensation. Details of those arrangements should also be made public.

So should the relationship between board members and all significant contractors hired by a nonprofit organization. Audits of all nonprofit organizations should be part of the public domain. And all charitable contributions of $1,000 or more to a nonprofit organization, whether from an individual, foundation, or corporation, should be public information. While charity groups have sought to protect the privacy of their donors, the demands of public accountability and the right to know must supersede such concerns.

This type of public information should be available on the Web sites of nonprofit organizations, as well as at the Internal Revenue Service and at GuideStar, which posts the informational tax returns of charities.

If nonprofit groups want to command greater respect and trust, they need to promote more openness, press the IRS to become more vigilant in rooting out bad players in the nonprofit world, and appoint more responsible board members.

Let's hope the Smithsonian episode spells the beginning of an effort to bring transparency to all nonprofits and more integrity to the way they are managed. If that happens, small will turn out to be beautiful, even at the Smithsonian.

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