

## Favorite Posts of 2022, Part One

01.02.23 | Linda J. Rosenthal, JD



While everyone is trying to get back to normal after the holidays (or – in the case of some unlucky air travelers – just trying to get back at all), we'll take the first few days of January to reminisce about some of our favorite as well as most important blog posts from 2022.

With dozens to choose from, it's hard to pick favorites. And many of them are part of themes that – in end-of-year hindsight – are related.

So we'll start with a grouping we'll now call "crime and punishment," beginning with:

- A tale of a nonprofit behaving badly: [Nonprofits' "What Not To Do" \(1.4\): The Gilgamesh Goof](#) (September 15, 2022); and
- An exhortation (sadly necessary) about the importance of ethical behavior, not least because the public's trust in philanthropy is eroding: [The Importance of Being Ethical \(Nonprofits\)](#) (August 19, 2022)

Then, we'll continue it with an update on who is currently in charge of going after our community's bad apples; as the IRS is being hamstrung by Congress, state attorneys general around the nation are picking up the pace:

- [New Charity Enforcement by CA Attorney General](#) (April 19, 2022)
- [State AGs Continue Aggressive Oversight of Nonprofits](#) (July 21, 2022)
- [Nonprofits & IRS: Square Peg, Round Hole](#) (September 7, 2022)
- [New Reports on IRS Oversight of Nonprofits](#) (October 14, 2022)
- [More Good News on State Charity Enforcement](#) (October 27, 2022)

### ***The Bad-Behavior Case Study***



“Who among us hasn’t ‘unwittingly’ come into possession of massive lots of looted ancient artifacts?”

That was the gratuitously snarky opening sentence in Episode 4 of our fan-favorite series: “Nonprofits’ ‘What Not to Do.’” And it’s fairly close to the actual “aw shucks; I didn’t know any better” excuse of the wrongdoer in our “Case of the Gilgamesh Goof” on being caught red-handed with said loot.

It’s quite a doozy of a tale which we describe in glorious detail in the September 15th post.

But, in a nutshell, it’s about the Green family of Oklahoma City, the “fabulously wealthy and prominently evangelical owners” of multi-billion-dollar national craft-store chain, Hobby Lobby. And it’s about their long-held dream of developing “a collection of historically and religiously important books and artifacts about the Bible” to be housed in a new and spectacular museum.

In 2009, CEO Steve Green jumped into the task with gusto, forming the new tax-exempt 501(c)(3) called Museum of the Bible. That entity was funded and controlled by the Green family or by Hobby Lobby; whatever: those lines were always a bit blurry.

He traveled to the Middle East many times, personally directing a five-year “international shopping spree” netting “tens of thousands of artifacts and manuscripts from biblical lands,” mostly from what is now modern-day Iraq.

The dream became a reality with the spectacular grand opening in November 2017 of a new \$500-million headquarters for the Museum of the Bible in downtown Washington, D.C.

The building was filled to the rafters with jaw-dropping exhibits showcasing those imported finds. There were “430,000 square feet of interactive and high-tech exhibits, some of them with experiential features that rival those of a theme park.”

“The headliner relics have included the Gilgamesh Dream Tablet,” a 3,600-year-old, 5” x 6” cuneiform clay tablet purchased for \$1.7 million in 2014. It bears a portion of the Epic of Gilgamesh, “one of the world’s oldest surviving works of literature and one of the oldest religious texts. The Epic notably includes stories that closely parallel portions of the Bible including the flood narrative.” The premiere exhibits also included certain fragments of the Dead Sea Scrolls.

So far, it sounds good. How did this treasure-hunt success story wind up in our “What Not To Do” stack?

That’s because Iraq has strict laws against exporting its cultural heritage and the United States (and other nations) back up the Iraqi ownership claims with serious import restrictions and penalties. Much of what Steve Green and his foreign helpers spirited away from the Cradle of Civilization was authentic but illegally “looted” out of Iraq.” Other purported “antiquities” were fake. The Gilgamesh Dream Tablet was the real-deal but improperly looted. The Dead Sea scroll fragments were later exposed as fakes.

All told, about 90% of the objects Steve Green imported “were later seized, forfeited, and repatriated to the primary country of origin, Iraq.”



Mr. Green and his associates knew all along they were breaking Iraqi or U.S. law or both. Early on: (1) their own retained experts had explicitly warned them off the illicit artifacts-importing activities and (2) U.S. customs authorities had intercepted some of the looted items and cautioned them against continuing. For several years, they were aware of an open federal investigation which eventually resulted in a series of consent degrees with the Justice Department beginning in 2017. (The wheels of justice, we all now know, move slowly.)

As told in the court documents, for several years, Steve Green and his crew twisted themselves into pretzels to evade detection through various subterfuges including roundabout export trails through other nations that don't have strict export restrictions.

Remarkably, up to and including the day he signed a stipulation and settlement agreement with the U.S. Attorney's Office acknowledging the wrongdoing and detailing all of these clever ruses, Steve Green repeatedly trotted out the "aw shucks; I didn't know any better" excuses.

For example, in a formal press release, he stated that "[t]he Company was new to the world of acquiring these items, and did not fully appreciate the complexities of the acquisitions process." He added: "This resulted in some regrettable mistakes. The Company imprudently relied on dealers and shippers who, in hindsight, did not understand the correct way to document and ship these items." The word "unwittingly" popped up, too.

In our "What Not to Do" posts, we make observations and throw in some advice to any other 501(c)(3) organization thinking about directly or indirectly engaging in this type of behavior.

First, don't do it. But if you do, and you're caught, please skip the non-apology apologies, ridiculous explanations or implausible excuses when the truth is "...all in black and white on stipulations you signed under penalty of perjury." After all, we pointed out: "We're not stupid and – frankly – we're subjected to this type of disingenuous gaslighting all day, every day, from the news. We're exhausted. Just stop."

Second, "don't do morally (or legally!) questionable things even though they are arguably consistent with your purpose or mission or will substantially advance it. Nonprofits are not above the law and don't get a free pass to better the world in any and every possible way." Although the Green family/Hobby Lobby/the Museum of the Bible believed they were in a far better position, financially and otherwise, than the antiquities experts in war-ravaged Iraq to preserve valuable artifacts, it's not okay to grab others' property.

Third, "understand that a single nonprofit's shortcomings affect more than that organization alone. Recent studies show that the public have lost faith and trust in the nonprofit sector. Don't add fuel to that fire....It's not just about you."

And that takes us to our (earlier) post about ethics and nonprofits.

### ***How Bad Behavior Matters More Broadly***

A month before publishing the Gilgamesh Goof tale, we wrote *The Importance of Being Ethical (Nonprofits)* (August 19, 2022). There, we had already made an express link generally between our "What Not to Do" series and the importance of aiming for and achieving a culture of ethics in an



organization.

The cautionary tales we have highlighted in that series, and will continue to showcase in the future, are more than “a tongue-in-cheek road map to staying out of trouble or legal jeopardy”; more than simply a “welcome break from the relentless heaviness of current events reported on the 24-hour news cycle....”

The “more serious purpose” is reinforcing the notion that “... nonprofit organizations and their key people should aim higher than mere minimum compliance with laws and rules. Not just legal, but also ethical, behavior should be the goal.”

Moreover, it’s “not only a moral duty, it’s also a financial necessity. In terms of survival, nonprofit organizations must be held in high esteem to attract and maintain public financial and other support.” But, “according to current surveys and studies, there has been a statistically significant erosion in trust in the nonprofit sector....”

Most of our August 19th ethics post focused on the history of the nonprofit sector since about the early 2000s when the huge Enron scandal broke. That event spooked not only the for-profit corporate world but also the nonprofit community and government regulators.

Although they pushed through some serious reform measures, by the end of that decade there was evidence that “unethical behavior was still a persistent problem in nonprofits and for-profits alike.” There were “... troubling statistics on the public perception of, and trust in, nonprofits as well as from nonprofit employees’ observations of considerable unethical behavior within their own organizations.”

Fast forward to the current day, the data show that “[t]rust in institutions generally seems to be falling, but trust in nonprofits seems to be declining even more rapidly.” So “...maintaining public trust is critical for foundations and nonprofits because of the voluntary nature of philanthropy. It is difficult for citizens to completely disengage from business and government, but it is simple for them to ‘opt’ out of involvement with nonprofits and philanthropy if they lose faith in them.”

A related research finding is that current-day members of the public have changed their rationales for feeling distrustful of nonprofits. While in the 1990’s, they worried that nonprofit leaders were too “amateurish, now they worry about the bad intentions of nonprofits and, in particular, of their donors.”

That finding ties in with our third piece of advice for readers of the Gilgamesh Goof post; namely, “understand that a single nonprofit’s shortcomings affect more than that organization alone....”

*The Importance of Being Ethical (Nonprofits)* provides extensive references and links to resources on this critical topic.

### ***Who’s Guarding the Hen House?***

The irony of the Gilgamesh Goof case is that the officials that those artifact hunters had *most* to worry about were not from the federal tax agency or from their state attorney general’s office. Instead, they were nabbed by alert customs officials and investigators both at home and abroad.



Of course, ordinarily that's not the case. In the United States, there is concurrent or overlapping charity-oversight jurisdiction at federal, state, and local levels of government, as well as geographically across many state borders.

But 2022 continued the trend of recent years in the eroding of the capability of the Internal Revenue Service to carry out its designated duties in matters of tax-exemption. Our posts this year, and earlier, amply demonstrate how budget and staffing constraints as well as organizational straitjackets inflicted on the agency from Congress in the past two decades or so have created a regulatory catastrophe for the nonprofit sector. See in particular: [Nonprofits & IRS: Square Peg, Round Hole](#) (September 7, 2022) amplified by additional current data described in [New Reports on IRS Oversight of Nonprofits](#) (October 14, 2022).

On the other hand, a number of state attorneys general around the nation – most notably, those from the most populous states with the highest concentration of nonprofits – are reclaiming their long-standing historical roles as defenders of charitable organizations and assets. See [New Charity Enforcement by CA Attorney General](#) (April 19, 2022) and [State AGs Continue Aggressive Oversight of Nonprofits](#) (July 21, 2022).

“Among the unmistakable trends is the [accelerating role of state charity regulators](#). This development contrasts sharply with the continued crumbling of the Internal Revenue Service's nonprofit-organization oversight capabilities, due in large part to sabotage of that federal agency in the last two decades by Congress.”

In [More Good News on State Charity Enforcement](#) (October 27, 2022), we particularly review in depth the important historical basis – going back some 500 years – supporting the charity-regulation jurisdiction of the nation's state attorneys general. “While we can lament the crumbling of the federal enforcement mechanism, there is some definite benefit in applauding and encouraging the stepped-up enforcement at the state level.”

### ***Conclusion***

Coming up next in our 2022 review, we'll touch on some of the views of philanthropy thought leaders about our sector's biggest challenges.

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