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Real or Rogue Charity? Private Health Clubs vs. the YMCA, 1970-2010

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Late twentieth-century America witnessed an enormous fitness movement among both men and women. One of the most visible aspects of this was the growth of thousands of private health clubs serving millions of Americans. But these clubs were not the nation's only fitness venues. After 1980, these clubs increasingly challenged tax-exempt, not-for-profit and public institutions. Clubs battled the YMCA as its member divisions rebuilt aging branches and replaced urban facilities with either suburban or business-district branches that served some of the same clientele as the for-profit clubs. Club trade groups repeatedly challenged the YMCA in court, in state and federal legislative hearings, and in the court of public opinion over its tax exemptions, its standing as a charity, and its 'right' to serve middle-class Americans. The Y was, said the clubs, a "rogue charity." These lawsuits (including defeats), public relations attacks, and lobbying forced the Y to respond and to rethink its practices, its mission, and its presentation of itself as a community organization and presence in American society.

In his monthly article in the August 2000 issue of *Club Business International*, John McCarthy, long-time executive director of the of the International Health, Racquet and Sportsclub Association (IHRSA), previously the International Racquet Sport Association (IRSA), took aim at what he said was the private fitness club's main enemy, "a *rogue charity* [emphasis added] that is often . . . no charity at all." The "rogue charity" in

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question was the YMCA (Young Men's Christian Association, the Y). Masquerading as charities, many YMCAs were "out-and-out commercial businesses" whose tax-exempt status afforded them 25-30 percent cost advantages over their commercial competitors, McCarthy said. Of most concern to the clubs, these "rogue" Ys were "duplicating services to the affluent" in new "plush" facilities and had stopped serving their traditional constituency, the young and the poor.[1] This essay will focus on conflicts between the commercial fitness clubs and the Y over the very definition of charity that grew out of the fitness boom of the late twentieth century.[2]

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[1] John McCarthy, "IHRSA and the YMCA: Non U.S. Member Advisory," *Club Business International* [*CBI*] 21 (Aug. 2000): 12.; John McCarthy, "Fitness for All: Foundation for Fair Competition," *CBI* 20 (June 1999): 20. In denouncing these apostate charities, McCarthy was reiterating the language of Helen Durkin, IHRSA vice-president and chief counsel who, while attacking such "rogue Ys" had also warned against denouncing those that are "truly charitable." Indeed, she noted, it was wise for club owners to emulate the actions of one Michigan club owner who donated his old equipment to "Ys that are truly charitable." Helen Durkin, "Winning the War: 100 Ways to Beat Tax-Exempt Competitors," *CBI* 20 (June 1999): 16, 74.

[2] On more recent work on the conflict between tax-exempts and their opponents, see also James T. Bennett and Thomas J. DiLorenzo, *Unfair Competition: The Profits of Nonprofits* (New York, 1989); *Unfair Competition by Nonprofit Organizations with Small Business: An Issue for the 1980s,* 3d ed., Office of the Chief Counsel for Advocacy, U. S Small Business Administration (Washington, D.C.), 15-25; and Harrison Wellford and Jeanne C. Gallagher, "The Myth of Unfair Competition by Nonprofit Organizations: A Review of Government Assistance to Small Business. A Report to Family Service America and the National Assembly," Oct. 1985, General Counsel, FP 159, box 5, Private Sector Competition, folder 4, Kautz Family YMCA Archives, University of Minnesota Library. On the conflict between the Y and gyms, see Lori K. Miller and Lawrence W. Fielding, "The Battle between the For-Profit Health Club and the 'Commercial' YMCA," *Journal of Sport and Social Issues* 19 (Feb. 1995): 76-107, for a study critical of the Y as profit-oriented commercial establishments. On the fitness boom, per se, see Marc J. Stern, **"**The Fitness Movement and the Fitness Center Industry, 1960-2000," *Business and Economic History Online* 6 *(*2008). See also Benjamin G. Rader, "The Quest for Self-Sufficiency and the New Strenuosity: Reflections on the Strenuous Life of the 1970's and 1980's," *Journal of Sport History* 18 (Summer 1991): 255-66; A. Eisenman and C. Robert Barnett, "Physical Fitness in the 1950's and 1970's: Why Did One Fail and the Other Boom?" *Quest* 31 (1979): 114-22; Michael S. Goldstein, *The Health Movement: Promoting Fitness in America* (New York, 1992); Ruth Clifford Engs, "The Third Clean Living Movement, 1970-2005," in Engs, *Cycles in Health Reform* (Westport, Conn., 2000); Barry Glassner, "Fit for Modern Selfhood," *Symbolic Interaction and Cultural Studies,* ed. Howard S. Becker and Michael M. McCall

(Chicago, 1990), 215-39. The YMCA was only the first and, in many ways, the largest of the clubs' targets. They also went after Jewish Community Centers, clubs associated with hospitals, university and college fitness centers, and municipal fitness centers. For recent comments on the conflict regarding

Although most Americans date the "fitness boom" to the 1980s, takeoff of the gyms actually began in the 1970s. In 1968, only 350 commercial exercise clubs dotted the American landscape.[3] By 1976, industry leaders estimated that approximately 2,000-2,500 clubs served the nation's exercise-crazed masses, and by 1985, the nation's Yellow Pages listed 9,222 health, racquet, and sports clubs, nearly a thirty-fold increase over 1968. These numbers increased to 13,854 by 1990 and to 15,372 by 2000.[4] Membership in commercial clubs grew from roughly 1.2 million in 1972 to 6.7 million in 1987 and to 15.8 million in 1999.[5]

These new clubs were not, of course, the nation's only fitness venues. Thousands of not-for-profit facilities dotted the urban and suburban landscape. With over eleven million members in 1,868 YMCA branches in 1980, the Y was the principal rival of the for-profit clubs and the best place for the clubs to poach other exercise-active adults—that is to say, potential club members.[6] Funded largely through membership and program fees, the Ys were distinctive.[7] Their imposing buildings were quintessential

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churches as tax-exempt organizations, see Martin A. Larson and C. Stanley Lowell, *Praise the Lord for Tax Exemption: How the Churches Grow Rich—While the Cities and You Grow Poor* (New York, 1969); and Dean M. Kelley, *Why Churches Should Not Pay Taxes* (New York, 1977).

[3] Benjamin Rader, *American Sports from the Age of Folk Games to the Age of Televised Sports* (Englewood Cliffs, N.J., 1983), 243.

[4] Glenn V. Swengros, "The Health Spa Industry and the Profession" April 5, 1976, presented at the National Convention of the American Association for Health, Physical Education and Recreation (Milwaukee, Wisc., April 2-6, 1976), 12-13; International Health, Racquet and Sportsclub Association [IHRSA], *Profiles of Success, 2001* (Boston, 2000), 4. According to Swengros, vice-president for public affairs of the Health Industries, Inc., club chain, the Yellow Pages listed 4,000 clubs, but many of those were disreputable massage parlors. The Yellow Pages figures for clubs also included YMCAs.

[5] American Sports Data, Inc., *IHRSA/ASD Health Club Trend Report 2003* (Hartsdale, N.Y., 2003), 29.

[6] *1981 YMCA Yearbook*, 73, 75. The Jewish Community Centers sometimes bothered the clubs (as in Chicago), but for the most part they saw them as more genuinely oriented toward Jewish religious and community issues. They were also a smaller portion of the market with only two hundred centers. Interview with Alan Mann, vice-president, Jewish Community Centers Association of the United States, telephone interview, 2 April 2010; interview with John McCarthy, 15 May 2010, in Waltham, Mass.

[7] Mayer N. Zald, *Organizational Change: The Political Economy of the YMCA* (Chicago, 1970), 46-47, points out that Y urban branches gained 42% of their revenues from business income in 1926 and that this declined to 32% by 1962, as Y residential and Railroad Branch businesses became less important. Business income (residential) remained crucial in larger cities (over 250,000) as late as 1953.

urban features, symbolizing the solidity of the organization and its longstanding role in the cities it served.[8]

After World War II, the Y increasingly suburbanized. It remained a federated organization, with independent local Ys connected through both state and national structures. The diversity embedded in this system permitted local Ys to be more or less religious and allowed for local expansion while presenting a national image around service.[9] As a not-for-profit 'charitable' organization, YMCAs around the country were exempt from paying federal, state, and local property or income taxes. Never-

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[8] On Y architecture, see Paula Rachel Lupkin, "YMCA Architecture: Building Character in the American City, 1869-1930" (Ph.D. diss., History of Art, University of Pennsylvania, 1997). The YMCA was founded in England in 1844 by George (later Sir George) Williams, a young London draper, as an evangelical attempt to counter the destructive and degrading aspects of unregulated urbanization and industrialization. Spreading to the United States in 1851 (Boston), the Y sought to win young men from the decadence of the urban scene and into a healthy, religious environment. It soon found that preaching and prayer were not enough and quickly offered physical exercise and organized sports as an alternative to the bright lights of the big city. This program was codified through the work of Luther Halsey Gulick, Jr., the child of missionaries to Hawaii, who, as director of the YMCA Training School (now Springfield College) designed the triangular form symbolizing the unity of mind, body, and spirit that came to represent the Y's goals and, through its fitness activities, tactics for both evangelizing and saving the young men of America. Ys flourished in the nation's burgeoning cities and elsewhere, offering lodging for the newly arrived, reading rooms and restaurants for railroad workers on the road, summer camps and camping (from 1855), USO and operations geared to the Armed Services from the Civil War onward, ties to the Boy Scouts, missions to Native American communities and overseas, university services, job services, health services, literacy training, recreational activities featuring games developed by Y personnel including basketball and volleyball, and activities like bodybuilding and weightlifting, all staffed by both volunteers and professionals whose goals were both physical and spiritual fitness. On the history of the Y, see especially C. Howard Hopkins, *History of the Y.M.C.A. in North America* (New York, 1951); Elmer L. Johnson, *The History YMCA Physical* Education (Chicago, 1979); Clifford W. Putney, *Muscular Christianity: Manhood and Sports in Protestant America, 1880*-1920 (Cambridge, Mass., 2001); Alan J. Pickering and Charles B. Holmes, "You Picked Them: The Top Ten Events in YMCA History," *Perspective* 31 (Aug./Sept. 2005): 15-27; see especially 17-19.

[9] See Johnson, *History of the YMCA Physical Education*; Zald, *Organizational Change*; Clifford Putney, "From Character to Body Building: The YMCA and the Suburban Metropolis, 1950-1980," in *Men and Women Adrift: The YMCA and the YWCA in the City*, ed. Nina Mjagkij and Margaret Spratt (New York, 1997), 231-47; and Putney, "Going Upscale: The YMCA and Postwar America, 1950-1990," *Journal of Sport History* 20 (Summer 1993): 141-66.

theless, local branches and particular facilities sometimes had to battle towns, camps, hotels, and restaurants to protect their tax-exempt status.[10]

Although the Y was primarily known for serving and 'protecting' young urban working men (and increasingly children and families), it also courted another audience. From the 1920s on, hundreds of Ys featured a second tier of membership. This more expensive and exclusive status, organized as Business Men's Clubs (BMC) and Men's Health Services, brought local worthies into the Association. Their "clubs" featured private lockers, steam rooms, health programs, massage services, libraries, and private swim times. The Ys enlisted members of these clubs as in-house volunteers, board members, and financial benefactors. Many became "Y's Men" who also facilitated access to local political power structures and, in some cases, land or credit.[11] The BMCs expanded markedly in the late 1960s, especially in suburbia, as more middle-aged, upper middle-class men began to run or jog.[12]

The fitness boom did, however, pose challenges to the Y. Old, deteriorating buildings and equipment did not cut it with baby-boomers demanding state of the art amenities. For the first time, private clubs offered these increasingly affluent adults an alternative to the Y. Some urban Ys responded aggressively, building luxurious, adult-oriented

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[10] YMCA Papers, YUSA, 5, Physical Education Program Records, box 62, Atlanta, Georgia, Tax Case, Legal Decisions, 1970; YMCA Archive, YMCA-YUSA.4-4. Armed Services-YMCA, box 12, *YMCA Tax Exemption Manual*, National Board of YMCAs (1976), 25-26.

[11] Harold T. Friermood, "Health Clubs in the YMCA with Respect to Current Status and Development of Operating Standards" (Ed.D. diss., New York University, 1954); Boris M. Kazimiroff, executive director of Men's Clubs in the United States, "Y's Men's Clubs Can Be Helpful to Program," *Perspective* 5 (Spring 1979): 31; interview with Rick Caro (president, Management Visions fitness consulting firm and founder and former president of IRSA), 14 July 2010; William W. Waxman, "Physical Fitness Developments for Adults in the YMCA," in *Exercise and Fitness: A Collection of Papers Presented at the Colloquium on Exercise and Fitness* (University of Illinois, College of Physical Education: Monticello, Ill, 1959), 183-92.

[12] "Report of Survey of YMCA Businessmen's Clubs and Health Service Departments" (1970), 2, 3, box 26, YMCA Papers, YUSA. One of the features of the fitness boom is that it actually began in the 1960s among middle- and upper middle- class men advised to exercise by their physicians. Muriel R. Gillick, "Health Promotion, Jogging, and the Pursuit of the Moral Life," *Journal of Health Politics, Policy and Law* 9 (Fall 1984): 369-87. Health clubs within the Y structure had come under scrutiny from the IRS as a non-exempt, non-charitable activity subject to the Unrelated Business Income Tax provisions of the federal tax code that deemed particular income generating programs, holdings (stocks, bonds, buildings), etc. not related to the charitable purpose to be taxable. Y health clubs were sometimes challenged regarding their exemptions if pricing appeared to exclude significant portions of the community; National Board of YMCAs, *YMCA Tax Exemption Manual* (1976), 25-26.

facilities with high fees that targeted downtown business professionals. In Washington, D.C., for example, the Y shut its decrepit 71-year-old downtown branch in 1977.[13] In its place it constructed an expensive, ultramodern facility with several grades of membership designed to serve 22-60- year-old men and women. Youth and the poor were not the target market. This development provoked criticism of the Y's tax-exempt status in DC, and the community was outraged further when the Y closed a branch serving poor black youth.[14]

The DC Y controversy and others that followed in its footsteps raised a question: would the "Y of the future" provide services for the rich at the expense of the community?[15] Y personnel responded that degraded facilities did not an effective center make, and that such properties should be "upgraded at breakneck speed." The new Y would still carry on moral

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[13] Rob Kasper, "Downtown Fitness Buffs Take One Last Lap, Bid Farewell to Old YMCA Building," *Washington Post*, 8 Dec. 1977, p. 3.

[14] Not surprisingly, the new Y provoked hostility for its elite style which, some argued, had turned the 'charity' into a club for the rich. "The question," said John F. Banzhaf III, law professor at George Washington University, "becomes whether they are in fact carrying out their tax exempt function." Established clubs mostly shrugged off the Y's tax advantages and expressed a lack of concern about prices at the new branch, which were so high that Arthur Levine of the *Washington Monthly* observed that "the chic Watergate Hotel Health Club looked positively cheap." But community leaders expressed outrage when the new Y's opening was followed by the decision to close the Anthony Bowen YMCA in Shaw due to unsafe conditions and the cost of renovation. The Bowen, after all, was the first black Y in the country "and one of two available to young persons at affordable costs." After hemming and hawing, the Association determined it could renovate the Bowen branch, especially if it wanted to keep its tax-exempt status and gain "a valuable parcel of land it has long sought in Northwest Washington." But the 'new' Bowen did not reopen until 1988. James Lardner, "New Downtown YMCA a Break in Tradition, Big Financial Gamble," *Washington Post*, 14 May 1978, B3; see also Arthur Levine, "Serving the Rich: The Washington Y," *Washington Monthly* 10 (19 Dec. 1978): 10-20; Peter Perl, "Board Votes to Close Shaw YMCA," 24 Feb. 1982, C1, 4, and "Board, Community Split Over Closing of Bowen 'Y'," 1 March 1982, B1, B8; Peter Perl, " 'Y' Defers Its Plans to Rebuild," 22 April 1982, B1; Lewis M. Simons, "YMCA Officers Support $1 Million Shaw Center," 1 May 1982, B1; Peter Perl, "Shaw Group Wants Bowen YMCA Reopened Before Land Swap," 20 May 1982, B3: all in *Washington Post*. The conflict damaged Y relations with the black community, and the time involved in renovations and lack of transparency in the process further soured the deal. In 1985, involvement by a private businessman helped convert the building to a public heritage trust ,and it was not until 1988, after considerable damage to its local reputation as a community-oriented organization, that the Y reopened a new branch in the area. "Slow Progress Made on Plan to Reopen YMCA," 26 Aug. 1985, B2; Linda Wheeler, "Historic YMCA Gets New Home," 9 Sept. 1987, C1; Lynne Duke, "Bowen Y: Now More Than Ever," 11 March 1988, B1: all *Washington Post*.

[15] Levine, "Serving the Rich," 14.

and social work, but it had an obligation to serve the middle classes and adults as well as children and the disadvantaged. After all, noted an article in the Y publication *Discovery*, the Y had the talent and track record to turn itself into "the very best fitness center in town."[16] The Y would not turn folks away for inability to pay, but this was not going to be "your father's YMCA," run-down, folksy, and decrepit.[17] But would this Y be welcoming to all at a cultural level? Was the new Y serving its mission as a community organization? As a charity? Should this Y remain tax-exempt?

In the new fitness environment that was emerging, the 'new Y' had to think about how to reach potential members and how to set prices. Some Y officials recommended direct comparison with their private 'competitors' in order to determine pricing, marketing, and programming.[18] Others cautioned that if that strategy were adopted, "the public will develop a perception that the YMCA is a retailer or vendor." The vice-president for financial development of Metro Los Angeles warned that the copycat approach "will further undercut" Y fundraising and compromise the "commitment, desire or capacity to involve in our programs those least

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[16] Bob Kleinmann, "The YMCA: The Times, They Are a Changin," *Discovery YMCA* 1 (Jan. 1983): 11. The Toronto Y, meanwhile, rebuilt its crumbling facilities, declaring, "no one will come to the Y out of sentiment. It must be as good as or better than its competitors," while discarding its pure "social service mentality" of free services for all and demanding stricter practices. In the process, membership rose from 5,500 in 1972 to 14,000 by 1982, while the branch continued to subsidize children and students and declared that no one would be turned away. Martin Jones, "Toronto Comes Back All Slicked Up," *Discovery YMCA* 2 (July-Aug. 1984): 8. The Rochester, New York, Y bragged about its new restaurant, daycare, and "rooftop playground," all elements in the renovation along with fitness that helped make it "the social center for those in their twenties" as membership rose by 1,000. "Rochester Y Lets the Sunshine In," 1 (May-June 1983): 24. Ys felt they had to keep up with the population as it moved and that meant satellite branches in some towns and new centralized sites in cities like St. Paul, Minnesota. Marie Bartlett, "Keeping Up with the Crowd," 2 (Jan.-Feb. 1984): 21-25. In Cleveland, it led the local Y to open its "first Y in downtown Cleveland in more than 60 years." "Cleveland YMCA Jumps into the Future," 2 (July-Aug. 1985): 16-17: all *Discovery YMCA*.

[17] YMCA TV Interviews: Henry Lubatte, CBC Newshour; Tax Status Challenge; Good Morning America, YMCA Archives, N.D.

[18] Marketing became a crucial element in the new Y's playbook, and Y officials recommended direct comparison with their competition before pricing or arranging marketing or programming. "We are," Robert G. Phipps argued in the Y's *Journal of Physical Education and Programs* while acknowledging the association's special place and "values as an organization," "one of many businesses after the recreation and fitness dollar." Robert G. Phipps, *Journal of Physical Education and Programs* 79 (Winter 1982): 15. You had to know "your market geography" and its demography. Stephen A. Smith, "What Is This Thing We Call 'Marketing'?" *Perspective* 5 (Spring 1979): 15-16.

able to pay the required program or membership fees."[19] By 1984, some Y activists grew more vehement. William J. Allen of Keene, New Hampshire, declared "We are in a mess as a movement. . . . We've locked ourselves into very expensive capital tools that we may not have had the moral right to build, because we do not seem to be able to afford to maintain and pay for many of them."[20]

The Y's internal soul-searching reflected wider doubts about the organization's new direction. A 1984 case involving the Springfield, Massachusetts, Y forced the charity issue to the foreground. Responding to that city's challenges to the not-for-profit status of the Y's fitness center and Business Men's Club, the IRS ruled that "a YMCA adult fitness center is appropriately tax-exempt provided the membership fees are such that the fitness center is accessible to a significant segment of the community."[21] Where a "two-tier membership" existed, the venues should be evaluated separately and the upper tier taxed unless it was "genuinely accessible to the community served."[22] This meant that each Y had to be able to justify fees in relation to local income levels and that subsidies became important for preserving 501(c)(3) status.[23] If challenged, the Y had to demonstrate that its facilities merited tax-exemption.

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[19] Paul Netzel, "What Does the Changing Mix of Contributions to Total Revenues Mean?" *Perspective* 7 (June 1982): 12.

[20] William J. Allen [general director of Cheshire County YMCA, Keene, NH.], "Y Operates from Survival Mentality; Who Are We Kidding?" *Perspective* 10 (April 1984): 14.

[21] "Impact of Portland and Pittsburgh Decisions," memo from Bob Boisture to John Danielson, Chris Mould, Jan McCormick, Celeste Wrolewski, 9 March 1990, p. 9, YMCA Papers, ADC Jan McCormick Papers, box 5, file 1, Tax Challenge, 1986-1988.

[22] Thomas C. Spring, "The ABCs of the IRS Rulings: Plain Talk from a Legal Expert," *Perspective* 12 (Jan. 1986): 14; "Background on an IRSA Manual: Club Action Kit: Tax-Exempt YMCA Competition," p. 9, YMCA Papers, ADC Jan McCormick Papers, box 5, file 1, Tax Challenge, 1986-1988; "Threat to YMCA Fitness Centers," Memo from Bob Boisture, director, YMCA Washington Office, to CEOs of YMCAs in Districts of Oversight Subcommittee, 22 March 1990, p.2; "Not-For-Profit Competition: A YMCA Fitness Center Passes the Test," *Club Business* [*CB*] 4 (Sept. 1984): 43.

[23] "Interview—YMCA of the USA General Counsel Christopher Mould," *Perspective* 12 (Jan. 1986): 9-11. The "presence or absence of local commercial clubs" was "irrelevant" to the IRS. What mattered was that the Springfield Y fitness center had members from all segments of the community and that it was available to all, including "recognized charitable classes." Spring, "The ABCs of the IRS Rulings," 14; "Background on an IRSA Manual: Club Action Kit: Tax-Exempt YMCA Competition," 9; "Threat to YMCA Fitness Centers," memo from Bob Boisture, 2; "Not-For-Profit Competition: A YMCA Fitness Center Passes the Test," 43.

The IRS might have been satisfied, but the commercial clubs were not. A regional coalition of thirty clubs in the Northwest organized in late 1983 "to devise a plan to fight adult fitness programs by non-profit groups." They would, in short, force the Y "to play by the same rules."[24] Club owners lobbied their state legislators for relief from "unfair competition" from the Y, which, in their words, now targeted "older, wealthier professionals. . . ."[25] The Y, charged Connecticut club owner Kenneth Navarro, was guilty of "Murdering Capitalism."[26] There could be no greater crime in Ronald Reagan's America.

After meeting with IRSA leader John McCarthy in 1984, the national Y agreed to ask federation members "not to advertise themselves as purely health or athletic clubs, but as broad human service agencies" and to forego promotional price competition as inappropriate.[27] The guidelines noted that the Y should "promote different programs to different constituents at different times throughout the year" so that it would "be viewed as a multi-purpose organization, one that does not offer just health club equipment and facilities." Mission must matter.[28] Nonetheless, the National Council's Executive Committee declared that " 'competition' with the for-profit sector" was "not inappropriate or 'unfair' and can provide valid options for those needing or desiring certain services." They also resolved that "proposals to restrict non-profits to serving the poor exclusively . . . are unacceptable."[29]

The conflict accelerated when Frank Eisenzimmer, a Portland, Oregon, club owner with four facilities, learned in 1984 that the Y was constructing a new health facility near a soon-to-open light rail stop. An Eisenzimmer club was near the site as well, and he was concerned about its viability in the face of the Y's competition. Working with other club owners and small business people organized as the Northwest Alliance for Market Equality (NAME), he petitioned the county tax assessor to remove

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[24] *IRSA News* 4 (Jan. 1984): 11-12.

[25] "Not-For-Profit Competition (YMCA)," *CB* 4 (Feb. 1984): 7-38.

[26] Letter from Kenneth Navarro, *CB* 4 (Nov. 1984): 6-7.

[27] IRSA leader John McCarthy met with Y leaders in Chicago in 1984 to complain of Ys advertising themselves as fitness clubs and stressing competitive pricing, discounts, and bodies beautiful. His organization would consider a more "confrontational strategy" if the time seemed right, but for the moment, he advised members to wait and see the Y's moves. "Not-For-Profit Competition: An Overview of IRSA's Efforts," *CB* 4 (Nov. 1984): 50-52.

[28] "YMCA Advertising Guidelines," 4 Sept. 1984, YMCA Archives, General Counsel, FP159, box 5, Private Sector Competition, folder 3.

[29] "Resolution of Executive Committee," 28 Sept. 1984, p. 10, YMCA Archive, "Minutes and Documents of Record of the National Board and Executive Committee of the YMCA," 1984.

the Y from the tax-exempt list. The assessor agreed, and a $1.2 million "bill for back taxes" to the Y followed.[30]

The Y and other non-profits formed a "Coalition of Concerned Agencies" to request state legislative and judicial relief.[31] The courts eventually ruled that only two Ys with very few subsidized members were taxable, but this liability still amounted to over $1 million by 1991. Chastened, the Y responded by closing one facility and diversifying membership at the downtown center so that one-third of members received subsidies. Y advertising also clearly noted that no one would be refused membership for inability to pay full price.[32] Portland's recertification as a tax-exempt facility in 1992 failed to stem the tide of club suits and criticism.[33]

This case opened the floodgates for challenges to the Y throughout the nation. IRSA published and distributed a *Club Action Kit on Tax-Exempt YMCA Competition* in 1986 "to help club owners compete with Ys not in the marketplace, but rather in court."[34] A major fight in Pittsburgh in 1988

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[30] Ellen Hume, "YMCA's New Elite Clubs Prompt Charge That It Abuses Its Tax-Exempt Status," *Wall Street Journal*, 31 March 1986, p. 21; Bill Andrews, *YMCA Case Studies on the Tax Challenge: YMCAs Respond to the Charge of Unfair Competition* (Chicago, 1993), "Portland," 2; "Background on an IRSA Manual," 9. According to Y records, Eisenzimmer "threatened [the assessor with] legal action if sufficient grounds were not demonstrated." The assessor avoided litigation when "he cited Oregon law which stated, in effect that to be tax exempt an organization's sole or primary purpose must be charitable" and determined that meant over half of revenues had to come from donations. Andrews, *YMCA Case Studies*, "Portland." The case drew the attention of the *Wall Street Journal* and *Time* magazine. Hume, "YMCA's New Elite Clubs"; Anastasia Toufexis, "Putting on the Ritz at the Y," *Time* 127 (21 July 1986): 65.

[31] "Background on an IRSA Manual," 2. These included the United Ways and not-for-profit hospitals.

[32] Andrews, *YMCA Case Studies*, "Portland," 2. State courts concurred with the decision over the next two years. The association maintained careful records relating to costs and subsidies for each program, service, and facility.

[33] Marcia Berss, "Taxation by Other Means," *Forbes* 154 (11 April 1994): 66.

[34] Taking the offensive, McCarthy both supported the Ys' charitable work and condemned the association as a "major detrimental force in the industry." "IRSA Arms Members with Booklet to Fight Ys," *Club Industry* (Sept. 1986), in YMCA Archives, General Counsel FP159, box 5, Private Sector Competition folder, no. 2. John McCarthy recalled in 2010 that this was not easy for him. "IRSA had to be sort of dragged into that issue. We were not directly involved in the Oregon case." On the one hand, he himself had belonged to the Boston Y Businessmen's Club and loved that organization. Yet this former priest found support in a surprising corner. "Well, when I was first involved in this I was very uncomfortable. I went to a friend of mine who was a Methodist minister and said, 'I am very uncomfortable taking on the Ys.' Because I had to lead the charge. He said, 'It will be good for the Ys. It will put them on notice that they have to service the charitable classes.' " Interview with John McCarthy.

left that Y's "downtown building" paying 40 percent of its assessed tax value for not meeting the test for charity or diversity.[35] IRSA's *Fair Competition Handbook* followed in 1988. Congressional and state hearings explored these challenges.[36] In Pennsylvania, the clubs and allies fighting tax-exempt rivals gained legislation in 1997 permitting small businesses to dispute new construction with demands for hearings and arbitration, although Y officials supported the act "to end over ten years of challenges to their exempt status."[37]

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[35] Kurt Kramer, "Why Ys Should Wake Up and Face the Taxes," *Perspective* 22 (July 1996): 10; Eden Fisher Durbin, "Making Sure They Hear Our Side of the Story," *Perspective* 24 (Nov. 1998): 29; interview with John McCarthy. Club owners took to the lists against the Y throughout the nation, using template letters to write city officials, call for defunding by the United Way, and demand that the Y cease from expanding its installations, recruiting in the adult market, and modernizing facilities.

[36] Congressional hearings on these matters occurred in 1987, 1994, and 1996; see *Unrelated Business Tax Income*, Hearings before the Subcommittee on Oversight of the Committee on Ways and Means, HR, 100th Cong., 1st sess., 22, 25, 26, 29, 30 June 1987, especially pts. 2 and 3 and appended documents, serial 100-27 (Washington, D.C., 1988)*; Unfair Competition from the Public Sector and Government Supported Entities: Non-Profits*, including appended documents, Hearing before the Subcommittee on Small Business, HR, 103d Cong., 2nd sess., 16 June 1994, series 103-88 (Washington, D.C., 1995); and *Unfair Competition with Small Business from Government and Not-For-Profits: Assessing the Current State of the Problem and the Recommendations of the 1995 White House Conference on Small Business,* Hearing before the Committee on Small Business, HR, 104th Cong., 2nd sess., 16, 18 July 1996, serial 104-86 (Washington, D.C., 1996). See also James T. Bennett and Thomas J. DiLorenzo, *Unfair Competition: The Profits of Nonprofits* (New York, 1989); *Unfair Competition by Nonprofit Organizations with Small Business: An Issue for the 1980s*, 3d ed., Office of the Chief Counsel for Advocacy, U. S Small Business Administration (Washington, D.C., 1984), 15-25; and Harrison Wellford and Jeanne C. Gallagher, "The Myth of Unfair Competition by Nonprofit Organizations: A Review of Government Assistance to Small Business, A Report to Family Service America and the National Assembly," Oct. 1985, YMCA Archives, General Counsel, FP 159, box 5, Private Sector Competition, folder 4.

[37]Durbin, "Making Sure." Club challenges continued. Club owners sometimes turned to stunts, as when a Nashville entrepreneur demanding that the Y spend half its budget on "the disadvantaged" bussed poor black children out to a suburban Y. Dave Moore, "A Novel Notion: The Y as Charity," *CBI* 19 (Jan. 1998): 51. But IHRSA continued to chronicle industry opposition to support for the Y by cities or counties, including such things as preferential land deals, as in 1997, when Reston, Virginia, requested that the Y build a center and offered it land at $1/year. Helen Durkin, "Trial Date Set in Suit to Stop YMCA and County," *CBI* 18 (Feb. 1997): 10.

[37] Moments of conversation between the sides occurred, of course. All was not warfare. In 1997, for example, IHRSA and Y leaders met and IHRSA leaders acknowledged the Y's decentralized nature, that the organization discouraged

The tax challenge posed an existential threat to the Y. As chair of the National Board James W. Ashley remarked in 1986, "No subject in recent YMCA history has generated as much attention as the so-called 'unfair' competition issue. . . . The for-profits decree that any YMCA that is not old and beat-up—or one that has a positive cash flow from its health club operation—is illegal and should be taxed." To fight back, the Y hired the public relations firm of Hill & Knowlton, committing over $431,000 to the campaign. Ashley expressed confidence that "more and more people will come to understand our true charitable mission: human development."[38]

Y officials saw IRSA's campaign as aligned with the threat posed by income-starved governments.[39] Variation in state law made the problem more complex, and general counsel Christopher Moulds speculated that it was only going to get worse as critics suggested that a 'real' charity could not charge fees "for *any* of its services."[40] Indeed, the very meaning of "charity" was at stake. Was something charitable only if there was no fee? What if there was a sliding-fee? And "what becomes of mainstreaming," that community-wide ideal?[41]

Pressured, Ys revisited multi-tier membership policies and decided the BMCs had to go. "We must," remarked Harold Davis of Fort Worth, "really do what we say we do to earn the exemption. . . . The tax challenge has

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price competition, and encouraged locals to speak with clubs first if they intended to expand. Ben Emdin, "IHRSA/YMCA Survey a Level Playing Field." *CBI* 18 (Oct. 1997): 22.

[38] James W. Ashley, "A Few Words," *Discovery YMCA* 4 (Fall 1986): 3. Rejecting privatization as the answer, others like Richard Cornuelle posited the Y as part of that "third or independent sector" of civil society, not business or government, working "in the public interest." He saw the Y as embodying the Tocquevillian traditions of associationalism and voluntarism and reminded Y folk of the centuries-long tradition of exemption provided to "private activities in the public interest." As a not-for-profit, the Y received tax-exempt contributions that accounted for 18% of its total funding. And "it needn't be limited to the poor. It needs to be only of significant benefit to a significant segment of the community," and the IRS had already noted that "fees may not be so high as to exclude all but a small part of the community." In contrast, the clubs were arguing that "the upscale market is somehow theirs by right." Should unrelated business income be taxed, he asked? Certainly, but he also noted that this grew from tax-exempts holding entirely unrelated enterprises—for example, New York University owning Mueller's Pasta Company. Richard Cornuelle, "YMCA: Who Needs It?" *Discovery YMCA* 4 (Fall 1986): 14-15, 20-25.

[39] "There's a Hand in Your Pocket," *Perspective* 12 (Jan. 1986): 7; John Danielson, "Tax Issues Change How Ys Plan and Operate," *Perspective* 12 (Jan. 1986): 8.

[40] "Interview—YMCA of the USA General Counsel Christopher Moulds," *Perspective* 12 (Jan. 1986): 10-11.

[41] Leslie S. Haines, "Y Versus Private Clubs Not Real Issue in Portland," *Perspective* 12 (Jan. 1986): 19-20. Mainstreaming involved cross-class facilities.

shown that an exclusive health center within a YMCA for the privileged few does not square with the public's idea of a tax-exempt charity."[42] Most other Ys followed.[43]

Becoming accessible to all regardless of ability to pay was also crucial if the Ys were going to demonstrate their return to mission, and more Y professionals acknowledged the need to link mission to programs, including fitness, with more than "lip service."[44] Proving this required that Ys upgrade their record-keeping system to demonstrate their mission-centered work. Service, health, fitness, and spirituality all truly had to come together.[45] After all, they argued, "perception is reality when Big Brother and the public watch."[46]

Some Y leaders acknowledged that the tax challenge reflected the fact that "in many cases, YMCAs were not mission driven."[47] Ys had to stop acting like clubs. Larry Rosen of the Channel Islands Y in California called for the association to give up "copycat pricing, advertising, membership policies and programming," because these "came close to destroying any number of YMCAs during the past decade." The Y, he insisted, should not focus on the "transient" 18-35– year-old market but rather on the family,

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[42] Harold Davis, "A Few Words," *Discovery YMCA* 7 (Winter 1989): 2.

[43] The Medford, Oregon, Y learned the same lesson when, an "immediate self-inventory" following the Portland decision led them to close their Men's Health Center and move to a one-tier system for both men and women featuring "equal services for all at one membership price." Medford lost two members in the process, but decided "we pride ourselves on the fact that the Y is a place where a millionaire and an unemployed worker could be together and you couldn't tell by look which is which. . . . Separate facilities seemed to go against that." Christine Scheele, "All Members Created Equal," *Discovery YMCA* 7 (Winter 1989): 6-7. Several years later, other Y leaders expressed appreciation for the simpler and "more straightforward" aspects of the single-tier system that encouraged greater membership. Martha Ortmann and Steve Hockensmith, "A Passion for Membership," *Discovery YMCA* 67 (Fall 1998): 12.

[44] Cliff Lothery and Pat Thornton, "Creative Solutions, Quality Staff Needed to Secure Leadership Role," *Perspective* 13 (June 1987): 12, 14.

[45] Prescott K. Johnson, "Incorporating Mission in Fitness Differentiates Ys from Health Clubs," *Perspective* 13 (June 1987): 16, 18-19.

[46] Dennis Ruble, "Perception Is Reality When Big Brother and the Public Watch," *Perspective* 19 (July 1993): 7. This was part of a debate over payment of Y leaders. Ruble argued that they should be "servant leaders" and not earn substantial salaries. It was, two Metro Milwaukee officials observed, "both unfortunate [painful] and beneficial." Lothery and Thornton, "Creative Solutions, Quality Staff Needed," 12, 14.

[47] Rick Hopkins, "Understand the Art of War to Advocate YMCA Mission," *Perspective* 14 (Dec. 1988): 52.

older segments of the community, and the sedentary.[48] Price discounting also had to go.[49]

How did fitness fit into this larger mission? Michael Spezzano of the New York City Y reminded his fellow officials to "make no mistake; we are in the fitness business and it is a big business." To help people, he said, "we must compete in the fitness market" by focusing on the immobile masses as the Y's potential market.[50] Linking fitness and health as a spiritual union was crucial if the Y was going to fulfill its mission "of helping people reach their fullest potential."[51] Framing fitness in terms of real community health issues would allow the Y to erase any image of itself as "an upscale health club" and "a single focus organization. . . ."[52] As

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[48] Larry Rosen, "There's No Need for Competition," *Perspective* 16 (Aug. 1990): 48.

[49] Some Y CEOs defended discounting as opening the doors for some who might not otherwise be able to come in and infusing necessary capital at key moments. Kenneth McLaughlin, "To Discount or Not to Discount: One Rule Does Not Fit All YMCAs," *Perspective* 20 (Jan. 1994): 18-20. For anti-discounting rebuttals see John Eix, *Perspective* 20 (May 1994): 4; William E. Cameron, Jr., "Discounting Reduces More Than Prices," *Perspective* 14 (Dec. 1987): 46. Discounting remained a sore spot for most Y officials. As Mary Umbel of Delaware's Central Branch noted, discounting "undercuts the Y's position as a community service organization." The only discounts her organization advertised were "the Y's financial assistance policies." Dave Carson of the Los Angeles Metro Y concurred. "We shouldn't do things to manipulate members to join. Among other things it threatens our tax-exempt status and makes us look like everyone else." Ortmann and Hockensmith, "A Passion for Membership," 11.

[50] Michael Spezzano, "Does the Y Have What It Takes to Be America's Fitness Leader?" *Perspective* 16 (Aug. 1990): 22-23; Michael Spezzano, "A Y Fitness Focus for the '90s: Community Health Issues," *Perspective* 18 (Aug. 1992): 22, 24.

[51] Gretchen Kelly, "The Fulfillment of the Y's Mission Requires Putting Fitness First," *Perspective* 17 (May 1991): 20.

[52] Spezzano, "A Y Fitness Focus for the '90s," 22-25. Similarly, Milwaukee's Pat Thornton suggested that putting fitness up-front with a kid and family focus through "Active Living Centers" would let the Y remain fitness-oriented but mission centered. For these professionals, the Y should not seek "to take market share away from competitors" but rather let the community know the organization "Will Change Your Life." Others warned that "whether we like it or not, fitness is perceived as an adult, upscale type of business," and this had cost the Y in places like Portland and Pittsburgh. The Y had to prove it was about more than fitness through its programs and "insure a healthy balance." Fitness should be a part of "spiritual wellness." Where implemented, this approach resonated with many Y patrons. Pat Thornton, "Why and How the YMCA Must Regain Its Fitness Leadership Role," *Perspective* 19 (June 1993): 22-23; Lori Swann, "Marketing the Fitness Promotion Message Y-Style," *Perspective* 22 (May 1996): 30; George M. Romell, "Stress Balance and High Quality for the Health of Your YMCA," *Perspective* 17 (May 1991): 21; Mike E. Young, "Get Ready for the

Frank Klipsch of the Davenport, Iowa, Y put it, "We're not a health club. We're an organization with social responsibility and a moral mandate. . . . Mission is good business."[53]

Many Ys 'returned' to mission in the wake of club criticisms.[54] Although the attacks did not abate, the Y still became the nation's seventh largest charity in donations by 1993.[55] Ys now articulated a service component in many of their adult fitness programs and facilities and kept increasingly rich and detailed records of their costs, income, and subsidies to those in need.[56] "We do health and fitness programs for persons of all ages and abilities" not to subsidize the needy, explained the chair of the Y's Public Policy Committee, but "because programs that build 'spirit, mind and body' are at the core of our charitable mission." By 1998, the Y "raised nearly $600 million to keep their doors open to everyone, regardless of their ability to pay."[57]

New Shape of YMCA Fitness in the 21st Century," *Perspective* 17 (May 1991): 27; Gary Pence, "Mission Accomplished," *Discovery YMCA* 6 (Winter 1988): 24-25.

[53] Ortmann and Hockensmith, "A Passion for Membership," 10-11.

[54] Several Y leaders took the issue of conflict with the clubs in a different direction. Some clubs, they asserted, do it better than the Ys for their target markets. They were "very well managed," observed the editor of the Y's *Perspective* magazine, and provided services the Y could "emulate." "I don't agree with those who say we don't compete with private fitness clubs. There *are* people who chose between us. Like it or not, our adult fitness facilities and adult fitness programs often *are* similar. That's OK. We don't have to have a corner on fitness." The Y needed to let the world know what was special about the Y. Its success would depend on its uniqueness. Steve Kendall, "Letter From the Editor," *Perspective* 17 (June 1991): 2. Club awareness to service, parent-friendly behavior, bonuses for superior staff, and basic amenities such as sanitation also struck Y leaders as long overdue in their organizations. Furthermore, they warned, "the YMCA cannot rest on its laurels, because there are other organizations that are encroaching on our 'spirit, mind and body' territory." Marcia Rogers Stanford, "Lessons We Can Learn from a Fitness Club," *Perspective* 21 (Oct. 1995): 23-24. At least one Y leader publicly suggested going wholly taxable as some Ys already had in part. The Y could then publicly target high-end markets and "legitimately compete as the best dollar value" while subsidizing its charitable operations "from our for-profit ventures." Kramer, "Why Ys Should Wake Up," 10-11. Heated letters and articles in rebuttal to this proposal suggest it did not have traction in the organization, and they rejected the notion of serving only on a pay-for-play basis. See *Perspective* 22 (Oct. 1996): 5-7, 32-33.

[55] "YMCA Now Ranks Seventh in Donations," *CBI* 15 (Jan. 1994): 10.

[56] John M. Preis and Kathleen H. Spencer, "An IRS Form That Has Plenty of Substance," *Perspective* 27 (Aug. 2001): 31.

[57] Jerald Johnson, "Exercising Our Mission Every Day at the YMCA," *Perspective* 26 (May 2000): 26.

Conflicts with IHRSA clubs, of course, continued even as for-profits outstripped the not-for-profits in membership.[58] Interviews in 2010 with industry consultant Rick Caro and IHRSA vice-president and general counsel Helen Durkin confirmed that clubs still saw the Ys as unfair competitors. Exercise machine industry representatives, on the other hand, saw the Ys and private clubs as simply natural features of the fitness landscape.[59] IHRSA's arguments, they suggested, were nothing more than a "red herring," masking heightened competition among the clubs, over-expansion, undercapitalization, and poor management.[60] Club membership, after all, had increased by 23 percent between 1998 and 2005, and many clubs were doing very well, suggesting that "if they provide what the consumer wants, they can profit."[61] The Y, of course, concurred.[62]

To combat IHRSA lobbying, the Y still found it crucial to lobby state legislators who did not "understand the not-for-profit sector well." Most Ys had eliminated the two-tiered membership structures that bespoke a for-profit orientation, but in a wonderful, and I suspect intentional, bit of irony, Larry Rosen, now CEO and president of the Los Angeles Y attacked the "risky, ill-advised and inappropriate behavior of *rogue YMCAs* [emphasis added]." It was a measure of the new order that he would note that "nothing puts us in harm's way faster than YMCAs that make no provisions for universal access to membership or that advertise sales, corporate discounts, reduced joining fees, and other specials to fluff up

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[58] In 2000, clubs enrolled 46.8% of the fitness market, while not-for-profits claimed 37.6%. "Miscellaneous For-Profit" elements controlled 15.6% of the total. IHRSA, *Profiles of Success: 2001*, p. 5. In 1999, commercial clubs claimed 15.8 million, or roughly 51%, of the 30.6 million members of all clubs including not-for-profits. American Sports Data, IHRSA/ASD, 29.

[59] Interview with Rick Caro, 14 July 2010, telephone, New York , N.Y.; and with Helen Durkin, Boston, Mass., 21 May 2010. Other private conversations confirmed this sentiment.

[60] Interview with Charles (Chuck) Levy, 13 July 2010, telephone interview, Chicago, Illinois.

[61] Randy Bugos, "The So-Called 'Unfair Advantage: Dealing with the International Health and Racquet Sport Association," *Perspective* 31 (July 2005): 11-12.

[62] Ibid., 11-14. Bugos argued that well-managed clubs flourished. Still, the Association found itself battling lawsuits that were both disruptive and, it believed, unfair. The Y faced seven suits in ten years, for example, from a Georgia club that claimed the Y was unfairly competing its business away. New owners taking over the facility, however, succeeded where the earlier owners failed. "Could it be location? new management? or was it really unfair competition from the Y?" The Y did not sell fitness memberships; rather, it sold the Y. While acknowledging that the Y sometimes received preferential treatment from towns, Y leaders argued that this reflected real value brought by the Y and preferred by the citizenry. Community leaders, they contended, would not donate land if they felt the Y "had lost our way." Employing six full-time lobbyists in a range of states, IHRSA could do serious damage.

membership sales. Unless, of course, you want to include those YMCAs that still offer a second-tier executive membership for the well-to-do who want to pay a little more for special privileges." Rosen's language echoed that of John McCarthy, a sign of how well the clubs had succeeded in shaping the issue.[63]

Conclusion

It is difficult to speak about the "conclusion" of this conflict, as it is still going on, but certain generalizations are possible. Charged with ignoring their mission, Y leaders initially denied that they had become the advocates of money over mission and continued their upgrades and expansion. Yet the challenge forced the Y to redefine and rearticulate itself vis-à-vis physical fitness and a larger mission. The legal challenges also forced the Y to become a more efficient not-for-profit business. All the Y personnel I interviewed for this project recalled these battles bitterly. But each also expressed the belief that the struggles had, in the end, been a positive experience for the Y as a national organization. They had forced it to clarify its mission as a not-for-profit business and to return to a modernized version of Luther Gulick's triangle connecting mind, body, and spirit. Furthermore, each expressed satisfaction that the Y retained its right to care for the needs of the community as a whole.[64] For the clubs, the battles continue.

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[63] The California Ys even had a special committee that monitored operations to make sure their members did not deviate from accepted norms. Those who regressed received a visit from the committee. Larry M. Rosen, "Watch the State House for Storm Warnings, Not D.C.," *Perspective* 34 (Jan. 2008): 18. Ys had to be careful, suggested Harold C. Smith, to watch out for "mission creep" associated with new facilities and the "emphasis on building and plant . . . and not on people." Harold C. Smith, "YMCA Mission Creep: Should It Be Cured?" *Perspective* 33 (Jan. 2007): 14.

[64] Interviews with Michael Spezzano, telephone to New York, 27 April 2010; Harry Rock, Springfield, Mass., 25 April 2010; Terese Texeira, San Francisco, 10 Aug. 2010.