

**BENEFACTOR**

# A Curious Tale

THIS ONE ISN'T WARM AND FUZZY. IT'S ABOUT THE RISKS OF COUNTING ON CHARITIES TO ACT CHARITABLY TOWARD ONE ANOTHER. BY JOHN SEDGWICK

**M**ARGRET REY, CO-AUTHOR OF the famous Curious George series of children's books about a mischievous monkey, left behind an estate that sorely tested the charity of her beneficiaries—and created just the sort of mayhem befitting Curious George himself.

As she lay dying in her small bedroom at the top of the stairs in her house in Cambridge, Massachusetts, in 1996, 90-year-old Rey had an inspiration. There was something important that she had forgotten to do with her wealth, and she had a lot of it. She had long intended to divide it among 16 high-profile charities—Boston's public broadcasting station, WGBH; Amnesty International; the Sierra Club; and the World Wildlife Fund, to name a few—through her Curious George Foundation. But Rey was also a Jewish refugee whose grandfather had been a prominent rabbi in Hamburg, and on her deathbed, she decided that she would like to acknowledge her heritage by making a major gift to a Jewish philanthropy, plus some small donations to five other groups that had recently come into her favor.

Unfortunately, Rey never set down these last-minute instructions in writing, nor did she enter them into her will. Instead, she entrusted her wishes solely to her close friend Lay Lee Ong, a Malaysian immigrant who had come to live in Rey's house as a student 17 years before and was helping nurse Rey through her final illness.

Good deeds rarely go unpunished anywhere, but this one fared particularly badly in the surprisingly cutthroat world of philanthropy. The 16 named charities treated the six "extra" ones as the worst

sort of gate-crashers—and summoned lawyers to keep them out. "Anybody who thinks that charities are going to behave well just because they're nonprofits, well, that's a bunch of crap," says John Spooner, a novelist and money manager who serves as a trustee for the Curious George Foundation. "They're often no better than the grasping cousins from Milwaukee."

Rey's last act created an imbroglio that pitted charity against charity, burned up several hundred thousand dollars in legal

expenses, blackened the good name of many of the organizations involved, raised charges of anti-Semitism, gave co-executor Ong ulcers, and took two and a half years to resolve.

As usual, the collision of many forces was responsible for the blowup. Certainly, the uncharitable way in which the charities greeted their rivals contributed to the mess. The unusually high quantity of lawyers, in a case involving more than 20 institutions, played a part. As did the monstrously com-





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plex IRS rules governing estates. But at the heart of the drama were two extraordinary figures, Margret Rey and Lay Lee Ong, who were linked by close friendship and then bound even more tightly by the peculiar legal, moral, and spiritual ties that join a testator to her executrix.

At her memorial service, Rey's longtime editor, Walter Lorraine, compared her to a cactus—prickly on the outside but tender on the inside. "Margret was Curious George," says Ong. "If you look at Curious George, you see Margret Rey."

That leaves Ong herself in the role of the Man With the Yellow Hat, the mon-

subject to a 55 percent estate tax and then another 55 percent generation-skipping tax (since Ong, as the recipient, was more than 37 and a half years younger than Rey, she was assumed by IRS rules to be separated from her by two generations). Most appalling of all, those tax payments would themselves be taxable at 55 percent (because the money used to pay the taxes would not be used for charitable expenditures, as planned). *Et voilà*—\$3 million to charity, \$5 million to Uncle Sam.

But note that the \$5 million part of the estate would pay the tax. Ong could have opted to say nothing to anyone about

the money: The 16 would have to give their assent to a special amendment to the foundation's founding documents that would explicitly permit the new distribution.

It's one thing to escape the clutches of the IRS; it's quite another to keep at bay some of America's most prominent charitable organizations once a large pile of cash is on the table. The charities had no financial incentive to agree to the amendment. As other attorneys close to the case have since pointed out, when Ong signed the disclaimer, she threw away her leverage. The 16 charities had her over a barrel; the \$3 million was, in effect, theirs. In retrospect, a shrewder move for Ong would have been to force the 16 to sign the assent first by threatening to keep the \$3 million herself, sticking them with the \$5 million tax bill and saying, in effect, sign this or get nothing.

The job of winning the assent *post facto* fell to the lawyer for the Curious George Foundation, Marion Fremont-Smith of Boston's old-line firm of Choate, Hall & Stewart. She focused on the "big three," as they were dubbed, of the original 16 charities, which, because of the way the Curious George Foundation had been set up, stood to receive 50 percent of the original \$5 million. One of the three, Cambridge's Longy School of Music, had assented, but WGBH and Harvard's student-run social-service program, the Phillips Brooks House Association, had shown no interest in cooperating.

Fremont-Smith called a meeting with WGBH and Phillips Brooks. To induce their assent, Ong had agreed to give the original 16 charities 15 percent of the extra \$3 million, plus the considerable appreciation on the stocks in the portfolio.

The charities, led by WGBH, did not seem grateful. "It was nasty," Ong recalls. "Really nasty. They wanted to know, 'Why should we believe you? Are you sure Margret wasn't senile? Perhaps she was under the influence of drugs?' Basically, they acted like the money was theirs." Ong was particularly offended by the attitude of WGBH's lead attorney, Carolyn Osteen. "She had no respect for me at all. She talked to me like I was the maid." (A spokeswoman for WGBH disputed this characterization of the meet-

## ONG COULD HAVE POKETED THE FULL \$3 MILLION AND LEFT THE \$5 MILLION TAX BILL TO THE ESTATE, AVOIDING INFINITE GRIEF.

key's owner who has to scramble to fix the messes George inevitably creates. A short, brisk, round-faced woman of 45, Ong came into Rey's life in 1979, two years after the death of Rey's husband and creative collaborator, Hans. At first, Ong had no idea that Margret was a distinguished author. But they shared a love for Rey's dog, and Ong was one of the few who could discern the kindness under her bluster. It was Ong who encouraged Rey to establish the Curious George Foundation and helped her settle on the 16 charities she chose to fund. Rey's estate—as far as her own lawyers knew—was worth about \$5 million.

But Rey, who harbored deep suspicions toward virtually everyone but Ong, had kept her money in different pockets. Ong alone, it appears, was entrusted by Rey with a full accounting. In making her deathbed instructions for the "extra" bequests, Rey directed Ong to use the money from a separate portfolio worth \$3 million and held jointly by Rey and Ong at Fleet bank. Ong wanted to do just that. She soon realized, however, that because of tax law and a provision of Rey's will that made the estate itself liable for all taxes, it would have cost \$5 million in taxes for her to pay out the extra \$3 million to charity.

An effective tax of 165 percent? That's right. First, the joint account would be

Rey's last words. She could have pocketed the \$3 million and left the \$5 million tax bill to the estate, wiping it out but avoiding an infinite amount of grief for herself. For that matter, she could have also claimed 5 percent of the estate as her half of the standard executor fee, and she could have accepted Rey's expensive house off Harvard Square, which she says Rey repeatedly offered to her. But she did none of these things. She accepted from Rey only a condo in New Hampshire. "I don't call it noble," Ong says. "I call it love for a dear friend."

If Rey's estate attorney, Hanson Reynolds, had known of the joint account in advance, he probably could have protected it from the onerous taxes by placing it in trust. Hearing about it from Ong after Rey's death, he was forced to scramble. He arranged for Ong to sign a disclaimer that waived her right to the \$3 million and thus allowed it to pass into the estate and, through the will, to the Curious George Foundation. This move circumvented the taxes, but it did not direct the money to the six extra charities that Rey had in mind. It simply increased the total sum headed for the original 16 charities. If the \$3 million was going to go elsewhere, those 16 would all have to agree to it.

Rey's business attorney, Richard Mintz, came up with a legal mechanism to reroute



ing, but declined to make Osteen available for an interview.)

After the meeting, WGBH sent a letter to the other 15 charities advising them not to agree to the inclusion of any additional charities. In fact, 3 more of the original 16 had already assented—the Southern Poverty Law Center, the Sierra Club, and the World Wildlife Fund. After receiving the WGBH letter, however, the SPLC wrote to Ong that it was reconsidering its position.

The battle raged on for another year, with no progress toward a resolution. To break the impasse, Ong decided to take drastic measures. She could see she was not in a strong position legally. But morally she felt she had a compelling case, and she decided to take it public. She told her story to *The Boston Globe's* Alex Beam, whose account of the case appeared two days before Christmas 1998 under the headline **MONKEY BUSINESS**.

Beam raised the specter of anti-Semitism in the WGBH-led effort to keep Rey's money from falling into the clutches of the Combined Jewish Philanthropies, the Boston-based charity that Ong had decided was the most appropriate recipient for Rey's bequest to a Jewish organization. This was an explosive allegation in a city such as Boston, which has long been riven by tribal conflicts. The story clearly hit a nerve, for WGBH's chairman of the board fired off an indignant letter to the *Globe*—and then enlisted two of the station's Jewish trustees to serve on a three-person committee to oversee WGBH's handling of the Rey matter. The *Globe* also published two letters from Rey's friends decrying the charities' greedy response to Rey's generosity.

A big meeting of all the named charities was scheduled for February 10 in a boardroom at Richard Mintz's firm, Mintz Levin. As the date for the meeting loomed near, WGBH made a last-ditch effort to rehabilitate its public image. It offered to give Ong its assent to the amendment to the foundation—if she would release a joint statement endorsing the station's actions. Ong declined the offer. Ong reports tartly, "I didn't want to make a deal with the devil." The night before the meeting, the station's executives announced their assent anyway. "They wanted to make it

look like they were heroes, galloping in, saving the day," Ong says. Without WGBH to lead the opposition, the original charities gradually fell in line. In the end, the Curious George Foundation spent \$250,000 on lawyers, diminishing the 16 charities' take accordingly. In addition, the 16 had to pay their own lawyers.

The lesson of this saga? John Spooner boils it down to five words: "You better write things down." Clearly the lesson is also not to leave decisions such as these so close to the bitter end, but instead to resolve them in the formal estate-planning process. And to be open with estate planners, letting them know the full range of assets so that they can make sensible plans. According to most estate planners, a \$3 million joint account like the one Rey and Ong maintained is a spectacularly bad idea.

One also has to bear in mind the nature of charities. It may seem easier and more straightforward to donate an estate to a charity rather than an individual, because charities are going to be "nice" about it. But they have their fiduciary responsibilities to capture every nickel potentially headed their way. What's more, they have a full range of formidable players—lawyers, trustees, and executive directors—who are ready and determined to uphold their interests. They are no nicer than they have to be.

In one respect, Margret Rey did show remarkable foresight—in her selection of Ong as co-executor of her will. Despite her experience, Ong is not so down on charities as to withdraw from them permanently. Once the estate is finally settled, she has instructed the Combined Jewish Philanthropies to use its \$2.55 million bequest to underwrite a donor-advised fund in the Reys' name, to be directed by Ong and Spooner. It is, in the end, the biggest single bequest of all, more than double the \$1.25 million received by WGBH. With it, Lay Lee Ong in effect will remain Margret Rey's executor, enacting the dying wishes of her old friend in perpetuity. ■

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*Contributing editor John Sedgwick's new novel, a psychological thriller called The Dark House, will be published by Harper-Collins next spring.*

## WHAT GIVES

### ONLINE IMAGE

While America Online chairman and CEO Steve Case reaps praise for his business exploits, Case's co-founder, Jim Kimsey, is quietly beginning to give away some of AOL's riches. Kimsey left the company to found the fledgling AOL Foundation in late 1997. "We need to figure out how to use AOL's assets for the benefit of society," he says. Another motivation? Avoiding the heartless reputation—and legal troubles—of fellow technology megacorp **Microsoft**. "We have to act in a way for regulators to see that our first interest is for the public well-being," Kimsey says.

### WOMEN'S WEALTH

Americans continue to underestimate the giving potential of women, according to the results of a survey funded by the W. K. Kellogg Foundation. While three-quarters of the survey's respondents said that men control more wealth than women, "the reality is that women now control 51.3 percent of personal wealth," says Peg Talburtt, executive director of the Michigan Women's Foundation, one of a cluster of women's groups involved with the survey.

### FLOWER POWER

When New York City mayor Rudolph Giuliani threatened to auction off more than 100 community gardens to developers, local activists found an ally in the New York Restoration Project—formed by actress Bette Midler to support a cleaner city—which teamed up with another conservation group to buy the gardens for \$4.2 million. But some worry about the message this gift sends. "The government has a responsibility to manage property owned by the public, including providing green space," says John D. Echeverria, director of the Environmental Policy Project at Georgetown University. "It's a troubling precedent in that private citizens have had to pay to protect the livability of our communities."

—Sara Austin