

Case 39

Environmental Public Interest Law Centers

Ford Foundation, 1970

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Background. Beginning with its major reorganization into a national foundation in 1952, the Ford Foundation has had an interest in the environment and resource conservation. That year, the Foundation created a committee to offer guidance in determining if and how the Foundation might play a role in ensuring resource availability to sustain economic growth in the United States.⁵⁹³ Members of this committee incorporated themselves as an organization named Resources for the Future, Inc.⁵⁹⁴ The Foundation granted this newly-formed organization \$150,000 in 1952 for its establishment and for its early work in determining the optimal strategy for larger foundation involvement.⁵⁹⁵ The Foundation continued funding Resources for the Future as its mission expanded to include research coordination and education on resource availability and management, and by 1977, the Foundation's grants to the organization totaled \$47.5 million.⁵⁹⁶

In 1962, the Ford Foundation trustees published a report indicating an interest in pursuing foundation activity "in the field of conservation, including its economic, ecological, cultural and aesthetic, leisure-time, and recreational aspects."⁵⁹⁷ The same year, Rachel Carson's *Silent Spring* brought to public attention the potential dangers of widespread DDT use, and more broadly, the fragility and vulnerability of the ecological system under pressures of advancing technological development.⁵⁹⁸ The use of DDT, however, was not dealt with in the public policy arena until 1966, when Victor Yannecone brought a suit first against the Suffolk County Mosquito Control Commission as well as subsequent suits in Long Island and in Michigan.⁵⁹⁹ Yannecone and his colleagues in these suits established the Environmental Defense Fund (EDF, later Environmental Defense) in 1967 as an organization through which to carry out their efforts.⁶⁰⁰ Yannecone's leadership style was not well suited to the organization, however, and he departed the organization a year after its founding. Shortly thereafter, the remaining scientists at EDF approached the Ford Foundation seeking funding for a legal staff to carry out subsequent environmental litigation. The Foundation initially declined to fund EDF, though it would later reconsider.⁶⁰¹

Strategy. In the late 1960s, the Ford Foundation experimented with a new strategy to effect public policy change—funding public interest law centers.⁶⁰² The Foundation directed this strategy at environmental policy and resource conservation in 1970 when it gave a conditional grant to the newly incorporated Natural Resources Defense Council (NRDC) for \$410,000 and later gave similar grants to EDF, the Sierra Club Legal Defense Fund, and the Southern California Center for Law in the Public Interest.⁶⁰³

By the time NRDC received its grant, Ford had already played a significant role in the organization's creation. For over a year prior to the final issuance of the grant, the Foundation had been in contact with a number of outstanding students from Yale Law School about their hopes of securing funding for their endeavors to solve environmental problems by creating a watchdog organization with the freedom to engage in public interest litigation. Upon graduation in June of 1969, six of the Yale students, as well as a recent graduate from Harvard, took temporary positions with hopes that their environmental public interest law organization would materialize.⁶⁰⁴

In the meantime, Stephen Duggan, a partner at a New York law firm, along with four other well-established lawyers incorporated Natural Resources Defense Council as a 501(c)3 organization in the State of New York. Duggan sought funding from the Foundation to host an organizing conference, but the Foundation rejected this request as preliminary, opting instead to monitor the organization's development.⁶⁰⁵

In March 1970, the Ford Foundation brought the group of recent law graduates together with the group of New York lawyers who incorporated the Natural Resources Defense Council, and Ford sought to facilitate a merger of purposes between the two parties. Over a period of two months, the two groups drafted a set of principles and strategies, and they together presented a grant proposal to the Ford Foundation.⁶⁰⁶ In response, the Foundation granted \$410,000 to the Natural Resources Defense Council as an initial grant for the Council's first few years of operation.⁶⁰⁷ This grant was contingent, however, on a ruling by the IRS allowing tax-exempt organizations like the NRDC to engage in public interest litigation while maintaining their tax-exempt status.⁶⁰⁸

The initial IRS position on public interest lobbying organizations—that they could not be tax-exempt and therefore could not be funded by foundations—was a substantial barrier to the evolution of environmental public interest litigation.⁶⁰⁹ The tax law changes in 1969 left unclear the tax exemption status of public interest law organizations that engage in litigation.⁶¹⁰ When the IRS temporarily halted consideration of tax-exempt applications for public interest law organizations, various stakeholders in the environmental movement mobilized, understanding the decision to be one of primary importance. Members of the board of NRDC contacted friends in the government, in the Republican Party, and editorial writers to attempt to influence the IRS decision.⁶¹¹ In the fall of 1970, the *New York Times* and *The Washington Post* both editorialized on behalf of the public interest law organizations.⁶¹² The IRS eventually decided to permit tax-exempt organizations to engage in public interest litigation, and the conditional grant from the Ford Foundation was cleared for use by the NRDC. The grants to other environmental public interest law activities followed.⁶¹³

Impact. The NRDC and Environmental Defense are today among the most influential environmental organizations in the world. NRDC has a membership of more than 1 million. In 2004 alone, the organization participated in more than 200 lawsuits. The organization has appeared numerous times before the U.S. Supreme Court. In addition, NRDC staff members have advocated for environmental protection on virtually every public policy issue at the federal, state, and local level.⁶¹⁴ NRDC has been at least partially responsible for the passage of the Clean Water Act of 1971, the removal of lead from gasoline, and the increased energy efficiency of home appliances.⁶¹⁵ Environmental Defense, boasting 400,000 members, has done less of its work in the courtroom and more collaboration directly with businesses, government, and community groups in tackling environmental problems. McDonald's implemented Environmental Defense's recommendations by cutting down on its packaging waste, New York Governor George Pataki heeded Environmental Defense's encouragement in requiring that diesel-powered equipment involved in the World Trade Center site reconstruction use clean fuel technologies, and FedEx Express recently collaborated with Environmental Defense in rolling out a fleet of hybrid electric delivery trucks in Sacramento, California.⁶¹⁶

Notes

593. Ford Foundation, *Annual Report: To Advance Human Welfare*, 1952, 32.

594. *Annual Report*, 1952, 32.

595. *Ibid.*

596. Richard Magat, *The Ford Foundation at Work: Philanthropic Choices, Methods, and Styles* (New York: Plenum Press, 1979), 186–87.

597. *Annual Report*, 1965, 31.

598. Robert Cameron Mitchell, "From Conservation to Environmental Movement: The Development of the Modern Environmental Lobbies," chapter in *Government and Environmental Politics: Essays on Historical Developments Since World War Two*, Michael J. Lacey, ed. (Washington: Wilson Center Press, 1989), 84–86.

599. *Ibid.*, 88–89.

600. *Ibid.*, 89.

601. *Ibid.*

602. *Annual Report*, 1970, 18.
603. Mitchell Sviridoff, *Natural Resources Defense Council, Inc.*, inter-office memorandum, 2/23/1971, 1; *Annual Report*, 1973, 20.
604. *Ibid.*, 2.
605. *Ibid.*, 1.
606. *Ibid.*, 2.
607. *Ibid.*, 7.
608. *Ibid.*, 8.
609. Mitchell, "From Conservation to Environmental Movement," 102.
610. John H. Adams, "Responsible Militancy—The Anatomy of a Public Interest Law Firm," *Record of the Association of the Bar of New York*, 631 (1974), 631–32.
611. Mitchell, "From Conservation to Environmental Movement," 102–03.
612. Adams, "Responsible Militancy," 632.
613. Mitchell, "From Conservation to Environmental Movement," 102–03.
614. "About Us," *Natural Resources Defense Council*, available at <http://www.nrdc.org/about>.
615. "About Us: Victories," *Natural Resources Defense Council*, available at <http://www.nrdc.org/about/victories.asp>.
616. "Origin & History," *Environmental Defense*, <http://www.environmentaldefense.org/aboutus.cfm?tagID=362>.