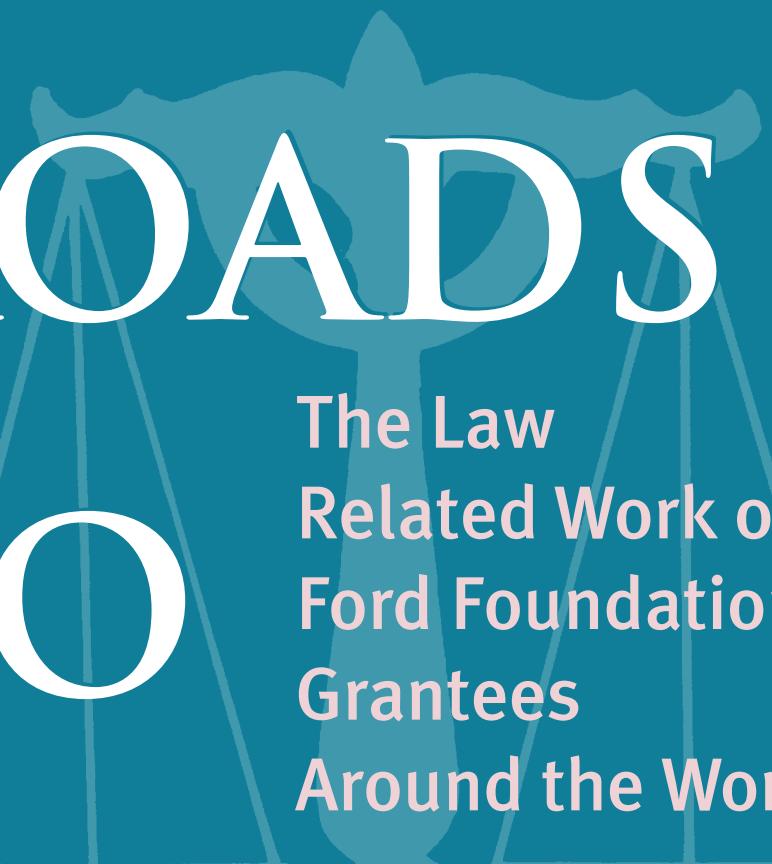


# MANY ROADS TO JUSTICE



The Law  
Related Work of  
Ford Foundation  
Grantees  
Around the World

THE FORD FOUNDATION

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Ford Foundation Grantees  
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# Rights into Action: Public Interest Litigation in the United States

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HELEN HERSHKOFF & DAVID HOLLANDER

This chapter examines the Ford Foundation's support of groups that use litigation to promote equality and justice for racial minorities, women, and immigrants in the United States. Since becoming a national foundation in the 1950s, Ford has played an important role in supporting the efforts of inspired civil rights lawyers to develop a network of organizations dedicated to using law to improve conditions and to promote equality for historically marginalized groups. Through seed funding, core financial support, and capacity-building grants, the Foundation has helped to sustain these organizations during the changing political climate of the late twentieth century. Although the Foundation supports a broad set of strategies in its U.S. law programming—including public education, community organizing, and coalition building—this case study focuses on Ford's support of litigation to effect social reform. Moreover, although Ford's promotion of law-based work spans the nearly half century of the Foundation's history, this case study focuses on the 1980s and 1990s, and is current as of mid-1999.

Ford's support of groups undertaking public interest litigation in the United States draws on a moral commitment shared by the Foundation and its grantees to social justice and to rule of law values. It also rests on the pragmatic view that judicially precipitated reform can help to remove discriminatory barriers, to expand opportunities, and to improve conditions for historically

underrepresented groups. The Foundation recognizes, however, that the concept of social change is ambiguous; the literature on public interest litigation offers no single definition of “success.” Some commentators criticize public interest litigation as a failed strategy that short-circuits the political process and produces few, if any, long-lasting successes. Reading the same evidence, other commentators declare victory for civil rights litigation, but urge a refocusing of effort on public education, legislative reform, and political mobilization. Still others point to litigation’s unintended adverse consequences—including bitter political opposition—and emphasize the need for consensual solutions to divisive social problems. Finally, some observers recognize the limits of court-initiated reform, but recommend its continued support as part of a multipronged strategy to expand social justice and to preserve victories against erosion and assault.

This case study addresses many of these concerns. Looking at the work of some of the Foundation’s grantees over the last two decades, the study illustrates the process of public interest litigation in the United States and identifies some of the factors framing its strategic use. The study does not claim to be scientific or comprehensive; it does not discuss, for example, Ford’s significant support of legal services for the poor during this period. Nor does the case study provide an audit of grantee work. Rather, through a sampling of the Foundation’s law grantees—in women’s rights, minority rights, and immigrant and refugee rights—the authors glean lessons from the use of litigation to change public policy; to enforce, implement, and monitor change; and to mobilize and empower members of historically disadvantaged groups. The authors conclude that public interest litigation has been and remains integral to a holistic social change strategy that may also include community mobilization, leadership and economic development, media outreach, policy analysis, and empirical research.

The chapter first provides a brief institutional history of Ford’s support of civil rights litigation in the United States and then describes the adjudicative campaigns of particular grantees in such diverse fields as school finance reform, reproductive choice, and land-use planning. Within specific U.S. contexts, the study then discusses the strengths and weaknesses of litigation as a social change strategy and explores how grantees have used

media and other public education activities to mitigate some of the potential risks and disadvantages of court-based activities. Finally, the study draws some general lessons that may be of use to advocates, donors, and policy analysts in considering when, whether, and how to use public interest litigation as a way to support social change. The chapter concludes with a brief look at future challenges, emphasizing the need for continued and sustained philanthropic support of public interest litigation as part of a social change strategy for historically marginalized groups.

### Brief History of Ford's U.S. Law-Related Grantmaking Program

Ford's support for law-based programs in the United States began in earnest in the early 1960s, with a primary focus on legal services for the poor. During that time, the Foundation launched its comprehensive "Gray Areas" program to combat urban poverty at the grassroots level by providing a wide array of legal, educational, medical, and other social services. The Gray Areas initiatives became the model for many of the Great Society programs, including the Legal Services Corporation. In 1965, Ford helped to establish the Center on Social Welfare Policy and Law, with the goal of using test case litigation to precipitate systemic change in the welfare system. Under the leadership of Edward Sparer, later a professor of law at the University of Pennsylvania, the center had a hand in many of the landmark poor people's due process cases of the late 1960s, and also provided backup services to frontline neighborhood legal services offices around the country.

McGeorge Bundy, who became the Foundation's president in 1966, spearheaded a substantial increase in the Foundation's grantmaking to minority rights groups in the United States, from only 2.5 percent of its annual giving in 1960, to 36.5 percent in 1968. A significant portion of this increase during the eight-year period went to litigation designed to ensure equal access to voting, education, employment, housing, and the administration of justice. The increasing emphasis on civil rights litigation reflected Bundy's view that the law "must be an active, not a passive force" for social change. Substantial grants went to the National Asso-

ciation for the Advancement of Colored People Legal Defense and Educational Fund, Inc. (LDF), and to the Mississippi office of the Lawyers' Committee for Civil Rights Under Law. Litigation comprised a key part of these groups' multipronged strategy, which also included support for improving minority leadership; promoting policy-oriented research on race and poverty; and expanding the availability of legal resources to disadvantaged communities.<sup>1</sup>

Recognizing the distinct needs of other ethnic groups and interests, Ford provided grantees start-up funds during the years 1968–1972 to establish seven new civil rights groups: the Mexican American Legal Defense and Educational Fund; the Southwest Council of La Raza; the Native American Rights Fund; the Puerto Rican Legal Defense and Educational Fund; the Women's Law Fund; the National Committee Against Discrimination in Housing; and the Legal Action Center. The Foundation also provided a seed grant to the Center for National Policy Review, which monitored federal agency action under civil rights and equal opportunity legislation. In providing funds to help create this broad civil rights network, the Foundation's aim was to support organizations, rather than particular cases, leaving decisions about actual lawsuits and specific strategies to the grantees themselves, a policy that continues to the present.

In 1979, Franklin Thomas became president of the Foundation. His tenure coincided with internal budget reductions, caused by the recession of the 1970s, and began just one year before the election of Ronald Reagan as U.S. president. Observing that the Foundation's law initiatives addressed some of society's most "sensitive and unyielding problems," Thomas emphasized that the quest for equality and justice remained "incomplete." He reaffirmed Ford's support for civil rights groups that use law for social reform, focusing the Foundation's domestic law programs on three goals: to advance the substantive legal agenda of the civil rights community; to enhance legal services for the poor; and to build the capacity of minorities, women, refugees and immigrants, and the poor to advocate on their own behalf.

During Thomas's tenure, "support for public interest law became a means to impact the lives of vulnerable groups in which the Foundation had a growing interest, rather than an end in and

of itself,” explains Lynn Walker Huntley, former director of the Foundation’s Rights and Social Justice Program. In continuing to support the national civil rights groups that it had helped provide funding to establish, the Foundation underscored the importance of their organic links to community, as well as their established track records of success. At the same time, Ford encouraged these grantees to develop new strategies, especially in the areas of education, employment, and housing, and to take greater account of the overlapping significance of race, class, and cultural characteristics.

Theodore M. Shaw, associate director-counsel of LDF, observes that 1980 marked “the end of a period in which civil rights litigation was viewed expansively and offensively, and [the beginning of] another in which by necessity it was viewed less expansively and defensively.” The nation’s political retrenchment from certain social programs presented the civil rights community with challenges on several fronts. The government had earlier been an ally of civil rights advance in court, through research, and by enforcing and monitoring antidiscrimination laws. After 1980, the Justice Department frequently opposed civil rights groups in court. As the President made appointments to the federal bench, the judiciary increasingly reflected the nation’s ambivalence toward civil rights. New and well-funded opposition groups filed their own lawsuits seeking to reverse earlier gains. At the same time, financial cuts in programs for the poor and in legal services highlighted the importance of including issues of poverty, as well as race, in the broader civil rights agenda.

Political opposition and legal challenges—in such key areas as employment opportunity, reproductive choice, and fair treatment of immigrants—badly strained the financial capacity of Ford’s grantees. By providing core and occasional project-based support, the Foundation afforded grantees maximum flexibility in designing and administering law programs as the social and political contexts of their work changed. Although grantees report that a triage mentality dominated their efforts throughout the 1980s, many groups—seemingly against all odds—scored important court victories on antidiscrimination issues and also secured the extension of civil rights law.

To address this evolving situation, many groups also began to

explore new issues and to complement litigation with public education and community mobilization activities. The American Civil Liberties Union (ACLU) and others expanded voter registration efforts, and also focused attention on the discriminatory barriers raised by the use of standardized tests in jobs and schools. In addition, during this period, the Foundation helped expand and sustain the civil rights infrastructure of nongovernmental organizations. In the early 1980s, Ford funding enabled the National Women's Law Center to become a freestanding organization, and helped establish groups with litigation capacity to represent refugees and immigrants. The Foundation provided support to encourage churches (or faith communities) to respond to the needs of the black community, and gave funds to enable groups to conduct research about Latinos and to build public support for and leadership skills within that community.

The election of Bill Clinton as president in 1992 did not stem challenges to civil rights. A conservative federal judiciary was now in place. Federal legislators—especially after the 1994 election—passed a series of laws that sharply diminished the federal “safety net” for poor people, imposed tough restrictions on immigrants, cut funding for legal services, and blocked access to judicial review even for certain constitutional claims. Ford increased its financial commitment to preserve and promote the interests of the disadvantaged, maintaining high levels of core support for some groups, and moving to project-based support for others.

Recognizing Asian Pacific Americans as the nation's fastest growing minority group, Ford helped to establish the National Asian Pacific American Legal Consortium in 1993. At the same time, Ford placed increased emphasis on intergroup relations among minorities, identifying important issues for additional support and fostering coalitional efforts on matters of broad concern. For example, in anticipation of the myriad legal issues that would be presented by the 1990 census, and out of concern that minorities would be adversely affected when voting districts were redrawn, the Foundation initiated a \$2 million campaign for grantees to support education, monitoring, advocacy, technical assistance, and litigation in the area of voting rights.

Throughout these years, other national and local foundations also gave support to public interest litigation and related strate-

gies. Some foundations provided grants for targeted projects. At the national level, a few key donors provided sustained support; they included the Rockefeller Foundation and the Carnegie Corporation.

In 1996, Susan Berresford became president of the Ford Foundation. As executive vice president of the Foundation for many years, she was well placed to provide strong support for civil rights and to lead Ford into the next century. In the final years of the 1990s, the Foundation encouraged grantees to rethink their basic missions, urging even greater attention to the relationships among race, gender, and class that could especially impact historically marginalized groups. As federal powers began devolving to the states, Ford also helped grantees explore ways to work in state government policy contexts that potentially afforded new opportunities for community involvement. Finally, Ford encouraged grantees to forge linkages with the academic community, business, and community groups to develop new partnerships for social reform.

“It is essential that the Foundation take a long-term approach to funding public interest litigation in the United States, while at the same time encouraging grantees to pursue new directions and strategies,” says Anthony Romero, the Foundation’s director of Human Rights and International Cooperation. “That’s why the work we’re doing now is as pressing as when we first started in the 1960s.”

### A Sampling of Grantee Activities: Three Dimensions of Court-Based Strategies

More than 150 years ago, Alexis de Tocqueville observed, “There is hardly a political question in the United States which does not sooner or later turn into a judicial one.” One of the great advances in American society in the last half century has been the creation of a network of civil rights organizations that enables historically marginalized groups to participate in this national judicial process. Legal advocacy can encourage democratic possibilities that are often blocked by discrimination and disadvantage. Civil rights groups thus use litigation strategically to create lever-

age for their constituents, promoting political and social goals that afford disadvantaged minorities a stronger place in society.

By the start of the 1980s, civil rights groups had largely secured a set of rights aimed at ensuring the formal perquisites of social and political equality. But poverty and inequality persisted, and Congress and the courts resisted efforts to remedy entrenched private practices that blocked movement toward further economic and social equality. After years of trying to use court decrees to reform public institutions—whether by desegregating public schools or improving health and safety conditions at mental hospitals—advocates accepted that litigation is a blunt tool requiring years of tedious enforcement proceedings. Indeed, because legal categories do not always correspond to social needs, litigation sometimes seemed to impede or distort policy goals. Moreover, the public’s tendency to view litigation as a “winner takes all” game contributed to a sense that civil rights efforts fueled unnecessary divisiveness, which contributed to backlash. Finally, whether because of “docket fatigue” or other reasons, the federal courts no longer appeared receptive to egalitarian arguments, increasingly raising procedural barriers to relief that impeded further progress. The changed political climate of the 1980s required grantees to reconsider not only many of their substantive goals, but their strategies as well.

Yet, even as grantees devoted more resources to public education, community organizing, and administrative advocacy, they did not abandon litigation as a tool to advance civil rights. As Marcia Greenberger, copresident of the National Women’s Law Center (NWLC), explains, “A concrete case could provide a way of highlighting the importance of a legal principle in the context of a real set of facts and actual people affected by the outcome. A case could serve to rally press and public attention to the legal principle at stake.” In some instances, civil rights groups resorted to litigation to block the government’s enforcement of unfavorable laws, such as efforts to challenge the 1986 immigration restrictions and Proposition 187 (a California referendum that attempted to bar undocumented immigrants from basic health and educational services). In other areas, grantees turned to state courts and to state constitutions for new sources of civil rights protection. In many instances, traditional civil rights groups could

no longer control when and where they would raise particular issues in court; opposition groups frequently filed their own lawsuits, and grantees had to intervene in such actions to preserve past victories. As civil rights groups matured, they struggled with mixed success to mitigate the risks of litigation, and their litigation goals evolved over time to accommodate new realities of public opinion and judicial philosophy.

### ***Public Interest Litigation and Public Policy Reform***

Ever since the National Association for the Advancement of Colored People (NAACP) first mounted its litigation campaign against segregation, the public has associated the courts with the power to change social life. Civil rights groups use different techniques to trigger the process of judicially precipitated reform. Test cases can establish precedents that will apply to many individuals. Class actions with many, often thousands, of plaintiffs allow the interests of a broad group of people to be addressed in one proceeding. Individual lawsuits have the potential to declare new rights and to extend a legal principle into new areas. In addition, civil rights groups must sometimes litigate defensively to preserve reform or to block harmful policies. And in some cases, Ford grantees appear as *amicus curiae*—as “friends of the court”—to explain or emphasize important issues.

The court-based struggles of Ford grantees show that litigation is an imperfect strategy constrained by many factors. Yet, in certain situations, it remains unclear whether noncourt strategies can prove successful without support from—or the threat of—litigation. Even when a lawsuit fails in court, it can help publicize issues, mobilize constituents, garner resources, and legitimate an outsider’s position, thereby endowing disadvantaged groups with forms of political capital.

This section looks at three adjudicative campaigns mounted by Ford grantees that, among other things, have helped reform public education, advance reproductive choice, and extend fair treatment to immigrants.

***Using State Courts to Reform Public Schools.*** After the desegregation battles of the 1950s and 1960s, it became apparent that

despite the end of formal segregation, schools in the poorest areas, many primarily composed of minorities, lacked resources to provide their students meaningful educational opportunity. American schools are largely financed by local property taxes, with the result that significant disparities exist between rich and poor school districts. Litigation efforts in the 1960s and early 1970s to reform school finance systems faltered when the U.S. Supreme Court refused to locate a right to education in the Constitution, and efforts to effect reform through state legislatures likewise achieved very limited success. In the 1990s, students in one poor Alabama school district still used decades-old textbooks predicting that one day man would walk on the moon.

Ford's long-standing commitment to education reform began with grants in the 1950s to study the effects of segregation, and continued with multimillion-dollar support for research, training, advocacy, and litigation in the 1970s. In the late 1980s, a Ford grant enabled the ACLU to work with school finance economists to develop an empirical base for a new litigation strategy aimed at enforcing a state constitutional right to an adequate education. Unlike the U.S. Constitution, every state constitution explicitly requires the establishment of free public schools. The ACLU's goal was to leverage these state constitutional clauses into an enforceable right to a quality education.

Since 1989, the ACLU has commenced state court challenges in Alabama, Connecticut, Louisiana, Maryland, and New York, and, as amicus curiae, in Massachusetts and California. While the outcomes vary from state to state, courts have typically upheld the principle of educational equity and adequacy. In Alabama, the court invalidated an earlier state constitutional amendment that eliminated any state right to free public education, on the ground that it was a blatant attempt to circumvent the historic 1954 U.S. Supreme Court desegregation ruling, *Brown v. Board of Education*. (*Brown* declared unconstitutional state laws that allow public school districts to separate students by race.) In a later ruling, the Alabama court defined the content of Alabama's state constitutional education right in terms of nine capacities that the state must develop in all children through appropriately funded programs of instruction. In Maryland, the lawsuit precipitated a historic negotiated agreement among the parties, requiring manage-

ment reform and increased state funding for public schools. In Connecticut, the court's order triggered a statewide planning process on how best to improve school quality through regional integration.

The ultimate goal of assuring quality education for every child in America has remained the same all along. When legislatures failed to do what was necessary to make that goal a reality, public interest lawyers stepped in. Says ACLU Legal Director Steven R. Shapiro, "Education litigation has become increasingly sophisticated, moving from the desegregation cases, to fiscal equity, to educational adequacy. The problem has changed over time, but the ACLU has a real commitment not to abandon the field."

*Litigating for Reproductive Choice.* The U.S. Supreme Court's 1973 decision in *Roe v. Wade*, establishing a woman's right to make reproductive choices, marked only the beginning of a long political struggle in the United States. Given the profound moral issues that abortion presents, the Court's decision provoked bitter opposition from churches and in Congress. With the help of Ford and other donors, Janet Benshoof established the Center for Reproductive Law & Policy in 1992 to advance women's reproductive rights. Benshoof has been litigating for reproductive choice since her days as a staff attorney at the ACLU Women's Rights Project. "In 1977," she says, "I was given a grant by John D. Rockefeller III to ensure that *Roe v. Wade* was implemented in all fifty states—a task that he thought, and I naively agreed, could be finished in a year! It wasn't long before we realized that advancing women's reproductive freedom would involve a life-long commitment."

Commentators sometimes refer to abortion as the classic example of litigation moving ahead of community norms and causing a political backlash. Opposition to abortion is deeply felt and highly mobilized. Benshoof observes, "There is no other issue in which the other side has galvanized so much money." Nevertheless, the center stands firm in its belief that litigation is an essential component of that struggle in the United States.

Simon Heller, the center's director of litigation, says the center's main work involves Supreme Court advocacy to preserve

*Roe* and the structure of reproductive rights that it protects. In support of that goal, the center also undertakes varied strategies, including litigating “service” cases that secure pro-choice policies for individual women to make sure that policies are enforced “on the ground.” Yet as Anika Rahman, its international program director, cautions, “Litigation is likely ultimately to fail if there isn’t along with it a public education campaign effort. At the end of the day, the most important thing is to ensure that the general public supports your goals and objectives.”

An important center priority has been to restore full reproductive rights to low-income women in the wake of the elimination of federal Medicaid funding for abortion. Within days of being contacted by a poor woman in Montana who had become pregnant after being raped, the center flew its lawyers to Montana and obtained a state court injunction, mandating that the state pay for the abortion she sought. Center staff used the case, based on the state constitution, to educate the public through the media about the extreme circumstances poor women can face. Eventually, complete restoration of Medicaid funding for reproductive choice in Montana was achieved. By 1996, 40 percent of women in the United States lived in states that provided public funding for abortion.

*Defending the Rights of Immigrants.* The civil rights revolution that began with *Brown* has never fully penetrated the realm of immigration law. Because noncitizens are a highly marginalized group, lacking even the right to vote, legislatures and courts often do not always respond to their needs. Beginning in 1982, Ford provided support to maintain and expand an infrastructure of national and regional legal organizations that help monitor and ensure the equitable enforcement of immigration laws. Among them is the ACLU Immigrants’ Rights Project, a grantee since its founding in 1983. “There’s enormous judicial deference in the area of immigration that doesn’t exist in other civil rights areas,” says Lucas Guttentag, its director, explaining that courts typically accept the policy judgments of the other branches of government in the immigration area. “But there have been significant advances. And I think the question is, where would we be without that litigation effort? And where we would be is absolutely nowhere.”

With plaintiffs generally poor, legal fees limited by the federal attorney's fee statute, and the issues to be litigated unusually complicated, the vast majority of reform litigation in the area has been brought by immigration lawyers dependent on foundation support. By necessity, much of the work is defensive or reactive. Yet grantees have scored some dramatic victories. In the early 1980s, several class actions successfully challenged aspects of the asylum process. Under a landmark case initiated in the 1980s involving Haitian refugees, a court ordered the government to reprocess 5,000 asylum applications in a way that would comply with fundamental due process. The 1982 landmark case of *Plyler v. Doe* established the principle that it is unconstitutional to deny undocumented children a free public education. Later, in a case involving Salvadoran refugees, the United States Immigration and Naturalization Service was barred through a settlement in 1991 from manipulating refugees into abandoning their right to seek political asylum.

In 1996, a tidal wave of unfavorable federal legislation hit the immigrant community. Popularly backed federal legislation to control illegal immigration and to reduce welfare rolls also eviscerated the rights of legal immigrants. The combined effect of three extremely complex and overlapping new laws left the underfunded immigration law community reeling. Organizations such as the ACLU and the National Immigration Law Center, an organization providing expertise on the rights of immigrants to public entitlements, divided up areas of responsibility in responding to the laws. On the litigation front, the ACLU, with other groups, challenged some of the new statutes' provisions that block immigrant access to judicial relief. Other advocates persuaded Congress to restore some of the categories of public assistance that the 1996 act eliminated. Many states have since agreed to replace some of the eliminated federal funding with state funds.

Taryn Higashi, Ford Foundation Refugee and Migrant Rights program officer, explains: "Lawyers have been central to all these strategies because immigration laws are so complicated. . . . Even though many issues are driven and shaped by public opinion and politics, without a lawyer to parse the laws, you just can't move." Because of Ford and other donor support, stable immigrants'

rights institutions, staffed by seasoned experts who knew and trusted one another, were in place when the crises hit, and they cooperated to meet the immigrants' legal needs.

### ***Public Interest Litigation to Implement, Enforce, and Monitor Change***

Public policies and laws are not typically self-executing. Time and again, a law is passed, or a judicial decree is issued, and little or nothing changes. Part of the problem is that legal norms are often expressed in general or open-ended terms, leaving implementation of statutory requirements to the discretionary decisions of many individuals, officials, and bureaucrats. Moreover, on some issues, opposition organizes and actively hinders implementation.

"If there's anything we've learned it's that it's not enough to be instrumental in creating a principle or policy," says Nancy Davis, former executive director of Equal Rights Advocates (ERA), a Ford grantee that litigated with other organizations to gain women and minorities equal access to employment as San Francisco firefighters. "Being around to make sure that it's enforced and that it has some teeth is absolutely critical." And indeed ERA was forced to monitor the settlement in the firefighters' case for many years.

"You can't relax on the law front," warns Burt Neuborne, John Norton Pomeroy Professor at the New York University School of Law, "because the moment you relax on the law front, they'll push you back to the old system of law. . . . Within a lifetime—within one single lifetime—much of what we've gained from the fifties to now could be gone."

Implementation and monitoring can be expensive, tedious, and long-term activities. Yet litigation can also be a cost-effective strategy. Litigation groups have won much-needed injunctive relief, and reaped millions of dollars in back pay awards and damages for clients with no other recourse to claim their rights.

Some people express reservations over using litigation to make law, even when other strategies have failed. However, public interest litigation is very often used as a tool to enforce laws and to seek compliance with decrees already on the books. As the

following three examples—Involving desegregation, Native American treaty obligations, and women’s rights—show, there is sometimes simply no alternative to litigation as a means of monitoring and obtaining compliance with legal requirements.

*Maintaining Desegregated Public Schools.* History recounts massive resistance by the Southern states to the landmark 1954 desegregation ruling of *Brown v. Board of Education*, and official indifference, and worse, in the North. LDF, a longtime Ford grantee, has returned to court hundreds of times to ensure that *Brown* is implemented. Janell Byrd, who joined the Washington office of LDF in 1984, explains that litigation to enforce *Brown* has tried to eliminate both “the legal structure of racial segregation” and “the racial caste system” that supports it. LDF’s docket thus aims broadly at ending “the wide variety of practices that go ‘hand-in-glove’ with racial segregation (including inferior educational resources in terms of school facilities, books, technology, and teachers), as well as the exclusion of minorities from mainstream society and its opportunity structures.”

Enforcing desegregation decrees thus forms part of a broader strategy: desegregation cases create opportunities for African Americans to participate in important community decisions. As Elaine Jones, LDF president and director-counsel, explains, “Desegregation is about funneling resources to your children. It is not just about white and black students sitting together in a classroom. It provides a lever for decision making by the black community.”

In its litigation, LDF emphasizes that desegregation improves educational policy. “During the period of the most effective school desegregation, roughly 1970 to 1990, the academic achievement for African Americans, while not closing the gap with whites, showed dramatic improvements,” LDF’s Byrd points out. In Alabama, for example, LDF recently resisted efforts by Chambers County to amend its desegregation plan with a proposal that would have allowed a significantly white, newly established city in the rural part of the state to secede from the county school system, which is predominately black, and to take with it a disproportionate share of the county’s educational resources. In the process of enforcing the existing desegregation order, LDF

was able to bring about significant educational improvements involving course offerings, teacher resources, and school facilities.

As of 1997, more than two hundred school desegregation orders remained in effect throughout the nation. Despite the trend toward resegregation, LDF has successfully maintained integration and improved school quality in the seventeen southern states where it has brought hundreds of proceedings to enforce *Brown*.

*Enforcing Native American Treaty Obligations.* Native Americans have historically faced systematic mistreatment in the United States and a loss of ancestral lands. In one of its efforts to break up Indian tribes and tribal lands, Congress in 1887 provided for the allotment of a portion of tribal lands managed by the United States to individual members of the respective tribes. The federal government undertook to hold the proceeds from those lands—income from leases allowing grazing, farming, logging, or mining—in trust for the individual tribal members. By all accounts, the government utterly failed in its obligations.

Many of the account holders are among the poorest people in the nation. Two hundred fifty million dollars flow through the system every year. In all, billions of dollars, held in trust for as many as half a million individuals, are at issue. Much of the money is impossible to trace because of government negligence. The gross mismanagement of the trust funds, the *Wall Street Journal* reports, “is so complex and so potentially expensive to fix that it has been kicked from one administration to another since the 1920s.” Although the problems had long been recognized, and the legal rights of the individuals were clear, the injustice continued and grew. As Elouise Cobell, a lifelong resident of the Blackfeet reservation in Montana, says: “They forced us to rely on a system that everybody knows didn’t work. When we complained about it to the Bureau of Indian Affairs, to the Interior Department, to Congress, and to administration after administration, it fell on deaf ears.”

In 1996, the Native American Rights Fund (NARF), a Ford grantee since its creation in 1972, filed a class action lawsuit, with Cobell as lead plaintiff, on behalf of the account holders. In February 1999, Federal District Judge Royce Lamberth held gov-

ernment officials in contempt of court for failing to produce records pertaining to the trust funds. A few months later, the court rejected the government's request to dismiss the lawsuit, finding that government officials have a duty to the account holders to "act as a proper trustee . . . as mandated by Congress." John Echohawk, NARF's executive director, says of the decision, "This is the first time a Federal court has ruled that the Federal trustee in this context of trust funds will be held to the standards of a private fiduciary, just like any other American. Because of that, this is watershed, landmark litigation." A trial on the merits began, still later, in June 1999, with government lawyers admitting that the U.S. was unable to account for what it owed the Indian beneficiaries.

*Advancing Educational Opportunity for Girls and Women.* "With law on your side, great things are possible," says NWLC's Greenberger. NWLC has been using law to expand opportunities for women since 1972, when it began as the Women's Rights Project of the Center for Law and Social Policy. A freestanding organization since 1981, NWLC's programs are grouped in four broad areas: education, health and reproductive rights, employment, and family economic security.

NWLC has used an ambitious and complementary strategy of litigation, administrative advocacy, and public education to define, enforce, and expand federal protections, in particular under Title IX of the Education Amendments of 1972, which guarantees gender equity in educational programs funded by the federal government. According to Greenberger, sticking with an issue is key: the positive development of Title IX protection in the area of school athletics programs is a case in point. NWLC has been involved in virtually every major Title IX athletics case, and every U.S. court of appeals that has considered the issue has come out in favor of broad protection against gender discrimination in athletic programs. In 1997, on the twenty-fifth anniversary of Title IX, NWLC highlighted the problem of continued athletic scholarships discrimination by filing complaints against twenty-five colleges and universities with the federal enforcement agency.

Its work to expand notions of gender equality have also

included protection of female students against sexual harassment. In the first student-to-student sexual harassment case the U.S. Supreme Court has ever considered, *Davis v. Monroe County Board of Education*, the Justices ruled in 1999 that under federal law a public school system is responsible for protecting a student from repeated and vicious sexual harassment by a fellow student. The case was brought by the family of a fifth-grader, who, over the course of five months, was repeatedly threatened, grabbed in inappropriate places, and sexually harassed by a boy in her class. Despite repeated complaints and pleas for help to her teachers and principal, the school system failed to protect the ten-year-old girl, explains Verna Williams, the NWLC attorney who successfully argued the case before the Court.

“The Court’s decision holds schools responsible for the safety of their students,” says Greenberger. “This ruling extends to students basic protections against sexual harassment that prevents them from getting the education they deserve and have a right to expect.”

These examples illustrate how grantees constantly have to return to court to turn “law on the books” into “law in action.” “Public interest litigators know that securing the initial court order is only the first step of many to cement a victory, even with the best judge,” says Mary McClymont, senior director of Ford’s Peace and Social Justice Program. “Time and continued vigilance are essential to achieve the change sought, and that’s why institutional support to litigating groups to enable them to keep going during the compliance stage is so critical.”

### ***Public Interest Litigation and Political Mobilization***

In a fundamental sense, public interest litigation aims at empowering historically disadvantaged groups so that they can freely and equally participate in the political process and protect the rights they secure. A court-based strategy can encourage community mobilization by raising consciousness, providing resources, and creating allies. In addition, litigation adds legitimacy to community groups when they confront government action, and helps publicize their goals. Yet just as the threat of “see you in court” gives communities important leverage, so national litiga-

gation groups benefit from the experiential knowledge of grassroots groups. The importance of community mobilization to long-term social change thus cannot be overstated. Helen Neuborne, deputy director of the Foundation's Human Development and Reproductive Health unit, says, for example, "Many people believe that the national women's groups did not do enough grassroots organizing after their victory in *Roe v. Wade*, that they went too far, too fast and lost support from their constituents."

Law groups are not always equipped to do organizing and community mobilization activities. Part of the difficulty, as one activist lawyer acknowledges, is "the difference in class and race between lawyers and the people they serve." Cindy Morano, senior organizer of Wider Opportunities for Women, a community organizer who has worked with lawyers throughout her career, explains, "Because lawyers and community organizers have different skill sets," legal skill does not predict organizing ability.

As a national foundation, Ford does not make many small grants to local groups. Over the years, however, it has developed mechanisms to channel funds to groups with expertise in community-based activities and has encouraged innovative legal strategies that are more broadly linked to community mobilization goals. Such techniques enable grantees to acquire information from affected communities and to keep these communities informed and engaged.

Some grantees have complemented their litigation programs with proactive "transactional lawyering" activities that involve community groups in nonlitigation legal strategies. As Alan Jenkins, Ford's Racial Justice and Minority Rights program officer, explains, these alternative lawyering approaches are intended "to help craft solutions where an adversarial approach is unlikely to succeed." He underscores, however, that while these nonlitigation efforts are important in mobilizing and sustaining political support, they carry their own set of limitations.

Finally, a holistic approach to social change requires coordination among different and diverse organizations. LDF Staff Attorney George Kendall explains the problem well: "Some of the most important issues that we need to win cannot be won without encouraging and sustaining cooperative efforts between national organizations. They require multipronged campaigns—legal, pub-

lic education, legislative—to succeed. Such efforts are beyond the means of any one organization; we will have success in the future on these must-win issues only if the donors recognize the necessity to provide funding on such collaborative efforts.”

The remainder of this section examines three diverse community-based strategies that grantees used to complement or spearhead their litigation work.

*Coordinating Litigation with Community Organizing.* In 1994, Los Angeles County was a vast urban area of approximately four thousand square miles and more than nine million people. Most residents traveled long distances to work, for medical care, and for other routine activities. The many working poor who could not afford an automobile were completely dependent on public transportation provided by the county’s Metropolitan Transportation Authority (MTA). Buses carried 94 percent of the MTA’s passengers. Eighty percent of the bus riders were people of color; their average household income was less than \$15,000. Despite the fact that its buses carried nearly all its riders, the MTA devoted more than 70 percent of its budget to rail programs, which primarily benefited affluent riders. Its fleet of buses was the most overcrowded, oldest, and least reliable in the nation. In the summer of 1994, the MTA announced plans to spend tens of millions of dollars in discretionary funds—which could have been spent on buses—on a light-rail line. At the same time, it announced plans to raise bus fares and discontinue inexpensive monthly passes, in order to make still more money available for rail facilities.

That fall, LDF sued the MTA on behalf of the Bus Riders Union (BRU) and a community organizing group that had helped create the BRU, citing Title VI (a federal antidiscrimination statute) and equal protection violations. LDF won a preliminary injunction against the fare increase and the elimination of passes. More than eighteen months of litigation followed, with four lawyers working nearly full time on behalf of the bus riders. A mountain of evidence was assembled, clearly showing the disparities in funding of bus and rail transportation. Public opinion began to crystallize in favor of increased bus service, and the *Los*

*Angeles Times* also became a forceful advocate for greater equity in public transport.

In 1996, the MTA agreed to a consent decree requiring it to implement several of the plaintiffs' main goals, including lower and controlled bus fares and reduced overcrowding. A joint working group of representatives of the MTA and the BRU was formed—giving bus riders an official, ongoing role in Los Angeles County public transportation policy. LDF closely monitored compliance with the consent decree, and went back to court several times. Finally, in October 1998, the MTA board voted to buy 2,095 new buses over the next six years, and days later the head of the MTA, in what the *Los Angeles Times* called "a sharp break with the [MTA's] long absorption in rail transit," called for the creation of a vast network of rapid bus lines.

More than four years after the litigation commenced, and over two years after the consent decree, Los Angeles bus riders were on the verge of seeing major change. "This work could not be done without the BRU," says Richard Larsen, an LDF attorney who has been on the case from the beginning. "They know the consent decree, they know the issues, they know the MTA. They articulate their causes well." BRU's community involvement was essential to mobilize interest in and support for this issue. But without the staying power of an established institution like LDF, the bus riders would never have had their day in court. The injustice done to the people who depend on buses for transportation became clear only through the focusing power of litigation—as discovery generated the mass of evidence that BRU relied on to change public opinion and public policy.

*Forming New Groups for New Constituencies.* In 1991, Ford and other foundations funded a collaboration of three regional Asian American legal groups under a single umbrella, the National Asian Pacific American Legal Consortium. Using a range of strategies including litigation, community education, and leadership training, the consortium, under Executive Director Karen Narasaki, has led its constituents from the margins to the center of civil rights advocacy.

The consortium has tried to learn from the experience of older

public interest law groups, while remaining keenly sensitive to its particular constituency. Many Asian Americans are recent immigrants, Narasaki says, with “an understandable mentality of saying, ‘Well, I left my country for a good reason. This country is better than what I had there. So who am I to complain?’” The consortium has focused heavily on community education and outreach, as well as developing leadership skills. “We don’t do litigation just to do litigation,” Narasaki explains. “It has to be capacity building somehow. Whether you’re doing grassroots organizing around the case, or using the case to educate the media, there has to be something more than the actual litigation itself.”

To help build a sense of community, the consortium has chosen hate crimes as a principal focus for its work. “One of the reasons is that it’s been a defining issue for the community as a whole,” Narasaki says. Asian American communities are extraordinarily diverse, with dozens of ethnicities and languages. To Narasaki, “the fact that these kinds of crimes exist is the clearest, most easily understandable reason why Asians have to come together in a coalition.” The coalition has tried to listen to its constituents, and to bring its resources to bear on issues that are high on the list of their concerns. But Narasaki emphasizes the critical role that lawyers play in the community that her organization serves. Many grassroots leaders face English language barriers and are unfamiliar with the political system. Having a law degree confers legitimacy in the corridors of power. “I tell lawyers and law students that I really think that for the Asian American community, we’re the bridge,” Narasaki says.

*Organizing a Community-Based Political Strategy.* Luke Cole, of the California Rural Legal Assistance Foundation, a former Ford grantee, has organized in the Central Valley in California around issues of environmental justice, in opposition to polluting enterprises in neighborhoods populated by the poor and disenfranchised. Cole argues that “taking environmental problems out of the streets and into the courts plays to the grassroots movement’s weakest suit” since “most poor people find the legal system foreign and intimidating.” Cole calls instead for “a community-based political organizing strategy [that] can be broad and participatory.”

Cole travels frequently from his office in San Francisco to help build networks of activists in the Central Valley. He says that mobilization “has to happen at an individual level in community after community after community.” The strategy faces many obstacles. Philanthropic support, never adequate, has diminished. Political resistance has forced environmental justice clinics at law schools to close or has blocked law students from appearing in court. Concerted opposition from industry and other groups has evoked critical media coverage and legislative setbacks. In California, for example, a significant court victory requiring the provision of Spanish language materials in environmental hearings was nullified by the legislature. Lacking a legislative presence in the state capital, grassroots activists were not even aware of the adverse legislation until after it had become law.

“If we had the power in the legislature, we would be able to know about these bills that are going through and are undoing our gains and stop them,” Cole says. “The fact that we had won this little local battle largely on legal grounds was unsustainable because we didn’t have a statewide political presence. So what we need to do is build on those local struggles, and knit them together into some type of larger network that then demands accountability. That’s a very labor-intensive process.” The California Rural Legal Assistance Foundation has not abandoned litigation, but knows that it is a tool that must be supported by broad public education and mobilization to realize lasting social change.

### Addressing the Limits of Litigation

The problems with litigation are many. As Antonia Hernandez, president and general counsel of the Mexican American Legal Defense and Educational Fund, says, “We see litigation as the tool of last resort. It is costly. It is long. And it is chancy. And particularly since 1980, the courts have not been our friends. But it’s the realization that you have the ability to litigate that gives you the credibility to use the other strategies effectively. And so to us, it’s a continuum—each tool, each strategy coming together for an end.”

Perhaps the most telling criticism of litigation as a strategy is that court decrees do not automatically trigger a change in people's attitudes. "When courts declare something, some number of people tend to believe it is the right thing to do," says Jack Greenberg, former LDF director-counsel. "And the court's order gets incorporated into their conduct and their behavior changes over time." But, he emphasizes, court orders do not necessarily win over a majority. Sustained public education campaigns are thus essential to frame public debate and to prevent distortion of progressive values. Most public interest law groups, however, spend their limited resources on lawyers first, with communicators and educators a distant second. By contrast, newly established opposition groups, created in reaction to civil rights advances, have committed sizable resources to public communications.

Media work demands a complex balance of coordination, policy analysis, and focus. "A successful media strategy requires obtaining a baseline of public attitudes through polling and research, and putting forward a message consistent with those values that does not compromise the movement's values," says Kathy Bonk, executive director and cofounder of the Communications Consortium Media Center.

For some grantees, use of new information and communications technologies, acquired under targeted Ford grants, offers greater sophistication and effectiveness in reaching both the media and the public. ACLU senior counsel Christopher A. Hansen cites changes at the ACLU since 1994 as an example: "We have e-mail listservs where all our press releases go out, so we reach many more reporters on a much more regularized basis. All of the documents on our cases get posted on our website and are available to the general public."

Public education is also directly connected to legal implementation. The monitoring and enforcement of laws and judicial decrees depends on networks of private lawyers available to work cooperatively with public interest law groups. Public education materials, including legal education manuals, provide critical resources for this effort. Many groups, however, lack the time and budgets for this effort. Elizabeth M. Schneider, an expert on bat-

tered women's issues and a professor at Brooklyn Law School, says that public interest groups that work on this issue "have no way to put out ideas or distribute necessary materials to lawyers around the country." A public education strategy, she suggests, thus also requires linkages with the academic community, as well as with students—the next generation of social change activists—in order to develop and refine cutting-edge thinking and better frame public debate.

Over the last two decades, some grantees have had to create a communications infrastructure from the ground up, with high start-up costs for personnel and computer technology. Other organizations have focused on intergroup coordination as a way to leverage resources and visibility. Some groups have "reinvented" themselves to adapt to the changing political climate. Still other groups have recast their membership structure as a way to further public education. No single group has taken all of these steps, and no single approach is necessarily the most effective. This section looks at the innovative efforts of three grantees—LDF, Americans for a Fair Chance, and the Women's Legal Defense Fund—to overcome some of the limitations of litigation and to influence the broadest possible public.

*Creating a Communications Infrastructure.* During the 1990s, LDF has focused on rebuilding its communications capacity to respond to the new political climate. Former LDF head Greenberg recalls the early days of the civil rights movement: "The NAACP had hundreds of thousands of members. It sent out the word through *Crisis* magazine, and bulletins, and newspapers. LDF lawyers met regularly with lawyers in every city imaginable. Especially in the black community, the lawyers were the leaders."

During these earlier years, training programs and fellowships helped LDF to "spread the word" by allowing it to cultivate new civil rights attorneys and to foster a network of community-based, cooperative lawyers. Institutional capacity dwindled, however, as resources shrank. By the 1980s, budget cuts forced LDF to close its Division of Legal Information and Community Services, which collected and analyzed data, produced studies and investigative reports, organized state coalitions, and collaborated with

academics, policy analysts, activists, women's groups, union leaders, and Latino and Native American groups.

LDF lawyers now emphasize that they are public relations entrepreneurs, as well as litigators. "In the 1980s," recalls Theodore M. Shaw, a veteran LDF attorney, "we would say, 'We're lawyers, we litigate; we're not publicity hounds. Those who count recognize what we do.' We did not have any internal person who would work with the press on our issues."

Since 1992, LDF has used general operating funds to retain a Washington, D.C., public relations firm to help develop media support for its issues. LDF took a major step forward in 1997 when Ford provided a special two-year grant to start a communications department. LDF has expanded its communications capacity, but sees much work ahead. Elaine Jones, current president and director-counsel, explains: "We need to have in-house communications capacity. We need to develop literature. We need a day-to-day contact person with the press. We need to do media work across the country."

*Collaborating to Mobilize Public Support.* Aside from abortion rights, affirmative action has perhaps elicited the most serious backlash against post-World War II social justice gains. Some observers believe that civil rights groups were put on the defensive by the intensity of the opposition. With legal and policy challenges to federal affirmative action programs, six civil rights groups, supported by the Ford, Rockefeller, Carnegie, C.S. Mott, and Cummings foundations, joined together in 1995 to establish a collaborative public education campaign to support affirmative action. After conducting research, including focus groups, the member groups decided to create a formal organization, Americans for a Fair Chance (AFC).

AFC's initial goal aimed at implementing a strategic communications plan in six states where affirmative action was under attack. The strategy involved identifying a wide range of potential allies, partners, and messengers—not just the traditional minority groups, but other constituencies with a stake in diversity such as veterans, students, and business—and providing them with sophisticated materials for disseminating a pro-affirmative action

message. AFC has initiated public education efforts around particular legal challenges (it chose Michigan as a target state in part because of pending litigation there), but its primary focus is on general public education. AFC's message—"It's Fair. It Works. It's Necessary"—appears on widely distributed fact sheets. Its campaign has been acutely sensitive to ensuring opportunities for all ethnic groups, as well as for women, and to promoting cooperation within the civil rights community. In the future, AFC leaders would like to see their model replicated on the local level around the country, enabling grassroots membership organizations to put forward a unified message.

*Refocusing Institutional Identity.* In the mid-1990s, the Women's Legal Defense Fund undertook, with Ford support, an institutional review. Focus groups revealed that the Fund's constituents were unhappy with its very name. "They think we're too litigious as a society, just plain don't like litigation as a strategy," says its president, Judith Lichtman. "But if you described what we do as having a seat at the table, representing their interests, being in Washington for them on a set of issues they care desperately about—like the Patient's Bill of Rights—they loved it. Holding public officials accountable once they get elected or appointed, they loved it."

So, on February 24, 1998, the twenty-seven-year-old Women's Legal Defense Fund was reborn as the National Partnership for Women & Families. With the name change came a new focus. "We learned that if you try to be all things to all people, you end up fooling around the edges of a lot of people's agendas, and driving little of an agenda yourself," Lichtman says. "Imposing an internal discipline and programmatic focus was very hard, harder than the name change." The partnership now formally takes a backseat on issues where sister organizations have greater expertise, such as educational equity, a specialty of the NWLC, and has instead consolidated its work into two main program areas—Work and Family, and Women's Health—areas where it had earlier developed significant expertise and a long history of success.

Recently, the partnership was approached by the American

Medical Association (AMA), the American Trial Lawyers Association, and leading labor unions to chair a coalition to mobilize public support for a “patient’s bill of rights.” “That could not have happened with the old name,” Lichtman says, “and I know that because the trial lawyers and the AMA told me. So a user-friendlier name opened up new advocacy opportunities for us.” The partnership has not abandoned litigation, but believes it is now positioned to accomplish more through non-court activity.

## Conclusion

The work of these public interest law organizations over the last twenty years suggests that the courts remain an important source of leverage for historically disadvantaged groups, lending them credibility, influence, and access to power. Public interest litigation sometimes produces dynamic policy impacts that extend far beyond the specific terms of a judicial decree, supporting social reform even if defendants refuse to comply with a court’s order. Looking forward, civil rights law will continue to play an important role in the struggle for social justice, even if defensive strategies must be used. The holistic approach that characterizes the work of Ford grantees speaks to the cyclical nature of social progress, in which victories are almost always followed by backlash and retrenchment. Losses often create new opportunities, but resources must be available to mine them effectively. This section offers some lessons that might be learned from the experiences of the grantees whose work this case study has surveyed. The lessons presented offer ideas and guidance for those working in this field; they can be adapted to many situations, but are not intended necessarily to be replicable formulae.

### ***Lessons and Insights***

#### *Litigation-Related Strategies*

1. Litigation remains the “big stick” that enables organizations dedicated to social change to be taken seriously. Although litigation may not produce transformative change

for all groups and on all issues, a steady development of legal principles can support incremental reform essential to social justice aims.

2. Litigation has a mixed, but important, impact. It can affect policy in different ways and to different degrees. As in the ACLU's school reform cases, a judicial decision can play an agenda-setting role by highlighting a legal issue and making it a priority for the other branches of government to resolve. In addition, a court can delineate rights and obligations—as in LDF's desegregation cases—providing bargaining leverage to otherwise politically excluded groups that enhances their ability to secure reform. A court can also give programmatic content to legal norms. Sometimes a judicial decree holds the line and preserves past victories. The success of a litigation strategy on one issue or in one area does not predict success for other groups or at other times. Some factors, however, appear to be crucial prerequisites to litigation success: appropriate and capable institutional mechanisms; adequate funding; dedicated leadership; and broad community support.
3. Monitoring and enforcement mechanisms can greatly enhance the impact of judicial decrees. Formal victory does not automatically translate into on-the-ground change. Without monitoring and enforcement, reform prospects are seriously diminished. Experience has shown that few judgments are self-executing, and that much work, sometimes including further litigation or the threat of it, is required to turn a court's rhetoric to reality. Moreover, monitoring brings to the surface experience and practice that can then be integrated into new forms of institutional design.
4. Litigation goes hand in hand with other strategies. Litigation can provide a pressure point for change, but systemic reform demands interactive and synergistic efforts to mobilize public sentiment. The need for such complementary work does not negate the role of lawyers.
5. An effective social change strategy requires a mix of organizations—some devoted to single-issue causes, others multi-focused—as well as mechanisms to link different

groups. On the one hand, an effective social change strategy requires the continued support of national civil rights groups. But an interlocking network of complementary institutions—state-based lawyers, grassroots community activity, and academic think tanks—is also vital. Finally, as conditions change, efforts must be made to include new groups and issues in the civil rights infrastructure.

### *Programming Approaches and Donor Roles*

1. Encouraging groups to work together can be an effective donor role; forcing partnerships can be counterproductive. Coalition building takes time and resources; funds for this purpose allow groups to leverage capacity, but do not substitute for other forms of financial support. Collaborations are best developed in close consultation with participating groups. Unwanted partnerships can divert time and attention from important activities.
2. Law groups and the communities that they serve need long-term core support as well as capacity-building grants. Viable institutions, rooted in their communities, with strong ties to other organizations, must be in place before a crisis hits. Core support allows grantees to develop technical expertise, credibility, and a long-term perspective on problems to which they can commit serious attention over time. They can thus function as “repeat players,” giving grantees an advantage when they litigate or seek allies on common issues. Withdrawal of support can impede a group’s effectiveness and even end reform efforts altogether.
3. It is unreasonable to expect most public interest law groups to become self-supporting. Despite the availability of membership fees for some groups and attorney’s fees in some cases, it is implausible to expect these groups to be weaned of donor support. Donors can, however, encourage grantees to broaden their bases of support and to explore innovative, entrepreneurial forms of financing linked to public education and mobilization goals. Project support that helps organizations identify alternative sources of support can further this effort; among them are endowment

campaigns that might offer long-term grantees substantial financial independence.

### ***Looking Ahead***

The next stage of social justice work requires a new articulation of goals, as public interest law groups work to forge “a more perfect Union” for all Americans. The changed political climate, together with increasingly narrow access to federal courts, highlights the need to continue integrating litigation into a broader social change strategy. National civil rights groups must develop new linkages with grassroots organizations, with the business community, and with government. And support must be available to nurture a new generation of intellectuals who can help to shape future civil rights discourse, to mobilize favorable public sentiment, and to encourage innovation.

Combined philanthropic efforts are needed to establish a space for social activists to meet, to confer, to consider past strategies, and to plan future endeavors with social scientists, affected communities, and others. To combat an apparent loss of faith in civil rights ideals, Ford and its partners could usefully sponsor empirical research to demonstrate the continuing importance of these ideals to a nation that strives to be fair, as well as efficient and productive. New forms of public advocacy and public education, from radio talk shows to popular movies to web-based materials, will need support to generate community sentiment in support of social justice goals. At the same time, support for litigation and legal advocacy will remain as necessary and important as at any point in the Foundation’s history.

### **Notes**

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1. In 1970, the Foundation launched an ambitious “Public Interest Law” initiative designed to support improvements in areas such as consumer rights, health care, and pollution. The program began with a grant to the Center on Law and Social Policy; over the next decade nine other public interest firms received support as well. In 1980, the Foundation awarded “terminal grants” to these public interest recipients and withdrew from involvement in the program.

### Appendix: People Interviewed for This Study

**Lorna Babby**

Staff Attorney, Native American Rights Fund, Washington, D.C.

**Janet Benshoof**

President, Center for Reproductive Law and Policy, New York

**Louis Bograd**

Staff Counsel, American Civil Liberties Union, Washington, D.C.

**Kathy Bonk**

Executive Director, Communications Consortium Media Center, Washington, D.C.

**Janell Byrd**

Staff Attorney, NAACP Legal Defense and Educational Fund, Inc., Washington, D.C.

**Luke Cole**

Director of the Center on Race, Poverty and the Environment, a project of the California Rural Legal Assistance Foundation, San Francisco, CA

**Dayna Cunningham**

Rights Officer, The Rockefeller Foundation, New York

**Ron Daniels**

Executive Director, Center for Constitutional Rights, New York

Nancy Davis  
Former Director, Equal Rights Advocates, San Francisco,  
CA

Robert Dinerstein  
Professor and Associate Dean for Academic Affairs, Washington  
College of Law, American University, Washington, D.C.

Alan Divack  
Archivist, The Ford Foundation, New York

Susan Drake  
Executive Director, National Immigrant Legal Support Center,  
Los Angeles, CA

John E. Echohawk  
Executive Director, Native American Rights Fund, Boulder,  
CO

Theresa Fay-Bustillos  
Vice President of Legal Programs, Mexican American Legal  
Defense and Educational Fund, Los Angeles, CA

Shepard Forman  
Director, Center on International Cooperation, New York

Susan Goering  
Executive Director, ACLU of Maryland, Baltimore, MD

William Goodman  
Legal Director, Center for Constitutional Rights, New York

Patricia Grayson  
Director of Development, NAACP Legal Defense and Educa-  
tional Fund, Inc., New York

Jennifer M. Green  
Staff member, Center for Constitutional Rights, New York

Jack Greenberg  
Adjunct Professor, Columbia University School of Law, New York

Marcia Greenberger  
Co-President, National Women's Law Center, Washington, D.C.

Diane L. Gross  
Program Director, Americans for a Fair Chance, Washington, D.C.

Lucas Guttentag  
Director, Immigrants' Rights Project, American Civil Liberties Union, San Francisco, CA

Christopher A. Hansen  
Senior Staff Counsel, American Civil Liberties Union, New York

Keith M. Harper  
Senior Staff Attorney, Native American Rights Fund, Washington, D.C.

Simon Heller  
Director of Litigation, Center for Reproductive Law and Policy, New York

Antonia Hernandez  
President and General Counsel, Mexican American Legal Defense and Education Fund, Los Angeles, CA

Irma Herrera  
Executive Director, Equal Rights Advocates, San Francisco, CA

Taryn Higashi  
Program Officer, Refugee and Migrant Rights, The Ford Foundation, New York

Jaribu Hill  
Director, Center for Constitutional Rights-South, Greenville, MS

Lynn Walker Huntley  
Director, Comparative Human Relations Initiative, Southern  
Education Foundation, Atlanta, GA

Alan Jenkins  
Program Officer, Racial Justice and Minority Rights, The Ford  
Foundation, New York

Linton Joaquin  
Litigation Director, National Immigrant Legal Support Center,  
Los Angeles, CA

Elaine Jones  
President and Director-Counsel, NAACP Legal Defense and  
Educational Fund, Inc., New York

George H. Kendall  
Staff Attorney, NAACP Legal Defense and Educational Fund,  
Inc., New York

Lewis Kornhauser  
Alfred and Gail Engelberg Professor of Law, New York  
University School of Law, New York

Richard Larsen  
Staff Attorney, NAACP Legal Defense and Educational Fund,  
Inc., Western Regional Office, Los Angeles, CA

Judith Lichtman  
President, National Partnership for Women & Families,  
Washington, D.C.

Vivian Lindermayer  
Development Director, Center for Constitutional Rights, New  
York

Stephen Loffredo  
Associate Professor, City University of New York Law School,  
New York

Geraldine D. Mannion  
Chair, Democracy Program and Special Projects, Carnegie Corporation, New York

Mary McClymont  
Senior Director, Peace and Social Justice Program, The Ford Foundation, New York

Cindy Morano  
Senior Organizer, Wider Opportunities for Women, Oakland, CA

Karen Narasaki  
Executive Director, National Asian Pacific American Legal Consortium, Washington, D.C.

Burt Neuborne  
John Norton Pomeroy Professor of Law, New York University School of Law, and Legal Director, Brennan Center for Justice at New York University School of Law, New York

Helen Neuborne  
Deputy Director, Human Development and Reproductive Health, The Ford Foundation, New York

Barbara Olshansky  
Assistant Legal Director, Center for Constitutional Rights, New York

Robert Peregyv  
Senior Staff Attorney, Native American Rights Fund, Washington, D.C.

Anika Rahman  
Director, International Program, Center for Reproductive Law and Policy, New York

Rene A. Redwood  
Executive Director, Americans for a Fair Chance, Washington, D.C.

Anthony Romero  
Director, Human Rights and International Cooperation, The Ford Foundation, New York

Charles F. Sabel  
Professor of Law and Social Science, Columbia University School of Law, New York

Elizabeth M. Schneider  
Professor of Law, Brooklyn Law School, Brooklyn, New York

Steven R. Shapiro  
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Theodore M. Shaw  
Associate Director-Counsel, NAACP Legal Defense and Educational Fund, Inc., New York

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Verna Williams  
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