

NON-VIOLENT DIRECT ACTION AND THE LEGISLATIVE PROCESS: THE CHICAGO FREEDOM MOVEMENT AND THE FEDERAL FAIR HOUSING ACT

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If out of [the Chicago Freedom Movement] came a fair housing bill, just as we got a public accommodations bill out of Birmingham and a right to vote out of Selma, the Chicago movement was a success, and a documented success.

Jesse Jackson¹

INTRODUCTION

Fresh from the success of the 1965 Selma, Alabama, voting rights campaign and the passage of the landmark Voting Rights Act, Martin Luther King and the Southern Christian Leadership Conference (“SCLC”) decided to take their Southern civil rights movement north to Chicago.² Dr. King and the SCLC joined forces with local Chicago activists to launch the Chicago Freedom Movement (“CFM”).³ The Southern civil rights activists decided that the Movement needed to address racism and poverty in the urban North and selected Chicago as the first site of this new initiative. The objectives to be achieved and the strategies and tactics to be employed remained to be determined.

By the middle of 1966, the CFM decided to target racial discrimination and segregation in Chicago’s housing market.⁴ That summer witnessed a direct action campaign aimed at white neighborhoods that excluded Blacks⁵—starting

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1. *The Chicago Freedom Movement—Activists Sound Off* (Chicago Public Radio broadcast Aug. 23, 2006) (on file with the Indiana Law Review), available at http://audio.wbez.org/848/2006/08/848_20060823c.mp3.

2. ALAN B. ANDERSON & GEORGE W. PICKERING, *CONFRONTING THE COLOR LINE: THE BROKEN PROMISE OF THE CIVIL RIGHTS MOVEMENT IN CHICAGO* 162, 172-73 (1986); TAYLOR BRANCH, *AT CANAAN’S EDGE: AMERICA IN THE KING YEARS 1965-68*, at 321 (2006); DAVID J. GARROW, *BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE* 442-44 (1986) [hereinafter GARROW, *BEARING THE CROSS*]; JAMES R. RALPH, JR., *NORTHERN PROTEST: MARTIN LUTHER KING, JR., CHICAGO, AND THE CIVIL RIGHTS MOVEMENT* 1 (1993).

3. RALPH, *supra* note 2, at 1, 54-55.

4. *See infra* Part I.C-D.

5. “Black” is capitalized whenever it refers to Black people, to indicate that Blacks, or African Americans, make up a specific cultural group with its own history, traditions, experience,

with testing for racial discrimination and vigils at real estate brokers' offices and escalating into a series of marches into white neighborhoods to dramatize their exclusionary character.⁶ The leaders hoped that their Chicago initiative would also provide a model for similar campaigns in other Northern cities.⁷

This Article focuses on yet another goal of the CFM—to raise the nation's awareness about the problem of housing discrimination and to press Congress to enact the pending corrective legislation.⁸ The Article argues that the CFM contributed to both the initial failure in 1966, and the final success in 1968, of the effort to secure passage of a federal fair housing law.⁹ Ironically, the Movement made an unlikely prospect—passage of fair housing legislation in 1966—even more unlikely.¹⁰ However, in 1968, Congress managed to enact a fair housing law.¹¹ This time around, the CFM contributed to the bill's surprising passage.¹² This Article will show how, through a series of indirect effects, the CFM contributed to the bill's passage, notwithstanding its contrary impact two years earlier.¹³

Part I provides background on the purposes and strategies of the CFM. Part II examines the CFM's impact on the unsuccessful effort to enact fair housing legislation in 1966. Finally, Part III assesses the indirect effects of the Chicago Movement in helping to facilitate the enactment of the Fair Housing Act in 1968.

I. THE CFM

A. *Why Go North?*

Martin Luther King saw racial discrimination as a national problem.¹⁴ Racism in the North had manifested itself in overt and covert discriminatory

and identity—not just people of a particular color. Using the uppercase letter signifies recognition of the culture, as it does with Latinos, Asian Americans, or Native Americans. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Litigation in Anti-Discrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988).

6. Mary Lou Finley, *The Open Housing Marches: Chicago, Summer '66*, in CHICAGO 1966: OPEN HOUSING MARCHES, SUMMIT NEGOTIATIONS, AND OPERATION BREADBASKET 1, 19-24 (David J. Garrow ed., 1989) [hereinafter CHICAGO 1966]; RALPH, *supra* note 2, at 114, 117, 119.

7. ANDERSON & PICKERING, *supra* note 2, at 183.

8. *See infra* Part I.C.

9. Some activists, such as Jesse Jackson, claim that the CFM contributed to the passage of the Fair Housing Act in 1968. James Ralph, a key historian of the Movement, makes a similar argument. James Ralph, *Assessing the Chicago Freedom Movement*, POVERTY & RACE, May/June 2006 [hereinafter *Assessing the Chicago Freedom Movement*].

10. *See infra* Part II.

11. Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (1968) (codified as amended at 42 U.S.C. §§ 3601-3619 (2000)).

12. *See infra* Part III.

13. *See infra* Part III.

14. GARROW, BEARING THE CROSS, *supra* note 2, at 452.

policies and practices, rather than unjust laws; however, the Northern racism had effects just as devastating as the Jim Crow laws and customs of the South.¹⁵

Dr. King envisioned the civil rights movement as a national movement rather than a regional one.¹⁶ While its roots were in the South, King's larger vision included creating a national movement to address the racial inequality that pervaded American society.¹⁷ That meant an ideological shift, away from attacking the legal segregation of the South to focusing on the poverty, living conditions, and segregation of Blacks in the Northern cities.¹⁸ King viewed a Northern campaign as a logical next step in the organization's efforts to apply its Southern strategies and tactics to the rest of the country.¹⁹ At the same time, the SCLC had lost some of its momentum and direction after Selma.²⁰ After its voting rights success, the organization found itself searching for a new direction.²¹ For King, the new direction was north, where he could make the case to the public and to those in power locally and nationally that race was an American problem.

The reality of the conditions for Blacks in the urban north became evident to the country in the summer of 1965, when the Los Angeles community of Watts erupted in violence.²² The Watts rebellion demonstrated dramatically that eliminating the formal barriers of discrimination in the South left the problems

15. ANDERSON & PICKERING, *supra* note 2, at 2; *Program of the Chicago Freedom Movement* (July, 1966), in CHICAGO 1966, *supra* note 6, at 97-98.

16. GARROW, *BEARING THE CROSS*, *supra* note 2, at 452 (noting that King said that "the movement had to transform itself from a southern to a countrywide effort"); RALPH, *supra* note 2, at 31. King felt a moral duty to address racism at the national level. *Id.* at 33. Additionally, as SCLC's efforts had always included an eye toward encouraging federal action, taking the movement national also seemed a natural step. See ADAM FAIRCLOUGH, *TO REDEEM THE SOUL OF AMERICA: THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE & MARTIN LUTHER KING, JR.* 7 (1987).

17. BRANCH, *supra* note 2, at 319-21; GARROW, *BEARING THE CROSS*, *supra* note 2, at 430, 452; RALPH, *supra* note 2, at 29-34.

18. See ANDERSON & PICKERING, *supra* note 2, at 153; BRANCH, *supra* note 2, at 282, 319-20; GARROW, *BEARING THE CROSS*, *supra* note 2, at 430, 452; RALPH, *supra* note 2, at 29-32; Finley, *supra* note 6, at 1, 1.

19. See ANDERSON & PICKERING, *supra* note 2, at 153; BRANCH, *supra* note 2, at 319-20; GARROW, *BEARING THE CROSS*, *supra* note 2, at 430, 452-53; RALPH, *supra* note 2, at 29-32; Finley, *supra* note 6, at 1, 1.

20. RALPH, *supra* note 2, at 33; FAIRCLOUGH, *supra* note 16, at 253-55.

21. ANDERSON & PICKERING, *supra* note 2, at 150; LEE RAINWATER & WILLIAM L. YANCEY, *THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY* 9-10 (1967).

22. BRANCH, *supra* note 2, at 284-85, 288-89. "In August . . . , a police stop . . . escalated into six days of chaos that left thirty-four people dead, nine hundred injured, and four thousand arrested." CHRISTOPHER BONASTIA, *KNOCKING ON THE DOOR: THE FEDERAL GOVERNMENT'S ATTEMPT TO DESEGREGATE THE SUBURBS* 77 (2006). Fourteen-thousand National Guard members joined with several thousand local police to get the situation under control. *Id.*

of race and poverty that beset the rest of the country untouched.²³ The violence in Watts convinced Martin Luther King that he needed to take his movement to the urban North and demonstrate that non-violence could be effective there.²⁴

Still, the idea of taking the movement north had its detractors within SCLC.²⁵ They argued that a Northern movement would face opponents who were more sophisticated than the Southern law enforcement officials whose violent reactions to the civil rights marches garnered nationwide support for activists.²⁶ In addition, SCLC's fundraising base, which was primarily Northern, would suffer if the movement left the South.²⁷ The SCLC's supporters could have been offended at the thought that they, or their communities, were being accused of racial discrimination. The organization's proven recruitment base was in the South, thus a Northern initiative might face greater uncertainty on the recruiting front as well.²⁸

Still other concerns revolved around the perceived unfinished business in the South. Some SCLC activists thought there was too much work left to be done in the South, including voter registration initiatives to make the promise of the hard-won Voting Rights Act of 1965 into a reality.²⁹

B. Why Chicago?

Having decided that it was time for an initial foray into a Northern city, King and his SCLC colleagues spent much of the summer of 1965 visiting potential sites for their first Northern movement.³⁰ That summer witnessed exploratory

23. GARROW, BEARING THE CROSS, *supra* note 2, at 439; Ronald E. Shaw, *A Final Push for National Legislation: The Chicago Freedom Movement*, J. ILL. ST. HIST. SOC'Y 304, 317 (2001).

24. BRANCH, *supra* note 2, at 319; RALPH, *supra* note 2, at 31-32, 38-39. King came to believe that SCLC made a mistake in neglecting the cities of the North. ADAM COHEN & ELIZABETH TAYLOR, AMERICAN PHAROAH—MAYOR RICHARD J. DALEY: HIS BATTLE FOR CHICAGO AND THE NATION 347 (2000).

25. The skeptics included King's close advisor Bayard Rustin and union leader Don Slaiman, the Executive Director of the AFL-CIO. BRANCH, *supra* note 2, at 320.

26. GARROW, BEARING THE CROSS, *supra* note 2, at 437.

27. BRANCH, *supra* note 2, at 320.

28. *Id.*

29. Bayard Rustin argued that the passage of that legislation made it imperative for SCLC to keep its focus on the South. "He urged King to go 'from city to city, and from county to county, leading people into voter registration centers.'" JOHN D'EMILIO, LOST PROPHET: THE LIFE AND TIMES OF BAYARD RUSTIN 454 (2003).

Rustin believed that "SCLC's special mission [was] to transform the eleven southern states." COHEN & TAYLOR, *supra* note 24, at 330. He also believed, that "[t]here [would not] be any real change in American politics and the American social situation until that [was] done." *Id.* Andrew Young expressed skepticism that the Justice Department would take the steps to make the legal changes a reality on the ground. *Id.* Young also cautioned that the organization's limited resources could not support the move North while maintaining a presence in the South. *Id.*

30. GARROW, BEARING THE CROSS, *supra* note 2, at 435-37; RALPH, *supra* note 2, at 34-38.

trips to Cleveland, Philadelphia, and Washington, D.C., as well as Chicago.³¹ Chicago soon emerged as the most attractive possibility, due to its own appealing aspects as well as the shortcomings of the other options that the SCLC considered.³²

Chicago seemed to epitomize the urgent problems of urban poverty and racial segregation that drew Dr. King's attention to the North in the first place.³³ It represented the plight and challenges of Northern cities—writ large.³⁴ The city's size and extreme segregation made it an appealing site for the initial Northern thrust.³⁵ Moreover, Chicago's segregation made the city ripe for creating opportunities for the kind of confrontations and drama that had been the source of much of SCLC's Southern success.³⁶

King believed that change in Chicago could serve as a catalyst for action in other Northern cities, leading to major changes elsewhere.³⁷ He hoped to create a pattern for action in Chicago that could be replicated in other Northern cities.³⁸

King wanted to demonstrate that nonviolent tactics could work in the North, while also raising the consciousness of the nation about racism and its consequences there.³⁹ He hoped "that Chicago . . . could well become the metropolis where a meaningful nonviolent movement could arouse the

31. RALPH, *supra* note 2, at 34-39. Local Black politicians in New York and Philadelphia quickly made clear their opposition to the movement choosing their cities. *Id.* at 35-36. King did not even visit New York, after a local Black leader, Adam Clayton Powell, informed reporters that the local Black leadership did not need King. BRANCH, *supra* note 2, at 321; GARROW, BEARING THE CROSS, *supra* note 2, at 435; RALPH, *supra* note 2, at 35.

Cecil B. Moore, President of the Philadelphia NAACP, cautioned that a visit from King would merely "divide the black community." See RALPH, *supra* note 2, at 36, 39; GARROW, BEARING THE CROSS, *supra* note 2, at 435. Though local King supporters convinced Moore to invite King to Philadelphia, and King did ultimately visit the city that summer, he knew that Moore's volatility made the city an unwise choice. RALPH, *supra* note 2, at 36. Cleveland was not large enough, and Washington was an "imprudent" pick, given the strained relationship between King and the White House. *Id.* at 39.

32. ANDERSON & PICKERING, *supra* note 2, at 143-44, 197; RALPH, *supra* note 2, at 39.

33. RALPH, *supra* note 2, at 39.

34. *Id.*

35. See DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 47 tbl. 2.3 (1993); RALPH, *supra* note 2, at 39. In 1959, the U.S. Civil Rights Commission called Chicago the country's "most residentially segregated large city." COHEN & TAYLOR, *supra* note 24, at 347.

36. See ANDERSON & PICKERING, *supra* note 2, at 197; RALPH, *supra* note 2, at 39.

37. King suggested, "Chicago represents all the problems that you find in the major [metropolitan] areas of the country. . . . If we can break the system in Chicago, it can be broken any place in the country." ANDERSON & PICKERING, *supra* note 2, at 183.

38. ANDERSON & PICKERING, *supra* note 2, at 183; Shaw, *supra* note 23, at 318.

39. ANDERSON & PICKERING, *supra* note 2, at 183; GARROW, BEARING THE CROSS, *supra* note 2, at 444; Shaw, *supra* note 23, at 317-18; see also RALPH, *supra* note 2, at 105.

conscience of this nation to deal realistically with the northern ghetto.”⁴⁰ He believed that success in Chicago could bring significant national press and attention.⁴¹

Chicago also seemed to have the potential for mobilization of a major movement. King believed that local people wanted and needed his movement to come to the city. By the summer of 1965, he had already become familiar with the city. During the previous summer, King had participated in the Illinois Rally for Civil Rights at Soldier Field in Chicago.⁴² The rally, held on June 21, two days after the passage of the Civil Rights Act of 1964, was meant to celebrate the new Act and encourage progress in civil rights in Illinois and Chicago, including integration of the city’s schools.⁴³ King delivered a speech to 75,000 people.⁴⁴ The rally was the largest civil rights gathering ever held in Chicago.⁴⁵

King also received a very warm welcome from the public, including the Black community and local activists, during his July 1965 exploratory visit.⁴⁶ He spoke to large, enthusiastic crowds, and led a group protesting Chicago’s segregation on a march to City Hall.⁴⁷

King found in the city what he believed to be a strong, experienced organizational base on which to build. Chicago had an active and experienced local movement that was eager to join forces with SCLC.⁴⁸ King was very impressed with the Coordinating Council of Community Organizations—known as CCCO or Triple C-O. This was a coalition of civil rights organizations, community groups, and church groups that for several years prior to King’s arrival protested Chicago’s “separate and unequal” schools.⁴⁹ These prior efforts

40. GARROW, BEARING THE CROSS, *supra* note 2, at 444. King announced at an SCLC executive staff meeting on August 26, 1965, that the movement would go to Chicago. RALPH, *supra* note 2, at 38-39. He explained that “[t]he present mood dictates that we cannot wait.” *Id.* at 39.

41. See RALPH, *supra* note 2, at 39.

42. *Id.*

43. ANDERSON & PICKERING, *supra* note 2, at 138.

44. RALPH, *supra* note 2, at 39.

45. See ANDERSON & PICKERING, *supra* note 2, at 138.

46. RALPH, *supra* note 2, at 39.

47. GARROW, BEARING THE CROSS, *supra* note 2, at 433-34; see also RALPH, *supra* note 2, at 39.

48. GARROW, BEARING THE CROSS, *supra* note 2, at 434; RALPH, *supra* note 2, at 39-40; Mary Lou Finley, *The Open Housing Marches: Chicago, Summer '66*, in CHICAGO 1966, *supra* note 6, at 1, 2.

49. RALPH, *supra* note 2, at 14-28, 39-40; Finley, *supra* note 6, at 1, 2. King said that “[s]ince there is a vibrant, active movement alive [in Chicago], we felt that this was the first community in which we should work and start our visits in the north.” GARROW, BEARING THE CROSS, *supra* note 2, at 434.

For several years, CCCO had fought against school segregation in Chicago. After letters to the Board of Education, conversations with school officials, and testimony at public meetings

faced great resistance from school and city officials, and made very little progress as a result.⁵⁰ The organization's leaders hoped that Dr. King's reputation and organization would inject energy and experience into the movement to address the City's racial problems.⁵¹ Both the presence of what appeared to be a well-developed organization and the persistent entreaties from its leaders to come to Chicago added to the city's appeal.⁵²

Mayor Richard J. Daley's position as the city's leader also attracted King. Some aspects of Daley's record and rhetoric led King to believe that the Mayor could be persuaded to respond positively to the Movement's concerns.

Daley had demonstrated his support for SCLC's Southern civil rights movement. Andrew Young, Dr. King's chief aide, recalled that

one of SCLC's most successful fund-raisers had been held in Chicago with the sponsorship of Mayor Daley and Mahalia Jackson: [In this 1963 event,] SCLC took home virtually all the money that was contributed.^[53] Daley and his operatives persuaded vendors not to charge us for

gained no ground for the group, the organization turned to demonstrations, sit-ins, and boycotts. On October 22, 1963, CCCO sponsored a school boycott. ANDERSON & PICKERING, *supra* note 2, at 118-19. Nearly 225,000 youth stayed out of school—by far CCCO's largest protest. *Id.* at 119. However, the impressive boycott had little, if any, effect in changing school board policies or practices. *Id.* at 127-28.

Much of the CCCO's activism focused on the removal of School Superintendent Benjamin J. Willis, who was viewed with great suspicion by the Black community. However, his support among whites was so strong that when he offered his resignation in 1963, the white-dominated Board of Education refused it. A second CCCO boycott in February 1964, could not match the scale of the previous one. *Id.* at 133. As a result, CCCO began to lose some of its focus and zeal. *Id.* at 133-40.

50. The CCCO's efforts to desegregate Chicago's schools were met with significant resistance from both Superintendent Benjamin J. Willis and the Board of Education, primarily in the form of silence or outright refusal to discuss the concerns of Black Chicagoans. Even small concessions, such as a modest voluntary transfer plan, precipitated widespread white resistance, leading school officials to back off from their initiatives. ANDERSON & PICKERING, *supra* note 2, at 113, 116-17, 137, 142.

51. RALPH, *supra* note 2, at 7, 34. It was important to SCLC that local activists sought to join forces. King and his colleagues had learned hard lessons in the South about the importance of working closely with local leaders. COHEN & TAYLOR, *supra* note 24, at 347-48.

52. King and the SCLC were impressed with the CCCO's Chairman, Albert Raby, as well as with the vigorous movement in progress in Chicago. GARROW, BEARING THE CROSS, *supra* note 2, at 434; RALPH, *supra* note 2, at 39; Shaw, *supra* note 23, at 318. In addition, James Bevel, King's long-time trusted advisor and SCLC Director of Direct Action, had moved to Chicago to accept a post at a local church earlier that year. RALPH, *supra* note 2, at 40. King viewed the presence of someone who was an integral part of previous direct action movements as an important asset for a Chicago campaign. RALPH, *supra* note 2, at 40-42; Finley, *supra* note 6, at 1, 2.

53. Taylor Branch describes the celebratory event. TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS 1954-63 805-06 (1988).

expenses. This was not the kind of thing Martin forgot.⁵⁴

In 1965, Mayor Daley had even praised King publicly, stating that “all right-thinking Americans should support” King’s goals of ending poverty and discrimination, and emphasizing Daley’s own desire to end poverty, slums, discrimination, and segregation.⁵⁵ Daley also invited King to meet with him so he could show the visitor the City’s progress on civil rights.⁵⁶ However, on that trip King declined the invitation to meet with the mayor, citing his tightly-packed schedule.⁵⁷

Daley had taken steps to further Blacks’ progress in the city. He supported Blacks for elective office and hired Blacks to patronage positions.⁵⁸ In addition, in 1963, Daley proposed, and the City Council passed, a local fair housing ordinance—another indication that he might be sympathetic to CFM’s concerns.⁵⁹

King also believed that it was advantageous that Daley was such a strong Mayor who seemed to have the power to bring about significant change.⁶⁰ The mayor’s dominance represented a contrast to other Northern cities, where power was much more diffused.⁶¹ With so much political power centralized in one person, King thought that persuading Daley to take action could bring about major changes in Chicago.⁶² Mayor Daley’s power at the national level also presented the possibility that putting pressure on him would lead to pressure on officials in Washington to act.⁶³

The idea of going to Chicago elicited substantial controversy within the movement. Bayard Rustin, one of King’s key advisors since the Montgomery bus boycott a decade earlier, believed that challenging Mayor Daley was naïve and ill-advised. He warned King:

You don’t know what Chicago is like. . . . There are powerful political

54. ANDREW YOUNG, *AN EASY BURDEN: THE CIVIL RIGHTS MOVEMENT AND THE TRANSFORMATION OF AMERICA* 406 (1996).

55. ROGER BILES, *RICHARD J. DALEY: POLITICS, RACE, AND THE GOVERNING OF CHICAGO* 111 (1995) [hereinafter BILES, RICHARD J. DALEY]; COHEN & TAYLOR, *supra* note 24, at 340.

56. GARROW, *BEARING THE CROSS*, *supra* note 2, at 433.

57. *Id.*

58. COHEN & TAYLOR, *supra* note 24, at 359.

59. RALPH, *supra* note 2, at 279 n.68.

60. COHEN & TAYLOR, *supra* note 24, at 337-38; GARROW, *BEARING THE CROSS*, *supra* note 2, at 444; RALPH, *supra* note 2, at 39; Finley, *supra* note 6, at 1, 2.

61. BILES, RICHARD J. DALEY, *supra* note 55, at 119.

62. The Democratic political machine was so notoriously powerful that King believed that Daley and Chicago’s other leaders would have the ability to make needed changes, if they could just be convinced. GARROW, *BEARING THE CROSS*, *supra* note 2, at 444. King thought that success would be more likely in a city where the power was centralized in one person, rather than one like New York, where far more people would need to be convinced. COHEN & TAYLOR, *supra* note 24, at 337.

63. Finley, *supra* note 6, at 1, 13.

figures. You've got the Daley machine to deal with. . . . You've got problems . . . which you don't have in the little southern communities that you are accustomed to. . . . [T]here is no political vacuum in Chicago. . . . You're going to be wiped out.⁶⁴

Others shared Rustin's view that Mayor Daley would be a major obstacle to progress.⁶⁵ He was a far more sophisticated adversary than those they encountered in the South.⁶⁶ He was not likely to counter demonstrations with violence that would give the Movement political and media victories, but would employ more subtle and effective defenses.

The challenges abounded. Chicago was far larger and more complex than any of the Southern cities in which the SCLC had worked.⁶⁷ The city's population of three million, one-third of whom were Black, dwarfed both the overall and Black populations of Southern cities like Selma and Birmingham.⁶⁸ Also, the city lacked the highly visible, legally and culturally embedded Jim Crow system that had provided an obvious target in the South.⁶⁹

At least one key advisor, Andrew Young, expressed concern that Chicago's Black residents would not be receptive to King's non-violent campaign.⁷⁰ The Democratic machine held great sway in the city's Black community. Black City Council members and other elected officials displayed unwavering loyalty to the Daley machine, which also reached deep into the Black community with its thousands of patronage jobs.⁷¹ Many Black churches also had close ties to the political establishment.⁷²

64. D'EMILIO, *supra* note 29, at 454; *see* COHEN & TAYLOR, *supra* note 24, at 330; GARROW, *BEARING THE CROSS*, *supra* note 2, at 455.

65. COHEN & TAYLOR, *supra* note 24, at 330; GARROW, *supra* note 2, at 455.

66. ANDERSON & PICKERING, *supra* note 2, at 183; *see* BRANCH, *supra* note 2, at 444. In fact, Daley's political sophistication created significant problems for the Movement. *See infra* notes 92-93 and accompanying text.

67. Chicago had nearly a million Black residents crammed into ghettos, primarily on the south and west sides of the city. FAIRCLOUGH, *supra* note 16, at 280. The sheer scale of a movement necessary to impact a city of that size made the challenge daunting. Also, rather than racist laws, Chicago had racist conditions in the form of "block by block housing segregation" and a neighborhood school system that created de facto segregation. ANDERSON & PICKERING, *supra* note 2, at 68.

68. BILES, RICHARD J. DALEY, *supra* note 55, at 119.

69. RALPH, *supra* note 2, at 98.

70. D'EMILIO, *supra* note 29, at 455.

71. BILES, RICHARD J. DALEY, *supra* note 55, at 119-20.

72. Cohen and Taylor suggested that many Blacks supported and appreciated Mayor Daley and did not want King to challenge him:

Daley, who needed black votes in a way that southern politicians did not, had handed out elected offices, patronage jobs, and money in the black community, and had singled out a few Dawsons and Metcalfs to represent blacks on a citywide level. These black leaders, and their armies of patronage workers, had a personal stake in the status quo,

Further, the frustrating experience of the previous several years' civil rights efforts provided additional cause for concern. The presence of CCCO's developed, active movement seemed to be an advantage to choosing Chicago; however, the fact that its efforts to combat school segregation had largely met with failure raised serious questions about the possibilities for bringing about change in the city.⁷³

C. *Why Fair Housing?*

When SCLC announced in September 1965, that it would join forces with the CCCO and form the "Chicago Freedom Movement," the organization's specific objectives and strategies remained to be determined.⁷⁴ Initially, most Chicago activists expected the new movement to continue to challenge the city's segregated and unequal schools.⁷⁵ However, it soon became clear that this effort had run its course. Boycotts, demonstrations, and litigation had met with little success.⁷⁶ In addition, Superintendent Benjamin Willis, whose intransigence had motivated much of the protest, announced that he was taking early retirement.⁷⁷ His departure from the scene dampened the urgency of that effort.⁷⁸

More importantly, Black Chicagoans faced many other problems besides the separate and unequal schools, including housing, jobs, and other economic woes.⁷⁹ By the fall of 1965, the Movement defined its goals in very broad terms: to end slums and attack the segregation that pervaded the city.⁸⁰ It struggled to define more specific objectives and strategies to pursue those goals. Narrowing the Movement's efforts was especially difficult given the breadth of problems Black Chicagoans faced, as well as the challenge of convincing local groups and activists to come together around a single agenda and give up some of their own projects.⁸¹

in a way that few blacks in Selma or Birmingham did.

COHEN & TAYLOR, *supra* note 24, at 359.

Bayard Rustin warned that "you've got the powerful black ministers who are going to be jealous of you coming in here." D'EMILIO, *supra* note 29, at 454.

73. See FAIRCLOUGH, *supra* note 16, at 283.

74. Finley, *supra* note 6, at 1, 3; see GARROW, BEARING THE CROSS, *supra* note 2, at 442-43.

75. ANDERSON & PICKERING, *supra* note 2, at 173.

76. *Id.* at 121; see BRANCH, *supra* note 2, at 506.

77. RALPH, *supra* note 2, at 98.

78. *Id.*

79. ANDERSON & PICKERING, *supra* note 2, at 173-89.

80. Though SCLC and CCCO came to view a system that bred slums and poverty, there was no overall action plan for the Movement. RALPH, *supra* note 2, at 50-51. Coalition members wanted to address a number of problems facing Northern cities, including education, housing, poverty, wages, and employment practices, in an effort to create a blueprint for change. ANDERSON & PICKERING, *supra* note 2, at 182-83. It quickly became clear that the scope of the Movement's goals was moving beyond basic civil rights to encompass human rights. *Id.* at 183.

81. ANDERSON & PICKERING, *supra* note 2, at 187; RALPH, *supra* note 2, at 95.

Slum conditions pervaded many of the city's Black neighborhoods.⁸² Many Blacks were forced to live in "dingy, unsanitary apartments," which lacked heat and hot water, and were often rat infested.⁸³ For the privilege of living in such quarters, Blacks paid far more in rent than a family in a white neighborhood would pay for a comparable apartment.⁸⁴ This reality led to a plan at the beginning of 1966 to address the problem of economic exploitation by ridding the city of slums, which the Movement saw as representing most of the problems Blacks faced.⁸⁵ The first initiative aimed to organize residents of the city's West Side Black community into an "end slums" Movement.⁸⁶ It targeted local slum landlords and attempted to bring national attention to issues of poverty.⁸⁷

Activists planned to move this campaign from organizing and mobilizing residents to staging small demonstrations and, eventually, substantial protests in May 1966.⁸⁸ However, as CFM began to realize just how much effort it would take to effectively organize the Black community, and as the self-imposed deadline of the summer of 1966 came closer, it became clear that a change of direction was required.⁸⁹

The effort to address slum conditions had encountered both internal and external obstacles. Organizing low-income tenants was a slow, difficult process, even for professional community organizers.⁹⁰ The SCLC typically had a very different *modus operandi*—mobilizing large numbers of people for dramatic, short-term movements and then moving on to another community.⁹¹

At the same time, Mayor Daley announced his own anti-slums campaign, to pre-empt the slums issue by using local and federal funds to improve housing and living conditions enough to defuse public criticism.⁹² Daley's rhetoric, as well

82. ANDERSON & PICKERING, *supra* note 2, at 188-89; GARROW, BEARING THE CROSS, *supra* note 2, at 456, 461; *see* RALPH, *supra* note 2, at 43.

83. FAIRCLOUGH, *supra* note 16, at 284; GARROW, BEARING THE CROSS, *supra* note 2, at 461.

84. FAIRCLOUGH, *supra* note 16, at 284.

85. ANDERSON & PICKERING, *supra* note 2, at 188-89; GARROW, BEARING THE CROSS, *supra* note 2, at 456.

86. RALPH, *supra* note 2, at 50; *see* GARROW, BEARING THE CROSS, *supra* note 2, at 457.

87. NICK KOTZ, JUDGMENT DAYS: LYNDON BAINES JOHNSON, MARTIN LUTHER KING JR., AND THE LAWS THAT CHANGED AMERICA 363 (2005). In one of the more publicized events of the end of the slums movement, King and other CFM members took over a slum building, claiming trusteeship over the building with a plan to collect rent from tenants to fix up the building. ANDERSON & PICKERING, *supra* note 2, at 191; BRANCH, *supra* note 2, at 440-41. Unfortunately, the landlord turned out to be an ailing, elderly man who could not afford the upkeep, rather than a poster child for slum landlords. ANDERSON & PICKERING, *supra* note 2, at 191; BRANCH, *supra* note 2, at 441.

88. GARROW, BEARING THE CROSS, *supra* note 2, at 456-58; RALPH, *supra* note 2, at 43.

89. *See* RALPH, *supra* note 2, at 89; Finley, *supra* note 6, at 1, 6.

90. FAIRCLOUGH, *supra* note 16, at 288.

91. *Id.*

92. COHEN & TAYLOR, *supra* note 24, at 363; RALPH, *supra* note 2, at 86-87. Just as King

as his actions, were overshadowing the CFM's initiatives to address the problems of the slums.⁹³ The CFM would need to pursue a different strategy in order to move beyond Daley's shadow.

It was not until late June 1966, that the CFM leadership settled on challenging housing discrimination and segregation, which in turn forced large numbers of Blacks to live in slum conditions.⁹⁴ They would embark on an "Open City Campaign."⁹⁵ Fair housing would become the core of the Chicago campaign that summer because of the advantages it offered for a nonviolent, direct action movement.⁹⁶

The problem of housing discrimination had deep roots and a pervasiveness and severity that made it highly visible. Chicago had a long and sad history of housing discrimination that confined Blacks into increasingly overcrowded areas—first, on the city's south side and later on the west side, with a small area on the near north side.⁹⁷ Real estate brokers played a central role in the process, beginning with an official policy adopted in 1917 of excluding Blacks from white

announced the end of the slums program, Daley announced his own anti-slums campaign. COHEN & TAYLOR, *supra* note 24, at 363. Throughout CFM's efforts to dramatize the state of slums in Chicago, Daley made efforts to co-opt their arguments and undercut any drama. *Id.* Soon after King assumed trusteeship of a slum building, Daley reported on the results of his own anti-slums initiative and announced to the press that his team had visited 96,761 poor families and exterminated 1,675,941 rats in its efforts to clean up the slums. *Id.* at 369. Daley also sometimes scheduled his own events to coincide with the CFM public events in an attempt to overshadow the CFM. *See id.* at 501-02.

93. *See* RALPH, *supra* note 2, at 89.

94. *Id.* at 102. Dr. King foreshadowed his concern with segregated housing as early as March 24, 1965, when he spoke to supporters at the end of the voting rights march from Selma to Montgomery, Alabama: "Let us march on segregated housing until every ghetto of social and economic depression dissolves and Negroes and whites live side by side in decent, safe, and sanitary housing." MARTIN LUTHER KING, JR., *THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR.* 285 (Clayborne Carson ed., 1998).

95. ANDERSON & PICKERING, *supra* note 2, at 216.

96. Finley, *supra* note 6, at 1, 12, 14; *see* ANDERSON & PICKERING, *supra* note 2, at 201.

97. Leonard S. Rubinowitz & Ismail Alsheik, *A Missing Piece: Fair Housing and the 1964 Civil Rights Act*, 48 HOW. L.J. 841, 898-900 (2005). Housing discrimination, in both private and public housing, was the "most dramatic, persistent, and pervasive form" of racism in Chicago. *Id.* at 898-99. "[S]upport for racial discrimination and residential segregation came from public officials, the housing industry . . . , and white citizens." *Id.* at 899. Blacks were denied access to predominantly white areas and attacked if they did manage to gain access. *Id.* The 1950s saw episodes of "extensive violence against Black families moving into . . . white neighborhoods," including a mob attacking and burning down the apartment building that a Black family had just moved into in all-white Cicero (a suburb adjacent to Chicago), bombings, acts of arson and attempted arson, and other terrorist incidents. *Id.* Such violence received national and international attention. *Id.*; *see generally* ARNOLD R. HIRSCH, *MAKING THE SECOND GHETTO: RACE & HOUSING IN CHICAGO, 1940-1960* (1983); MASSEY & DENTON, *supra* note 35.

neighborhoods.⁹⁸ Subsequently, racially restrictive covenants became pervasive in large parts of the city.⁹⁹ Throughout the first two-thirds of the twentieth century, violence greeted many Blacks who dared to move into white neighborhoods.¹⁰⁰

Moreover, a fair housing campaign held the potential to create drama and draw attention to Chicago's racism and its consequences.¹⁰¹ Housing segregation was a volatile issue in Chicago that presented the potential for confrontation.¹⁰² In Birmingham and Selma, confrontation and the attendant drama had been the key to the civil rights activists' success. King believed that a similar scenario was required in Chicago.¹⁰³

Also, local activists had already identified significant problems in the housing sales and rental markets.¹⁰⁴ The American Friends Service Committee ("AFSC"), an organization devoted to pursuing social justice, had initiated an open housing project in the Chicago area. The AFSC tested real estate offices to determine whether they discriminated against Black customers.¹⁰⁵ The project found widespread, blatant racial discrimination, thus providing clear evidence on which to base the Movement.¹⁰⁶

Movement leaders hoped that the housing issue would attract a broad base of support within the Black community. Housing discrimination existed in all parts of the housing market, so its impact cut across class and neighborhood lines.¹⁰⁷ Expanding Blacks' housing options could have other benefits, as well. In addition to improving housing conditions, moving into middle-class white neighborhoods could mean better schools and more access to jobs.¹⁰⁸

While housing discrimination may not have been of central concern to much of Chicago's Black community, it did raise questions about basic human

98. ANDERSON & PICKERING, *supra* note 2, at 46-47.

99. *Id.* at 48.

100. Leonard S. Rubinowitz & Imani Perry, *Crimes Without Punishment: White Neighbors' Resistance to Black Entry*, 92 J. CRIM. L. & CRIMINOLOGY 335, 346-47 (2001) (reviewing STEPHEN GRANT MEYER, *AS LONG AS THEY DON'T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS* (2000)); *id.* app. at 416 (Appendix A. Housing-Related Crimes Committed by Whites Against Black Entrants); *see generally* MEYER, *supra*.

101. Finley, *supra* note 6, at 1, 9; *see* ANDERSON & PICKERING, *supra* note 2, at 203-04.

102. *See* GARROW, *BEARING THE CROSS*, *supra* note 2, at 498.

103. *See id.*

104. ANDERSON & PICKERING, *supra* note 2, at 196-201; FAIRCLOUGH, *supra* note 16, at 292; RALPH, *supra* note 2, at 99-102.

105. ANDERSON & PICKERING, *supra* note 2, at 198-99; RALPH, *supra* note 2, at 100-02.

106. ANDERSON & PICKERING, *supra* note 2, at 198-99; FAIRCLOUGH, *supra* note 16, at 292; RALPH, *supra* note 2, at 99, 101-02.

107. Lori G. Waite, *Overcoming Challenges and Obstacles to Social Movement Mobilization: The Case of the Chicago Freedom Movement* (1998) (unpublished Ph.D. dissertation, Northwestern University) (on file with author).

108. COHEN & TAYLOR, *supra* note 24, at 382.

dignity.¹⁰⁹ For some Movement leaders, focusing on Blacks' mistreatment by real estate brokers dramatized the failure of the system to accord Blacks their basic rights as human beings.¹¹⁰ Additionally, open housing was more concrete than education or poverty and provided a clear target for the Movement.¹¹¹ Further, housing segregation in Chicago was the form of Northern racism that most closely resembled the overt nature of Southern racism, which was a known adversary for veterans of SCLC's earlier campaigns.¹¹²

King also favored the fair housing focus because of the possibility of helping to enact federal legislation.¹¹³ Congress was debating President Johnson's fair housing bill at the time.¹¹⁴ In the spring of 1966, King and other civil rights

109. Finley, *supra* note 6, at 1, 8. Journalist Mike Royko said that "Chicagoans already knew about slums. Whites were indifferent and Negroes didn't have to be reminded where they lived." FAIRCLOUGH, *supra* note 16, at 290 (citing MIKE ROYKO, BOSS: RICHARD J. DALEY OF CHICAGO 143 (1988)).

Civil rights activists in other parts of the country also had other priorities than housing discrimination at that time. The Chicago Freedom Movement was one of only twelve of the 181 protests challenging segregation between 1966 and 1970 that targeted housing discrimination. BONASTIA, *supra* note 22, at 78.

110. According to Mary Lou Finley, assistant to James Bevel, Bevel thought that Black men needed to build confidence and to assert themselves as people deserving equal treatment. Finley, *supra* note 6, at 1, 7-8. To Bevel, fair housing was an example of a basic human right. *Id.* If Black men could take a stand on this issue and demand to be treated like human beings, they would build confidence to push them forward in the Movement and build on their success, feeding into subsequent movements. *Id.* at 8. Finley believed that Bevel had probably convinced Dr. King, and that King and Andrew Young sold the idea to CCCO at a meeting on the "demands" shortly before the July 10th rally. *Id.* at 7.

111. RALPH, *supra* note 2, at 101-02. Some also believed that the problem of housing discrimination lent itself to a more straightforward solution than others, since executive or legislative action at the local, state, or federal level could end discrimination in housing. Finley, *supra* note 6, at 1, 8.

112. See BRANCH, *supra* note 2, at 507. King had encountered housing discrimination when he attended graduate school in Boston. GARROW, BEARING THE CROSS *supra* note 2, at 423. That experience may have affected his willingness to focus on fair housing in Chicago. *Id.*

113. As early as January 1966, SCLC had publicly pressed Congress for passage of open housing legislation. FAIRCLOUGH, *supra* note 16, at 285-86 (citing Press Release, Southern Christian Leadership Conference, The Chicago Plan (Jan. 7, 1966)).

On April 13, 1966, SCLC's Executive Board issued a statement: "SCLC therefore calls upon the Congress of the United States to enact compulsive federal fair housing legislation, prohibiting discrimination and segregation in the sale and rental of all housing accommodations, public and private." Shaw, *supra* note 23, at 319 (citing Minutes of Board Meeting, April 13, 1966, TD [photocopy], Southern Christian Leadership Conference, PMLK, 1954-1968, box 29, folder 6, KLAA).

114. H.R. 14765, 89th Cong. (1966), as presented in *Civil Rights, 1966: Hearing on H.R. 14765 Before the Subcomm. No. 5 of the H. Comm. on the Judiciary, 89th Cong.* (1966)

leaders met with President Johnson to discuss the bill.¹¹⁵ The President invited the major civil rights leaders to the White House to solicit their help at a time when civil rights legislation did not seem to have the support or urgency of earlier bills.¹¹⁶ Moreover, President Johnson recognized that fair housing legislation was different from, and more difficult than, anything he had proposed up to that point.¹¹⁷

From the outset of the discussions of housing discrimination as a target, King and others viewed national legislation as at least a secondary goal of the Movement.¹¹⁸ When announcing the Chicago Plan, King stated, “[O]ur objectives in this movement are federal, state and local. On the federal level we would hope to get the kind of comprehensive legislation which would meet the problems of slum life across the nation.”¹¹⁹ Just as the movement in Birmingham had influenced the introduction of the 1964 Civil Rights Act, and the Selma march had been instrumental in the passage of the Voting Rights Act in 1965, King hoped that the Chicago Movement’s shining a light on housing discrimination would lead to legislation that specifically addressed open housing, as well as other civil rights concerns affecting the urban North.¹²⁰ He described the connection: “Congress is debating this issue of open housing this session. You can present bodies or bring about creative tension to expose the problem most creatively.”¹²¹ The connection between a local fight for open housing and

[hereinafter *1966 House Hearings*]; HUGH DAVIS GRAHAM, *THE CIVIL RIGHTS ERA: ORIGINS AND DEVELOPMENT OF NATIONAL POLICY 1960-1972*, at 203, 255-59 (1990); RALPH, *supra* note 2, at 175.

115. KOTZ, *supra* note 87, at 367. According to a memorandum from Joseph Califano, Domestic Program Coordinator to Lyndon Johnson, U.S. President, March 16, 1966, King, Roy Wilkins, Whitney Young, Floyd McKissick, John Lewis, Dorothy Height, A. Philip Randolph, Joseph Rauh, Andy Biemiller, Clarence Mitchell, and Dave Brody were all confirmed for the meeting on March 18. Memorandum from Joseph Califano, Special Assistant for Domestic Affairs, to Lyndon Johnson, U.S. President (Mar. 16, 1966) (copy on file with the Indiana Law Review).

116. Memorandum from Nicholas Katzenbach, U.S. Attorney Gen., to Lyndon B. Johnson, U.S. President (Mar. 17, 1966) (copy on file with the Indiana Law Review).

117. *Id.*

118. FAIRCLOUGH, *supra* note 16, at 286; Waite, *supra* note 107, at 114. At a press conference on January 7, 1966, King said about Chicago that “[o]ur work will be aimed at Washington.” FAIRCLOUGH, *supra* note 16, at 286 (quoting Press Release, Martin Luther King, Jr., Southern Christian Leadership Conference, The Chicago Plan (Jan. 7, 1966)).

119. Shaw, *supra* note 23, at 318 (quoting Press Release, Martin Luther King, Jr., Southern Christian Leadership Council, The Chicago Plan (Jan. 7, 1966)). On July 11, in the first meeting with Mayor Daley after the kickoff of the campaign, the Mayor refused to “announce his support for President . . . Johnson’s civil rights bill that was pending in Congress.” BILES, RICHARD J. DALEY, *supra* note 55, at 124.

120. ANDERSON & PICKERING, *supra* note 2, at 190; FAIRCLOUGH, *supra* note 16, at 133.

121. ANDERSON & PICKERING, *supra* note 2, at 201. King made this point in a conversation with his aide, Andrew Young. *Id.*

the fair housing bill offered him an opportunity to impact federal legislation.¹²² As Jesse Jackson suggested, “[The CFM] was an attempt to get the nation to make housing segregation illegal.”¹²³

Thus, the CFM settled on the goal of an “Open City,” with fair housing as its primary objective.¹²⁴ Its official program announced that as of July 10th, “we shall cease to be accomplices to a housing system of discrimination, segregation, and degradation.”¹²⁵

The Chicago activists considered fair housing to be at the center of many injustices faced by Black Chicagoans.¹²⁶ After the rally inaugurating the direct action campaign on July 10, designated “Freedom Sunday,” King and several thousand others marched to City Hall to post their list of demands there.¹²⁷ The local demands included appeals to the Mayor, City Council, Governor, real estate brokers, and others regarding open housing, employment, welfare, education, and political representation for Blacks in Chicago.¹²⁸ The program for the Movement also included a demand for the “[p]assage of the 1966 Civil Rights Act with a provision to make it illegal to discriminate in the sale or renting of property on the basis of race, color, creed, or national origin.”¹²⁹

D. *Strategies and Tactics: From Vigils to Marches*

The CFM employed two major strategies. Initially, it targeted real estate brokers. Since the Movement’s leaders viewed real estate brokers as major culprits in perpetuating housing discrimination and segregation, they “tested” brokers in selected white neighborhoods to see if they would serve Black

122. *Id.* at 190. CFM did not select that issue because of its priority in the minds of the city’s Black population. Finley, *supra* note 6, at 1, 7. At the time, many Black Chicagoans were most concerned with the struggles of daily life, such as finding jobs, coping with poverty, and enduring slum conditions. *Id.* at 8; see BONASTIA, *supra* note 22, at 78-79.

123. HENRY HAMPTON & STEVE FAYER, VOICES OF FREEDOM: AN ORAL HISTORY OF THE CIVIL RIGHTS MOVEMENT FROM THE 1950S THROUGH THE 1980S, at 308 (1991); *The Chicago Freedom Movement—Activists Sound Off*, *supra* note 1; see Shaw, *supra* note 23, at 328. Some civil rights historians have deemed the CFM a failure. ANDERSON & PICKERING, *supra* note 2, at 3.

124. ANDERSON & PICKERING, *supra* note 2, at 201.

125. *Id.* at 201-07. King announced the program and the housing initiative on July 10 to an estimated 23,000 at Soldier Field. COHEN & TAYLOR, *supra* note 24, at 384.

126. GARROW, BEARING THE CROSS, *supra* note 2, at 493; see Finley, *supra* note 6, at 1, 3-4.

127. BILES, RICHARD J. DALEY, *supra* note 55, at 123-24; see *Program of the Chicago Freedom Movement*, *supra* note 15, at 97, 104-09.

128. *Program of the Chicago Freedom Movement*, *supra* note 15, at 97, 104-09.

129. *Id.* at 106. King wanted a strong, effective bill. ANDERSON & PICKERING, *supra* note 2, at 278. When the House stripped the bill of much of its scope and coverage, King objected in strong terms, “The housing section is virtually meaningless It is so watered down that it will hardly do anything to undo the long-standing evil of housing discrimination in this country.” RALPH, *supra* note 2, at 179; see also ANDERSON & PICKERING, *supra* note 2, at 278.

customers.¹³⁰ Black and white “dummy” home seekers applied for the same units, so they could compare the results to determine whether there was evidence of racial discrimination.¹³¹ They targeted blue collar neighborhoods where the homes were well-maintained yet fairly affordable.¹³² The testers documented blatant discriminatory practices by brokers.¹³³ Armed with that evidence, activists initiated vigils at the offending real estate brokers’ offices and in local churches, as well as small marches and picnics in the surrounding neighborhoods.¹³⁴ While continuing to coordinate real estate testing, the Movement held vigils in July, which were met with little resistance, few hecklers, and modest press.¹³⁵ The campaign was receiving far less public attention than the Movement had hoped.¹³⁶ It had yet to encounter the kind of confrontation it needed to generate significant media coverage.¹³⁷

In an effort to escalate the Movement, activists began a series of larger marches into white neighborhoods on the southwest and northwest sides of the city—neighborhoods that were at some distance from the Black community, where Black purchasers and renters were clearly unwelcome.¹³⁸ As in the marches in the Alabama cities of Birmingham in 1963 and Selma in 1965, the Chicago marchers were met with violent resistance; but this time the violence came from white bystanders, rather than the police.¹³⁹ Mayor Daley was determined not to turn the demonstrators into martyrs by using the force of the police against them; but marchers in Gage Park (on the city’s Southwest side), and later in Belmont-Cragin (on the Northwest side), encountered crowds throwing rocks, bottles, cherry bombs, pieces of coal, and even knives.¹⁴⁰ On occasion, white mobs burned, overturned, or pushed marchers’ parked cars into nearby bodies of water, such as the lagoon in Marquette Park.¹⁴¹

Though the Chicago police provided a buffer between the marchers and the

130. RALPH, *supra* note 2, at 114.

131. FAIRCLOUGH, *supra* note 16, at 292.

132. RALPH, *supra* note 2, at 114, 116. Members of CFM tested real estate offices in Gage Park and Belmont-Cragin. *Id.*

133. FAIRCLOUGH, *supra* note 16, at 292.

134. RALPH, *supra* note 2, at 114-19. Testers in Gage Park reported at least seventy-eight instances of discrimination within four days. *Id.* at 114.

135. *Id.* at 114-19.

136. *Id.* at 119.

137. This according to Andrew Young, one of the SCLC’s chief organizers. *Id.*

138. *Id.* at 116.

139. *Id.* at 119-26, 188-91; Finley, *supra* note 6, at 1, 24.

140. ANDERSON & PICKERING, *supra* note 2, at 228; COHEN & TAYLOR, *supra* note 24, at 392-93; RALPH, *supra* note 2, at 120.

141. ANDERSON & PICKERING, *supra* note 2, at 220, 224; RALPH, *supra* note 2, at 120-21; Finley, *supra* note 6, at 1, 22. On July 31, Blacks drove to the protest site in Marquette Park. While the police protected the marchers, whites descended on the unattended vehicles, setting fifteen cars on fire, smashing windshields and windows of thirty cars, and pushing two cars into the park’s lagoon. BILES, RICHARD J. DALEY, *supra* note 55, at 127.

protesters, the marchers were still hit by objects thrown by the crowd.¹⁴² Movement leader Andrew Young said that the violent white mobs were “in some ways . . . more frightening” than the opposition they faced in the South.¹⁴³

As the marches continued to grow in size, with groups as large as 600 or 1500 demonstrators, so did the size of the mobs that greeted them, with one mob estimated at nearly 8000 people.¹⁴⁴ At a march in early August into Marquette Park—a white working-class neighborhood on the city’s southwest side—Dr. King was hit in the head and knocked to the ground by a rock, while bystanders shouted “Kill him, Kill him.”¹⁴⁵ King said that he had “never seen as much hatred and hostility on the part of so many people.”¹⁴⁶ This violence drew the national press to Chicago and produced horrific images on national television.¹⁴⁷ People across the country were once again exposed to the violence that peaceful civil rights demonstrators encountered.¹⁴⁸

Locally, the marches had serious negative consequences for Mayor Daley.¹⁴⁹ For a powerful leader who viewed Chicago as “his” city, the demonstrations represented an unacceptable loss of his control of the city.¹⁵⁰ Outsiders threatened the order that he prized so highly.¹⁵¹ With CFM carrying out multiple marches, the risk loomed that angry, violent white mobs could overpower the police and inflict serious casualties on the marchers.¹⁵²

Moreover, the marches carried a substantial political cost for him. Blacks and working class ethnic whites constituted two of the major voting blocs that

142. ANDERSON & PICKERING, *supra* note 2, at 228-29; KOTZ, *supra* note 87, at 366; RALPH, *supra* note 2, at 119-23.

143. RALPH, *supra* note 2, at 123.

144. *Id.* at 123, 128-29, 132; Finley, *supra* note 6, at 1, 20-23.

145. ANDERSON & PICKERING, *supra* note 2, at 228; RALPH, *supra* note 2, at 123.

146. RALPH, *supra* note 2, at 123.

147. BILES, RICHARD J. DALEY, *supra* note 55, at 128.

148. RALPH, *supra* note 2, at 92-93.

149. Daley objected to marches and demonstrations and believed that the political process was the way to make decisions. COHEN & TAYLOR, *supra* note 24, at 328. In one of CCCO’s 1965 school protest marches on City Hall, the police arrested 250 of the demonstrators. *Id.* When Daley and the School Board met with protest leaders on June 28, the Mayor pressed for negotiations around the table rather than demonstrations in the streets—a precursor of his position the following summer. *Id.* at 329.

150. *Id.* at 393-94. Apparently, Daley even became physically ill because of the toll the marches took on him. *Id.* at 340.

151. According to one Daley biography, the Mayor’s opposition to King was based on racial integration’s risks to the Democratic machine. *Id.* at 339. Blacks moving out of Black neighborhoods could have destabilized the political regime there, while also leading whites to flee to the suburbs. *Id.* White flight would have cut into another key component of the machine’s base. *Id.*

152. FAIRCLOUGH, *supra* note 16, at 300. Daley was a young man during Chicago’s race riot of 1919, and he must have been aware of the possibility of a repetition of that tragic event. See generally WILLIAM M. TUTTLE, JR., RACE RIOT: CHICAGO IN THE RED SUMMER OF 1919 (1970).

helped bring him to office and keep him there.¹⁵³ The marches pitted these two crucial constituencies against each other, with potentially disastrous consequences for the Mayor.¹⁵⁴ White home owners criticized him for permitting the marches to continue and for the rough treatment they received at the hands of the police.¹⁵⁵ Providing police protection for the marchers aroused the ire of whites who viewed Daley as facilitating a Black invasion of their neighborhoods.¹⁵⁶ Anti-Daley placards began to appear along with the racist ones at the marches, and Democratic officials feared increasing defections from the party.¹⁵⁷

There seemed to be no way out of this quandary for Daley as long as the marches continued.¹⁵⁸ Referring to the upcoming fall elections, Movement leader James Bevel asserted that “[e]very time we march, . . . Daley loses 10,000 votes—from the whites.”¹⁵⁹ A white precinct captain echoed the refrain that the civil rights activity was causing damage to the machine: “We lose white votes every time there’s an outburst like this.”¹⁶⁰ As a result, Daley received great pressure from home owners and from machine functionaries to find a way to stop the marches.¹⁶¹

In addition, hundreds of police officers were present for every march.¹⁶² Mayor Daley claimed that this led to a dearth of police officers and a rising crime rate in other parts of the city.¹⁶³

E. Summit Meetings and Agreement

By mid-August, several large marches had encountered mobs of thousands of angry, jeering, and violent onlookers.¹⁶⁴ Mayor Daley had become desperate to put an end to the disruption on the streets of his city.¹⁶⁵ He would soon use

153. COHEN & TAYLOR, *supra* note 24, at 149.

154. *Id.* at 412-21.

155. BILES, RICHARD J. DALEY, *supra* note 55, at 128-29.

156. *Id.*

157. *Id.*

158. As much as he wanted the marches to stop, Daley knew that “issuing an order” to that effect or “having the police stop them forcibly” would play into the hands of CFM and advance their cause. COHEN & TAYLOR, *supra* note 24, at 394.

159. FAIRCLOUGH, *supra* note 16, at 299-300.

160. COHEN & TAYLOR, *supra* note 24, at 412-13. At the same time, some Blacks became radicalized to the point that they were prepared to break their ties to the machine. *Id.* at 413. Overall, the 1966 elections in Chicago and surrounding Cook County were disastrous for the Democrats, in part because of CFM. *Id.* at 426-27.

161. BILES, RICHARD J. DALEY, *supra* note 55, at 128-29; FAIRCLOUGH *supra* note 16, at 300.

162. ANDERSON & PICKERING, *supra* note 2, at 223-30; RALPH, *supra* note 2, at 165.

163. RALPH, *supra* note 2, at 164-65.

164. *Id.* at 119-47; ANDERSON & PICKERING, *supra* note 2, at 221-33.

165. FAIRCLOUGH, *supra* note 16, at 300.

whatever means were at his disposal to accomplish that objective.¹⁶⁶

As a strategic step, Daley agreed to negotiate with the CFM.¹⁶⁷ He made very clear that his primary purpose in meeting with the Movement leaders and reaching an agreement with them was to end the marches.¹⁶⁸ The Chicago Conference on Religion and Race coordinated the so-called "summit" meeting, which convened on August 17, 1966.¹⁶⁹ Participants included the Mayor, his colleagues and advisors, CFM leaders, business leaders, and leaders of the Chicago Real Estate Board.¹⁷⁰ The Movement's demands emphasized the cessation of discrimination by real estate brokers in the sale and rental of housing.¹⁷¹

The initial all-day meeting did not result in a negotiated agreement, in part because of the unwillingness of the real estate officials to make commitments on behalf of their members.¹⁷² Fearing increasing white backlash and violence, the Mayor and his staff argued throughout the meeting for a suspension of the demonstrations; however, without an agreement on the actions to be taken, CFM representatives rejected these repeated requests.¹⁷³ A subcommittee was chosen to work on developing a proposed agreement to bring back to the whole body the

166. *Id.* For example, Representative Roman Pucinski, one of Mayor Daley's Chicago Democrats in Congress, met with President Johnson to ask him to meet with CFM leaders to persuade them to stop the marches. Shaw, *supra* note 23, at 324 (citing Basil Talbott Jr., *Demonstrate at Loop Real Estate Board*, CHI. SUN-TIMES, Aug. 11, 1966, at 4). Pucinski requested Johnson tell the CFM that the demonstrations would jeopardize the passage of additional civil rights legislation. *Id.*

167. FAIRCLOUGH, *supra* note 16, at 300; RALPH, *supra* note 2, at 149-50.

168. RALPH, *supra* note 2, at 158-60; John McKnight, *The Summit Negotiations: Chicago, August 17, 1966-August 26, 1966*, in CHICAGO 1966, *supra* note 6, at 111, 116, 132. John McKnight, who attended the meetings as a U.S. Civil Rights Commission observer, commented on Daley's motives: "It never seemed to me that Daley was trying to figure out how to deal with the broader race and housing problems in Chicago. . . . It was about stopping the marches, which were tearing at the heart of the Democratic Party." COHEN & TAYLOR, *supra* note 24, at 402.

169. ANDERSON & PICKERING, *supra* note 2, at 237.

170. RALPH, *supra* note 2, at 149-52; Kathleen Connolly, *The Chicago Open-Housing Conference*, in CHICAGO 1966, *supra* note 6, at 49, 93-94.

171. ANDERSON & PICKERING, *supra* note 2, at 239; GARROW, BEARING THE CROSS, *supra* note 2, at 519; McKnight, *supra* note 168, at 111, 115. Other demands included enforcement of Chicago's Fair Housing Ordinance and an end to construction of high-rise public housing developments limited to Black neighborhoods. ANDERSON & PICKERING, *supra* note 2, at 239. Mayor Daley's response to King's demands was to concentrate on whether satisfying the demands would lead to an immediate moratorium on marches. *Id.* at 240. King stated that the housing marches would likely stop, but marches to highlight issues like education and employment would not be included in any moratorium. *Id.* Daley quickly agreed in principle to those demands that directly affected him. *Id.*; BILES, RICHARD J. DALEY, *supra* note 55, at 130; COHEN & TAYLOR, *supra* note 24, at 404.

172. COHEN & TAYLOR, *supra* note 24, at 405-12.

173. *Id.* at 408-11.

following week.¹⁷⁴

In the meantime, Mayor Daley sought and obtained an injunction limiting the number, size, and timing of the marches—one per day, with no more than 500 marchers, and during daylight hours.¹⁷⁵ Leaders of the CFM faced a very difficult choice, but they ultimately decided not to break the injunction.¹⁷⁶ Instead, on August 21 and August 23, King led individual marches into white neighborhoods on Chicago's southeast and southwest sides, thus complying with the injunction.¹⁷⁷

On August 26, 1966, the parties reached what was later called the Summit Agreement, which included a commitment from the Chicago Commission on Human Relations to enforce the city's 1963 open housing ordinance, an agreement from Mayor Daley to advocate for state open occupancy legislation the following year, and a general agreement from the Chicago Real Estate Board "to withdraw its opposition to . . . open housing and to urge its members to obey the law."¹⁷⁸ The agreement did not contain any timetable for the various actions specified, nor did it include any enforcement provisions.¹⁷⁹ With the agreement, King announced the end of the marches—Mayor Daley's primary objective.¹⁸⁰ While Dr. King declared the agreement a "victory for justice," and the initial national media response was similarly positive, critics both within and outside the CFM considered it a sell-out and a failure.¹⁸¹

174. ANDERSON & PICKERING, *supra* note 2, at 253.

175. BRANCH, *supra* note 2, at 518-19; GARROW, BEARING THE CROSS, *supra* note 2, at 516; RALPH, *supra* note 2, at 161.

176. COHEN & TAYLOR, *supra* note 24, at 415; GARROW, BEARING THE CROSS, *supra* note 2, at 516-17; RALPH, *supra* note 2, at 160. King feared that breaking the injunction would distract public attention from the open housing question. RALPH, *supra* note 2, at 162. He was also concerned that the overt unlawfulness would undermine the moral high ground taken by the Movement's non-violent, law-abiding strategy. *Id.* As a pragmatist, he also realized that many of his supporters were middle-class people who would not be willing to go to jail. *Id.* Moreover, any such effort would put a serious strain on the Movement's limited financial resources. The Movement's attorneys also strongly recommended complying with the injunction. GARROW, BEARING THE CROSS, *supra* note 2, at 515. Finally, King was becoming increasingly tired from his whirlwind schedule and myriad of responsibilities. *Id.* at 515.

177. BILES, RICHARD J. DALEY, *supra* note 55, at 133.

178. ANDERSON & PICKERING, *supra* note 2, at 272.

179. See KOTZ, *supra* note 87, at 367 (describing settlement as "toothless set of pledges").

180. BILES, RICHARD J. DALEY, *supra* note 55, at 133.

181. ANDERSON & PICKERING, *supra* note 2, at 268; BILES, RICHARD J. DALEY, *supra* note 55, at 133-35. Many local Black activists felt that the agreement had sold out the Black people of Chicago to the city administration. GARROW, BEARING THE CROSS, *supra* note 2, at 524. Critics complained that the agreement was little more than pledges of non-discrimination with no real commitments. FAIRCLOUGH, *supra* note 16, at 303. They were especially concerned that the agreement included no timetable for implementing the elements of the agreement and no enforcement provisions. *Id.* Still, the agreement was stronger than the one in Birmingham.

As with the Birmingham agreement negotiated three years earlier that identified modest initial steps to be taken to desegregate the city, the Summit Agreement focused entirely on local actions.¹⁸² At the same time, there was the possibility that the events on the streets of Chicago could raise national awareness of the problem of housing discrimination and help bring about legislative action in Washington, as they had with Birmingham and Selma.¹⁸³ King continued to hold out hope that Congress would respond to the Chicago marches by passing fair housing legislation.¹⁸⁴

There was nothing in the Summit Agreement itself that would have provided the basis for hope about federal legislation, but the precedents of Birmingham and Selma contributing to the pressure on Congress may have led King to think that the same dynamic might work after Chicago. The Birmingham experience was perhaps the most relevant for King, since the explicit goals there were local, the agreement was both local and modest, and the violence that the demonstrators encountered provided an impetus for Congress to act.

II. 1966: THE CFM AND THE PROSPECTS FOR ENACTING FAIR HOUSING LEGISLATION

In 1965, Martin Luther King wrote:

The goal of the demonstrations in Selma, as elsewhere, is to dramatize the existence of injustice and to bring about the presence of justice by methods of nonviolence. Long years of experience indicate to us that Negroes can achieve this goal when four things occur: 1. Nonviolent demonstrators go into the streets to exercise their constitutional rights. 2. Racists resist by unleashing violence against them. 3. Americans of conscience in the name of decency demand federal intervention and legislation. 4. The administration, under mass pressure, initiates measures of immediate intervention and remedial legislation.¹⁸⁵

King's explanation of his strategy in Selma sounds like a blueprint for the CFM's efforts to create the pressure that would lead to passage of federal fair housing legislation in 1966. That fall, while speaking in Washington, D.C., King reiterated that "[w]e need civil rights legislation," and emphasized the fair

BRANCH, *supra* note 2, at 558.

182. The Birmingham Truce Agreement reached between movement leaders and Birmingham's merchants, included the desegregation of the city's stores, improved employment opportunities for Blacks, and established a Committee on Racial Problems and Employment. GARROW, *BEARING THE CROSS*, *supra* note 2, at 258-59.

183. See *supra* notes 101-03 and accompanying text.

184. KOTZ, *supra* note 87, at 367.

185. Martin Luther King, Jr., *Behind the Selma March*, *SATURDAY REV.*, Apr. 3, 1965, at 16-17, 57, *reprinted in* A TESTAMENT OF HOPE 127 (James Melvin Washington ed., 1986).

housing bill President Johnson had proposed earlier that year.¹⁸⁶

In early 1966, Johnson asked Congress to enact fair housing legislation as part of a larger civil rights package.¹⁸⁷ In April, he introduced the bill to the same Congress that had passed the landmark Voting Rights Act the year before.¹⁸⁸ Yet the new bill was unsuccessful in both 1966 and 1967.¹⁸⁹ In 1966, the House passed a modest fair housing bill that covered about forty percent of the nation's housing.¹⁹⁰ In the Senate, the President's proposal encountered the Southern filibuster that had greeted his initiatives the previous two years.¹⁹¹ However, unlike the Civil Rights Act of 1964 and the Voting Rights Act, the effort to invoke cloture to end the filibuster and bring the bill to a vote of the full Senate failed. The bill died.¹⁹²

With or without the CFM, fair housing legislation faced an extremely uphill battle in 1966. The CFM could not build sufficient public and political support to overcome the obstacles the bill faced.¹⁹³ In fact, the Chicago Movement made matters worse, reducing still further the chances of passage that year.

A. *The Obstacles*

By 1966, public support for civil rights had waned.¹⁹⁴ Some thought that the

186. GARROW, *BEARING THE CROSS*, *supra* note 2, at 536.

187. *1966 House Hearings*, *supra* note 114, at 1048; Lyndon B. Johnson, U.S. President, State of the Union (Jan. 12, 1966).

188. The Civil Rights Bill of 1966 was introduced long before the November elections that resulted in significant Republican gains and Democratic losses in both the House and Senate. *See* GRAHAM, *supra* note 114, at 260.

189. *Civil Rights-Open Housing, 1966 Legislative Chronology*, in CONGRESS AND THE NATION, 1965-1968, at 365, 373 (1969) [hereinafter *1966 Legislative Chronology*].

190. GRAHAM, *supra* note 114, at 261; JAMES C. HARVEY, *BLACK CIVIL RIGHTS DURING THE JOHNSON ADMINISTRATION* 38 (1973); *see* H.R. 14765, 89th Cong. (1966); RALPH, *supra* note 2, at 174.

The bill passed the House on August 9, 1966. GRAHAM, *supra* note 114, at 261. Amendments to the bill exempted owner-occupied buildings that housed less than four families, among other exemptions, which effectively meant the bill would only cover large apartment buildings and developments. *1966 Legislative Chronology*, *supra* note 189, at 370; HARVEY, *supra*, at 38; Charles McC. Mathias, Jr. & Marlon Morris, *Fair Housing Legislation: Not an Easy Row to Hoe*, CITYSCAPE, 1999, at 21, 22-23.

191. GRAHAM, *supra* note 114, at 255; *see* 42 U.S.C. § 2000 (2000); *id.* § 1973; *Civil Rights, 1945-1964 Legislative Chronology*, in CONGRESS AND THE NATION, 1945-1964, at 1615, 1636-37 (1965); *Voting Rights, 1965 Legislative Chronology*, in CONGRESS AND THE NATION, 1965-1968, at 356, 359-60 (1969).

192. The bill never even made it to the floor of the Senate. A two-week filibuster of a motion to consider the bill ended with supporters conceding defeat on September 19, 1966. *1966 Legislative Chronology*, *supra* note 189, at 373; *see infra* notes 316-48 and accompanying text.

193. RALPH, *supra* note 2, at 174-75, 184, 186.

194. *Id.* at 184-86.

country had already gone too far in responding to Black protests.¹⁹⁵ Much of this attitude shift stemmed from white resistance to efforts to desegregate the North, as well as growing frustration with urban riots and hostility toward the growing Black Power movement.¹⁹⁶

As the civil rights movement migrated north, many white Northerners chose not to support it. Even many of those who opposed the formal Jim Crow system of racial segregation in the South had little sympathy for challenges to systemic racism in their own backyard.¹⁹⁷ The civil rights movement also lost support due to urban disorders in a number of cities, as well as the emergence of the Black Power movement with its powerful rhetoric.¹⁹⁸

Fair housing legislation faced particularly tough sledding because of the national scope of the bill. Previous civil rights statutes primarily affected the South and, as a result, legislators and their constituents in much of the country were largely unaffected by their passage.¹⁹⁹ At that time, housing discrimination and segregation were more pervasive outside the South.²⁰⁰ If anything, fair housing legislation would have a greater impact in the North and West than in the South. That made the bill especially controversial. Worse yet, 1966 was an election year, a time when members of Congress are least likely to take on controversial matters.

Much of the organized pressure on Congress aligned itself against passage of fair housing legislation. The National Association of Real Estate Boards ("NAREB") carried out an aggressive and effective lobbying campaign against the bill.²⁰¹ NAREB included about 83,000 real estate brokers, accounting for about ninety percent of the country's real estate transactions.²⁰² The organization distributed large numbers of leaflets and put together a major letter writing initiative to members of Congress in opposition to the bill.²⁰³ Largely as a result of that effort, Congressional mail ran dramatically against open housing

195. RALPH, *supra* note 2, at 184, 186. "By 1966, [seventy] percent of whites [thought] that 'Negroes were trying to move too fast.'" Mara S. Sidney, *Images of Race, Class, and Markets: Rethinking the Origin of U.S. Fair Housing Policy*, 13 J. POL'Y HIST. 181, 188 (2001) (quoting JAMES L. SUNDQUIST, *POLITICS AND POLICY: THE EISENHOWER, KENNEDY, AND JOHNSON YEARS* 281 (1968)).

196. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 38 (1988) [hereinafter KERNER REPORT]; RALPH, *supra* note 2, at 6, 186-88. Beginning in 1965, the nation witnessed "three consecutive summers of deadly [and costly] urban" rebellions in cities around the country. BONASTIA, *supra* note 22, at 77.

197. RALPH, *supra* note 2, at 186.

198. *Id.* at 184, 186; see BRANCH, *supra* note 2, at 531-32.

199. Rubinowitz & Alsheik, *supra* note 97, at 873-85.

200. *Id.*

201. RALPH, *supra* note 2, at 175, 184, 186.

202. BONASTIA, *supra* note 22, at 80.

203. *Id.*

legislation.²⁰⁴

While the House managed to overcome these obstacles to pass a bill—albeit a very weak one—the filibuster in the Senate prevented a full Senate vote. Senate Minority Leader Everett Dirksen, a Republican of Illinois, who had facilitated cloture in 1964 and again in 1965, stood firmly opposed to fair housing legislation.²⁰⁵ That ended the matter for 1966.

B. CFM's Lack of Significant Positive Impact

Perhaps for some of the reasons discussed in Part A, the white violence that greeted the CFM did not generate the powerful public outrage and political momentum that had come from the brutality against peaceful demonstrators in Birmingham and Selma.²⁰⁶

Both the Chicago violence itself and the public response to it were very different from the then-recent Southern experience. In Birmingham and Selma, Alabama, law enforcement officers—local police and state troopers—attacked the peaceful demonstrators.²⁰⁷ In Birmingham, in 1963, Police Chief Bull Connor ordered fire hoses and police dogs set on the peaceful young demonstrators.²⁰⁸ The graphic images in the media of those attacks helped build the public support required for passing the Civil Rights Act of 1964.²⁰⁹

Similarly, in 1965, voting rights activists in Selma sought media attention as a means of advancing their cause.²¹⁰ As the movement evolved, its centerpiece became a march from Selma to the state capitol in Montgomery to raise national consciousness about the exclusion of Blacks from the political process in the South and to create pressure on Congress to enact effective federal voting rights legislation.²¹¹ As the marchers left Selma and reached the Edmund Pettus Bridge,

204. *Id.*

205. Rubinowitz & Alsheik, *supra* note 97, at 896-901.

206. One commentator has suggested that while Congress was considering fair housing legislation in the summer of 1966, “[i]t does not appear . . . that the Chicago demonstrations inspired action in Washington.” BONASTIA, *supra* note 22, at 79.

207. See GARROW, BEARING THE CROSS, *supra* note 2, at 239-60, 379-99; GENE ROBERTS & HANK KLIBANOFF, THE RACE BEAT: THE PRESS, THE CIVIL RIGHTS STRUGGLE, AND THE AWAKENING OF A NATION 314-23, 380-88 (2006); see generally FAIRCLOUGH, *supra* note 16.

208. GLENN T. ESKEW, BUT FOR BIRMINGHAM: THE LOCAL AND NATIONAL MOVEMENTS IN THE CIVIL RIGHTS STRUGGLE 227 (1997); FAIRCLOUGH, *supra* note 16, at 126; GARROW, BEARING THE CROSS, *supra* note 2, at 239-40, 248.

209. See *infra* notes 256-59 and accompanying text for a discussion of President Johnson’s use of these images to press Congress to enact his bill.

210. ROBERTS & KLIBANOFF, *supra* note 207, at 384; see GARROW, BEARING THE CROSS, *supra* note 2, at 379.

211. BRANCH, *supra* note 2, at 47-52; DAVID J. GARROW, PROTEST AT SELMA: MARTIN LUTHER KING, JR., AND THE VOTING RIGHTS ACT OF 1965, at 73-77 (1978) [hereinafter GARROW, PROTEST AT SELMA]; J. MILLS THORNTON III, DIVIDING LINES: MUNICIPAL POLITICS AND THE STRUGGLE FOR CIVIL RIGHTS IN MONTGOMERY, BIRMINGHAM, AND SELMA 487-88 (2002).

scores of uniformed state troopers—many on horseback—turned them back.²¹² As the marchers knelt to pray before continuing on the march, the troopers surged forward and attacked them viciously with nightsticks, amidst clouds of tear gas.²¹³ The national media coverage of this violence shocked the nation and generated widespread public and political support for congressional action, thus contributing to the passage of President Johnson's proposed Voting Rights Act.²¹⁴

In Chicago, private citizens—white neighborhood residents and their supporters—not police officers, were responsible for the violence against the demonstrators.²¹⁵ In contrast to the Alabama experience, Mayor Daley provided police protection for the marchers.²¹⁶ While the protection was often inadequate and the police arrested few of the whites who attacked the marchers, the police were at least formally on the side of the marchers.²¹⁷

Mayor Daley's provision of police protection for the marchers weakened the moral force of the Movement's position.²¹⁸ In the South, it was very clear that the authorities were attacking peaceful citizens who were exercising their constitutional right to demonstrate. For many white Northerners, the housing marches in Chicago had far more ambiguous implications. They were peaceful demonstrations, but for many people they also constituted an "invasion" of working-class white communities that threatened the well being of those neighborhoods.²¹⁹ Violence and hostility directed at the marchers was often couched in the rhetoric of self-defense. Many whites blamed the protesters for seeking to foment unrest and for provoking violence.²²⁰

As the marches continued, white supremacist sentiment took hold in Chicago. In late August, members of the American Nazi Party, the National States Rights Party, and the Ku Klux Klan all traveled to Chicago to hold rallies.²²¹ Many white Chicagoans were shocked and angered by the influx of white supremacist groups; however, many blamed the civil rights activists for the sudden arrival of these unwelcome outsiders.²²² Local politicians, like the police superintendent who publicly blamed the city's unrest on the Black protesters,

212. BRANCH, *supra* note 2, at 49.

213. *Id.* at 50-52; FAIRCLOUGH, *supra* note 16, at 242; JOHN LEWIS, WALKING WITH THE WIND: A MEMOIR OF THE MOVEMENT 327-30 (1998); ROBERTS & KLIBANOFF, *supra* note 207, at 385-86.

214. ROBERTS & KLIBANOFF, *supra* note 207, at 384-88; *see* IRVING BERNSTEIN, GUNS OR BUTTER: THE PRESIDENCY OF LYNDON JOHNSON 241 (1996); GRAHAM, *supra* note 114, at 165-70; LYNDON BAINES JOHNSON, THE VANTAGE POINT: PERSPECTIVES OF A PRESIDENCY 1963-1969, at 165 (1971) [hereinafter JOHNSON, THE VANTAGE POINT]; KOTZ, *supra* note 87, at 271.

215. RALPH, *supra* note 2, at 129.

216. *Id.*; COHEN & TAYLOR, *supra* note 24, at 364.

217. RALPH, *supra* note 2, at 188-89.

218. *Id.* at 141-42.

219. *Id.* at 188-89; *see* Rubinowitz & Perry, *supra* note 100, at 357-58.

220. RALPH, *supra* note 2, at 141.

221. *Id.* at 148-49, 164.

222. *Id.* at 164.

further stoked whites' anger.²²³

Moreover, the CFM did not generate the extensive national media attention that the movements in Birmingham and Selma had attracted.²²⁴ That may have been attributable to the different strategies and tactics of the Southern and Chicago movements, as well as the white response to the respective initiatives.²²⁵ The Southern movement had made use of dramatic tactics that provided local movements with a national audience.²²⁶ In the South, King and many other demonstrators had gone to jail, thus garnering additional media attention. King himself, whether in jail or not, had been a strong draw.²²⁷ Often, the media focused on events simply because of King's presence.²²⁸

In responding to the Southern movement, the media paid special attention to the violent response of Southern law enforcement and the influx of youth into the movement.²²⁹ When Bull Connor turned the dogs and fire hoses on protesters in Birmingham, the national press reported widely on the incident.²³⁰ The day that hundreds of Black youth first joined the movement also received extensive national press and attracted hundreds of new volunteers to the movement.²³¹ Birmingham quickly became front page news throughout the country.²³²

Attracting press had been a significant element of the movement's strategy in the South; however, there were fewer dramatic tactics and drastic measures designed to garner publicity in Chicago.²³³ Neither King nor any of his followers went to jail.²³⁴ Moreover, King was in Chicago only intermittently. He led only two marches, both of which attracted some of the most extensive press coverage

223. *Id.*

224. *Id.* at 177-78. The Chicago marches made the front page of the *New York Times* only seven times in their twenty-seven days, compared to sixteen times in 1963 in Birmingham and thirty-five times in 1965 in Selma. *Id.* at 178.

225. *Id.* at 177.

226. *Id.* In Birmingham and Selma, hundreds of protesters were arrested, and images of arrested protesters standing in the courthouse made national headlines and aroused outrage throughout the country. ROBERTS & KLIBANOFF, *supra* note 207, at 380; *see* GARROW, BEARING THE CROSS, *supra* note 2, at 379-80. Additionally, the Southern movement actively encouraged people throughout the country, especially clergy, to join the protesters in the South. RALPH, *supra* note 2, at 177. The movement and its supporters fed and housed the thousands of protesters who traveled to Selma to participate in marches. *Id.*

227. RALPH, *supra* note 2, at 177.

228. *See id.*

229. *See* ROBERTS & KLIBANOFF, *supra* note 207, at 311-22.

230. *Id.* at 312, 318-19.

231. *Id.* at 314-15.

232. RALPH, *supra* note 2, at 178.

233. *Id.* at 177; *see* ROBERTS & KLIBANOFF, *supra* note 207, at 307-23, 380-88.

234. RALPH, *supra* note 2, at 177. King decided that they would not violate the injunction that the city obtained in August to limit the marches. *See supra* note 176 and accompanying text.

of any of the Chicago marches.²³⁵ Further, the Movement made no real effort to attract participants from around the country, which might have brought additional media coverage.²³⁶

The lack of greater media attention may have reflected the lack of public support for the CFM, especially as compared to the national support the Southern movements generated in 1964 and 1965.²³⁷ As whites in the North showed ambivalence toward civil rights activities in their own backyards—especially those raising the highly controversial issue of housing discrimination—the Northern media followed suit.

Initially, the media seemed sympathetic to the CFM.²³⁸ However, as the Movement continued, the media not only failed to cover the Movement as extensively as the Southern demonstrations, it also became distinctly critical of King and his fellow activists.²³⁹ As the marches became the Movement's primary tactic, the *Chicago Tribune* sympathized with the white homeowners and “disparaged the imported prophets of ‘nonviolence’” who the paper said had “baited” the homeowners during their marches.²⁴⁰

By the end of August, national media were also criticizing the Chicago Movement and calling for an end to the marches. During an appearance by King on the news show *Meet the Press* in late August, moderator Lawrence Spivak asked King, “Isn't it time to stop demonstrations that create violence and discord?”²⁴¹ A few days later, the *New York Times* urged the Movement to agree to a moratorium on marches to stall “the present downhill course to nowhere.”²⁴²

The coincidence in timing of the CFM and the urban riots in Chicago and other Northern cities also distracted public attention from the violence that

235. RALPH, *supra* note 2, at 177. On the other hand, King was not present at the Edmund Pettus Bridge in Selma when state troopers and local police attacked the marchers. LEWIS, *supra* note 213, at 324. His absence did not seem to detract from the national outrage that the violent resistance provoked. *See supra* note 214 and accompanying text.

236. RALPH, *supra* note 2, at 177-78. Ralph suggests that the Movement made no effort to attract marchers from beyond Chicago because Chicago already presented an interracial group of potential protesters. *Id.* at 177. Also, there may have been concern that if the Movement imported marchers and created more disruption in the city, Daley would have clamped down on the marches harder and sooner.

237. At the same time, there was substantial opposition outside of the South to the Southern movements. Jonathan L. Entin, *Viola Liuzzo and the Gendered Politics of Martyrdom*, 23 HARV. WOMEN'S L.J. 249, 262 & nn.103-04 (2000) (reviewing MARY STANTON, *FROM SELMA TO SORROW: THE LIFE AND DEATH OF VIDA LIAZZO* (1998)).

238. BILES, RICHARD J. DALEY, *supra* note 55, at 128.

239. *See* BRANCH, *supra* note 2, at 441, 521. The winter before the marches began, when King assumed trusteeship over a rat-infested slum building, the *New York Times* headline read “Dr. King Assailed for Slum Tactic.” *Dr. King Assailed for Slum Tactic—Takeover of Building Stirs Wide Chicago Opposition*, N.Y. TIMES, Feb. 25, 1966, at 18.

240. BRANCH, *supra* note 2, at 509.

241. *Id.* at 519 (quoting *Meet the Press* (NBC television broadcast Aug. 21, 1966)).

242. BRANCH, *supra* note 2, at 521.

Chicago's civil rights demonstrators encountered. Both the public and the media frequently conflated the riots and mob violence against peaceful marchers, holding Blacks responsible in both cases for the turmoil involved.²⁴³ According to one historian, "A number of opponents [of the fair housing bill] implicitly used 'rioters' as a synonym for all African Americans."²⁴⁴

Consequently, the CFM was not able to stir the conscience of the nation in the same way that Birmingham and Selma had done.²⁴⁵ The violence in Chicago did not lead Congress to sympathize with the goals of the Movement. In fact, there were very few references to the CFM in the 1966 hearings on the fair housing bill in either the House or the Senate.²⁴⁶ Most of the references in the House hearings criticized the Movement.²⁴⁷

C. CFM's Negative Impact on the Drive for Fair Housing Legislation

While other forces would almost certainly have prevented the passage of a fair housing bill in 1966, the CFM inadvertently further undermined the effort to pass the bill. The Movement's adverse impact seems attributable in large part to its initial decision to go north to Chicago and its subsequent strategic and tactical choices to shine the spotlight on housing discrimination there by marching into white neighborhoods.

1. *President Johnson, the CFM, and the Fair Housing Bill.*—President Johnson had used his official position as well as his exceptional political skills to push the Civil Rights Act of 1964 and the Voting Rights Act through Congress.²⁴⁸ However, Johnson made no such concerted effort in 1966. Several

243. RALPH, *supra* note 2, at 186, 193.

244. BONASTIA, *supra* note 22, at 83.

245. See RALPH, *supra* note 2, at 173.

246. *Id.* at 191-92. See, e.g., *Civil Rights: Hearings on S. 3296, Amendment 561 to S. 3296, S. 1497, S. 1654, S. 2845, S. 2846, S. 2923 and S. 3170 Before the Subcomm. on Constitutional Rights of the S. Comm. on the Judiciary, 89th Cong. 1520 (1966)* (statement of James Harvey) [hereinafter *1966 Senate Hearings*] (lamenting the "tragic happenings in Chicago . . . when a riotous mob of white people brutally attacked . . . [participants] in a nonviolent effort to open housing"); *Civil Rights Act of 1967: Hearings on S. 1026, S. 1318, S. 1359, S. 1362, S. 1462, H.R. 2516 and H.R. 10805 Before the Subcomm. on Constitutional Rights of the S. Comm. on the Judiciary, 90th Cong. 421 (1967)* (statement of Whitney Young) [hereinafter *Civil Rights Act of 1967 Senate Hearings*] (commenting on marches on Chicago, although he seems to be referring to marches into the suburbs); *Fair Housing Act of 1967: Hearings on S. 1358, S. 2114, and S. 2280 Before the Subcomm. on Housing and Urban Affairs of the S. Comm. on Banking and Currency, 90th Cong. 234 (1967)* (written statement of Edward Rutledge) (giving credit to King and local Chicago leaders for dramatizing the issue of fair housing).

247. RALPH, *supra* note 2, at 191 & nn.53-54 (citing the remarks of Congress in the Congressional Record, among other sources).

248. Johnson's efforts included working closely with King to increase pressure on Congress to pass the Voting Rights Bill, as well as making public statements and privately lobbying members of Congress. JOHNSON, *THE VANTAGE POINT*, *supra* note 214, at 165; KOTZ, *supra* note 87, at 253,

key factors account for his relatively passive approach, including his preoccupation with the war in Vietnam, his declining popularity, the disruption caused by violence in major cities, and the decreasing public support for civil rights legislation in a congressional election year.²⁴⁹ Additionally, the CFM contributed to the President's lack of engagement, largely because of his sharply contrasting relationships with the main protagonists—Mayor Richard J. Daley and Dr. Martin Luther King, Jr.

President Johnson took few steps publicly or privately to try to move the 1966 fair housing provisions through Congress.²⁵⁰ He walked a fine line by proposing progressive legislation—maintaining his image as a civil rights supporter—but not putting his political weight behind it, which might have made it look as if he was controlled by civil rights leaders.²⁵¹ The events on the streets of Chicago contributed to Johnson's lack of aggressiveness in pursuing fair housing legislation.²⁵²

Unlike with Selma, President Johnson expressed no public support for the CFM.²⁵³ Privately, he expressed strong opposition to the marches, and the

368-70.

249. ROBERT DALLEK, *FLAWED GIANT: LYNDON JOHNSON AND HIS TIMES 1961-1973*, at 443-44 (1998); JOHNSON, *THE VANTAGE POINT*, *supra* note 214, at 177; Memorandum from Henry Wilson to Lyndon B. Johnson (Mar. 11, 1966) (copy on file with Indiana Law Review).

250. Although Johnson did make some speeches in support of the 1966 civil rights bill, there is little evidence that he engaged in the behind-the-scenes persuasion of members of Congress that marked the passage of earlier civil rights legislation. Shaw, *supra* note 23, at 320.

251. See KOTZ, *supra* note 87, at 368-69.

252. The White House also expressed concern about the impact of the marches on the re-election chances of Illinois Senator Paul Douglas, a strong supporter of Johnson's "Great Society" programs. ANDERSON & PICKERING, *supra* note 2, at 270; RALPH, *supra* note 2, at 183. Since Douglas had a strong civil rights record, he was losing support to Republican candidate Charles Percy (also a supporter of civil rights legislation) in white neighborhoods where the marches were taking place. ANDERSON & PICKERING, *supra* note 2, at 270. The White House was so concerned that Attorney General Nicholas Katzenbach called King to emphasize the potential negative impact the marches might have on Douglas's campaign. RALPH, *supra* note 2, at 183.

253. When speaking in August of 1966 in the Northeast, Johnson's message focused on "the importance of [seeking] change through established channels" and actively criticized those who took the law into their own hands. RALPH, *supra* note 2, at 183. He made no direct statements against the CFM, but certainly expressed subtle disapproval. *Id.*; President Lyndon B. Johnson, Remarks at the University of Rhode Island Ceremony Awarding President Johnson an Honorary Degree (Aug. 20, 1966), in CONG. Q. 1932 (1966).

Johnson had his surrogate, Vice President Hubert Humphrey, a long-time civil rights supporter, call for an end to the marches. RALPH, *supra* note 2, at 183. On August 13, 1966, on *The Today Show*, Humphrey said, "People are sick and tired of violence and disorder." *Id.* To another reporter, he stated that demonstrators in Chicago had gone too far and were actually damaging the cause of social justice. *Id.*

When urging Congress to pass the Voting Rights Act, Johnson condemned the violence in

tensions and violence they provoked.²⁵⁴ Johnson's response to the CFM reflected both his growing closeness to Chicago's Mayor Richard J. Daley and his increasing distance from Martin Luther King.²⁵⁵

a. *The Johnson-Daley connection.*—The close political and personal relationship between President Johnson and Chicago's Mayor Richard J. Daley precluded the possibility of the President repeating his earlier approach to arguing for civil rights legislation. In 1965, President Johnson made explicit reference to the police violence against voting rights marchers in Selma in urging that the country support, and Congress pass, the Voting Rights Act.²⁵⁶ On March 15, Johnson spoke to Congress, condemning the violence in Selma, promising a voting rights bill, and associating himself with the Southern civil rights movement when he ended his speech with the civil rights battle cry, declaring "we . . . shall . . . overcome."²⁵⁷ Johnson used similar tactics to ensure the passage of the 1964 Civil Rights Act in the wake of police violence against protesters in Birmingham.²⁵⁸

Thus, the President made good use of the violence perpetrated against non-violent civil rights demonstrators in arguing for the passage of civil rights legislation. He could have pointed once again to the repeated violence that the non-violent CFM's marchers encountered at the hands of whites in pressing for the passage of fair housing legislation.²⁵⁹ He even could have ignored the fact that this time the police protected the marchers and the violence came at the hands of private citizens.

However, the political and personal implications of Selma and Chicago were vastly different for President Johnson. Even though local and state elected

Selma, connecting the violence to a need to strike down restrictions to voting in all elections. JOHNSON, *THE VANTAGE POINT*, *supra* note 214, at 165. Johnson had seen a clear connection between King's efforts in Selma and the Voting Rights Act, taking time to speak by phone with King about the potential support for the Voting Rights Act while he was working on Selma. GRAHAM, *supra* note 114, at 162-63; KOTZ, *supra* note 86, at 250. After King's arrest, Johnson spoke to the press about the fundamental nature of the right to vote. GARROW, *PROTEST AT SELMA*, *supra* note 211, at 51-52.

254. BRANCH, *supra* note 2, at 506.

255. *See id.*

256. JOHNSON, *THE VANTAGE POINT*, *supra* note 214, at 165. Johnson used events in Selma to put political pressure on Congress to pass the Voting Rights Act, including getting cloture to end the filibuster by Southern senators and cooperating with King and NAACP lobbyist Clarence Mitchell, Jr., to develop a compromise bill that could pass the House. BRANCH, *supra* note 2, at 270; KOTZ, *supra* note 87, at 328, 331; RANDALL B. WOODS, *LBJ: ARCHITECT OF AMERICAN AMBITION* 586 (2006).

257. JOHNSON, *THE VANTAGE POINT*, *supra* note 214, at 165; *see* DALLEK, *supra* note 249, at 220. In a telephone conversation with King later that evening, Johnson suggested, "[Y]ou're the leader who's making it all possible, I'm just following along trying to do what's right." RICHARD N. GOODWIN, *REMEMBERING AMERICA* 310 (1988).

258. KOTZ, *supra* note 87, at 60-63.

259. *See supra* notes 139-48 and accompanying text.

officials in Alabama belonged to the President's party, he could attack the law enforcement leadership publicly with little short-term political cost. Not so with Chicago's Mayor Richard J. Daley, who was a crucial political ally and friend of the President.²⁶⁰ It was inconceivable that Johnson would point to the violence inflicted on civil rights demonstrators in Chicago as a reason for enacting a fair housing law. If Johnson had highlighted the Chicago violence, he would have embarrassed and alienated Daley. Daley would have interpreted such statements as claims that his city was racist and that he, the Mayor, could not control its citizens.²⁶¹ Johnson did not want, nor could he afford, to risk disrupting his relationship with Daley.

Mayor Daley had received substantial credit—rightly or wrongly—for John Kennedy's narrow victory in 1960, which brought Lyndon Johnson into the White House as Vice-President.²⁶² Kennedy carried Illinois by a slim margin, and Daley was instrumental in Kennedy's win in the state.²⁶³

While Johnson probably knew that Daley had objected to Kennedy's selecting him as his running mate, he understood the mayor's political importance. As President, Johnson did not let that history interfere with a blossoming relationship with the Mayor. Upon assuming the presidency after Kennedy's assassination in November 1963, Johnson began his efforts to connect with Daley. He called the Mayor frequently, invited him to the White House, and asked him to sit with the first family during his initial speech to a joint session

260. COHEN & TAYLOR, *supra* note 24, at 351-52. Though their relationship had a rocky start—Daley had initially discouraged John F. Kennedy from choosing Johnson as his running mate—once Johnson became President, he actively sought a rapport with Daley. *Id.* at 267-70, 310, 323-24; EUGENE KENNEDY, *HIMSELF! THE LIFE AND TIMES OF MAYOR RICHARD J. DALEY* 171 (1978). Eventually this rapport developed into a personal and political friendship. See MICHAEL R. BESCHLOSS, *TAKING CHARGE: THE JOHNSON WHITE HOUSE TAPES, 1963-1964*, at 323-24 (1997).

261. See COHEN & TAYLOR, *supra* note 24, at 351.

262. Daley had urged presidential candidate John F. Kennedy to pick someone other than Lyndon Johnson as his running mate in 1960. *Id.* at 260. Daley had helped Kennedy secure the Democratic nomination, so he thought that Kennedy should be responsive to his concern that Chicago Blacks would find the Democratic ticket less appealing with a Southerner on it, thus making it more difficult to win Illinois. *Id.* However, Kennedy selected Johnson because he thought that the Texan would help secure Southern votes. *Id.*

263. See *id.* at 260, 265. The Kennedy-Nixon election in 1960 was one of the closest in history, and Illinois was a key state in the race. *Id.* at 265. Kennedy won Chicago by a staggering margin of more than 456,000 votes, giving him Illinois. *Id.* The results remain shrouded in controversy, with allegations that the Daley forces committed voter fraud to ensure that Kennedy would carry the state. BILES, *RICHARD J. DALEY*, *supra* note 55, at 73-74. After months of the Chicago Democratic political machine working on Kennedy's behalf, on the night of the election, the race was close. *Id.* at 73. Near the end of the night, both parties released votes that they had been holding, and in the end Kennedy won Illinois. *Id.* Though the State Election Board unanimously certified the results, and an impartial investigation uncovered no voter fraud, the election results retained an air of mystery. *Id.* at 73-74.

of Congress.²⁶⁴ Johnson further expressed his appreciation by inviting Daley to be a special guest at his inauguration.²⁶⁵

Over time, Lyndon Johnson and Richard Daley developed a mutual respect and a friendship. Their similar political and personal styles helped to cement the relationship. Both were loud, outspoken, and aggressive in their leadership.²⁶⁶

Moreover, Daley was undoubtedly the most powerful big city mayor in the country.²⁶⁷ Johnson needed his support, and he worked hard to get it and then to maintain it. Daley actively supported Johnson's legislative agenda, while Johnson helped Daley get federal funding for Chicago—on Daley's terms.²⁶⁸

At the time of CFM's marches in Chicago, Johnson was contemplating a run for re-election, for which he would have needed Daley's strong support.²⁶⁹ He "recognized that it would be politically insane for a Democratic President with

264. COHEN & TAYLOR, *supra* note 24, at 310. Speaking to Daley in early 1964, Johnson stated, "I never forget how you treated me in the '60 thing and I always have a warm spot for you." BESCHLOSS, *supra* note 260, at 168.

During the same conversation, Johnson said "I'm a Dick Daley man." *Id.* Daley returned the compliment: "We're Johnson men because, by God, Mr. President. I really mean it. All I hear is everything wonderful about you. You're doing a great job and may the Lord continue to give you health to carry out the responsibilities the way you're doing." *Id.*

265. COHEN & TAYLOR, *supra* note 24, at 326. Johnson invited the Daleys to sit on the platform during the swearing-in ceremony and in the presidential box during the Inaugural Ball. *Id.* Daley was also chosen to introduce the President at one of the parties. *Id.*

266. As Lady Bird Johnson explains in her diary, her husband considered the Mayor "one of his favorite people . . . He's a very arch type of political boss, ruddy faced, emanating efficiency and friendliness." BESCHLOSS, *supra* note 260, at 323-24.

267. See BILES, RICHARD J. DALEY, *supra* note 55, at 148.

268. According to Joseph Califano, Johnson's domestic advisor,

Daley was critical to the success of the Great Society, [Johnson's major domestic initiative]. . . . A call to Daley was all that was needed to deliver the fourteen votes of the Illinois Democratic delegation. Johnson and others of us had made many calls to the Mayor and Daley had always come through.

COHEN & TAYLOR, *supra* note 24, at 351 (quoting BERNSTEIN, *supra* note 214, at 396).

In 1964, Chicago became one of the first cities in the country to develop a Community Action Program (CAP)—a Johnson initiative to provide funding to cities to alleviate poverty, which featured a requirement to include poor residents in decisionmaking. ANDERSON & PICKERING, *supra* note 2, at 170; COHEN & TAYLOR, *supra* note 24, at 316-18. However, it quickly became clear that CAP would survive in Chicago only if Daley ran it the way he wanted to, with little oversight and virtually no participation by poor residents. ANDERSON & PICKERING, *supra* note 2, at 170; COHEN & TAYLOR, *supra* note 24, 342-46. Though at least one congressman complained about Daley's ignoring the program's requirements, Johnson allowed Daley to run the program as he saw fit, regardless of the program's requirements. ANDERSON & PICKERING, *supra* note 2, at 170-71; COHEN & TAYLOR, *supra* note 24, at 316-18, 342-46. One program official said that "We had problems with Daley on *everything*, . . . and he always went to the White House, and always won." *Id.* at 344.

269. COHEN & TAYLOR, *supra* note 24, at 351.

aspirations for another term to meddle in a crisis in a city governed by the most powerful Democratic mayor in the country.”²⁷⁰ He certainly did not want the Mayor to turn on him and oppose his re-election. Daley had already conveyed to the President his strong opposition to the Vietnam War; however, the Mayor never criticized the war publicly, out of his political loyalty.²⁷¹ Johnson did not want to risk endangering that loyalty, given the potentially disastrous political consequences.²⁷²

Consequently, Johnson would not have contemplated the use of even implicit criticism of Daley by pointing to the violent resistance to open housing demonstrations in Chicago as a reason for Congress to enact fair housing legislation. Any public statement by the President or any member of his administration during that summer about the need to address housing discrimination might have been understood by the public as an implicit reference to the Chicago situation.

Instead, Johnson privately supported Daley in his handling of the threats posed by the CFM.²⁷³ As suggested earlier, CFM’s strategy and tactics raised the ire of Mayor Daley. The mayor shared with the President his anger and his frustration with the marches. During the course of the open housing marches in the summer of 1966, Daley and Johnson had a number of private telephone conversations about the events in the city.²⁷⁴ Daley consistently criticized the Movement and told the President at one point that “[w]e stand for justice for all our people, and we also stand for law and order, and I’ll be damned if we let

270. RALPH, *supra* note 2, at 182.

271. In a conversation with Johnson in 1966, Daley said of the war, “[W]hen you’ve got a losing hand in poker you just throw in your cards . . . You put your prestige in your back pocket and walk away.” COHEN & TAYLOR, *supra* note 24, at 445-46.

272. Johnson worked hard to protect his relationship with Daley. In 1965, federal education officials had threatened to suspend education funds to Chicago as a result of CCCO’s civil rights complaint. ANDERSON & PICKERING, *supra* note 2, at 178; COHEN & TAYLOR, *supra* note 24, at 334. After investigating the allegations of segregation and unequal treatment in Chicago’s schools, Francis Keppel, the U.S. Commissioner of Education, found the schools likely to be in violation of the Civil Rights Act of 1964 and froze any award of federal funds to Chicago pending a full investigation. ANDERSON & PICKERING, *supra* note 2, at 179; COHEN & TAYLOR, *supra* note 24, at 349-52. Daley angrily complained to the President, and the funds flowed almost immediately. ANDERSON & PICKERING, *supra* note 2, at 180-81; COHEN & TAYLOR, *supra* note 24, at 351-52. President Johnson sought to redeem himself with the Mayor as quickly as he could. ANDERSON & PICKERING, *supra* note 2, at 180-81; COHEN & TAYLOR, *supra* note 24, at 349-52; *see* GARY ORFIELD, *THE RECONSTRUCTION OF SOUTHERN EDUCATION: THE SCHOOLS AND THE 1964 CIVIL RIGHTS ACT* 151-207 (1969).

273. *See supra* notes 253-54 and accompanying text.

274. BRANCH, *supra* note 2, at 505-06. Daley also told Johnson that King was criticizing him publicly about Vietnam: “King’s rally . . . was fifty percent Johnson—‘Johnson’s a killer, Johnson’s a destroyer of human life, Johnson is a killer in Vietnam’ . . . He [King] is not your friend. He’s against you on Vietnam. He’s a goddamn faker.” *Id.* at 505 (alteration in original).

anyone take over themselves the running of the city.”²⁷⁵ On that occasion, Johnson replied, “You’re just as right as you can be, Dick, . . . [a]nd I’ll support you.”²⁷⁶ Johnson repeatedly expressed his sympathy and support for Daley in the face of what the Mayor described as highly disruptive and costly demonstrations.²⁷⁷

b. The Johnson-King disconnect.—At the same time, the growing political and personal divide between President Johnson and Martin Luther King further adversely affected Johnson’s views about the CFM and his willingness to pursue fair housing legislation aggressively in its wake. Johnson and King worked together on both the Civil Rights Act of 1964 and the Voting Rights Act of 1965.²⁷⁸ However, there was always a tension between them, in part because of their very different personality styles. Johnson was brash and outspoken, while King was soft-spoken and modest.²⁷⁹

275. *Id.* at 506. In one of those conversations, Daley conflated King’s movement with gang violence. Others seemed to share his difficulty in separating the violence perpetrated on peaceful marchers from the violence involved in urban riots. Telephone Conversation Between Richard J. Daley, Mayor of Chicago, and Lyndon B. Johnson, U.S. President (July 19, 1966) (on file at Lyndon B. Johnson Presidential Library and Museum, WH6607.02.10414).

276. BRANCH, *supra* note 2, at 506. Johnson and King were not in contact during this period, so the President did not hear the civil rights leader’s perspective on the Chicago Movement. RALPH, *supra* note 2, at 182.

277. BRANCH, *supra* note 2, at 506. Less than a week later, the President reassured Daley again, saying “there’s nobody that loves you more than I do.” Telephone Conversation Between Richard J. Daley, Mayor of Chicago, and Lyndon B. Johnson, U.S. President (July 19, 1966) (on file at the Lyndon B. Johnson Presidential Library and Museum, WH6607.03.10423). In conversations with many politicians, Johnson did most of the talking. However, his reputation for arm-twisting, browbeating, and intimidation did not surface when he spoke with Mayor Daley. Instead, Johnson’s time on the phone with Daley was spent mostly in listening, as Daley relayed all of his hopes and woes for Chicago. Johnson said very little beyond expressing concern and support. *See* Telephone Conversation Between Richard J. Daley, Mayor of Chicago, and Lyndon B. Johnson, U.S. President (July 19, 1966) (on file with the Lyndon B. Johnson Presidential Library and Museum, WH6607.02.10414-15) (lasting more than twenty-two minutes). Years after Johnson’s presidency, Daley remembered, “I loved LBJ. There was nothing he wouldn’t do for Chicago.” FRANK SULLIVAN, *LEGEND: THE ONLY INSIDE STORY ABOUT MAYOR RICHARD DALEY* 175 (1989).

278. GRAHAM, *supra* note 114, at 162-63; KOTZ, *supra* note 87, at 189-90. King and Johnson had both considered the Voting Rights Bill an allied effort. KOTZ, *supra* note 87, at 253. At one point in Selma, over the telephone, Johnson advised King as to how to continue putting pressure on Congress, and King in turn advised Johnson on how to ensure the Black vote in the next election. *Id.*

279. RALPH, *supra* note 2, at 181. For many reasons, including their personality differences and different approaches to achieving civil rights progress, the relationship between King and Johnson never moved beyond formality. *Id.* King considered righting social injustices to be a moral imperative, while Johnson relied on legislative arguments and methods in pushing for civil

Johnson had always been more comfortable with civil rights leaders who worked with Congress and the Administration through traditional political channels—like Roy Wilkins and Clarence Mitchell, Jr. of the NAACP and Whitney Young of the Urban League.²⁸⁰ Johnson understood the legislative process, perhaps better than any politician of his generation.²⁸¹ Johnson feared that demonstrations would lead to violence and negative political repercussions. He preferred the more predictable congressional lobbying.²⁸² He was much less comfortable with the confrontational direct action strategies that served as the hallmark of King's approach to social change and with the trust in faith and religion underlying King's movement.²⁸³ Johnson even urged King during their first meeting to stop using demonstrations as a tactic.²⁸⁴ Notwithstanding their differences, they maintained a mutually respectful and constructive—if somewhat distant—relationship during Johnson's early years in the White House.²⁸⁵

However, by the time of the CFM in 1966, President Johnson had become increasingly disenchanted with King.²⁸⁶ Mayor Daley knew about the tension between Johnson and King, and he exploited it in seeking the President's support in the summer of 1966.²⁸⁷

The growing distance between Johnson and King arose from both strategic and political differences that increasingly came to the fore by the middle of the decade. King had supported the upstart Mississippi Freedom Democratic Party ("MFDP") at the 1964 Democratic National Convention. The racially integrated MFDP objected to the all-white delegation and threatened to protest if they were not allowed to be seated at the Convention.²⁸⁸ President Johnson viewed the MFDP as disruptive and counter-productive, and he denied King's request for

rights. *Id.*

280. WOODS, *supra* note 256, at 575; see KOTZ, *supra* note 87, at 179, 270.

281. BESCHLOSS, *supra* note 260, at 420.

282. KOTZ, *supra* note 87, at 270.

283. WOODS, *supra* note 256, at 575.

284. KOTZ, *supra* note 87, at 66, 195.

285. *Id.* at 278. However, Johnson was not completely consistent in his discomfort with protests. During the civil rights protests in Selma, Johnson explicitly encouraged King to keep the pressure on Congress, which quite likely meant continuing the demonstrations. *Id.* at 253.

286. ANDERSON & PICKERING, *supra* note 2, at 180; RALPH, *supra* note 2, at 181.

287. See *supra* text accompanying notes 260-69.

288. GARROW, BEARING THE CROSS, *supra* note 2, at 341-43; KOTZ, *supra* note 87, at 250. The Mississippi Freedom Democratic Party ("MFDP") threatened to protest at the convention if their demands were not met. Johnson had requested a moratorium on all marches, protests, and other potentially disruptive activities until after election day because he feared such events would improve Republican Barry Goldwater's chances in the presidential election. GARROW, BEARING THE CROSS, *supra* note 2, at 343. Johnson expected King and other civil rights leaders to back him up. *Id.* Though the National Association for the Advancement of Colored People ("NAACP") supported the call for a moratorium, King continued to speak out on behalf of the MFDP. *Id.* at 341-43, 346, 348.

them to be represented at the Convention.²⁸⁹

Most importantly, Dr. King had begun to speak out publicly against the Vietnam War in August 1965, less than a week after the President signed the Voting Rights Act.²⁹⁰ King's opposition to the war grew to the point that he could no longer remain silent. At the annual convention of SCLC, King told a crowd of 3500 people that "the true enemy is war itself."²⁹¹ He began to call on those in power to stop the war.²⁹² He called on the President to state clearly that the administration would be willing to negotiate with the Viet Cong.²⁹³

The heart of the issue was a moral question for King. Peace was a moral imperative.²⁹⁴ He also viewed the Vietnam War as closely connected with the issues of civil rights and poverty, about which he cared so deeply.²⁹⁵ Funding the war drained resources from those desperately needed for civil rights and Johnson's "Great Society" programs.²⁹⁶ Additionally, Black draftees disproportionately waged the war and suffered the sacrifices of Vietnam, still another form of exploitation and oppression the system imposed on Blacks.²⁹⁷

For President Johnson, King's public opposition to the war constituted a betrayal that ruptured an already tenuous and tense relationship.²⁹⁸ The President was outraged by King's outspoken opposition to the war, especially because Johnson had worked so hard to get landmark civil rights legislation through Congress.²⁹⁹

289. GARROW, BEARING THE CROSS, *supra* note 2, at 346-48.

290. *Id.* at 438.

291. BRANCH, *supra* note 2, at 287.

292. GARROW, BEARING THE CROSS, *supra* note 2, at 438.

293. *Id.*

294. RALPH, *supra* note 2, at 181; *see* GARROW, BEARING THE CROSS, *supra* note 2, at 443, 453.

295. *See* GARROW, BEARING THE CROSS, *supra* note 2, at 438; KOTZ, *supra* note 87, at 346.

296. WOODS, *supra* note 256, at 786. Johnson introduced his Great Society initiative in May 1964, as a plan to develop a series of working groups tasked to tackle specific problem areas in an effort to create a great society. GRAHAM, *supra* note 114, at 153. Johnson's plan to "provide material benefits to the needy but also improve the quality of life for everyone" included, among other programs, education assistance, health programs, immigration reforms, and antipoverty measures. KOTZ, *supra* note 87, at 259. Johnson was able to push a number of these reform bills through Congress before the lack of progress in Vietnam took its toll on his political capital. *Id.* at 368-69.

297. WOODS, *supra* note 256, at 786.

298. *See* DALLEK, *supra* note 249, at 467.

299. *Id.* In a telephone conversation on August 20, 1965, Johnson told King "that members of Congress had 'the impression that you are against me on Vietnam.'" KOTZ, *supra* note 87, at 345. Johnson also said, "You better not leave that impression I want peace as much as you do Let's not let this country get divided." *Id.* at 345-46.

The White House Conference on Civil Rights planned for the spring of 1966 also illustrated the growing rift between Johnson and King. The conference, initially supported by all of the major

As criticism of the war mounted, Johnson became even more sensitive to his critics.³⁰⁰ In November 1965, the President called King, and they discussed Vietnam.³⁰¹ Johnson laid out his reasoning and his "middle [of the] road" strategy for the war.³⁰² King listened, but the conversation did nothing to change his views.³⁰³ Johnson and King never spoke privately again.³⁰⁴

Johnson also had serious concerns about King's relationship with the Communist Party. FBI head J. Edgar Hoover repeatedly sent the President reports detailing the Communist influence on King and his movement.³⁰⁵ The FBI emphasized the Communist connections of two of King's closest advisors.³⁰⁶

civil rights groups, was supposed to launch a new dialogue about the status of civil rights in the United States. ANDERSON & PICKERING, *supra* note 2, at 171, 195; KOTZ, *supra* note 87, at 359. However, Johnson's seeming embrace of the controversial Moynihan report was the beginning of a significant split between civil rights leaders and the President, and ensured that the conference would be disastrous. ANDERSON & PICKERING, *supra* note 2, at 171, 195; KOTZ, *supra* note 87, at 359; RAINWATER & YANCEY, *supra* note 21, at 5, 6, 16, 275. The Moynihan report, which attributed the condition of Blacks in the United States to the breakdown of the Black family, and the White House's response, enraged civil rights leaders. ANDERSON & PICKERING, *supra* note 2, at 171, 195; KOTZ, *supra* note 87, at 359; RAINWATER & YANCEY, *supra* note 21, at 5, 6, 16, 275. Though the civil rights conference did ultimately take place, Johnson did not personally invite King, as he might have previously. ANDERSON & PICKERING, *supra* note 2, at 171, 195; KOTZ, *supra* note 87, at 359. The conference itself provided little room for new dialogue, instead expecting attendees to respond to the White House's proposed policies. See ANDERSON & PICKERING, *supra* note 2, at 171, 195; KOTZ, *supra* note 87, at 359; RAINWATER & YANCEY, *supra* note 21, at 5, 6, 16, 275.

300. KOTZ, *supra* note 87, at 346.

301. *Id.* at 371.

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.* at 195-96. Hoover's reports consisted of secondhand information, most of which was uncorroborated. WOODS, *supra* note 256, at 577. The reports emphasized that King was being used by communists for their political advantage, and they concluded by summarizing the "communist credentials" of King's advisors. *Id.* Hoover's accusations had led Attorney General Robert Kennedy to authorize wire taps of King's house and his Atlanta and New York offices in 1963. *Id.* at 576.

306. King first worked with Bayard Rustin, a longtime advocate of nonviolent protest, on the Montgomery bus boycott, and Rustin soon became one of King's closest advisors. GARROW, BEARING THE CROSS, *supra* note 2, at 93. Rustin also was rumored to have communist sympathies, so the FBI kept him under close watch which included wiretapping Rustin's phone. KOTZ, *supra* note 87, at 351. Another of King's close advisors, Stanley Levinson, was also kept under tight surveillance due to his ties to the Communist party, including FBI allegations that Levinson was a Communist agent. GARROW, BEARING THE CROSS, *supra* note 2, at 116-17, 195. By the time he became close to King, Levinson had severed all direct ties, but he did continue to offer some financial assistance to the party. *Id.* at 195. After King violated a direct request from Robert

King's public opposition to the Vietnam War only increased Johnson's concerns about the civil rights leader's possible communist connections.³⁰⁷

Moreover, by 1966, Johnson had become convinced that civil rights demonstrations had outlived their usefulness, as evidenced by the disruption they caused in Chicago.³⁰⁸ By the time Congress was considering the fair housing bill that year, Johnson and King were largely estranged.³⁰⁹ So while Johnson and Daley had frequent conversations about the CFM in the summer of 1966, Johnson and King had none.³¹⁰

2. *Public Reaction to the CFM.*—As in the South, the Chicago Movement's leadership wanted to take dramatic action that would provoke resistance and elicit both local and national public support for their cause. To a large extent, however, that strategy backfired in Chicago. The CFM's activities alienated many of those who had previously supported the Southern civil rights movement politically and even financially.³¹¹ For many whites in the North, racial discrimination was a Southern phenomenon, epitomized by Jim Crow laws and customs, barriers to political participation, and violence by white supremacist organizations. These whites thought that Southern civil rights activists had no reason to come North and were not welcome there.³¹²

Moreover, Chicago was a great American city and a destination for two great 20th century migrations of Southern Blacks. It was a land of opportunity, where Blacks participated actively in the political process as well as the labor market. Consequently, many whites thought that it was particularly offensive for "outside agitators" to target Chicago. Much of Chicago's Black community shared the view that Southern civil rights activists should have continued their work in the South rather than disrupting the racial accommodation that they had reached in Chicago.³¹³

Kennedy to end all contact with Levinson, Kennedy approved FBI wiretaps on both King's home and his Atlanta office. *Id.* at 195, 304.

307. KOTZ, *supra* note 87, at 351.

308. President Johnson felt that the media coverage of the violence that greeted the open housing marches reflected badly on his leadership. *See* RALPH, *supra* note 2, at 183. The negative press was particularly problematic because Johnson felt that he had done so much to help the cause of civil rights. KOTZ, *supra* note 87, at 195.

309. *See* KOTZ, *supra* note 87, at 371.

310. RALPH, *supra* note 2, at 181.

311. *Id.* at 184, 186.

312. *See* CARL M. BRAUER, JOHN F. KENNEDY AND THE SECOND RECONSTRUCTION 210-11 (1977).

313. RALPH, *supra* note 2, at 189; *see* BRANCH, *supra* note 2, at 441; FAIRCLOUGH, *supra* note 16, at 304. Unlike some earlier movements, such as the Montgomery bus protest, Chicago's large and economically diverse Black population was not united in the effort to achieve fair housing. RALPH, *supra* note 2, at 177-78, 185. There was a good deal of internal debate about goals and objectives, as well as strategy and tactics. *Id.* at 177-89. More importantly, many Black clergy, politicians, and residents objected to the Movement, including the presence of outsiders who were

The vast majority of whites living in Gage Park, Marquette Park, and the other neighborhoods in which marches took place strongly objected to these intrusions into their communities.³¹⁴ Private property rights were at stake, unlike the public discrimination that activists and legislators were appropriately challenging in the South.³¹⁵ When Jesse Jackson announced a plan to march into the racially exclusionary suburb of Cicero, whites in and outside of Cicero criticized the activists for their provocative plans rather than the Cicero residents for their racist attitudes and actions.³¹⁶

3. *Congress.*—While the House of Representatives passed a very limited fair housing bill in 1966, Senate opponents filibustered the bill to death.³¹⁷ The events in Chicago seem to have contributed to the opposition among legislators. According to Justice Department official Roger Wilkins, “The most significant and best publicized opposition to the [fair housing bill] was . . . based on the opposition to ‘conduct,’ i.e., the marches of the Chicago Freedom Movement through white neighborhoods in Chicago.”³¹⁸

a. *The Senate: Senator Everett Dirksen’s role.*—While much of the civil rights legislation of the 1960s had the support of the majority of the Senate, there was a coalition of segregationist Southern Democrats and conservative Republicans that repeatedly used the filibuster device in an attempt to block a full Senate vote.³¹⁹ Since cloture required a two-thirds vote, the filibuster was a potent weapon and a major obstacle to enacting civil rights legislation.³²⁰ Thus, the largest hurdle in Congress was usually the threat or reality of a filibuster in the Senate.³²¹ The two-thirds vote required for cloture could be achieved only if Republicans joined with non-Southern Democrats in sufficient numbers to invoke cloture and pave the way for the majority of the senators in favor of civil rights

spearheading much of the activity. *Id.*

314. RALPH, *supra* note 2, at 126-27.

315. Whites resisting Black entry into their neighborhoods and communities used a number of rationales to justify their violent resistance to the entrance of Blacks. These rationales included defining Blacks as invaders and then invoking a skewed interpretation of traditional justification defenses, such as self-defense, defense of others, defense of property, and even defense of country. Rubinowitz & Perry, *supra* note 100, at 367-77. Additionally, whites rationalized their resistance as acts of “norm enforcement,” punishing Blacks for violating society’s social norms, which included the residential separation of the races. *Id.* at 375-76.

316. See BRANCH, *supra* note 2, at 515. At a mass meeting, before Movement leaders had decided on any further plans, the young Reverend Jesse Jackson announced, “I’m going to Cicero!” *Id.* Cicero had an extensive history of racial violence. *Id.*; see also MEYER, *supra* note 100, at 118-19.

317. See *supra* note 192 and accompanying text.

318. RALPH, *supra* note 2, at 193-94.

319. See GRAHAM, *supra* note 114, at 203.

320. STANDING RULES OF THE SENATE XXII (2).

321. See GRAHAM, *supra* note 114, at 142, 151-52, 171.

legislation to vote for it.³²²

As a result, Senate Minority Leader Everett Dirksen, a Republican from Illinois, played a critical role in all of the civil rights legislation of the 1960s.³²³ Senator Dirksen held the key to securing the Republican votes needed for cloture.³²⁴ He was a powerful minority leader who had great influence with Senate Republicans and was the only person potentially capable of securing enough Republican votes for cloture to avoid a legislation-killing filibuster.³²⁵ Dirksen had established a pattern of withholding his support until late in the process, negotiating changes in the bills that were favorable to his interests—especially mitigating their impact on the North—and then securing the needed Republican votes for cloture.³²⁶ He also had a close political and personal relationship with President Johnson, which made his role in civil rights legislation even more crucial.³²⁷ So the Johnson Administration turned to Dirksen for his support in 1966, just as it had in previous years.³²⁸

Early on, Senator Dirksen made clear his strong opposition to the fair

322. See *id.* at 150-52, 171. Votes for cloture were necessary in both 1964 and 1965 to end filibusters holding up major civil rights legislation. *Id.* at 151-52, 171.

323. 1966 *Legislative Chronology*, *supra* note 189, at 372; RALPH, *supra* note 2, at 192; EDWARD L. SCHAPSMEIER & FREDERICK H. SCHAPSMEIER, DIRKSEN OF ILLINOIS: SENATORIAL STATESMAN 155-56 (1985). President Johnson recognized that Dirksen's support and his active efforts to gain Republican votes were essential to the passage of any civil rights legislation. SCHAPSMEIER & SCHAPSMEIER, *supra*, at 155.

324. See 1966 *Legislative Chronology*, *supra* note 189, at 372; RALPH, *supra* note 2, at 192; SCHAPSMEIER & SCHAPSMEIER, *supra* note 323, at 155. In 1964 and 1965, Dirksen's leadership had proven crucial to overcoming the Southern Democratic filibuster and passing the Civil Rights Act and the Voting Rights Act, respectively. BYRON C. HULSEY, EVERETT DIRKSEN AND HIS PRESIDENTS: HOW A SENATE GIANT SHAPED AMERICAN POLITICS 224 (2000); see also ROGER BILES, CRUSADING LIBERAL: PAUL H. DOUGLAS OF ILLINOIS 189 (2002) [hereinafter BILES, CRUSADING LIBERAL].

325. SCHAPSMEIER & SCHAPSMEIER, *supra* note 323, at 155-56.

326. "Dirksen learned early in his career that by holding out on compromise at first, he could better position himself further down the line—especially with regard to civil rights legislation." Sean Morales-Doyle, *Unexpected Delay: A Legislative History of the Fair Housing Act of 1968* (May 9, 2007) (unpublished student paper, Northwestern University School of Law) (on file with Author) (citing HULSEY, *supra* note 324, at 102-03).

327. Letter from Lyndon B. Johnson, U.S. Senator, to Everett M. Dirksen, U.S. Senator (Apr. 27, 1959) (copy on file with the Indiana Law Review) (thanking Dirksen for the "quality of [his] friendship, the depth of [his] understanding and the extent of [his] cooperation"); see HULSEY, *supra* note 324, at 248-53 (detailing Dirksen's friendship with Johnson and his habit of supporting Johnson on issues such as the Vietnam War even as he criticized them and despite the fact that it earned him a reputation as a "double agent" in some circles); SCHAPSMEIER & SCHAPSMEIER, *supra* note 323, at 150-51.

328. Memorandum from Nicholas deB. Katzenbach, U.S. Attorney Gen., to Lyndon B. Johnson, U.S. President (Sept. 9, 1966) (copy on file with the Indiana Law Review).

housing bill.³²⁹ He argued that it was an unconstitutional intrusion on property rights and beyond the power of Congress under the Fourteenth Amendment and the Commerce Clause.³³⁰

The CFM's marches into white neighborhoods seemed to harden Dirksen's opposition to fair housing legislation. He expressed his opposition to the Movement publicly, labeling it as "calculated harassment" and "a species of intimidation."³³¹ He said, "It's like saying they're gonna do this or else."³³² He viewed the marches as designed to pressure Congress to enact what he considered to be bad legislation.³³³

In his objections to CFM marches, Dirksen seemed to conflate violence by whites against Black civil rights marchers with Blacks carrying out violence in their own communities in the form of riots or urban rebellions. He considered these very different forms of violence as equally "caused" by Blacks.³³⁴ He thought that Blacks were culpable in the civil rights violence because they had the unseemly goal of interfering with white people's property rights and their well-founded belief that their home was their "castle."³³⁵ To Dirksen, not only was the goal of the Chicago Movement illegitimate, but its means were reprehensible.³³⁶ He saw civil rights activists as exacerbating the situation by generating confrontations with their marches into white neighborhoods.³³⁷ In his view, the marchers were responsible for the violence they provoked from white resisters.³³⁸

b. The House of Representatives.—While the House did pass a fair housing bill in 1966, it had become watered down as it worked its way through the legislative process.³³⁹ In August, the House exempted real estate brokers who sold single-family homes.³⁴⁰ It also excluded from coverage privately owned

329. KOTZ, *supra* note 87, at 116. Dirksen was deeply committed to protecting property rights and expected private property to remain exempt from public regulation. *See id.*; HULSEY, *supra* note 324, at 188, 224-25.

330. 1966 *Senate Hearings*, *supra* note 246, at 1160-65 (statement of Nicholas deB. Katzenbach, U.S. Att'y Gen.) (displaying argument between Dirksen and Katzenbach about the constitutionality of the proposed legislation under the Fourteenth Amendment and the Commerce Clause); BILES, CRUSADING LIBERAL, *supra* note 324, at 189; HULSEY, *supra* note 324, at 224.

331. RALPH, *supra* note 2, at 192.

332. *Id.*

333. *Id.*

334. *See id.*

335. *See id.*

336. *Id.*

337. *Id.*

338. *See id.*

339. GRAHAM, *supra* note 114, at 261. Graham indicates that the House Republicans had little power in 1966 because of the "Goldwater debacle," implying that the bill passed the House because of the sheer numbers of Democrats. *Id.*

340. *See* HARVEY, *supra* note 190, at 38.

homes with less than five residential units.³⁴¹ The amended bill covered only large apartment buildings and developments—about forty percent of the nation’s housing.³⁴²

Some members of Congress conflated the CFM—and the violence by whites—with the violence in the urban rebellions in Chicago and elsewhere.³⁴³ The bill’s supporters tried to draw a clear distinction between the Blacks who were rioting and those who were engaged in lawful protest.³⁴⁴ However, many of the opponents used the word “rioters” to refer to all Blacks, regardless of whether they were peacefully protesting or engaged in violence.³⁴⁵

The resulting confusion undermined support for any civil rights legislation. In early August 1966, Illinois Congressman Dan Rostenkowski, a staunch Daley ally, stated that “his mail has been extremely heavy in opposition to the Civil Rights Bill.”³⁴⁶ He referred to the “touchiness” of the “race problems” in Chicago “and how the white citizens and the police are becoming very aggravated.”³⁴⁷

When the 1966 civil rights bill died in September, Martin Luther King expressed the depth of his disappointment and his concern about the consequences.³⁴⁸ He lamented that “[t]he executioners of the 1966 civil rights bill have given valuable assistance to those forces in the Negro communities who counsel violence. Although I will continue to preach with all my might the moral rightness of nonviolence, my words are now bound to fall on more deaf ears.”³⁴⁹

III. 1968: PASSING THE FAIR HOUSING ACT

It is certainly possible that with the passage of time and the presence of intervening forces pressing for fair housing legislation, the CFM made little or no contribution to the passage of the Fair Housing Act in 1968. Factors that have been credited with contributing to its passage include: the election of several moderate Republicans to the Senate in 1966, President Johnson’s increased efforts to push the legislation through, Senator Dirksen’s last minute switch to support cloture, and Martin Luther King’s assassination.³⁵⁰ It is also possible that

341. RALPH, *supra* note 2, at 174-75.

342. *Id.*; HARVEY, *supra* note 190, at 38.

343. BONASTIA, *supra* note 22, at 83; RALPH, *supra* note 2, at 191.

344. BONASTIA, *supra* note 22, at 83.

345. *Id.*

346. Memorandum from Jake Jacobsen, Legislative Counsel, to Lyndon B. Johnson, U.S. President (Aug. 10, 1966) (copy on file with the Indiana Law Review).

347. *Id.*

348. When the House-passed bill was sent to the Senate, King changed his position and expressed his support for the proposed fair housing legislation. BONASTIA, *supra* note 22, at 80.

349. BERNSTEIN, *supra* note 214, at 392.

350. Jean Eberhart Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 WASHBURN L.J. 149, 149, 158, 160 (1969); see GRAHAM, *supra* note 114, at 270-72. CFM contributed inadvertently to the election of Charles Percy—one of the moderate Republicans who

the bill was passed *in spite of* the impact of the CFM, given the arguably negative impact on the legislative process in 1966.³⁵¹

However, the evidence suggests that the CFM probably constituted one of the “constellation of forces” that contributed to the surprise enactment of the Fair Housing Act in April of 1968.³⁵² In spite of its negative short-term effects on the efforts to pass fair housing legislation, the CFM’s lingering positive impact came to the fore in support of its final passage.

A. President Johnson’s Role

By 1968, the implications of the CFM for President Johnson had changed. The Movement itself had long since ended, and the key players had left Chicago. Johnson could pursue fair housing legislation without the risk of embarrassing and alienating Mayor Daley.³⁵³ Finally, Dr. King’s assassination provided an opportunity for President Johnson to press for prompt passage of the Fair Housing Act as a step towards fulfilling King’s dream of racial equality.

While President Johnson could not use the violent reaction to Chicago’s 1966 open housing marches as a basis for pressing for Congressional legislation, his knowledge of the events on the ground there certainly deepened his understanding of the problem of housing discrimination and the need for federal legislation. From the outset, he had defined the problem of housing discrimination as national in scope—rather than as solely regional. In his first State of the Union Message, on January 8, 1964, Johnson said, “Let me make one principle of this administration abundantly clear: All of these increased opportunities—in employment, in education, in housing, and in every field, must be open to Americans of every color.”³⁵⁴ As a Southerner, he had no incentive to think of this form of racial discrimination as confined to the South. Unlike many Northern politicians, Johnson had nothing invested in the false belief that racial discrimination was exclusively a Southern problem.³⁵⁵

Ironically, the telephone conversations with Mayor Daley in the summer of 1966 helped inform President Johnson of the vehemence of whites’ resistance to Black families’ entry into all-white neighborhoods.³⁵⁶ While Mayor Daley was conveying a message of disruption and disorder, with which the President could

defeated incumbent Paul Douglas. *See infra* notes 368-69 and accompanying text.

351. *See infra* notes 382-83 and accompanying text.

352. *Assessing the Chicago Freedom Movement*, *supra* note 9. Bill Moyer, a CFM participant, suggests that “[t]he Chicago Open Housing Movement also made a critical contribution to the passage of the 1968 Civil Rights Act, which outlawed racial discrimination in housing.” BILL MOYER ET AL., *DOING DEMOCRACY: THE MAP MODEL FOR ORGANIZING SOCIAL MOVEMENTS* 133 (2001).

353. *See infra* notes 362-64 and accompanying text.

354. Lyndon B. Johnson, U.S. President, State of the Union (Jan. 8, 1964), *available at* <http://www.americanrhetoric.com/speeches/16j1964stateoftheunion.htm>.

355. *See* BRAUER, *supra* note 312, at 210-11.

356. *See supra* notes 257-77 and accompanying text.

empathize, the Mayor was also painting a picture of a city that was extremely hostile to Blacks' moving freely into traditionally white neighborhoods.³⁵⁷

Moreover, President Johnson received reports from his staff about events on the ground in Chicago that summer. At one point, he sent high-level administration officials to Chicago to observe what was happening and report back to him.³⁵⁸ This provided additional information about the nature and extent of white resistance to Blacks moving into "their" white neighborhoods. He also received reports from his staff in Washington who were keeping tabs on the situation in Chicago.³⁵⁹

After the Summit Agreement was signed in August 1966, King left Chicago.³⁶⁰ While he talked of monitoring compliance and renewing activities in the city if the parties did not meet their commitments, there was little substance to those threats.³⁶¹ As a practical matter, the Movement had ended with the signing of the Summit Agreement.³⁶² In February 1967, President Johnson's staff reported to him that Martin Luther King had left Chicago and the Movement there had ended.³⁶³ The disruption in the streets that had so angered

357. See *supra* notes 257-77 and accompanying text.

358. Johnson sent both Assistant Attorney General John Doar and Community Relations Service Director Roger Wilkins to Chicago. KOTZ, *supra* note 87, at 365. They came away very impressed with King's work in the city. *Id.* at 365-66.

359. Joseph Califano, Special Assistant for Domestic Affairs, reported to the President that the situation in Chicago was deteriorating. Memorandum from Joseph Califano, Special Assistant for Domestic Affairs, to Lyndon B. Johnson, U.S. President (July 15, 1966) (copy on file with the Indiana Law Review).

360. COHEN & TAYLOR, *supra* note 24, at 423.

361. Upon returning to Atlanta, King told his congregation that the negotiations were "a first step in a thousand mile journey." GARROW, BEARING THE CROSS, *supra* note 2, at 524. However, most evidence indicates that very little actually happened after the Summit. The CFM petered out over the course of the next few months. RALPH, *supra* note 2, at 195. The main follow-up was the creation of an organization to pursue fair housing activities on a metropolitan-wide basis—the Leadership Council for Metropolitan Open Communities—but little else happened. *Id.* at 207-08. Most of Chicago's white voters were pleased that very little civil rights progress resulted from the Summit Agreement. BILES, RICHARD J. DALEY, *supra* note 55, at 136-37. Whites and Blacks alike gave Daley a resounding fourth-term re-election victory in 1967. *Id.* He garnered seventy-three percent of the votes—including four-fifths of the Black vote—and won all fifty wards. *Id.*; FAIRCLOUGH, *supra* note 16, at 305. As a result of CFM, Daley's "opposition to civil rights groups hardened, and he became known as one of the greatest northern opponents of the civil rights movement." BILES, RICHARD J. DALEY, *supra* note 55, at 136-37.

362. RALPH, *supra* note 2, at 195. King returned to Chicago briefly in October of 1966 and was disturbed by the failure to implement the agreement. GARROW, BEARING THE CROSS, *supra* note 2, at 535. He even threatened to resume demonstrations, but nothing came of it. *Id.* at 535-36.

363. Memorandum from Nicholas deB. Katzenbach, U.S. Attorney Gen., to Lyndon B. Johnson, U.S. President (Feb. 27, 1967) (copy on file with the Indiana Law Review).

Attorney General Katzenbach informed the President in late February, 1967, that

and frustrated Mayor Daley had long since passed. So the President's active efforts on behalf of fair housing legislation would no longer risk undermining his relationship with Chicago's mayor. Early in 1967, Johnson had asked for and received assurances from his staff concerning "the plans of civil rights organizations in Chicago."³⁶⁴ With King and the Movement gone from Chicago, Johnson's support for fair housing legislation could not readily be associated with earlier events in Chicago.³⁶⁵

Ironically, President Johnson's call for Congress to enact the fair housing bill in the wake of King's 1968 assassination—something he had been pushing all along—may have been rooted implicitly in the CFM. The best evidence that enactment of that bill would serve as a step toward fulfilling King's dream was the campaign Dr. King waged against housing discrimination and segregation in Chicago during the summer of 1966.³⁶⁶

While King's involvement in housing desegregation served as a rhetorical basis for the President and Congress to move forward on fair housing legislation in the aftermath of Dr. King's death, still another irony remained. It is highly unlikely that King would have sought that particular legislation as the way of continuing his work. Instead, he had shifted his energy during the last part of his life to more fundamental problems of poverty and economic inequality.³⁶⁷ In his testimony before the President's Advisory Commission on Civil Disorders only a few months before his death, King emphasized these concerns in both his own statement and response to commissioners' questions.³⁶⁸ While he mentioned the need for strong fair housing legislation,³⁶⁹ King devoted most of his attention to the need for a massive federal spending program to provide jobs and income for

[a]t this point there is nothing planned in the way of demonstrations for the immediate future, and, insofar as I can see, for any time. Dr. King is not in Chicago, and his principal lieutenants, Jim Bevel and Hosea Williams, have also withdrawn from the scene. I don't think there is any intention of returning.

Id.

364. *Id.* Johnson also asked about the status of Daley's re-election campaign, presumably in order to be sure that everything was on track for Daley to continue in office. *See id.*

365. In fact, Daley had pushed through a fair housing ordinance in Chicago in 1963. RALPH, *supra* note 2, at 115 n.68 (citing an interview with James Murray in which Murray recalled that "Mayor Daley called me in and said that the city needed a fair-housing ordinance and would I draft it . . . My own feeling is that he did it for the good of the city.").

366. *See supra* Part II.

367. KOTZ, *supra* note 87, at 380-81. In still another ironic twist, the Johnson White House had been strategizing before King's death about how to pre-empt King's proposed "Poor People's Campaign's" giant march in Washington slated for April 1968, where the nation's poor would stay until America responds. *See* DALLEK, *supra* note 249, at 533.

368. *See* Dr. Martin Luther King, Jr., Remarks at a Meeting of the National Advisory Commission on Civil Disorders 2773-2825 (Oct. 23, 1967) (transcript available from the Indiana Law Review).

369. *Id.* at 2791-92.

low-income Americans.³⁷⁰

B. *The Senate: Ending the Filibuster*

As with other 1960s civil rights legislation, opponents in the Senate used the filibuster to try to prevent a full Senate vote on what became the 1968 Civil Rights Act.³⁷¹ As discussed earlier, fair housing opponents had engineered a successful filibuster in 1966, even using the CFM as fodder for their opposition.³⁷²

Virtually all observers expected the same result in the Senate in 1968.³⁷³ Since the summer of the CFM, fair housing had developed into a politically charged issue at the national level.³⁷⁴ Additionally, some Northern members of Congress had been frightened by the violent white response to the Chicago demonstrations and were hesitant to take any action that might provoke similar violence in their districts.³⁷⁵ The civil rights movement was also suffering from declining support in the wake of white backlash to civil rights progress and the fear of the growing Black Power movement.³⁷⁶

Early in 1968, Senate Minority Leader Everett Dirksen of Illinois seemed to remain unalterably opposed to federal fair housing legislation.³⁷⁷ His continued opposition would probably have doomed the bill, because Dirksen's support was required to bring along enough moderate Republicans to reach the two-thirds votes needed for cloture.³⁷⁸

While Senator Dirksen strongly objected to the CFM's strategies and tactics, he, like President Johnson, learned more about the depth of housing discrimination from CFM. Moreover, to the extent that Dirksen viewed all violence as equally problematic, his desire to stem the tide of urban violence may have come in response to the events of the CFM as well as several "long, hot summers" in Chicago and many other cities.³⁷⁹ The Fair Housing Act could be a vehicle for reducing the level of urban violence—a critical task for Congress

370. *Id.* at 2776-77, 2810-25.

371. GRAHAM, *supra* note 114, at 150-52, 171.

372. *See supra* Part II.

373. KOTZ, *supra* note 87, at 389; Dubofsky, *supra* note 350, at 149. Unlike in 1966, NAREB did little lobbying before the Senate vote. BONASTIA, *supra* note 22, at 87. Apparently, the organization was taken by surprise by the broad support this time around. *Id.*

374. KOTZ, *supra* note 87, at 389.

375. *Id.* at 389-90.

376. *See id.*

377. *See supra* note 330 and accompanying text.

378. Johnson depended on Dirksen to gather votes among the Senate Republicans, primarily by agreeing to amendments, often weakening ones, in exchange for votes. 1966 *Legislative Chronology*, *supra* note 189, at 370; GRAHAM, *supra* note 114, at 141-42; *see* SCHAPSMEIER & SCHAPSMEIER, *supra* note 323, at 150-51.

379. GRAHAM, *supra* note 114, at 273; *see also* BONASTIA, *supra* note 22, at 86.

to undertake.³⁸⁰

In announcing his changed position on cloture, Senator Dirksen also spoke of his concern that Black Vietnam veterans could face discrimination in housing upon their return.³⁸¹ The CFM could only have made him more aware of that possibility, which he wished to prevent through federal legislation.

The results of the election for the other Illinois Senate seat in November 1966 may also provide a connection between the CFM and Senator Dirksen's changed position on fair housing legislation. In that election, incumbent Democrat Paul Douglas lost his seat to Republican Charles Percy.³⁸² Part of the reason for the Republican victory was a negative reaction among white voters to the marches of the CFM.³⁸³ Nevertheless, Dirksen may have interpreted the election of Percy as an indication of Republican strength in Illinois. Dirksen would be running for re-election in 1968, and the Percy victory in 1966 may have given him reassurance that his support of fair housing legislation would not endanger his victory in November.

C. *The House of Representatives: Honoring Dr. King's Memory?*

When Martin Luther King was assassinated on April 4, 1968, the fair housing bill had already passed in the Senate and had been debated in the House.³⁸⁴ It was passed by the House six days later and signed into law by

380. The President's Advisory Commission on Civil Disorders (the "Kerner Commission," after Governor Otto Kerner of Illinois, the chair of the commission) was released shortly before the successful cloture vote in the Senate. BONASTIA, *supra* note 22, at 86. The Commission recommended that Congress enact comprehensive fair housing legislation. KERNER REPORT, *supra* note 196. It is uncertain what effect, if any, the report had on ending the Senate filibuster. It is also uncertain what effect, if any, the CFM had on the Commission's report and recommendation. Governor Kerner was certainly aware of the resistance to racial integration in Chicago, a view reflected in the Commission's report. In fact, Kerner had prepared the Illinois National Guard in anticipation of an announced CFM march into Cicero, a notoriously racially exclusionary suburb bordering Chicago. RALPH, *supra* note 2, at 111, 166; *Recordings Prove Charge, Says Daley; Guard Patrols Streets*, CHI. TRIB., July 16, 1966, at 1.

381. Mathias & Morris, *supra* note 190, at 25; Morales-Doyle, *supra* note 326, at 47 (citing Mathias & Morris, *supra* note 190, at 25).

382. BILES, CRUSADING LIBERAL, *supra* note 324, at 197-98.

383. *Id.*; SCHAPSMEIER & SCHAPSMEIER, *supra* note 323, at 186. Biles describes fair housing as the "most volatile" issue on the table during the 1966 race between Douglas and Percy. BILES, CRUSADING LIBERAL, *supra* note 324, at 194. He points out that Douglas not only lost some of Chicago's white homeowners who were upset by the marches because of his racial liberalism, but he also lost the votes of some of those who supported the CFM because he had not provided enough support to the Movement. *Id.* Douglas complained of Percy's forces, saying, "They are trying to get the young Negroes to oppose me on the ground that I haven't done enough, and to get the Whites to oppose me on the ground that I had done too much." *Id.* at 194.

384. At the beginning of April, it looked like that bill might die in committee. BONASTIA, *supra* note 22, at 87.

President Johnson on April 11.³⁸⁵

The assassination of Martin Luther King demanded prompt action by the federal government for both symbolic and practical reasons.³⁸⁶ The nation was in mourning and in flames, and congressional action represented a way to make a unifying statement about the collective loss the country had suffered.³⁸⁷ At the same time, Black communities in a number of cities, including the nation's capital, erupted in violence in the aftermath of the assassination.³⁸⁸ Some members of Congress believed that a legislative response would help to address the frustrations triggering the violence and restore calm and order in those communities.³⁸⁹

Supporters of the fair housing bill successfully used the tragedy to press the House for its passage.³⁹⁰ Some suggest that President Johnson and the House of Representatives focused on open housing legislation as a memorial to Dr. King because of the commitment King had shown to this issue through the CFM.³⁹¹ It was the Chicago Movement that first associated King with the issue of housing discrimination and the goal of federal fair housing legislation. So there was a logic, or at least a political rationale, for using the passage of the Fair Housing Act as a way of memorializing him.

The day after the assassination, President Johnson urged prompt passage of

385. Graham, *supra* note 114, at 271-72; see Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified as amended at 42 U.S.C. § 3601-3619 (2000)). It passed in spite of the fact that the Republicans gained forty-seven seats in the House in the 1966 elections, which moved the body in a more conservative direction. Sidney, *supra* note 195, at 190.

386. President Johnson met with a group of civil rights leaders the next day, including Clarence Mitchell and Roy Wilkins of the NAACP, Whitney Young of the Urban League, and Walter Fauntroy of the SCLC. JOHNSON, *THE VANTAGE POINT* *supra* note 214, at 175. According to Johnson, those in attendance wanted to push forward with something “positive to carry the people” in the wake of the tragedy. *Id.* at 176.

387. The country was in a state of disarray bordering on chaos. One historian described “a national mood of remorse that even the massive urban rioting that followed could not erase.” GRAHAM, *supra* note 114, at 272.

388. BRANCH, *supra* note 2, at 767.

389. See Florence Wagman Roisman, *Affirmatively Furthering Fair Housing in Regional Housing Markets: The Baltimore Public Housing Desegregation Litigation*, 42 WAKE FOREST L. REV. 333, 362-63 (2007).

390. One historian has suggested that “[t]he passage of the 1968 act came almost as a surprise, and many viewed it as more a commemoration of King in the wake of his assassination than a response to a national call for reform.” RALPH, *supra* note 2, at 234.

391. In July 2006, participants in the CFM held a national conference called CFM 40, commemorating the 40th anniversary of the Movement. One commentator at the conference suggested that President Johnson and Congress focused on fair housing legislation as an appropriate tribute for King after the assassination because of the interest in the issue that King articulated in Chicago in 1966. Aldon Morris, Professor, Nw. Univ., Remarks at the CFM 40 (July 24, 2006). While King had turned his attention to the problem of poverty and economic inequality after he left Chicago, he continued to indicate support for federal fair housing legislation. *Id.*

the Civil Rights Act of 1968, including the fair housing provisions.³⁹² He suggested that this would be a way of continuing King's work.³⁹³ The fair housing bill provided an opportunity for the Congress to act quickly on a measure that could be linked directly to King's agenda. Both in the CFM and in his follow-up statements, Dr. King had argued for the importance of enacting federal fair housing legislation.³⁹⁴ The CFM was the one time in his career that King focused primarily on the issue of fair housing on a sustained basis.³⁹⁵ His leadership of that Movement made it credible to invoke his name and his memory in pressing for passage of the Fair Housing Act in the immediate aftermath of his death.

The assassination seemed to motivate President Johnson to pursue passage of the bill more aggressively. A charitable version of his actions would suggest that enmities may die with the antagonist's death, particularly if it is a tragic death. A more cynical view of the President's actions is that he decided to exploit King's death for his own political purposes. For whatever reason, Johnson used the occasion of the assassination to press for passage of the civil rights bill in the House.

The morning after King was killed, Johnson sent letters to House Speaker John McCormack and Minority Leader Gerald Ford calling for passage of the fair housing bill: "Last night, America was shocked by a senseless act of violence. A man who devoted his life to the nonviolent achievement of rights that most Americans take for granted was killed by an assassin's bullet. . . ."³⁹⁶ He went on to urge passage of the fair housing act: "I urge the members of the House of

392. In pressing for passage of the fair housing bill after King's death, Johnson told key congressmen, "It's been sitting too long in the Congress." KOTZ, *supra* note 87, at 417.

393. After King's assassination, Johnson told aides, "We've got to show the nation . . . that we can get something done." *Id.* There is controversy about the extent to which House action on the Civil Rights Act was intended as a way of honoring Dr. King. To the extent it was, it is also unclear how much that depended on his interest in fair housing, as opposed to simply enacting some civil rights legislation in his memory. To the extent it was about fair housing in particular, it is also unclear how much that emphasis is related to Dr. King's involvement in the CFM. It is not a large inferential leap, however, to suggest that Dr. King's fair housing efforts in Chicago less than two years before his death were in the minds of members of Congress and the Administration as they moved the Fair Housing Act toward passage.

394. *See supra* note 391 and accompanying text. This is not to suggest, however, that fair housing legislation was a high priority for King at the time of his death. Instead, he was focused on his newly-developed "Poor People's Campaign"—a campaign more concerned with broad economic justice than housing discrimination specifically. KOTZ, *supra* note 87, at 381. His presence in Memphis in support of the garbage workers' strike represented a shift in his focus to economic issues. *Id.* He was preparing to embark on a major initiative, the Poor People's Campaign, in Washington, D.C., at the time he was shot. Both the goals and the methods of that campaign were highly controversial. *Id.* at 379-87. Moreover, they did not provide an obvious opportunity for a quick Congressional response as did the Fair Housing Act.

395. *See supra* Part I.

396. *See* KOTZ, *supra* note 87, at 417.

Representatives to rise to this challenge In your hands lies the power to renew for all Americans the great promise of opportunity and justice under law The time for action is now.”³⁹⁷

However, quick passage would require House concurrence with the Senate version of the bill rather than approval of its own version.³⁹⁸ The latter course would have required sending the House and Senate versions to a conference committee to resolve the differences between the two houses’ bills.³⁹⁹ That would have resulted in delay, at least, and perhaps even resulted in another Senate filibuster and ultimate defeat.⁴⁰⁰ President Johnson’s announcement on March 31, 1968, that he would not run for re-election created additional uncertainty about what the future would hold for a revised bill.⁴⁰¹ At the same time, Senator Dirksen might have declined to take on the responsibility for facilitating cloture again. Even if he had tried, he might have failed because of his declining influence with his Republican colleagues.⁴⁰²

Proponents of the bill, especially fair housing advocates, sought to avoid this uncertain path. Instead, they argued for concurrence with the Senate version, which would send the bill to the President for his signature.⁴⁰³

At that stage, President Johnson used his legendary persuasive powers to encourage House members to accept the Senate’s version of the bill. NAACP head Roy Wilkins suggested that “[a]fter Dr. King’s assassination, Congress, [presumably, the House of Representatives] could not resist L.B.J., who pressed harder than ever for passage.”⁴⁰⁴

It is unclear how much of an impact the assassination had on the House decision to concur with the Senate version of the bill rather than going to conference.⁴⁰⁵ The House had, of course, passed a fair housing bill in 1966, so the major obstacle seemed to have been overcome when the Senate passed a bill in 1968. However, there were differences between the House’s 1966 version and

397. *Id.*

398. The civil rights bill was in the hands of the Rules Committee of the House, which would decide whether the House would consider its own bill or vote in concurrence with the Senate version. *Id.* at 417-20.

399. *Id.* at 419-20.

400. See GRAHAM, *supra* note 114, at 271; *infra* note 408 and accompanying text.

401. Tom Wicker, *Johnson Says He Won’t Run*, N.Y. TIMES, Apr. 1, 1968, at 1.

402. *Open Housing, Rights Protection, Rioting, 1968 Legislative Chronology*, in CONGRESS AND THE NATION, 1965-1968, at 378, 387 (1969) [hereinafter *Effective Lobbying Put Bill Across*]; Morales-Doyle, *supra* note 326, at 47-50 (citing HULSEY, *supra* note 324, at 255).

403. GRAHAM, *supra* note 114, at 271-72.

404. ROY WILKINS WITH TOM MATHEWS, *STANDING FAST: THE AUTOBIOGRAPHY OF ROY WILKINS* 329 (1994).

405. *Effective Lobbying Put Bill Across*, *supra* note 402, at 388 (describing disagreement among the bill’s opponents and proponents in the House regarding the likelihood that the bill would have gone to conference prior to King’s assassination). One commentator suggests that “[m]ost observers agree that King’s death was critically important in gathering sufficient support for the 1968 fair housing legislation.” BONASTIA, *supra* note 22, at 87.

the Senate's somewhat stronger 1968 version.⁴⁰⁶ Moreover, the Senate's bill incorporated other provisions besides fair housing that had not been part of the House-passed 1966 package.⁴⁰⁷ Thus, while the House might have passed a bill without King's assassination, the bill might have been different from the Senate's—thus leading to a conference that could have delayed or even killed the fair housing provisions.⁴⁰⁸

King's assassination was certainly on the minds of members of Congress as they decided whether to concur in the Senate bill or pass their own. In the House hearings in the immediate aftermath of King's death, many of the bill's opponents argued for delaying consideration of the bill until a time when emotions were not running so high.⁴⁰⁹ They expressed fear that the bill would be passed as a "memorial" to King, rather than after calm, thorough, and thoughtful deliberation.⁴¹⁰ On the other hand, the bill's supporters seemed to avoid references to King, perhaps in order to suggest that the bill should be passed as a matter of principle, rather than in reaction to a tragedy.⁴¹¹ The opponents' use of King's assassination may have been a last resort tactic to block passage of the bill—an effort that ultimately failed.⁴¹² Just as cloture in the Senate came about by the narrowest of margins, the House Rules Committee approved concurrence with the Senate version by one vote. After approval by the full House, President Johnson completed the surprising passage into law of the Fair Housing Act, just a week after the death of the leader of so many local movements that reverberated

406. GRAHAM, *supra* note 114, at 271.

407. The Senate's bill included anti-riot provisions and provisions intended to protect Native Americans' civil rights. The anti-riot provisions prohibited traveling in interstate commerce with the intent to incite or participate in a riot and manufacturing, transporting, or teaching the use of firearms and explosives for use in a riot. Morales-Doyle, *supra* note 326, at 15 (citing *Effective Lobbying Put Bill Across*, *supra* note 402, at 382).

408. Morales-Doyle, *supra* note 326, at 52-53; see GRAHAM, *supra* note 114, at 271.

409. *To Prescribe Penalties for Certain Acts of Violence or Intimidation: Hearings on H. Res. 1100 Before the H. Comm. on Rules*, 90th Cong. 56, 59-60 (1968) (statement of Rep. Albert W. Watson). Opponents used this argument in addition to their ongoing arguments about "racial blackmail" and the need to avoid rewarding "Black Power groups . . . burn[ing] our cities." *Id.* at 68 (statement of Rep. Joe D. Waggoner).

410. *Id.* at 69 (statement of Rep. Joe D. Waggoner). Congressman Latta recalled the passage of the Civil Rights Act of 1964, which he viewed as a memorial to President Kennedy, as an inappropriate way for Congress to proceed. *Id.* at 60-61 (statement of Rep. Albert W. Watson). He feared that if Congress passed legislation "on the basis of the fact that a great man died," they would "see many other great men in this country dying just to see legislation passed in the future." *Id.* at 61. Congressman Latta also continued to make the same "chicken and egg" arguments about fair housing laws and riots as mentioned above with regard to the series of riots that took place after King's assassination. *Id.* at 86 (statement of Rep. Charles E. Wiggins).

411. For example, Congressman John Anderson suggested that the bill's supporters had made their decision long before King died. *Id.* at 61 (statement of Rep. Albert W. Watson).

412. *Id.* (statement of Rep. Albert W. Watson); *id.* at 31-32 (statement of Rep. Clark MacGregor) (Rep. Madden discusses the unfairness of the use of the filibuster by the Senate).

across the nation—including the CFM.

CONCLUSION

Many factors contributed to the failure of the fair housing bill in 1966 and its ultimate passage two years later. So it is extremely difficult to isolate a single one such as the CFM and assess the role that it played in each instance. At the same time, the evidence suggests that the Movement had an impact each time. Ironically, it seemed to undermine efforts to secure passage at the time of the marches in 1966, an unintended consequence directly contrary to the hopes of the Movement's leaders. Mayor Daley's opposition to the Movement hindered it nationally as well as locally, because of his close relationship with President Johnson. Moreover, the violent resistance to the non-violent marches in Chicago failed to generate the kind of public and congressional support that the violence perpetrated on Southern civil rights activists had produced in previous years.

Yet, in still another ironic twist, the CFM seems to have had the opposite effect—the originally intended one—when it came to the ultimate passage of fair housing legislation in 1968. The Movement had raised the consciousness of the major players about the depth and breadth of the problem of housing discrimination. By that time, the Movement in Chicago had ended, Mayor Daley was no longer an obstacle to pressing for passage, Martin Luther King had been assassinated, and the political situation had changed just enough to permit congressional action. Still another piece of the civil rights leader's dream had been realized.

