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Delayed Synergy: Challenging Housing Discrimination in Chicago in the Streets and in the Courts

Leonard S. Rubinowitz*
Michelle Shaw†

ABSTRACT

During the Montgomery Bus Boycott, the Montgomery Improvement Association combined a boycott with a successful constitutional challenge to bus segregation laws, producing more progress to desegregate the buses than either strategy could have brought about on its own. The Montgomery Improvement Association's approach was a paradigm of the synergy between a social movement and social change litigation.

This Article argues for opportunities for synergy between social movements and social change litigation in three ways: 1) extending the time frame; 2) joining the forces of two separate organizations to produce change, unlike the single organization in Montgomery; and 3) creating an innovative new program that is different from either of the earlier separate strategies. The Article takes housing desegregation in metropolitan Chicago as a case study. As a result of close, ongoing collaboration between two organizations, substantially more low-income Black families in metropolitan Chicago secured affordable housing of their choice than in the decade before the two organizations joined forces and produced "delayed synergy."

* Professor of Law, Northwestern Pritzker School of Law. The first author acknowledges the generous support from the Northwestern Pritzker School of Law Faculty Research Program. The first author joined Northwestern University's Center for Urban Affairs as a Research Associate in 1972. His research examined the potential viability of a strategy to enable low-income Black families from Chicago's inner city to move to subsidized housing throughout the Chicago metropolitan area. The research laid some of the groundwork for what became the Gautreaux Assisted Housing Program in 1976, the embodiment of the "delayed synergy" discussed in this Article.

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This Article is dedicated to Tim Jacobs, for his extraordinary contributions and his invaluable presence over two decades. He will be missed by so many.

Keywords: social change litigation, delayed synergy, Montgomery Bus Boycott, strategy, desegregation, activism, Chicago, affordable housing, *Gautreaux*, Chicago Freedom Movement, United States Department of Housing and Urban Development (HUD)

Table of Contents

INTRODUCTION

- I. THE COLLABORATION QUESTION: THE CHICAGO FREEDOM MOVEMENT AND THE *GAUTREAUX* LITIGATION
 - A. *Favorable Conditions for Collaboration*
 1. Common Goals
 2. Common Place and Time
 3. Common Challenges and Adversaries
 4. Overlapping Participants
 - B. *Reasons Why Collaboration Did Not Happen: Missing Conditions*
 1. Different Core Strategic Commitments
 2. Full Plates
 3. Specific Housing Emphasis: Private Housing v. Public Housing
 - II. THE PURSUIT OF SEPARATE PATHS: 1966–1976
 - A. *The Leadership Council for Metropolitan Open Communities as the Chicago Freedom Movement’s Successor*
 1. Origins in the 1966 “Summit Agreement”
 2. The Leadership Council’s Early Days
 - B. *The Gautreaux Litigation*
 1. The CHA Case
 2. The HUD Case
 - III. CHANGED CONTEXT: LAYING THE GROUNDWORK FOR COLLABORATION
 - A. *Internal Factors*
 1. Metropolitan-wide Focus
 2. Converging Strategies
 3. A Turn to the Private Rental Housing Market
 4. Capacity: Manageable Plates
 - B. *External Factors*
 1. Congressional Enactment of the Section 8 Program
 2. The Supreme Court Decision in the HUD Case
 3. Gautreaux–HUD Agreement: The Gautreaux Program
 - C. *The Final Factor: Leadership Council Joins Forces with Gautreaux Lawyers to Administer the Gautreaux Program*
 - IV. IMPLEMENTING THE *GAUTREAUX* PROGRAM
 - A. *Collaboration Between the Leadership Council and the Gautreaux Lawyers*
 - B. *Demand for the Program and Housing Supply*
 - V. THE RESULTS: MEASURING THE SYNERGY
 - A. *1966–1976: A Time of Separate Paths*
 - B. *1976–1998: A Time of Collaboration*
- CONCLUSION

AFTERMATH: A NOTE ON THE PROLIFERATION OF HOUSING “MOBILITY PROGRAMS” AND PUBLIC HOUSING DESEGREGATION LITIGATION

“Synergy refers to when an interaction of elements produces an effect that is greater than the effect that would have resulted from simply adding up the effects of each individual element.”²

INTRODUCTION

Social movements using direct action, such as boycotts and demonstrations, and social change litigation have often proceeded independently of each other. On occasion, however, leaders have deployed the two strategies in tandem, hoping to create synergy between them that results in greater progress than the two could achieve by adding up their separate efforts.³

The basic model of “synergy” assumes that direct action and complementary litigation proceed more or less simultaneously and in sync with each other.⁴ It also envisions a single autonomous organization making the decision to deploy the two strategies at once.⁵ Finally, it contemplates the use of those two strategies in particular rather than the creation of a third one that represents a more effective alternative.⁶

The Montgomery Bus Boycott serves as a paradigmatic example of the basic model. In 1956, the Martin Luther King, Jr.-led Montgomery Improvement Association (MIA) combined the activism of a social movement and complementary litigation to produce greater change than either could have accomplished by itself.⁷ After several months of boycotting the city’s buses, with increasing resistance by local officials and the bus company and no visible progress, the MIA decided to add a lawsuit challenging the state and local bus segregation laws to its strategic arsenal.⁸ The combination of the two strategies produced more change on the buses than they could have achieved proceeding independently of each other.⁹

The Supreme Court decision striking down those laws gave the Black community the legal victory it needed, but they still had to contend with the possibility of resistance on the ground from many quarters that could have turned the Court’s decision into a Pyrrhic victory.¹⁰ The strength, organization, and discipline the Black community developed

² *Synergy*, *DICTIONARY.COM*, <https://www.dictionary.com/browse/synergy> (last visited July 28, 2021).

³ Christopher Coleman, Laurence D. Nee & Leonard S. Rubinowitz, *Social Movements and Social Change Litigation: Synergy in the Montgomery Bus Protest*, 30 *LAW & SOC. INQUIRY* 663 (2005).

⁴ *See generally id.*

⁵ *See generally id.*

⁶ *See generally id.*

⁷ *See generally id.*

⁸ The incredibly long boycott, which lasted more than a year, remained in sync with the lawsuit, where the Supreme Court struck down the bus segregation laws less than a year after the case was filed. The boycott and the litigation “interacted, each shaping and reinforcing the other.” *See* Coleman, Nee & Rubinowitz, *supra* note 3, at 663.

⁹ Coleman, Nee & Rubinowitz, *supra* note 3, at 663.

¹⁰ *Gayle v. Browder*, 352 U.S. 903 (1956); Coleman, Nee & Rubinowitz, *supra* note 3, at 687. The protesters were prepared to deal with opposition that might arise because of the experience they gained and the lessons they learned from encountering myriad forms of resistance over the months of the boycott.

during the boycott enabled Black residents once again to withstand and overcome the resistance that arose in the wake of the Supreme Court decision.¹¹ As a result, the combination of the two strategies produced more change on the buses than either could have produced by itself.

This Article argues that the potential for synergy between a social movement's direct action and social change litigation can extend well beyond that basic model. First and foremost, it argues that the conditions necessary for synergy can occur long after the initiation of the direct action and the litigation. The concept of "delayed synergy" suggests that those conditions may not come together for years.

Second, synergy can occur even with separate organizations and decision makers proceeding at the same time, each with their own, independent strategies. Even after an extended period of organizations proceeding on parallel paths, the leaders may come together and join forces to create synergy. Finally, synergy may be operationalized through the organizations' creation of a third, innovative strategy that is more effective than their previous direct action and litigation strategies.¹²

This Article illustrates this expanded conception of synergy by using a case study involving two initiatives that began in Chicago at nearly the same time, each with major implementation challenges. In 1966, Dr. Martin Luther King, Jr. and his Southern Christian Leadership Conference (SCLC) went North for the first time, joining forces with local Chicago activists to address residential racial segregation and discrimination.¹³ They launched a nonviolent direct action initiative with marches, demonstrations, and vigils in July 1966, calling it the Chicago Freedom Movement.¹⁴

A few weeks later, the American Civil Liberties Union filed a public housing desegregation lawsuit in federal court in Chicago.¹⁵ It was the first major case of its kind in the country.¹⁶ This lawsuit came to be known as the *Gautreaux* litigation. It consisted of

"Black" is capitalized whenever it refers to Black people to indicate that Black people, or African Americans, make up a specific cultural group with its own history, traditions, experience, and identity—not just of a particular color. Using the uppercase letter signifies recognition of the culture, as it does with LatinX, Asian Americans, or Native Americans. See Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Litigation in Anti-Discrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988).

¹¹ Coleman, Nee & Rubinowitz, *supra* note 3, at 687, 722 n.158.

¹² Thanks to Molly Crane for this insight.

¹³ ALAN B. ANDERSON & GEORGE W. PICKERING, *CONFRONTING THE COLOR LINE: THE BROKEN PROMISE OF THE CIVIL RIGHTS MOVEMENT IN CHICAGO* 173 (2008). See *infra* Part I.B.2. For more on the Chicago Freedom Movement, see generally JAMES R. RALPH, JR., *NORTHERN PROTEST: MARTIN LUTHER KING, JR., CHICAGO, AND THE CIVIL RIGHTS MOVEMENT* 1, 7, 28–91 (1993); *THE CHICAGO FREEDOM MOVEMENT* (Mary Lou Finley, Bernard Lafayette Jr., James R. Ralph, Jr. & Pam Smith eds., 2016); ANDERSON & PICKERING, *supra* note 13; TAYLOR BRANCH, *AT CANAAN'S EDGE: AMERICA IN THE KING YEARS 1965–68*, 501–22 (2006); *CHICAGO 1966: OPEN HOUSING MARCHES, SUMMIT NEGOTIATIONS, AND OPERATION BREADBASKET* (David J. Garrow ed., 1989); Chicago Campaign (1966), KING INST. ENCYCLOPEDIA, http://kingencyclopedia.stanford.edu/encyclopedia/encyclopedia/enc_chicago_campaign/ (last visited Nov. 15, 2020).

¹⁴ See *infra* Part II.A.1; BRANCH, *supra* note 13, at 501–22.

¹⁵ ALEXANDER POLIKOFF, *WAITING FOR GAUTREUX* 48 (2006). For more on the *Gautreaux* case, see generally *id.*; LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, *CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA* (2000).

¹⁶ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 1–2; see *infra* Part I.B.2.

two companion cases challenging policies and practices of the local and federal agencies, respectively, that administered the public housing program.¹⁷

Unlike in Montgomery, the direct action lasted less than three months, but it culminated in an agreement between the Chicago Freedom Movement and local leaders that provided for the creation of a successor organization that implemented the agreement.¹⁸ That organization, the Leadership Council for Metropolitan Open Communities (Leadership Council), soon opened its doors.¹⁹ Also, unlike in Montgomery, the *Gautreaux* litigation proceeded slowly, with its life counted in decades rather than months.²⁰

For a full decade, the activists and lawyers proceeded separately, without any thoughts of collaboration.²¹ While there were factors that may have made collaboration seem logical, there were many valid reasons for this lack of collaboration at the outset.²² The Chicago Freedom Movement's successor organization, the Leadership Council, made some progress in assisting Black families' moves, but the progress was very slow and relatively minor. The *Gautreaux* lawyers, while technically victorious in court, made almost no actual progress on the ground.²³

By 1976, internal and external conditions had changed dramatically in ways that made it possible for synergy and accelerated progress to occur.²⁴ Internally, the two organizations had newly shared goals and strategies, along with increased capacity to work together. The external conditions had changed as well. All three branches of the federal government took steps that laid the groundwork for collaboration.²⁵

With these important changes in conditions, the *Gautreaux* lawyers and the Leadership Council joined forces, creating an innovative new strategy to provide expanded housing opportunities for Black families.²⁶ This newly-created Gautreaux Assisted Housing Program (Gautreaux Program) launched in 1976 and led to far more success than

¹⁷ POLIKOFF, *supra* note 15, at 48. The companion cases (which were ultimately consolidated) had different lengths, but both lasted for decades. The HUD case (1966–1998) took a decade to define the remedy and two more decades to implement it. The CHA case (1966–2024) took three years to establish a violation and issue an order, and more than half a century to implement the many orders. A 2019 settlement agreement established the remaining goals and had a planned termination date of 2024. *See infra* Part II.B.1–2. While the two *Gautreaux* cases were later consolidated, this Article refers to them as separate cases for purposes of clarity. They had very different histories and roles in the synergy analysis. *Id.* For background on public housing in Chicago generally, *see* ARNOLD R. HIRSCH, MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO 1940–1960 (1983); DEVEREUX BOWLY, JR., THE POORHOUSE: SUBSIDIZED HOUSING IN CHICAGO (2d. ed. 2012); MARTIN MEYERSON & EDWARD C. BANFIELD, POLITICS, PLANNING, AND THE PUBLIC INTEREST: THE CASE OF PUBLIC HOUSING IN CHICAGO (1964); D. BRADFORD HUNT, BLUEPRINT FOR DISASTER, THE UNRAVELING OF CHICAGO PUBLIC HOUSING (2010).

¹⁸ *See infra* Part II.A.1.

¹⁹ *See infra* Part II.A.2.

²⁰ *See infra* Part II.B.1–2; BILL MOYER, JOANN MACALLISTER, MARY LOU FINLEY & STEVE SOIFER, DOING DEMOCRACY (2001) at 80–82 (describing Stage 8: Continuing the Struggle); 122–23, 126, 130–31, 134 (citing the Southern Christian Leadership Conference as part of the case study of a civil rights movement).

²¹ *See infra* Part V.A.

²² *See infra* Part I.

²³ *See infra* Part V.A.

²⁴ *See infra* Part III.

²⁵ *See infra* Part III.B.

²⁶ *See infra* Part III.C.

either group had accomplished on its own.²⁷ It assisted more than 7,000 low-income Black Chicago families (more than 25,000 people) to move into affordable rental housing throughout the Chicago metropolitan area.²⁸ The families moved into 120 suburban communities, and the Program inspired the proliferation of “housing mobility” programs in cities all over the country.²⁹ The accomplishments of the Gautreaux Program represent the “delayed synergy” that could not have been imagined when initiatives began in the streets and the courts of Chicago in the summer of 1966.

Since the concept of time is central to this analysis, this Article’s structure is largely chronological. It starts with the two initiatives’ almost simultaneous 1966 launches and ends with the completion of the Gautreaux Program, near the turn of the twenty-first century. In between, circumstances changed, creating opportunities for collaboration and synergy.

Part I focuses on the question of possible initial collaboration and the separate paths that the two initiatives took for years. Section A examines the conditions that seemed favorable for collaboration, which turned out to have little force: 1) common general goals; 2) common geographical focus and launch time; 3) common challenges and adversaries; and 4) overlapping participants.

Section B explores the reasons why collaboration did not happen at that time. The organizations had: 1) different core strategic commitments; 2) full plates; and 3) different specific housing emphases (private housing v. public housing), which led to the pursuit of separate paths. In addition, conditions external to the organizations that were necessary for a successful collaboration did not come together for a decade.

Part II traces the organizations’ pursuit of separate paths from 1966 to 1976, including 1) the development of the Chicago Freedom Movement’s successor organization, the Leadership Council, and 2) the course of the *Gautreaux* litigation, with the violation and remedy in the CHA case and the companion case against HUD.

Part III considers the changing context in the ten-year period that laid the groundwork for the 1976 collaboration. Section A explores the organizations’ altered internal positions that put them on the same page: 1) a newly shared expanded focus from addressing housing issues in the city of Chicago to the entire six-county metropolitan area; 2) a common target of securing access to private subsidized housing; and 3) the growth in capacity of each organization, enabling them to design and implement a new initiative to advance the converging geographical and programmatic goals.

Section B looks at changed external conditions that laid the groundwork for collaboration. These include 1) Congress’s enactment of the Section 8 rent subsidy Program (1974); 2) decisions culminating in the Supreme Court permitting a metropolitan-wide remedy, a necessary condition for creating the collaboration (1976); and 3) HUD’s agreement to fund a metropolitan-wide remedial rental program (1976).

Section C focuses on the final internal factor: the Leadership Council’s agreement to administer the Gautreaux Program. That bringing together of the two organizations was the final piece that created the opportunity for synergy.

²⁷ See *infra* Part V.B.

²⁸ See *infra* Part V.B; POLIKOFF *supra* note 15, at 248.

²⁹ See *infra* Part V, Aftermath.

Part IV considers the implementation of the Gautreaux Program, including opportunities and constraints related to 1) demand for the program; and 2) supply of available housing.

Part V examines the results and measures the synergy by examining the total number of moves achieved during: 1) 1966–1976 at a time of separate paths; and 2) 1976–1998 at a time of collaboration. It documents the synergy achieved with the coming together of the *Gautreaux* case and the social movement on a metropolitan-wide housing effort. While the Gautreaux Program faced many obstacles, the scale of this collaborative undertaking far exceeded the progress of the separate initiatives up to that point.

The Conclusion considers what the Chicago case study offers to the understanding of the relationship between social movements and related litigation. The Aftermath highlights the Gautreaux Program’s broader impact in spawning both federal and local housing “mobility” programs.

I. THE COLLABORATION QUESTION: THE CHICAGO FREEDOM MOVEMENT AND THE *GAUTREAU*X LITIGATION

The 1955–56 Montgomery Bus Boycott was a paradigmatic example of synergy between the social movement and the litigation challenging the bus segregation laws.³⁰ However, unlike the 1966 Chicago situation, a single protest organization coordinated the social and legal movements.³¹ When the boycott began, the leaders formed the Montgomery Improvement Association (MIA), to carry out the protest and make the strategic decisions.³²

In Chicago, in 1966, there were two separate initiatives, so setting agendas and deciding strategies were in the hands of two independent organizations: the Chicago Freedom Movement and the American Civil Liberties Union of Illinois (ACLU).³³ As a result, any coordination of strategies between the two would have required the respective organizations to join forces. Their autonomy is critical to examining their possibilities for collaboration.

This section examines the seemingly favorable conditions for collaboration between the activists and the litigators and the obstacles that ensured it did not happen at the outset. Over the next decade, changes both within the organizations and external conditions dramatically altered the calculus.³⁴

³⁰ Coleman, Nee & Rubinowitz, *supra* note 3, at 666.

³¹ *Id.* at 674.

³² While the leaders sometimes disagreed with each other, including about the timing of filing the desegregation lawsuit, the Montgomery Improvement Association proved capable of working out those differences internally. While Dr. King and the other leaders considered embarking on a bus boycott and federal litigation challenging bus segregation laws simultaneously, they started the boycott and put off the lawsuit. Several months later, events led the leaders to add the lawsuit to their strategy. *Id.* at 672–75, 679, 681–84, 699–701. *See also* MARTIN LUTHER KING, JR., *STRIDE TOWARD FREEDOM* (1958); HENRY HAMPTON AND STEVE FAYER, *AN ORAL HISTORY OF THE CIVIL RIGHTS MOVEMENT* (1991); J. Mills Thornton III, *Challenge and Response in the Montgomery Bus Boycott of 1955–1956*, 67 *ALA. L. REV.* 40 (2014).

³³ *See infra* Part I.B.

³⁴ *See infra* Part III.

A. *Favorable Conditions for Collaboration*

There were several conditions that pointed towards the two organizations working together from the start. They both wanted to end residential segregation in Chicago. They both launched in Chicago within weeks of each other. Both organizations were dealing with a huge and complex challenge, partially focused on fighting the city's power structure. Finally, there were many individuals, and even organizations, that were involved in both struggles, which could have led the way for communication and even collaboration from the start.

1. Common Goals

The Chicago Freedom Movement and the *Gautreaux* litigation shared a common goal—alleviating Chicago's pervasive racial residential segregation and the discrimination that produced and sustained it.³⁵ They both envisioned Black people having the choice to live freely in any housing and any neighborhood in the city—not just in theory but in reality.³⁶

Both the Chicago Freedom Movement and the ACLU identified racial residential discrimination and segregation as a core civil rights problem in Chicago.³⁷ Both organizations focused on the historic and continuing exclusion of Black Chicagoans from white neighborhoods.³⁸ Because of both public and private racially discriminatory policies and practices, Chicago had long been one of the most segregated cities in the country.³⁹ From early in the twentieth century, racial discrimination pervaded the city's private housing market.⁴⁰ The result was that Black residents were confined to overcrowded, over-

³⁵ See ANDERSON & PICKERING, *supra* note 13; POLIKOFF, *supra* note 15. For more on the Chicago Freedom Movement, see generally RALPH, *supra* note 13; THE CHICAGO FREEDOM MOVEMENT, *supra* note 13; BRANCH, *supra* note 13; CHICAGO 1966, *supra* note 13; KING INST. ENCYCLOPEDIA, *supra* note 13. For more on the *Gautreaux* case, see generally RUBINOWITZ & ROSENBAUM, *supra* note 15.

³⁶ The Chicago Freedom Movement had embarked earlier on an “End the Slums” campaign which addressed the deteriorated conditions in inner city Black neighborhoods, but with the launch of the “Open City” campaign, the priority shifted to making locational choice a reality. THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 44–45.

³⁷ POLIKOFF, *supra* note 15, at 7; ANDERSON & PICKERING, *supra* note 13, at 201.

³⁸ HIRSCH, *supra* note 17; POLIKOFF, *supra* note 15, at 26–32. The movement emphasized the role of the real estate industry, especially the Chicago Real Estate Board, that forced Black residents into limited neighborhoods. ADAM FAIRCLOUGH, TO REDEEM THE SOUL OF AMERICA: THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE AND MARTIN LUTHER KING, JR. 291 (1987); RALPH, *supra* note 13, at 101, 228.

³⁹ DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 72 (1998) (discussing Chicago as one of the most segregated cities in the country). For extensive empirical analysis of residential segregation in Chicago, see KARL E. TAEUBER & ALMA F. TAEUBER, NEGROES IN CITIES (1965); OTIS DUDLEY DUNCAN & BEVERLY DUNCAN, THE NEGRO POPULATION OF CHICAGO (1957). For more recent discussions, see RICHARD ROTHSTEIN, THE COLOR OF LAW (2017); RICHARD H. SANDER, YANA A. KUCHEVA & JONATHAN M. ZASLOFF, MOVING TOWARD INTEGRATION: THE PAST AND FUTURE OF FAIR HOUSING (2018).

⁴⁰ See generally ALLAN SPEAR, BLACK CHICAGO: THE MAKING OF THE NEGRO GHETTO, 1890–1920 (1969); ST. CLAIR DRAKE & HORACE R. CAYTON, BLACK METROPOLIS: A STUDY OF NEGRO LIFE IN A NORTHERN CITY (1993).

priced, substandard housing—first on the city’s South Side and later in West Side neighborhoods as well.⁴¹

2. Common Place and Time

Both initiatives chose the city of Chicago as the site for their efforts. The several dozen organizations in the Coordinating Council of Community Organizations (CCCO) targeted issues in the city.⁴² CCCO was formed to protest segregation and unequal treatment in Chicago Public Schools.⁴³ The organization had grown frustrated with its lack of success, and it was looking to shift its focus.⁴⁴ CCCO leaders sought Dr. Martin Luther King, Jr.’s assistance to energize their lagging efforts.⁴⁵ Dr. King and the SCLC joined them to form the Chicago Freedom Movement, focusing on the city of Chicago.⁴⁶

The *Gautreaux* litigation also focused within the city limits where the Chicago Housing Authority (CHA) operated.⁴⁷ All of CHA’s public housing was within the city.⁴⁸ The plaintiff class members, who were all the residents of public housing and families on the waiting list, were all city residents.⁴⁹

⁴¹ FAIRCLOUGH, *supra* note 38, at 280–81; THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 27; HIRSCH, *supra* note 17, at 8.

⁴² Though still relatively new, by 1964 CCCO member organizations were a diverse array of civil rights, religious, professional, labor, and community groups. The groups ranged from conservative groups, such as the Chicago Urban League (who according to its charter could not be a protest organization), to moderate groups, and an aggressive wing led by Chicago branches of CORE and SNCC. RALPH, *supra* note 13, at 9, 24. Al Raby was a Black activist and the leader of the CCCO. In the summer of 1965, he led a direct action movement against the segregation in Chicago Public schools, and their superintendent. *Id.* at 7–9; POLIKOFF, *supra* note 15, at 35–36. The groups and the individual leaders in CCCO were racially integrated, and therefore the Chicago Freedom Movement as a whole was a racially integrated movement. To give the reader a better idea of the integrated nature of the movement, as people involved in the movement are discussed, the footnotes will identify the race of the individuals.

⁴³ To address separate and unequal schools, activists engaged in many marches, as well as two major one-day boycotts of the schools. The first occurred in October 1963 and involved more than 225,000 Black children. The second took place in February 1964, with 175,000 Black children participating. THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 17.

⁴⁴ All of their efforts were to no avail. The resulting frustrations led to the efforts to bring Dr. King and the Southern Christian Leadership Conference to Chicago to support and strengthen activists’ efforts. RALPH, *supra* note 13, at 38; ANDERSON & PICKERING, *supra* note 13, at 167.

⁴⁵ THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 108; RALPH, *supra* note 13, at 28.

⁴⁶ In the summer of 1965, as Dr. King explored northern cities as possible destinations for his first northern movement, his focus was on the city itself, rather than the region. The presence of Mayor Richard J. Daley served as an attraction because he had supported the southern civil rights movement. Dr. King was also impressed with the level of community activism in the city, as evidenced by the coalition of organizations that comprised CCCO. RALPH, *supra* note 13, at 39; BRANCH, *supra* note 13, at 320–21; ANDERSON & PICKERING, *supra* note 13, at 183; CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 24, 241. The coincidence of place continued as both initiatives expanded to a metropolitan focus later. *See infra* Part III.A.1.a.

⁴⁷ *See infra* Part II.B.1. *See also* Leonard S. Rubinowitz, *Metropolitan Public Housing Desegregation Remedies: Chicago’s Privatization Program*, 12 N. ILL. U. L. REV. 589, 595–96 (1992).

⁴⁸ *See* POLIKOFF, *supra* note 15, at 29–30.

⁴⁹ *Gautreaux v. Romney*, 363 F. Supp. 690, 691 (N.D. Ill. 1973). Under state law, CHA could provide public housing in the suburbs, with the approval of local officials. That had not happened, so there were no CHA residents living in the suburbs. *See infra* Part III.A.1.a.

The fact that both initiatives started at almost the same time also seemed to provide an opportunity for collaboration.⁵⁰ After months of preparation, in the summer of 1966, the Chicago Freedom Movement and the ACLU launched the “open city” movement and filed the *Gautreaux* case, respectively.⁵¹

During this period, civil rights movements in the streets, inspired by Montgomery, and actions in the courts, inspired by the Supreme Court’s landmark decision in *Brown v. Board of Education*, took place all over the country.⁵² Given this high level of civil rights activity, it was not particularly surprising that both initiatives launched in the same place around the same time, even though they did so independently. Chicago had such an extreme history of segregation and discrimination in all aspects of the city’s housing that both the initiatives were quite timely.⁵³

3. Common Challenges and Adversaries

Both initiatives entered uncharted territory, with high risks and great uncertainty as to the outcome.⁵⁴ The Chicago Freedom Movement was Dr. King’s and the SCLC’s first foray into the North.⁵⁵ Chicago was a much larger and more complex city than any southern campaign had addressed.⁵⁶ The *Gautreaux* case was the first major lawsuit alleging racial discrimination in a northern public housing program.⁵⁷ Similarly, the ACLU was challenging the administration of one of the largest public housing programs in the country.⁵⁸

⁵⁰ The development of the ACLU’s and Chicago Freedom Movement’s strategies to challenge the city’s racial divide spanned essentially the same time period. ACLU lawyers spent months examining the facts of public housing segregation, researching the law, and developing legal theories of the case. Meanwhile, Chicago Freedom Movement leadership considered various possible focuses, strategies, and tactics, before settling on open housing as the centerpiece of the movement. During that period of preparation, each organization could have explored the potential benefits and costs of collaboration. *See infra* Part I.B.2.

⁵¹ THE CHICAGO FREEDOM MOVEMENT, *supra* note 13 at 45–48; POLIKOFF, *supra* note 15, at 48.

⁵² *See, e.g.*, BRANCH, *supra* note 13; *The Civil Rights Movement Timeline*, HISTORY.COM, <https://www.history.com/topics/civil-rights-movement/civil-rights-movement-timeline> (Dec. 4, 2017, updated Jan. 19, 2021).

⁵³ *See, e.g.*, HIRSCH, *supra* note 17; ROTHSTEIN, *supra* note 39.

⁵⁴ Arguably this could also be a reason for not coordinating, since it would make things more complicated. *See infra* Part I.B.2.

⁵⁵ *See* ANDERSON & PICKERING, *supra* note 13. For more on the Chicago Freedom Movement, *see generally* RALPH, *supra* note 13; THE CHICAGO FREEDOM MOVEMENT, *supra* note 13; BRANCH, *supra* note 13; GARROW, *supra* note 13; KING INST. ENCYCLOPEDIA, *supra* note 13. For information on the civil rights movement in the north, *see generally* THOMAS J. SUGRUE, *SWEET LAND OF LIBERTY: THE FORGOTTEN STRUGGLE FOR CIVIL RIGHTS IN THE NORTH* (2009); JEANNE THEOHARIS, *A MORE BEAUTIFUL AND TERRIBLE HISTORY: THE USES AND MISUSES OF CIVIL RIGHTS HISTORY* (2018); MARTHA BIONDI, *TO STAND AND FIGHT: THE STRUGGLE FOR CIVIL RIGHTS IN POSTWAR NEW YORK CITY* (2006).

⁵⁶ *See infra* Part I.B.2.

⁵⁷ *See infra* Part II.B.1. In 1953, a California appeals court found that a policy to deny Black tenants admission to buildings in white neighborhoods was a violation of the Fourteenth Amendment. *See* ROTHSTEIN, *supra* note 39, at 30.

⁵⁸ In the 1950s, CHA was the largest landlord in Chicago, with over 40,000 units. As of 2021, CHA was the second largest housing authority in the United States based on number of Section 8 vouchers, and third based on public housing units. *About*, CHI. HOUS. AUTH., <https://www.thecha.org/about> (last visited Nov. 1, 2021); Donna Kimura, *Top Public Housing Authorities*, HOUS. FIN. (Apr. 1, 2010), https://www.housingfinance.com/developments/top-public-housing-authorities_o.

Moreover, both the Chicago Freedom Movement and the ACLU confronted the city's power structure.⁵⁹ The powerful Mayor Richard J. Daley, the local Democratic machine, and its many allies presented a formidable force that was likely to strenuously oppose any efforts at systematic change in the policies and practices that had produced the city's residential patterns.⁶⁰

4. Overlapping Participants

In general, direct action and litigation call for different kinds of participants, with the former requiring activist leaders and many "foot soldiers" without any specialized knowledge and the latter relying on a small number of lawyers with specific expertise.⁶¹ However, in this instance, some organizations and individuals participated in both initiatives. Those connections seemed to provide an opportunity for collaboration.

The non-profit Chicago Urban League appeared to be a potential bridge between the Chicago Freedom Movement and the public housing litigation.⁶² It had long served the city's Black community in helping people "find jobs, secure affordable housing, enhance their educational experiences, and grow their businesses."⁶³ The Urban League participated in the Chicago Freedom Movement as a member of CCCO.⁶⁴ Bill Berry, its Executive Director, played an important role throughout the direct action campaign and beyond, while

⁵⁹ The city government was not the primary formal opposition for either the Chicago Freedom Movement or the *Gautreaux* case; but with Mayor Richard J. Daley (white) at the peak of his power in running the Democratic machine, he and his allies in City Hall and at CHA were among the main opponents for both the Chicago Freedom Movement and the *Gautreaux* litigators. For more on Mayor Daley's role in Chicago, see, e.g., ADAM COHEN & ELIZABETH TAYLOR, *AMERICAN PHARAOH: MAYOR RICHARD J. DALEY - HIS BATTLE FOR CHICAGO AND THE NATION* (2000); MIKE ROYKO, *BOSS: RICHARD J. DALEY OF CHICAGO* (1998); ROGER BILES, *RICHARD J. DALEY: POLITICS, RACE, AND THE GOVERNING OF CHICAGO* (1995).

⁶⁰ See *infra* Part II.A.2, II.B.1. At the summit meetings with the Chicago Freedom Movement, Daley was the dominant figure, using his clout to leverage a deal that ended the marches. See *infra* Part II.A.1.

In the public housing litigation, Mayor Daley's role was less visible, because CHA was a separate legal entity and the only local defendant in the case; but everyone knew that he was pulling the strings there as well. See, e.g., POLIKOFF, *supra* note 15, at 77, 79, 98–99; COHEN & TAYLOR, *supra* note 59, at 199–201. The formal head and public face of CHA was its chairman Charles Swibel (white), who was the mayor's surrogate, confidante, close adviser, and his appointee to the position. POLIKOFF, *supra* note 15, at 42–43. During the summit meetings, Swibel tried to persuade the Chicago Freedom Movement to get the *Gautreaux* lawyers to drop the case as part of the agreement. John McKnight, *The Summit Negotiations: Chicago, August 17, 1966*, in CHICAGO 1966, *supra* note 13, at 117–18. Ironically, Swibel was either assuming a connection between the Chicago Freedom Movement and the lawyers in the case or trying to stimulate such a connection in order to achieve his purpose of making the lawsuit go away.

⁶¹ Leonard S. Rubinowitz et. al., *A "Notorious Litigant" and "Frequent of Jails": Martin Luther King, Jr., His Lawyers, and the Legal System*, 10 NW. J. L. & SOC. POL'Y 496, 568 (2016).

⁶² The Urban League even played a role in SCLC coming to Chicago. An Urban League study found that there were large numbers of Black people from Mississippi living in Chicago. That helped the SCLC conclude that there would be a natural connection between Dr. King and Chicago's Black community. Presentation by Bernard Lafayette at the Gary Orfield conference in 1987; see generally ARVARH E. STRICKLAND, *HISTORY OF THE CHICAGO URBAN LEAGUE* (University of Missouri Press rev. ed. 2001).

⁶³ *About*, CHI. URB. LEAGUE, <https://chiul.org/about/> (last visited July 28, 2021). The Chicago Urban League was founded in 1916 as an affiliate of the National Urban League.

⁶⁴ ANDERSON & PICKERING, *supra* note 13, at 99. The Chicago Urban League had been a member of CCCO since its formation in 1962. *Id.* at 90.

Harold (Hal) Baron, its Research Director, played a central role in drafting the document that guided the movement—the “Program of the Chicago Freedom Movement.”⁶⁵

At the same time, the Urban League laid the essential groundwork for the *Gautreaux* case.⁶⁶ Hal Baron led the organization’s research on CHA’s racial practices.⁶⁷ The work revealed what appeared to be widespread discrimination and segregation in the location of public housing developments and the assignment of tenants.⁶⁸ Baron took their findings to the ACLU to explore the possibility of litigation challenging the agency’s practices.⁶⁹

Even though the national ACLU’s history and core purpose were civil liberties and the protection of the First Amendment, there were strong reasons for turning to it for legal support.⁷⁰ First, local affiliates had a great deal of autonomy, and the Illinois division

⁶⁵ See *infra* Part II.A.1. (discussing summit meetings, where Ming represented the Chicago Freedom Movement). Hal Baron (white) served as Research Director at the Urban League. RALPH, *supra* note 13, at 274 n.17. The program laid out what the movement saw as the largest problems affecting Black people in Chicago (racism, slums, and ghettos), as well as listing their demands related to each of those areas. Document available at https://www.crmvet.org/docs/66_cfm_program-july.pdf.

At a meeting on July 23, 1966, Baron informed the Chicago Freedom Movement leadership that the ACLU was suing the CHA over the location of new public housing sites. ANDERSON & PICKERING, *supra* note 13, at 218–19.

⁶⁶ POLIKOFF, *supra* note 15, at 7, 26–27.

⁶⁷ *Id.* at 26–27.

⁶⁸ *Id.* at 56–58. The first use of the research findings was an administrative complaint filed with HUD. See Frederick Aaron Lazin, *Public Housing in Chicago, 1963–1971, Gautreaux v. Chicago Housing Authority: A Case Study of the Co-Optation of a Federal Agency by Its Local Constituency* 134–38 (March, 1973) (Ph.D. dissertation, University of Chicago) (on file with first author).

The Urban League provided data showing that since 1954, CHA built 0.6% of regular public housing in white or mixed neighborhoods and 99.4% of its units in non-white neighborhoods. *Id.* at 50–51. After Baron conducted his research and found evidence of CHA discrimination, he joined with the West Side Federation to file an administrative complaint with HUD. POLIKOFF, *supra* note 15, at 7.

HUD rejected the complaint because most Black applicants expressed a preference for Black neighborhoods. Also, the City Council, which had veto power under state laws, had rejected white-area sites CHA proposed. *Id.* at 7, 26–27. It still got some public attention, at least in CCCO-affiliated organizations.

⁶⁹ The case did not follow the typical pattern of prospective clients seeking legal representation.

Baron presented his findings to the ACLU, suggesting at the time, “you might want to look at this as a suit under the ’64 Civil Rights Act.” LAZIN, *supra* note 68, at 138. An ACLU attorney and Hal Baron then asked to meet with Alex Polikoff, an ACLU volunteer lawyer, to discuss a possible lawsuit growing out of his findings. When Polikoff decided to file suit, he asked Baron and the Urban League to help him find plaintiffs. POLIKOFF, *supra* note 15, at 7, 32–33.

While the Fourteenth Amendment’s Equal Protection Clause already provided the basis for a challenge to racial discrimination in the public housing program, the passage of the 1964 Civil Rights Act prompted the Chicago Urban League’s additional research on the racial aspects of the Chicago Housing Authority’s policies and practices. See *id.* at 7, 26–27.

Title VI of the Civil Rights Act prohibited racial discrimination in programs and activities receiving federal financial assistance, which included public housing programs. Civil Rights Act of 1964, tit. VI, Pub. L. No. 88-352, 78 Stat. 241 (codified at 42 U.S.C. §§ 2000d to 2000d-4).

⁷⁰ For information on the ACLU’s strong history on protecting the First Amendment, see generally DIANE GAREY, *DEFENDING EVERYBODY: A HISTORY OF THE ACLU* (1998); SAMUEL WALKER, *IN DEFENSE OF AMERICAN LIBERTIES* (1990).

pursued civil rights goals as a secondary agenda.⁷¹ Moreover, it was the only established legal organization in the city that assumed the costs of its litigation and had the capacity, through its “cooperating attorneys,” to carry out a challenge of this scale.⁷² While Chicago law firms were beginning to incorporate *pro bono* in their respective cultures, there was no firm that was publicly committed to *pro bono* at a level that would have attracted the Urban League’s attention.⁷³

Based on the Urban League’s research, the ACLU lawyers decided to proceed in federal district court.⁷⁴ The Urban League continued to assist the lawyers as they prepared for, and proceeded with, the litigation.⁷⁵ Without the Urban League’s efforts, there would have been no such legal challenge at that time.

Among the individuals involved in both initiatives, Dorothy Gautreaux stands out.⁷⁶ She lived in public housing for many years, and was a very active organizer of, and advocate for, public housing tenants.⁷⁷ She represented public housing residents in CCCO and in the Chicago Freedom Movement.⁷⁸ She also agreed to serve as a named plaintiff in the ACLU’s class action lawsuit.⁷⁹ When the lawyers made hers the first name on the

⁷¹ POLIKOFF, *supra* note 15, at 5–7 (discussing Polikoff’s school desegregation case in Waukegan and the ACLU’s Civil Rights Committee).

⁷² The Chicago Urban League did not have resources to fund litigation. STRICKLAND, *supra* note 62, at 257–59. The NAACP Legal Defense Fund (LDF), the leading civil rights litigation organization in the country, was based in New York and focused its work on the South during that time. JACK GREENBERG, CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION (1994). The Chicago Lawyers’ Committee for Civil Rights under Law, was not formed until 1969, three years after the litigation began. *Mission, Values & History*, CHICAGO LAWYERS’ COMMITTEE FOR CIVIL RIGHTS, <https://www.clccrul.org/mission-values-history>.

Outside of non-profit organizations, there were no viable options. Very few Chicago law firms had *pro bono* policies and support at this time. Potentially, a member of the Black bar may have been interested in the case, but their numbers were small, and most could not afford to take a case of this magnitude *pro bono*. One of the most active civil rights lawyers, Bob Ming, was closely connected to Mayor Daley, and actually argued on behalf of the city of Chicago against the Chicago Freedom Movement. *See infra* Part II.A.1.

⁷³ *See infra* Part I.B.2.

⁷⁴ The ACLU is a national non-partisan non-profit, with largely autonomous local chapters. The Illinois chapter was founded in 1926 and was very small. In 1965, it had a staff of four, and a budget of less than \$50,000. The organization chooses cases, but most of the litigation is carried out by “cooperating attorneys.” The ACLU is reactive in its litigation efforts, identifying problems and addressing them, rather than initiating proactive campaigns like the Legal Defense Fund’s school desegregation campaign, culminating in *Brown v. Board of Ed. About Us*, ACLU ILL., <https://www.aclu-il.org/en/about/about-us> (last visited Jul. 28, 2021); Robert L. Rabin, *Lawyers for Social Change: Perspectives on Public Interest Law*, 28 STAN. L. REV. 207, 212–15, 219 n.43, 221–24 (1976); Ryan Haggerty, Obituary, *Jay A. Miller, 1928-2012*, CHI. TRIB., Jan. 5, 2012 at 2.7.

⁷⁵ *See infra* Part I.B.2.

⁷⁶ *See* Hal Baron, *Women in the Movement II: Dorothy Gautreaux*, in THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 369–71.

⁷⁷ *Id.*

⁷⁸ Gautreaux was responsible for bringing Dr. King to Altgeld Gardens, her public housing development, for a rally. *Id.* at 370.

Dorothy Gautreaux challenged the separate and unequal public schools in the city. She worked on improving the quality of schools in her area and organized tenants to participate in demonstrations and boycotts. *Id.* at 369–71.

⁷⁹ The Urban League helped find the plaintiffs, and Dorothy Gautreaux was one of six named representatives in the class action. POLIKOFF, *supra* note 15, at 33. Charles Markels, a Lawyers’ Guild

complaint, Gautreaux became the public face of the residents challenging the agency's policies and practices.⁸⁰

Kale Williams, a white local activist, also participated in both initiatives. As head of the Chicago Regional Office of the American Friends Service Committee—the Quakers' social justice arm—Kale Williams was a leader in CCCO.⁸¹ He became an important participant in the Chicago Freedom Movement, serving on the negotiating team in “summit meetings” that led to the Summit Agreement that also ended the marches and demonstrations.⁸²

Williams also played a role in the public housing challenge. In the early 1960s, he worked with a coalition of civil rights groups opposing CHA's racial policies and practices.⁸³ In 1966, Williams joined the ACLU board during the initiation of the *Gautreaux* case.⁸⁴

Jay Miller, another white activist who was connected to Kale Williams, also played a role in both initiatives.⁸⁵ As a staff member of the American Friends Service Committee, he helped organize a Dr. King rally in Chicago that attracted 75,000 people in 1964.⁸⁶ In the fall of 1965, Miller became Executive Director of the ACLU of Illinois.⁸⁷ He served in that capacity when the lawyers filed the case the following summer.⁸⁸

representative to CCCO and a *Gautreaux* co-counsel, suggested Dorothy Gautreaux as a potential lead plaintiff. Gautreaux's name was chosen to be first (which a case is usually known by) both because it is unusual, and because she “was a tenant leader who would become an especially good spokesperson.” *Id.* at 47; *see also* Baron, *in* THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 370.

⁸⁰ Baron, *in* THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 370.

⁸¹ RALPH, *supra* note 13, at 136.

⁸² RALPH, *supra* note 13, at 161. He also served on the movement's agenda setting committee. *Id.* at 118.

⁸³ Various conversations of the first author with Kale Williams. The first author was present in many meetings about the program and had many conversations with the lawyers and Leadership Council staffers before and during the two decades of the *Gautreaux* Program. *See* Leonard S. Rubinowitz & Katie Kenny, “Metropolitan Housing Opportunities for Lower-Income Chicago Families: Report on the *Gautreaux* Demonstration Program, Year 1” (Report for Leadership Council for Metropolitan Open Communities by the Urban-Suburban Investment Study Group, Center for Urban Affairs, Northwestern University [1991]); RUBINOWITZ & ROSENBAUM, *supra* note 15. At one of these meetings the CHA director admitted they used a dual intake system to keep segregation. An account of this meeting later helped in the *Gautreaux* litigation. *Id.*

⁸⁴ *Id.*; Williams played a critical role in the collaboration a decade later, when he was Executive Director of the Leadership Council for Metropolitan Open Communities, the implementing organization. *See infra* Part III.C.

⁸⁵ E-mail from Mary Lou Finley, Professor Emeritus, Antioch University, to first author (Feb. 6, 2012, 03:31 CST).

⁸⁶ June Rosner, *Jay Miller Tribute Page*, ACLU ILL. (Jan. 11, 2012), <https://www.aclu-il.org/en/news/jay-miller-tribute-page> (“Jay Miller was in charge of the 1964 successful Martin Luther King ‘I care I’ll be there’ Rally at Soldier Field.”). This rally was a precursor to Dr. King choosing Chicago for his first northern movement. *See supra* note 46.

⁸⁷ Miller retired in 2000, after more than four decades in leadership positions with the ACLU of Illinois, Northern California, and in the national offices in Washington, D.C. and New York. He spent more than a quarter of a century as Executive Director of the ACLU of Illinois: 1965–71 and 1978–2000. Haggerty, *supra* note 74. Miller served on the staff of the American Friends Service Committee, a member of CCCO, from 1961 until the fall of 1965. Haggerty, *supra* note 74; e-mail from Mary Lou Finley, *supra* note 85.

⁸⁸ E-mail from Mary Lou Finley, *supra* note 85.

While each of these participants had a role in both initiatives, none of them seemed to imagine connecting the two.⁸⁹ Not only did the organizations not combine strategies, but no one seemed to consider communicating plans, or sharing information or resources that could assist the other. Their perspective seemed to be that these were two separate and worthwhile activities, each of which called for their separate involvement. It is doubtful early connection would have borne fruit, given the need for external conditions that could not have even been imagined in 1966. They emerged over time, and were not fully present for a decade.⁹⁰

B. *Reasons Why Collaboration Did Not Happen: Missing Conditions*

Even though the Chicago Freedom Movement and the ACLU had shared goals, participants, time, and place, those provided only weak connections, so neither organization considered the possibility of joining forces when they began their initiatives.⁹¹ For important reasons of principle and practicality, the Chicago Freedom Movement and the *Gautreaux* litigation went their separate ways.⁹² Not only were key internal conditions for joining forces missing, but the external conditions necessary for synergy also lay well into the future.⁹³

1. Different Core Strategic Commitments

The two organizations had different perspectives on how to bring about social change. They drew on distinct traditions of Black protest: one of mobilizing large numbers of protesters to engage in collective direct action, and the other of using the courts to challenge racist laws, policies, and practices.⁹⁴

⁸⁹ Participants did not seem to be conscious of these choices and did not know why they did not coordinate as they looked back on it decades later. Kale Williams, one of the central figures in the Chicago Freedom Movement, was baffled about why they had not worked together. Williams knew that Alex Polikoff was plugging away during the period, but without a lot of interaction or communication with the Chicago Freedom Movement. Various conversations of the first author with Kale Williams. *See supra*, note 83.

⁹⁰ *See infra* Part III.

⁹¹ POLIKOFF, *supra* note 15, at 47. In looking back at the origins of the *Gautreaux* case in 1966, Polikoff wondered why he and the other lawyers involved did not consider connecting with the Chicago Freedom Movement to discuss ways to coordinate their efforts. Specifically, he regretted that *Gautreaux* lawyers did not try, through shared leaders, to urge the Chicago Freedom Movement to insist on changes from the CHA, such as not building more ghetto high rises. POLIKOFF, *supra* note 15, at 46; Elizabeth Mooney Interview with Alex Polikoff, in Chicago, Ill. (July 30, 2008) at 10.

⁹² For the origins of *Gautreaux*, *see generally* LAZIN, *supra* note 68; POLIKOFF, *supra* note 15, at 46–47. For the origins of the Chicago Freedom Movement, *see* RALPH, *supra* note 13, at 1, 7, 28–91; ANDERSON & PICKERING, *supra* note 13; DAVID GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR. AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (1987); FAIRCLOUGH, *supra* note 38.

⁹³ *See infra* Part III.

⁹⁴ The tradition of collective direct action goes back a long way—slave revolts, the underground railroad, economic boycotts against the early Jim Crow laws, and the March on Washington. *See generally* ALDON MORRIS, THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE (paperback ed. 1986).

Black activists used the courts as early as the 1890s, with the challenge in *Plessy v. Ferguson* and proceeding through the first half of the twentieth century and beyond with the NAACP's and the NAACP Legal Defense Fund's legal challenges involving school and other forms of segregation. Those lawyers

The Chicago Freedom Movement and its leadership—especially Dr. King—emphasized Gandhian nonviolence through mass movements engaged in direct action.⁹⁵ They shared a deep philosophical and practical commitment to nonviolent direct action.⁹⁶ SCLC attempted to create civic crises through massive nonviolent protest.⁹⁷

As a matter of principle, Dr. King favored direct action because it engaged and energized the community.⁹⁸ It featured ordinary people seeking to bring about social change through mass action.⁹⁹ For him, litigation (especially relying on it exclusively) put

played the primary roles in shaping the legal challenges central to overturning the Jim Crow order and did not usually engage in mass protest. MORRIS, *supra*, at 37.

There are some civil rights lawyers who were involved in organizing, and Spottswood Robinson and Oliver Hill insisted on a showing of community support before they agreed to file suit challenging the segregated schools in Prince Edward County, Virginia in 1951. MARGARET EDDS, *WE FACE THE DAWN: OLIVER HILL, SPOTTSWOOD ROBINSON, AND THE LEGAL TEAM THAT DISMANTLED JIM CROW* 208 (2018).

⁹⁵ See, e.g., RALPH, *supra* note 13, at 38–41; ANDERSON & PICKERING, *supra* note 13, at 125–26, 184–85.

⁹⁶ See, e.g., *THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR.* 240 (Clayborne Carson ed., 1998) (“Our feeling was that [nonviolent direct action], more than any other [method], was the best way to raise the problems of the Negro people and the injustices of our social order before the court of world opinion, and to require action.”); RALPH, *supra* note 13, at 65. For Dr. King, nonviolence was much more than a strategy. It was a central philosophy, a way of life. *THE PAPERS OF MARTIN LUTHER KING, JR., VOLUME V, THRESHOLD OF A NEW DECADE*, at 517.

Moreover, Dr. King expressed concern about the cost of litigation, complaining that “to accumulate resources for legal actions imposes intolerable hardships on the already overburdened.” GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE* 139 (Univ. of Chicago Press, 2d ed., 2008).

By 1966, Dr. King had moved away from the use of complementary litigation in support of nonviolent direct action as the leaders of the Montgomery Bus Boycott had used. See also, Coleman, Nee & Rubinowitz, *supra* note 3; Rubinowitz, *supra* note 61, at 581–88.

⁹⁷ See RALPH, *supra* note 13, at 31–32, 51, 59, 65. Dr. King articulated his position in his 1963 Letter from Birmingham Jail: “Nonviolent direct action seeks to create such a crisis and establish such creative tension that a community that has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored.” MARTIN LUTHER KING, JR., *WHY WE CAN’T WAIT* 89 (Beacon Press 2010) (1964); Mary Lou Finley, *The Open Housing Marches Chicago Summer ‘66*, in *CHICAGO 1966*, *supra* note 13, at 12.

In his July 1966 launch speech in Chicago, Dr. King emphasized that: “Our power does not reside in Molotov cocktails, rifles, knives, and bricks . . . I am still convinced that nonviolence is a powerful and just weapon. It cuts without wounding. It is a sword that heals.” RALPH, *supra* note 13, at 107 (quoting Martin Luther King, Jr. speech on July 10, 1966).

By 1966, Dr. King had moved from his original idea of “persuasive nonviolence,” relying on moral persuasion, to “coercive nonviolence,” trying to put so much pressure on the establishment that it had to respond. The strategies the Chicago Freedom Movement deployed reflected this more aggressive version of nonviolence. See KING, *WHY WE CAN’T WAIT*, *supra* note 97 at 89. He had given up on the “persuasive nonviolence” that characterized his early years. Rubinowitz, *supra* note 61, at 580–81, 588; Martin Luther King, Jr., *Where Do We Go From Here: Chaos or Community?*, Address at the Southern Christian Leadership Conference Convention (Aug. 16, 1967) in MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* 96, 137 (Beacon Press 2010) (1968).

⁹⁸ Rubinowitz, *supra* note 61, at 568.

⁹⁹ ROSENBERG, *supra* note 96, at 139–40; Rubinowitz, *supra* note 61, at 568.

matters into the hands of the elite lawyers and largely excluded the masses from efforts that affected them directly.¹⁰⁰

From a practical standpoint, litigation had several disadvantages. Turning to the courts usually led to significant delays, putting that strategy out of sync with direct action initiatives.¹⁰¹ Moreover, litigation is expensive, and deprives much-needed resources from efforts to mobilize ordinary people.¹⁰² Finally, by 1966, Dr. King was skeptical of the courts' ability to convert legal victories into changes on the ground.¹⁰³

In contrast, the ACLU and the *Gautreaux* lawyers were committed to litigation as their main strategy to bring about social change.¹⁰⁴ While the ACLU was not founded as a litigation-focused organization, turning to the courts had always been at least one of its strategies.¹⁰⁵ By the 1960s, the ACLU's legal challenges were central to its vision of how to bring about social change.¹⁰⁶ When the Urban League brought the CHA research to the ACLU, they framed the problem of state-imposed segregation as a form of racial discrimination and therefore a legal problem for the courts to address.¹⁰⁷ Moreover, ACLU staff and volunteer lawyers often shared a "fear the streets and favor the courts"

¹⁰⁰ See MORRIS, *supra* note 94, at 123; ROSENBERG, *supra* note 96, at 140.

¹⁰¹ GARROW, BEARING THE CROSS, *supra* note 92, at 91–92; Martin Luther King, Jr., *Foreword to WILLIAM M. KUNSTLER, DEEP IN MY HEART*, at xxii (William Morrow & Co. 1966); ROSENBERG, *supra* note 96, at 87–88.

¹⁰² ROSENBERG, *supra* note 96; Rubinowitz, *supra* note 61, at 568.

¹⁰³ See *infra* text accompanying note 151. Unlike many of the struggles in the South, where Jim Crow laws prevailed, the Chicago Freedom Movement was not challenging a discriminatory law. Instead, they asked a single question: "can a Negro walk into a real estate office and be served?" RALPH, *supra* note 13, at 156. The Chicago Freedom Movement leaders interpreted any answer other than "yes" to be a failure of political will, not law. They believed that only the pressure of a mass movement could change that answer. The real estate industry was made up of many individual businesses. As became apparent subsequently, there was no way to change all of their practices in one fell swoop. See *supra* Part III.C.

¹⁰⁴ See POLIKOFF, *supra* note 15, at 8.

¹⁰⁵ SAMUEL WALKER, IN DEFENSE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU, 51–169 (S. Ill. Univ. Press, 2nd ed., 1999) (1990). At the time of its founding in 1920, there was a focus on non-court advocacy, primarily in the form of lobbying, publicizing, and using personal connections to influence officials' actions. DIANE GAREY, DEFENDING EVERYBODY: A HISTORY OF THE ACLU, 69–70 (1998).

By the late 1920s, the ACLU began seeing that courts were increasingly receptive to their mission, and they shifted their efforts accordingly. WALKER, *supra*, at 69; JUDY KUTULAS, THE AMERICAN CIVIL LIBERTIES UNION AND THE MAKING OF MODERN LIBERALISM, 1930–1960 31 (2006).

¹⁰⁶ See WALKER, *supra* note 105 at 51–169; Rabin, *supra* note 74, at 212.

That was the strategy that Thurgood Marshall and the NAACP Legal Defense Fund (LDF) had deployed since the 1930s to challenge the constitutionality of state-imposed segregation, most notably in public education at all levels. See generally RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY (1975); GREENBERG, *supra* note 72; MARK TUSHNET, MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936–1961 (1994). That campaign culminated in *Brown v. Board of Ed.*, which served as a model for making civil rights advances through the courts. See *Brown v. Bd. of Ed.*, 347 U.S. 483 (1954).

¹⁰⁷ The foundational course of *Marbury v. Madison*, providing for judicial review of the constitutionality of government actions, is a centerpiece of Constitutional Law and lawyers' legal training. See *Marbury v. Madison*, 5 U.S. 137, 138 (1803). The ACLU and the NAACP and NAACP Legal Defense Fund were among the earliest organizations to turn to the courts in civil rights and civil liberties matters. See Rabin, *supra* note 74. See *supra* Part I.A.4.

perspective.¹⁰⁸ Direct action seemed dangerous, with risks of violent resistance as had occurred in the South.¹⁰⁹ The results also seemed unpredictable. In short, nonviolent direct action was not a significant part of the ACLU's strategic inventory. Relying on the courts was the organization's standard way of pursuing social change.

2. Full Plates

Both the Chicago Freedom Movement leaders and the *Gautreaux* lawyers faced complicated and difficult challenges as they pursued their separate initiatives. They had steep learning curves and a great deal of preparation and decision-making to do for many months before they could go public with their plans in the summer of 1966.¹¹⁰ They each focused on their own daunting tasks rather than considering possible connections with each other.¹¹¹

The Chicago Freedom Movement had an unusually complicated structure. As mentioned earlier, the organization owed its existence to a marriage of a pre-existing local coalition, known as CCCO, with Dr. King's SCLC.¹¹² The entry of SCLC into the Chicago picture added to ongoing internal tensions.¹¹³ CCCO brought a great deal of local knowledge to the table, while SCLC brought a series of successes in the southern movements.¹¹⁴ A struggle for decision-making power ensued.¹¹⁵ Local activists often felt that SCLC staff treated them dismissively, dominating and disrespecting them.¹¹⁶ It took months to work out those relationships and create a structure that incorporated both the locals and the newcomers.¹¹⁷ They called it the "Chicago Freedom Movement," with co-leaders Dr. King and Al Raby, the head of CCCO.¹¹⁸

Similarly, determining an agenda and goals was extremely difficult.¹¹⁹ It took a number of months to reach a resolution.¹²⁰ That task began with an assessment of the school desegregation efforts that had occupied CCCO for several years.¹²¹ SCLC and CCCO

¹⁰⁸ Interview with John McKnight, former Executive Director of ACLU (July 21, 2006). McKnight was the white Executive Director of the ACLU of Illinois from 1960–62. He is not a lawyer and favors working with community groups and neighborhood organizations.

¹⁰⁹ See, e.g., FAIRCLOUGH *supra* note 38, at 121–28, 183–86, 242–43 (discussing violence against protesters in Birmingham, St. Augustine, and Selma).

¹¹⁰ About six months for the *Gautreaux* lawyers. POLIKOFF, *supra* note 15, at 25. Dr. King announced a plan to come to Chicago in January 1966, though staff were laying groundwork a few months prior to that announcement. RALPH *supra* note 13, at 43–44.

¹¹¹ POLIKOFF, *supra* note 15, at 47.

¹¹² THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 24–26.

¹¹³ RALPH, *supra* note 13, at 54–55; ANDERSON & PICKERING, *supra* note 13, at 173–74.

¹¹⁴ RALPH, *supra* note 13, at 48–55; ANDERSON & PICKERING, *supra* note 13, at 182–83.

¹¹⁵ See RALPH, *supra* note 13, at 139–40; ANDERSON & PICKERING, *supra* note 13, at 172–88; GARROW, *supra* note 92, at 467.

¹¹⁶ RALPH, *supra* note 13, at 54–55, 139–40; GARROW, BEARING THE CROSS, *supra* note 92, at 467.

¹¹⁷ RALPH, *supra* note 13, at 44–55; ANDERSON & PICKERING, *supra* note 13, at 173.

¹¹⁸ RALPH, *supra* note 13, at 55; ANDERSON & PICKERING, *supra* note 13, at 188.

¹¹⁹ Finley, in CHICAGO 1966, *supra* note 13, at 1–14.

¹²⁰ Finley, in CHICAGO 1966, *supra* note 13, at 2 (describing the preparations that began in Sept. 1965).

¹²¹ See FAIRCLOUGH, *supra* note 38, at 282–83; Leonard S. Rubinowitz & Kathryn Shelton, *Non-Violent Direct Action and the Legislative Process: The Chicago Freedom Movement and the Federal Fair Housing Act*, 41 IND. L. REV. 663, 672 (2008).

leaders decided that continuing the seemingly futile campaign against segregated and unequal education would not be effective.¹²²

Even after they had switched their focus, it took months for them to choose a way forward.¹²³ The movement first began an effort to “end slums,” which involved organizing low-income tenants to press their landlords to make repairs.¹²⁴ That turned out to be a slow, painstaking process, with no dramatic progress.¹²⁵ SCLC staff in Chicago were not trained as community organizers and experienced serious morale problems with a strategy that was so slow and different from the nonviolent direct action of the southern movements.¹²⁶

As a result, movement leaders continued to search for an agenda that would serve as the centerpiece of the Chicago Freedom Movement.¹²⁷ James Bevel, a confidant of Dr. King, pressed for housing discrimination to serve that purpose.¹²⁸ He argued that lack of full access represented a denial of equal citizenship, which was the foundation of all forms of racial discrimination.¹²⁹ It was not until summer approached that Dr. King finalized the decision to make the goal of an “open city” the centerpiece.¹³⁰ The leaders then turned to the difficult task of developing strategies and tactics to address the deeply embedded barriers standing in the way.¹³¹

Still another challenge was building support within the Black community, which posed a far greater test than it had in the Southern movements.¹³² Many Black people in Chicago had an allegiance to the Democratic machine.¹³³ Elected officials, including Black City Council members, owed their positions to Mayor Daley’s support.¹³⁴ Political

¹²² FAIRCLOUGH, *supra* note 38, at 283. Although Al Raby sought to continue the movement’s efforts related to public education, Dr. King’s confidant James Bevel insisted that they needed a broader focus to sustain a mass movement and attack segregation as well. RALPH, *supra* note 13, at 51.

¹²³ Finley, *in* CHICAGO 1966, *supra* note 13, at 1–14.

¹²⁴ *Id.* at 3–4.

¹²⁵ *Id.* at 5–6.

¹²⁶ *Id.*

¹²⁷ *Id.* at 6–7.

¹²⁸ The discussions tied the old and new goals together. Ending the slums by opening the city seemed to be key to ending segregation. RALPH, *supra* note 13, at 50–51; Finley, *in* CHICAGO 1966, *supra* note 13, at 7–8.

Black activist James Bevel did not consider housing discrimination the highest priority for Chicago’s Black community, but he saw it as a way of establishing a level of dignity that was necessary for all kinds of racial progress. Finley, *in* CHICAGO 1966, *supra* note 13, at 7–8.

William Moyer, a white organizer with CCCO member American Friends Service Committee, influenced James Bevel. He also argued for housing discrimination as the central focus of the movement. He carried out extensive research on the issue and found widespread racial discrimination in the housing market in both the city and the suburbs, providing support for CFM’s interest in a metropolitan approach. RALPH, *supra* note 13, at 99–101; *see infra* Part III.A.1.i.

¹²⁹ Finley, *in* CHICAGO 1966, *supra* note 13, at 7–8. The decision to focus on “open city” also involved a process of elimination. RALPH, *supra* note 13, at 101–02 (saying it was “the only feasible proposal advanced”).

¹³⁰ Finley, *in* CHICAGO 1966, *supra* note 13, at 7; RALPH, *supra* note 13, at 102. The goal was an open city in which all places in the city are available to all. They then chose open housing as the first target to mobilize around. ANDERSON & PICKERING, *supra* note 13, at 201.

¹³¹ Finley, *in* CHICAGO 1966, *supra* note 13, at 12–19; RALPH, *supra* note 13, at 104–05.

¹³² RALPH, *supra* note 13, at 76–88.

¹³³ THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 38–40; RALPH, *supra* note 13, at 80–88.

¹³⁴ *See, e.g.*, RALPH, *supra* note 13, at 84; COHEN & TAYLOR, *supra* note 59, at 213–15, 315, 415, 519–21.

patronage also contributed to loyalty to the Democratic machine for significant numbers of Black city employees.¹³⁵ In addition, some Black clergy openly opposed Dr. King because of his use of nonviolent direct action or because they viewed him as an outsider meddling in Chicago's affairs.¹³⁶ Facing a large and divided Black community added another layer of difficulty to the effort to mobilize support for the movement.¹³⁷

The *Gautreaux* litigators also faced daunting challenges associated with their decision to sue both CHA and HUD.¹³⁸ The ACLU had accepted the case, but they still had to find lawyers to work on the litigation.¹³⁹ The ACLU assumed the costs of its litigation and had the capacity to carry out a challenge of this scale, but only through its “cooperating attorneys.”¹⁴⁰ Finding attorneys to volunteer on the case was not an easy task at a time when most Chicago law firms provided limited support for *pro bono* work.¹⁴¹

Local law firm partner Alex Polikoff assumed the leadership in the case, and assembled a team of *pro bono* lawyers to join the litigation.¹⁴² While Polikoff's firm “tolerated” his *pro bono* because of his stellar work on behalf of their paying clients, he could not turn to his firm for other lawyers to join him on the case.¹⁴³ Polikoff used his personal and professional connections to enlist four other lawyers—the “quintet”—each

¹³⁵ See, e.g., COHEN & TAYLOR, *supra* note 59, at 205, 314–15, 433.

¹³⁶ GARROW, BEARING THE CROSS, *supra* note 92, at 460; RALPH, *supra* note 13, at 77–78.

¹³⁷ RALPH, *supra* note 13, at 76–88.

¹³⁸ POLIKOFF, *supra* note 15, at 47–49.

¹³⁹ The proliferation of non-profit organizations with salaried public interest and civil rights lawyers lay a few years ahead. Thurgood Marshall and the NAACP Legal Defense Fund soon became a model for legal organizations that foundations and other funders supported. See Rabin, *supra* note 74.

¹⁴⁰ See *supra* notes 72, 74 and accompanying text.

¹⁴¹ The widespread large firm “culture of commitment” to *pro bono* work did not emerge for many years after that. Coincidentally, the first author interviewed at that firm for a summer clerk position in 1967. The firm was eager to showcase Polikoff to law students interested in *pro bono* opportunities. The first author spent that summer at the firm where second chair Milton Shadur was a partner and spent some time on early work related to the case.

See Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 *FORDHAM L. REV.* 2415 (1999); Scott L. Cummings, *The Politics of Pro Bono*, 52 *UCLA L. REV.* 1 (2004). By the 21st century, some large Chicago firms had *pro bono* directors or partners. Teams within the firm sometimes formed to do class actions. Alan Mills, Exec. Dir., Uptown People's L. Ctr., Presentation to Northwestern Pritzker School of Law Students (Feb. 16, 2021).

¹⁴² The team consisted of Chuck Markels, a childhood friend who worked with Polikoff on the Waukegan School Board case; Milton Shadur, a partner in a highly regarded law firm, who would go on to become a federal district court judge; Bernard Weisberg, a firm lawyer known for his devotion to the ACLU; Merrill Freed, another firm lawyer who attended law school with Polikoff. POLIKOFF, *supra* note 15, at 5–6, 25–26. All five are white. *Id.* at 214.

According to lead counsel Polikoff, the *Gautreaux* litigation was entirely in the hands of the quintet, without involvement of staff attorneys, starting with the decision to take the case. *Id.* at 5–8; e-mail from Alexander Polikoff to first author (Nov. 29, 2020).

In 1970, Polikoff left his law firm to become Executive Director of BPI, a recently formed public interest law and policy center. *Id.* at 82. He took the case with him, so it became a BPI case at that point. *Id.* at 84. Because the case was in the hands of Polikoff and the rest of the quintet, without the involvement of ACLU staff attorneys, it was a smooth process for him to take the case to BPI with him when he left his firm. E-mail from Alexander Polikoff to first author (Nov. 29, 2020). Later, when there were attorneys' fees from HUD, BPI split them with the ACLU based on time spent before and after Polikoff moved to BPI. *Id.*

¹⁴³ POLIKOFF, *supra* note 15, at 6–7.

from a different firm, who shared a commitment to pursuing civil rights goals on a *pro bono*, part-time basis.¹⁴⁴ However, they had no preexisting knowledge of either the depression-era public housing program generally or the specific history of the CHA's participation in it.¹⁴⁵ The lawyers faced a very steep learning curve concerning the context before they could address the legal and factual questions in the litigation.¹⁴⁶

The quintet's litigation strategy entered uncharted territory, both in terms of the legal claims and evidentiary basis for their case. They had to develop a legal theory and the proof to support it, with few precedents available.¹⁴⁷ This was destined to be the first major public

¹⁴⁴ *Id.* at 25–26. Among them, they had litigation experience and *pro bono* experience, including the Waukegan school desegregation case and other ACLU cases. *Id.*

There were dozens of lawyers that worked on the *Gautreaux* case over the years. The original members of the quintet left for different reasons over the years, but BPI lawyers and other volunteers worked on the case throughout. BPI lawyers included Julie Brown, Cecil Butler, Doug Cassel, John Hammell, Bob Jones, Betsy Lassar, Howard Learner, Patricia Logue, Bob Vollen, and Tim Wright. *See* POLIKOFF, *supra* note 15, at 214–17; *infra* Part IV.A.

¹⁴⁵ POLIKOFF, *supra* note 15, at 8. “[T]he public housing program was entirely foreign to me. Chuck [Markels] was in a similar state of ignorance.” This was a significant gap in their knowledge, since CHA was landlord to 40,000 families. *Id.* at 248.

¹⁴⁶ *Id.* at 8.

¹⁴⁷ It was only a dozen years after the Supreme Court decision in *Brown v. Board of Ed.* (holding state-imposed segregation in public schools unconstitutional as a form of racial discrimination). *Brown v. Board of Ed.*, 347 U.S. 483 (1954). In the interim, the Court had decided a series of *per curiam* cases extending *Brown* to many other public services and facilities.

For cases regarding public services, *see* *Johnson v. Virginia*, 373 U.S. 61 (1963) (finding a contempt arrest for a Black citizen refusing to sit in the Negro section of the courthouse was invalid because the state may not require segregation at public facilities); *Dawson v. Baltimore City*, 350 U.S. 877 (1955) (affirming a decision to declare unconstitutional racial segregation by the city of Baltimore and the State of Maryland at public beaches and bathhouses); *Holmes v. Atlanta*, 350 U.S. 879 (1955) (enjoining the city of Atlanta from segregating municipal golf courses); *New Orleans City Park Improvement Ass'n v. Detiege*, 358 U.S. 54 (1958) (enjoining the city of New Orleans from discriminating in public parks).

For integration of dining, *see* *Gober v. City of Birmingham*, 373 U.S. 374 (1963) (overturning the convictions of ten Black students for criminal trespass while eating at white lunch counters, in violation of a Birmingham, Alabama, ordinance); *Turner v. City of Memphis*, 369 U.S. 350 (1962) (granting injunctive relief against discrimination in an airport restaurant, and declaring a Tennessee law requiring segregation of restaurants unconstitutional); *Avent v. North Carolina*, 373 U.S. 375 (1963) (vacating a conviction of seven students (both Black and white) for eating at a white-only lunch counter in Durham, North Carolina).

For integration of transit systems, *see* *Gayle v. Browder*, *supra* note 10, (affirming a decision striking down a segregation law applying to bus transit in Montgomery, Alabama); *Bailey v. Patterson*, 369 U.S. 31 (1962) (holding that segregated interstate and intrastate transit is unconstitutional); *Taylor v. Louisiana*, 370 U.S. 154 (1962) (reversing a conviction of breach-of-peace of Black citizens who entered a waiting room at a Louisiana transit terminal customarily reserved for whites); *Evers v. Dwyer*, 358 U.S. 202 (1958) (finding that a Black litigant who rode a segregated Memphis, Tennessee bus once and was threatened with arrest has an actual controversy in suing against enforcement of the law).

Collectively, the *per curiam* decisions held that state-imposed segregation, as well as state laws mandating or enforcing segregation, in places such as buses, dining establishments, public parks, municipal golf courses, and public beaches is unconstitutional under *Brown*.

However, these decisions all involved explicit, facial segregation provisions. *See supra* this note. Moreover, the cases almost all came from the South, where constitutional provisions, statutes, and local ordinances mandating segregation were pervasive in the Jim Crow era. *See supra* this note. None of those

housing desegregation case.¹⁴⁸ The novelty of their case was compounded by the fact that it was taking place in a northern city, where the case was not based on explicit or “facial” discrimination, as in the Jim Crow South.¹⁴⁹ The case would be one of first impression for the courts.¹⁵⁰

Additionally, without a “smoking gun” proving CHA’s intentional racial discrimination, the lawyers had to engage in extensive pre-filing discovery, including in-

Supreme Court decisions involved the federal public housing program. The few cases considering racial discrimination in public housing were lower court ones where the segregation policies were explicit, leading the court to find them unconstitutional.

Those cases provided little guidance as to how to develop a case challenging the constitutionality of the public housing program in Chicago. The Illinois constitution did not require or permit segregation in public housing. It said nothing about racial segregation in public housing; nor was there any statutory mandate at the state or local level providing for segregation. Moreover, CHA had no explicit policy related to race in selecting sites for developments or assigning tenants to them. POLIKOFF, *supra* note 15, at 26–27. In short, the Supreme Court had not ruled in any case that presented the situation in Chicago’s public housing program. There were no clear precedents on which the plaintiffs could draw. Even in the public school context, the Supreme Court did not decide a northern desegregation case, with no segregation laws, until 1973. In *Keyes v. School Dist No. 1, Denver, Co.*, 414 U.S. 883 (1973), the Court found that actions by the school board could create an unconstitutionally segregated school district, even without any laws on the books providing for it. *Id.* at 189–90. The *Gautreaux* plaintiffs were essentially arguing for that kind of approach with respect to public housing, seven years before the Court had recognized it—even if only in the public school context—in any case from the North.

¹⁴⁸ ROSENBERG, *supra* note 96, at 75. The Supreme Court refused to hear any housing segregation cases from 1953–1967. ROTHSTEIN, *supra* note 39, at 30–31, 36. Two previous Fifth Circuit public housing cases had occurred at this time: *Cohen v. Public Housing Admin.*, 257 F.2d 73 (5th Cir. 1958) (dismissing a case for lack of case or controversy, due to lack of proof that plaintiff applied to segregated public housing in Savannah, Georgia); *Barnes v. City of Gadsden*, 268 F.2d 593 (5th Cir. 1959) (denying an injunction against urban redevelopment plans that fostered segregation, where no law required segregation). This leaves for future cases the question of exactly when a government goes from permitting to enforcing segregation and what responsibility it has to the tenants of public housing.

¹⁴⁹ It was also uncertain whether policies or practices related to site selection or tenant assignment that produced racial segregation could present a viable equal protection claim without a showing of intent to discriminate. While the initial complaint included both intent and effect counts, Judge Austin dismissed the effects counts as insufficient to make out a constitutional claim. POLIKOFF, *supra* note 15, at 55–56. A decade later, the Supreme Court required a showing of purposeful discrimination to make out a claim under the equal protection clause in *Washington v. Davis*, 426 U.S. 229 (1976). The strongest claim would be that CHA intentionally carried out a segregated program in locating and occupying its developments. Because CHA did not have an explicit segregation mandate, plaintiffs would have to prove that CHA practices intentionally produced the segregation that the plaintiffs claimed existed. Statistics on the location and occupancy of the family public housing in the city provided only a starting point. Even that was contested. POLIKOFF, *supra* note 15, at 50–58.

Still another evidentiary challenge involved the search for a former CHA employee who played a part in carrying out the covert segregation practices and was willing to testify about them. That search took Polikoff to New York, where he spoke with a woman who elaborated on her role in the agency’s racially driven practices in assigning tenants. *Id.* at 53.

District Judge Richard Austin’s extremely skeptical initial reaction to the plaintiffs’ claims showed the challenges lying ahead for the lawyers: “Where do you want them to put ‘em—Lake Shore Drive?” (a reference to a very affluent location along Lake Michigan). *Id.* at 49–50.

¹⁵⁰ See *infra* notes 155–56.

depth research in CHA’s massive and disorganized files.¹⁵¹ The *Gautreaux* lawyers had their hands full over the months of preparation for filing the case and the continuing challenges after that.

Because these organizations were so busy dealing with internal struggles and steep learning curves, they were likely too preoccupied to even consider adding another factor into the equation. The addition of another set of people, ideas, and priorities would have simply been too difficult to manage at this point in time for both the movement activists and the lawyers.

3. Specific Housing Emphasis: Private Housing v. Public Housing

The history of racial discrimination in Chicago’s housing demonstrates the relationship between discrimination in the private housing market and the racial policies and practices in public housing.¹⁵² There was a reciprocal relationship between the segregation in those two parts of the housing supply—site selection for public housing perpetuated the pre-existing segregation in the private market, and the development of public housing reinforced the private market discrimination and segregation.¹⁵³

While the Chicago Freedom Movement activists and the *Gautreaux* litigators shared the goal of ending racial discrimination in the city’s housing, they emphasized different parts of that inter-related system.¹⁵⁴ The Chicago Freedom Movement focused on parts of the private market, while the litigation focused exclusively on the city’s public housing program.¹⁵⁵

At the launch of the Chicago Freedom Movement, Dr. King emphasized the movement’s private market focus.¹⁵⁶ Though they viewed public housing as part of the

¹⁵¹ POLIKOFF, *supra* note 15, at 56. A team of volunteer law firm lawyers working on the case *pro bono* engaged in factual and legal research over the next several months. The Urban League also brought together a team of college students to assist with factual research. The students, known as the “jeans brigade,” spent a summer searching for evidence of CHA’s discriminatory purpose. *Id.* at 56–57; ROTHSTEIN, *supra* note 39, at 242.

¹⁵² When the public housing program began in Chicago during the Great Depression, its policies and practices mirrored the discrimination and segregation of the private market. MASSEY & DENTON, *supra* note 39, at 17, 21, 31–37. Massey and Denton also note that residential patterns had not always been segregated in the city. In the nineteenth century, when the city’s Black population was small, Black residents were relatively dispersed. Segregation began to be pervasive with the first Great Migration of the early twentieth century, as Black people from the South were confined to an area of the city’s South side. *See generally* JAMES R. GROSSMAN, *LAND OF HOPE: CHICAGO, BLACK SOUTHERNERS, AND THE GREAT MIGRATION* (1989); ARNOLD R. HIRSCH, *supra* note 17.

¹⁵³ *See* HIRSCH, *supra* note 17.

¹⁵⁴ *See* sources cited *supra*, note 14, 16.

¹⁵⁵ RALPH, *supra* note 13, at 98–102 (discussing Chicago Freedom Movement’s decision to focus on housing); Finley, *in* CHICAGO 1966, *supra* note 13, at 8–9 (discussing the potential for dramatic direct action by vigils at real estate offices and marching into white neighborhoods—drama that was less possible with public housing than the private market).

¹⁵⁶ The demands included a “program to increase vastly the supply of low-cost housing on a scattered basis for both low- and middle-income families.” They also included demands for non-discriminatory housing listings and mortgage loans, as well as non-housing-related demands in areas like employment and public aid. Demands Placed on the Door of the Chicago City Hall by Martin Luther King, Jr., July 10, 1966, <https://static1.squarespace.com/static/585ef15dc534a5283f3cf7fb/t/587547dfb3db2ba5306be24a/1484081120374/King%27s+Demands.pdf>.

larger problem, the concept of an “open city” focusing on the city’s private housing served as the centerpiece of the program.¹⁵⁷ After the event, Dr. King and others marched to City Hall, where they posted a list of demands, including some directed at achieving the “open city” by ending discrimination by the real estate and lending industries.¹⁵⁸ The Chicago Freedom Movement then began a series of marches, vigils, and demonstrations in working-class white home ownership neighborhoods designed to challenge residential racial segregation and discrimination in the city.¹⁵⁹

The activists focused on those places because researchers found pervasive discrimination by real estate brokers in home sales.¹⁶⁰ In addition, home ownership served as a sign of full citizenship, which was being denied to Black people.¹⁶¹

The secondary, interrelated “end the slums” initiative focused on a different part of the private housing market.¹⁶² Because landlords knew that segregation confined Black families to specific neighborhoods and those families had limited (if any) capacity to relocate, they let their properties in those neighborhoods deteriorate while maintaining high rent levels.¹⁶³ The “end the slums” movement sought to pressure landlords to address those conditions while protecting activist residents from wholesale evictions.¹⁶⁴ While that initiative did not have the “open city” effort’s visibility or investment of resources, it

The movement focused on the exclusion of Black home seekers from certain neighborhoods—refusals to sell them homes there. A year later, Black Chicago homebuyers who experienced a different form of racial discrimination in the private housing market organized to challenge their sellers’ exploitation of them. Real estate speculators exploited Black home purchasers both in the price and in selling only on contract, with no availability of mortgages. These contracts meant no equity until the contract was completely paid off, and “eviction” if they missed one payment. The buyers formed the Contract Buyers League to seek relief from those sellers. The organizing efforts produced renegotiation of the terms of some of the sales, and also led to litigation challenging the racial exploitation as a form of racial discrimination. The litigation was ultimately unsuccessful. *See generally*, BERYL SETTER, *FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA* (2010); Finley, *in* CHICAGO 1966, *supra* note 13; Jeffrey Michael Fitzgerald, *The Contract Buyers League: A Case Study of Interaction between a Social Movement and the Legal System* (1972) (Ph.D. dissertation, Northwestern University).

¹⁵⁷ King, *Demands Placed on the Door of the Chicago City Hall*, *supra* note 156.

¹⁵⁸ *Id.*

¹⁵⁹ RALPH, *supra* note 13, at 105–40. The tactics also included real estate “testing,” where Black couples and white ones visited the same real estate office to document the discriminatory treatment the Black couples encountered. *Id.* at 114–17. They also held integrated picnics, shopped at white neighborhood grocery stores, attended white churches, and hosted prayer vigils. *Id.* at 51.

¹⁶⁰ RALPH, *supra* note 14, at 99–100.

¹⁶¹ Finley, *in* CHICAGO 1966, *supra* note 14, at 8. The focus on those neighborhoods also may have been influenced by respectability politics, suggesting that Black people were just as worthy as whites to live in those neighborhoods. Private market access focused on home-ownership whereas public housing provision was about poverty and government support. Public housing residents were disproportionately poorer families, many headed by women. So, they may not have been the most “respectable” Black folks to fight for on the housing front. On respectability politics in the Civil Rights Movement, *see*: Devon W. Carbado & Donald Weise, *The Civil Rights Identity of Bayard Rustin*. 82(5)Tex. L. Rev. 2004: 1133–96; Randall Kennedy, *Lifting as we climb: A progressive defense of respectability politics*. Harper’s Magazine 31 (2015); <https://www.npr.org/2009/03/15/101719889/before-rosa-parks-there-was-claudette-colvin>.

¹⁶² ANDERSON & PICKERING, *supra* note 14, at 196–98; Finley, *in* CHICAGO 1966, *supra* note 14, at 4–6.

¹⁶³ ANDERSON & PICKERING, *supra* note 14, at 196–98; Finley, *in* CHICAGO 1966, *supra* note 14, at 3–4.

¹⁶⁴ Herman Jenkins, *Tenant Unions during the Chicago Freedom Movement: Innovation and Impact*, *in* THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 188–91; Finley, *in* CHICAGO 1966, *supra* note 13, at 5–6.

complemented the larger effort in pursuing the goal of a private housing market that served everyone equally, regardless of race.¹⁶⁵

In contrast, the *Gautreaux* lawyers focused exclusively on Chicago's public housing developments.¹⁶⁶ That choice followed from their strategic choice of using the courts to achieve social change. When the Chicago Urban League researchers shared their findings about CHA's discrimination with the ACLU, they were particularly aware of Title VI of the 1964 Civil Rights Act, which prohibited racial discrimination in programs that received federal funding like public housing.¹⁶⁷ Federal courts had also been applying the Fourteenth Amendment's Equal Protection Clause to attack racial discrimination in public institutions, as epitomized by the Supreme Court's decision in *Brown*.¹⁶⁸

When the ACLU brought the lawsuit alleging racial discrimination in Chicago's public housing program, it proceeded on the assumptions that it had a viable legal claim and success on that claim would lead to significant change on the ground.¹⁶⁹ With that mindset, there was no need to consider joining forces with a mass movement in order to achieve their purposes.¹⁷⁰

As a result of these disconnects, the two initiatives had launches that were almost simultaneous but completely independent of each other. While both grew out of the civil rights activities of the period, the precise timing was simply a coincidence rather than a result of coordination, and it set in motion a pattern of proceeding independently.

II. THE PURSUIT OF SEPARATE PATHS: 1966–1976

For a decade, the Leadership Council for Metropolitan Open Communities—the successor organization to the Chicago Freedom Movement—and the *Gautreaux* litigation followed separate paths.¹⁷¹ During that time, they each made limited progress in assisting Black families to secure housing of their choice.¹⁷²

A. *The Leadership Council for Metropolitan Open Communities as the Chicago Freedom Movement's Successor*

The direct action portion of the Chicago Freedom Movement caused so much disruption that Mayor Daley and community leaders came to the table to discuss possible solutions. These meetings concluded with an agreement about future steps to be taken to address fair housing, including the creation of an organization, the Leadership Council, to

¹⁶⁵ Finley, in CHICAGO 1966, *supra* note 13, at 5–7; ANDERSON & PICKERING, *supra* note 14, at 200–01.

¹⁶⁶ See generally POLIKOFF, *supra* note 16, at 47–49.

¹⁶⁷ Civil Rights Act of 1964, 42 U.S.C. § 2000e.

¹⁶⁸ *Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483 (1954). As of 1966, there was no federal or Illinois law prohibiting racial discrimination in private housing. Chicago enacted a weak fair housing ordinance in 1963, with little enforcement authority. Chicago, Ill. Fair Housing Ordinance (Sept. 11, 1963), reprinted in FAIR HOUSING LAWS: SUMMARIES AND TEXT OF STATE AND MUNICIPAL LAWS 250–53 (Hous. & Home Fin. Agency 1964).

¹⁶⁹ POLIKOFF, *supra* note 15, at 7.

¹⁷⁰ See *supra* text accompanying note 89.

¹⁷¹ Operation Breadbasket also emerged from the Chicago Freedom Movement, with an emphasis on using Black purchasing power to leverage increased employment opportunities for Black workers. See Gary Massoni, *Perspectives on Operation Breadbasket*, in CHICAGO 1966, *supra* note 13, at 179–346.

¹⁷² See *infra* Part V.B.

implement the agreement and work to end housing discrimination in the Chicago area. The Leadership Council soon began operations, but faced many struggles and difficulties. In its early years, the programs were largely ineffective.

1. Origins in the 1966 “Summit Agreement”

As the Chicago Freedom Movement’s “open housing” demonstrators marched into the city’s working-class white neighborhoods to protest racial exclusion, white residents and their allies greeted them with verbal abuse and violent resistance.¹⁷³ Chicago police were on the scene, but they did little to control the angry white crowds.¹⁷⁴

As the violence escalated, so did the political cost of the demonstrations for Chicago’s Mayor Richard J. Daley.¹⁷⁵ The confrontations pitted his two principal constituencies—Black people and working-class white Chicagoans—against each other.¹⁷⁶ Stopping the demonstrations became his highest priority.¹⁷⁷ As a result, Daley pressured the movement’s leaders to seek a resolution of their concerns in the conference room rather than on the streets.¹⁷⁸

Without halting the marches, movement leaders agreed to participate in “summit meetings” in August.¹⁷⁹ There were more than sixty participants at these meetings.¹⁸⁰ More than a quarter of them represented the Chicago Freedom Movement.¹⁸¹ The rest came from

¹⁷³ As the earlier initiatives, such as vigils at real estate offices, seemed to have little impact, movement leaders escalated their direct action with a series of marches into white working-class neighborhoods. Large numbers of angry white onlookers responded with increasing violence. RALPH, *supra* note 13, at 122.

¹⁷⁴ In one of the marches, a rock hit Dr. King in the head and knocked him down. After the march, Dr. King told reporters that he had “never seen so much hatred and hostility on the part of so many people.” *Id.* at 123.

Racists also damaged protesters’ cars and pushed them into a lagoon. Unlike a few years earlier, in places like Birmingham and Selma, Alabama, the Chicago police were not the source of the violence against nonviolent protesters, but they were not effective in providing protection. Their sympathies with the white residents and their allies were quite apparent. *Id.* at 120–23.

¹⁷⁵ *Id.* at 141–42.

¹⁷⁶ *Id.*

¹⁷⁷ ANDERSON & PICKERING, *supra* note 13, at 232; McKnight, *in* CHICAGO 1966, *supra* note 14, at 112.

¹⁷⁸ ANDERSON & PICKERING, *supra* note 13, at 232.

¹⁷⁹ RALPH *supra* note 13, at 151, 158.

¹⁸⁰ ANDERSON & PICKERING, *supra* note 13, App. I at 439–40.

¹⁸¹ *Id.*; Martin Luther King and Al Raby led the Chicago Freedom Movement contingent, which was all men and mostly Black activists. The presence of several whites reflected the inter-racial nature of the movement. The contingent included local representatives from CCCO and SCLC members from the South.

Dr. King reinforced his commitment to non-violent direct action and his reluctance to rely on legal remedies in a colloquy with William Ming. Ming had defended Dr. King six years earlier in a perjury trial in Alabama. Leonard S. Rubinowitz, *Martin Luther King Jr.’s Perjury Trial: A Potential Turning Point and a Footnote to History*, 5 IND. J.L. & SOC. EQUALITY 237, 262–3 (2017). In the summit meeting, Ming served as an advisor to Mayor Daley, encouraging Dr. King to pursue claims of housing discrimination through the Commission created by the city’s 1963 Fair Housing ordinance. Dr. King reminded Ming that it was more than a decade since the Supreme Court had decided *Brown v. Board of Education*, and there had been almost no desegregation in the public schools of the South. See *supra* Part II.A.2, II.B.1; Rubinowitz, *supra* note 61, at 587; McKnight, *in* CHICAGO 1966, *supra* note 13, at 124, 127.

the city's elite—business, civic, religious, labor, and government leaders, including Mayor Daley and his colleagues.¹⁸²

The tense negotiations culminated in a “Summit Agreement” that a subcommittee prepared and presented to the participants later that month.¹⁸³ After substantial debate, a vote approved the draft with no dissents.¹⁸⁴ But it was just that—an agreement about future steps to be taken to advance open housing in the Chicago metropolitan area, with few specifics or timetables.¹⁸⁵

Sections one through nine listed a series of general commitments by public and private actors to pursue racially non-discriminatory policies and practices.¹⁸⁶ Section ten, the last, longest, and arguably the most important provision of the Summit Agreement, made clear that the participants understood that the work had just begun and that major

There were no lawyers among the movement's representatives at the summit meetings. That reflected the movement's strong commitment to direct action and limiting the roles of lawyers.

Several lawyers played a role in various aspects of the movement. While the negotiations were proceeding, Mayor Daley secured an injunction limiting the number, size, and timing of the demonstrations. Leo Holt, one of the movement's lawyers, advised his clients concerning the constitutionality of the injunction. DEMPSEY J. TRAVIS, *AN AUTOBIOGRAPHY OF BLACK POLITICS, VOLUME 1* 392 (1987). Lawyers were also deeply involved in the landlord-tenant challenges, a different part of the movement. Rubinowitz, *supra* note 61; Bernardine Dohrn, Gilbert A. Cornfield & Gilbert Feldman, *Session V: A Conversation with Gil Cornfield and Gil Feldman, Cornfield and Feldman; Lawyers for the Chicago Freedom Movement, 1965–1966*, 10 *NW. J. L. & SOC. POL'Y.* 667 (2016); Jenkins, *in THE CHICAGO FREEDOM MOVEMENT*, *supra* note 13, at 182–206.

¹⁸² ANDERSON & PICKERING, *supra* note 13, App. I at 439–40. There was also one observer. John McKnight, the head of the Midwest office of the United States Commission on Civil Rights, took notes on the meetings and dictated them into a recorder afterward. While this transcript of his dictation uses quotation marks to indicate someone spoke, it is not verbatim quotations from the participants. McKnight in *CHICAGO 1966*, *supra* note 13, at 111–45.

¹⁸³ ANDERSON & PICKERING, *supra* note 13, at 260–62. The official title was “Agreement of the Subcommittee to the Conference on Fair Housing Convened by the Chicago Conference on Religion and Race.” It was submitted by Thomas Ayers, Chair of the subcommittee and approved on August 26, 1966. ANDERSON & PICKERING, *supra* note 13, App. II at 441–46.

During the negotiations, the Chicago Freedom Movement's representatives did not initially propose that the agreement provide for the establishment of an organization to implement it. However, the subcommittee assigned to draft the agreement reached consensus that it should specify that there would be such an organization. That created the necessity of taking a long view by making the centerpiece of the agreement the establishment of an organization to carry it out. Significantly, the agreement had no mandate about assisting individual Black families to obtain opportunities for fair housing, except for the provision of legal services to those encountering racial discrimination. *Id.*; RALPH, *supra* note 13, at 168.

The idea of an entity charged with carrying out the agreement “flowed naturally from the original demands.” Thomas Ayers, a white corporate CEO, chaired the subcommittee. He expressed support for the Chicago Freedom Movement at the initial summit meeting. *Id.*

¹⁸⁴ ANDERSON & PICKERING, *supra* note 13, at 262–66. Chicago Freedom Members had significant concerns about the draft agreement, but Martin Luther King concluded that it was the best deal they could get, and the others went along with him. When the convenor said to the press afterwards that “through the great democratic process, we have worked out an agreement” one of the Chicago Freedom Movement representatives responded privately “Democratic Process, shit, it was forced out of them!” McKnight in *CHICAGO 1966*, *see supra* note 13, at 145.

¹⁸⁵ The ‘Summit Agreement,’ ‘Agreement,’ Report of the Subcommittee to the Conference on Fair Housing Convened by the Chicago Conference on Religion and Race, *in CHICAGO 1966*, *supra* note 13, at 147–54.

¹⁸⁶ *Id.*

challenges lay ahead.¹⁸⁷ It made continuity of the effort an explicit provision of the agreement.¹⁸⁸

The section began with a mandate to “initiate forthwith the formation of a separate, continuing body” to implement the agreement.¹⁸⁹ The Leadership Council for Metropolitan Open Communities (Leadership Council) was “established as a direct result” of the nonviolent direct action campaign.¹⁹⁰ It was the only fair housing organization that Dr. King helped create.¹⁹¹ Its mission was to turn the commitments in the Summit Agreement into reality.¹⁹² There was no ending date for it.¹⁹³ The indefinite duration of the organization’s existence underlined the signatories’ recognition of the magnitude of the task at hand.¹⁹⁴

The agreement specified that “this body should accept responsibility for the execution and action programs necessary to achieve fair housing.”¹⁹⁵ The agreement stated that the new organization should be “sponsored by major leadership organizations in the Chicago metropolitan area and built on a nucleus of the representatives of the

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 153–54.

¹⁸⁹ *Id.* That organization functioned as the vehicle needed to commence and undertake the much longer process of turning agreements into changes on the ground and advancing the open housing goals of the Chicago Freedom Movement. The continuity implicit in that arrangement provides the basis for measuring the impact of the Chicago Freedom in future decades and characterizing the Leadership Council as a successor organization.

¹⁹⁰ Brian White, *The Leadership Council for Metropolitan Open Communities: Chicago and Fair Housing*, in *THE CHICAGO FREEDOM MOVEMENT*, *supra* note 13, at 131–32. Kale Williams, the second executive director of the Leadership Council, referred to it as a “direct outgrowth” of the campaign. James Ralph, the leading scholar of the Chicago Freedom Movement, referred to the organization as “the one long-lasting product of the Summit Agreement.” *Assessing the Chicago Freedom Movement*, *POVERTY & RACE*, May–June 2006, 1, 1.

Another commentator said of the Leadership Council that the Chicago Freedom Movement “gave birth to it.” He also described the organization as being “established as a direct result of the Chicago Freedom Movement.” White, *The Leadership Council for Metropolitan Open Communities*, in *THE CHICAGO FREEDOM MOVEMENT*, *supra* note 13, at 131–32.

¹⁹¹ A discussion of Aurie Pennick, CEO of the Leadership Council from 1992–2002 (immediately following Kale Williams) referred to the Leadership Council that way. This timing included presiding over the conclusion of the Gautreaux Program in 1998. Pennick, the first Black person and the first woman to lead the council, was a lawyer with extensive program and administrative experience. *See Aurie Pennick recalls her presidency of the Leadership Council for Metropolitan Open Communities*, *THE HISTORY MAKERS*, at 4:35 (Sep. 29, 2005), <https://www.thehistorymakers.org/biography/aurie-pennick-41>.

¹⁹² The ‘Summit Agreement,’ in *CHICAGO 1966*, *supra* note 13, at 147–54.

¹⁹³ *Id.* at 153–54.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* Paragraph 3 incorporated the city’s public housing program into the scope of the ongoing commitments: “The Chicago Housing Authority will take every action within its power to promote the objectives of fair housing. It recognizes that heavy concentration of public housing should not again be built in the City of Chicago. Accordingly, the Chicago Housing Authority has begun activities to improve the character of public housing, including . . . initiation of a leasing program which places families in the best available housing without regard to the racial character of the neighborhood in which the leased facilities are provided. In the future, it will seek scattered sites for public housing . . .” This public housing commitment helped set the stage for the collaboration in the form of the Gautreaux Program a decade later. *See infra* Part III.B.3.

organizations” in the summit process.¹⁹⁶ This clause ensured that some of the participants in the summit meetings would play a significant role in the new organization,¹⁹⁷ and indeed, many of the original participants, or others from the same organizations, became early board members.¹⁹⁸

After a unanimous vote in favor of the draft Summit Agreement on August 26, 1966, Dr. King reminded the participants that the agreement was not an end, but a beginning.¹⁹⁹ He expressed the concern that the hopes of Black people had “been shattered too many times” and that we “must make this agreement work.”²⁰⁰ He emphasized that they had a “big job” ahead, and that it would be difficult.²⁰¹

After that, the marches and demonstrations ceased.²⁰² Within a few months, Dr. King and most of his SCLC colleagues had left Chicago.²⁰³ In May 1967, Dr. King returned to assess progress.²⁰⁴ He announced that he saw no need for further demonstrations in Chicago.²⁰⁵ That marked the formal end of the Chicago Freedom Movement as an organization.²⁰⁶ However, the “Summit Agreement” contemplated a continuing impact of

¹⁹⁶ The organization was also supposed to develop other strategies and tactics to advance the fair housing goals. These included holding fair housing conferences in suburban communities, taking steps to educate the public about their legal obligations, and assisting in drafting of fair housing laws. ANDERSON & PICKERING, *supra* note 13, App. II at 445.

With respect to resources, the agreement recognized that “Carrying out these commitments will require substantial investments of time and money by both private and public bodies . . . [.]” but it had no specifics about sources and amount of funding for the new organization. *Id.* at 441–46.

¹⁹⁷ *Id.*

¹⁹⁸ White, *The Leadership Council for Metropolitan Open Communities*, in THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 136.

Kale Williams provided additional continuity between the direct action and the implementation. After he played an important role in the summer campaign, he later became the second Executive Director of the Leadership Council. He held that position for more than two decades. *See infra* notes 398–99. The first executive director of the agency was Edward Holmgren (white), a CHA employee during its brief progressive days during the early 1950s, turned longtime housing integration activist. RALPH, *supra* note 13, at 207.

¹⁹⁹ McKnight in CHICAGO 1966, *supra* note 13, at 144–45.

²⁰⁰ *Id.* at 145.

²⁰¹ *Id.* Dr. King called the Summit Agreement “the first step in a thousand-mile journey, but an important step.” ANDERSON & PICKERING, *supra* note 13, at 272.

²⁰² THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 59–70. Kale Williams, a participant in the Summit Meetings, described the situation: “[The] dramatic and intense activity was ended, and most people, in the movement and in the leadership groups, began to organize for the next phase, that of implementation of the agreement.” *Id.* at 62.

²⁰³ RALPH, *supra* note 13, at 223–24; THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 69. Other leaders, such as Jesse Jackson, remained in Chicago long after that time. RALPH, *supra* note 13, at 229; Jesse L. Jackson, Sr., *The Movement Didn’t Stop* in THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 236–54.

²⁰⁴ RALPH, *supra* note 13, at 219.

²⁰⁵ *Id.*

²⁰⁶ THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 67–69. CCCO struggled to maintain energy and purpose, and by the fall of 1967, Al Raby resigned as head of the coalition. RALPH, *supra* note 13, at 223–24; THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 69. While other CCCO leaders claimed this was a time of re-evaluation for the organization, CCCO folded within weeks. RALPH, *supra* note 13, at 223–24.

the Chicago Freedom Movement in the form of the Leadership Council as the successor organization created to pursue its fair housing goals.²⁰⁷

2. The Leadership Council's Early Days

The Leadership Council opened its doors in December 1966.²⁰⁸ Thus began what turned out to be a forty-year operation.²⁰⁹ Starting the organization proved a formidable task, as evidenced by its limited early results.²¹⁰ It encountered a structural problem at the outset because the governing board included interests represented in the summit meetings, ranging from public officials and corporate and real estate leaders to civil rights supporters.²¹¹ The tensions that surfaced in the summit meetings carried over into the formation of the organization.²¹² The city's failure to follow through on some of its commitments in the Summit Agreement presented still another impediment to the organization's early efforts.²¹³

The founders also faced the usual challenges in starting a new organization, especially one with a vague description and mandate.²¹⁴ They had to address questions related to fundraising and staffing, as well as settling on strategies, tactics, and agendas for their programs and projects.²¹⁵

All these challenges may have contributed to the failure of an early Leadership Council initiative. In 1968, the Council launched the Equal Opportunity Housing Service, a projected three-year program designed to eliminate racial restrictions from the housing system.²¹⁶ The organization aimed to secure realtors' cooperation by providing the service

²⁰⁷ See BILL MOYER & JOANN MCALLISTER, MARY LOU FINLEY, STEVEN SIOFER, *DOING DEMOCRACY: THE MAP MODEL FOR ORGANIZING FOR SOCIAL MOVEMENTS* (2001) for an approach to the many stages of a social movement. The conception of the phases of the movement is analogous to the lengthy period of implementation of the remedy in institutional litigation, such as school or housing desegregation cases. See *supra* Part II.A.1.

²⁰⁸ BRIAN J. L. BERRY, *THE OPEN HOUSING QUESTION: RACE AND HOUSING IN CHICAGO, 1966–1976* (1979) at xx.

²⁰⁹ The Leadership Council closed its doors in 2006, because of administrative issues, including the lack of continuing financial support. The job was far from complete. White, *in* *THE CHICAGO FREEDOM MOVEMENT*, *supra* note 13, at 131.

²¹⁰ See *infra* Part V.A.

²¹¹ RALPH, *supra* note 13, at 206–07; ANDERSON & PICKERING, *supra* note 13, at 281–82, 299; White, *in* *THE CHICAGO FREEDOM MOVEMENT*, *supra* note 13, at 137, 140.

²¹² ANDERSON & PICKERING, *supra* note 13, at 278–82. White, *in* *THE CHICAGO FREEDOM MOVEMENT*, *supra* note 13, at 137, 140.

²¹³ RALPH, *supra* note 13, at 226–27.

²¹⁴ See *supra* Part II.A.1.

²¹⁵ These difficult questions even raised concerns about the prospects for getting the Leadership Council off the ground at all. White, *in* *THE CHICAGO FREEDOM MOVEMENT*, *supra* note 13, at 137. Prior to the actual development of the Leadership Council, a temporary chair of a follow-up subcommittee acquired over \$125,000 for the new organization, through grants and fundraising. RALPH, *supra* note 13, at 206.

²¹⁶ Along with the major programs discussed here, the Leadership Council pursued a variety of methods to work towards fair housing, including, but not limited to, the following: researching housing conditions affecting Black people, awareness-raising through direct action and media efforts, testing to confirm discrimination, counseling services to assist moving families, monitoring of housing practices, and providing trainings to the real estate industry. See, e.g., White, *in* *THE CHICAGO FREEDOM MOVEMENT*, *supra* note 13, at 137–40.

with nondiscriminatory listings.²¹⁷ The Council thought that in three years, the program would no longer be necessary.²¹⁸ That goal turned out to be unrealistic, and the program made virtually no progress in acquiring nondiscriminatory listings from realtors.²¹⁹ It was not an auspicious beginning.²²⁰

B. *The Gautreaux Litigation*

As the Chicago Freedom Movement was spawning the Leadership Council, the ACLU filed the *Gautreaux* companion cases against CHA and HUD in federal district court.²²¹ Presiding Judge Richard Austin proceeded with the CHA case and held the HUD case in abeyance because the latter was derivative of the case against the local agency.²²² If the CHA case had been decided in favor of CHA, then there was no basis for a case against HUD. HUD's liability—if any—was for funding the discriminatory practices of CHA.

Rather than working outside the market, as prior fair housing efforts had done, this program was designed to alter the current housing market and make it available to all. BERRY, *supra* note 208, at 20.

²¹⁷ *Id.* at 21–22.

²¹⁸ *Id.* at 21, 47. The service planned to operate within Black neighborhoods to market to Black residents looking for housing, work with Black employers in the suburbs, and do typical real estate marketing with their listings. The Equal Opportunity Housing Service was designed as a separate unit within the Leadership Council. The staff and director of the unit reported to the executive director of the Leadership Council, who reported to the board of directors. It was designed to have a central office in the Chicago Loop, as well as three neighborhood offices set up in the South Shore, Austin, and the near southwest side. The near southwest office never opened, and the Austin office was forced to close by neighborhood groups. *Id.* at 21–24.

The Leadership Council felt that because its board included influential civic leadership, it was in a position to secure the necessary cooperation of the real estate industry. They also planned a promotional campaign to get listings from private landlords. *Id.* at 21–22.

²¹⁹ *Id.* at 24–25, 61. The program basically provided publicly available newspaper listings, and nothing additional. *Id.* at 61.

Program staff felt the goals were unrealistic and that the board should use more aggressive tactics rather than expecting voluntary cooperation. Board members included leaders in the real estate industry who claimed to want fair housing, but also claimed to not be able to control how their companies acted. *Id.* at 32. The real estate industry did not change, and an evaluator concluded that the program was a “dismal failure.” *Id.* at 62. Some credit should be given to the Leadership Council for this time, as they helped get fair housing ordinances passed, which in turn helped facilitate moves. *Id.* at 65.

²²⁰ The organization grew and developed in important ways over its first decade. *See infra* Part III.C.

²²¹ POLIKOFF, *supra* note 15, at 47–49.

²²² *Id.* at 68. Judge Austin was a former prosecutor and state court judge who had once run for governor as Mayor Richard J. Daley's handpicked nominee. He was a white man, like every judge who succeeded him on the *Gautreaux* case. After Judge Austin's death, Judge John Crowley took over briefly, followed by Judge Marvin Aspen. Judge Aspen was also tied to Daley. He had worked both as a lawyer for the City of Chicago and for Mayor Daley personally. He would hold the case for four decades, during which time he oversaw the appointment of a receiver in the CHA case, upheld the consent decree in the HUD case institutionalizing the agreements related to the Gautreaux Program, and dismissed the case against HUD. *Id.* at 49.

1. The CHA Case

In February 1969, Judge Austin granted summary judgment for the plaintiffs, holding that CHA intentionally discriminated in selecting sites for public housing in Black areas.²²³ From 1954 through 1966, 99.4% of CHA's family units—all but sixty-three—were placed in largely Black neighborhoods.²²⁴ The judge determined that only intentional racial discrimination could explain such a pattern.²²⁵ The judge rejected CHA's defense that the City Council, with site approval authority under state law, rejected almost all sites that CHA proposed outside of Black neighborhoods.²²⁶ CHA's willingness to proceed under the Council's segregation regime violated the plaintiffs' civil rights.²²⁷

The judge also found that the tenant assignment practices, with segregated waiting lists, violated the plaintiffs' rights under the 1964 Civil Rights Act.²²⁸ He threw out CHA's assertion that it was trying to avoid further racial tension and violence, like that which occurred when the agency assigned some Black families to white-area public housing developments in the 1950s.²²⁹ Judge Austin found that the whole system under which CHA operated was unconstitutional under the Fourteenth Amendment.²³⁰

The court next had to fashion a remedy to address CHA's entire system of racial discrimination, which was an unprecedented challenge.²³¹ The court had to craft relief from whole cloth, so Judge Austin invited the parties to submit proposed orders.²³² The court's July 1969 order, which closely adhered to the plaintiffs' counsel's submission, forced CHA to desegregate by moving Black families into public housing in mostly white

²²³ *Gautreaux v. Chicago Hous. Auth.*, 296 F. Supp. 907, 913 (N.D. Ill. 1969). The *Gautreaux* plaintiffs had challenged CHA's informal, covert policies and practices that allegedly had both the intent and effect of producing a racially segregated public housing system in Chicago. In March 1967, the plaintiffs survived a motion to dismiss, on the intent counts. They then were granted access to CHA files related to site selection. Both sides filed for summary judgment in mid-1968. POLIKOFF, *supra* note 15, at 49–64; Rubinowitz, *supra* note 47, at 593–95.

In many northern cities, there were explicit racial segregation policies that came with the emergence of public housing. In the 1950s and then in the early 1960s, Peoria activists focused on segregated public housing buildings. Walter Johnson addresses this history in St. Louis as well in *THE BROKEN HEART OF AMERICA: ST. LOUIS AND THE VIOLENT HISTORY OF THE UNITED STATES* (2020).

²²⁴ *Gautreaux*, 296 F. Supp. at 910.

²²⁵ *Id.* at 913; POLIKOFF, *supra* note 15, at 66.

²²⁶ *Gautreaux*, 296 F. Supp. at 914.

²²⁷ *Id.*

²²⁸ *Id.* at 909; Civil Rights Act of 1964, 42 U.S.C. § 2000d (1964).

²²⁹ *Id.* Leonard S. Rubinowitz & Imani Perry, *Crimes Without Punishment: White Neighbors' Resistance to Black Entry*, 92 J. CRIM. L. & CRIMINOLOGY 335, 379–80 (2001).

²³⁰ *Gautreaux*, 296 F. Supp. at 914.

²³¹ Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976).

²³² As with school desegregation remedies, there was no formula for how to proceed in that uncharted territory. *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 299 (1955). Judge Austin ordered the parties to work together to develop a proposed order. If they could not do that, they should proceed independently. CHA chose not to participate. At the last minute, it proposed that it simply be ordered not to consider race in locating public housing. Plaintiffs' counsel proposed a detailed plan, which the judge largely adopted. ALEXANDER POLIKOFF, *HOUSING THE POOR* 153 (1978).

neighborhoods.²³³ The centerpiece of the court’s order, termed the “scattered site” program, required CHA to provide additional housing “as rapidly as possible” under a locational formula emphasizing predominantly white areas from which public housing had been systematically excluded.²³⁴ The 1969 order applied primarily to the city of Chicago, but the order also allowed for a limited portion of the remedial housing to be provided outside the city limits, with the agreement of local suburban officials.²³⁵

The local response to the district court’s order resembled the Deep South’s reaction to the Supreme Court’s school desegregation decisions a decade earlier.²³⁶ In both cases, the term “massive resistance” captured the reality.²³⁷ After the district court’s remedial order in Chicago, CHA, Mayor Richard J. Daley, the Chicago City Council, and private organizations and individuals all played a part in bringing public housing development to a virtual standstill.²³⁸ Mayor Daley filled the CHA Board with commissioners who would

²³³ *Gautreaux v. Chicago Hous. Auth.*, 304 F. Supp. 736 (N.D. Ill. 1969), *enforcing* 296 F. Supp. 907. (1969). It should be noted that the plaintiffs’ submission was created entirely by the lawyers, with no consultation of the plaintiffs themselves. Hal Baron criticized the *Gautreaux pro bono* lawyers on this ground: “When you have *pro bono* with poor clients, the lawyers become their own clients.” Baron illustrated the point by referring to a conversation he had with Alex Polikoff, the lead lawyer for the *Gautreaux* plaintiffs, after the court had found a violation by CHA and was proceeding to the remedial stage of the case. Baron asked how the plaintiffs could help in fashioning a remedy. According to Baron, Polikoff said that the plaintiffs were “not necessary. We can figure out the public good.” Baron thought that if Dorothy Gautreaux were alive, she would have organized the plaintiffs and insisted on more plaintiff involvement in the remedy. Interview with Hal Baron, former Rsch. Dir. of Chi. Urban League, in Chi., Ill. (Aug. 8, 2012); Interview by Alan Mills, with Hal Baron, former Rsch. Dir. of Chi. Urban League, in Chi., Ill. (Apr. 6, 1981).

²³⁴ *Gautreaux*, 304 F. Supp. 736. The order had no timetable. In light of the history of white neighborhoods’ hostility to public housing, the order contained provisions designed to accommodate white residents’ concerns and reduce community resistance. The new public housing developments would be low-rise, small, and scattered, rather than the recent concentrations of large-scale, high-rise developments. Moreover, CHA was to reserve half of the units in each development for low-income families already living in the neighborhood—presumably white families living in predominantly white neighborhoods. *Id.* at 738. RUBINOWITZ AND ROSENBAUM, *supra* note 15, at 26–27 (2000).

²³⁵ State law permitted CHA to operate outside the city by agreement with suburban public housing agencies. The order gave CHA the option of providing up to one-third of the remedial housing in white areas of suburban Cook County. However, no suburban housing authorities agreed to participate. POLIKOFF, *supra* note 15, at 71, 75–76; *see infra* Part III.A.1.i.

²³⁶ *Brown v. Bd. of Educ. (Brown I)*, 347 U.S. 483 (1954); *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294 (1955).

²³⁷ *See generally* CLIVE WEBB, *MASSIVE RESISTANCE: SOUTHERN OPPOSITION TO THE SECOND RECONSTRUCTION* (2005); Arnold R. Hirsch, *Massive Resistance in the Urban North: Trumbull Park, Chicago, 1953–1966*, 82 J. AM. HIST. 522 (1995).

²³⁸ Rubinowitz, *supra* note 47, at 596; POLIKOFF, *supra* note 15, at 94–96.

This obstruction necessitated continuous returns to the court for additional orders, with inevitable delays involved in hearings and appeals. Aspen said that to his knowledge, it was the longest-running case in federal court history with 121 pages of docket entries. *Interview with Judge Aspen*, U.S. DIST. CT. N.D. ILL. 1:14:57 (Feb. 27, 2019), <https://www.ilnd.uscourts.gov/Pages.aspx?page=interviewJudgeAspen>.

CHA’s remedial performance was so abysmal that Judge Marvin Aspen, who presided for more than four decades beginning in 1981, finally took the extraordinary step of appointing a receiver in 1987 (eighteen years after the original order) to administer the scattered site program. Judge Aspen appointed the Habitat Company, a private developer, as receiver. Habitat reported directly to the court rather than to the CHA board. POLIKOFF, *supra* note 15, at 197–98.

not “rock the boat.”²³⁹ When CHA did approve a site, the City Council would deny approval, or defer action, to avoid any public disputes.²⁴⁰ Private citizens also filed lawsuits and protested to keep Black people out of their neighborhoods.²⁴¹ The years of resistance and resulting inaction demonstrated that any hope of achieving significant progress in providing desegregated housing opportunities for the plaintiffs had to come from the HUD case.²⁴²

2. The HUD Case

Once Judge Austin had decided the CHA case, he turned to the one against HUD.²⁴³ The HUD case derived from CHA’s and was based on the structure of the public housing program.²⁴⁴ While local public housing agencies had substantial authority to develop and manage public housing, HUD paid the capital cost of local developments and approved construction sites and tenant assignment plans.²⁴⁵ The plaintiffs claimed that HUD had illegally approved and funded CHA’s discriminatory program, contributing over \$350 million between 1950 and 1966.²⁴⁶

In 1970, Judge Austin dismissed the case against HUD.²⁴⁷ He found that the officials had faced a dilemma that precluded liability.²⁴⁸ On one hand, HUD tried in good faith, but unsuccessfully, to get CHA to administer the program on a non-discriminatory basis. On the other hand, if HUD officials refused to approve and fund the city’s program as a means of forcing CHA into compliance, it would have deprived low-income families of much-needed affordable housing.²⁴⁹ However, the next year, the Seventh Circuit reversed the

²³⁹ HIRSCH, *supra* note 17, at 257.

²⁴⁰ Rubinowitz, *supra* note 47, at 596.

²⁴¹ One group of Chicago homeowners sued CHA on the basis of “people pollution,” the idea that public housing tenants as a group were of a lower social class, more likely to be criminals, not maintain property, etc. The suit alleged that the CHA project violated the National Environmental Policy Act. The judge ruled that “although human beings may be polluters, they are not themselves the pollution.” POLIKOFF, *supra* note 15, at 162–63. Other community groups held meetings or protests, including protesting at Polikoff’s house and an organized campaign of phone calls to BPI board members. The opposition was mounted even in response to extremely small proposed developments. Six hundred neighborhood residents protested a proposed three-flat, one unit of which would have gone to a neighborhood family. Mayor Daley weighed in on this, arguing that it was not a matter of race but of property values. “Most of these people don’t have stock portfolios. The only thing they have is their bungalow. They just want to know can they hold their value.” POLIKOFF, *supra* note 15, at 166. Moreover, private citizens lobbied their council members to block proposed sites, while some builders bought and developed proposed sites before CHA could get control of them, making them unavailable for public housing. *Id.* at 159–66; Rubinowitz, *supra* note 47, at 596.

²⁴² In 1981, the district judge commented on CHA’s performance before adopting a consent decree on a different aspect of the remedy: “Thus, despite continuous litigation, numerous hearings and remedial court orders . . . during the past twelve years, plaintiffs have yet to realize more than token relief.” Gautreaux v. Landrieu, 523 F. Supp. 665, 667 (1981). To emphasize the point, he said: “From 1969 to 1979 progress in providing remedial housing was negligible.” *Id.* at 668.

²⁴³ Rubinowitz, *supra* note 47, at 597; Hills v. Gautreaux, 425 U.S. 284, 288–89 (1976); Gautreaux v. Romney, 448 F.2d 731, 733 (7th Cir. 1971).

²⁴⁴ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 36.

²⁴⁵ *Id.*

²⁴⁶ *Id.*; Complaint at 20 n.16, Gautreaux v. Romney, 332 F. Supp. 366 (N.D. Ill. 1971).

²⁴⁷ Gautreaux v. Romney, No. 66-C-1460 (N.D. Ill. Sept. 1, 1970) at 6.

²⁴⁸ Gautreaux v. Romney, 448 F. 2d 731, 733, 737 (7th Cir. 1971).

²⁴⁹ *Id.* at 737.

lower court and held HUD liable for approving and funding CHA's racially discriminatory site selection and tenant assignment policies and practices.²⁵⁰

When the Seventh Circuit remanded the case to the district court in 1971, Judge Austin ordered the parties to formulate "a comprehensive plan to remedy the past effects of unconstitutional site selection procedures."²⁵¹ At the plaintiffs' request, the order directed the parties to include "alternatives which are not confined in their scope to the geographic boundary of the City of Chicago."²⁵²

In response, plaintiffs asked the court to create a remedy consisting of a metropolitan plan for relief.²⁵³ A metropolitan plan would allow plaintiffs to move throughout the very large, six-county metropolitan area, rather than only different neighborhoods in the city of Chicago.²⁵⁴ They argued that a metropolitan remedial plan was necessary to fix the past effects of the unconstitutional segregation and that it provided other benefits related to employment, education, and safety.²⁵⁵ The judge rejected the plaintiffs' metropolitan proposal and concluded that the remedy must be limited to the city of Chicago.²⁵⁶ He emphasized that the violations had taken place within the city of Chicago, and the plaintiffs were all city residents.²⁵⁷ Moreover, there were no allegations that HUD had discriminated or fostered discrimination in the suburbs.²⁵⁸

²⁵⁰ *Id.* at 739–40; Rubinowitz, *supra* note 47, at 598–99.

²⁵¹ *Hills v. Gautreaux*, 425 U.S. 284, 290 (1976); *see* *Gautreaux v. Romney*, 332 F.Supp. 366, 368 (N.D. Ill., 1971). Plaintiffs' counsel sought HUD's participation in the development of an order, but the agency declined to discuss such a joint effort. Letter from Alexander Polikoff to Judge Richard Austin (Apr. 27, 1972).

²⁵² *Gautreaux v. Romney*, 363 F. Supp. at 690–91 (N.D. Ill. 1973). It is not clear why Judge Austin included the possibility of metropolitan relief when he invited the parties to submit proposed remedial plans. Plaintiff's counsel proposed it and he seemed to accept it without explanation and serious consideration of the implications. He had declined to find HUD liable in the first place, which suggested that he would probably adopt a very limited remedy. *Gautreaux v. Romney*, No. 66-C-1460 (N.D. Ill. Sept. 1, 1970).

²⁵³ The plaintiffs' proposed order would have provided for metropolitan-wide relief, extending the limited focus on the suburbs in the CHA order. RUBINOWITZ & ROSENBAUM, *supra* note 15, at 36; POLIKOFF, *supra* note 15, at 108; Roger J. Dennis & Leonard S. Rubinowitz, *School Desegregation Versus Public Housing Desegregation: The Local School District and the Metropolitan Housing District*, 10 URB. L. ANN. 145, 175 (1975). In support of this approach, they submitted a memorandum that developed a legal, policy, and practical rationale for an expanded geographical reach of the remedy. Rubinowitz, *supra* note 46, at 599.

HUD proposed an order that would require it to use its "best efforts" to assist CHA in providing relief within the city. *Id.*

²⁵⁴ *See infra* Part III.A.1.

²⁵⁵ Memoranda in Support of Plaintiffs' Outline of Proposed Final Order Embodying Comprehensive Plan for Relief; Memorandum #2- The Additional Dwelling Units to Be Provided Should Be Located Throughout a Defined Metropolitan Area (3 July 1972).

²⁵⁶ *Gautreaux v. Romney*, 363 F. Supp. at 690–91 (N.D. Ill. 1973). Though the judge invited the parties to submit a metropolitan plan, when that aspect of the order became the center of attention during the proceedings, he rejected it out of hand. POLIKOFF, *supra* note 15, at 108–20; *see supra* note 252.

²⁵⁷ *Gautreaux v. Romney*, 363 F. Supp. at 691 (N.D. Ill. 1973).

²⁵⁸ Further, the judge held that it was not permissible to impose obligations on suburban entities that were not involved in discriminatory site selection in Chicago. *Id.* Since the judge ruled on a motion asking him to consider metropolitan-wide relief, his decision addressed the abstract principle rather than any specific proposed metropolitan plan. Rubinowitz, *supra* note 47, at 599.

Once again, the Seventh Circuit reversed. In 1974, it concluded that “on the record here it is necessary and equitable that any remedial plan to be effective must be on a suburban or metropolitan area basis.”²⁵⁹ The court relied heavily on HUD’s regulations and officials’ statements about the necessity of addressing housing problems on a metropolitan basis.²⁶⁰ As a result, the court remanded the case for “the adoption of a comprehensive metropolitan area plan that will not only disestablish the segregated public housing system in the City of Chicago which has resulted from CHA’s and HUD’s unconstitutional site selection and tenant assignment procedures but will increase the supply of dwelling units as rapidly as possible.”²⁶¹

In response to the Seventh Circuit’s decision, the federal government petitioned the Supreme Court for *certiorari*, and the Court granted it.²⁶² The government argued that there was no basis for metropolitan-wide relief. In 1976, the Supreme Court rejected the government’s position and concluded that the district judge had the power to adopt a metropolitan-wide remedy, leaving the trial judge to decide whether to do so.²⁶³

By 1976, the court case had been working its way through the system for ten years, with very little progress on the ground. Similarly, the Leadership Council, as a continuation of the Chicago Freedom Movement, was plugging along in its efforts, but not getting significant results. However, the efforts would not be wasted, as these steps would lead to future opportunities for collaboration.

III. CHANGED CONTEXT: LAYING THE GROUNDWORK FOR COLLABORATION

In the decade from 1966 to 1976, changes set the stage for collaboration between the *Gautreaux* lawyers and the Chicago Freedom Movement’s successor organization, the

The judge adopted HUD’s proposed order requiring agency officials to “use their best efforts to cooperate with CHA in its efforts to increase the supply of dwelling units” in conformity with applicable law, including the original order against CHA.

²⁵⁹ *Gautreaux v. Chi. Hous. Auth.*, 503 F.2d at 936. While the *Gautreaux* lawyers took longer than the Chicago Freedom Movement to fully expand their focus to the metropolitan area, that was because the question of the full-scale spatial expansion was part of the HUD case, on which the district deferred action until the resolution of the CHA case.

²⁶⁰ The court quoted the HUD General Counsel saying that “[t]he elimination of slums and the provision of decent housing for families of low income in the locality are matters of metropolitan area scope but of primary concern to the central city because the problem and impact are intensified there. In effect, therefore, the State legislatures have determined that the city and its surrounding area comprise a single ‘locality’ for low-rent housing purposes,” and further pointed to a HUD regulation which notes “housing market areas often are independent of arbitrary political boundaries.” *Id.* at 937.

²⁶¹ *Id.* at 939.

²⁶² Brief for the Petitioner, *Hills v. Gautreaux*, 421 U.S. 962 (No. 74-1047), 1975 WL 173594. The Solicitor General has the authority to decide whether to petition for *certiorari* when a government agency loses a civil case. See generally Neal Devins, *Unitariness and Independence: Solicitor General Control over Independent Agency Litigation*, 82 CALIF. L.REV. 255 (1994). Solicitor General Bork petitioned the Court because he believed that: 1) HUD was a solid agency that had done the best it could under the circumstances to provide much-needed housing for low-income people; and 2) federal courts should not interfere with the operations of federal agencies, and he wanted to stop the trend of judicial governance of administrative agencies. Telephone Interview by Moshe Melcer with Robert Elliott, former HUD General Counsel (Dec. 1, 2019); *Hills v. Gautreaux*, 421 U.S. 962, 962 (1975) (granting *certiorari*).

²⁶³ See *infra* Part III.B.2.

Leadership Council. First, internal factors within the two organization—commitments to a metropolitan-wide approach, new strategies for assisting families with moving, and turning to the private housing market—created a convergence in methodology that had not existed initially. Additionally, three external changes initiated by the three branches of the federal government, outside the control of the activists and lawyers—Congress’s Section 8 rental assistance program, the Supreme Court’s ruling in the HUD case, and HUD’s own willingness to create an experimental housing program—made collaboration a viable option.²⁶⁴

With these changed conditions, the *Gautreaux* lawyers and the Leadership Council joined forces to create and administer a new, metropolitan-wide housing program.²⁶⁵ Thus 1976 became a critical turning point in this account. Partnering replaced independent action, and paths that had been separate came together. As collaboration blossomed, synergy became possible.

A. Internal Factors

By 1976, internal factors in both groups transformed the idea of collaboration from irrelevant to viable and promising. First, the organizations shared a commitment to a metropolitan-wide approach to providing housing opportunities.²⁶⁶ Additionally, both were open to pursuing new strategies for programs that assisted families with moving.²⁶⁷ Finally, they both turned to the private rental housing market in pursuit of their goals.²⁶⁸

1. Metropolitan-wide Focus

The Chicago Freedom Movement and the *Gautreaux* litigation both initially limited their geographical focus to the city of Chicago.²⁶⁹ By the time the litigators and activists joined forces in 1976, they shared the view that the entire Chicago metropolitan area, rather than just the city, constituted the appropriate space for addressing housing discrimination and segregation.²⁷⁰ At first, they set their sights beyond the city at different times and in different ways, but when the collaborative *Gautreaux* Program began in 1976, metropolitanization had become a common and central theme.²⁷¹

Even before there was a Chicago Freedom Movement, Dr. King recognized the need to address suburban housing discrimination. When he visited Chicago during the summer of 1965, he accepted several invitations to speak in the suburbs.²⁷² One invitation came from the North Shore Summer Project, an organization addressing housing discrimination

²⁶⁴ See *infra* Part III.B.

²⁶⁵ See *infra* Part III.C.

²⁶⁶ See *infra* Part III.A.1.i.

²⁶⁷ See *infra* Part III.A.1.ii.

²⁶⁸ See *supra* Part I.B.3 and *infra* Part III.A.1.iii.

²⁶⁹ See *supra* Part I.A.2.

²⁷⁰ The metropolitan thrust was embodied in the 1966 Summit Agreement in the Chicago Freedom Movement. See *supra* Part II.A.1. In the *Gautreaux* litigation, the 1969 original order had a very limited provision for remedial housing in the suburbs. See *supra* note 235 and accompanying text. In the 1972 effort to define a remedy against HUD, plaintiffs’ counsel made the metropolitan focus center stage. See RUBINOWITZ & ROSENBAUM, *supra* note 15 at 36.

²⁷¹ See *infra* Part III.B.3.

²⁷² Gail Schechter, *The North Shore Summer Project: “We’re Gonna Open up the Whole North Shore,”* in THE CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 164.

in the northern suburbs near Lake Michigan.²⁷³ On the village green of all-white Winnetka, Dr. King challenged the 10,000 (almost all white) people in attendance to address suburban housing discrimination and segregation.²⁷⁴ That speech served as a precursor to Dr. King's return to the city.²⁷⁵ A year later, the Chicago Freedom Movement explicitly broadened its focus to the Chicago metropolitan area in the 1966 summit meetings and the resulting Summit Agreement.²⁷⁶

During the summit meetings, both Mayor Richard J. Daley and the Chicago Freedom Movement representatives supported the idea of expanding the focus to the entire metropolitan area.²⁷⁷ Although they had different reasons for their positions, their interests converged on an explicit expansion of the scope of the enterprise.²⁷⁸ Mayor Daley pressed repeatedly for the idea that the suburbs should share a responsibility with the city to address the housing problems and that they should be part of the efforts going forward.²⁷⁹ In his introductory statements at the summit meeting, he pointed out that housing was a metropolitan problem, and he suggested that the city had done its share—more than any other city on that issue.²⁸⁰ In his mind, it was time for the suburbs to step up and be part of the solution.²⁸¹

²⁷³ *Id.* at 154–64. Dr. King said: “We must go all out to end segregation in housing . . . Every white person does great injury to his child to grow up in a world that is two-thirds colored and yet live in conditions where that child does not come into person-to-person contact with colored people . . . Racism in housing will not be removed until there is an assault on the structure of power that reaps huge profits from the divisions in our society. What is profitable to a Realtor is not always profitable to a city . . .” E-mail from Gail Schechter to first author (Sept. 20, 2020).

This was his first public address on the North Shore. He spoke at two North Shore Jewish congregations—Beth Emet in Evanston and Congregation Solel in Highland Park. Schechter, *supra* note 13, at 163.

²⁷⁴ *Id.* Crowd estimates vary from 8,000 to 15,000. *Id.* at 179 n. 28; RALPH, *supra* note 13, at 34–35.

The commemorative marker at the site quotes him: “History has presented us with a cosmic challenge . . . We must now learn to live together as brothers or we will perish as fools.” The marker states that “[o]n July 25, 1965, Dr. Martin Luther King, Jr. spoke to a crowd of 8,000 on Winnetka’s Village Green.”

²⁷⁵ See *supra* Part I.A.2.

²⁷⁶ See *supra* Part II.A.1. During the summit meetings, Mayor Daley sought and received an injunction that limited the marches to one per day, in one neighborhood only, and no more than 500 people. In response, the movement carried out marches in the suburbs, including Evergreen Park and Chicago Heights. Schechter, in *THE CHICAGO FREEDOM MOVEMENT*, *supra* note 13, at 163; McKnight, in *CHICAGO 1966*, *supra* note 13, at 141–42.

Prior to the summer campaign, CFM activists were involved in Oak Park’s battle over housing discrimination. RALPH, *supra* note 13, at 100–01.

²⁷⁷ McKnight, in *CHICAGO 1966*, *supra* note 13, at 111, 121, 137.

²⁷⁸ Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 528–33 (1980) (arguing that *Brown v. Board*, and other Black people’s progress occurs when white people have their own reasons for supporting the changes).

²⁷⁹ Kathleen Connolly, *The Chicago Open Housing Conference*, in *CHICAGO 1966*, *supra* note 13, at 74.

Daley also suggested that there was a need for a state open occupancy law that covered the metropolitan area. McKnight, in *CHICAGO 1966*, *supra* note 13, at 125–26.

²⁸⁰ Connolly, in *CHICAGO 1966*, *supra* note 13, at 74.

²⁸¹ *Id.*; McKnight, in *CHICAGO 1966*, *supra* note 13, at 125–26, 130, 140. Charles Swibel, head of the Chicago Housing Authority, also urged that the suburbs should be involved, by providing land on which to build public housing. McKnight, in *CHICAGO 1966*, *supra* note 13, at 117. Two of the ten points of the summit agreement specifically addressed metropolitan issues. Daley said about the agreement: “I’m

While the mayor sought to limit the city's responsibilities by including the suburbs, Dr. King had no interest in letting the city off the hook.²⁸² Instead, he wanted to expand the geographical impact of the movement, as he had proposed the previous summer.²⁸³

Additionally, the name that the organizers picked for the organization charged with implementing the Summit Agreement—the Leadership Council for Metropolitan Open Communities—reflected both its goals and its geographical focus.²⁸⁴ The Agreement repeatedly referred to its metropolitan scope.²⁸⁵ The Agreement thus expanded the Chicago Freedom Movement's initial concept of an “open city” to the metropolitan area.

The *Gautreaux* lawyers also focused on the city originally, but they planted a seed for expanding their efforts beyond the city boundaries when they proposed a partial suburban option in the CHA remedy.²⁸⁶ As discussed above in Part II(B)(1), the district judge adopted that limited provision in his 1969 order.²⁸⁷

The first opportunity for plaintiffs' lawyers to press for a full-scale metropolitan approach came in 1972, after the Seventh Circuit established HUD's liability and the district judge was considering the plaintiffs' proposed remedies.²⁸⁸ Plaintiffs' lawyers argued as a matter of principle and practicality that a metropolitan-wide remedy was permissible and appropriate.²⁸⁹ Final resolution of that question had to wait until the Supreme Court's decision four years later, but the lawyers emphatically made the metropolitan focus a commitment, just like the Chicago Freedom Movement.²⁹⁰

satisfied that the people of Chicago and the suburbs will accept this program in light of the people who endorsed it.” ANDERSON & PICKERING, *supra* note 13, at 272.

²⁸² See *supra* notes 275–76 and accompanying text.

²⁸³ *Id.* In the summit meeting, Dr. King said that he saw nothing in the world more dangerous than Negro cities ringed with white suburbs. McKnight, in CHICAGO 1966, *supra* note 13, at 121.

²⁸⁴ See *supra* notes 199–200 and accompanying text. The opening paragraph of the agreement stated its purpose in metropolitan terms: “Th[e] subcommittee has been discussing a problem that exists in every metropolitan area in America. It has been earnestly seeking immediate, practical, and effective steps which can be taken to create a fair housing market in metropolitan Chicago.” Summit Agreement, in CHICAGO 1966, *supra* note 13, at 147; ANDERSON & PICKERING, *supra* note 13, at 260–62.

²⁸⁵ The ‘Summit Agreement,’ in CHICAGO 1966, *supra* note 13, at 153–54. Point 10 made a series of statements about geographical scope of the organization to be formed:

1. “Its membership should reflect the diverse racial and ethnic composition of the entire Chicago metropolitan community.”
2. It should carry forward programs such as “the convening of conferences on fair housing in suburban communities to the end that the policy of the City of Chicago on fair housing will be adopted in the whole Chicago metropolitan area.”
3. “The group should emphasize that the metropolitan housing market is a single market.”

²⁸⁶ See *supra* note 257 and accompanying text.

²⁸⁷ See *supra* note 241 and accompanying text. Mayor Daley responded to the decision by again bringing up the metropolitan question, just as he had three years earlier in the Chicago Freedom Movement summit meetings. See *supra* notes 290–92 and accompanying text. He said that “there is no public housing in the suburbs. [This was not literally true, but there was very little compared to Chicago.] Surely the metropolitan area should open up if we are going to answer the problem.” POLIKOFF, *supra* note 15, at 67. The issue of Metropolitanization was a major topic of discussion with Judge Austin in chambers as well. *Id.* at 70–72.

²⁸⁸ *Id.* at 108–09; RUBINOWITZ & ROSENBAUM, *supra* note 15, at 37, 45. While the Chicago Freedom Movement could simply adopt a metropolitan-wide goal and proceed accordingly, the litigators were subject to the court's jurisdiction and remedial power to decide on the permissible geographical scope of the remedy. See *supra* Part II.B.2.

²⁸⁹ See *supra* notes 262–63.

²⁹⁰ See *infra* Part III.B.2.

That resolution would have important practical applications. The metropolitan focus dramatically expanded the geographical area within which families could secure housing.²⁹¹ The great postwar growth of suburban rental housing, along with the even larger explosion of owner-occupied properties, gave any metropolitan-wide rental program a large potential supply of units.²⁹² The demographic diversity of the much larger area created significantly increased opportunities for integrative moves.²⁹³

2. Converging Strategies

In 1966, the Chicago Freedom Movement and *Gautreaux* lawyers' respective strategies sent the former to the streets and the latter to the federal courts. Those initial deeply held disparate strategies for bringing about social change put them on separate courses for the foreseeable future. A decade later, that picture changed dramatically. The Chicago Freedom Movement's direct action campaign had long since concluded.²⁹⁴ The movement's impact continued in the form of the Leadership Council, which worked to implement the Summit Agreement.²⁹⁵

An analogous transition took place with the *Gautreaux* litigation.²⁹⁶ A decade after filing the companion cases, plaintiffs' lawyers moved from pursuing their objectives exclusively through the formal judicial process to seeking a negotiated approach.²⁹⁷ In the CHA case, plaintiffs' lawyers had been fighting in court for a decade, seeking a variety of modification and enforcement orders in search of effective relief—with little effect.²⁹⁸ Additionally, in the HUD case, it took the Supreme Court a decade to reach a definitive decision about the geographical scope of permissible relief.²⁹⁹ The slow pace of judicial action, coupled with the dire need for relief from housing segregation and discrimination, forced plaintiffs' counsel to search for alternative strategies. After a decade of frustration and disillusionment with the formal litigation process, *Gautreaux* lawyers sought to avoid a return to the district court for additional formal proceedings and chose instead to work out an effective housing program directly with HUD.³⁰⁰ While still under the court's umbrella, negotiation moved to center stage, replacing formal litigation.³⁰¹

²⁹¹ While the city of Chicago had a population of 3.4 million people, 1.2 million housing units, and 228 square miles, the metropolitan area included over 200 municipalities in six counties, with 7 million residents, 2.3 million housing units, and 3,690 square miles. RUBINOWITZ & ROSENBAUM, *supra* note 15, at 45.

²⁹² Many of those units would not have been available to such a program. *See infra* Part IV.B.

²⁹³ Like the city, Chicago's suburbs were largely racially and economically segregated. *See generally*, MASSEY & DENTON, *supra* note 39 and ROTHSTEIN, *supra* note 39, on the extreme segregation in the Chicago area, and the role of government in creating and maintaining the patterns of segregation.

²⁹⁴ *See supra* Part II.A.1.

²⁹⁵ *See supra* note 216.

²⁹⁶ *See infra* Part III.B.3.

²⁹⁷ *Id.*

²⁹⁸ *See supra* Part II.B.1.

²⁹⁹ *See infra* Part III.B.2.

³⁰⁰ *See infra* Part III.B.3.

³⁰¹ *See infra* Part III.B.3. Informal negotiations were initiated and carried out by the parties, while the legal case remained open and active. *Id.*

3. A Turn to the Private Rental Housing Market

The Chicago Freedom Movement originally focused on two parts of the private housing market—single-family homes in primarily middle-class white neighborhoods and slum housing in low-income Black neighborhoods.³⁰² With the Summit Agreement in place, the Movement’s focus extended not only geographically but to all types of housing in metropolitan Chicago’s six counties.³⁰³

As detailed in Part I above, the *Gautreaux* case initially focused entirely on public housing. After Section 8 became the main federal subsidy program, opportunities for implementing a remedy shifted to the private market.³⁰⁴ Both the lawyers’ and the Leadership Council’s goals included providing low-income Black families with affordable rental housing, on a fair housing basis, throughout the Chicago metropolitan area.³⁰⁵ This convergence in goals between the litigation’s remedial program and the Leadership Council’s role in implementing the Summit Agreement of 1966 generated an opportunity for cooperation.³⁰⁶

4. Capacity: Manageable Plates

While the development of the *Gautreaux* Program required creativity, determination, and flexibility, the *Gautreaux* lawyers and the Leadership Council had a decade of experience that prepared them to join forces.³⁰⁷ They each also had the expertise that replaced the steep learning curves that posed such a challenge a decade earlier.³⁰⁸ Both organizations also had well defined goals, and a staff structure prepared to address those goals.³⁰⁹ Moreover, this new initiative became top priority for each of them, and they shared the willingness to invest the time and staff necessary to carry out the program.³¹⁰

B. External Factors

In addition to changes in the two organizations’ internal factors, external decisions by all three branches of the federal government laid the groundwork for synergy. First, in 1974, Congress created Section 8, a rent subsidy program that provided a new vehicle for relief for the plaintiff class.³¹¹ Then, in 1976, the Supreme Court held that the district court could adopt metropolitan-wide relief in the HUD case.³¹² Later that year, HUD agreed to

³⁰² See *supra* notes 128–31 and accompanying text.

³⁰³ Summit Agreement, *supra* note 205, at 445 (“The proposed board . . . should carry forward programs . . . to the end that the policy of the City of Chicago on fair housing will be adopted in the whole Chicago metropolitan area.”).

³⁰⁴ See *infra* Part III.B.1.

³⁰⁵ See *supra* Part III.A.1.i.

³⁰⁶ The fit was particularly close with the Chicago Freedom Movement’s “end the slums” project, which aimed at creating opportunities for decent housing for low-income families. See *supra* notes 35, 171–174.

³⁰⁷ See *infra* Part V.A.

³⁰⁸ See *supra* note 142 and accompanying text for further discussion on the *Gautreaux* lawyer Polikoff. See *infra* Part III.C. for discussion on the Leadership Council.

³⁰⁹ *Id.*

³¹⁰ See POLIKOFF, *supra* note 15, at 232–33; RUBINOWITZ & ROSENBAUM, *supra* note 15, at 50–51.

³¹¹ See *infra* Part III.B.1.

³¹² See *infra* Part III.B.2.

fund an experimental program using Section 8 funds to move families into private rental housing throughout the Chicago metropolitan area.³¹³

1. Congressional Enactment of the Section 8 Program

In 1972, when the plaintiffs' lawyers began to press for a metropolitan-wide remedy, the design and implementation of such an approach would have faced many obstacles and offered limited potential for progress.³¹⁴ The only remedial approach available was for CHA to build public housing in the suburbs.³¹⁵ By that time, CHA had demonstrated its intransigence and incompetence.³¹⁶ Moreover, suburban housing authorities uniformly rejected CHA's requests for permission to build public housing outside the city as permitted under the original order.³¹⁷ With this bleak picture of continuing roadblocks, significant implementation of any metropolitan remedy had to await the arrival of a more effective program for the purpose—one that CHA would not administer.³¹⁸ Fortunately, in 1974, Congress created a subsidized housing program that provided a far more promising remedial vehicle.³¹⁹ The Section 8 program served as a critical contributor to synergy.³²⁰

³¹³ See *infra* Part III.B.3.

³¹⁴ There was little reason to expect that any of the suburban agencies would reach agreements under the HUD case that would welcome low-income Chicago residents into their communities. The Housing Authority of Cook County, the largest public housing agency outside of the city (Chicago is the county seat of Cook County), had similar racial patterns to the city, making it an unlikely partner for this purpose. RUBINOWITZ & ROSENBAUM, *supra* note 15, at 22. There was evidence that DuPage County, an affluent, predominantly white county west of Chicago, had created a housing authority to make sure that there would be no public housing in the area. *Id.* (citing LEONARD S. RUBINOWITZ, *LOW INCOME HOUSING: SUBURBAN STRATEGIES* (1974)).

Assuming their continuing refusal, the only scenario under which CHA could have built housing in the suburbs was for the district judge to set aside the state law providing for suburban local officials' agreement and order CHA to proceed without their approval. Plaintiffs' counsel could refer to an arguably analogous step that Judge Austin had taken in the CHA case. He had set aside the state statute giving the Chicago City Council veto power over proposed sites because the Council's failure to act impeded remedying a constitutional violation. *Gautreaux v. Chi. Hous. Auth.*, 342 F. Supp. 827, 829–30 (N.D. Ill. 1972).

However, Judge Austin had demonstrated deep skepticism about the HUD case from the outset. He had dismissed the case against HUD, only to be reversed by the Seventh Circuit. See *supra* Part II.B.2. He then refused to consider any metropolitan remedy, concluding that there was no basis for relief extending to the suburbs. *Gautreaux v. Romney*, 363 F. Supp. 690, 691 (N.D. Ill. 1973) *rev'd sub nom.* *Gautreaux v. Chi. Hous. Auth.*, 503 F.2d 930, 938–39 (7th Cir. 1974).

Given his consistent posture in the HUD case, it is highly unlikely that Judge Austin would have taken the extraordinary step of setting aside a state statute as it applied to large numbers of suburbs that were not implicated in the violation. Even if all of those obstacles could have been overcome, the challenges of getting public housing built in suburbs that were likely to be extremely resistant would have been daunting.

³¹⁵ See *infra* note 326.

³¹⁶ See *supra* Part II.B.1.

³¹⁷ Rubinowitz, *supra* note 47, at 597, n.20. See *supra* notes 291–94.

³¹⁸ See *infra* Part V.B.

³¹⁹ 42 U.S.C. § 1437f.

³²⁰ Section 8 came as part of a reinvention of federal subsidized housing programs during the Nixon Administration. Early in 1973, the Nixon administration announced a moratorium on most federal housing programs, including the public housing program that was at the center of the *Gautreaux* litigation. (Projects

Under Section 8, federal rent subsidies paid the difference between a specified percentage of tenants' income and the market rent for the apartments.³²¹ The program had two major variations.³²² For project-based Section 8, an entire privately-owned building or development served low-income renters receiving subsidies that made the housing affordable.³²³ Tenant-based Section 8 made federal rent subsidies available for low-income households to secure housing in the private market.³²⁴ It provided eligible tenants with vouchers to use in private housing with landlords willing to participate and rents within specified ceilings.³²⁵ With privatization at its core, the program did not require housing providers to secure local approvals beyond those applicable to any housing in the community.³²⁶ With the advent of tenant-based Section 8, an essential ingredient for a potential collaboration between the Leadership Council and the *Gautreaux* lawyers became available.

that were already underway could proceed.) The President severely criticized the traditional federal approach to housing and ordered HUD to undertake a comprehensive study in order to propose a new, long-term solution to the housing problem. MORRIS, *supra* note 94, at 2–3; CHRISTOPHER BONASTIA, *KNOCKING ON THE DOOR: THE FEDERAL GOVERNMENT'S ATTEMPT TO DESEGREGATE THE SUBURBS* 38 (2006).

Critics of the moratorium argued that it was a subterfuge designed to scuttle HUD's fledgling efforts to use its subsidy programs to assist Black and other low-income households to move to the suburbs. HUD had attempted to leverage federal funds to suburbs to pursue racial integration in their communities. *Id.*

Initially, President Nixon responded to HUD's initiatives with a lengthy Statement About Federal Policies Relative to Equal Housing Opportunity. Statement about Federal Housing Policies Relative to Equal Housing Opportunity, 1971 PUB. PAPERS 721 (June 11, 1971). The implicit rejection of HUD's efforts was, "This Administration will not attempt to impose federally assisted housing upon any community." *Id.* at 731. The moratorium on housing programs followed a year and a half later.

Congress modeled the existing housing portion of the Section 8 program on the modest "leased housing program" created a decade earlier. Housing and Urban Development Act of 1965, Pub. L. No. 89-117, § 23, 79 Stat. 451, 455 (1965).

The result was the Housing and Community Development Act of 1974. It contained the Section 8 program, which was to serve as the primary mechanism for providing affordable housing. The statute continued some of the previous housing programs, but at dramatically lower levels of funding. 12 U.S.C. § 1706e; BONASTIA, at 39. The replacement for traditional public housing became the centerpiece of the metropolitan-wide *Gautreaux* Program two years later. *See infra* Part III.A.1.i.

³²¹ *Id.*

³²² 42 U.S.C. § 1437f.

³²³ *See supra* note 168 and accompanying text. Section 8 was part of the public housing statute, the United States Housing Act of 1937, Pub. L. No. 412, ch. 896, 50 Stat. 888 (1937) (current version at 42 U.S.C. § 1437). Moreover, it served the same residents as the traditional public housing program and the courts included it under the umbrella of the litigation. *See infra* Part III.B.2.

³²⁴ 42 U.S.C. § 1437f(o). The federal program came to be known as "Housing Choice Vouchers" since recipients received vouchers to pay for a portion of the rent to private landlords.

³²⁵ 42 U.S.C. § 1437f(o). Under the federal statute, participation was voluntary on landlords' part. Ceiling rents were based on local "Fair Market Rents" (FMRs). 42 U.S.C. § 1437f(o)(B).

³²⁶ 42 U.S.C. § 1437f(o).

2. The Supreme Court Decision in the HUD Case

There was great uncertainty about how the Supreme Court would decide the metropolitan question when it arrived from the Seventh Circuit.³²⁷ In 1974, the Court found that a Michigan district court could not adopt a school desegregation remedy extending beyond Detroit's city limits, where the constitutional violation had taken place.³²⁸

However, in its landmark 1976 decision *Hills v. Gautreaux*, the Court held 8-0 that a metropolitan-wide housing desegregation remedy was permissible.³²⁹ The Court agreed with the Seventh Circuit that the district judge could use his equitable power to adopt a metropolitan-wide remedy in the public housing context.³³⁰ The Court distinguished the public housing situation from school desegregation cases because HUD's own definition of the appropriate geographical area for its programs' operations was the Chicago "housing market area."³³¹ That area consisted of the six-county metropolitan region within which home seekers competed for housing units.³³² Moreover, the Court found that it was possible to design a metropolitan-wide housing remedy that would not impermissibly interfere with the traditional powers and functions of innocent local governmental units.³³³ The authority of suburban governments and public housing agencies could remain intact, including zoning and other land use controls.³³⁴ Also, suburban officials would not have to initiate proposals for federal housing programs to accommodate Chicago residents.³³⁵

Having provided assurances that extending remedies beyond the city would not interfere with local prerogatives, the Court focused on the permissible possibilities for metropolitan-wide remedies.³³⁶ It emphasized the ways federal housing programs had changed since the District Court's initial decision in 1969, focusing especially on the

³²⁷ See *supra* notes 258–260 and accompanying text. The Supreme Court consideration also depended on earlier decisions favorable to the plaintiffs: the district court decision in 1969 finding a violation by CHA (*Gautreaux v. Chi. Hous. Auth.*, 296 F. Supp. 907, 913 (N.D. Ill. 1969)) and the Seventh Circuit decision finding a violation by HUD, derivative of the CHA's violation (*Gautreaux v. Romney*, 448 F.2d 731, 738 (7th Cir. 1971)).

³²⁸ In 1974, the Court held in *Milliken v. Bradley* that the district court and the court of appeals had exceeded their remedial powers in considering an inter-district remedy—one extending into the suburbs—in a Detroit school desegregation case. *Milliken v. Bradley*, 418 U.S. 717, 752 (1974). The Court required both “an interdistrict violation and interdistrict effect” in order to warrant an interdistrict remedy. *Id.* at 741, 745. Rubinowitz, *supra* note 47, at 601. The Court held, in a 5–4 vote, that the legal basis for such an order did not exist in that case. *Id.* at 600. The *Milliken* case cast a cloud over the metropolitan-wide approach plaintiffs proposed in *Gautreaux*.

³²⁹ *Hills v. Gautreaux*, 425 U.S. 284, 305–06 (1976). The court ruled 8–0, with Justice Stevens recusing himself because he had sat on the Seventh Circuit when it had the case before it.

³³⁰ *Id.* at 306. However, the Court's reasoning differed significantly from the Circuit Court's. See *infra* Part II.B.2; notes 341–343.

³³¹ *Gautreaux*, 425 U.S. at 299.

³³² *Id.* (“[t]he relevant geographic area for purposes of the respondents' housing options is the Chicago housing market, not the Chicago city limits.”); Dennis & Rubinowitz, *supra* note 253, at 150–52.

³³³ *Gautreaux*, 425 U.S. at 303.

³³⁴ *Id.* at 305.

³³⁵ *Id.* at 303.

³³⁶ *Id.* at 303–05.

Section 8 program.³³⁷ That program provided an opportunity for the creation of a new remedial initiative that would enable plaintiff class families to secure private housing throughout the Chicago metropolitan area, with HUD subsidizing their rents.³³⁸ In noting the difficulties and delays in securing relief within the city, the Court seemed sympathetic to the plaintiffs' view that broader new initiatives held promise for more effective relief.³³⁹

However, the Court rejected the Seventh Circuit's conclusion that the district judge was required to issue a metropolitan-wide order.³⁴⁰ It emphasized that it was deciding only that a metropolitan-wide remedy was within the power of the district judge, not that it was mandatory.³⁴¹ The Court left the district judge to decide, in light of the facts of the case, whether it was appropriate to extend the remedy beyond the city of Chicago.³⁴² It remanded the case to the district court to decide on the scope of the remedy, including its geographical reach.³⁴³ As such, great uncertainty about the outcome remained despite the Court's ruling.

3. Gautreaux–HUD Agreement: The Gautreaux Program

When the Supreme Court remanded the case, counsel for both parties chose a different path rather than returning to the district court. Instead, lead plaintiffs' counsel Alex Polikoff and HUD General Counsel Robert Elliott began settlement negotiations.³⁴⁴

Polikoff chose that process because “[b]y now [he] was desperate to get tangible results.”³⁴⁵ Forsaking the courtroom for an informal process was a pragmatic response to the frustrations of the years of litigating the CHA case, with many enforcement orders and

³³⁷ *Id.* at 303–04. The District Court had concluded that the Section 8 program came under the umbrella of this litigation. It was part of the same statute as public housing and performed the same function in terms of eligible tenants. *See* Dennis & Rubinowitz, *supra* note 253, at 165, n.66 (referencing a May 5, 1975 unreported opinion). Once the Supreme Court treated the Section 8 program as an aspect of the public housing program, it came under the umbrella of the *Gautreaux* case. *See* discussion of the Section 8 program, *supra* Part III.B.1.

³³⁸ *See infra* Part III.B.3.

³³⁹ *Gautreaux*, 425 U.S. at 289–90.

³⁴⁰ *Id.* at 306.

³⁴¹ *Gautreaux*, 425 U.S. at 306.

³⁴² The Court repeated this point, presumably to express respect for and deference to the district judge. *Id.* The idea of deferring to the local district judge in developing civil rights remedies mirrors the Court's approach in *Brown II*. *Brown v. Bd. of Educ. of Topeka, Kan.* (*Brown II*), 349 U.S. 294, 301 (1955).

³⁴³ *Gautreaux*, 425 U.S. at 306. The references to the difficulties of providing relief in the city may have been a hint about the advantages of metropolitan focus to bring about effective relief. Rubinowitz, *supra* note 47, at 605.

The Court also left open the appropriate definition of desegregation as an aspect of relief. HUD would simply be bound to do what it was already authorized or required to do under the 1964 Civil Rights Act and the Fair Housing Act of 1968 and its implementing regulations. *Id.* at 609.

The Court emphasized the new construction aspect of Section 8, but the actual relief relied mostly on the existing housing component of the program. *Id.* at 602; *Gautreaux*, 425 U.S. at 304; *see infra* Part IV.B. The authority of suburban governments and public housing agencies would remain intact, including zoning and other land use controls. Moreover, Gautreaux families could be housed without any effort on the part of suburban officials. RUBINOWITZ & ROSENBAUM, *supra* note 15, at 37; *Gautreaux*, 425 U.S. at 305.

³⁴⁴ *See* Rubinowitz, *supra* note 47, at 611–13, n.88. HUD's willingness to negotiate a metropolitan-wide approach indicated an evolution of the agency's position since 1972. *Id.*

³⁴⁵ POLIKOFF, *supra* note 15, at 230. He recounted the record of the past—“the scattered-site program seemed to be going nowhere” and the very limited prospects for other ongoing initiatives. *Id.*

extremely limited housing opportunities for the plaintiff class to show for it.³⁴⁶ That mostly futile history of relying on the court to overcome resistance provided a strong incentive to explore an alternative approach.³⁴⁷ The plaintiffs still kept the case in the legal arena but simply used a different tactic by negotiating for the agreement.³⁴⁸

Moreover, the plaintiffs wanted to avoid any further proceedings in front of Judge Austin, who had resisted the plaintiffs' claims on both the violation and relief in the HUD case.³⁴⁹ The plaintiffs suspected that because he had been overruled by both the Seventh Circuit and the Supreme Court, he would not likely endorse their proposals for a metropolitan-wide remedy out of personal animus against them.³⁵⁰ Judge Austin had the Supreme Court's assurance that he could determine the geographical scope of relief with finality,³⁵¹ so if the plaintiffs returned to his courtroom, they incurred the significant risk that he would limit the HUD remedy to the city.

At the same time, an extensive discussion took place within HUD about how to respond to the remand.³⁵² There was "strong sentiment" within the agency to "keep fighting" to limit HUD's obligations.³⁵³ That would have meant returning to the district court seeking a city-only order, as it had done successfully four years earlier.³⁵⁴ Just as Polikoff had reason to fear such a continuation of the formal process, HUD advocates for a narrow remedy had reason for optimism if they went back to Judge Austin.³⁵⁵

Countermanding other voices within the agency, HUD General Counsel Robert Elliott argued that settlement was "in the public's interest" because the agency should provide housing opportunities for low-income families on a broad geographical basis.³⁵⁶ He viewed a negotiated plan as a proper vehicle to make housing available to the plaintiff class.³⁵⁷ As the Supreme Court emphasized, HUD already administered many of its housing and other programs on an area-wide basis.³⁵⁸ That suggested the possibility of reaching an agreement that would not interfere with the agency's administrative prerogatives.³⁵⁹

³⁴⁶ *Id.* at 225, 230–32. See *supra* note 337 and accompanying text.

³⁴⁷ See *supra* Part II.B.1.

³⁴⁸ "Litigation is defined broadly to include representation before administrative as well as judicial forums, and to encompass negotiating, advising, and similar traditionally litigation-related activities." Rabin, *supra* note 74, at 209, n.10. The agreement specified terms regarding postponing seeking a metropolitan relief order during implementation. Also, the parties did eventually return to court for a formal agreement. See *infra* text accompanying note 405.

³⁴⁹ See *supra* Part II.B.2.

³⁵⁰ See *supra* notes 259, 263 and accompanying text.

³⁵¹ See *supra* note 263 and accompanying text.

³⁵² Interview with Kale Williams, Exec. Dir. of Leadership Council, in Chi., Ill. (July 21, 1976); Telephone Interview by Moshe Melcer with Robert Elliott, former HUD Gen. Couns. (Dec. 1, 2019).

³⁵³ *Id.*

³⁵⁴ See *supra* note 256.

³⁵⁵ See *supra* Part II.B.2.

³⁵⁶ Telephone Interview by Moshe Melcer with Robert Elliott, former HUD Gen. Couns. (Dec. 1, 2019).

³⁵⁷ *Id.*

³⁵⁸ *Hills v. Gautreaux*, 425 U.S. 284, at 299 (1976). See Dennis & Rubinowitz, *supra* note 253, for a detailed account of HUD's policies and practices that were in accord with a regional perspective.

³⁵⁹ At the time, HUD policy emphasized metropolitan approaches to housing problems. See Dennis & Rubinowitz, *supra* note 253.

Elliott and others won the fight to negotiate a metropolitan-wide agreement.³⁶⁰ Elliott represented the agency in the successful negotiation of a resolution.³⁶¹ The resolution helped bypass a potentially resistant district judge and set the stage for the creation of a program that provided substantial opportunities for plaintiff class families to move throughout the metropolitan area.³⁶²

As part of the settlement, HUD agreed to provide Section 8 subsidies over and above the regular allocation for the Chicago area and to fund the administrative costs involved in carrying out the program.³⁶³ The goal was to assist 400 plaintiff class families to move to non-minority areas throughout the region in that year and to determine the viability of continuing the program.³⁶⁴

C. The Final Factor: Leadership Council Joins Forces with Gautreaux Lawyers to Administer the Gautreaux Program

Once HUD settled with the *Gautreaux* plaintiffs, the plaintiffs needed to join forces with an organization to help them design and administer the new program.³⁶⁵ The *Gautreaux* litigation and the Leadership Council finally collaborated, as the lawyers enlisted the Leadership Council's assistance with HUD's approval.³⁶⁶

³⁶⁰ That resolution was reflected in the commencement of negotiations between plaintiffs' counsel and the HUD General Counsel.

³⁶¹ POLIKOFF, *supra* note 15, at 231; Telephone Interview by Moshe Melcer with Robert Elliott, former HUD Gen. Couns. (Dec. 1, 2019).

³⁶² Since this was an agreement on a pilot program, it did not include a final/formal agreement on a metropolitan approach. Once Polikoff and Elliott reached an agreement, Elliott and HUD Secretary Carla Hills took the matter to Philip Buchen, White House Counsel. After briefing President Ford, Buchen returned to Elliott and Hills with one question from the president: "Is this the right thing to do?" Elliott and Hills said yes, and Buchen responded that they had President Ford's approval. Telephone Interview by Moshe Melcer with Robert Elliott, former HUD Gen. Couns. (Dec. 1, 2019).

Full Text of Agreement Between Plaintiffs and HUD Concerning Implementation of Gautreaux Supreme Court Decision, BUREAU OF NAT'L AFFS. APPENDIX B HUD, 40, 40–41 (June 7, 1976) [hereinafter *Agreement*]. The agreement did not bind either party beyond the year. Plaintiffs' counsel had concerns about HUD's participation during that year; but they were resolved, and the parties extended the letter of understanding for another 18 months. POLIKOFF, *supra* note 15, at 236–37.

³⁶³ *Agreement*, *supra* note 362, at 40. In its 1976 decision, the Supreme Court assumed that the remedial scope included Section 8, based on the district court's order the year before. *Hills v. Gautreaux*, 425 U.S. 284 (1976).

³⁶⁴ *Agreement*, *supra* note 362, at 40. The agreement did not specifically allocate locations, but did provide tentative goals for city and county distribution, among and within all six counties.

³⁶⁵ It may have theoretically been possible for CHA to administer the program. It was determined that the Leadership Council was more qualified than CHA or HUD, along with beating out other competitors. RUBINOWITZ & ROSENBAUM, *supra* note 15, at 42. It does not appear that CHA was seriously considered to administer the program, likely due to their abysmal performance up to that point. *Id.* at 41; POLIKOFF, *supra* note 15, at 231.

³⁶⁶ Since HUD was funding the one-year experimental Gautreaux Program, it had to approve the selection of the administrative entity. Federal officials agreed with plaintiffs' counsel on that choice. So, the initial Gautreaux–HUD agreement stipulated that HUD would contract with the Leadership Council to perform the key functions—to locate, counsel, and assist members of the plaintiff class to find existing units, and local owners of housing willing to participate in the program. The agreement also limited the plaintiffs' ability to go back to court during a trial period for the program, and stated that both parties would work to develop an ongoing remedy. RUBINOWITZ & ROSENBAUM, *supra* note 15, at 38–42; *Gautreaux v. Landrieu*, 523 F. Supp. 665, 667 (1981). Later, in response to objections to its selection process, HUD put the

A decade after its founding, the Leadership Council had become one of the leading fair housing organizations in the country.³⁶⁷ While it had had a difficult start, the Leadership Council was by that time a pioneer in developing new strategies to generate housing opportunities.³⁶⁸ The business community and the establishment continued to support it financially and institutionally, giving the Leadership Council the ability to continue creating new techniques to fight housing segregation.³⁶⁹

In 1968, Congress passed the Federal Fair Housing Act, and the Supreme Court extended the reach of a century-old federal civil rights statute to private housing.³⁷⁰ Those changes in the law provided the Leadership Council with the opportunity to establish a very active legal action program with staff and *pro bono* lawyers.³⁷¹ Investigators and lawyers assisted home seekers who encountered racial discrimination in their housing search.³⁷² By the early 1970s, they generated consistently positive outcomes in those cases.³⁷³ Black families moved into housing that had previously been unavailable because of discrimination.³⁷⁴ The legal campaign also began to affect the practices of the real estate industry.³⁷⁵

administrative task out for competitive bidding. HUD concluded that the Leadership Council's competitors lacked either the ability to operate throughout the metropolitan area or the capacity to carry out the program effectively. See RUBINOWITZ & ROSENBAUM, *supra* note 15, at 41–44, 50; *Gautreaux v. Landrieu*, 523 F. Supp. 665, 667 (1981). Several similar short-term agreements culminated in a final agreement by district court in a 1981 consent decree. The decree specified the Leadership Council as the administrator for the duration of the program.

³⁶⁷ See *supra* Part II.A.2.

³⁶⁸ RALPH, *supra* note 13, at 7.

³⁶⁹ *Id.* at 227–28; SANDER, KUCHEVA & ZASLOFF, *supra* note 39, at 156–57. As Executive Director Kale Williams stated, the premise that served as the basis for its programs was “that housing discrimination and segregation are institutionalized in a dual housing market, the correction of which is a major social reform requiring multiple strategies applied over a period of time.” Kale Williams, *The Dual Housing Market in the Chicago Metropolitan Area*, in HOUSING CHICAGO STYLE: A CONSULTATION (1982), at 42.

³⁷⁰ See Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601–19; *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

³⁷¹ BERRY, *supra* note 208, at 73–76.

³⁷² Kale Williams, in HOUSING, *supra* note 369, at 40; BERRY, *supra* note 208, at 72–74. The service utilized white testers to prove discrimination. The tester would ask to view the unit immediately after a Black home seeker encountered resistance to test the response and act as a verification witness to the discrimination. For a sampling of the types of cases handled by the service, see BERRY, *supra* note 208, at 103–06.

³⁷³ SANDER, KUCHEVA & ZASLOFF, *supra* note 39, at 156; BERRY, *supra* note 208, at 75–76, 103–04.

³⁷⁴ BERRY, *supra* note 208, at 75–76, 103–04.

³⁷⁵ *Id.* at 94, 115–16. Initially, the damages were small enough, and all individual cases against different realtors, that the industry did not feel any effects, but as damages increased, and punitive damages were added, there began to be a change in realtors' behavior. *Id.* at 74–76, 93–94.

By 1975, Kale Williams said that in Chicago, “the enforcement of the federal fair housing law is a prompt and effective remedy to racial discrimination in housing.” He went on to say that repeated enforcement was “hav[ing] an effect on the real estate industry.” SANDER, KUCHEVA & ZASLOFF, *supra* note 39, at 157, *citing* Kale Williams, *Bias Marks Chicago Housing*, CHI. DEFENDER, Aug. 23, 1975.

The Legal Action Program also faced internal challenges, primarily focused on how the cases were selected. The directors thought they should not file lawsuits in areas where there was already some integration, and the staff thought that gave people in those areas free reign to discriminate. There were also concerns about directors having too much input on case selection, and directors' vulnerability to

In 1976, the Leadership Council absorbed two additional initiatives that expanded the organization's capacity to assist families in ways that the new collaborative program required.³⁷⁶ The Home Investments Fund (HIF), a non-profit organization which had provided counseling and assistance to minority families seeking to move throughout the Chicago metropolitan area, merged into the Leadership Council.³⁷⁷ It changed its name to the Fair Housing Center and became a subdivision of the Leadership Council, bringing staff experienced in providing direct services to home seekers.³⁷⁸

Moreover, in early 1976, the Leadership Council began to work with the Illinois Housing Development Authority (IHDA), the state housing finance agency, in developing and administering a program that became a partial model for the Gautreaux Program.³⁷⁹ IHDA made reduced interest rate loans available to developers willing to provide housing for people with modest incomes.³⁸⁰ The Leadership Council contracted with IHDA to locate, counsel, and assist Gautreaux Program families to rent units in developments that the agency financed.³⁸¹ Participating in the IHDA program provided the opportunity to learn lessons that would be valuable in shaping the larger Gautreaux Program.³⁸²

Additionally, since 1972, Kale Williams had served as the executive director of the Leadership Council.³⁸³ Williams had experience and knowledge relevant to managing the

intimidation or pressure. BERRY, *supra* note 208, at 98–101. There was also a constant struggle due to the many ways realtors discriminated. *See, e.g., id.* at 79–83 (quoting an order from a discrimination case which prohibited the realtor from denying any dwelling because of race or color, saying a unit was not available, failing to show a unit, discriminating in any services connected with a sale, i.e. financing, or publishing any discriminatory materials. It also included an affirmative action piece, which required training, education, procedures, and court inspection of records to ensure compliance).

The lawyers also pursued broader precedents in federal courts. Moreover, they brought legal action to maintain racially integrated communities by preventing realtors from engaging in steering of clients to particular places based on their race. Kale Williams, *in* HOUSING, *supra* note 369, at 40–41. *See, e.g.,* Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252 (1977) (holding that zoning that results in a racially disproportionate impact, but does not show discriminatory intent, does not violate the Fourteenth Am.); Gladstone Realtors v. Vill. of Bellwood, 441 U.S. 91 (1979) (holding that that the village and homeowners in a racially changing area have standing to challenge steering practices as indirect victims of housing bias).

³⁷⁶ *See infra* Part V.A.

³⁷⁷ Kale Williams, *in* HOUSING, *supra* note 369, at 41.

³⁷⁸ *Id.*

³⁷⁹ POLIKOFF, *supra* note 15, at 226–30.

³⁸⁰ *Id.* at 226.

³⁸¹ HUD granted IHDA \$9 million for a Section 8 project-based program in Chicago. Since all Section 8 funds in Chicago were covered by the *Gautreaux* orders, this provided an opportunity to offer new housing to public housing residents. Based on an agreement with the *Gautreaux* lawyers, IHDA required developers that it assisted to set aside a percentage of their apartments for those families. The court order including Section 8 in the remedy applied only to the city. But IHDA also applied this arrangement to the suburban developments that it financed. *Id.* at 226–27. The one year agreement provided funding for the Leadership Council to screen families, as well as provide counseling and other assistance. *Id.*; RUBINOWITZ & ROSENBAUM, *supra* note 15, at 42. *See infra* Part V.A.

³⁸² Although the IHDA program was small and did not require the Leadership Council to locate landlords willing to participate in the program, it did put the agency in touch with low-income Black families.

³⁸³ He served in that position for 20 years. He had also been an overlapping participant in 1966. *See supra* Part I.A.4.

program, as well as a working relationship with Polikoff.³⁸⁴ Williams was deeply involved in the design and creation of the program.³⁸⁵ He staffed it, oversaw its implementation, and worked with Polikoff to press HUD to improve the program as it proceeded.³⁸⁶

By the time the *Gautreaux* and HUD lawyers agreed on the concept of a remedial program, the Leadership Council had a proven track record and was well qualified to play a major role in the design and implementation of the program.³⁸⁷ The lawyers on both sides concluded that the combination of the Leadership Council's past experience and its role in developing the program, along with its strong leadership, made the Leadership Council the "obvious choice" to join in the operation of the new, much larger, and more complex initiative.³⁸⁸

IV. IMPLEMENTING THE GAUTREAUX PROGRAM

A. *Collaboration Between the Leadership Council and the Gautreaux Lawyers*

As the conditions for collaboration came together, the agreements produced a delayed synergy between the Chicago Freedom movement, via the Leadership Council, and the *Gautreaux* litigation.³⁸⁹ While the program faced significant obstacles, Black families began to gain access to subsidized housing throughout the metropolitan area at a rate that far exceeded the results of the two initiatives working separately.³⁹⁰ The joining of forces continued for the next two decades, leading to 7,100 families moving through the newfound collaboration.³⁹¹ The many meetings between the lawyers and the Leadership

³⁸⁴ A personal relationship of mutual trust and confidence that had developed over the decade between *Gautreaux* lead counsel Alex Polikoff and Kale Williams, helped provide the basis for their working together in a way that they could not have anticipated a decade earlier. First author's observation, *see infra* note 397. Elliott also had confidence that the program was in good hands with Kale Williams as Executive Director of the Leadership Council. Telephone Interview by Moshe Melcer with Robert Elliott, HUD General Counsel (former) (Dec. 1, 2019).

³⁸⁵ POLIKOFF, *supra* note 15, at 226–36.

³⁸⁶ *Id.* Later, Williams also worked with Polikoff on MTO, helping persuade officials. *See infra* Aftermath.

³⁸⁷ *See supra* notes 369–88 and accompanying text.

³⁸⁸ E-mail from first author to second author, (Oct. 3, 2008). By 1976, it had a staff of housing professionals and lawyers. RUBINOWITZ & ROSENBAUM, *supra* note 15, at 42. The agency had a wide range of experience in fair housing, including legal action, public education and advocacy, and counseling of Black homeseekers. *Id.*

In the early 1970s, the Leadership Council worked with a group of suburban mayors through the Regional Housing Coalition, promoting affordable housing in the suburbs. *Id.* It also worked with willing members of the real estate industry. It developed relationships with like-minded landlords and property managers, securing their cooperation in accepting Black tenants in predominantly white areas.

Because of the innovative character of the *Gautreaux* Program, no organization had the precise experience involved or the demonstrated capacity to implement it. The Leadership Council had not worked extensively with public housing residents or other poor Black residents and thus had not had the opportunity to develop relationships and trust with the program's intended beneficiaries. The agency also lacked hands-on experience with the Section 8 program, so it lacked familiarity with the program's mechanics. *Id.* at 43.

³⁸⁹ *See infra* Part V.B.

³⁹⁰ *Id.*

³⁹¹ POLIKOFF, *supra* note 15, at 246. The program was continued by mutual agreements until 1981, when the parties moved for and received a consent decree that specified HUD's total obligation as supporting

Council and the stream of writings and telephone calls exchanged over the life of the program attest to the closeness of the working relationship.³⁹² Polikoff spent over half a century as lead counsel on the case, and was greatly invested in all aspects of the case.³⁹³ He and Kale Williams served as co-leaders of the Gautreaux Program.³⁹⁴ They shared a deep commitment to the goals of the program and belief in its potential for achieving them.³⁹⁵ The unprecedented nature of this initiative called for everyone involved to work together and do whatever was necessary.³⁹⁶

On September 15, 1976, Polikoff and other *Gautreaux* lawyers met with Kale Williams and others from the Leadership Council to discuss many start up issues.³⁹⁷ Kale Williams gave the lawyers both an explanation and a status report on the pre-existing IHDA program, as it was somewhat of a model for the Gautreaux Program.³⁹⁸ There was also a general discussion of current and future concerns, including questions about how to select interested families, as well as concerns about the supply of available housing.³⁹⁹ This meeting set the stage for the collaborative culture that continued throughout the Gautreaux Program.⁴⁰⁰

Polikoff and Williams continued to work together throughout the program to evaluate the progress, and address issues as needed.⁴⁰¹ In December 1976, the Leadership Council staff called a meeting to discuss their very serious concerns about the low rate of

7,100 moves. *Id.* at 240; RUBINOWITZ & ROSENBAUM, *supra* note 15, at 66. That included the Gautreaux Program and smaller initiatives like IHDA.

HUD argued for that figure, over plaintiff counsel's effort to establish a higher figure. Polikoff considered that as a loss in the negotiating process. E-mail from Alexander Polikoff, to first author (Nov. 8, 2020).

³⁹² The first author was present in many of these meetings about the program and had many conversations with the lawyers and Leadership Council staffers over the two decades of the Gautreaux program. *See supra*, note 83.

³⁹³ Polikoff was hands-on with every aspect of the case, including the Gautreaux Program, well into his 90s. What started as a law firm partner's pro bono assignment became the case of his career. The case occupied much of his time for that extremely lengthy period. The other lawyers that were involved moved on or passed away during the life of the case. His several hundred-page memoir of the case, with many aspects in great detail, attests to his great investment in the case, including the Gautreaux Program. *See generally* POLIKOFF, *supra* note 15.

Polikoff was especially hands-on with the Gautreaux Program because it was the most promising remedial initiative in the case, by far. *See* Interview with Judge Aspen, *supra* note 238, at 1:06.45. He came to be known by activists involved in housing mobility programs inspired by the Gautreaux Program as the "father of mobility programs." He received an award for these contributions at the 7th Annual Conference on Housing Mobility; *see 7th National Conference on Housing Mobility*, POVERTY & RACE RSCH. ACTION COUNCIL (Oct. 23, 2018), <https://www.prrac.org/the-7th-national-housing-mobility-conference/>.

³⁹⁴ *See* POLIKOFF, *supra* note 15, at 226–36.

³⁹⁵ *Id.*

³⁹⁶ *Id.* at 226–48.

³⁹⁷ *See generally* first author's meeting notes from Sept. 15, 1976 meeting (on file with first author) [hereinafter Meeting Notes]. Those present at the meeting included *Gautreaux* lawyers Cecil Butler, Douglas Cassell, Merrell Freed, Mary James, Jerry Muller, Robert Vollen and Bernie Weisberg, along with Bob Johnson and Len Rubinowitz. *Id.*

³⁹⁸ *Id.* *See supra* notes 381–384 and accompanying text.

³⁹⁹ *See* Meeting Notes, *supra* note 397.

⁴⁰⁰ *Id.*; *see* Rubinowitz & Kenny, *supra* note 392.

⁴⁰¹ *See* Rubinowitz & Kenny, *supra* note 392. Betsy Lassar, BPI lawyer, remembers joining in "many meetings" with Leadership Council Staff, including Williams. E-mail from Betsy Lassar, BPI lawyer, to first author (Oct. 16, 2021, 02:42 CST) (on file with first author).

moves.⁴⁰² At the time of the meeting, the Leadership Council staff projected being able to place approximately half the number of families they originally hoped to place during the first year.⁴⁰³ Both Polikoff and Williams attended, along with other staff and representatives from both organizations.⁴⁰⁴ They considered practical program solutions, as well as improvements that would need to be approved by HUD.⁴⁰⁵

The evaluation meeting made clear that there needed to be changes to the HUD agreement, including higher rent allowances for the Section 8 vouchers, as well as additional subsidies for new construction in the Chicago area.⁴⁰⁶ When the *Gautreaux* lawyers met with HUD to negotiate for those new arrangements, Kale Williams attended alongside Polikoff and other lawyers.⁴⁰⁷ Though it took months to work out with HUD, they did get the requested changes, along with an initial extension to the *Gautreaux* Program itself.⁴⁰⁸ The *Gautreaux* lawyers and the Leadership Council staff continued this culture of collaboration throughout the program to improve and refine issues, as exemplified in these initial meetings.⁴⁰⁹

There were also aspects of the program which called for a more specific division of labor.⁴¹⁰ Williams, as head of the Leadership Council, assembled a staff of a half-dozen to work directly with families and landlords.⁴¹¹ They counseled families about housing available in the suburbs and provided information about potential destination communities and the experience of residential integration.⁴¹² They also assisted families with their housing search.⁴¹³ Moreover, they enlisted landlords in the program by providing information about the Section 8 program, as well as the screening process the Leadership Council used for including families.⁴¹⁴ In addition, the agency sought to overcome negative stereotypes based on race and class so that landlords would participate in the program.⁴¹⁵

⁴⁰² POLIKOFF, *supra* note 15, at 236.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ The meeting led to an agreement to put larger families on a separate waitlist, since they were so difficult to place. They would pull those families only when the occasional large apartment became available, freeing up resources to focus on families that were more likely to successfully find housing. *Id.* The difficulty placing large families continued, and both Williams and Polikoff were still working to address it as late as 1992. Interview with Kale Williams, Exec. Dir. of Leadership Council, in Chi., Ill. (Feb. 4, 1992) (discussing efforts to increase the supply of townhouses and single-family homes for large families).

⁴⁰⁶ POLIKOFF, *supra* note 15, at 236–37.

⁴⁰⁷ *Id.* at 236.

⁴⁰⁸ *Id.* at 236–37.

⁴⁰⁹ See Rubinowitz & Kenny, *supra* note 392.

⁴¹⁰ Though even here, occasionally they worked together. See *infra* note 414.

⁴¹¹ POLIKOFF, *supra* note 15, at 227, 232–33.

⁴¹² In the regular Section 8 program, which had been operating for a couple of years, eligible participants secured certificates from the local public housing agency, and the market operated in traditional ways after that. The agency paid part of the rent and was responsible for ensuring that units met minimum standards, but prospective tenants and landlords made their own matches. The *Gautreaux* Program required additional administrative functions because the market was unlikely to achieve the program's metropolitan integration objectives otherwise. RUBINOWITZ & ROSENBAUM, *supra* note 15, at 40–41.

⁴¹³ *Id.*

⁴¹⁴ *Id.* at 51–52; POLIKOFF, *supra* note 15, at 232–33. In another sign of the collaborative atmosphere, sometimes BPI lawyers would join Leadership Council staff in talking to landlords. E-mail from Betsy Lassar, *supra* note 401.

⁴¹⁵ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 59–60.

Similarly, Polikoff and the lawyers handled the ongoing legal aspects of the case. Though many issues were handled by negotiations with HUD, there was still a court case surrounding all of this. Throughout the 1970s, the program was extended in multiple agreements with HUD, but the ultimate disposition remained unknown.⁴¹⁶ In 1981, a final consent decree was upheld on appeal, setting the framework to end the lawsuit against HUD.⁴¹⁷ The parties agreed on continuing the flow of both Section 8 certificates and funding to the Leadership Council, until 7,100 occupancies.⁴¹⁸ When 7,100 Gautreaux families had moved, the lawsuit against HUD would officially end.⁴¹⁹

B. Demand for the Program and Housing Supply

Initial response to the program was modest, and many potential participants were skeptical.⁴²⁰ However, interest in the program burgeoned quickly and remained high for the duration of the program.⁴²¹ Word of mouth and television and newspaper accounts dramatically increased demand.⁴²² The program generated interest for several reasons. It offered safer places, with better housing and schools, and better job opportunities for parents.⁴²³ The program's housing subsidies also drew in eligible families, especially due to the declining availability of affordable rental housing.⁴²⁴

The high level of interest shifted the challenge to securing housing that met the program requirements.⁴²⁵ There was a large supply of available housing stock due to the dramatic post-war growth of suburban rental housing.⁴²⁶ However, many of the rental units did not meet the program's locational objectives, size needs, or Section 8 quality and cost

⁴¹⁶ POLIKOFF, *supra* note 15, at 238–39.

⁴¹⁷ *Id.* at 241.

⁴¹⁸ *Id.* at 239–40.

⁴¹⁹ *Id.* at 240.

⁴²⁰ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 53. Among those who were even aware of the program, most had lived their whole life in Chicago's inner city and could not envision moving to the suburbs—the program's favored destination. A 1979 HUD Study of the Gautreaux Program found that only 12% of eligible families who did not participate desired to live in the suburbs. KATHLEEN A. PEROFF, CLOTEAL L. DAVIS, & RONALD JONES, GAUTREAUX HOUSING DEMONSTRATION: AN EVALUATION OF ITS IMPACT ON PARTICIPATING HOUSEHOLDS 8, 35–36 (1979).

⁴²¹ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 54. By the early 1980s, people were lining up on the streets by the thousands on the specified registration day. When they switched to a phone registration, in the early 1990s, the telephone company estimated that they received at least ten thousand calls in one day. *Id.*; POLIKOFF, *supra* note 15, at 244–45. In another example of Polikoff's commitment to the program, he sometimes answered the phones on registration day. *Id.*

⁴²² RUBINOWITZ & ROSENBAUM, *supra* note 15, at 55. A 1979 HUD study found that 43% of Gautreaux families said their source of information about the program was a friend or relative. PEROFF, DAVIS, & JONES, *supra* note 420, at 123.

⁴²³ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 54–55. A 1979 HUD study of the Gautreaux Program found that 34% of participants judged good schools to be the most important factor in their decision to move. PEROFF, DAVIS, & JONES, *supra* note 420, at 105.

⁴²⁴ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 54–55.

⁴²⁵ *Id.* at 57.

⁴²⁶ *Id.* at 57–58. For a detailed study about the available housing stock, see PEROFF, DAVIS, & JONES, *supra* note 420, at 3, 43–49.

requirements.⁴²⁷ Over time there was enough housing for the program to proceed at a steady pace, but there was never a large enough increase to surge of families' interest.⁴²⁸

Additionally, the voluntary participation of landlords was crucial for the program's growth.⁴²⁹ While the Leadership Council took numerous steps to attract landlords' participation in the program, many property owners and managers declined.⁴³⁰ Their objections seemed to be based on race, class, and composition of the applicant families.⁴³¹ In addition, some objected to Section 8's substantive and procedural requirements.⁴³² Thus, while the program's reliance on the private market was a strength because there was little opportunity for local public officials to block it (as in public housing) and the program was not visible and political, the reliance on the private market also constrained the program's growth and success.

IV. THE RESULTS: MEASURING THE SYNERGY

From 1966 to 1976, the Leadership Council and the *Gautreaux* lawyers proceeded independently of each other, pursuing their common goal of enabling Black families to move on a desegregated basis throughout the Chicago metropolitan area.⁴³³ After that, they continued some of their separate approaches, but they also collaborated on a major new course of action—the Gautreaux Program.⁴³⁴

The main comparison for testing the synergy hypothesis is between: 1) the impact of the separate efforts of the Leadership Council's programs and the *Gautreaux* court's "scattered site" program until 1976; and 2) the scale of the collaborative Gautreaux Program that started that year. Statistics on the moves facilitated by some initiatives are not available, but disparities in the order of magnitude are clear.⁴³⁵ The Gautreaux Program

⁴²⁷ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 58–59. In 1976, 45% of CHA's family apartments were three or more bedrooms. The suburban rental market did not have a similar supply of housing for large families. *Id.* at 58, 208–9n48 (citing CHA Facts 1977: Chi. Hous. Auth. Ann. Report 1976 (Chi. Hous. Auth., 1978), 30). HUD had a maximum rental amount, based on a percentage of "fair market rent." This was often limiting in the areas available to the program, especially in suburban counties. BARRY G. JACOBS, GUIDE TO FEDERAL HOUSING PROGRAMS 27–28 (Bureau of Nat'l Aff. 1982).

⁴²⁸ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 57.

⁴²⁹ *Id.* at 59.

⁴³⁰ *Id.* at 59–61.

⁴³¹ *Id.*

⁴³² *Id.* at 61.

⁴³³ *See supra* Part III.

⁴³⁴ While the Gautreaux Program dominated the new approach, the Illinois Housing Development Authority supplemented the effort with a much smaller parallel initiative. *See supra* Part IV. The Leadership Council continued other activities such as advocacy and public education that did not involve direct services to home seekers. It is impossible to determine the extent to which they may have had an indirect impact in bringing about additional moves. *See supra* Part II.A.2.

⁴³⁵ For example, the Legal Action program filed more than 1,500 lawsuits, with a success rate over 90%. However, success could mean the family moved into the apartment, or simply received a settlement or some other positive outcome. Similarly, the cases that did involve a move, may or may not have specifically involved a low-income Black family moving in to a primarily white neighborhood. White, *in* CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 139.

assisted far more moves than all of the two groups' separate strategies combined.⁴³⁶ Joining forces therefore produced significant synergy.

A. 1966–1976: A Time of Separate Paths

The Summit Agreement did not provide a specific mandate for the Leadership Council to provide direct assistance to individual home seekers.⁴³⁷ However, in its first decade, the Leadership Council carried out some “direct services” programs, assisting individual families with their moves.⁴³⁸

The Leadership Council's earliest initiative enlisted real estate brokers to help Black home seekers move into predominantly white communities.⁴³⁹ The goal was to facilitate 1,000 moves in the first year.⁴⁴⁰ However, only 46 families moved in that time.⁴⁴¹

The agency's Legal Action Program had far greater success in helping Black families gain access to areas where they had not been welcome.⁴⁴² The program enabled dozens of Black families each year to overcome the discrimination they encountered and move into housing of their choice.⁴⁴³ By 1976, the Leadership Council facilitated several hundred moves through the Legal Action Program.⁴⁴⁴

In early 1976, the Illinois Housing Development Authority provided funding so the Leadership Council could assist low-income Black families in securing subsidized rents in state-financed new developments.⁴⁴⁵ As mentioned earlier, the scale in the pre-collaboration experimental period was quite modest.⁴⁴⁶

Meanwhile, on the litigation path, the two parts of the *Gautreaux* lawsuit had quite different histories.⁴⁴⁷ The CHA case reached the remedial stage in 1969.⁴⁴⁸ As of 1974, CHA had built no remedial public housing in the five years since the original order.⁴⁴⁹ CHA finally broke ground for approximately sixty-five units in predominantly white areas

⁴³⁶ See *infra* Part V.A-B.

⁴³⁷ See *supra* note 195–196 and accompanying text.

⁴³⁸ See discussion *supra* notes 226–228. The Legal Action Program represented many home seekers alleging racial discrimination. The cases often led to moves, but not necessarily low-income families. BERRY, *supra* note 208, at 109–12.

⁴³⁹ BERRY, *supra* note 208, at 21.

⁴⁴⁰ *Id.* at 47.

⁴⁴¹ *Id.* at 61.

⁴⁴² See *supra* notes 389–393.

⁴⁴³ *Id.*

⁴⁴⁴ See White, in CHICAGO FREEDOM MOVEMENT, *supra* note 13, at 139. The Legal Action program filed over 1,500 cases, with over a 90% success rate. While success did not always mean a move, certainly hundreds of moves did occur.

⁴⁴⁵ See *supra* notes 379–382 and accompanying text.

⁴⁴⁶ Also that year, the Home Investment Fund (HIF) merged into the Leadership Council, creating a new section called the Fair Housing Council. It assisted Black “market rate” home seekers with the financial aspects of securing their homes. See *supra* notes 362–80 and accompanying text.

⁴⁴⁷ See *supra* Part II.

⁴⁴⁸ See *supra* notes 233, 243–244 and accompanying text.

⁴⁴⁹ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 30. The delay was not attributable to lack of demand or resources. Thousands of eligible families expressed interest in the program. HUD set aside funding for an initial 1,500 family units in Chicago in 1969. *Id.* at 27. Of course, construction and acquisition and rehabilitation take longer than moving into existing housing, the main focus of the Gautreaux Program, but that difference cannot begin to explain the order of magnitude disparities.

in 1975.⁴⁵⁰ In the first thirty years of this extraordinarily lengthy case, construction and acquisition of scattered site public housing totaled 2,700 units.⁴⁵¹ CHA provided only about 900 apartments in the two decades prior to the judge appointing a receiver.⁴⁵² The Habitat Corporation, the receiver that the district judge appointed in 1987 to administer the program, built or acquired and rehabilitated about 1,800 units in its first decade.⁴⁵³ That amount was double the number CHA had provided in almost two decades.⁴⁵⁴ The receiver's competence and commitment enabled it to increase the pace, but the earlier delays prevented a major breakthrough because they reduced the amount of affordable land available for the program.⁴⁵⁵ Moreover, none of the suburban officials ever agreed to work with CHA, so the suburban option produced no housing opportunities for Gautreaux families.⁴⁵⁶

In the HUD part of the litigation, there were no moves before 1976.⁴⁵⁷ It took a decade to secure the Supreme Court decision that defined the parameters of permissible relief.⁴⁵⁸ That decision laid the groundwork for the transition from separate paths to the collaboration that produced the Gautreaux Program.⁴⁵⁹

B. 1976–1998: A Time of Collaboration

The Gautreaux Program represented the core of the collaboration. The IHDA-funded initiative that began early in 1976 provided additional metropolitan-wide housing opportunities.⁴⁶⁰

The Gautreaux Program started slowly.⁴⁶¹ In the first fifteen months, the Leadership Council helped to move 168 families, well short of its one-year goal of 400 families.⁴⁶² With experience and improvements in the program, the pace increased.⁴⁶³ After the district court's 1981 consent decree established an obligation of 7,100 family moves, annual placements averaged about 300 families.⁴⁶⁴ The moves jumped into the 400s in the

⁴⁵⁰ *Id.* at 30. The original order required that the first 700 units be located in predominantly white areas. *Gautreaux v. Chi. Hous. Auth.*, 304 F. Supp. 736 (N.D. Ill. 1969) (enforcing 296 F. Supp. 907 (N.D. Ill. 1969)).

⁴⁵¹ POLIKOFF, *supra* note 15, at 212.

⁴⁵² *Id.* at 212–13.

⁴⁵³ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 33.

⁴⁵⁴ *Id.*

⁴⁵⁵ By that time there had been massive residential development on much of the once available land. *Id.* at 34–35. Other constraints included delays in getting rezoning and construction approvals, federal regulations, limited federal funds, and community opposition. By the end of Habitat's first decade as receiver, it was clear that the future prospects for developing scattered site housing in predominantly white neighborhoods were quite limited. *See* POLIKOFF, *supra* note 15, at 213.

⁴⁵⁶ *Id.* at 95–96, 110, 140.

⁴⁵⁷ The case was still going through the court system, no action was occurring. *See supra* Part II.B.2.

⁴⁵⁸ *Id.*; *Hills v. Gautreaux*, 435 U.S. 284 (1976).

⁴⁵⁹ That includes the smaller IHDA program, as well. *See supra* notes 379–382 and accompanying text.

⁴⁶⁰ *See supra* notes 379–382 and accompanying text.

⁴⁶¹ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 50.

⁴⁶² *Id.*

⁴⁶³ *Id.* at 67.

⁴⁶⁴ *Gautreaux v. Landrieu*, 523 F. Supp. 665, 669 (N.D. Ill. 1981); RUBINOWITZ & ROSENBAUM, *supra* note 15, at 67.

1990s.⁴⁶⁵ By early 1998, when the Leadership Council enrolled its last family, 6,500 families had moved through the Gautreaux Program.⁴⁶⁶

Moreover, what began as a modest, short-term experiment of moving Gautreaux families into IHDA financed projects in the city and suburbs evolved into a significant ongoing supplement to the Gautreaux Program.⁴⁶⁷ In the one-year experiment, forty-four Gautreaux families moved into IHDA projects with their Section 8 vouchers.⁴⁶⁸ That set the stage for a parallel effort to the Gautreaux Program. In the next two decades, 1,500 Gautreaux families rented apartments in those projects.⁴⁶⁹ That was not nearly the scale of the Gautreaux Program, but it increased the overall pace of families' moves.⁴⁷⁰ By 1998, the Gautreaux Program, combined with the IHDA-funded initiative, reached (and exceeded) the obligation of assisting 7,100 Gautreaux families to move throughout the Chicago metropolitan area.⁴⁷¹

On an annual basis, far more families moved through the new initiatives starting in 1976 than through the sum of the individual ones prior to that time.⁴⁷² The combination of the availability of Section 8 rent subsidies, the lawyers securing a favorable Supreme Court decision on the metropolitan question, HUD's willingness to negotiate a new housing program, and the Leadership Council's competence and commitment produced an upsurge in families moving that far exceeded the earlier moves.⁴⁷³

In his extremely detailed account of the case, lead counsel Polikoff gave overall ratings to the scattered site and Gautreaux programs.⁴⁷⁴ On the former, in an expression of extreme frustration with CHA's non-performance, he said that on a scale of one to ten, "the scattered site part of the *Gautreaux* remedy would have to be judged as falling somewhere below zero."⁴⁷⁵ The subsequent work of the court-appointed receiver brought his score for

⁴⁶⁵ RUBINOWITZ & ROSENBAUM, *supra* note 15, at 67.

⁴⁶⁶ POLIKOFF, *supra* note 15, at 248.

⁴⁶⁷ *Id.* at 229, 248.

⁴⁶⁸ *Id.* at 229.

⁴⁶⁹ *Id.* at 248.

⁴⁷⁰ *Id.* at 232, 248.

⁴⁷¹ *Id.* at xiv; *Gautreaux v. Landrieu*, 523 F. Supp. 665, 669; RUBINOWITZ & ROSENBAUM, *supra* note 15, at 67. By early 1998, when the Leadership Council enrolled its last families, about 6,500 families had moved through the Gautreaux Program. The rest of the 7,100 families specified in the consent decree were assisted through other initiatives. More than half the families—about 4,000—in the Gautreaux Program moved to the suburbs.

As suggested in the text, the total moves actually exceeded the 7,100 target, reaching around 8,000 families. That included 6,500 families through the Gautreaux Program and 1,500 through the Leadership Council's IHDA-funded effort. POLIKOFF, *supra* note 15, at 48.

⁴⁷² See discussion *supra* Part V.A.

⁴⁷³ The litigation, with its favorable Supreme Court decision, and the social movement's capable and committed successor organization, came together to produce an important synergy. That is the case even though it was a decade in coming, and that it cannot be quantified precisely.

⁴⁷⁴ POLIKOFF, *supra* note 15, at 212–14, 248.

⁴⁷⁵ *Id.* at 212. He made that statement in 1986, eighteen months before the Habitat Company took over as receiver and picked up the pace.

the scattered site initiative up to two or three.⁴⁷⁶ In contrast, Polikoff gave the Gautreaux Program a score of six or seven.⁴⁷⁷

Those ratings mirror the comparisons above. Translated into the terms of the argument here, the collaboration advanced the organizations' goals far more effectively than either organization had achieved working separately.

CONCLUSION

The Montgomery Bus Boycott is considered the paradigm of the way that litigation and direct action can combine to produce synergy in social change. This quintessential example indicates that the two strategies may need to be deployed together within a narrow time frame.⁴⁷⁸ Additionally, experience gleaned from the boycott suggested that a single organization needed to be in charge of strategic decision-making.⁴⁷⁹

Challenges in Chicago to housing discrimination in the last third of the twentieth century suggest that the potential for synergy exists even with different time frames and organizational structures. In this case, the argument requires understanding social movements as having impacts potentially extending well beyond their direct action campaign. For example, the history of combatting housing discrimination in Chicago suggests that the Summit Agreement ending the Chicago Freedom Movement's open housing demonstrations defined its long-term impact by providing for the creation of a successor organization to implement it.

The *Gautreaux* lawyers and the Leadership Council pursued their housing goals independently for a decade, with separate organizations in charge.⁴⁸⁰ In a move that could not have been anticipated at the outset, they joined forces in 1976.⁴⁸¹ They worked together to design and implement a program to advance their shared objectives.⁴⁸² That initiative, aided by the resources of a new housing subsidy program and the opportunity to operate on a metropolitan-wide scale, made possible an initiative that produced far greater results than both of them acting independently had been able to bring about up until that time—the very definition of synergy.⁴⁸³

Without the Chicago Freedom Movement and the Leadership Council that it spawned, the *Gautreaux* lawyers would not have been able to engage an established organization with the capacity to carry out their innovative program.⁴⁸⁴ In turn, without the

⁴⁷⁶ *Id.* at 214. Note that it required the court taking the extraordinary step of appointing a receiver to take over CHA's responsibilities to get his assessment into positive territory and to achieve a scale and level of desegregation that was anywhere near what was achieved in the jointly created and implemented Gautreaux Program. Habitat accomplished more in its first decade as receiver than CHA had in almost two decades. RUBINOWITZ & ROSENBAUM, *supra* note 15, at 33. "With Habitat taking over as receiver, the administrative picture changed significantly and the pace increased; but the Gautreaux Program's assets permitted it to continue outpacing the scattered site program." *Id.* at 69.

⁴⁷⁷ POLIKOFF, *supra* note 15, at 248.

⁴⁷⁸ Coleman, Nee & Rubinowitz, *supra* note 3, at 663.

⁴⁷⁹ See *supra* notes 26–28 and accompanying text.

⁴⁸⁰ See *supra* Part V.A.

⁴⁸¹ See *supra* Part III.C.

⁴⁸² *Id.*

⁴⁸³ See *supra* Part V.

⁴⁸⁴ See *supra* note 384.

opportunities created by the litigation, the Leadership Council would not have had the resources and other forms of support to carry out anything more than its modest efforts in assisting movers.⁴⁸⁵

In the process, a variation on the paradigm of the Montgomery coordination of social change strategies emerged. While social movements and related litigation might start on separate tracks or with separate organizations in charge, and may continue in that vein for an extended period, the possibility of “delayed synergy” remains indefinitely.

AFTERMATH: A NOTE ON THE PROLIFERATION OF HOUSING “MOBILITY PROGRAMS” AND PUBLIC HOUSING DESEGREGATION LITIGATION

The Gautreaux Program, the centerpiece of the Chicago story, spawned numerous similar initiatives around the country. They came to be called “residential mobility programs,” or simply “mobility programs.”⁴⁸⁶

In 1989, *Gautreaux* lead counsel Alex Polikoff began an effort to persuade the federal government to replicate the Gautreaux Assisted Housing Program in other cities.⁴⁸⁷ Polikoff’s initial correspondence supported his proposal with information about the Gautreaux Program, the research on its beneficial effects for participating families, and a favorable op-ed piece.⁴⁸⁸ This effort began his persistent and prolonged letter-writing campaign, punctuated by long periods of silence, followed by intermittent unenthusiastic responses from various HUD officials.⁴⁸⁹

Finally, HUD agreed that it would not oppose a legislative proposal so long as it was introduced by a member of Congress, rather than HUD, and that the program was based on poverty rather than race.⁴⁹⁰ Polikoff found a supportive Senator, and in 1991, funding was provided for a program to be called Moving to Opportunity (MTO).⁴⁹¹ The program was carried out in five selected cities, with an emphasis on research and evaluation related to

⁴⁸⁵ See *supra* Part V.

⁴⁸⁶ See POLIKOFF, *supra* note 15, at 246–47.

⁴⁸⁷ *Id.* at 258–63. Incoming HUD Secretary Jack Kemp said that he intended to push for “bold, radical and experimental programs” to address problems of the inner city, so it seemed like a window of opportunity to try to persuade HUD to add this approach to its requests for Congressional funding. Polikoff worked with Kale Williams of the Leadership Council and Northwestern University Professor James Rosenbaum, who had carried out extensive research on families’ experience in the Gautreaux Program, to move the process along. *E.g.*, Susan J. Popkin, James E. Rosenbaum & Pamela M. Meaden, *Labor Market Experiences of Low-Income Black Women in Middle-Class Suburbs: Evidence from a Survey of Gautreaux Program Participants*, 12 J. POL’Y ANALYSIS & MGMT. 556, 573 (1993); James E. Rosenbaum, Stefanie DeLuca & Anita Zuberi, *When does residential mobility benefit low-income families? Evidence from recent housing voucher programmes*, 17 J. POVERTY & SOC. JUST. 113, 113–24 (2009). See generally RUBINOWITZ & ROSENBAUM, *supra* note 15.

⁴⁸⁸ *Chicago’s Housing Pioneers*, N.Y. TIMES, Nov. 1, 1988, at A30. See, *e.g.*, Popkin, Rosenbaum & Meaden, *supra* note 487; Rosenbaum, DeLuca & Zuberi, *supra* note 487.

⁴⁸⁹ POLIKOFF, *supra* note 15, at 258–61.

⁴⁹⁰ Families’ eligibility had to be based on poverty rather than race, and destinations had to be “low-poverty” areas. HUD made a staffer available to work with Polikoff to make sure the specifics of a proposed program would be acceptable to the agency. *Id.* at 261.

⁴⁹¹ Polikoff used a contact to promote the idea with Maryland Senator Barbara Mikulski, head of the Senate Committee responsible for HUD appropriations, Federal funding included an allocation of Section 8 rental subsidies and the cost of administering the programs. *Id.* at 262–64; Dep’ts of Veterans Aff. & HUD & Indep. Agencies Appropriations Act of 1992, Pub. L. No. 102-139, 105 Stat. 736, 745 (1991).

the families' experience as a key part of its purpose.⁴⁹² MTO was based on the Gautreaux Program model, but it used poverty rather than race in defining eligibility and specified appropriate destinations for moves as low-poverty areas.⁴⁹³

In the wake of MTO, local programs proliferated around the country.⁴⁹⁴ A 2020 report noted the rapid expansion of these initiatives and identified fifteen existing mobility programs and ten "new and emerging programs" in cities across the country.⁴⁹⁵ Partnerships between local public housing agencies and non-profit organizations assisted low-income families to move to "higher opportunity areas."⁴⁹⁶ The programs' assistance included mobility counseling, assistance in the housing search, and enlisting landlord participation.⁴⁹⁷

Congress itself provided more evidence that the idea of housing mobility is generally accepted as a solution for alleviating housing discrimination.⁴⁹⁸ In the highly partisan times of 2019 and 2020, Congress passed two bipartisan bills appropriating a total of \$50 million for a housing choice voucher mobility program.⁴⁹⁹ The HUD announcement of the program cited studies demonstrating the benefits of the MTO programs funded in 1991, and referred to Polikoff's advocacy in bringing about the mobility idea.⁵⁰⁰ As such, the collaboration between the Leadership Council and the *Gautreaux* lawyers not only produced synergy in Chicago, it also affected the entire country, with growing evidence of the long-term benefits for the children moving to more middle-class neighborhoods.⁵⁰¹ Children who moved to such neighborhoods, especially at an early age, had higher college attendance rates, higher earnings, live in better neighborhoods as adults, and are less likely to be single parents.⁵⁰²

⁴⁹² *Id.* The MTO cities were Baltimore, Boston, Chicago, Los Angeles, and New York.

⁴⁹³ 105 Stat. at 745, *supra* note 491; *see supra* note 492.

⁴⁹⁴ In a Seattle mobility program, researchers found significant benefits for children participating. Raj Chetty, Nathaniel Hendren & Lawrence Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106(4) AM. ECON. REV. 855, 855–902 (2016); Raj Chetty & Nathaniel Hendren, *The Effects of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects and II: County Level-Estimates*, 133(3) Q. J. ECON. 1107, 1107–62 (2018).

⁴⁹⁵ POVERTY & RACE RSCH. ACTION COUNCIL, HOUSING MOBILITY PROGRAMS IN THE U.S. 2020 (2020). PRRAC is "a civil rights law and policy organization based in Washington, D.C. Our mission is to promote research-based advocacy strategies to address structural inequality and disrupt the systems that disadvantage low-income people of color." ABOUT PRRAC, <https://www.prrac.org/vision/> (last visited Sep. 1, 2021). The report suggested that the idea underlying these programs had its origins in the *Gautreaux* litigation.

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.* at 4.

⁴⁹⁸ Section 8 Housing Choice Vouchers: Implementation of the Housing Choice Voucher Mobility Demonstration, 85 Fed. Reg. 42890, 42891 (July 15, 2020).

⁴⁹⁹ *Id.*

⁵⁰⁰ *See id.* (citing Chetty, Hendren & Katz, *supra* note 494, and Chetty & Hendren, *supra* note 494).

⁵⁰¹ Chetty, Hendren & Katz, *supra* note 494, at 899–900; Chetty & Hendren, *supra* note 494, at 1156–59.

⁵⁰² *Id.*