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The Mississippi Freedom Democratic Party's Congressional Challenge of 1964-65: A Case Study in Radical Persuasion

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THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY’S CONGRESSIONAL CHALLENGE
OF 1964-65:
A CASE STUDY IN RADICAL PERSUASION

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Far out in the uncharted backwaters of the un-fashionable end of the Western Spiral arm of the Galaxy lies a small un-regarded yellow sun.

Orbiting this at a distance of roughly ninety-eight million miles is an utterly insignificant little blue-green planet whose ape-descended life forms are so amazingly primitive that they still think digital watches are a pretty neat idea. This planet has – or rather had – a problem, which was this: most of the people living on it were unhappy for pretty much of the time. Many solutions were suggested for this problem, but most of these were largely concerned with the movements of small green pieces of paper, which is odd because on the whole it wasn’t the small green pieces of paper that were unhappy.

And so the problem remained; lots of the people were mean, and most of them were miserable, even the ones with digital watches.

Many were increasingly of the opinion that they’d all made a big mistake in coming down from the trees in the first place. And some said that even the trees had been a bad move, and that no one should ever have left the oceans.

And then, on Thursday, nearly two thousand years after one man had been nailed to a tree for saying how great it would be to be nice to people for a change, a girl sitting on her own in a small café in Rickmansworth suddenly realized what it was that had been going wrong all this time, and she finally knew how the world could be made a good and happy place. This time it was right, it would work, and no one would have to get nailed to anything.

Sadly, however, before she could get to a phone to tell anyone about it, a terrible, stupid catastrophe occurred, and the idea was lost for ever.

This is not her story.
-Douglas Adams, *The Hitchhiker’s Guide to the Galaxy*

This is not that girl’s story, either. It is, however, an academic exercise dedicated to those who are searching for whatever it was she figured out; the author hopes that we can figure it out before our next terrible, stupid catastrophe, that people will be nice for a change, and that we can skip the part where someone is nailed to something.
ACKNOWLEDGMENTS

As no good deed goes unpunished, I would like to reward those whose good deeds have made this work possible with mention in it.

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I owe an immeasurable debt to those who, for absolutely no compensation, gave me their time and their irreplaceable insights to bolster my work. Reverend Ed King, Lawrence Guyot, Esquire, and Dr. Ekwueme Michael Thelwell were invaluable in reconstructing the Mississippi black voter’s biggest splash in Congress since Reconstruction, and I can only hope reading this paper will bring them a fraction of the joy they have provided me.

Finally, this work would have been simply impossible without the contributions of the two great loves of my life, my mother, Sharon, and my wife, Jessica. Mom, thank you for always pushing me to think, to learn, to argue, and to grow (if not grow up). Jess, thank you for putting up with the thesis-induced absenteeism and absentmindedness, for lending your eye and your ear, and, of course, for the Dr. Pepper (my secret weapon).
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ABSTRACT

This thesis explores the Mississippi Freedom Democratic Party’s 1965 Challenge to the legitimacy of that state’s Congressional Delegation. It examines that Challenge as a rhetorical act and places it in the context of the broader Civil Rights discourse. Further, it seeks to establish that the Challenge, as a rhetorical act, played an important role in the development of crucial Civil Rights legislation, namely 1965’s Voting Rights Act.
INTRODUCTION

There is nothing novel about the idea of protest as a political rhetorical act. Where legal or social structures bar minority or subject groups from joining the recognized political discourse, those groups frequently employ symbolic acts of objection in place of the arguments they cannot make.

Michael Lipisky describes protest as “a mode of political action…characterized by showmanship or display of an unconventional nature, and undertaken to obtain rewards from political or economic systems while working within the systems,”1 adding that protest is a tool of the powerless used to motivate third parties to join a fight on the protestors’ side. He differentiates such protest from similar actions undertaken by already-powerful groups, larger collectives, or parties with at least some entry into the debate.

Those in the United States’ civil rights movement of the mid-twentieth century, then, were veterans of Lipisky-style protest; the marches, sit-ins, pray-ins, and wade-ins in their playbook fit squarely within his parameters. As he noted, it is unlikely that “fifteen people sitting uninvited in the Mayor’s office have the power to move City Hall,”2 and it is reasonable to conclude that those fifteen would know the limitations of their tactics. Sit-ins were designed to highlight a disagreeable condition and win third party sympathy for its remedy, to appeal to the empowered to do what they powerless could not, and to stir and leverage publicity for rhetorical ends.

In 1965, a group of civil rights activists from Mississippi decided to skip City Hall and stage the sit-in of all sits-in inside the source of all United States law, the chamber of the United States House of Representatives. Theirs was a most ambitious endeavor.

The Mississippi Freedom Democratic Party (MFDP) asked Congress to rule that the political repression blacks faced in Mississippi had so undermined the credibility of elections there that the House should refuse the state’s five-Member Congressional

2 Lipisky, “Protest as a Political Resource,” 1146.
delegation its seats.\textsuperscript{3} As a student of both Congress and the political and cultural realities MFDP faced in Washington and in Mississippi, I initially believed the party had set an impossible goal for itself, and assumed its leaders must have known this and undertaken their Congressional Challenge principally as a protest; in my mind, the U.S. Capitol was – and could only have been – the world’s largest Woolworth’s.

I was wrong. MFDP leaders thought they should and could prevail, and they were at least partly right on both counts. Their members and the rest of the near half-million black residents of Mississippi had no real opportunity to express political will; with that truth available to them, the party’s lawyers identified a legal strategy capable of invalidating the delegation’s election and thus winning a stunning victory for the civil rights movement.

The authors of the Congressional Challenge certainly understood its rhetorical value. Even if they were unsuccessful in seeing the white Mississippi delegation sent home, the challenge was an opportunity to demonstrate that those in the civil rights movement (and the race of people whose rights they were asserting) could advance their campaign to the heart of the Republic, fight on its terms, and do so well and persuasively.

They also understood their chances to unseat the delegation were poor, and they were willing to accept that – but they would not resign themselves to it before the effort even began. Their hopes for winning rested on an inversion, of sorts. If Martin Luther King, Junior’s, great success was in impelling a “shift of the civil rights discussion from the political to the moral realm,”\textsuperscript{4} then the task MFDP had was to take that moral discussion back into the epicenter of the political discussion, to make the case that the electoral system in Mississippi was so morally repugnant that Members of Congress from the other 49 states should set aside politics and take action. They believed this was possible, and the course of the Challenge showed they had at least some reason for that belief. Accordingly, MFDP set as its goal the ouster of the Mississippi delegation, with a

\textsuperscript{3} These were Republican Prentiss Walker (Fourth District) and Democrats Thomas Abernethy (First District), Jamie Whitten (Second District), John Bell Williams (Third District), and William Colmer (Fifth District).

“self-compromise” position of simply mounting a sustained, credible challenge, no matter the result.

MFDP leadership was not quite alone in believing they could reach at least the lesser of those goals. The bulk of journalists covering the movement and the drama of Washington believed the effort had no chance at even respectability and was simply a stunt — though, even among the most intensely anti-Challenge journalists, it was a move that “[struck] at the sovereignty of the state.”5 Fellow civil rights groups, the Americans for Democratic Action (ADA) the most vocal of them, were only slightly less harsh in their criticism of the Congressional Challenge, again terming it mere theater. Initially, even those who had the most to lose, the five-Member Mississippi delegation, discounted the Challenge as a tedious waste of their time and ignored it as best as possible. But, the difference in their attitude after its first half-victory could not have been more stark: they retained a “Dream Team” before the term existed, hiring as their collective representatives a former Governor of Mississippi and the state’s sitting Attorney General.6

METHODS AND SOURCES

The function of this thesis is that of rhetorical criticism; it will not criticize a speech or a speaker, but it will examine the Congressional Challenge as a rhetorical as well as a legal act. I will refer to and comment on discrete communicative efforts along the Challenge timeline, but primarily as they fit into and shape that timeline and not on their own. As the venerated Edwin Black suggests, criticism is part perception, part evaluation,7 and I will follow that established recipe.

I will endeavor to help my reader perceive the Challenge and the rhetorical elements it contained by providing a thorough map of the Challenge battlefield; that is, both the opposition MFDP leadership needed to overcome and features of the legal,

political, and rhetorical topography they intended to exploit. This image stretches from the window Reconstruction-era lawmakers left unlatched and MFDP lawyers climbed through to the undermining from the Johnson White House and the outright opposition of groups that had been MFDP’s allies.

Though it necessarily involves a recapitulation of the Challenge and the events surrounding it, this thesis will not be a mere history. Instead, I will seek to bring to the reader’s attention not only the sequence of the Challenge but the meaning behind each part thereof – not just the what but also the why. It is in this why that the rhetorical value of an event or an action emerges; if letters and words, used to represent an idea or an emotion, can convey that emotion between speaker and audience, then actions, when similarly tied to a thought or a feeling, can do the same. My goal, then, is to pry open the actions and pluck the thoughts from them for examination.

In looking for the why as well as the what, I place myself on somewhat less stable footing. If I cite merely the date and text of a speech, I can be fairly certain that a reader, upon visiting my sources, can confirm my assertion that the speech, as I presented it, occurred on the date I noted. By examining contexts, motives, and implications, I create the risk that another scholar could investigate the same material through the same sources and conclude that I am in egregious error; that is all the more true because my subjects here will be actions and stances at least as often as they will be words. However, Thomas Nilsen gives a succinct account of the reasons for embarking upon the more dangerous path:

It is the function of the speech critic to reveal the way of acting and believing fostered by the speech and the possible consequences thereof. This is the more significant meaning of the speech for the society upon which it has its impact, and this meaning is primarily to be seen in the concept of man, the concept of ideas, and the concept of society embodied in the speech.

The importance of this rhetorical perspective to the study of an historical event is

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8 Nothing against history. (B.A., History, Florida State University, 2003)
so evident it is nearly “hiding in plain sight.” At their core, the hallmarks of the Civil Rights Era – marches, riot police, speeches, dogs and fire hoses – were the outgrowths of a common conflict of ideas, namely differing ideas about the connection between paleness and social and political value. The strategies for victory in this conflict, then, were ones that sought to sway those ideas, to persuade, and that is the province of rhetoric. As Martin Medhurst suggests about the Cold War, “[r]hetoric was not something added on or peripheral to or substituting for the ‘real’ issues. No, rhetoric was the issue.”

The task I have set for myself is to interpret that rhetoric, verbal or otherwise, and craft a history from it.

In interpreting the Challenge, I have two goals. The first of these is to counter the echoes of MFDP’s contemporary critics who called the Congressional Challenge a stunt and establish that the Mississippi Freedom Democratic Party did undertake its Challenge sincerely; this will be a simple mark to reach, as MFDP leaders made it clear both in their actions in 1965 and in my conversations with them in 2008 that they believed they should and could win. They did not enter the United States House of Representatives simply for the rhetorical value of being thrown out of it; they entered to open five of its seats to legitimate elections.

The second, more challenging goal is a revision of history. “Both historians and rhetoricians are in engaged in making, not merely recording or reporting,” writes Medhurst, and as I report the history of the MFDP Congressional Challenge as its participants and observers recorded it, I will endeavor to remake that history, specifically the history of its importance. Common wisdom links the passage of the 1965 Voting Rights Act to the violence civil rights marchers faced in Selma, Alabama, on March 7 of that year. No doubt, that incident and its press coverage did provide an easily-packaged, readily-understood banner moment for the push for the Act and enable its supporters to

dub any opposition, on whatever grounds, as endorsements of that violence. The Pettus Bridge became, in the era in which the public discourse embraced the (tele)visual, a powerful rhetorical symbol.

However, former Mississippi Freedom Democratic Party leaders believe their Congressional Challenge provided the stronger impetus for strengthening and passing the VRA; theirs is an admittedly biased perspective – I find it difficult to imagine they might have said, “No, we didn’t do a damned thing” – but it is one that study of the political climate and the rhetoric of the drive toward voting rights support. As they do, I believe the historical record clearly establishes that the MFDP Congressional Challenge was at least as successful in changing the system from within as Selma was in highlighting the need for change from the outside.

To these ends, this paper will employ several sources of information and multiple contexts of analysis. The bulk of its evidence will come directly from the MFDP and its contemporaries, including opponents and the press. Another important primary source component for detailing the electoral environment in which the challenge occurred is the mountainous stack of depositions MFDP lawyers collected. Finally, I will make additional reference to texts on Congressional precedent, broader histories of civil and voting rights in Mississippi, and other examinations of the Challenge.

Those examinations are in markedly short supply. The Congressional Challenge lacked the dramatic value of the MFDP’s 1964 challenge at the Democratic National Convention in Atlantic City; most notably, it lacked Mrs. Fannie Lou Hamer’s televised oration. Because the Congressional Challenge is not as telegenic, it has seen less popular and scholarly attention and, as a result, doctoral dissertations have been the primary venue for examination.

Vanessa Davis\(^\text{13}\) highlights the animosity between MFDP and some of the more established national Civil Rights groups, namely the National Association for the Advancement of Colored People (NAACP) and, in particular, the ADA. She also discusses the logistical problems of coordinating and funding the challenge and, perhaps

\(^{13}\) Vanessa L. Davis, “‘Sisters and Brothers All’: The Mississippi Freedom Democratic Party and the Struggle for Political Equality” (Ph. D. diss., Vanderbilt University, 1996).
most interestingly, the defense strategy the five elected Members of the state’s Congressional delegation employed. Davis’s work sets the scene in which MFDP acted its drama.

Michael Sistrom\textsuperscript{14} spends considerably more time on the challenge. He discusses MFDP strategy more extensively than does Davis and also advances the notion that the challenge, along with Freedom Summer, had as much a role in propelling the Voting Rights Act into law as the Edmund Pettus Bridge had. Like Davis, Sistrom provides a unique perspective, as his discussion of the implications of the challenge necessarily involves the reaction of other groups and the established power structure.

Both Davis and Sistrom cite a scholar whose work was valuable here, as well, Leslie McLemore. \textsuperscript{15} In a dissertation largely trumpeting MFDP as an invaluable driver of change and progress in Mississippi and nationally, McLemore devotes a chapter to the Congressional Challenge, including sections on “Preparing for the Challenge” and “The Aftermath.” He praises MFDP for its effort to demonstrate its political ability through the only means available in a state that systematically barred most of its members from voting. The bulk of his treatment is a play-by-play of MFDP strategy leading to the challenge, its execution both on the floor and in Mississippi, and a greater detail of the depositions MFDP and its volunteer lawyers took than is present in either of the previously cited works. Himself a former MFDP member, McLemore can and does analyze the responses of the elected delegation, particularly its efforts to stall all parts of the challenge to dissipate MFDP support and resources, and he defines all sides of the challenge and their reactions to its conclusion. McLemore’s membership in the MFDP is not the only unique perspective from which he writes: his is also the only of these works that had the opportunity to discuss the relatively short-lived party in the present tense.

The notable exception to the general quiet about the Congressional Challenge has been the writing of the people involved in it. Their memoirs are rife with analyses of the Challenge and the problems it faced, assessments of responsibility for the success it

\textsuperscript{14}Michael P. Sistrom, "‘Authors of the Liberation’: the Mississippi Freedom Democrats and the Redefinition of Politics" (Ph. D. diss., University of North Carolina-Chapel Hill, 2002).

achieved and didn’t, and anecdotes about the people who shaped it. Of the memoirs, those of attorneys William Kunstler and Arthur Kinoy and activist Stokely Carmichael, later known as Kwame Ture, are the most illuminating. Naturally, Kunstler and Kinoy detail the mechanistic challenges of mounting the effort, including taking some 3,000 pages of depositions, while Carmichael captures the spirit of those at the head of the campaign.

To my immeasurable scholarly and personal benefit, personal conversations stand in place of memoirs for three of the most vital figures in this study: Reverend Ed King, former MFDP Chair Lawrence Guyot, and Washington office director and chief lobbyist (Ekwueme) Michael Thelwell. Guyot and Thelwell, particularly, were the architects of the organizing and politics behind the Congressional Challenge, and, without their help, the attitude and legacy of the Challenge would be far less clear.

For my sketch of the race relations history that produced the Mississippi Freedom Democratic Party and motivated its activities, including the Congressional challenge, I will rely principally on John Dittmer’s award-winning work. While MFDP appears in only a small portion of Dittmer’s text, its growth and major efforts receive thorough attention, and the balance of the work maps Mississippi’s civil rights landscape, including a lengthy discussion of the decades of repression that preceded the most active period of the movement. With Dittmer capably providing the broader history, I will compile the immediate voting rights histories of MFDP members and those they represented using the most authoritative source available: the 3,000-plus pages of depositions, most from black Mississippians who had seen harassment, intimidation, violence, and other obstacles as they tried to use the political system.

Two principal contexts exist for this study, the internal and the external. The memoirs, conversations, and documents will serve the internal quite well. The objective in this context is to understand the states of mind of those who conceived and executed this would-be repudiation of Mississippi voting laws and their application. The external context is, itself, two-fold: the contemporary and the historical.

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16 John Dittmer, Local People: The Struggle for Civil Rights in Mississippi (Urbana, IL: University of Illinois Press, 1994).
The contemporary external context consists of the reactions to the Challenge by fellow civil rights groups, journalists, political figures, and the delegation and its defenders; here, too, the documentary record is extensive, and there is little question about the attitudes of each of those parties (and the words of Kunstler, Kinoy, Carmichael, King, Guyot, and Thelwell resolve whatever ambiguity is left). The historical external context requires a bit more interpretation. Many of the details of the civil rights movement are fading from public memory, and, as already discussed, the Challenge has never featured as prominently as other events of the era. Nonetheless, a record does exist to allow some conclusions about the influence the Challenge has had on the history of race in the United States, particularly through the Voting Rights Act.
1. PROVOKING A CHALLENGE

“[The challenge] was based on a need to demonstrate some kind of political effectiveness, which could not be accomplished inside a State where you could not vote, and on the fact that the government of Mississippi, and all elections it conducted were, and had been since 1890, in clear and indefensible violation of the Constitution.”\textsuperscript{17}

The authors’ reference to 1890 was not arbitrary; that date serves as a landmark in Mississippi’s history, and, without it, the acrimony of the 1950s and 1960s might have been mitigated. In that year, Mississippi’s post-Reconstruction leaders gathered in constitutional convention “for the express purpose of eliminating the Negro vote.”\textsuperscript{18}

Before the 1890 revisions, there had been a time when black voters and even black officeholders were common. During the early Reconstruction years, “[i]n terms of political influence, Mississippi’s Blacks were second only to the Blacks of South Carolina.”\textsuperscript{19} Black voters of that era were loyal to the Party of Lincoln, and they and the Republicans benefited, but the wealthy white plantation owners resented their new political impotence. That resentment developed into armed conflict and forcible control of the ballot box in the election of 1875, and the state’s Democrats took control of its political and legal machinery; they then set about re-tooling that machinery to ensure they would never again be in the position of having to re-claim power. “‘The Mississippi Plan’…was essentially designed to disenfranchise Blacks and thereby make them psychologically manageable, uneducated and economically dependent.”\textsuperscript{20}

Though the bulk of the laws of the next century were outgrowths of this White Supremacist’s Manifesto, its face was the 1890 constitution. In 1870, the United States Congress had readmitted Mississippi’s representatives to service under the “fundamental condition…that the constitution of Mississippi…never be so amended or changed as to

\textsuperscript{17} Lawrence Guyot and Michael Thelwell, “The Politics of Necessity and Survival in Mississippi,” \textit{Freedomways}, VI, no. 2 (1966),140.
\textsuperscript{18} Dittmer, \textit{Local People}, 6.
\textsuperscript{19} McLemore, “The Mississippi Freedom Democratic Party,” 27.
deprive any citizen or class of citizens of the United States of the right to vote,” so the changes would have to be more clever than simply, “Whites Only.” At the 1890 Mississippi Constitutional Convention, future United States Senator James Zachariah George was “serenaded,” a musical endorsement of his observation that, “When we meet in convention, (it) is to devise such measures, consistent with the Constitution of the United States, as will enable us to maintain a home government under the control of the white people of the state.” [emphasis added]

The solution was to enact stringent poll taxes and residency requirements and a mandate that applicants be able to read or interpret a section of the state constitution, giving county registrars a flexible standard they could use to accept applicants they favored and reject those they disliked; in large part, that division fell along the lines of race, with one noting, “I have no other reason [to make registering more difficult for blacks to register] than that they were colored.”

In practice, registrars applied this “understanding clause” inequitably, requiring far greater proficiency from black applicants than they demanded of white applicants; in official theory, the theory Mississippi would successfully use before the United States Supreme Court, this inequity was not the intent; in unofficial theory, inequity was precisely the intent. In Virginia, a similar provision adopted in 1902 came with the explicit commentary of its author, on the floor of the convention, that a political competency test was not intended to be administered fairly, and there is no reason to believe 1890 Mississippi felt differently.

With the authority they gained in that revision, the state’s registrars systematically denied black voters registration in any significant numbers. As of 1961, many of the state’s 82 counties could boast that seven or more of every ten white residents eligible to

21 “An Act to admit the State of Mississippi to Representation in the Congress of the United States,” United States Statutes at Large, 16 Stat. 67 (1848-1871), Chapter 19, 41st Cong., 2nd sess., 68.
24 Dittmer, Local People, 7.
25 Dittmer, Local People, 6.
26 Williams v. Mississippi, 170 U.S. 213 (1898).
vote were registered;\textsuperscript{28} just as many, though, showed black registration rates of less than ten percent. Chickasaw and Amite Counties, for instance, each reported a single black voter, while they both had eligible black populations of greater than 3000. Lamar County was clearly no student of tokenism: of its 1071 eligible black residents, none appeared on the voting rolls. Even in Hinds County, home to Mississippi’s capital city of Jackson, only 13.2 percent of eligible black residents had cleared the many official and unofficial hurdles of voter registration.

The official hurdles, as noted above, were no small matter. The unofficial hurdles were the stuff of ignoble legend. With or without provocation, blacks were subject to arrest, imprisonment, financial ruin, and physical violence; trying to register or encouraging others to do so invited these tactics as reprisal.\textsuperscript{29} Newspaper headlines boldly advised would-be black voters that staying home on Election Day was their best bet for staying healthy, and actually visiting the polls that day could find white residents standing in the way and sympathetic sheriff’s deputies and their revolvers waiting behind them.\textsuperscript{30}

Even the seemingly trivial drew outrage and rebuke: In 1956, Reverend Alvin Kershaw, a religious scholar, saw his invitation to speak at a forum at the University of Mississippi withdrawn because, while appearing as a contestant on a television quiz show, he had indicated some of his winnings would go to support NAACP programs.\textsuperscript{31} Not only did this suppression of both black voting and the notion that blacks might vote help create the environment from which the Congressional Challenge would spring, but it would form the factual basis for both that Challenge and the appeal to the Democratic National Convention in Atlantic City in 1964.

Thanks to resentment toward Republican control of the White House during Reconstruction, “[t]he Democratic primary was the only election of importance in the

\textsuperscript{28} Some even showed more white voters registered than were eligible, a curiosity, indeed.
\textsuperscript{29} Dittmer, \textit{Local People}, 13, 53.
\textsuperscript{30} Dittmer, \textit{Local People}, 2.
Deep South,” and its winner could usually count on running unopposed – or something close to it – in the general election and certain victory. This *de facto* one-party system helped ensure political stability and stagnation; with no competing ideas, those in power faced little possibility of losing it, so they favored maintaining old alliances and support over wooing new favor.

At the time of the Congressional Challenge, neither the state nor the Democratic Party, of course, could officially, openly bar black voters from participating in the primary; the Supreme Court had invalidated the all-white primary in Texas in 1944, and Mississippi was just as bound by that precedent. But, the efforts to continue subjugating the black population had never been stopped by mere Constitutional interpretation: Indeed, the Fifteenth Amendment was in the Constitution, and “southern white people have always viewed the Fifteenth Amendment in much the same way in which patriotic Germans…regarded…the Versailles Treaty. They have never accepted…the enfranchisement of the Negro, and they have shown great ingenuity in devising methods for defeating this purpose without violating the letter of the law.”

With a near-omnipotent Democratic Party unwilling to welcome them and a near-impotent Republican Party incapable of being welcomed in the state, voting rights activists were left with one option for joining a political party devoted to the notion that participation in the electoral process was a right: create one. “[Third] parties have served the purpose of bridging the gap between the electorate and government; they have played a crucial role in American democracy,” and that was the role left for the MFDP.

The original purpose of the Freedom Democratic Party was to provide black voters in Mississippi access to national politics they could not have had before; indeed, the notion of some kind of formal challenge to the legitimacy of the state’s elections laws

33. It is worth considering that a viable Republican Party in Mississippi might have led to both a quicker development of civil rights protection and a radically altered present in which more black voters at least considered that party’s candidates on Election Day.
was present at its inception.\textsuperscript{37} So, with the goal of dismantling Mississippi’s disenfranchisement structure by circumventing it, on April 26, 1964, members of the Student Nonviolent Coordinating Committee (SNCC), the Congress of Racial Equality (CORE), and the Southern Christian Leadership Conference (SCLC), assembled together as the Council of Federated Organizations (COFO), elected an interim executive committee for their Mississippi Freedom Democratic Party. That committee included two figures already prominent in this paper, Annie Devine and Leslie Burl McLemore.\textsuperscript{38}

MFDP’s first project was voter registration, one it shared, to varying degrees, with most of the civil rights organizations active in Mississippi at the time. In what would become its fashion, though, the party’s registration effort took a more assertive tone. Since no amount of ferrying would-be registrants to the courthouses of Mississippi’s counties had shaken the resolve of those counties registrars to keep blacks from registering, MFDP opted to demonstrate those twin realities – blacks eager to register and white officials fervent in denying them – by conducting its own “Freedom Vote” campaign in the fall of 1963. When 80,000 had registered through two months of the effort, the point that interest in and commitment to participatory government was not race-dependent was well made.

MFDP had never considered itself a third party, but instead the true Democratic Party of the state and the one more closely aligned with the values of the Democratic National Committee.\textsuperscript{39} In that spirit, MFDP members tried to take part in the Democratic Party’s processes throughout 1964, including local and state conventions. In some cases, they were admitted; in some cases, they were turned away; in all cases, their voices would not be heard.\textsuperscript{40} MFDP took the opportunity to use rumblings from the state convention that the party would endorse the Republican candidate for President, Barry Goldwater, rather than the incumbent Democrat, Lyndon Johnson, as a point of contrast. MFDP’s own state convention – “the first time since Reconstruction that Blacks had

\textsuperscript{37} McLemore, “The Mississippi Freedom Democratic Party,” 106.
\textsuperscript{40} McLemore, “The Mississippi Freedom Democratic Party,” 116.
gathered in such numbers [around 800] to challenge Mississippi’s political structure”41 – produced a Statement of Loyalty, pledging “to work dauntlessly for the election of President Lyndon B. Johnson.”

This effort to wrest at least some control of the state’s only meaningful political institution was at the heart of MFDP’s brightest moment in the sun: the challenge at the 1964 Atlantic City Convention.42 That August, MFDP sent sixty-eight of its own delegates with the hopes of supplanting the “regular” delegates elected through the official primaries. Before the Convention’s Credentials Committee, the Freedom Democrats argued that theirs was the more appropriate delegation to represent the state, since the regulars had supported a system of segregation and discrimination that disenfranchised hundreds of thousands of black Mississippians; the regulars denied any such suppression. National party leaders, most notably presumptive Presidential nominee Lyndon Johnson, expressed some sympathy for the conditions in Mississippi, but were too concerned with the potential political consequences of openly supporting MFDP to embrace the Convention challenge. Johnson, in fact, worked actively to undermine it.

In testimony before the Credentials Committee, Mrs. Fannie Lou Hamer – who would feature just as prominently in the Congressional challenge – delivered a televised oration that stirred hearts across the country. “Is this America?”43 she asked. Her impassioned plea – and the strong case she and other speakers for MFDP made that the regular delegation was a product of a discriminatory system – won at least enough support to force an overture of compromise from DNC leaders, though the Freedom Party summarily rejected the two token at-large seats they were offered in place of their 68-member delegation.

Again, it was Mrs. Hamer who levied the most damning criticisms, asking compromise negotiator and prospective Vice President Hubert Humphrey if his “position [as a Vice Presidential candidate was] more important…than four hundred thousand black people’s lives,”44 and insisting MFDP “didn’t come all this way for no two seats.”45

42 Dittmer, Local People, 285-302.
43 Dittmer, Local People, 288.
44 Dittmer, Local People, 294.
Though the net result—the Freedom Democrats held no seats at the convention—could constitute defeat, the complete story reads more as a moral victory. \(^46\) They had stirred national attention and support for their effort and forced national party leadership to both offer nominal recognition and promise that future conventions would acknowledge only delegations elected from states free of discrimination; \(^47\) they had also prompted the incensed departure of the regular Mississippi delegation. \(^48\)

The Convention Challenge was a pivot point for MFDP and its relationships with the rest of the civil rights movement and public opinion (namely press opinion). Joe Rauh, MFDP’s original attorney and counsel for the United Auto Workers union, \(^49\) had advocated accepting the compromise, a suggestion that led to Mrs. Hamer’s statement that she and her compatriots were “sick and tired of being sick and tired;” \(^50\) in what was probably a mutually agreeable decision, MFDP parted company with Rauh. \(^51\) The NAACP had been tolerant, if not wholly supportive, of MFDP activities, with financial contributions and even (though only nominally) lending the services of its Mississippi Field Secretary, Charles Evers, as treasurer and ex-officio member of the MFDP executive committee. After Atlantic City, the NAACP became openly hostile to MFDP programs, particularly the Congressional Challenge. \(^52\)

The press, during the Convention Challenge, had effectively been MFDP’s allies. When Hamer delivered her rebuke of the Mississippi party and her plea for voting rights, supporters, opponents, and interested parties across the country were watching on television. Even when Johnson tried to regain control of his coronation nomination by calling an impromptu press conference in the middle of the Credentials Committee meeting and the broadcast of Hamer’s speech, “the networks dutifully cut away to the president before she had completed her remarks. Aware they had been manipulated,

\(^{45}\) Dittmer, *Local People*, 302.

\(^{46}\) While sports coaches may dread and discount this term, it is useful here. If the advancement of ideals is the goal, rather than simply scoring more points than the opponent, then advancing those ideals is a victory, even if it falls short of winning an argument or an election.

\(^{47}\) Dittmer, *Local People*, 296.

\(^{48}\) Dittmer, *Local People*, 298.


\(^{50}\) Kunstler, *My Life*, 144.

\(^{51}\) Author telephone conversation with Ed King, March 18, 2008.

\(^{52}\) Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
however, and sensing the importance of the story, the networks played back her testimony that night,”\textsuperscript{53} prime-time.

In that instance, the political press corps had assisted MFDP in not only defeating the President’s efforts to silence party dissent, but it had, on its own impulse, offered a glimpse of the turmoil to a substantially larger audience. After Atlantic City, perhaps feeling the Congressional Challenge was too much a repeat to stir the same sympathy from their audiences,\textsuperscript{54} the national press would give it scarce – if any – importance, and coverage would be sparse.\textsuperscript{55}

Following the convention, MFDP leaders, as any political movement’s architects would do, immediately turned their attention toward the next fight. Even before Atlantic City, MFDP Chair Lawrence Guyot and others had considered the idea of an elections dispute in Mississippi, intending “to file a suit calling for the voiding of elections results [under laws] providing for the challenging of state elections, for reason of racial discrimination.”\textsuperscript{56} This idea was initially set aside, though, since it would require convincing Mississippi courts the state had conducted illegal elections, something in which MFDP and other civil rights groups had seen little success. The principle of contesting elections survived, though, and Guyot and others were readily persuadable to a more viable means to that end.

\textsuperscript{53} Dittmer, \textit{Local People}, 288.
\textsuperscript{54} Particularly among those members who felt MFDP had been greedy or reckless in refusing the compromise.
\textsuperscript{55} Author telephone conversation with Ed King, March 18, 2008.
\textsuperscript{56} Lawrence Guyot and Michael Thelwell, “The Politics of Necessity and Survival in Mississippi,” 140.
2. MFDPS WINDMILL TILTERS – K & K

There is little doubt that the Mississippi Freedom Democratic Party’s Congressional Challenge of 1965 would not have occurred as it did without the efforts and insights of two traveling attorney-agitators, William Kunstler and Arthur Kinoy. They had begun work with MFDP and COFO prior to Atlantic City, but Rauh’s departure elevated them to leadership of the party’s legal efforts.

In a move to avoid the sabotage done by “lawyers within the movement whose politics tied them at moments of crisis to forces outside the movement,” as was the case with Rauh, who pledged his loyalties first to the national Democratic Party and second to civil rights, MFDP leadership insisted that “the fundamental attitudes of people’s lawyers must be close to those of the movements they were representing.”

Through their involvement with other efforts, Kunstler and Kinoy had proven their devotion, and MFDP rewarded them with a few extra mountains of poorly-paid, difficult, life-threatening work in toppling the racist power structure of Mississippi.

When Kunstler and Kinoy took over legal operations shortly after the Convention, they did so against the opposition of much of the rest of the movement, a theme they would see repeated often. Other groups, headed by the NAACP and Joe Rauh, suggested they were Communists (another theme), and insisted MFDP disassociate with them. Chair Guyot and his colleagues refused, keeping the pair on as the party began to ask, “What next?” “This was no one-shot operation designed merely to capture the spotlight at the Democratic National Convention,” but, without another effort as bold as the Convention Challenge – and preferably more successful – it might not become much more.

The idea of a direct challenge of the elections to come that November resurfaced, but the apparent necessity of winning the agreement of state courts (impossible) or spurring the action of federal courts in the state (not much more likely) remained. But, just as the Mississippi Constitution of 1890 had established the mechanism under which

58 Kinoy, Rights on Trial, 263, 264.
59 Kinoy, Rights on Trial, 266.
hundreds of thousands of black residents could have their political voices silenced with the full power of state law for most of a century, an even older bit of legislation had provided the means by which that silencing could be stopped.

A decade before the Civil War, Congress had formalized its contested elections procedures. Within thirty days of the election, the contestant had to provide written notice of the dispute to both the presumptive winner and the Clerk of the House, specifying all grounds for the challenge. The contestee then had thirty days to provide a response. The final portion of the process that occurred outside the House was the collection of evidence by both sides; the original statute fixed this period at sixty days, but MFDP and its opponents each had just forty.

This evidence window provided the Challenge its best opportunity for success — and its best vehicle for making its point even if it failed: In statute, a challenger asserting a right to a seat in Congress could call witnesses, favorable or otherwise, for sworn depositions on the subjects raised in the grounds for contest, and those calls had federal subpoena power backing them. That obscure portion of law provided the means for circumventing Mississippi’s horizontal monopoly on authority that MFDP and its leaders had been hunting. “[MFDP] didn’t have subpoena power, we couldn’t compel them to come and talk,” but Congress could and, through the Challenge, would. Kinoy “could hardly believe [his] eyes when [he] stumbled across…exactly what we were looking for.” Kunstler and Kinoy pitched the statutory challenge to Lawrence Guyot in a memo, and he “was wildly enthusiastic;” precedent was not as cheerful.

61 Kinoy, Rights on Trial, 270.
63 Author telephone conversation with Ekwueme Michael Thelwell, 21 August 2008.
64 Kinoy, Rights on Trial, 268.
65 Kinoy, Rights on Trial, 269.
3. HISTORY NOT ON THEIR SIDE

That 1851 statute saw few successful uses in its 114-year life, and overturning certified elections has been rare under any statutory scheme. From 1933 to 2005, the United States House of Representatives saw 105 elections contested. Of those, only two resulted in the House awarding the contestant the seat in question. In most cases, the committee reviewing the contest recommended dismissal on grounds of insufficient evidence. A small minority of dismissal recommendations came because the committee believed the contestant had not provided evidence in a timely fashion or lacked standing to levy a contest; in the latter group, most were defeated opponents who alleged improprieties in primary elections, but the committee considered only disputes tied to general elections.

Precedent was a mixed bag for the Mississippi Freedom Democratic Party. Their challenge met all of its deadlines, and there had been cases, including Dale Alford, 5th District of Arkansas, in which other elected Members of the House levied challenges, rather than defeated opponents. However, the simple arithmetic – one successful challenge out of sixty-five – suggested the difficulty MFDP faced, as did the well-established precedent that challenges without a valid contestant (one who had appeared on the general election ballot) would see a quick dismissal; Mississippi election laws and practices being what they were, this would be a case without a “valid” contestant. The full House had also never acted contrary to the recommendation of the committee of reference for a challenge.

Whatever MFDP’s depositions generated on the legal merits of the challenge, the party’s effort faced daunting political challenges. This premise is rather intuitive – if the system had been working in their favor or even fairly, Southern blacks would not have had to resort to marches, sit-ins, lawsuits, and seating challenges – but the extent of the

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66 The procedure under which the 1965 challenge occurred was repealed in 1969, though much of it was preserved in that year’s Federal Contested Election Act, 2 U.S.C. §§ 381-396.
67 At the time of the MFDP challenge, the germane committee was the Subcommittee on Elections of the House Committee on Administration, though this was not the case in all 105 of the disputed elections.
68 For most of these dismissals, that “timely fashion” was ninety days.
slant to the playing field is worth noting. At the Convention, Democratic Party leadership had shown its preference for valuing political concerns above moral conviction, and there was little reason to believe that attitude had shifted with the turn of the calendar. Further, the committee that would hear the challenge and issue a report on its merits and a recommendation for its disposition “was overwhelmingly Southern,” and presumably not inclined to view the challenge favorably.

The refusal of the Convention Challenge compromise had also drawn the ire of Joe Rauh and others who favored more moderate activities designed to win support in the political and legal arenas. If MFDP was serious about the Congressional Challenge, it would have to do so on its own; there would be no financial support – and, by implication, no political backing, either – from the NAACP.

There also would be no support from the White House; President Johnson had intervened to squelch the effort in Atlantic City, and he was certainly no warmer to the idea of rejecting five elected Members of Congress than he had been to sending home a convention delegation. Just as he had in August, Johnson offered a compromise; this one would sacrifice Representative John Bell Williams in exchange for MFDP stepping aside for the seating of the other four Members of the Mississippi delegation. MFDP offered the same response it had in Atlantic City: No. “[Lawrence Guyot] took that to the State Executive Committee of the Freedom Democratic Party and they looked at me and they said, ‘Why did you even bring this to us?’”

It was in this environment – uncooperative at best and hostile at worst – that the Mississippi Freedom Democratic Party conceived and mounted its challenge to the seating of the state’s elected House delegation. Regardless of the difficulties before them, MFDP “would make its own decisions…money or no money,” as “no one could tell them what to do,” and it was at a party meeting on November 10, 1964, that the Congressional challenge began to take shape.

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70 Davis, “‘Sisters and Brothers All’,” 145.
71 Williams had openly cast aside party loyalty and campaigned for Johnson’s Republican opponent, Barry Goldwater, in the Presidential election.
72 Author telephone conversation with Lawrence Guyot, 24 July 2008.
73 Kinoy, Rights on Trial, 264.
74 Kunstler, My Life as a Radical Lawyer, 144.
4. PLOTTING A COUP

Much as it had with its Freedom Registration, MFDP would stage a demonstration of its members’ willingness and capacity for political participation, a Freedom Vote.\textsuperscript{75} It would be an election open to all voters, black or white. With help from SNCC, the ballot for the Vote would feature Victoria Gray, Annie Devine, and Fannie Lou Hamer as candidates in their respective Congressional districts underneath a Presidential ticket of Lyndon Johnson and Hubert Humphrey, alongside their Republican and regular Democratic opponents. From October 31 through November 2, 1965, MFDP and SNCC would host polling places in counties throughout Mississippi and solicit mail-in ballots from counties too dangerous for open campaigning.\textsuperscript{76} Campaign posters for the Freedom Vote featured Johnson and Humphrey and their portraits, and, beneath them, “three black faces…three black woman faces.”\textsuperscript{77} With the regular Democrats disgusted with Johnson’s progressive ideas and either abstaining or supporting Goldwater, Stokely Carmichael notes those “were the only Johnson/Humphrey posters I remember seeing in the state. But for some reason our appeal…for an appearance by either or both candidates at a giant MFDP rally in Jackson never received the courtesy of a reply. Odd, clearly bureaucratic bungling.”\textsuperscript{78}

In addition to its demonstrative value, this three-day vote would also serve as the basis for arguing that, were it not for state actions in excluding black candidates and black voters, the results of the state-sanctioned election might have been different.\textsuperscript{79} Hamer, Devine, and Gray had been on the Democratic Primary ballot in June,\textsuperscript{80} but, in part because black voters had been systematically barred from participating, they were soundly defeated. Afterward, Mississippi Secretary of State Heber Ladner had denied the

\textsuperscript{76} McLemore, “The Mississippi Freedom Democratic Party,” 175.
\textsuperscript{77} Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
\textsuperscript{79} Kinoy, \textit{Rights on Trial}, 269.
\textsuperscript{80} Kinoy, \textit{Rights on Trial}, 268.
candidates’ appeals for placement on the general election ballot.\(^{81}\)

Their names thus absent from the ballot most white voters saw, the only referenda on the three came in the Freedom Vote. Here, they were (predictably) successful, each winning her respective race by more than 6,000 votes.\(^{82}\) Again, Carmichael reaches for comparison and criticism: “[F]ortunately Johnson and Humphrey did win the freedom election. Which was all they won in the state, because Goldwater and Miller cleaned their clocks in the state-run-so-called election. But it was hardly our fault that only 6 percent of our people could vote in that closed affair, was it?”\(^{83}\)

After the Vote, at a meeting with Guyot, Hamer, Devine, Gray, Washington Director Mike Thelwell, and five others in attendance,\(^{84}\) Kinoy pitched the details of his plan. MFDP would use Section 201 to issue challenges stating that, because black residents had been systematically denied their voting rights and, because “state officials participate[d] in [a] policy of steel-hard segregation,”\(^{85}\) the five Members of the Mississippi delegation were not lawfully elected. The challenge strategy put Devine, Gray, and Hamer forth as the legitimate representatives of the 2\(^{nd}\), 4\(^{th}\), and 5\(^{th}\) Congressional Districts, respectively, even though they had not appeared on the state-sanctioned November ballot.

Though the Alford case provided some hope for contesting an election without a challenger claiming a right to the seat in question, the bulk of House precedent required a defeated opponent to lodge the contest. “[MFDP] never for a moment expected the Congress to seat Mrs. Hamer, Mrs. Gray, Mrs. Devine, but, unless they presented themselves as the legitimate challengers, the process could not move forward,”\(^{86}\) so the trio informed both the elected delegation and the Clerk that they were rightful seat-holders. This point would later cause Thelwell and the rest of the supporters of the Challenge considerable trouble, but Kinoy pointed out Congressional precedent also

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\(^{81}\) Heber Ladner, Letter to Annie Devine, Student Nonviolent Coordinating Committee papers, Appendix A, file 47, microfilm reel 63, frame 737.


\(^{83}\) Carmichael, Ready for Revolution, 415.

\(^{84}\) Michael Thelwell, Report of Meeting of Nov. 10\(^{th}\), Washington, D.C., Student Nonviolent Coordinating Committee papers, Appendix A, file 47, microfilm reel #63, frame 929.

\(^{85}\) Thelwell, Report of Meeting of Nov. 10\(^{th}\), frame 930.

\(^{86}\) Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
“gives persons challenging for a seat…the right to appear on the floor,” something MFDP could not otherwise have expected.

Another rationale for the choice to submit the trio as the rightful holders of those seats is never explicated, but seems logical. The bulk of House precedent held that opponents who were not candidates in the general election had no standing to issue seat challenges; armed with Lander’s denial, the candidates could argue that his participation in the system of steel-hard segregation had deprived them of the standing they otherwise would have had and undercut their ability to challenge an election they had been nominally and disingenuously allowed to participate in.

McLemore takes this thought a step further, suggesting that the initial petitions to be on the ballot were made “with the idea in mind of using this as evidence in the preparation of their briefs.” Appealing to Ladner for special placement on the November ballot, then, had been a win-win for MFDP: if he had granted the appeals, they would have better standing for a challenge; since he did not, they had extra evidence that systematic exclusion had prevented them from even having the opportunity to have standing for a challenge.

As the meeting progressed, Kinoy continued to outline his strategy and the challenge procedure, citing the statutory timeline and deposition provisions. He stressed the value of the federally-enforced subpoena power, an opportunity to reverse the historical theme of using the force of law to press the opposition. He also identified the battleground for the challenge, describing contests and their eventual resolutions as “INTENSELY POLITICAL DECISIONS” [emphasis in original], including the role of the Subcommittee on Elections, whose Members Thelwell listed as targets for lobbying efforts.

After the November meeting, the fevered work of actually doing the things MFDP leadership had just talked about began. Kunstler and Kinoy began preparing arguments and recruiting help for the depositions; Guyot and his field team began gathering the

87 Thelwell, Report of Meeting of Nov. 10th, frame 929.
89 Thelwell, Report of Meeting of Nov. 10th, frame 930.
90 Kunstler, My Life as a Radical Lawyer, 144.
political and financial resources they would need to devote to the undertaking;\textsuperscript{91} Thelwell, who had just finished his stint as SNCC’s Washington director and was eager to take up field work for that organization in the rural south, was told, “Mike, you got to turn back and go to Washington, open a Washington office of the Mississippi Freedom Democratic Party. We’re challenging the seating of these three Congressmen. Here’s $500, go open an office.’ So, you’re supposed to pay two months’ office rent, get office equipment, and set up an office on five hundred bucks.”\textsuperscript{92}

The attorneys faced two principle challenges: constructing an argument for why Congress should pull the chairs from under the Mississippi delegation and assembling and training a small army of lawyers to help with taking orderly, admissible depositions. The first of these was straightforward: “If the Members of Congress from Mississippi were supposed to represent the people of Mississippi, and Black people were totally excluded from that vote, the Members of Congress elected at those elections had no right to say they represented the population.”\textsuperscript{93} “[T]he whole political system of the state of Mississippi was predicated on the disenfranchisement of 45 percent of the population, who happened to be black,”\textsuperscript{94} so Congress, they would argue, could not consider the delegation to have the same popular mandate Members from other states could rightly claim.

The second task, of marshalling the deposition teams, was less daunting than it might seem, thanks to conscience. Coordinating and training would be the challenge; recruiting would not. “With the active help of the Lawyers Guild [MFDP eventually] lined up over one hundred lawyers to come into Mississippi from January 20 to February 12.”\textsuperscript{95} Kunstler fixes the number at 250.\textsuperscript{96} As for organizing, leadership was to assign tasks and territories to attorneys as they volunteered their time, with the most senior handling depositions of hostile witnesses, and each attorney deposing voters had a script of questions to ask, to “save money and time,…help avoid a rambling record,…and

\begin{thebibliography}{99}
\bibitem{91} Dittmer, \textit{Local People}, 378.
\bibitem{92} Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
\bibitem{93} Kinoy, \textit{Rights on Trial}, 267.
\bibitem{94} Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
\bibitem{95} Kinoy, \textit{Rights on Trial}, 271.
\bibitem{96} Kunstler, \textit{My Life as a Radical Lawyer}, 144.
\end{thebibliography}
[make it easier] to assess the entire array of evidence."^97

As imposing as the legal difficulties were, the MFDP challenge would never even encounter them if the party could not navigate the logistics of filing the contest, taking the depositions, producing the briefs, and – most importantly if this challenge were to produce a rhetorical effect that could survive regardless of its eventual result – bringing significant numbers of the disenfranchised to Washington to give literal face to the injustice. The goal was to bring “1,000 Negroes from Mississippi…to speak for freedom with their bodies,” a number organizers estimated would require $50,000 to support.^98 Leadership crafted march itineraries[^99] and detailed timelines for the formal notice of challenge.¹⁰⁰ The latter contained explicit assignment of every detailed task the statutes required, including proper distribution and service of the challenge notices and even the necessity of the contestants’ signatures on those notices, as failures in each of these had been grounds for previous contest dismissals.¹⁰¹

Though none of it was easy, the toughest of the early work would fall to Thelwell. There would be no depositions if no one introduced the Challenge in the House or if that body opted to dismiss it out-of-hand with no investigation. Like any House business, the Challenge required introduction from a Member;¹⁰² even after the Challenge formally came to the floor, the House alone would determine its presumptive Members’ qualifications, no matter what rhetorical skill MFDP displayed.¹⁰³ The architects of the challenge realized that their only hope for success was to recruit a small cadre of Members to oppose the Mississippi delegation’s seating, and then to present the full House with such overwhelming evidence of rampant discrimination that the sheer repugnance of it would motivate a majority to vote to remove the delegation.

^97 Edward Ardzrooni and Douglas Fuchs, To Mississippi Challenge Attorneys and COFO Volunteers, Student Nonviolent Coordinating Committee Papers, Appendix A, file 48, microfilm reel #63, frame 973.
¹⁰¹ Whitaker, House Contested Elections Cases, 1-22.
¹⁰² Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
¹⁰³ Carmichael, Ready for Revolution, 418.
This thorough scripting of the challenge procedure and how MFDP would fulfill each of its requirements is ample evidence of the sincerity of the party’s belief that it could succeed, but so is the language leadership used in constructing and communicating the contest. “January 4th [the date of the first floor vote] is a beginning, not an end.”\textsuperscript{104} Lawrence Guyot called the Congressional challenge, “the most important activity of the Freedom Movement in Mississippi in the coming weeks.”\textsuperscript{105} If the challenge had been mere protest, there would have been no reason for Guyot and his team to trouble themselves with this much effort; simply filing the formal contests – even in incomplete form – and mustering the rally at the Capitol would have been sufficient to make the point.

With the strategy chosen, all that remained was its execution, against opposition from the elected delegation, the state party and legal structures, the White House, and, as we shall see, fellow liberal and civil rights groups and the press. It was, as Carmichael describes, “a really far-out, radical, legal, and low-percentage political strategy devised by…Arthur Kinoy and Bill Kunstler, to project the question of voting rights into the halls of Congress,”\textsuperscript{106} but could it actually succeed in recalling the delegation?

\textsuperscript{104} Untitled minutes of meeting with Kinoy, 13 November 1964, Student Nonviolent Coordinating Committee Papers, Appendix A, file 47, microfilm reel #63, frame 749.
\textsuperscript{105} Lawrence Guyot, Re: MFDP Challenge, frame 781.
\textsuperscript{106} Carmichael, \textit{Ready for Revolution}, 417.
5. SPLITTERS

Other groups within the civil rights movement had no doubts about the prospects for the Congressional Challenge; they were sure it would be an embarrassing failure. In fact, leaders from these groups had ridiculed the idea and publicly opposed parts of it. These organizations had been allies of MFDP and had aided in many of its projects, including the Convention Challenge in Atlantic City, but disputes over the resolution of that conflict and the more confrontational tone of MFDP’s brand of activism had dug a rift between the party and some of the more established national civil rights organizations.

Thelwell and fellow MFDP leaders were “persona no gratia, pariahs, nobody [would] talk to [them].”107 That tone pervaded assemblies of the Leadership Conference on Civil Rights, the 88-member coalition whose meetings consisted of high-ranking representatives of the NAACP, ADA, SNCC, the National Council of Churches’ Commission on Religion and Race, and virtually every organization involved in civil rights effort. The Leadership Conference’s chair was typically a representative of the NAACP, who, at the time of the challenge, was Clarence Mitchell; his vice-chair was ADA’s representative, none other than former MFDP counsel Joe Rauh. Mitchell and Rauh were close allies – Thelwell describes them as “cut buddies”108 – so the political math explaining how a body presumptively sympathetic to MFDP concerns could be so indifferent or outright hostile is straightforward: The Leadership Conference was simply reflecting the attitudes of its leadership.

Those attitudes found their clearest public expression in a vehicle that didn’t even bear Rauh’s name, though it did smack of his rather-less-than-humble opinion. Borrowing the name of Americans for Democratic Action National Director Leon Shull, Rauh sent a memorandum to his entire press and movement mailing list, a memorandum giving mixed – but mostly unfavorable – critiques of the challenge. Though they claimed to support the effort to return the elected delegation to Mississippi, Shull and Rauh spent much of the statement attacking the MFDP demand that Congress offer the state’s seats

107 Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
to the contestants, Hamer, Devine, and Jackson Gray. The memo called substituting the Freedom Vote winners “a dangerous precedent,” opening the door for “a right-wing movement…to blast its way into Congress on a wave of emotional hysteria against liberal principles,” adding that, “Legal principles afford protection to democracy; liberals can hardly support their destruction.”

Because of the substitution demand, Shull and Rauh claimed MFDP was making the underlying challenge to the legitimacy of the delegation impossible for either the movement or, especially, Members of Congress to support.

Thelwell was quick to respond; he had to, since, as he pointed out, ADA had also sent its scathing rebuke “to all our Congressional support.” He took issue with some of the legal and procedural concerns the statement had raised, claiming it contained “many serious misrepresentations,” and calling it “more of a political hatchet job, than it was a conscientiously held political or legal position.” In the letter, Thelwell never reaffirmed or recanted the substitution demand, but he did cease making any reference to it in official communications no later than an early January, 1965, progress report, and his position all along had been that he and MFDP had no illusions that seating Hamer, Devine, and Gray was either possible or proper.

Regardless of its veracity, though, the ADA memo had done its damage. Even when MFDP “had…dropped their claims to membership in the House, few…critics of the challenge seemed to notice.” According to Thelwell, at least two Members who had planned to support the forthcoming contest backed out after reading ADA’s criticisms.

ADA never retracted nor apologized for its statement. In fact, “ADA never again supported the Mississippi Freedom Democratic Party,” though MFDP continued to include in its campaign materials ADA’s support for unseating the regular delegation, alongside that of Mitchell’s NAACP. The latter group had given simple endorsement to

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109 Leon Shull, Memo to National Officers, National Board, Chapter Chairmen, 19 December 1964, Student Nonviolent Coordinating Committee papers, Appendix A, file 47, microfilm reel #63, frame 753, 754.
111 Thelwell, Letter to Fellow Workers, frame 770.
112 Thelwell, Letter to Fellow Workers, frame 770.
113 Mississippi Challenge, frame 810.
115 Thelwell, Letter to Fellow Workers, frame 770.
116 Davis, “‘Sisters and brothers all’,” 128.
the basic premise that the delegation was elected illegally, but was skeptical of the challenge and offered no real support.\textsuperscript{117} This disconnect between MFDP and two civil rights groups of considerable influence was a significant impediment, particularly in northern urban areas. There, otherwise liberal Members would be reluctant to support the Challenge because doing so might upset the local ADA or NAACP bodies and risk their support in the next election.

Beyond the personal disdain Rauh and Mitchell held for MFDP, its leaders, and their style, the Leadership Conference’s philosophy preferred methods of advancing civil rights that were more deliberate and less confrontational. Some fell into the same logic I later would: Accomplishing anything in the halls of power in the political climate of 1964 was near impossible; Seating challenges had never been successful moves for anyone; MFDP had neither the funding nor the political and legal experience of groups like NAACP; So, clearly, it was a doomed exercise intended only to anger the opposition and get the attention of moderates.

Many in the Leadership Conference believed there would never even be a challenge, formally. In order for the House to actually take up and resolve the issue, one of its Members would have to rise to challenge the delegation’s right to its seats. Mitchell, Rauh, and others were convinced MFDP would be unable to find a single sympathetic Congressman to raise the Challenge. The White House – still afraid to upset Southern Democrats – and House leaders – wary of establishing a precedent that might one day threaten their own power\textsuperscript{118} – were working quietly to stop the Challenge.\textsuperscript{119} As such, the belief Mitchell and Rauh held was reasonable, even if their behavior was not.

The only friendly ears MFDP rhetoric found in the Leadership Conference at the outset of the Challenge belonged to the representatives of religious groups. Since they were not inherently political entities, these groups – churches, church councils, and church-related social activism organizations – could act strictly out of conscience on the moral components of the Challenge. Episcopal Bishop Paul Moore and Commission on

\textsuperscript{117} Sistrom, “‘Authors of the Liberation’,” 231.
\textsuperscript{118} Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
\textsuperscript{119} Author telephone conversation with Lawrence Guyot, 24 July 2008.
Religion and Race Director Robert W. Spike,\textsuperscript{120} were the first to speak favorably of the efforts of MFDP, and the model of these two men, each with immense credibility within the Leadership Conference as people who took positions solely on principle, not political benefit, helped to mitigate the hostility coming from Rauh and Mitchell.\textsuperscript{121} The island of support these two provided – particularly Spike – would prove invaluable as MFDP worked to bring the Challenge to the House floor and secure for it a fair hearing.

\textsuperscript{120} Martin Luther King, Jr., too, was receptive to the challenge, though his Southern Christian Leadership Conference had its own operations that prevented him from lending his full attentions.

\textsuperscript{121} Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
6. A “CLEVER BIT OF BUSINESS”

On December 3 and 4, 1964, the Mississippi Freedom Democratic Party informed three of the Members of the state’s Congressional delegation that it would be contesting each of their elections to the U.S. House,\textsuperscript{122} and, by implication, challenging the legitimacy of all five. On December 4, the party announced the challenge to the media.\textsuperscript{123} With that announcement, the test began for Kinoy’s strategy, Guyot’s planning, Thelwell’s influence, and MFDP’s commitment. As pledges rolled in from more attorneys interested in helping with depositions, Rita Schwerner,\textsuperscript{124} working in the office of Kunstler, Kunstler and Kinoy, described the attitude of challenge staff: “Clever bit of business I’d say…we’re all excited about it and working our fool heads off and loving it.”\textsuperscript{125}

Three weeks after MFDP formally launched its Challenge, some critical but somewhat surprising support came. Thelwell and his compatriots knew the Challenge could not exist as House business if no Member rose to object to the seating of the delegation. Kinoy had described finding a willing Congressman as an “if,”\textsuperscript{126} and people we might expect to be MFDP allies had already dismissed it as impossible.

On December 23, MFDP received an early Christmas present: Democratic Congressman William Fitts Ryan of New York announced that he would object to their swearing-in and, in another of Kinoy’s ifs, move to adopt a Fairness Resolution that would demand the Mississippi seats stay vacant until the challenge was resolved.\textsuperscript{127} In fact, Ryan had done Kinoy one better, as he brought along public commitments from sixteen other Members to support the Resolution and join in objecting to the oath for the

\textsuperscript{122} Mississippi Challenge – Progress Report and Future Action, 17 January 1965, Student Nonviolent Coordinating Committee Papers, Appendix A, file 47, microfilm reel #63, frame 810.
\textsuperscript{123} Release 1200.1, December, 1965 [sic], Student Nonviolent Coordinating Committee Papers, Appendix A, file 47, microfilm reel #63, frame 872.
\textsuperscript{124} Yes, that Rita Schwerner, widow of civil rights martyr Michael Schwerner.
\textsuperscript{125} Rita Schwerner, Letter to Teresa, 1 February 1965, Student Nonviolent Coordinating Committee Papers, Appendix A, file 44, microfilm reel #63, frame 658.
\textsuperscript{126} Thelwell, Report of Meeting of Nov. 10\textsuperscript{th}, frame 932.
Mississippi delegation. With this “dramatic and news-worthy...opening day”\textsuperscript{128} stand against the delegation, MFDP’s prospects for and confidence in victory grew.

In many ways, Ryan was an ideal inside man for the Challengers. Since his initial election in 1960, he had made clear that he would ignore party pressure and vote his conscience on every issue.\textsuperscript{129} In 1961, he had been one of just two Members of the House to vote against a bill authorizing government interception and search of mail from Communist countries.\textsuperscript{130} He was an avid supporter of the long-unpopular notion of providing federal funds for art, in the form of what would become the National Endowment for the Arts.\textsuperscript{131}

Enhancing his résumé for conscription into MFDP service, Ryan would have been scarcely more welcome in a Mississippi courthouse than were the black voters he was trying to help unshackle. Indeed, he had come to the attention of Mississippi’s activists before the Challenge had been much more than a thought. In the summer of 1964, another of the Civil Rights movement’s seminal moments brought Ryan to the state: the murders of James Chaney, Andrew Goodman, and Michael Schwerner. Goodman and his parents were among Ryan’s constituents in New York’s 20\textsuperscript{th} Congressional District. Two days after the trio had first been reported missing, Ryan had joined Goodman’s parents – along with Schwerner’s father and his Congressman, Ogden Reid – in a meeting with Attorney General Robert Kennedy to press for federal involvement in the investigation.\textsuperscript{132} The first – and only – conviction on a charge directly tied to the deaths of the three came in 2005,\textsuperscript{133} but, given the legal climate of Mississippi in 1964, Ryan might have considered a wait of only 41 years indicative of a successful meeting.

The murders stirred in Ryan a personal interest in seeing Mississippi segregation and repression lifted, regardless of whether or not any of his constituents were involved.

\textsuperscript{128} Thelwell, Report of Meeting of Nov. 10\textsuperscript{th}, frame 932.
\textsuperscript{129} Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
\textsuperscript{130} Vincent Cannato, \textit{The Ungovernable City: John Lindsay and His Struggle to Save New York} (New York: Basic Books, 2001), 8.
\textsuperscript{132} Kinoy, \textit{Rights on Trial}, 248.
After a September, 20, 1964, bombing in McComb, Mississippi, he had not only met with the black victims, he had also promised a federal grand jury to look for links between militant supremacists and local law enforcement.\textsuperscript{134}

In William Fitts Ryan, MFDP leaders knew they had the ear of a Member with a passion for their cause; how productive he could be was another matter. The most pressing concern was that a Member who refused to subjugate his philosophies to those of his party is likely to see his calls for party support go unanswered. This was clearly true of Ryan, and he was a Member with little status or influence within the Democratic Caucus or within the House at-large.\textsuperscript{135} In Congress, power is visible; those who have it spend their time off the floor in plush offices on high-traffic corridors, while those who do not find themselves tucked away and inaccessible. On a visit to Ryan’s office, an MFDP colleague told Thelwell, “Damn, boy, if we were up any higher, they’d have him nesting up here with the pigeons.”\textsuperscript{136}

The other significant trouble with Ryan pledging to stand on the floor of the House and object to the Mississippi delegation’s seating was a more fundamental one: He might need to stand on his chair. Raising any issue on the House floor depends on recognition and acknowledgment from the Speaker, and, with Ryan positioned at the rear of the chamber alongside the other Congressmen-in-title-only, Speaker John McCormack, of Massachusetts, might genuinely overlook him or, since McCormack was a big part of the House leadership that had been trying to stifle the Challenge, at least pretend to do so. At that point, no amount of willingness or enthusiasm on Ryan’s part would matter. Since pyrotechnics are probably unwise indoors, MFDP had only one option available to ensure their Challenge would at least see the floor once; they had already done what their erstwhile compatriots had thought impossible in securing a Congressman willing to raise an objection, but now they needed to exceed it by finding a few more. “If five or six guys get up, then the Speaker’s got to see them.”\textsuperscript{137}

The task of enlisting these co-pioneers fell to Thelwell, who opted for the kind of

\textsuperscript{134} Dittmer, \textit{Local People}, 309.
\textsuperscript{135} Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
\textsuperscript{136} Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
\textsuperscript{137} Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
creative, direct approach that is the province of any political organization that headquarters its campaign efforts in “a little row house on U-street or something, in the heart of the ghetto.”  

Since most of the Congressmen within the structure of House hierarchy and politically indebted to Democratic leadership would be unwilling to even consider supporting the Challenge, Thelwell opted to focus on the legendary wave of new Democrat blood President Johnson had brought back to Washington with him. There were 51 Democratic freshman Members in the 89th Congress, of whom 47 had taken Republican seats (45 of them with less than 56 percent of the vote). Thelwell believed these freshmen would be more pliable, since they were not yet “hardened, cynical Washington politicians;” additionally, those 45 who had narrowly taken seats from the opposition would have been searching for a tool for securing their place as voter advocates and more likely to endorse ambitious projects likely to see media attention.

With his targets identified, Thelwell’s strategy was lobbying at its most literal. When the freshmen gathered at a Washington hotel for an orientation meeting, Thelwell and his team would rent a small room in the same hotel. As the meeting adjourned, they were waiting in the hotel lobby for an opportunity to isolate individual Members – away from the crush of leadership and the protection of the entrenched, veteran staffs the Members did not yet have – and make their case for joining Ryan and opposing the delegation’s seating. After a few of these efforts, MFDP had secured “seven or eight” Members willing to rise with Ryan. They included James M. Hanley of Syracuse, New York, who told Thelwell, “Son, I come from a district which, for a hundred years, has returned a Republican, so I’m sure I’m a one-term Congressman. I think I have two years in Washington; I believe I may as well do some good while I’m here.”

This low-rent, high-intensity targeted rhetoric was not the only political strategy in trying to set the Congressional stage for the Challenge. Guyot, the field staff, and the volunteers who could be spared from fundraising and preparing for the depositions spent

\[^{138}\text{Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.}\]
\[^{139}\text{Thomas P. Murphy, “Political Ethics in a Coattails Congress,” }\text{Ethics} 77, \text{no. 4 (1967): 292.}\]
\[^{140}\text{George C. Edwards, “The Impact of Presidential Coattails on Outcomes of Congressional Elections,” }\text{American Politics Research} 7, \text{iss. 1 (1979): 103.}\]
\[^{141}\text{Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.}\]
\[^{142}\text{Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.}\]
their time trying to muster support from Members’ districts. With traditional allies from the Leadership Conference – especially NAACP and labor unions – still unwilling to endorse the Challenge, MFDP would need to find another way to reach respected opinion leaders in districts across the country. Here, the sympathy and consideration of the religious groups in the Conference, particularly the National Council of Churches, would be invaluable.

“What the National Council of Churches support did gave us access to Congressmen nationwide, because you might have a constituency, a Congressional district, in which you have very few labor unions, so you can’t use labor even if labor were supporting you, and they weren’t…[but] they all had churches, and…most of those churches had social action groups. They could bring certain, if not pressure, certain arguments to Congress people we otherwise couldn’t have gotten to.”143 Those people included many of the progressive Democrats from northern states, along with key Republicans, including Minority Leader and future President Gerald R. Ford, who met with Guyot and CORE co-founder James Farmer “because his bishop called him and said he should do it.”144 Between Thelwell’s groundwork and Guyot’s long-distance contacts, MFDP came to the Capitol confident the Challenge would at least see the floor; the party could hardly have expected what they would see when it did.

On January 4, the battle was fully joined. As Congressman Ryan readied to make his motions before the House, Hamer, Devine, and Jackson Gray tried to assert the precedent they felt gave them rights to the floor for the duration of the contest; the Capitol Hill police did not recognize this precedent, and they informed the trio that they were welcome to observe the proceedings from the gallery.145 What they witnessed from above the House floor was a reminder of both the difficulties ahead of them and the growing support behind them.

As the swearing of oaths began for the 89th Congress, Ryan made good on his promise to object to the Mississippi delegation’s swearing-in.

Mr. Speaker, on my responsibility as a Member-elect of the 89th Congress,

143 Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
144 Author telephone conversation with Lawrence Guyot, 24 July 2008.
I object to the oath being administered to the gentlemen from Mississippi, Mr Abernethy, Mr Whitten, Mr Williams, Mr Walker, and Mr Colmer. I base this upon facts and statements which I consider to be reliable. I also make this objection on behalf of a significant number of colleagues who are now standing with me.¹⁴⁶

As he rose, more than Thelwell’s “seven or eight” rose with him. The Congressional Record and New York Times are both silent on the number, and it varies by anecdotal account, but as many as sixty – an “insurrection, a mini-rebellion”¹⁴⁷ – of the Mississippi delegates’ presumptive colleagues stood, “calling out, ‘We join the gentleman from New York.’”¹⁴⁸ Kinoy best captures the mood of the MFDP members and supporters in the gallery:

We looked at each other startled. We could hardly believe the sight.
Nothing like this had happened on the floor of the House for many years.
You could feel the waves of excitement speed through the packed galleries.

Then all eyes turned toward the Speaker. What would he do?
Would he treat the Challenge seriously or try to brush it aside? The hall was deadly quiet. Then the words come out, “According to the rules of this House, the gentleman from Mississippi will step aside until all other members are sworn in.” There it was. One after another, the five white representatives of the Mississippi power structure were objected to and then remained seated on the side, while every other member stood to be sworn in. It was an unbelievable moment. Everything welled up inside me and I could hardly restrain myself from jumping and cheering. Victoria Gray leaned over in her seat and whispered to me, “We did it. Even if just for this moment, we did it.”¹⁴⁹

That mini-rebellion included Michigan’s freshman Democrat John Conyers, Jr., a

¹⁴⁷ Carmichael, Ready for Revolution, 420.
¹⁴⁸ Kinoy, Rights on Trial, 274.
¹⁴⁹ Kinoy, Rights on Trial, 274.
still-serving Congressman who has become one of the House’s most powerful Members. Conyers had initially told Thelwell he would be unable to rise with Ryan because he feared doing so would threaten the judiciary committee position he had been promised, a position he felt afforded him more opportunity to advance the cause of civil rights than one vote on a likely-doomed seating challenge would offer. Because such a large number – more than the six or so Thelwell had told him to expect – rose with Ryan, Conyers was able to join, and “he was saved the embarrassment of sitting while Ryan and the rest of them rose.” Conyers owed his opportunity to support the challenge to a Republican.

Conyers’ reprieve came from Thomas Curtis of Missouri, whom MFDP’s advisers had described as a powerful, moderate Republican. One of Curtis’ constituents had sent a letter to Thelwell, writing that he had asked Curtis to support the Challenge and had received a response from the Congressman calling it merely a public relations ploy. Spurred by this dismissal, Thelwell wrote to Curtis, insisting that it was a serious effort and accusing Curtis of having spread racist, right-wing propaganda and done the people of Mississippi serious damage. Curtis never responded directly, but, when Ryan rose, “a group of about ten to fifteen…Republicans rose with him,” and Thelwell concludes that Curtis, stirred by both the merits of the Challenge and the opportunity to help swell the insurrection against Democratic House leadership, had organized fellow Republican moderates to join the fight.

Speaker John McCormack opted to have the Mississippi Five stand aside while the rest of the Members took their oaths. That dispensed with, the business came back to Mississippi. Before Ryan could offer his resolution to keep them out of their seats until the contest was formally decided, House Majority Leader Carl Albert of Oklahoma offered a conflicting resolution that mandated they take their oaths and the dispute, per precedent, go to the Subcommittee on Elections. “By recognizing Albert before Ryan…McCormack clearly demonstrated the Democratic Party leadership’s apathy

150 Conyers is the last of those 1964 “coattail” freshmen, and was a founding member of the Congressional Black Caucus.
151 Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
152 Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
towards the challenge.” The Albert resolution did include language that acknowledged the Members of the delegation faced a “serious challenge…that…would be seen through to the end.”

Supporters of the Challenge then replaced the “deadly quiet” with impassioned pleas to keep the Mississippi seats just the way they were at the moment, empty and gathering Congressional dust. James Roosevelt of California (son of President Franklin D. Roosevelt) argued, “We dare not let men pretend to a seat in this honorable House who have been chosen by a closed vote in a closed society…We must say to [the Mississippi delegation] that they cannot run a society like Soviet Russia and then claim seats in the American Congress; that they cannot win ‘elections’ from a system based on murder and then claim the right to govern free men.”

Ryan and his comrades demanded and won a roll-call vote on the Albert resolution – a victory in itself that would force Members to vote on the record, rather than simply join an unnerved “Aye” in a voice vote – and, though they lost, they did tally 149 votes. In that vote, most states outside the south – and even some within it, like Texas – saw their delegations split, and both parties produced substantial minorities voting against seating the Mississippians. This led Reverend Ed King to conclude that, despite its ambivalence or outright hostility, leadership had left Members free to vote their consciences. Heavy-handedly manipulating a vote on so divisive a moral issue would have been a political miscalculation that would only have served to strengthen the case that MFDP and black voters had been mistreated. With the question of the Mississippi seats decided for a time, the Ryan resolution was moot and never received a floor vote; nonetheless, the 149 votes of support he and MFDP had won were a clear sign that there were Members receptive to the appeal and, if the contestants could produce

153 Davis, “‘Sisters and brothers all’,” 133.
156 List of Congressmen, January 1964, Student Nonviolent Coordinating Committee papers, Appendix A, file 47, microfilm reel 63, frame 731-737.
157 List of Congressmen, frame 736.
158 Author e-mail correspondence with Ed King, 21 March 2008.
enough evidence, there might be a real opportunity for success.

“Of course we lost, and they were then sworn, but we’d kept them out for almost two hours and their seating would be ‘provisional’ while the challenge ran its course in the House.” Moreover, in a bit of symbolic rhetoric, the Mississippi delegation stood aside while the House began its business, then took their oaths separately from their peers, and last; the state and its racial tyranny, though cautiously admitted, were not quite welcome in the nation’s House.

To everyone outside MFDP and its group of genuine allies, the cadre of co-objectors who rose with Ryan and the substantial number who voted to boot the regular Mississippians were a stunning turn. “It’s hard to say who was the more shocked; the Speaker, the Washington liberal establishment, or the Mississippi power structure.”

The white regulars had clearly hoped the House would ignore and quickly dismiss the Challenge, and, before January 4, had considered any response to it as either unnecessary or an undeserved recognition of its legitimacy. “William Coleman…was the representative for the Congressional delegation from Mississippi. He didn’t sign any papers or anything till after the 149 votes; then he signed the papers and brought them over to Kinoy.” At least the delegation, though, seemed prepared for what it thought was an unlikely result, since its representatives quickly assembled the team and strategy they would need to argue against it; that much was not true of the “Washington liberal establishment.”

After the vote, Thelwell “was rushing out of the gallery, as you can imagine, exhilarated and excited as a mother-fucker, and who should I run into but [Joe] Rauh and [Clarence] Mitchell.” He told them the result of the vote, and, frustrated, Rauh suggested they “go ask somebody intelligent.” They did, “and they were astounded, because they thought, without their support, and the full support of the UAW, AFL-CIO, Americans for Democratic Action, the NAACP, and the leadership of the Leadership


And, truth be told, even to most of them, though to a lesser degree.


Author telephone conversation with Lawrence Guyot, 24 July 2008.

United Auto-Workers

American Federation of Labor – Congress of Industrial Organizations
Conference for Civil Rights, we wouldn’t get but two or three votes, and they were
telling everyone it was irresponsible and a publicity stunt. So they were crestfallen,“
when the people they claimed to represent had just won, if not a victory, at least an
unprecedented acknowledgment of legitimacy in the hub of American power.165

And, those people – though Thelwell, Guyot, Kinoy, Kunstler, and the rest of the
MFDP staff and supporters who had contributed to launching the Challenge had led the
way – had helped to earn this acknowledgment themselves in legendary fashion. Guyot
recalls that he and Thelwell had discussed what to do with the hundreds of working-class,
black Mississippians who had come to support the Challenge on its only guaranteed day
in the chamber. Before the day of the vote, they had joined the lobbying team, scouring
the halls of House office buildings to stir support, but Congressional rules prohibited any
lobbying or distribution of literature in the Capitol itself or on the underground tunnel
route to it from the offices. Their solution: “What if we just ask them to stand there?”166

That “what if” became representational rhetoric: two lines of grizzled, weary but
passionate black faces, spaced every ten feet along the sides of the tunnel, giving literal
face to the disenfranchised and powerless 45 percent of the state of Mississippi.

The people…stood still as statues, dignified, erect, utterly silent.
The double column of black people must have lined over sixty yards of the
 tunnel. On both sides. It was pure theater, bro.

The congressmen had come by in little groups, each group…deep
in conversation. They’d turn the corner, and for a moment the sight of our
people would stop them dead in their tracks. We didn’t move or say a
mumbling word. Then the group would walk between the two rows, but
now suddenly very silent. It’s hard to describe the power of that moment. I
looked into the legislators’ faces as they passed. Most could not take their
eyes off those careworn, tired black faces. Some offered a timid greeting,
a smile, or tentative wave. Others flushed and looked down. All seemed
startled. Some clearly nervous, even afraid. All seemed deeply affected in

165 Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
166 Author telephone conversation with Lawrence Guyot, 24 July 2008.
some way. Our people just stood there and looked at them.¹⁶⁷

“There were quite a few Congressmen who said, ‘Well, I hadn’t made up my
mind or I had made up my mind to [abstain] or I had made up my mind to vote the other
way. But, when I saw those people, I couldn’t do that anymore.”¹⁶⁸ Voting to ignore the
political repression of hundreds of thousands of anonymous numbers on a Census report
might not be difficult; for a person of any conscience, voting to silence, by force of law,
the woman whose eyes you looked into, who you knew understood precisely what was
happening that day and precisely what your vote, either way, could mean in her life, is a
far sterner test. “That grave, mute presence became the most effective and eloquent of
testimonies.”¹⁶⁹

¹⁶⁷ Carmichael, Ready for Revolution, 420.
¹⁶⁸ Author telephone conversation with Lawrence Guyot, 24 July 2008.
¹⁶⁹ Carmichael, Ready for Revolution, 420.
7. MAKING A “FARCE OF CONGRESS”

The Fourth Plantation\textsuperscript{170} was lopsidedly scathing in its treatment of the early days of the Challenge. As the regular delegation and its all-star legal team had no doubt anticipated, the bulk of the coverage was friendly to their cause, especially in papers in and around Mississippi. William Chaze, writing in Jackson, Mississippi’s, \textit{Clarion-Ledger}, was particularly critical, penning columns with headlines like “Freedom Democrats Trying to Make Farce of Congress.”\textsuperscript{171} Even in a sidebar news piece on the oddity of MFDP effectively buying the coffee Sovereignty Commission Director Erle Johnston drank during his deposition, Chaze’s tone was dismissive toward MFDP and flattering toward the contestees.\textsuperscript{172}

Chaze, though perhaps the most consistently open in his disdain for the challenge, was not alone. His \textit{Clarion-Ledger} colleague, Wallace Dabbs, wrote the news article reporting the January vote on the Albert resolution, and his words scarcely hid what seems to have been a Cheshire-worthy grin. After explaining the vote, supplying quotes of relief and satisfaction from the delegation, and reporting praise for House leadership, he said of MFDP, “And typically, a mass meeting was called…by the rump group to make more charges…and complain.”\textsuperscript{173}

The delegation was taking the challenge seriously – a similarly gentle article from the \textit{New Orleans Times-Picayune} reported as much – but believed the best strategy was to guide public opinion toward discrediting the Challenge on its face and then file a motion with the committee to dismiss on the grounds that the contestants had no standing to contest the seats.\textsuperscript{174} Guyot noted, “Such a motion…leaves the central issue of Negro disenfranchisement untouched; the contestees have tacitly acknowledged the

\begin{footnotes}
\item[170] Edmund Burke’s Fourth Estate, adapted for Mississippi Delta use.
\item[174] Lawrence Guyot, Letter to Members of the House of Representatives, n.d., Student Nonviolent Coordinating Committee papers, Appendix A, file 47, microfilm reel #63, frame 867.
\end{footnotes}
indefensibility of their position.”

Recognizing the value of public support for the delegation and the policies they represented, Memphis Commercial Appeal columnist Kenneth Toler lambasted Mississippians for their “apathy.” He also asserted the MFDP sought the repeal of statutes and greater federal involvement, rather than new elections for the seats in question.

Not all writers were indifferent or hostile toward MFDP and the challenge; Drew Pearson was critical of the contestees’ delay tactics and even more so of Speaker McCormack’s “secret deal” with the Mississippi delegation to frustrate the challenge at every turn. Fellow Washington Post scribe Susanna McBee went so far as to write an article giving Fannie Lou Hamer the opportunity to claim the public and other civil rights groups had misunderstood the challenge, and, in fact, she and her fellow contestants were “not asking to be seated now in lieu of the five Congressmen.” Additionally, a few articles appeared – namely in the San Francisco Chronicle and New York Times – that were complimentary toward the attorneys who had volunteered.

As might be expected, the “black press” saw the Challenge more favorably than most of the “white press” did. Even here, though, the extent of coverage is surprisingly limited. Two of the nation’s most prominent black newspapers, Cleveland’s Call & Post and the New York Amsterdam News were largely silent.

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175 Guyout, Letter to Members, frame 867.
176 Toler, “Apathy Chills Five Representatives,” frame 711.
182 I am not convinced the unified journalistic voice this term suggests ever existed, so its use here is primarily for the sake of convenience.
183 See above.
The Call & Post had a smattering of articles at the January beginning of the challenge, one early May status update, and a report on its resolution in September that amounted to scarcely more than a post-game write-up of an unimportant sporting event. Even that piece’s most remarkable paragraph – “‘I’m not crying for myself today, but I’m crying for America today,’ [Fannie Lou Hamer] said. ‘I cry that the Constitution of the United States, written down on paper, applies only to white people.’” – was almost a footnote, as the last paragraph of the article, on page two, after a jump from the first-page headline.

The New York Amsterdam News only marginally acknowledged the existence of the Challenge. Its pages bore all of three articles on the effort. Oddly, one of these ran before William Fitts Ryan objected on his responsibility; an “advancer,” in press parlance, is usually an hallmark of a story a writer or publication views as particularly important and is generally a sign that its coverage will be thorough. This was not the case, as only a column from Roy Wilkins, NAACP Executive Director, at the outset of the Challenge and another advancer reporting a September procedural move from Congressman Ryan ever followed. Wilkins, as might be expected, given his position, nominally endorsed the Challenge, but repeated the misguided refrain against the notion of the Freedom Vote winners taking the state’s seats. “It is to be hoped that no proposal to seat someone else, never duly elected and representing a party never legally registered, will prevent the Congress itself from voting to bar the Mississippi Congressmen.”

185 “Mississippi Freedom Democratic Party Continues Ouster Campaign,” The Call & Post (Cleveland, OH), 8 May 1965, 12B.
186 “Freedom Democrats Lose Bid to Unseat 5 House Democrats,” The Call & Post (Cleveland, OH), 25 September, 1965, 1A.
188 A Representative from New York City, and at least some of whose constituents ostensibly read the Amsterdam, making the paper’s near silence all the more baffling.
The occasional exception to this ambivalence from the black press was Chicago’s *Daily Defender*. It ran both an article\(^{192}\) and an editorial\(^{193}\) in advance of Ryan’s objection. The latter, from the mind of editor and publisher John Sengstacke, evaluated the situation and the stakes well:

> If this challenge is upheld and the seating of the white Mississippians denied, it would be a spectacular victory not only for the Mississippi Freedom Democratic Party, but also the whole civil rights movement and the democratic process itself.

Though the prospects for such a victory are remote, there is good basis for feeling that the aftermath of the contest will create a healthier political climate even in the state of Mississippi.\(^{194}\)

For its first week, the Challenge was a *Defender* fixture, with no fewer than seven mentions,\(^{195}\) including front page banner headlines on January 4, 5, and 12. The January 4 coverage – necessarily produced before the Challenge was even official – a striking front page photograph of Devine, Hamer, and Gray standing in front of the Capitol, above the caption, “We’re Here Now, They Must Go.” The front page of the January 5 *Defender* devoted half of its space to two photographs of what is likely the signature public memory of the Challenge, the moment at which self-described American Nazi Robert Lloyd barged into the House Chamber in black-face, shouting “Ize de Mississippi Delegation!” before Capitol Police forcibly removed him. Two days later, Rose Marie Brooks would wonder, as many did, “how a man dressed in black leotards, a top hat, red handkerchief, with a black mask could slip by a closely-guarded entrance into the House chambers!,” particularly when the three contestants themselves had peaceably sought and been denied admission to the floor moments earlier.

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\(^{192}\) “Congressional Seats Challenged by M.F.D.P.,” *Daily Defender* (Chicago, IL), 29 December 1964, 8.


When Sengstacke again used his editorial pen, his message was less an adulation of the MFDP’s courage than a scathing rebuke of what he saw as Congress’ lack of it. He opened with, “The seating of the Mississippi’s [sic] Representatives-elect, despite incontrovertible evidence of their illegal assumption to the legislative office is a shocking demonstration of Congressional irresponsibility,” and sustained that fervor throughout, calling on the United States Supreme Court to intervene as “Congress [had] failed too many times to deal squarely and fairly with the matter not to be guilty of the charge of irresponsibility.”

This enthusiasm waned quickly, though. A back pages article touting an MFDP “Free Elections Confab” in late April was the only further mention of the Challenge prior to September. MFDP did appear twice more, but with no reference to the Challenge: A May story announced a lawsuit MFDP had filed demanding more time for black voters to register, and a March report of the claims by Prentiss Walker that MFDP voter registration efforts had brought “beatnik, pseudo-intellectual teen-age girls…overly eager for affection and attention” to Mississippi. In the interim, the Defender had discussed an early Voting Rights Act trial balloon and the hiring of the first black pages in the House and Senate, but found no need to detail the progress of depositions, even those of the hostile witnesses.

Then, after months of silence, Sengstacke’s Defender picked the thread of the Challenge up again in September with the same eagerness with which its coverage had begun the prior December. Eight stories dealt with the waning days of the bid.

199 “Mississippi Area Turmoil Over Election,” Daily Defender (Chicago, IL), 3 May 1965, 3.
200 “Solon Raps Vote Drive in Miss.,” Daily Defender (Chicago, IL), 9 March 1965, 7.
201 One of the members of the Mississippi Delegation MFDP was trying to unseat, making for a natural segue to the Challenge that the Defender left unused.
202 “Solon Raps Vote Drive in Miss.,” paras. 1 and 6.
Rosemarie Tyler Brooks, in her write-up declaring “Moral Victory” even before formal victory was officially excluded, quoted an aide to a Congressman who had voted to send the delegation home in January to tell her readers “it is impossible for them to win [because] ‘it would shake up the entire system. If these guys can be challenged, so can many others.’”

Authoring the final – again scathing – words on the subject was Sengstacke:

The appeal was made on the provable and unchallenged contention that there was almost total Negro exclusion from the political and electoral processes in Mississippi in the last election.

…

The conclusion is therefore inescapable that a gross infraction of the electoral laws had been committed and that the Mississippi delegation had no legal claims to its seats in Congress.

The issue raised by the Mississippi Freedom Democratic Party is one that strikes at the very core of our electoral system. It proves beyond reasonable doubt the depth of the insight and wisdom in the Supreme Court’s controversial ruling of ‘one man, one vote.’ If this legalism is ever carried to its logical conclusion, Southern states other than Mississippi will be found guilty of violating electoral laws and of having more representatives in Congress than they are entitled to have.

The swift and compelling movement of history may hasten that day. The Freedom Party’s courageous challenged was not wasted on desert air. It may have awakened the conscience of the unsuspecting electorate to the hocus-pocus of corrupt and unconscionable election officials.

With such passion from its editor, then, why did the Defender join the Call & Post and the Amsterdam in ignoring the Challenge for most of its days? The apparent fault, as always, is compound, but it also reasonable in the world of political rhetoric and


its journalistic treatment.

To some degree, the Challenge was undoubtedly the victim of the same impulse that routinely sends stories of lectures and legislation to the back or out of the newspaper, the drive to report the stories paying readers most want to read. Outside of its initial and final chapters, the MFDP Challenge contained little that was ready-made for quick consumption alongside the morning coffee. “More Depositions Taken” and “Still Not Much Movement for Challenge” are yawners as headlines, particularly when they are repeated for eight months. Worsening this problem was that the Call & Post and Amsterdam were weeklies with short publication deadlines; by the time they could print anything about a Challenge development, it was already “old news,” and only worthy of attention if little else of import had happened.

Even if it had been a little spicier, the Challenge had an extraordinary set of events to compete with for public attention. Barely two weeks before Congressman Ryan announced his support, Sam Cooke, a pioneer in soul music, died in his early thirties, and the deaths of Nat King Cole and Malcolm X also stole headlines during the life of the Challenge. Much as it has in the historical scholarship on the Civil Rights movement, the Challenge shrank behind Selma and the Voting Rights Act, with riots in Los Angeles and mounting tensions in Vietnam taking their own share of the papers.

Another – but related – reason for the paucity of coverage seems rooted in a communication theory that had yet to be born. If the mass media are the “agenda-setters” for the public, we can reason that lack of coverage and a lack of public interest continually reinforced each other. But, that lack of coverage must, it seems, have come from somewhere. If the public can have agenda-setters, journalists can, too. From my own experiences in the broadcast media, I can attest to the truth of this. If “important people” were not talking about an issue, I was not expected – and in many cases not allowed – to provide it any coverage.

It seems reasonable that same dynamic existed in the newsrooms of the black press in 1965. In the case of the MFDP Congressional Challenge, the “important people”

of the Civil Rights Movement were fairly quiet. Martin Luther King, Jr., expressed support throughout, but provided little aid. NAACP and ADA were, respectively, skeptically indifferent and openly hostile to the undertaking. Because figures like King, Mitchell, and Wilkins inherently drove the coverage of the movement, their inattention to the Challenge meant the coverage would likely be equally inattentive, particularly for the *Amsterdam*, which shared a city with NAACP headquarters.

The relatively small combined readership of the black press and the friendly white press was not enough to match the audiences to the journalistic voices opposing the challenge. Combined with the lack of support from other prominent groups within the movement this distinct minority of friendly opinion within the national debate likely sealed the fate of the challenge. Regardless of the contents of MFDP’s depositions, most Members, gauging the political winds as elected officials are wont to do, simply could not have felt enough support for the “radicals” position to justify taking the political risk of voting to quash a state-certified election, especially if the Subcommittee on Elections were to give the justification for their playing it safe that precedent suggested it would.
8. A TIME TO LISTEN

With the vote on the Albert resolution – whose failure would have kept the regular delegation out of Congress pending the disposition of the Challenge and whose passage still left that delegation’s status genuinely imperiled – began the task of collecting depositions from both disenfranchised black voters and agents of the steel-hard system of segregation. Despite difficulties in raising money for the expenses of traveling the state to gather testimony, the deposition drive mustered its 100-plus attorneys. Challenge staff were reminded that the “whole challenge now rests on how well we do on these depositions.”

From those attorneys taking depositions from disenfranchised blacks, leadership asked for three varieties of testimony. That from “people subjected to violence or threat,” from “people who have attempted to register but have been given some sort of run-around which made registration impossible,” and from “people who have suffered economic reprisals for their activities in voter registration.” The lawyers taking on “the other side” were to press them on membership in the segregationist White Citizens Councils or other evidence that suggested they would discriminate against black voters.

As the first group of attorneys crossed the state in search of tales of repression that were all too plentiful, the latter embarked on the more arduous task of putting the opposition under oath and on record. Challenge leadership was hardly bashful about using its federal subpoena power; it demanded appearances from Governor Paul Johnson, former Governor Ross Barnett, Secretary of State Heber Ladner, Director of Public Safety Colonel T.B. Birdsong, and State Sovereignty Commission Director Earl Johnston. Faced with the threat of fines or contempt charges, all but Governor Johnson

209 Davis, “‘Sisters and brothers all’,” 137.
210 Re MFDP challenge, frame 900.
211 Re MFDP challenge, frame 898.
212 Re MFDP challenge, frame 903.
213 Re MFDP challenge, frame 899.
214 William Miller, Writ of Subpoena To: Earl Johnston, 15 January 1965, Student Nonviolent Coordinating Committee papers, Appendix A, file 47, microfilm reel #63, frames 822, 793, 797, 798, and 800, respectively.
complied with the subpoenas;\textsuperscript{215} he claimed his position allowed him immunity from civil process.\textsuperscript{216}

The business of serving the subpoenas was an ordeal that must have simultaneously reminded MFDP of the difficulties they faced and given them a chuckle at the opportunity for role reversal the statutory subpoena power gave them. The process servers delivering the decrees found uncooperative maids and spouses, slammed doors, and even threats of calls to the police if they did not desist.\textsuperscript{217}

Another opportunity for chain-yanking – and legitimate advancement of the cause of the Challenge – was in the venues for the depositions, and MFDP leaders would not waste that opportunity. Although the opposition had graciously offered use of county courthouses – places where those running and supporting the Challenge ordinarily would not have been welcome – for their testimony, the MFDP Executive Committee hit upon a strategy that would simultaneously be humiliating for the power structure and both uplifting and convenient for the disenfranchised. Wherever possible, they held the depositions in federal buildings – symbols of the eroding of the power the establishment held and the fairer days to come – or, better still, black churches.\textsuperscript{218}

It helped the volume and candor of the depositions from prospective or registered black voters to remove their testimonies from the buildings that symbolized their oppression. Interviewing a subject on his own turf is common wisdom in the journalism business, as it tends to yield a more relaxed, disclosive interviewee, and it is easy to imagine that this principle would apply only more strongly in so deeply emotional, personal, and dangerous a situation as those who had tried to register would face in testifying for Challenge lawyers and their opposition.

The more remarkable reality of this strategy, though, was the symbolism in the

\textsuperscript{215} The novelty of this situation cannot be overstated; a collection of white authorities who had used state law as a means to force compliance with repressive laws and cultures from black residents now faced those same black residents using federal law to force compliance with an endeavor built to show those means and ends to the entire country, potentially stripping those authorities of their power in the process.

\textsuperscript{216} In the Matter of the Election Contest Against Representatives…from the State of Mississippi, 19 January 1964, Student Nonviolent Coordinating Committee papers, Appendix A, file 47, microfilm reel #63, frame 826.


\textsuperscript{218} Author telephone conversation with Ekwueme Michael Thelwell, 21 August 2008.
days that featured testimony from Barnett, Ladner, Johnston, and their delegates. “Here you have this totally unprecedented arrangement where the white supremacist establishment of the state sees it necessary to cooperate with this insurgent organization of their blacks.” Guyot describes the empowerment the deposition provision offered: “We issued federal subpoenas to anybody we wanted, and we brought them into black churches, and we announced those meetings, and we had local civil rights heroes put them through the questioning period.”

The headliners’ depositions produced more small victories for the challenge, victories MFDP and its allies quickly touted. Ladner took perhaps the wisest approach, refusing to answer questions about refusing Hamer, Devine, and Jackson Gray the ballot and declining to explain a section of the state constitution on command as the state required those attempting to register to do. His deposition is a mass of refusals, declinations, objections, and insistences that statute spoke to the question the Challenge attorneys had raised and it would be unnecessary for Ladner to expound. Ladner was aided in that his counsel during the depositions was Joe Patterson, Mississippi’s sitting Attorney General, and counsel for the white delegation – B.B. McClendon for Republican Prentiss Walker, former Governor and Attorney General J.P. Coleman for the four Democrats – were sitting alongside, interjecting frequently. Coleman, especially, objected with every three or four questions, complaining about everything available to him, including the presence of young black residents in the gallery during the depositions.

Attorney General Joe Patterson, ostensibly the best-suited to defend himself under examination and protect his side’s case, instead came closest to stepping in it the most ingloriously. He admitted he “[hadn’t] done a thing” to protect the rights of blacks to

\[\text{219} \text{ Author telephone conversation with Ekwueme Michael Thelwell, 21 August 2008.} \]
\[\text{220} \text{ Author telephone conversation with Lawrence Guyot, 24 July 2008.} \]
\[\text{221} \text{ COFO Radio News, 2 February 1965, Student Nonviolent Coordinating Committee papers, Appendix A, file 47, microfilm reel #63, frame 831.} \]
\[\text{222} \text{ In this case, the A-listers, Kunstler, Edward Stern, and Morton Stavis, with Kunstler asking the questions.} \]
vote, and contradicted his own prior testimony by admitting his membership in the segregationist, ostensibly non-governmental White Citizens Council (WCC). MFDP attorneys then took the opportunity to illustrate why Patterson might have wanted to disavow that association, providing unflattering documents and “anti-Negro statements” from the WCC. They also read into the record statements of praise for WCC activities from four of the Congressmen whose election MFDP was contesting. He routinely described providing black residents the opportunities to register and vote as a “matter of law,” but insisted his office, that of the chief legal official in the state, had no authority or duty for enforcing compliance with that law.

Two rather minor opposition members’ depositions provide little more than some amused astonishment at how popular the phrase “no recollections” and variations on that theme were even in the mid-1960s, those of segregationist broadcast producer and newspaper editor Richard Morpheu and Walthall County registrar Joe Stinson. Stinson offered added humor in modeling the “what your definition of is is” approach to testimony before it even debuted; he spent a paragraph differentiating between the noun and “transitive verb” versions of the word “branch.”

Another relatively small player, Forrest County clerk and registrar Theron Lynd, was not content to simply not recall any information pertinent to the Challenge investigation; he insisted he did not know any of it in the first place. In addition to not knowing, even in vague terms, the proportion of his county’s voters who were black, he also could not share with the deposition team the total number of voters in Forrest County, a curious claim for the county registrar. James Lamberton led the questioning for the Challenge contestants, and, even in proceedings marked by courteous and gentlemanly behavior to the absurd, he could not restrain himself from remarking that “the examination of Mr. Lynd is complicated by the fact that he is in virtual ignorance of

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224 COFO Radio News, 831.
225 COFO Radio News, 831.
228 “Papers Omitted: Part II,” 1567-1575.
229 “Papers Omitted: Part II,” 1571.
anything relating to his office."\(^{230}\)

If the number, character, and strenuousness of objections are measure of the guilt of a defendant (in this case, a contestee), then the deposition of Erle Johnston,\(^{231}\) on its own, should have sent the white delegation back to Mississippi. Johnston was director of the State Sovereignty Commission, a body charged to “do and perform any and all things deemed necessary and proper to protect the sovereignty of Mississippi and her sister states from encroachment by the Federal government,”\(^{232}\) including the sovereignty to restrict voting rights. Johnston, apparently related to Lynd, claimed ignorance several times, but then he and his counsel, Attorney General Patterson, led the deposition team on an curious but fruitless crumb trail: When Stern asked about Johnston’s interpretation of the meaning of “any and all things,” Patterson objected and claimed, as an employee of the Commission, Johnston’s personal opinion was irrelevant and only Commission action should be part of the record; when Stern asked about Commission action, Patterson – with help from former Governor Coleman – objected and claimed the Commission’s meeting minutes were the only means by which it could act, so Stern should simply introduce the minutes, rather than asking questions of Johnston, and anyway none of it would be relevant to the contest; when Stern asked if Johnston or his attorney had brought the meeting minutes as part of the array of documents required by his subpoena, Patterson dismissed that demand as a “vast fishing expedition.”

Across these testimonies, Coleman tried to distance his clients, the four Democratic contestees, from the repression of Mississippi. He insisted that, if any discriminatory actions or structures existed, which they certainly did not, the Congressmen, who were not employees or administrators of the state, had no knowledge of and no participation in them. There was, he observed, “No allegation anywhere that anything done by [the Mississippi] election commission was in confederation with the Members of Congress,” a phrase he used in virtually every reference to his clients to both sustain his argument of separation and suggest the Challenge was moot and his clients were Congressmen without question.

\(^{231}\) “Papers Omitted: Part III,” 2444-2473.
After hours of politely enduring this jab that Coleman must have thought devilishly clever and subtle, Kunstler broke from his questioning to engage the matter:

I would just like the record to indicate, in answer to Governor Coleman, that if these elections which – at which the so-called Congressmen were elected, in quotes, were in fact illegal and invalid and unconstitutional, they are not, according to the Constitution, Members of Congress because they were not elected, quote by the people end quote, as is required by article I, section 2, and that their knowledge or lack of knowledge of what went on in the state of Mississippi is wholly immaterial. The Constitution does not say after the words “elected by the people” unless the Congressman concerned did not know he was not elected by the people. And I would like the record to quite clearly indicate that knowledge or lack of the knowledge on the part of the five Congressmen is irrelevant to this proceeding.

Coleman quickly realized a resumption of question-and-evasion was immeasurably preferable to giving Kunstler more opportunity to make his argument directly in the record that Congress would use to decide the Challenge, so his response was a nimble side-step: “We recognize that as a contention of counsel, but the decision on that will be for the House to make.”

The bulk of the depositions, though, came from the people Coleman, Johnston, Lynd, and their compatriots wanted to keep out of the voting booth. Summarizing and compiling the roughly 3,000 pages of testimony from voting rights workers, movement organizers, clergy, voters, denied voters, and people simply born the wrong color in the wrong state at the wrong time would be a substantial project unto itself. In lieu of that, I present a few “highlights.”

Farmer Joe Mitchell’s only offense was trying to register to vote. His attempts were delayed and denied, but his admonishment came swiftly: A standing credit account he had held and kept current at a local service station was revoked. His was a relatively

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234 “Papers Omitted.”
pleasant experience.

Mississippi Highway Patrolman R.E. Moody pulled over and arrested student organizer Don Hamer (no apparent relation), ostensibly because the lights illuminating his license plate were too bright, but did admit he intended to arrest and jail anyone involved in voter registration whenever he could, regardless of whether or not a blinding glare was emanating from their vehicle tags.

Game Warden Howard Mooney told Reverend John Beard a local organizer, Henry Reaves, was in danger of being “bumped off the map”\(^\text{235}\) if he continued in his activities.

Charles Hill saw the church he attended burned hours after it hosted an address from Fannie Lou Hamer. In fairness to Mississippi law enforcement, though, a sheriff’s deputy did recommend to fellow congregation member Laura May Strong that churches that hosted the proper events – ostensibly any but organizing blacks to participate in politics – were less fire prone.

Vera Piggee was arrested and jailed on a charge of disturbing the peace for recklessly assaulting a man’s fist with her face. Later, when bullets ripped into her house, the investigating officer suggested it was the work of an unstable black man who had been roaming the neighborhood and shooting randomly.

MFDP founder Aaron Henry told those at his deposition that Clarksdale County sheriff’s deputies had arrested at least half a dozen fellow activists for loitering, a difficult arrest, no doubt, since the six had been in moving vehicles at the time. He also shared tales of police officers offering a young black man money to assault white voting rights workers, in hopes of creating a rift that would stifle the movement, and of the U.S. Justice Department calling him at his home to keep him current on the most recent meetings held to discuss his assassination.

Among the more startling tales is that of Odessa Brooks. In late July, 1965, she and thirty-eight other women were arrested as they walked \textit{en masse} to attempt to register. Their offense was “parading without a permit.”\(^\text{236}\) All of them were crammed

\(^{235}\) “Papers Omitted, Part I,” 291.
\(^{236}\) “Papers Omitted, Part I,” 461.
into a single, leaky cell with six bunks. Jail officers kept the heat on in the cell, allowed light in only when they opened one of its doors, fed the women a spoon of grits and a dry piece of bread twice a day, and allowed them to leave the cell only to cut roadside grass with scythes. They also made a point of sharing with their prisoners their observations that “nigger women [have] good pussies.”

The rest of the testimony contained similar themes: economic and social reprisal for registering or organizing; violence and intimidation; and law enforcement abusing its authority and abandoning its responsibility. Any good faith reading of the record MFDP brought back to Washington would have compelled at least some doubts about the propriety of the regular delegation’s election, particularly since there was no evidentiary record to oppose it. The contestees opted to file briefs in lieu of taking any testimony, as their argument rested on the Congressional precedent that, since they were not on the general election ballot, Hamer, Devine, and Gray had no standing to contest the seats.

The strongest evidence the opposition gave MFDP during the deposition, though, appears nowhere in the record. In fact, the evidence was an absence: While MFDP and its attorneys were scouring the state for tales of violence and repression, the Mississippi establishment had issued orders that there was to be no racial violence of any kind, and the people who had been carrying out the street-level agenda put their toys away.

“They didn’t want us to be able to build a record that said, ‘Look, while you’re considering the Challenge and while we’re taking depositions, five people were shot trying to register to vote,’ so they turned it off throughout the state.” This strategic and systematic restraint seems clear evidence that “they could have stopped it whenever they wanted to.”

Their counsel was confident the Members’ popularity among their peers would

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239 Curiously, they did not mention that the system MFDP was alleging had made the elections unconstitutional was also the system that had denied the trio any opportunity to appear on the ballot.
241 Author telephone conversation with Lawrence Guyot, 24 July 2008.
242 Author telephone conversation with Ekwueme Michael Thelwell, 20 August 2008.
keep them in the House. McClendon noted, in a veiled invocation of the fear of losing Southern support that had kept Lyndon Johnson from aiding either the Convention or the Congressional Challenge, “Popularity…is always involved in a thing of this sort. It is involved whether you are voting on a congressional issue, the president of a civic club, or the President.” Kunstler and Kinoy waived the contestants’ right to rebuttal, seeing nothing to rebut, and the matter was the House’s to decide.

243 Chaze, “No Deposition Hearings Likely.”

This took a while. Though a formal filibuster was impossible,245 the tactic leadership and the regular delegation employed was the same: Drag the matter out long enough and the opposition, morally or legally right or not, might simply run out of energy. In large part because of the indifference and hollow support of its progressive peers, money was difficult for the MFDP to continue to summon; energy was not. The party had the righteous passion of Guyot and Thelwell, the tireless cause-lawyer spirit of Kunstler and Kinoy, and, most important for this stage of the effort, the trademark perseverance of the “ruddy, freckle-faced man with a leprechaun’s smile and auburn hair,”246 Congressman Ryan.

The most blatant of the stalling maneuvers came from the office of the Clerk of the House, Ralph Roberts. Though compiling, processing, cataloging, and introducing the depositions into the record was undoubtedly a daunting task with 1965 document technology, the seventy-three days Roberts spent deliberating on whether or not the testimony even needed printing seems excessive and designed solely to delay, particularly in light of the catalyst that finally made up Roberts’ mind: Victoria Gray led a thirteen member sit-in in the Clerk’s office, told the press what they were doing and why, and, “by the end of the day they had achieved what all our scholarly legal memos had failed to obtain for over a month. The Clerk rapidly retreated, and the depositions were ordered sent to the printer.”247

Even with the briefs and depositions printed and the whole mess sent to the Subcommittee on Elections, the delays continued. Weeks passed with the subcommittee either not meeting or, when it did gather, omitting the Challenge from its agenda. As he had done eight months prior, Ryan forced the issue. He released a statement,248 with the

244 Author telephone conversation with Lawrence Guyot, 24 July 2008.
245 As this was a contest over the seating rights of Mississippi’s House delegation, it took place entirely within the House; the Senate was uninvolved, though presumably not uninterested.
247 Kinoy, Rights on Trial, 286.
backing of thirty-one fellow Congressmen and Congresswomen, chastising the Clerk, the subcommittee, and House leadership for the “great delay.” He made his case for denial of Mississippi’s sanctioned delegation – “Never before has any issue been so thoroughly documented prior to action by the House” – but, as he was “determined that the House [at least] have the opportunity to confront this vital issue during this session of Congress,” Ryan promised that, if another month passed with no action from the subcommittee, he would introduce a floor motion to withdraw its reference and bring the Challenge back to the full House. The prospects for such a motion passing were likely not very good, but leadership was not in the mood to face another “mini-rebellion,” and the Subcommittee on Elections, “totally controlled by southern Democrats,” finally convened its Mississippi Challenge hearing on September 13.

The tone – and, to any but the most naïve of optimists, the outcome – of the hearing was clear from its beginning; indeed, formally, it was not a hearing on the Challenge but a hearing on the white delegation’s motion to dismiss the Challenge. Debate was limited to three hours, and holding the hearing expressly on the motion to dismiss denoted the delegation as the moving party and entitled it to make the first and last arguments, the first hour and the last half hour.

The hearing was closed to the public, the press, and even other Members of the House, including Members of the Subcommittee’s parent committee, the Committee on House Administration. Despite arguments from Kunstler that he “[felt] it serve[d] no useful purpose to shroud this hearing in a closed session” and doing so “was inconsistent with this subcommittee’s rules,” Chairman Robert Ashmore, of South Carolina, overruled the motion to open the hearing on the grounds that it was “a hearing on a

249 Kinoy, Rights on Trial, 289.
250 Whitaker, House Contested Election Cases, 68.
252 Contested Elections, 25.
254 Contested Elections, 28.
motion that is...based on more or less legal-technical grounds." In doing so, he endorsed the contestees’ position that the debate should center on whether or not Hamer, Gray, and Devine had standing to bring a contest – a point on which precedent was on the white delegation’s side – rather than on the merits of the MFDP argument – a point on which the delegation’s footing was, put politely, much less steady. Chairman Ashmore had “abruptly slammed the doors in the faces of the more than two hundred Black people from Mississippi who jammed the corridor of the House building.”

As promised, the contestees argued Hamer, Devine, and Jackson Gray had never been candidates in the general election that produced the regular delegation and, according to House precedent, had no standing to contest the results of that election, disenfranchisement or not. William Colmer, from the Fifth District, began the oration; reading from prepared statement, he opened with a history of the election that began at 1964 and referred to “a self-styled ‘Freedom Democratic Party group [holding] what they were pleased to term ‘freedom elections.’”

The bulk of his argument rested on the issue of standing, though he did break from that long enough to warn of a near-apocalypse should the Challenge succeed. Referring to the argument that Mississippi’s elections laws put it in violation of its 1870 readmission conditions, he noted that, if that argument prevailed, “Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Texas, Arkansas…are in the same position, [and] all of the Representatives from these States in the Congress since 1870 must be considered also as illegally elected. If this were followed to its logical conclusion, what effect would such a decision have upon the laws that have been enacted by the Congress while all of these Representatives and Senators from these states have been serving illegally over these many years?” He continued this line of argument – sans some of the hyperbole:

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256 Kinoy, *Rights on Trial*, 289.
257 *Contested Elections*, 30.
258 He contended that no such conditions could possibly exist for Mississippi’s readmission because, he claimed, the U.S. Supreme Court had ruled that it and its fellow Confederate states “were never out” (*Contested Elections*, 32), *ergo* they could never have been readmitted to a body they never left, *ergo* there could be no conditions attached to a readmission that could never have happened.
259 *Contested Elections*, 32.
Is it unreasonable to assume that any group in any State, North, South, East, or West, could challenge any Member or any State delegation if this precedent should be set?

Today it is the Freedom Democratic Party in Mississippi. Who can say that tomorrow it will not be the Ku Klux Klan, the Black Muslims, or any other organization in any other State of the Union who would be encouraged to do likewise?

Yes, it is conceivable that a conspiracy on a national level could disrupt and stop the functioning of the Congress if such a precedent was once established. 260

Colmer concluded by asking the Subcommittee “to stop the highly organized and burdensome harassment of your Mississippi delegation as well as the harassment of all of the Members of the House, by this well-organized, well-financed group conspiracy.” 261

Never in his opening oration did Colmer address the merits of the claims of the Challenge; he never argued that black voters in Mississippi faced no unfair opposition. In part, we can reasonably conclude, he simply did not believe they did. The more critical reason for this seeming omission, though, is that any engagement of those claims would have suggested those making them had standing to do so, the antithesis of Colmer’s argument.

The Subcommittee’s questions of Colmer passed with little of interest coming from either the Members or the witness, save one comment from Chairman Ashmore in response to a question from New York Congressman Charles Goodell. 262 Goodell had asked about some of the challenge process precedents, and Ashmore distinguished the Mississippi Challenge from one that had been successful: “under the statute [the MFDP lawyers had used] when you bring a contest you must be, according to the precedents [Colmer] just cited, a defeated candidate who participated in the election.” 263 The Chair –

260 Contested Elections, 33.
261 Contested Elections, 34.
262 Father of current National Football League Commissioner Roger Goodell, for the sports fans in the audience.
263 Contested Elections, 35.
the chief arbiter – argued on the side of the contestees before the hearing was even half concluded.

The statements and question periods of John Bell Williams, Prentiss Walker, and Thomas Abernethy followed similar lines. Abernethy summoned notions of Foghorn Leghorn with his nutshell version of the argument that, having been defeated in the primaries and thus rendered ineligible to appear in the general election, the MFDP candidates had no standing to contest the delegation’s seating: “But they were not satisfied after they got licked, they went up east and hired some lawyers and came to this Congress in an attempt to unseat us. Why, I do not know. They are not claiming the seats. Unless it be, as Mr. Colmer pointed out, just to discommode the members of this delegation.”

When the contestants rose to make their arguments, they led with their emotional best. Victoria Gray warned, “You cannot consent to the elimination of colored people from the body politic, especially through questionable and fraudulent [sic] methods, without consenting to your own downfall and your own destruction.”

Annie Devine told of the difficulty she had in availing herself of an alternative process to get on the general election ballot; this post-primary process involved collecting and submitting petition signatures from qualified voters in the district. The registrar refused to certify over one hundred of the signatures on her petition, saying, “many of these people had paid poll tax and many of these people could vote, but…they were not qualified.” Dismissing the contest on the grounds that the MFDP contestants lacked standing, she said, “is very good to save face, but I have a question: What about the soul of this Congress, this committee, and what about the soul of this country, if there be such?”

The MFDP trio and their attorneys were not the only witnesses pressing for the Challenge to continue. A Reverend Allen Johnson told the Subcommittee, “We want to

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264 Though Ashmore again tipped his hand when he broke from House etiquette and called Williams to the microphone by his given name, “John Bell,” rather than as “Mr. Williams.” (Contested Elections, 36.)
265 Contested Elections, 40.
266 Kinoy, Rights on Trial, 290.
267 Contested Elections, 54.
268 Contested Elections, 54.
be a part of our community. We have fought for it. I have bled, I have suffered, I have served as an officer in the Army and would like to take an active part in public life, but as of now we do not have truly these opportunities in the third district and in other districts in our state.”

Augusta Wheadon, an MFDP member who said, “I did not wish to risk my life to get certified to run against Mr. Thomas Abernethy,” cautioned that “this kind of dismissal…would seal the disillusionment of the Mississippi Negro from ever being able to receive justice in the system of American procedures.”

Fannie Lou Hamer spoke last of the contestants, and she played her anchor role well.

By sweeping this challenge under the rug now and dismissing this challenge, I think it would be wrong for the whole country. It is time for the American people to wake up. All we want is a chance to participate in the government of Mississippi. For all of the violence, all of the bombings, all of the people murdered in Mississippi because they wanted to vote, there hasn’t been one person convicted. It is only when we speak what is right that we stand a chance at night of being blown to bits in our homes. Can we call this a free country where I am afraid to go to sleep in my own home is Mississippi?...I might not live two hours after I get back home, but I want to be part of helping set the Negro free in Mississippi.

Had Ashmore not closed the hearing, Hamer’s Congressional Challenge speech would likely live alongside her Convention Challenge speech today. Nonetheless, her testimony had an immediate effect on the subcommittee: “Before Morty Stavis could get in more than a few minutes of legal argument, Ashmore abruptly adjourned the hearing to the next morning.” When the subcommittee reconvened, the lawyers’ began their task of countering the standing argument.

Stavis attempted to re-direct the precedents from which the contestees derived their argument that only a defeated general election candidate could file a contest; he

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269 Contested Elections, 58.
270 Contested Elections, 61.
271 Kinoy, Rights on Trial, 291.
272 Kinoy, Rights on Trial, 291.
suggested the same precedents also directed that the motion to dismiss on grounds of standing should have been made before the evidence-gathering phase. Because the white Mississippi delegation had allowed the contest to proceed in January without making that objection, he said, they had tacitly acknowledged that the contestants had standing. “Now that the testimony is out, unanswered and unanswerable, they move on a motion to dismiss and cite cases which hold that we did not have the right to take the depositions if they had objected then.”

He argued that the delegation was trying to create an environment that would be the envy of any lawyer: “Let’s see what the testimony is, if I like the testimony, if it is good for my side, we will go ahead and let the judge and jury decide it, but if/when all the testimony is in and it looks rough for me, I will disqualify the judge and the jury.”

Stavis’ humor had not run out. “You are then saying that if the conspiracy of the State officialdom is so complete as to prevent the contestant from even becoming a candidate, by golly, we will give you a special medal for really effective conspiracy,” noting the effectiveness of the conspiracy by referring to the registrars’ petition-qualification delays. “Every trick in the book was pulled to see to it that these people could not get on the ballot so that the argument could be made here – ‘well, we ran in this election unopposed.’”

Kinoy echoed both the argument and the tone of his colleague, but he strayed more into the meat of the MFDP case. “[The House] cannot say to restaurant keepers and innkeepers, ‘Clean your house of discrimination and segregation’ and refuse to clean its own house.” Kinoy calls it, “in many ways the easiest legal argument either [he or Stavis] ever had to make.”

Nonetheless, the Subcommittee took the escape route the contestees had mapped for dismissing this threat to the legitimacy of Southern delegations without dealing with pesky evidence. “The House…should dismiss the cases, the [Subcommittee’s] report

273 Contested Elections, 70.
274 Contested Elections, 70.
275 Contested Elections, 71.
276 Contested Elections, 72.
277 Contested Elections, 74.
278 Kinoy, Rights on Trial, 291.
concluded, because the contestants did not qualify to utilize the House contested elections statute.” The report also “noted…that at the same election, presidential electors and a U.S. Senator had been elected without question.”

The result was not a total loss for MFDP, though, as “a minority view [rejected the contestees’ standing claim] because under the laws of the State in 1964, the claimants could not have become candidates to avail themselves of the contested elections act,” echoing Stavis’ and Kinoy’s arguments. In a bit of damage control, the majority report noted the Subcommittee was not condoning disenfranchisement, and it rejected any presumption that the dismissal meant the House would not take action in future cases.

With a quick, uneventful stamp from the subcommittee’s superior Committee on House Administration, the report came for a full House vote on September 15. Thanks to more digging into precedent, when the contest came to the floor, so did the contestants. “For the first time since…Reconstruction, representatives of the Black people of the South were walking onto the floor of the House of Representatives.”

Chairman Ashmore presented the report and called for the House’s concurrence. In addition to repeating the conclusion that Gray, Devine, and Hamer lacked standing, he engaged some of their arguments directly. “Even if these charges [of systematic disenfranchisement] are true…a Member of Congress should not…be held responsible for the wrongful acts of some registration officer back in his home district,” asking, “how can you, or I, or the Members from Mississippi, know of, or control, these officers back home when we are attempting to attend to our duties here for 10, 11, or 12 months out of the year?” He also suggested the contestants would not have had enough votes to change the results of the election, and concluded by providing the out he knew would be palatable with the undecided Members: “And the alleged practices complained of by the contestants in the 1964 Mississippi elections would constitute violations of the new act if occurring subsequent to its enactment.”

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279 Whitaker, House Contested Election Cases, 68.
280 Whitaker, House Contested Election Cases, 68.
281 Whitaker, House Contested Election Cases, 69.
282 Kinoy, Rights on Trial, 292.
Representative Goodell took a more moderate tack, but still argued for the dismissal of the contests. He, too, referred to the power of the Voting Rights Act to cure the ills MFDP had alleged to have occurred in Mississippi, and felt this was sufficient without the upset of an entire state’s delegation being sent home mid-Session, which might have put the House in its own violation of the Constitution. In an odd twist he offered alone, Goodell also chided the contest procedures for “trapping…the finest legal minds in the country,” and pledged, on behalf of the Administration Committee, to see the confusion removed; four years later, Congress passed and President Richard Nixon signed the Federal Contested Elections Act of 1969.285

The most moderate and seemingly judicious of the Members who spoke on either side of the question then at hand was Missouri’s Representative Curtis. His principle criticism was of the process that had led to the day’s debate.

I am deeply concerned about a number of aspects of this important matter. The reports of attempts to frustrate a full and fair hearing and consideration of this contest by the Clerk of the House, the committee, and the Democratic leadership concern me. As always in such matters, it is difficult to conclusively fix blame, and dangerous to question motives. For this reason, I merely question the necessity and desirability of the delays and procedures which have taken place. Specifically, I question the limitation of the hearings to 3 hours. I question the secrecy of the hearings to the press and the public. I question the fact that the record of the hearings, such as they were, have still not been made available to the Members. How can the Members of this body fulfill their role as judges if they lack access to the record of the case. I question he apparent limitation of the number of copies of pertinent documents to less than 100 and the subsequent transfer of these documents from the Clerk to the committee and their lack of availability to Members of Congress.286

Though he derided “political posturing,” Curtis did a bit of it himself, using the delays and oddities within the process as an opportunity to undermine the House’s

Democratic leadership. “Unlike previous years, where the balance in party membership has been considerably closer, the first session of the 89th Congress will be remembered not alone for the legislative output, but, unfortunately, also for the highhanded abuse of power by the majority party, even including those self-professed liberals and would-be defenders of minority rights of whom one might expect more.” In an effort to bring his partisan assault back to the germane, Curtis added, “The power structure in the House doesn’t discriminate in its abuse of power. At the same time that the minority party – and I might add the people of this Nation – was being rubbed into the ground earlier this week, the majority party was doing the exact same thing to the Mississippi challengers. Obviously, its tactics are reserved not merely for the minority party but are available for any group which has the temerity to get in its way, or which in any way disagrees with the President or the Democratic leadership.”

In the end, Curtis voted in favor of the Challenge. “I voted to seat the Mississippi Members-elect in January because no case had been made against them. I would today oppose the Ryan resolution to unseat them because the case still has not been made against them. For this same reason, and because of the inadequate consideration which has been given this matter by the committee – as should be clear from their report – I will oppose the previous question and the motion to dismiss.”

Curtis was not the only critic of process. Illinois’ Congressman Donald Rumsfeld – yes, that Rumsfeld, the later Secretary of Defense – told the Speaker, “I submit that the Members of the House are not today in a position to judge the merits of this case in that we have not had access to the testimony presented or to the hearings on the resolution that is now before us.”

New York’s John Lindsay largely spared the Subcommittee, reserving his critiques for Speaker McCormack. The latter had allowed for just one hour to debate the recommendation to dismiss, and Lindsay suggested, “Forty minutes on one side and 20 on the other is insufficient for this debate. It lends to the appearance, if not the fact, that

the Mississippi challenge was shoved into the drawer.”

That dispensed with, Lindsay offered his support for the contestants. “The time is long overdue for this House to put itself on record that it will not be a tacit accomplice to the systematic deprivation of the voting rights of US citizens.”

Charles Gubser of California complained about the process – “Mr Speaker, here we are, just a few short moments from a vote on this matter and I have not yet seen these facts. Should I be asked to evaluate them without having seen them?” – but he included both sides in his criticism.

Referring to Representative Ryan’s threatened motion to pull the contest back from the Subcommittee and hear it directly on the House floor, Gubser said, “Had they shown faith in our democratic process and been willing to trust it instead of concluding prematurely that our existing institutions would not act in deliberate honesty, they would not be in this present dilemma. The cause of civil rights, so honestly pursued by so many of us who choose orderly process over dramatics and demagoguery, has been seriously impaired…It is regrettable that the hundreds of dedicated persons from my district and all over the Nation who have given their time to a cause have been led astray by ill-advised leadership.”

Michigan’s Conyers responded to Gubser’s lament. “I have joined with many of my colleagues over the last few months in urging expeditious consideration of the substantive issues involved – not improper procedures to dismiss the entire matter as quickly as possible.” He also rejected the notion that the Voting Rights Act was enough – in part, he said, because Mississippi was already fighting to have that law thrown out – and asked those who had a moral disagreement with Mississippi’s politics to express that with the vote on the Challenge: “I pray you as diligent, capable, competent leaders, with whom I have been so proud to serve during these 9 months, that you will join with me in a motion to eradicate the undemocratic practices that every one of you in your heart

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knows to exist.”

James Corman of California joined Conyers in deflating the VRA trade-off. He suggested not only that the Act had not rendered the Challenge moot, but the Challenge was an invaluable opportunity to demonstrate to any non-compliant states that Congress had meant what it had Resolved. “How quickly they would all co-operate if this House concluded that it would seat Members only when they were elected under circumstances consistent with the 15th amendment.”

Speaking on the side of the Challenge, Gubser’s fellow Californian, Representative Roosevelt, again displayed his talents, arguing, “The unimpeachable facts of wholesale Negro disenfranchisement make a mockery out of the constitutional requirement that the Members of this House be chosen ‘by the people of the several States.’” As to the notion that the Voting Rights Act was all the remedy black voters in Mississippi or any other state would need, Roosevelt had a simple reply: “What will be done cannot obviate what has been done.”

Joseph Resnick of New York would hear nothing of precedents that might or might not suggest there were no grounds for the Challenge. “It seems to me that each day we sit here we write new precedents. That is what we are paid to do. That is our job. The rules change, and we are here to see that they are changed in accordance with the needs of the Nation.”

Another member of the New York delegation, Leonard Farbstein, said he had nothing against the Mississippi Members themselves. “Unfortunately, the only means of showing our opposition and disgust with the tactics used by the citizens of Mississippi in preventing other American citizens from voting by the use of terror, pressure, and other illegal means, is by depriving them of representation in this House, in other words deprive them of the benefit of their ill gotten gains by vacating the seats of the delegation

296 Because of their marked eloquence, Roosevelt’s remarks are included in full as the Appendix to this work.
from that State.”

The last speakers debating the merits of the Subcommittee report were the Mississippi Members themselves. Like Farbstein had done, Colmer attempted to remove the personal from the discussion, saying he bore “no bitterness or resentment on our part toward any of our colleagues. Their decision in this matter, as in all others which confront them, is one for their own discretion and conscience.”

He once more trotted out the horses Conspiracy – “It must be obvious to all fair-minded people, familiar with this matter, that this action against my State was but a part of an overall conspiracy.” – and Chaos – “If the membership of this body is to be subjected to this type of procedure, where the whole delegation of a sovereign State can be successfully challenged by some nebulous political group, then the very foundation of the Congress would be destroyed.” Whitten, by contrast, saved the House some time and rolled the two arguments into one: “It might be well to note that any individual or any group, conservative, radical, or otherwise, Communist or non-Communist, could create the same situation with regard to any delegation; and if the House of Representatives went along with any such efforts it would, in effect, cause the House to destroy itself from within.”

In summing his side’s arguments, Ryan spent a portion of his remarks on a checklist of responses to the positions the Challenge’s opponents had taken.

On the idea that there were insufficient votes available for the election to have turned out differently, he countered, “In the first place, this is an admission of disenfranchisement. Moreover, if the House accepts this, it will establish the rule that no disenfranchised majority or minority can sustain an election challenge without proof that

301 The astute reader will note that Congressman Ryan has been conspicuously silent in the floor debate thus far. This was certainly not the case. He has been reserved till last in this section per a bit of artistic license; had the Subcommittee framed the report as being on the contest itself, rather than on a subsequent motion to dismiss it, Ryan would have had final privileges both in the hearing and on the floor. I have chosen to give that to him in this work.
their votes would have changed the result.”

In attacking the report’s observation that Mississippi’s election laws had not been overturned by any court, Ryan asserts, “The report neglects to note that these laws have recently been set aside by a special session of the Mississippi Legislature, called by the Governor for the very reason that he determined that they were unconstitutional.”

His response to the Voting Rights Act trade-off was particularly emphatic. “The majority report says that the Voting Rights Act ‘provides thorough and complete remedies to any and all such discrimination and disenfranchisement.’ The act’s authors had no such illusions, and its diehard opponents make clear every day that they hold no such fears. Those who do have faith in the Voting Rights Act can best affirm it by accepting the act’s main premise and voting accordingly today: the November 1964 Mississippi elections were unconstitutional.” More pointedly, he added, “The Voting Rights Act of 1965 does not in any way negate the fact that the Congressmen from Mississippi were illegally elected. It does not overcome the fact that Mississippi has violated the Constitution. It does not relieve us of our obligation to uphold our oath to the Constitution.”

Most of Ryan’s remarks, though, went to the record of the situation he argued had existed in the 1964 elections in Mississippi. “The record is written in the faces of Negro citizens who courageously confronted terror, violence, and even murder in their efforts to exercise a fundamental constitutional right – the right to register and vote.” He reminded the House of its “opportunity today to tell the people of Mississippi and the people of this Nation that the House of Representatives upholds the Constitution,” and even tied the Challenge to three of the Mississippi voting struggle’s most publicized casualties: “Three young and dedicated Americans, James Chaney, Andrew Goodman, and Michael Schwerner…paid for their patriotism with their lives.”

In the end, Ryan’s passion was not enough to stave off what had been largely

inevitable since he had objected to the administration of the oaths to the Mississippi delegation some eight months prior. He had seemingly done some good, though. The final vote was 228-143 to dismiss the Challenge, a weaker showing for leadership and the Southern bloc than the 276-149 vote on January’s Albert resolution had been. That weakness was in the form of abstentions, not votes to unseat; they may well have made for a much closer vote if not for a statement from the lips of future President Gerald Ford.

Just before the vote, Ford had announced an agreement from the Administration Committee to amend the language of the report. That amendment stripped language that declared the Mississippi Members “entitled” to their seats. In addition to putting more distance between the House and the Mississippi Plan, this change, he said, would dispense with any notion that the vote on the Challenge would be a precedent for future disenfranchisement contests. “The House of Representatives on this occasion at this time is in effect taking a very limited action; we are dismissing the petition. We are taking no other action.” Kinoy sees that change as pure damage control: “This was obviously a maneuver…to pull over some middle-of-the-road Members who had been shaken by our presentation.”

The Challenge had been defeated formally, and the regular delegation kept its seats.

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312 Kinoy, Rights on Trial, 294.
314 Kinoy, Rights on Trial, 294.
CONCLUSION: VICTORY IN DEFEAT

The Mississippi Freedom Democratic Party did not leave the parliamentary game empty handed, nor were they stuck with mere parting gifts. If nothing else, they had achieved a pledge from Congress similar to that of the Democratic National Committee in Atlantic City: disenfranchisement and discrimination were not acceptable political tools, and they could be grounds for voiding elections. Congress’ revised language in its dismissal motion was a warning to Mississippi that the body could and would revisit the issues the Challenge had raised, if necessary.315

If, as Stephen Lucas suggests, the American Revolution was as much about “hundreds of pamphlets, essays, and broadsides,…demonstrations, composed persuasive songs, plays, and poems, and…countless speeches and sermons” as it was cannon and muskets, then the voting rights movement, relatively absent open, two-sided armed conflict, was at least as much a revolution of rhetoric. Its demonstrations, songs, and pamphlets had, by the time of the emergence of the MFDP Congressional Challenge, made substantial progress in cultivating in “Americans…a level of focused dissatisfaction.” That electoral dissatisfaction had its own Bostons in high-profile shootings and bombings and its own Lexington and Concord in Selma. What it had lacked was formality, recognition in the policy-making body that things were amiss. President Johnson had provided some of that in pressing the Voting Rights Act, but the forceful legislative mechanism that Act became is a product of the Mississippi contests.

MFDP had made a strong case that the kinds of tactics Section Five of the VRA316 was written to proscribe had been in use in Mississippi. It gave Congress 3,000 pages of proof that the country needed clear, meaningful statutory protection of all citizens’ right to participate in their government. President Johnson signed the Act on August 6, 1965,317 roughly seven months after the Challenge’s introduction and six weeks before its

315 Author telephone conversation with Lawrence Guyot, 24 July 2008.
316 That section explicitly required states get permission from either the federal Department of Justice or the Court of Appeals for the District of Columbia before they changed voting procedure, making ensuring states complied with the Fifteenth Amendment and allowed all their citizens to vote clearly a federal matter; as it related to discriminatory elections, “sovereignty” was no longer a defense. (42 U.S.C § 1973).
317 United States Department of Justice, Civil Rights Division, Voting Section, “The Voting Rights Act of 1965.”
dismissal. The interpolation is simple, but unnecessary; the explicit connections between the Challenge and a meaningful Voting Rights Act are even clearer.

In January, when Congressman Ryan had objected to the delegation’s seating, his Republican colleague, William McCulloch of Ohio had linked the Challenge to the VRA: “He said, ‘We have two choices. We can either unseat the Congressional delegation from Mississippi, or we can strengthen the Voting Rights Act.’” Given the language in the dismissal motion, it seems clear many Members wanted to prevent recurrences of Mississippi-style repression; the VRA did that, but a denial of seating would have, too, if passing the Act had not been available. Further, “members who had voted to dismiss…sent earnest letters to constituents trying to justify their vote. They were, they explained, firmly committed to the voting rights bill, which would finally take care of this national disgrace once and for all.”

*Jackson Daily News* reporter William Peart, writing on the contest finally coming to its hearing in the Subcommittee on Elections, included a series of recent developments a “Washington source” gave as reasons the delegation could expect to prevail. One of the reasons Peart’s source gave for the ultimate failure of the challenge was the passage of the Voting Rights Act. Proving Peart’s source prophetic (or well-placed), the Subcommittee’s report “noted that the Federal Voting Rights Act of 1965 had been enacted in the interim and that if evidence of its violation were presented to the House in the future, appropriate action would be taken.”

The contrast between President Lyndon Johnson’s quiet sabotage of the Convention and Congressional challenges and his open call for the VRA suggests the Act may have been his attempt to appease and mollify MFDP and its allies. Indeed, Sistrom suggests the challenge had wandered directly into this trap: “On the one hand, their demand for new elections could leverage broader statutory reform. On the other

*Author telephone conversation with Lawrence Guyot, 24 July 2008.*

*Carmichael, Ready for Revolution,* 424.

*William Peart, “Effort to Dismiss Challenge Against Solons Expected,” Daily News (Jackson, MS), 3 September 1965, n.p., Student Nonviolent Coordinating Committee papers, Appendix A, file 47, microfilm reel #63, frame 867.

*Whitaker, House Contested Election Cases,* 68.

*United States Department of Justice, “The Voting Rights Act of 1965,” para. 1.*

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hand, in the mind of the Congress, that reform would be a safe substitute for the
expulsion of the white incumbents.”323 There is no question Selma provided invaluable
images in pushing the VRA to passage, but discounting the role of the MFDP
Congressional challenge is a disservice to history and the people who shaped it.324

Those people still see a connection between their work and the meaningful Voting
Rights Act. Reverend Ed King tells us, “We thought we could [unseat the delegation,
but] we were really trying to [at least] force Congress, the President, and the people to
pass legislation ending voter discrimination,” calling “the challenge…a victory because it
had to be treated as valid; for Congress not to throw the challenge out on the first day
meant that there was a legal foundation for it.”325 That legal foundation became the
substance of what the Voting Rights Act, through Section Five, sought to prevent.

Kwame Ture writes, “The challenge was dismissed. But I tell you what, it helped
pass the voting rights act. In fact, quiet as it’s kept, the Congressional Challenge was a
major factor in the passage of that important legislation.” The horse-trading “was
[Members’] way out on the challenges, but the voting rights bill passed.”326

Lawrence Guyot perhaps holds fastest to the link between the Challenge and the
Act, particularly its fifth section. He points to McCulloch’s offer of a choice for
leadership between sending the white Mississippians home and strengthening the Act:
“Section Five was not in the Voting Rights Act when he said that.” He also retains the
perspective of someone who was not only part of the civil rights movement at large but
also at the head of the MFDP Congressional Challenge. “We didn’t want to be beaten by
the passage of the Voting Rights Act because we felt that those two things could
complement one another rather than being an alternative for one another, which is what
they turned out to be;” when his MFDP hat goes back on its peg, though, he calls

323 Sistrom, “‘Authors of the Liberation’,” 228.
324 The same is true of the work of Dr. Martin Luther King, Jr., marchers and sit-in participants, the first
wave of school integrators, and even the words of Thurgood Marshall and Frederick Douglass. Without all
of these invaluable individuals, the pace of civil rights progress in the United States would have been
slower, and consolidating and generalizing history are always dangerous occupations.
325 Author telephone conversation with Ed King, March 18, 2008.
326 Carmichael, Ready for Revolution, 424.
“Section Five…the most successful twenty-five words in American political history.”

Ekwueme Michael Thelwell, for his part, gives credit for the Act to both Selma and the Congressional Challenge as part of the same spirit, one he says was far more successful than the notion Mitchell, Rauh, and their allies had of changing the system from within.

I mean, these damned lobbyists, especially the ones from the labor movement and the NAACP, they tend to confuse proximity with influence. If you get a visit to the Congressman, if you get to visit a powerful Senator, you need to take a picture and send it back to whoever you represent to show that you’re effective: confusing proximity with influence and influence with power, you know, and not really doing squat. So they take credit, for example, for all the civil rights legislation, but they could have been in Washington a million years, they wouldn’t have got none of that passed without the people in the streets and without the vigor of the movement and without the democratic force of nonviolent direct action and thousands of people in motion.

In its most literal sense, the Mississippi Freedom Democratic Party’s 1965 challenge to the legitimacy of that state’s Congressional delegation was a failure; the five products of a one-party, one-race, closed political system continued to represent their state in the House of Representatives without the input of forty-five percent of their constituents.

In any meaningful sense, though, the Congressional Challenge was a remarkable success. Short of actually unseating the delegation, it had reached every goal its architects set. Because of the sincerity of its approach and the talent it had assembled, MFDP had made history: white, segregationist authorities responded to subpoenas from black civil rights activists to come to black churches and answer questions about their repressive government; the attention the Challenge generated forced those same authorities to suspend their repression, at least as long as the contest continued; House leaders had proven themselves embarrassingly unable to control their Members. Most importantly,

327 Author telephone conversation with Lawrence Guyot, 24 July 2008.
because the MFDPane Congressional Challenge had demonstrated that, without direct
federal action, voting discrimination and suppression would continue as they had in
Mississippi, the nation received a Voting Rights Act that contained explicit authority for
that action.

Like Josh Gibson had with baseball, because they had played in the
segregationists' arena of rhetoric and acquitted themselves well, Fannie Lou Hamer,
Annie Devine, and Victoria Jackson Gray had staked a claim to legitimacy for an entire
race, though the post-Reconstruction Congressional Jackie Robinson was yet to emerge.
APPENDIX

Copying California Representative James Roosevelt’s remarks into the paper *en masse* seemed a bit inappropriate; leaving any part of them out entirely seemed more so. Hence, I have included them verbatim for the reader’s pleasure and my own.

In a procedural move only marginally related to the substance of the Challenge, its supporters had offered a motion counter to that to accept the Subcommittee on Elections’ report and dismiss the contests. This motion sought to remove the contest from the Subcommittee’s charge and send it instead to the House Committee for the District of Columbia (in essence, committee-shopping).

Mr Speaker, I rise in support of the motion to recommit to the House District Committee the ‘Mississippi challenge’ cases.

This body – and every one of us – must face our moral responsibility to the great democratic processes of our Nation. Once the technical and legal points have been argued and assessed, there remains a great overriding issue. It is a moral issue. Can we support continued service in this body of persons elected by what must be frankly recognized as a perversion and misuse of our elected processes? That such practices have long been a part of the political life of the State of Mississippi, that they have, by custom and usage, become an accepted way of life for thousands and millions of people, makes even more clear the necessity to accept our responsibility and to act upon it.

This is not a matter of personalities. These Members are my good friends. But I must overlook that. I must look to the people of the State of Mississippi, to the people of the Nation, to the people of other lands. Democracy, and its processes, are at issue.

To those who say that the Voting Rights Act of 1965 will require correction of these practices – and that the Representatives from Mississippi will hereafter be elected by constitutional means is no answer to the question presently before us. What will be done cannot obviate what has been done. The present Mississippi delegation is the one that concerns us today.

The record in the Mississippi contested election cases of 1965 bring before the House overwhelming evidence of the simple, stark facts upon which these cases rest – the almost total, systematic, and deliberate exclusion of the Negro citizens of Mississippi from the electoral processes of that State. Only 7 percent of the Negro citizens of voting age were registered to vote. Over 450,000 Negro citizens were excluded from the electoral process during which the Members of this House were elected. The unimpeachable facts of wholesale Negro disenfranchisement make a mockery out of the constitutional requirement that the Members of this House be chosen ‘by the people of the several states.’
It is now thoroughly well established that the Negroes of Mississippi have voted and registered in such pitifully small numbers because they have been prevented from doing so by an unrelenting program of legislation, discriminatory administrative procedures, violence, and intimidation. The array of findings on this score is indeed impressive and the condition is statewide – it exists to an overwhelming degree in each of the five congressional districts here in question.

Although court decisions have been extremely ineffectual in eliminating the massive disenfranchisement of Negro citizens in Mississippi, the findings by Federal courts in county after county represent an impressive array of proof of the pattern of discrimination. These decisions relate to counties throughout the state.

The President, in his message to Congress of March 15, 1965, summed up in terms which leave no possibility of further doubt all the proof of the fact that Negroes have been excluded from the electoral process in Mississippi.

Depositions were taken in the Mississippi contest in more than 30 counties of the State of Mississippi. Over 400 witnesses testified. Over 10,000 pages of detailed testimony, all subject to the right of cross-examination, tell the story of Negro disenfranchisement again and again.

This almost total exclusion of Negro citizens from the electoral processes of Mississippi is the result of almost a century of operation of what has come to be known through the Nation as the Mississippi plan. Since 1875 the dominant white political structure of the State has openly and consciously utilized every possible technique to disenfranchise the Negro and perpetuate a system of white supremacy. The specifics may vary but the broad outlines of the formula by which Negro disenfranchisement has been achieved remain the same over years. It is a combination of violence and laws which invite discrimination by granting broad discretion to local registrars who are part of a conspiracy to prevent Negro participation in the electoral process.

The report of the US Civil Rights Commission only this May, the many decisions of the Federal courts, the over 400 depositions taken in these contests, all reveal in details repeated over and over again, that the Mississippi plan of 1875 and 1890 is still very much in effect. For almost 100 years the Negro citizens of Mississippi have been consciously, deliberately, and systematically excluded from the political processes of the State. The records of these contested elections now bring before this House for its judgment the Mississippi plan in its full flower.

The massive disenfranchisement of the Negro citizens of Mississippi which has been now so fully demonstrated in the records of the present
cases renders the elections here patently violative of the Federal Constitution. It is much too late to argue blandly as the sitting Members do that the Mississippi election laws are ‘legal’ and ‘constitutional.’ On June 7, 1965, the Governor of their own State publicly conceded that the two central registration provisions of the Mississippi Constitution were unconstitutional. Laws comparable to the Mississippi registration and election provisions have this term of court been stricken down by the Supreme Court of the United States.

These cases present to the House a truly extraordinary situation. Sitting Members seek to sustain their right to seats in the House obtained in elections the Governor of the State now concedes were conducted under unconstitutional registration and election laws. The position of the sitting Members, as set forth in their answers, has now been completely undermined by the Governor and legislature of their own state.

The flagrant unconstitutionality of the legislation through which for over 70 years the State of Mississippi has systematically and thoroughly excluded its Negro citizens from the franchise is not [sic] conceded by all. The only question remaining is whether the House of Representatives of the United States will tolerate elections for Members of the House conducted under unconstitutional laws which have excluded from the electoral process a substantial number of citizens of the State whose only disqualification from voting has been that their skin is black.

In contest after contest in which evidence of wholesale Negro disenfranchisement has been laid before the House, this legislative body has met its constitutional duty to unseat contestees whose purported authority to membership in the House rests upon such elections. The current challenges to the Mississippi contestees do not present new and untested questions to the House. They are thoroughly supported by a long line of the most important and honorable precedents of the House itself. In over 40 election contests in the past this House has set aside election results where Negro citizens were excluded from the voting process.

Mr Speaker, full and adequate hearings on this matter have not been held. The motion to recommit, which will be offered, and which I will support, will give us the opportunity to grant the thorough and detailed consideration which it deserves. I urge my colleagues to reject the resolution before us, and to recommit these challenge cases to the Committee on House Administration.”

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BIOGRAPHICAL SKETCH

My own journey began in Texas City, Texas, at 6:23 pm on August 7, 1981. It has involved pick-ups in Tallahassee, Florida, on May 3, 2003, and (I hope) May 2, 2009, a few bits of Spurs and Stars triumph, and countless returns to Astros misery. Its next three-year stop will be in Washington, of the District of Columbia, from which I will emerge as yet another lawyer, since there seems to be such a shortage of supply. I have no idea where I will go from that moment, but I do know finally being done (I think [again]) will produce a joy only one other “finally” moment could possibly rival: finally being able to utter the phrase, “World Champion Houston Astros.”