CHAPTER 3

WRITING THE ADMINISTRATION BILL

Once President Kennedy had decided to introduce a strengthened civil rights bill, there was no problem finding civil rights proposals or putting them into legal language. That job had already been done by the Civil Rights Commission. In a series of five reports issued in the fall of 1961, the commission had not only detailed the nature and extent of racial segregation and racial oppression in the United States but also made explicit legislative recommendations to remedy the situation.

THE CONTINUING ATTEMPT TO NATIONALIZE THE CIVIL RIGHTS ISSUE

As the Civil Rights Commission was preparing to release its major report in 1961, one could look back over the past 100 years of race relations in the United States and detect a definite trend toward the progressive nationalization of the civil rights issue. Step-by-step, although very slowly at times, presidential orders and Supreme Court decisions had brought the power of the United States Government to bear on ending one or another aspect of racial segregation.

A major step occurred in 1863 when President Abraham Lincoln issued the Emancipation Proclamation freeing the slaves in those Southern states that had seceded from the Union during the Civil War. The three post-Civil War Amendments to the Constitution -- the 13th, 14th, and 15th Amendments -- abolished

slavery, guaranteed the newly freed slaves equal protection of the laws and other basic rights, and guaranteed all citizens the right to vote no matter what their race.

The reestablishment of white rule in the South following the removal of Union soldiers in 1877 essentially brought U.S. Government intervention into race relations in the South to a halt, and little further progress was made until the mid 20th Century. In 1941 President Franklin Delano Roosevelt banned racial discrimination in all factories making military weapons for the United States and appointed a Fair Employment Practices Committee to study racial discrimination in employment. In 1948 President Harry S. Truman issued an executive order racially integrating all of the armed forces of the United States.

BROWN V. BOARD OF EDUCATION

In May 1954 the Supreme Court ruled unanimously that segregation of school students into separate white and black school systems was unconstitutional. This landmark decision, Brown v. Board of Education of Topeka, Kansas, called for the "desegregation" of all public school systems in the nation "with all deliberate speed."

Instead of producing compliance on the part of local politicians and school officials, however, the Brown decision often produced "massive resistance," particularly in the South. White politicians and white government officials frequently maneuvered to delay the racial integration of local public school systems as long as possible. Rather than grudgingly accept the Supreme Court's decision, segregationist dominated Southern legislatures began passing laws providing for the denial of state school funds to any community that integrated its schools. State constitutions were amended to permit shutting down public schools rather than permit desegregation.

LITTLE ROCK

Delay of school integration by government officials in the South reached a peak in September 1957 when the local school board in Little Rock, Arkansas, began to proceed with the integration of Little Rock's Central High School. On the pretext of preventing violence, Arkansas Governor Orval Faubus ordered the Arkansas National Guard to occupy Central High School and prevent the carrying out of court ordered integration.

The response of President Dwight D. Eisenhower to this direct attempt to nullify the integration decision was swift and powerful. Eisenhower "federalized" the Arkansas National Guard, thus taking it out from under the command of Governor Faubus and putting it under Eisenhower's control. The president then ordered the Arkansas National Guard out of Central High School and away from Little Rock. He then dispatched regular United States Army troops to occupy Central High School and the surrounding school grounds and to protect school officials and black students as they continued the process of court ordered school integration.

President Eisenhower's decisive actions at Little Rock had great symbolic significance. For the first time since Union troops were withdrawn from the South in 1877, United States soldiers had reentered a Southern city and state for the express purpose of imposing a national policy over the opposition of a state government official. For Southern blacks, the national intervention was a turning point. Until President Eisenhower acted so decisively at Little Rock there was no assurance that the power of the national government would be used to uphold the Supreme Court. After Little Rock, however, the precedent was set. From then on, blacks could always hope for United States Government intervention if local Southern school officials openly defied court orders integrating public schools. The result was to inspire black leaders and their white allies to press ever harder for an end to all forms of racial segregation.

THE MONTGOMERY BUS BOYCOTT

One year after the Supreme Court decision desegregating public schools, on 1 December 1955, a black seamstress, Mrs. Rosa Parks, was arrested in Montgomery, Alabama, when she refused to stand and give her seat on a city bus to a white man. At a subsequent meeting of black leaders in Montgomery, it was decided that blacks would boycott the segregated bus system in Montgomery until it was racially integrated. The Reverend Martin Luther King, Jr., was elected President of the Montgomery Improvement Association, an organization specially created to lead the bus boycott. For more than a year, more than 40,000 Montgomery blacks refused to ride the city's buses rather than be subjected to segregated seating. Car pools were formed to get bus boycotters to work and to school. Many Montgomery blacks simply walked wherever that had to go rather than ride a racially segregated bus.

The major accomplishment of the Montgomery bus boycott was that it turned a nonviolent demonstration for racial integration into a national news story. Because of the large number of boycotters involved, and because boycotters carpooling and walking made good television film, the national television networks covered the bus boycott extensively. When the white community in Montgomery reacted with random acts of violence (buildings bombed, buses fired upon, physical harm to boycotters, etc.), there was even more national coverage. It was this news attention that made Martin Luther King, Jr., a national symbol of the new black resistance to segregation and enabled him to present to the American people his ideas on the nonviolent demonstration as a means of producing political and social change.

The Montgomery bus boycott had two direct results. First, the transit system in Montgomery was integrated. The white leadership finally gave in to the demands of the black demonstrators. The success of the boycott revealed that the goal of racial integration could be achieved by the technique of the nonviolent demonstration.

The second result of the Montgomery bus boycott was that it made nonviolent forms of protest such as freedom rides and sit-ins big news items, both in the national and the local press. After Montgomery, no longer would demonstrators work in relative obscurity. Race relations, civil rights demonstrations, and violent white reactions to demonstrations henceforth were big news and played accordingly.

STUDENT SIT-IN DEMONSTRATIONS

On February 1, 1960, four black college students sat down at a lunch counter in Greensboro, North Carolina, and quietly waited to be served. Following extensive national new coverage of this "sit-in" demonstration, students at black colleges throughout the South, often joined by students from nearby white colleges, began similar sit-ins in an effort to racially integrate local restaurants and lunch counters. This wave of demonstrations, often involving high school students as well as college students, frequently provoked a violent response from the white community and thereby produced the desired coverage from the news media. By the spring of 1961 over 70,000 black and white youngsters had participated in the sit-ins, and a new civil rights organization, the Student Nonviolent Coordinating Committee (SNCC), had been created to recruit and train sit-in demonstrators throughout the nation.

FREEDOM RIDES

During this same period, civil rights groups organized "Freedom Rides" to test racial integration on interstate buses and in bus terminals in the South. Demonstrators would board the buses in the upper South and ride them into Alabama and Mississippi and other states in the deep South. One Freedom Ride ended with a Greyhound bus being stopped and burned by segregationists at

Anniston, Alabama. Another ended in a riot in the bus station in Birmingham, Alabama, in which a white Freedom Rider was beaten so severely 53 stitches were required to close the wounds in his head.

THE CIVIL RIGHTS ACTS OF 1957 AND 1960

As a result of the increased attention which racial problems received following the 1954 Supreme Court decision integrating public schools and the Montgomery bus boycott, Congress passed a civil rights bill in 1957 and again in 1960. Although both bills were subjected to Southern filibusters, the filibusters ended when House and Senate leaders removed from the bills those items that were objectionable to the Southerners. Civil rights supporters charged that the bills had been "gutted" of any meaningful civil rights reforms. The 1957 bill did provide, however, for the establishment of a Civil Rights Commission to study racial problems in the United States and make recommendations to Congress, and it was this commission which was issuing its major report to Congress in 1961, and whose findings served as the basis for the Kennedy Administration civil rights bill of June 1963.

VOTING RIGHTS

The first volume of the 1961 Civil Rights Commission report dealt with voting rights. The big problem, the report argued, was the arbitrary use by Southern election officials of "literacy tests" and "constitutional interpretation tests" to prevent blacks from registering to vote. These tests required prospective voters to be able to read and interpret the United States Constitution before being registered. In many instances, even blacks with college degrees were unable to read and interpret the Constitution to the satisfaction of local election officials. Such high standards usually were not set when white citizens endeavored to register to vote.

The Civil Rights Commission recommended that Congress

enact a law making completion of six grades of school sufficient proof of literacy for voter qualification. This would give any black citizen who had completed elementary school (and who was not a convicted criminal or in a mental hospital) the automatic right to register and vote.[1]

EDUCATION

Reporting seven years after the Supreme Court's desegregation decision and four years after President Eisenhower's swift intervention at Little Rock, the Civil Rights Commission in 1961 found the nation's progress toward desegregating schools to be "slow indeed."[2] The commission therefore recommended a long series of legislative remedies to Congress. Local school boards should be required to file detailed plans for desegregating their schools, the commission said, and the attorney general of the United States should be given authority to see that those plans are carried out. In addition, Congress should provide financial aid to local school systems to encourage them to create special programs and hire specially trained employees to oversee and facilitate the desegregation process.

Perhaps the most interesting proposal by the Civil Rights Commission was the suggestion that Congress "cut off" up to 50 percent of the United States education funds going to any state that continued to practice school segregation. The amount of U.S. education funds cut off would be adjusted to the proportion of the state's public school districts that still had not been racially integrated. In the case of colleges and universities, however, the Commission went even further and recommended that all U.S. Government aid be cut off to those institutions of higher learning that discriminate on the basis of race, religion, or national origin.

EMPLOYMENT

In the field of employment, the 1961 Civil Rights

Commission Report found black Americans caught in a vicious cycle of lacking the training for good jobs and, because of discrimination in hiring, never being able to get the training necessary to get the good jobs. The report explained:

> The vicious cycle of discrimination in employment opportunities is clear; the Negro is denied, or fails to apply for, training for jobs in which employment opportunities have traditionally been denied him; when jobs do become available there are consequently few, if any, qualified Negroes available to fill them; and often, because of lack of knowledge of such newly opened opportunities, even the few who are qualified fail to apply.

If many blacks were weakly motivated to improve their educational and occupational status, the commission report concluded, it was because blacks were "the product of long-suffered discriminations."[3]

The Civil Rights Commission's major recommendation in the employment field was the creation by Congress of a Fair Employment Practices Commission (FEPC) to enforce a policy of equal employment opportunity in all U.S. Government agencies and also in private industry employment that was created or supported by U.S. Government contracts or U.S. Government aid programs. In the case of state employment offices, the commission again recommended a U.S. Government funds cutoff as the best way to achieve local compliance with national laws forbidding racial discrimination. The secretary of labor should be directed, the commission report said, to deny U.S. funds to state employment offices that operated on a discriminatory basis or which accepted and processed "whites only" or "colored only" job orders.

JUSTICE AND POLICE BRUTALITY

In its report on justice and law enforcement, the Civil Rights Commission concluded that, although there was much to admire in the American system of criminal justice, "police brutality is still a serious and continuing problem." The report went on to point out that "although whites are not immune, Negroes feel the brunt of official brutality, proportionately, more than any other group in American society."

Furthermore, the Civil Rights Commission charged, in areas where local sentiment favored segregation, "some officers take it upon themselves to enforce segregation . . . [and] the Negro's subordinate status." This often took the form of police "connivance" in private violence, such as when "police are informed that violence will take place against blacks or white sympathizers and do nothing to prevent it."[4]

This problem of police connivance in private violence stemmed from a problem with the 14th Amendment to the United States Constitution. When that amendment had been proposed and adopted in the years immediately following the Civil War, its framers had mainly wanted to prevent state governments from denying civil rights to their newly emancipated black citizens. As a result, the prohibitions in the 14th Amendment all applied to the state governments and not to the individuals living in those states. The exact wording of the 14th Amendment was:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Because of this "no state shall" form of wording, the 14th Amendment could not be used to protect black Americans from mistreatment by individuals. It could only be used to protect black

Americans from official actions by the state governments. The result was a system of oppression, particularly practiced in the South, in which state officials would "not notice" or "wink" when private individuals discriminated against blacks or terrorized them. In certain localities, most of them in the American South, white citizens who beat, lynched, and murdered blacks could do so with almost complete confidence that state and local police, being committed themselves to the doctrine of white supremacy, would be less than zealous about investigating the crimes and catching the perpetrators.

Adding to the ability of Southern white individuals to discriminate against and terrorize blacks was "the free white jury that will never convict." Even in those cases where arrests were made and indictments sought, lynch mobs and race murderers could rely on the fact that a jury of their white neighbors and friends surely would acquit them.

The Civil Rights Commission Report of 1961 proposed several legislative remedies for the problem of police brutality. It recommended Congress pass a law spelling out in detail those acts that constitute police brutality and unlawful official violence. Such acts, even when committed by state and local government officials, would be national crimes and thus would be tried in United States courts. One of the forms of unlawful official violence that would be defined in the new law would be "refusal to protect any person from known private violence, or assisting private violence."[5]

The Civil Rights Commission also recommended that state and local government officials be made liable for damages when police officers under their control commit acts of brutality or unlawful official violence. In addition, the commission suggested that the Congress empower the attorney general of the United States to file suit against state or local court systems that permit the exclusion of citizens from juries because of their race or nationality. This last remedy was directly aimed at eliminating "the free white jury that will never convict."

PART III

Civil rights supporters had long argued that, as the Civil Rights Commission Report of 1961 pointed out, only intervention by the United States Government in Washington would end police brutality and unlawful official violence visited upon blacks in the South. To this end, the Eisenhower administration had proposed to Congress in 1957 that the attorney general of the United States be granted the power to secure court injunctions in civil rights cases and that such cases be removed from state courts to United States courts.

This provision soon became known on Capitol Hill as "Part III" because it was the third title of a proposed Eisenhower administration civil rights bill. Part III was an extremely important proposal to civil rights supporters. It would permit the U.S. attorney general to file civil rights suits, thus relieving the black individual in a hostile Southern community of the responsibility of filing such a suit. Many black individuals would not think of filing a civil rights suit, mainly because the threat of white retaliation, possibly in the form of a bombing or a lynching, was so great. The attorney general and the Civil Rights Division of the Justice Department would have no such fears, however, and could pursue civil rights cases in a vigorous and public way that would never occur if such cases were left to the individual initiative of isolated Southern black citizens.

Although the Eisenhower Part III was defeated in the Senate by a filibuster, almost all subsequent civil rights bill contained a provision similar to Part III that gave the attorney general the power to seek court injunctions to protect civil rights. The concept kept the nickname of Part III even when it was no longer the third part of the bill in question.

THE BATTLE OVER THE ADMINISTRATION BILL

Skillful lobby groups do not wait for presidential proposals to reach Capitol Hill before they begin their lobbying efforts. Pressure

is applied both to the White House itself and, more importantly, to the particular bureaucrats who will be writing the exact legal language of the proposed legislation. In line with this strategy, civil rights groups began sending messages to President Kennedy and to the Justice Department (where the actual legislative proposal would be drawn) urging that the administration bill include the major legislative recommendations of the Civil Rights Commission Report of 1961.

There were still many voices of caution to be heard in the inner circles at the White House, however. Those concerned with the fate of the tax cut bill and the rest of the Kennedy economic program continued to see much to be lost and little to be gained from presenting a strong civil rights bill. Suddenly reports began spreading throughout Washington that something less than a really strong civil rights proposal would be forthcoming from the White House. The public accommodations section was going to be limited in scope, the rumors said, confined only to those restaurant and hotel facilities immediately engaged in interstate commerce. There would be a Part III, but the attorney general would be allowed to file suit only in school desegregation cases and not in all civil rights cases. There would be an Equal Employment Opportunity Commission (EEOC) to end job discrimination in U.S Government agencies and in private businesses operating under U.S. Government contracts, but there would be no Fair Employment Practices Commission (FEPC) with powers to end job discrimination in all private industry.[6]

On 19 June 1963 a weaker proposal than what was wanted by the civil rights forces went to Congress. "It was clear that the counsel of caution had, on the whole, prevailed."[7] One major concession was made to the pressure from the civil rights bloc. President Kennedy called for creation of a Fair Employment Practices Commission (with powers to end job discrimination in all private industry) in his civil rights legislative message. There was no FEPC language in his omnibus civil rights bill, however, only the EEOC limited to ending job discrimination in U.S. Government agencies and under U.S. Government contracts.

MAJOR PROVISIONS

The omnibus civil rights bill which the Kennedy administration sent to Capitol Hill contained seven major proposals. Title I concerned voting rights and provided that anyone who had a sixth grade education could not be required to take a literacy test in order to register to vote. Title II, the most important part of the proposed bill in view of the sit-in demonstrations in general and the Birmingham demonstrations in particular, outlawed racial discrimination in all places of public accommodation such as restaurants, snack bars, motels, hotels, swimming pools, etc.

Title III gave the attorney general of the United States the power to file suits to bring about the racial desegregation of public schools. It is interesting to note the impact of tradition here. Granting the attorney general the power to file suits in civil rights cases had always been known as Part III, and here it was placed as Title III of the Kennedy civil rights bill.

Title IV proposed the establishment of a Community Relations Service to assist state and local governments in resolving racial disputes. Title V extending the working life of the Civil Rights Commission for four more years (through November of 1967). Title VI provided for the cutoff of U.S. Government funds to any state or local government program that practiced racial discrimination. Because of the pressure it would put on Southern state and local governments to desegregate all government programs that were financed with U.S. Government aid, this was a very important part of the Kennedy bill, second in importance only to Title II and its guarantee of equal access to public accommodations.

Title VII created the Equal Employment Opportunity Commission (EEOC) with authority to limit job discrimination only in U.S. Government employment and work undertaken under U.S. Government contracts.

Compared to the relatively mild civil rights measure which President Kennedy had sent to Congress in March of 1963, his June

of 1963 proposal appeared to many observers to be very strong. Strong as it was, however, it came under continuing criticism from civil rights groups, mainly for its lack of a Fair Employment Practices Commission (FEPC) to end job discrimination in all places of employment, private as well as public.

Worried by this continuing criticism of his civil rights legislative package, President Kennedy called the major civil rights leaders to a conference at the White House. He was determined to convince them that his proposed bill was the best that could be achieved under the circumstances. According to Joseph Rauh, Jr.:

> He [President Kennedy] said he realized that this fight might even endanger his reelection, but here was a moral issue and he was determined to wage the battle come what may. He stressed the need for an all-out effort by everybody in the room to mobilize the public behind his bill.[8]

President Kennedy left the meeting and was replaced by Vice-President Lyndon Johnson. When asked what would happen if the Leadership Conference on Civil Rights were to lobby Congress hard to strengthen the Kennedy proposed bill, the Vice President replied that there must be "flexibility" in a campaign of this kind, and he saw no problems with the civil rights groups going beyond the administration in their demands. According to Joseph Rauh, Jr.: "This was the go-sign for the Leadership Conference strategy from then on."[9] The civil rights movement would give its wholehearted support to the Kennedy civil rights bill, but it would demand more, and it would attempt to strengthen the administration proposal at every opportunity.

A number of the civil rights leaders at the meeting were not surprised that Vice-President Johnson took a stand in favor of strengthening the administration civil rights bill. The major black political leaders saw Vice-President Lyndon Johnson, although a Southerner, as more in favor of civil rights than Kennedy. Whitney

Young, Jr., national director of the Urban League, gave the following response to a question about Vice-President Johnson's role in drafting the civil rights bill:

> He [Johnson] played a very key role and was actually more supportive of some of the measures than some of the administration, the other Kennedy people were. Initially we had seven or eight titles and there were any number of the members of the administration who were trying very hard to get us to cut down the number. . . . Mr. Johnson didn't feel that way.[10]

CONCLUSIONS

No legislation originates in a vacuum. Bills are introduced in the United States Congress because somewhere "out there" real people are upset with some aspect of the status quo and want to see things changed. The strengthened civil rights bill which President Kennedy sent to Congress in June 1963 originated, not in the White House or in the office of a particular senator or representative, but in the confrontational violence of the civil rights movement and the segregationist white response. Short of a declaration of war, few bills presented to Congress have had as violent and confrontational an origin as the strengthened Kennedy civil rights bill of June 1963.

As much as it originated in the streets, however, the Kennedy civil rights proposal of June 1963 originated in the television tube. The use of television news to dramatize racial repression in the South and to present the arguments of the civil rights demonstrators was crucial.

The racial demonstrations and their full coverage in the media forced President Kennedy to do something which he obviously had not wanted to do -- present a strong civil rights bill to the United States Congress. The record is clear that, until the Birmingham demonstrations and riots forced him to change his position, President

Kennedy had no intention of sending a strong civil rights proposal up to Capitol Hill. A point to be noted here is that, despite all of their great constitutional and customary powers, presidents of the United States can often be forced by external events and external political actors to take steps that they otherwise might not take.

Adding to the excitement and tensions surrounding the presentation of the strengthened Kennedy civil rights bill to Congress were the formidable obstacles that the proposed legislation would face on Capitol Hill. The House Rules Committee would delay the bill as long as possible. Some way would have to be found to get the bill around the Southern controlled Senate Judiciary Committee. Most important of all, the bill would have to survive a determined Southern Democratic filibuster in the Senate, something that had never been accomplished before with a strong civil rights bill. If civil rights supporters had the media impact of the civil rights demonstrations and confrontations working in their favor, the anti-civil rights forces had control over certain key points in the congressional law making process working for them. What was being set up was a classic confrontation between a media focused public demand for change and the procedural prerogatives and powers of certain key members of Congress.

It was clear in June 1963 that, as the civil rights struggle moved up to Capitol Hill, the Kennedy administration found itself caught in the middle between two strong and contending forces. The Southern Democrats in Congress were determined to either kill the strengthened Kennedy bill or else weaken it considerably. On the other hand, the civil rights forces (as represented by the Leadership Conference on Civil Rights) intended to strengthen the bill as much as possible. The job of successfully steering a middle course for the bill between these contending interests was the principal task facing Kennedy administration legislative strategists.

The argument can be made that few legislative proposals have ever arrived before the United States Congress with as much previous publicity and as much public awareness about their significance as

did the Kennedy civil rights proposal of June 1963. Clearly the national spotlight on the civil rights issue was shifting to the United States Congress, and everyone involved knew that it was shifting there. This would be anything but the customary congressional battle, carried out quietly in the halls of Congress with little or no public attention and only the immediately affected government agencies and client groups involved. The civil rights movement leading up to June 1963 had been one of the most heavily publicized events in United States history. It set the stage for the strengthened Kennedy civil rights proposal to be one of the most extensively publicized congressional battles in United States history.

1. CQ Weekly Report, 15 September 1961, 1582-1585. For a summary of the entire five volume Civil Rights Commission Report of 1961, see CQ Almanac - 1961, 394-398.

2. CQ Weekly Report, 29 September 1961, 1669-70.

3. CQ Weekly Report, 16 October 1961, 1722.

4. CQ Weekly Report, 17 November 1961, 1860.

5. CQ Weekly Report, 17 November 1961, 1861.

6. Rauh manuscript, 3-4. See also James L. Sundquist, Politics and Policy: The Eisenhower, Kennedy, and Johnson Years (Washington: Brookings, 1968), 263.

7. Sundquist, Politics and Policy, 263.

8. Rauh manuscript, 5.

9. Rauh manuscript, 5.

10. Whitney Young, Jr., interview, 18 June 1969, 4-5, Oral History Collection, LBJ Library.