CHAPTER 9

FILIBUSTER #1;
THE MOTION TO CONSIDER

On 17 February 1964, one week after the bipartisan administration civil rights bill passed the House of Representatives, Senate Democratic Leader Mike Mansfield of Montana was standing on the Senate floor, quietly and patiently waiting. Through the door and down the aisle came a clerk from the House of Representatives, carefully carrying the House approved civil rights bill from the House to the Senate.

Ordinarily the House clerk would have quietly handed the bill to the Senate clerk. Then the Senate clerk would have routinely read the title of the bill, seen that it concerned civil rights, and sent the bill to the Senate Judiciary Committee.

But routine was not what Mike Mansfield had in mind for this particular day in the Senate.

The Constitution provides for the vice-president of the United States to serve as president of the Senate, therefore senators traditionally address the chair as "Mr. President." In actual practice, the vice-president sits as president of the Senate only on rare occasions. During most sessions a junior senator from the majority party (the Democratic Party in 1963-1964)
sits in the "president's" chair and performs the routine task of recognizing senators who wish to speak.

Therefore, when Democratic Leader Mansfield wanted to speak to the Senate, he addressed the junior senator in the chair with the customary title of "Mr. President."

"Mr. President," said the Democratic leader, "I request that House bill 7l52 be read the first time." The Senate clerk quickly read the bill's title. "Mr. President," Mansfield then said, "I object to the second reading of the bill today."[1]

With these two sentences, Mansfield took the first step in an elaborate three-step parliamentary maneuver aimed at bypassing the Senate Judiciary Committee and its chairman, Senator James Oliver Eastland of Mississippi.

By objecting to the second reading of the House passed civil rights bill, Mansfield had stopped the bill at the presiding officer's desk. In effect, the Democratic leader had taken the bill under his own direct control. He next announced that the Senate would take up the administration farm bill (wheat and cotton) and then would take up the civil rights bill, probably getting to civil rights about the first week in March.

Mansfield then gave his fellow senators and the press and public a preview of exactly how he planned to handle the obstructionism of Senator Eastland:

> Mr. President, in the near future, the leadership will propose to the Senate that this measure be placed on the calendar without referral to committee, and that, subsequently, the Senate as a body proceed to its consideration.

Mansfield carefully explained to the Senate that he was treading a familiar path, and that everyone knew the reason why the civil rights bill could not be forwarded to the Judiciary Committee for public hearings and committee mark up. "The procedures which the leadership will follow are not usual," Mansfield noted, "but neither are they unprecedented. And the reasons for unusual procedures are too well known to require elaboration."[2]

BYPASS OR REFER WITH INSTRUCTIONS

Over the following three weeks, which was the period of time required for the Senate to finish the wheat and cotton bill, a serious strategy argument broke out among the liberal senators supporting the civil rights bill. Should the civil rights bill bypass the Senate Judiciary Committee completely, or should the bill be referred to the Judiciary Committee with instructions to report it back, unamended, after a specified period of time?

Senator Wayne Morse of Oregon, a strong civil rights supporter, was the principal advocate of referring the bill to committee with strict instructions to report the bill back unchanged. Morse argued that every single sentence of the bill would be litigated. He believed that committee hearings and a committee report would give the courts much needed information about the intent of Congress, information which would be essential when, as inevitably would happen, the courts were called upon to find various parts of the civil rights bill constitutional. The Senate Judiciary Committee should, Morse repeatedly told the Senate, "sit down and write a scholarly majority report that the courts can use in the hotly contested litigation that will take place in innumerable cases in the next decade."[3]

Furthermore, Morse noted, since the Southern Democrats could filibuster the motion to take up the civil rights bill without the bill having first gone to committee, it would save time in the long run to send the bill to the Judiciary Committee for a specified period of time.

Hubert Humphrey was the principal voice for bypassing the Judiciary Committee completely. He constantly repeated the civil rights slogan that "121 consecutive civil rights bills died in the Senate Judiciary Committee from 1953 to 1963." In meeting after meeting Humphrey argued that referral to the committee with orders to report back would add nothing to the legislative history of the bill and would simply waste more time.

A "BORE-ATHON"

Subsequent debate on the Senate floor gave those senators who opposed sending the civil rights bill to the Judiciary Committee (with orders to report back the bill unchanged) an opportunity to further state their case. Senator Joseph S. Clark, a Democrat from Pennsylvania, gave a graphic description of what would happen to the bill once it fell into the hands of committee chairman Eastland:

> He will never even poll the committee. There will be no report, so that in the end we will have some testimony which will merely reiterate much of the testimony already taken in two other [Senate] committees and in the House, and we shall have wasted 10 days.[4]

Clark's remarks were strongly seconded by Senator Keating of New York:

> Speaking as a member of [the] committee, I must question the premise that sending this bill to the Judiciary Committee -- the traditional graveyard for civil rights legislation -- will somehow add to the body of knowledge in this area. . . . The chairman of the Judiciary Committee has decided that the rules of the Senate [unlimited debate] are also applicable to the committee. This means that a "bore-athon" is not only possible, but predictable in the committee. It has happened before and, I assure you, it will happen again.[5]

The NAACP was strongly opposed to sending the civil rights bill to the Judiciary Committee. Clarence Mitchell, Jr., told Democratic leader Mike Mansfield that he (Mitchell) and the NAACP would regard referral of the House passed bill to the Senate Committee on Judiciary "as betrayal."[6] Mitchell subsequently made

public a telegram he sent to Senator Morse urging him to end his support of Judiciary Committee hearings. The telegram read:

> If there is any one thing that strains the faith of citizens, it is a persistent effort to give an aura of respectability to committee hearings on civil rights [run by Senator Eastland]. To the man in the street, this is the equivalent of the stacked deck, the hanging judge, and the executioner who enjoys his work.[7]

Humphrey felt personally vexed that a strong civil rights supporter like Wayne Morse would be pressing him so hard to send the bill to the Judiciary Committee. "The only time I see Wayne anymore," Humphrey lamented at a civil rights strategy meeting, "is to take the body blows as he goes by."[8]

THE MANSFIELD SURPRISE

At first it appeared that Senate Democratic Leader Mike Mansfield would side with Humphrey and attempt to bypass the Judiciary Committee completely. On 26 February 1964, just before the Senate took up the wheat and cotton bill, Mansfield moved that the civil rights bill be placed on the Senate calendar (from which it could be motioned up for Senate debate at a later date).

Following the successful completion of this piece of routine business (only slightly delayed by a Southern Democratic point of order), Mansfield asked unanimous consent that "House bill 7152 be referred to the Judiciary Committee with instructions to report back, without recommendation or amendment, to the Senate not later than noon, Wednesday, March 4."[9]

Humphrey and Kuchel were perplexed by this attempt on Mansfield's part to placate Senator Morse and respond to at least a portion of the Southern demand for Judiciary Committee hearings. The bipartisan floor leaders for the civil rights bill had been given a

minimum of advance notice that Mansfield was going to make this motion,[10] and Republican Senator Jacob Javits, learning about Mansfield's motion when Mansfield presented it on the Senate floor, jumped to his feet to object, thereby blocking the Democratic leader's request for unanimous consent. Javits did suggest, however, that Mansfield make his motion again the next day when Javits and other senators backing the bill would have had more time to think about it.

Mansfield did make his motion again the following day, only this time it was Judiciary Chairman Eastland who objected to the unanimous consent request. Eastland then proceeded to portray the request as a near insult to his Committee:

> The net result would be that we would be handcuffed. . . . I will not be a party to sending a bill to the committee when it cannot amend it and cannot make a recommendation. . . .
>
> Therefore, Mr. President, I object.[11]

The episode illustrated that there was something of a difference between what Humphrey and Kuchel were trying to do and what Mansfield was trying to do. Humphrey and Kuchel were endeavoring to pass the strongest civil rights bill possible. Mansfield wanted a civil rights bill, but, as Democratic leader, he was ready to try to placate maverick civil rights supporters such as Wayne Morse and, if possible, the Southerners. For the remainder of the Senate debate on the bipartisan civil rights bill, Humphrey and Kuchel were somewhat tense and worried about what other moves Mansfield might make to keep in the good graces of all the senators, including the Southerners.

THE MOTION TO CONSIDER

By Monday, 9 March 1964, the Senate had disposed of the wheat and cotton bill. On that day Mansfield planned to offer his

motion that House bill 7l52, the bipartisan administration civil rights bill, be taken from the calendar and be considered as the next item of business for the United States Senate.

Under ordinary conditions such a motion to consider is debatable, which means the Southern Democrats could filibuster both the motion to consider and the civil rights bill itself. The prospect, therefore, was for two filibusters, which led to the prospect that two cloture votes might be required to overcome the two filibusters.

Mansfield's one hope to avoid a double filibuster was a Senate rule providing that a motion to consider is not debatable during the morning hour. The morning hour is the period from 12 Noon, when the Senate customarily goes into session, until 2 P.M., when the Senate gets down to hard legislative work. The morning hour is set aside for senators to make speeches on current political issues, put newspaper articles from hometown newspapers in the Congressional Record, and take care of other matters that really do not require the other senators to be in attendance.

Unfortunately for Mansfield, the Southern Democrats knew all about the rule that a motion to consider is not debateable during the morning hour. They could easily foil Mansfield's use of the rule by filling time during the morning hour, thereby denying Mansfield the opportunity to make his motion to consider until after 2 P.M. (when the morning hour would be over and the motion would be debateable).

Mansfield's staff had developed some complicated parliamentary moves which might have enabled the Democratic leader to present his motion during the morning hour. Mansfield reviewed these maneuvers and, in typical Mansfield style, pronounced them too "tricky." He resolved to offer his motion as soon as he could get the Senate floor in the regularly approved manner, and, if that were after the morning hour, then he would simply accept a Southern filibuster of his motion to consider.[12]

As the Senate went into session on 9 March 1964, Senator Richard Russell of Georgia, the leader of the Southern Democrats,

was well prepared to see that Democratic Leader Mansfield would not get the Senate floor during the morning hour. The day began with the customary unanimous consent request that the Senate dispense with the reading of the Journal (Congressional Record) from the previous day. Senator Russell promptly objected and then announced that he would offer amendments to the record. Following the long and laborious reading of the Journal, Russell asked that it be amended to include some statements that Senator Mansfield had made about the civil rights bill the previous Friday. Russell then gave a long speech supporting his proposed amendment to the Journal, citing a number of the legal arguments that had been used against the civil rights bill in the House Judiciary Committee and on the House floor.

The Southern leader then moved on to a general discussion of civil disobedience, reading into the record several recent newspaper stories on the topic. A number of the newspaper articles contained reports of attacks on teachers in urban schools, a phenomenon which Russell associated with the activities of a prominent civil rights group (CORE, the Congress of Racial Equality). As 2 P.M. came and went and the morning hour was safely behind him, Russell concluded by reading an article from the Washington Star regarding the activities of pressure groups during House passage of the civil rights bill.[13]

When Senator Mansfield finally obtained the Senate floor, he expressed the hope that eventually the Senate would have a chance to vote the bipartisan civil rights bill up or down. He then tried to impress upon his fellow senators the importance of what they were about to do:

> There is an ebb and flow in human affairs which at rare moments brings the complex of human events into a delicate balance. At those moments, the acts of governments may indeed influence, for better or for worse, the course of history. This is such a moment in the life of the Nation. This is that moment in the Senate.[14]

Mansfield then made his motion, which was strictly procedural: "Should the Senate proceed to the consideration of HR 7l52, the Civil Rights Act of l964?" Immediately Sam Ervin of North Carolina, Lister Hill of Alabama, Russell Long of Louisiana, and John McClellan of Arkansas took the floor and began discussing Mansfield's motion to consider. Filibuster #1 had begun.

NATURE OF THE DEBATE

The Senate debate on the motion to consider was highly disorganized. Rather than staying on the narrow subject of the motion to consider, pro-civil rights senators and anti-civil rights senators alike made extensive comments about the substance of the civil rights bill. Some of the speeches did not refer to either the motion to consider or the civil rights bill, but were on entirely extraneous subjects. Also there was little correlation between one speech and another, even when the speeches were consecutive. The various senators who spoke during the debate on the motion to consider appear to have mainly been stating their views for the record rather than trying to build a logical case for or against civil rights that would sway their colleagues.[15]

Humphrey and Kuchel had a decision to make when it became clear that the Southerners were going to debate the merits of the bill as well as the propriety of the motion to consider. Originally the civil rights forces had planned to withhold their substantive arguments until the bill itself was pending. However, when the Southerners began debating the bill on its merits, Humphrey decided "to take on the Southern Democrats without delay in order to avoid a blackout of news favorable to the bill."[16]

Humphrey adopted a strategy of <u>immediate answer</u>. Whenever the Southerners inserted a substantive criticism of the bill into the debate on the motion to consider, the pro-civil rights forces would immediately take the Senate floor and give a vociferous reply. As a legislative aide to Senator Kuchel expressed it, the idea was "to

create an atmosphere of winning by being aggressive."[17]

On many occasions the strategy of immediate answer worked effectively for the civil rights senators. At one point, Humphrey maneuvered Senator Allen Ellender of Louisiana into admitting that blacks were prevented from voting in certain parts of the South because whites feared the prospect of being governed by black elected officials. The exchange of remarks on the Senate floor went like this:

> Mr. ELLENDER. It is true that in some states there are counties where the ratio of Negroes to whites is 2 to 1. There may be registration difficulties in those counties. But why? . . . It is because the few whites in those counties would be scared to death to have Negroes in charge of public office without qualification.
>
> Mr. HUMPHREY. What the Senator from Louisiana is saying is that although the whites are in the minority, they prevent the colored majority from registering to vote? . . .
>
> Mr. ELLENDER. Well --
>
> Mr. HUMPHREY. The Constitution is rather explicit on that subject.
>
> Mr. ELLENDER. I understand that. I am not saying they should not be registered, but I am giving the Senator the reason why. If this happened in the state of Minnesota, the Senator from Minnesota would do the same thing.
>
> Mr. HUMPHREY. Not at all. Not at all.
>
> Mr. ELLENDER. The Senator from Minnesota has not lived in the South. The situation does not exist in the state of Minnesota that has existed in the South. In some counties in the state of Mississippi, the ratio of Negroes to whites is 3 to 1.
>
> Mr. HUMPHREY. I appreciate that. . . .

> Mr. ELLENDER. I am frank to say that in many instances the reason why the voting rights were not encouraged is that the white people in those counties who are in the minority are afraid they would be outvoted. Let us be frank about it. . . .
>
> Mr. HUMPHREY. It is a fact, is it not, that the large numbers of colored people who are citizens of the United States, many of whom pay taxes, many of whom are called upon to perform all the duties of citizenship, in peace and war, are denied the right to register and thereby denied the right to vote?
>
> Mr. ELLENDER. That has been done in many places.[18]

Senator Sam Ervin of North Carolina stepped in at this point to aid Ellender, trying to make the traditional Southern Democratic point that it was the black people's own fault that they could not vote because they did not "bother" to register. But the damage to the Southern cause had already been done. Humphrey's aggressive exchange with Ellender had effectively drawn the attention of the press to Senator Ellender's admission. National network television news and the following day's morning papers carried the story that a Southerner had admitted that some Southern whites were "scared to death to have Negroes in charge of public office." From the point of view of civil rights advocates, the need for a national voting rights law had been underscored. Humphrey's policy of immediate answer had worked.

TO CLOTURE OR NOT TO CLOTURE

Mansfield and Humphrey had thought the Southerners would filibuster the motion to consider for about one week. Suddenly the debate had been going on for a full week and was well into its second week. Political wags around Capitol Hill, comparing this preliminary

filibuster to the short "miniskirts" that were popular in women's fashions at the time, began describing it as a "minibuster."[19]

Suddenly the main topic of conversation in civil rights strategy meetings was what to do about the ever lengthening debate on the motion to consider. Initially Hubert Humphrey had argued in favor of a cloture vote after only five days. "Five days of [Southern] snorting is enough," Humphrey said, "and then we should get the bill up." Humphrey was opposed, however, by Thomas Kuchel. "We ought to permit the Southerners to filibuster since the American people will get disgusted with them," Kuchel said. "A prolonged filibuster on the motion to set the legislation for action works to our advantage." Clarence Mitchell, Jr., of the NAACP agreed with Kuchel that the best advice was to "let the Southerners talk."[20]

On 17 March 1964 the New York Times carried a major story that Mansfield, Dirksen, Humphrey, and Kuchel had decided to seek a cloture vote the following week if the Southerners continued to debate the motion to consider. In point of fact, it was only Mansfield and Dirksen who were talking cloture at such an early point in the proceedings. By this time Humphrey and Kuchel, particularly Kuchel, were strongly opposed to it. The bipartisan floor managers wanted to withhold a cloture vote until (1) it could be invoked on the civil rights bill itself, and (2) they were certain they had enough votes to win the cloture vote. A legislative aide to Senator Humphrey summarized the reasons for this strategy:

> To attempt cloture and to fail would seriously cripple the civil rights forces in their campaign to generate confidence and momentum behind the legislation. And those senators who voted against cloture once would be that much more difficult to win later in the debate.[21]

It was disturbing to Humphrey and Kuchel that Mansfield and Dirksen had let the New York Times hear of a cloture effort on the

motion to consider. The whole affair hinted at a greater inclination by both Mansfield and Dirksen to think in terms of a compromise settlement. There was little disagreement among political observers that, once cloture had been tried and had failed, the bill would then become far more vulnerable to major concessions in the pattern of earlier civil rights debates. Humphrey's legislative aide gave this analysis of the situation:

> From Mansfield's perspective, however, this possibility was much less a disaster than it would have been for Humphrey or Kuchel. Partially due to a less intense involvement over the years in the civil rights effort, and partially due to a perspective which necessarily considered the civil rights bill as one among many bills that would have to pass under his general direction, Mansfield gradually emerged as less of an absolute proponent than either floor manager, less willing to think only in terms of demolishing the filibuster as the essential step toward total victory.[22]

The day after the New York Times story concerning a possible cloture vote, Mansfield abandoned the plan completely. Apparently heavy pressure from Humphrey and Kuchel caused the Democratic leader's change in view on the issue. Senator Kuchel told his legislative assistant that Mansfield backed down from the cloture plan after Kuchel had "vigorously" objected to it.[23]

In fact, Kuchel's legislative assistant actually theorized at this time that Mansfield's early pressure for cloture on the motion to consider was a plot by President Johnson to shame the Republicans. The legislative assistant wrote in his daily notes:

> My cynical mind tells me that this might be a Lyndon Johnson attempt to embarrass the Republicans since we would be shy the 25 votes the GOP needs to

> deliver for cloture. Those votes will be available five or six weeks from now, but not if the vote is held now.[24]

As strategy making was going on in the meeting rooms of the Senate side of the Capitol, the minibuster continued unabated. When Senator John Stennis of Mississippi heard about the publication of a civil rights newsletter, he revealed his displeasure on the Senate floor. "I should like to ask," Stennis intoned, "who writes these mysterious messages, which come to senators before the Congressional Record reaches them, and in them attempts to refute arguments made on the floor of the Senate?" Hubert Humphrey was only too pleased to respond to Stennis and simultaneously publicize the organizational efforts of the civil rights forces. "There is no doubt about it," Humphrey readily admitted. "The newsletter is a bipartisan civil rights newsletter. . . . For the first time, we are putting up a battle. Everything will be done to make us succeed. . . . I wish also to announce that if anyone wishes to have equal time, there is space on the back of it for the opposition."[25] As Humphrey surely knew would be the case, the Southern Democrats declined to contribute any material to the "back" of the civil rights newsletter.

Exactly as they had intended, Mansfield and Humphrey were able to keep the debate on the Senate floor polite and friendly. At the end of one long day, for example, Willis Robertson of Virginia, having just ridiculed every title in the bill, walked over to Humphrey and offered him a small Confederate flag for his lapel. Humphrey accepted the "Stars and Bars" graciously and then gave a speech praising Robertson for his "eloquence and his great knowledge of history and law, but also for his wonderful . . . gentlemanly qualities and his consideration to us at all times."

Senator Robertson then delivered a Southerner's ultimate compliment to a Northerner by telling Humphrey that it was Union soldiers from Humphrey's home state of Minnesota that successfully invaded Virginia in the Civil War. Robertson said: "I told the

Senator [Humphrey] that if it had not been for the men from Wisconsin and Minnesota, when Grant finally came down into Virginia, we would have won." Robertson then jokingly took back some of his praise by noting that the Wisconsin and Minnesota soldiers took Virginia only because most of them were former Virginians. "They formerly belonged to Virginia," Robertson concluded. "We could not whip them . . . ." Arm in arm, Humphrey and Robertson retired to Humphrey's office "for some early evening refreshment."[26]

THE END OF THE MINIBUSTER

Completely stymied by the apparent willingness of the Southern Democrats to debate the motion to consider until forced by external forces to stop, Humphrey and Kuchel began thinking of various steps that might be taken to dramatize the obstructionism of the filibusterers. One plan was to have Mansfield make daily requests on the floor of the Senate that the motion to consider be voted upon. Another idea was to constantly talk about the "threat" of a cloture vote to the press. The hope here was that serious press coverage of such a threat might convince the Southerners that the civil rights senators actually had the votes for cloture, and that the Southerners were thereby taking great risks in continuing to block the Senate from taking up the bill.[27]

As it turned out, none of these plans were necessary. Richard Russell, the leader of the Southern Democrats, concluded that two weeks was about as far as he could push his luck in continuing the filibuster against the motion to consider. It was not in his interest to provoke senators into the successful application of cloture so early in the game. A legislative aide to Senator Humphrey gave the following explanation of why Russell ended the filibuster of the motion to consider:

> Recognizing that to continue [filibuster #1] further

> would eventually incur those risks, Russell passed the word quietly to Mansfield that a vote on the preliminary motion could occur. . . . Both sides, in short, concluded that it was in their respective best interests to avoid a showdown over cloture at this stage of the debate.[28]

Senator Russell never announced his decision to end the minibuster publicly. The Southerners just stopped talking at the agreed upon time and the vote took place. Mansfield, of course, would not discuss the agreement in public either. As Hubert Humphrey's legislative aide noted:

> [Such an action] would have embarrassed Russell and probably forced him to continue the filibuster [of the motion to consider] regardless of the consequences. Indeed, the principals to the decision talked little about it [the informal agreement to end the minibuster] even in private.[29]

With absolutely no warning to the public that things had changed, the Senate met on the morning of Thursday, 26 March 1964, and promptly voted, 67 to l7, to proceed to the consideration of H.R. 7152, the bipartisan civil rights bill.[30] Only Southern Democrats voted against the motion to consider. After considerable delay, the civil rights bill was officially before the Senate.

The fact that 67 Senators voted for the motion to consider did not indicate that Humphrey and Kuchel had 67 votes (the requisite number) for cloture. Several senators who voted to take up the bill either opposed cloture or had not yet committed themselves to support cloture.

In a final effort in behalf of his plan to get at least some committee consideration of the bill, Senator Morse moved to refer the bill to the Senate Judiciary Committee with instructions to report the bill back by 8 April 1964. After a brief rehash of all the previously

stated arguments on this issue, Mansfield moved to table Morse's motion (in effect, killing it). Although the news media had carried reports that the vote on Morse's motion would be close, Mansfield's tabling motion passed easily by a vote of 50 to 34.[31] The last obstacle in the path of Senate consideration of the bill itself had been removed.

CONCLUSIONS

The 2 and 1/2 week debate on the motion to consider mainly revealed that the civil rights forces were short the necessary 2/3 vote for cloture. When it became apparent that an early cloture vote might be required to end the minibuster, an informal whip count showed the civil rights forces more than eight votes shy of the 67 votes needed.

It is interesting to note the performance of the 12 Republican senators who the civil rights forces hoped would eventually provide the additional votes for cloture. Of these 12 Republicans, now referred to as "The Crucial Twelve," 7 had supported Senator Morse's motion to send the bill to the Senate Judiciary Committee with instructions to report the bill back unamended. Although a vote for Morse's motion did not necessarily mean a senator was against cloture or anti-civil rights, it did mean that Humphrey and Kuchel did not, as yet, have that senator firmly supporting their point of view and their particular brand of civil rights leadership. Clearly a long and indecisive period of bidding for the cloture votes of these 7 senators lay ahead.

Civil rights floor leaders Humphrey and Kuchel were very concerned about the performance of Senator Everett Dirksen. The Republican leader had not only voted for Morse's motion but had given a strong speech in support of it. Dirksen told the Senate:

> If this [bill] is as important as the zealots would have us believe, that is all the more reason why the Senate should be most careful [and refer the bill to the Judiciary Committee]. . . . This bill would remake the

> social patterns of this country. Let no one be fooled on that score. Its impact would be profound. . . . I desire a civil rights bill. . . . But I want it to be fair, equitable, durable, and workable . . . .[32]

During his speech, Dirksen had continued to articulate his strong reservations about crucial parts of the legislation, particularly equal employment opportunity. As for equal access to public accommodations (to many observers the most important part of the bill), Dirksen announced his intention to introduce, at a later date, substitute language for the public accommodations section that had passed in the House of Representatives.[33]

The pro-civil rights forces were unnerved by the thought that Dirksen was going to introduce such a major amendment. Their concern was compounded by the fact that Dirksen had given no indication whatsoever as to what form his public accommodations amendment was going to take. The atmosphere of mystery which Dirksen had successfully created about his proposed amendments produced a general feeling of tension and malaise in the civil rights camp.

The civil rights forces had made some gains as the minibuster came to an end, however. Humphrey's strategy of immediate answer had produced the desired amounts of favorable publicity for the civil rights bill. Furthermore, the civil rights "quorum duty list" had functioned very effectively and, so far at least, all quorum calls had been answered quickly and in good order. Most importantly, the press had been impressed with the efficient organization of the civil rights forces and was spreading that impression throughout the nation. As the New York Times put it:

> Civil rights forces, not to be outdone by Southern opponents, have thrown up their own well manned command post in the Senate. . . . As militarily precise as the Southerners' three platoon system, the

> Humphrey forces are organized down to the last man . . . .[34]

As for the Southern Democrats, they had demonstrated just how effectively a filibuster can tie up the Senate. Humphrey and Kuchel had been totally unable to come up with any way to end the minibuster other than cloture -- and they clearly did not yet have the votes for cloture. Although it was never officially announced, insiders knew that the debate on the motion to consider had ended only because Richard Russell had decided to let it end, not because of any power of the civil rights forces.

Russell thus emerged from the debate over the motion to consider in a confident mood. "We have lost a skirmish," Russell told the Senate after the Morse motion (to refer the bill to the Judiciary Committee with instructions to report back unamended) had failed. "We shall now begin to fight the war."[35]

Filibuster #1, the filibuster of the motion to consider, thus came to an end. Filibuster #2, the actual filibuster of the civil rights bill itself, was about to begin.

1. Time Magazine, 28 February 1964, p. 22.

2. Congressional Record 110, Pt. 3 (17 February 1964) 2882.

3. Congressional Record 110, Pt. 5 (26 March 1964) 6419.

4. Congressional Record 110, Pt. 5 (26 March 1964) 6419.

5. Congressional Record 110, Pt. 5 (26 March 1964) 6431.

6. Horn log, p. 23.

7. CQ Weekly Report, 27 March 1964, p. 597.

8. Horn log, p. 24.

9. Congressional Record 110, Pt. (26 February 1964) 3719.

10. Stewart, Independence and Control, p. 10. Also see Horn log, p. 23. Horn reported that political columnist Robert Novak called him (and presumably other pro-civil rights senators' aides) to find out if Mansfield's motion had come as a surprise.

11. Congressional Record 110, Pt. (27 February 1964) 3830.

12. Stewart, Independence and Control, p. 212.

13. Congressional Record 110, Pt. 4 (9 March 1964) 4741-4754.

14. Congressional Record 110, Pt. 4 (9 March 1964) 4754.

15. Kane, The Senate Debate, 68.

16. Stewart, Independence and Control, p. 214.

17. Stephen Horn, legislative assistant to Senator Thomas H. Kuchel, 20 April 1966, quoted in Kane, The Senate Debate, 81.

18. Congressional Record 110, Pt. 4 (11 March 1964) 4999-5000.

19. Personal recollection of the author.

20. Humphrey, Kuchel, and Mitchell quotes from Horn log, p. 24.

21. Stewart, Independence and Control, p. 216.

22. Stewart, Independence and Control, p. 217.

23. Horn log, p. 51.

24. The aide was Stephen Horn. See Horn log, p. 51.

25. Congressional Record 110, Pt. 4 (12 March 1964) 5042, 5046, 5079.

26. Stewart, Independence and Control, p. 215.

27. Stewart, Independence and Control, pp. 216-217.

28. Stewart, Independence and Control, 217-218.

29. Stewart, Independence and Control, 218.

30. Congressional Record 110, Pt. 5 (26 March 1964) 6417.

31. Congressional Record 110, Pt. 5 (26 March 1964) 6455.

32. Congressional Record 110, Pt. 5 (26 March 1964) 6445-6451. See also CQ Weekly Report, 27 March 1964, 596-597.

33. Congressional Record 110, Pt. 5 (26 March 1964) 6446-6451.

34. New York Times, 22 March 1964, 41.

35. Congressional Record 110, Pt. 5 (26 March 1964) 6455.