

## CHAPTER 13

### *"TO DIE ON THE BARRICADES;" TO EARN "A PLACE OF HONOR"*

If the civil rights leaders had thought they were going to sit around the Senate floor for a few hours and enjoy the fact that cloture had been invoked on the civil rights bill, they were mistaken. Immediately after cloture and following a brief exchange of congratulations, Senator Sam Ervin of North Carolina rose at his desk and offered an amendment which, if accepted, probably would have greatly weakened the bill.

The amendment appeared acceptable at first glance. It provided that government officials who violate civil rights laws could not be tried by both the state government and the United States Government for the same violation. Not until several minutes after the amendment was presented did the civil rights forces realize that Southern states could use the amendment to punish civil rights violators with light or nonexistent state penalties and thereby protect the violators from prosecution and heavy fines and jail sentences in U.S. courts.

To the amazement of the civil rights forces, Senator Ervin's amendment looked so good at first glance that it was adopted by a vote of 49 to 48. Only a procedural misstep on Ervin's part saved the newly clotured civil rights bill from what civil rights supporters would have considered disaster. In his eagerness to present the amendment, Ervin had offered it to a previous Southern amendment rather than to the Mansfield-Dirksen substitute amendment which had been produced by the Humphrey-Dirksen negotiations. Ervin's

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amendment, although officially passed by the Senate, died when the original Southern amendment to which it was attached failed to be adopted.

It soon developed that events on the Senate floor immediately following cloture were extremely disorganized. Part of this was the great emotional letdown that occurred following such an historic legislative victory. More important, however, was the fact that the Senate leadership had concentrated so heavily on getting cloture that practically no attention whatsoever had been given to the problem of how to handle the Southern Democrats during the postcloture period. No basic organizational plans had been developed to deal with Southern amendments, and no one had done any extensive research and planning on just what the parliamentary situation would be on the Senate floor once cloture was enacted. Going from a precloture to a postcloture Senate turned out to be, in the words of a pro-civil rights Senate aide, like "going from the frying pan right into the blooming fire."<sup>1</sup>

## LIFE UNDER CLOTURE

Once cloture is invoked in the United States Senate, each senator may speak for only one more hour on the bill itself or any pending amendments. Only those amendments which had been introduced prior to the cloture vote could be called up, and therein lay the real "kicker" for the civil rights forces. If the Southern Democrats were to get one of their amendments (introduced prior to the cloture vote) added to the bill, the civil rights forces could not introduce an amendment of their own to get the Southern amendment out of the bill. In effect, any Southern amendment adopted in the tumultuous days immediately following cloture was going to be a permanent part of the bill, and there would not be anything the civil rights forces could do about it. "Under these conditions, the bipartisan [floor managers] could ill afford any miscalculations in the numerous roll call votes which lay ahead."<sup>2</sup>

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During the first two days immediately following the cloture vote, the civil rights forces held several meetings to try and develop a policy for handling the expected spate of Southern amendments to the bill (over 300 had been introduced prior to the cloture vote). A disagreement promptly broke out between Humphrey and the Leadership Conference lobbyists over how the situation could best be handled. The Leadership Conference and the strongly pro-civil rights senators urged the outright rejection of all amendments and to push the Mansfield-Dirksen compromise to final passage as quickly as possible. Humphrey, on the other hand, wanted to be more accommodating and work with the Southerners in those few cases where their amendments would improve the bill and could get the approval of the staff lawyers from the Justice Department.

Humphrey's legislative assistant sought to explain why Humphrey was taking such a conciliatory attitude toward the Southerners under a parliamentary situation where any amendment adopted would be a permanent part of the bill with no opportunity for future changes or corrections. He noted:

Humphrey seemed to be quite distraught and not really in command of the situation. The push for cloture had been a deeply demanding one, and he seemed to let up and relax after the vote had been taken in a way which could not be helpful under the demanding nature of the new circumstances which confronted everyone.<sup>3</sup>

It soon became obvious, however, that the Southern Democrats were not interested in perfecting the bill but mainly wanted to present amendments that would "gut" the bill completely. Humphrey's legislative assistant summed up the situation:

The Southerners appeared more interested in compiling a record of total hostility to the legislation

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rather than resolving specific substantive problems through the good offices of the party leadership.<sup>4</sup>

Under these conditions, a policy slowly developed on the part of the civil rights leaders to systematically vote down any and all amendments that were presented by the Southern Democrats. A small number of amendments were accepted by Humphrey and Mansfield, always after consulting with Everett Dirksen, but most Southern amendments were rejected across-the-board with a minimum of debate or analysis by the bipartisan forces supporting the bill.

## THE POSTCLOTURE FILIBUSTER

Without quite realizing what they were doing at first, the Southerners were discovering a way to extend the filibuster even after having lost the cloture vote. When a senator calls up and debates a proposed amendment, the time is charged against his 1 hour of speaking time allowed under cloture. The time for the quorum call and the roll call vote to approve or defeat the amendment is not charged to the senator, however, and a quorum call and roll call of all 100 senators can take anywhere from 20 minutes to 1 hour, depending on how long it takes to get a sizable number of senators on to the floor.

Soon the various Southerners had learned to call up a particular amendment, use anywhere from 30 seconds to 2 minutes to explain the amendment, and then settle back and watch 20 minutes to 1 hour of Senate time be used up for the quorum call and the roll call vote. If a senator averaged 1 minute for each amendment he presented, he could introduce 60 amendments in the course of his 1 hour of postcloture speaking time and, at an average rate of 30 minutes per quorum call and roll call, delay the Senate a total of 30 hours while it was voting down his amendments. Once civil rights leaders multiplied 30 potential hours of delay per senator times the 18

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filibustering Southerners, the magnitude of the potential for delay became obvious.

This technique for delay which the Southerners had discovered came to be known as the postcloture filibuster.<sup>5</sup> Suddenly the Senate floor, which had been a quiet and boring place during the long days of the filibuster, became a place of action and tumult. The Southern Democrats presented amendment after amendment, thus requiring the pro-civil rights forces to answer a quorum call and a roll call vote every 1/2 hour. Having a vote on an amendment every 30 minutes seemed to be almost as grim a fate as the previous torture of going 2 months without any meaningful votes at all.<sup>6</sup>

Soon the major question for civil rights supporters was how long would the Southern Democrats persist in calling up amendments and thereby extend their postcloture filibuster. On Monday, 15 June 1964, Richard Russell acknowledged the futility of prolonging the struggle further and informed Mansfield and Humphrey that he was ready to conclude the debate as soon as possible.<sup>7</sup> Senator Russell did this despite the fact that he could have easily prolonged the postcloture filibuster for a month or two more. As it turned out, however, Russell was unable to get the more dedicated Southerners to join him in bringing a stop to the debate. Sam Ervin of North Carolina, Russell Long of Louisiana, and Strom Thurmond of South Carolina appeared determined to continue. Thurmond announced he was going to offer all his amendments, and Ervin said he would offer amendments as long as Thurmond did. Humphrey's legislative assistant came to the following conclusion:

It was . . . clear during this period that Russell was having trouble controlling his own troops. . . . Russell clearly was not able to exercise any control over these actions by Thurmond and Ervin.<sup>8</sup>

Although he was their official leader, Richard Russell could not dictate orders to the Southern Democratic senators any more than

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Mansfield and Humphrey could dictate orders to the Democratic senators or Dirksen and Kuchel could dictate orders to the Republican senators.

When Senate Democratic Leader Mike Mansfield realized that the Southerners were not going to stop their postcloture filibuster, he decided to bear down hard and have the Senate work late into the night. On Tuesday, 16 June 1964, the Senate went into session at 10:00 A.M. and did not quit until midnight. Over 33 Southern amendments were brought up, briefly debated, and defeated by roll call vote. It set the all-time Senate record for the largest number of roll call votes in one calendar day.

#### PAST THE BREAKING POINT ON THE SENATE FLOOR

The pressure of having to vote down all the Southern amendments began to take its toll on the civil rights forces:

As the day wore on into evening on that Tuesday, senators began to get rather well oiled by frequent visits to their respective hideaways around the Capitol. There were some amusing incidents which took place because of this, principally Dirksen's outburst against Russell Long. [Dirksen and Mansfield] had accepted several of Long's minor amendments to the bill, and it was implicitly assumed that the acceptance of the amendments would limit the number of other amendments Long would be offering, but it did not seem to work this way. At one point Long offered an amendment and Dirksen, obviously a little under the weather, jumped to his feet and ran back to Senator Long, gesticulating wildly, and said something to the effect of, "Goddam you, you've broken our agreement. Why, you've welched on our

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deal." Long looked absolutely horrified at the specter of Dirksen running up the center aisle of the Senate and there were a few moments of some concern if not high comedy. Dirksen calmed down and soon he and Long were striding about the Senate floor, arm in arm.<sup>9</sup>

The Senate is regarded as the world's most exclusive private club, and, on those few occasions where Senators lose their decorum and behave in an unfriendly manner towards each other, they quickly come to their senses and publicly show the world that friendship and good manners are still the order of the day.

This long day in the Senate was not over, however. Later in the evening Senator James Eastland of Mississippi made a motion to adjourn, a procedural motion reserved strictly for the Democratic leader (when the Democrats are in the majority). This was a challenge to the principle of party leadership in the Senate which neither Mansfield nor Dirksen could ignore. They lined up every non-Southern Democratic vote available, Democrats and Republicans alike, to try to crush this minor rebellion. Then, in a totally unexpected slap at Dirksen in his role as Republican leader in the Senate, Republicans Peter Dominick of Colorado and Edwin Mechem of New Mexico voted in favor of adjournment.

Outraged at Dominick's and Mechem's actions, Dirksen "hit the roof" and dispatched a covey of Senate pages to locate the errant senators and bring them back to the Senate chamber. When Dominick returned, Dirksen "dashed wildly about the chamber and made Dominick change his vote." When Mechem returned, he "was protesting quite visibly and Dirksen was also quite visibly telling him he had to change his vote." Finally, Dirksen grabbed Mechem by the arm, marched him into the well of the Senate, looked him squarely in the eye and commanded, "Okay, now vote!" Mechem quietly responded, "Nay," and thereby voted against adjourning. The motion to adjourn was rejected by a vote of 73-18, and Mansfield's and

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Dirksen's authority as party leaders in the Senate remained unthreatened.<sup>10</sup>

All of this quite remarkable and unsenatorial behavior was too much for Mike Mansfield. The Democratic leader decided it was foolish to continue any longer and adjourned the Senate at the midnight hour.

## CONTRASTS ON A JUNE NIGHT

It was during this period of repeated Southern amendments and the requisite roll call votes that a legislative aide to Senator Thomas Kuchel of California decided to take a needed break from the tumult on the Senate floor and stepped out on the front portico of the Senate wing of the Capitol. Standing between the marble pillars and enjoying the pleasant cool of a June evening in Washington, he gazed over at the marble steps leading up to the center section of the Capitol building, the section midway between the Senate wing and the House of Representatives wing which contains the Capitol dome.

On these steps sat a large racially integrated audience, about half white and half black, listening to a concert band playing on the sidewalk below. These public band concerts on the main Capitol steps were held frequently during the summertime. At the particular moment the legislative aide looked over, it was the "sing along" portion of the band's evening program and the audience was singing "America the Beautiful."

The legislative aide was struck by the contrast between the two separate worlds he was observing that evening. Inside the Capitol, on the Senate floor, was the tumult and anger of the forces of Southern racial segregation making their final stand against inevitable change. Out on the Capitol steps, however, a completely integrated audience was peacefully singing about "brotherhood from sea to shining sea." The two groups were completely oblivious to each other. The senators were unaware of the band concert less than



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100 yards from their intense legislative battleground. The relaxed concertgoers had no idea that just behind them and to the left the "brotherhood" about which they were singing was striving to take a giant step forward.<sup>11</sup>

ACCEPTING THE INEVITABLE

On Wednesday, 17 June 1964, Mansfield and Humphrey entered into negotiations with Southern Democrats Thurmond and Ervin to end the postcloture filibuster and permit the Senate to get on with its work. Even these two committed Southerners could see that the wearing process of voting down amendment after amendment was pushing the Senate majority to the breaking point. Thurmond and Ervin agreed to introduce only a certain number of additional amendments, and these were disposed of by late in the afternoon on that same day. The bill received its third reading that evening, which closed it to further amendment, and the Senate adjourned. Final speeches on the civil rights bill were scheduled for all day Thursday and all day Friday with the final vote anticipated at the close of business on Friday, 19 June 1964.

THE FINAL SOUTHERN BARRAGE

The two days set aside for final speeches gave Richard Russell and the Southern Democrats one last chance to sum up their arguments against the bipartisan civil right bill. Even as modified by the negotiations with Senator Dirksen, the Southerners charged, the bill was unconstitutional. The Southerners hit hard on the point that the major effect of the Dirksen negotiations, amending the bill so it applied only where there was a "pattern and practice" of racial discrimination, guaranteed that the new law would mainly effect the South and have little or no effect in the North and the West.

Senator Richard Russell's final speech, given just prior to the final vote on the bill, ably summed up the Southern position on civil

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rights and revealed the fact that the Southerners were as committed to their cause as the pro-civil rights senators were to theirs. Russell said:

The central issue at stake in this debate has been the preservation of the dual system of divided powers [between the national government and the states] that has been the hallmark of the genius of the Founding Fathers.

I am proud to have been a member of that small group of determined senators that since the 9th of March has given . . . the last iota of physical strength in the effort to hold back the overwhelming combination of forces supporting this bill until its manifold evils could be laid bare before the people of the country.

The depth of our conviction is evidenced by the intensity of our opposition. There is little room for honorable men to compromise where the inalienable rights of future generations are at stake. . . .

Mr. President, the people of the South are citizens of this Republic. They are entitled to some consideration. It seems to me that fair men should recognize that the people of the South, too, have some rights which should be respected. And though, Mr. President, we have failed in this fight to protect them from a burgeoning bureaucracy that is already planning and organizing invasion after invasion of the South, . . . our failure cannot be ascribed to lack of effort. Our ranks were too thin, our resources too scanty, but we did our best. I say to my comrades in arms in this long fight that there will never come a time when it will be necessary for any one of us to

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apologize for his conduct or his courage.<sup>12</sup>

Similar to Hubert Humphrey and the civil rights senators, the Southerners were proud of the fact that the debate on the civil rights bill was carried out on a high level and was, for the most part, free of racial jokes and racial epithets. An aide to Senator Lister Hill of Alabama (one of the filibustering Southern Democrats) explained:

The fight had to be made. There were strong legal arguments against the bill. We were proud of the fact that the Southerners argued the bill on the basis of its constitutional aspects. The racial aspect was not emphasized. There was good unity among the Southerners in the effort made, and we honestly believed we were upholding the ideals of Thomas Jefferson and James Madison in pointing out the unconstitutional nature of the bill. The Southern side of the debate was prepared in a careful and scholarly manner. The arguments that were made against the bill were good ones. They are still good. I have no problem defending those arguments.<sup>13</sup>

#### THE FAILURE OF SOUTHERN STRATEGY

In the days immediately following the successful cloture vote on the civil rights bill, there was much speculation in the press as to why the Southern Democrats, who previously had never been defeated in their attempts to stop a strong civil rights bill with a filibuster, had been defeated this time around. In a newspaper interview, Senator Russell acknowledged that he had been thinking a great deal about his tactics and had not found one thing he would have done differently. Russell explained:

The cards were stacked from the beginning.

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The odds were insuperable, overwhelming. We carried the fight for about 80 days, and this was a remarkable legislative achievement. . . .

This time we had the public stirred up by the clergy, the moralists, the faculties of the colleges, the demonstrations. Nearly every day someone raised the claim that, unless we passed this bill, there would be more riots in the streets this summer.<sup>14</sup>

Many observers felt that Russell and the Southern Democrats made a major strategy mistake when they did not offer to bargain with Mansfield and Humphrey and thereby gain for themselves the kind of concessions that were won by Senator Dirksen. According to Congressional Quarterly Weekly Report:

Northern sources say that had Russell come to them at the outset of the filibuster and tried to make a bargain, it is likely that he could have extracted some teeth from the bill. It is also likely that had Southerners allowed more voting on amendments before cloture, especially before Dirksen and other Republicans were committed to the bill, several [pro-Southern] amendments would have carried. "They could have caused us fits," one Northern source said, "but their strategy was surprisingly unimaginative." Russell never approached the leadership for bargaining purposes, and allowed voting only on jury trial amendments, a side issue.<sup>15</sup>

Hubert Humphrey shared this view that the Southern Democrats made a mistake by not letting the Senate vote on amendments to the civil rights bill:

Frankly, I was rather surprised at the Southerners'

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tactics. I never could quite understand why they didn't let us vote more often. . . . If they had done so, they could have insisted that the legislative process was working, that amendments were being voted upon. Instead of that, they just kept talking and talking. It seemed to me that they lost their sense of direction and really had little or no plan other than what they used to have when filibusters [always] succeeded.<sup>16</sup>

Humphrey's legislative assistant also believed the Southerners could have made real gains by allowing votes on amendments. He noted that the civil rights forces became disorganized and had great difficulty holding their shaky alliance together when the Southerners allowed votes on jury trial amendments:

We [the civil rights forces] were really quite disorganized and unhinged at that point and only escaped through mistakes of the opponents and a certain amount of good luck for ourselves. [It was] one helluva way to pass a civil rights bill.<sup>17</sup>

Although Richard Russell was the acknowledged leader of the Southern bloc, Congressional Quarterly Weekly Report pointed out that he could not be charged with total responsibility for the failure of Southern strategy. In accord with their "Confederate" tradition, the Southern Democrats operated under a rule of unanimity, and it only took the objection of one Southern senator to prevent voting on Senate amendments to the civil rights bill. Several of the Southerners were known to be considerably more intransigent than others, and these senators possibly prevented Russell from following a more flexible strategy which might, in turn, have been more successful.<sup>18</sup>

The Southerners missed another opportunity to amend (and thereby weaken) the bill in the pandemonium that occurred following the successful cloture vote. Hubert Humphrey remarked privately to

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an aide that a carefully prepared strategy by the Southern Democrats for proposing amendments immediately following cloture might have produced some real reverses for the civil rights forces.<sup>19</sup> The aide elaborated on Humphrey's thinking on this point:

It was . . . evident that the Southerners really had given very little thought to their strategy after cloture. Their amendments were not called up in any particular order, which was a mistake. Had they plotted out precisely which amendments would be called up, they could have scored, perhaps, some impressive victories early in the debate after cloture and thereby opened up the danger of bad amendments being adopted to the bill . . . .<sup>20</sup>

The Southerners could claim partial victory on one point, however. The extended filibuster did put Mansfield and Humphrey in a position where they had to compromise with Senator Dirksen, and Dirksen's amendments to the bill did somewhat check the ability of the United States Government to interfere with state and local governments on civil rights matters. An aide to Alabama Senator Lister Hill explained:

It was a partial victory in that deals had to be struck to get the bill through. If nothing else, the filibuster forced the other side to compromise.<sup>21</sup>

## THE REALITIES OF SOUTHERN POLITICS

When arguing that the Southern Democrats should have allowed more voting on amendments and should have been more willing to compromise with the Northerners, one must never forget the realities of Southern politics in the early 1960s. Because of various white stratagems for keeping Southern blacks from being able

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to vote, most Southern senators had few black voters among their voting constituents. The white majority vote that ruled the South politically at that time was strongly opposed to racial integration of any kind or degree. Even the slightest hint of being willing to accept integration in the American South would have put the Southern Democratic senators in deep political trouble when they came up for reelection.

It thus was clear that, on the issue of civil rights in 1964, no accommodation or compromise was possible on the part of the Southern Democrats:

Any legislation which would satisfy the demands of the Negro community and those committed to civil rights could not be acceptable to the South. . . . The final speeches by many members of the Southern bloc . . . clearly illustrated that there [was] no satisfactory compromise [possible] between the South and supporters of civil rights legislation. Under these circumstances it [was] not surprising to find absolute opposition [on the part of the Southerners]. . . . Regardless of personal feelings, political realities demanded that the Southern senators "die on the barricades" in their effort to defeat the bill.<sup>22</sup>

SENATOR GOLDWATER'S VOTE

The two days set aside for final Senate speeches on the civil rights bill set the stage for Senator Barry Goldwater to make public his final position on the bill. As a result of Goldwater's victory over Nelson Rockefeller in the California Republican primary, most observers were convinced that Goldwater would be the 1964 Republican nominee for president. Although Goldwater had voted against cloture, there was considerable speculation in the newspapers that he might "work both sides of the street" by voting for the civil

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rights bill on final passage.<sup>23</sup>

Everett Dirksen worked particularly hard to get Senator Goldwater to support the bill, particularly in view of the fact that the G.O.P. nominating convention was less than a month away. "You just can't do it," Dirksen said when Goldwater told him he was going to vote against the bill as well as against cloture. "You can't do it [to] the party," Dirksen went on. "The idea has come!" But Goldwater refused Dirksen's earnest entreaties to vote for the bill on final passage. Dirksen had imposed his will on the Senate, but not on the likely presidential nominee of his own Republican party. For Dirksen, Goldwater's negative vote took away part of the savor of his great legislative triumph with the civil rights bill.<sup>24</sup>

On Thursday, 18 June 1964, Goldwater took the Senate floor to announce his vote against the civil rights bill on final passage and to give his reasons. While explicitly recognizing the responsibility of the United States Government in the area of civil rights, Goldwater asserted that there was absolutely no constitutional basis for either the public accommodations or equal employment sections of the bill. Goldwater also took the position that enforcement of the various provisions of the bill would be very difficult, requiring a U.S. Government police force and a national network of spies and informers.<sup>25</sup>

## THE LAST WORDS

Friday, 19 June 1964, found the principal architects of the Senate version of the civil rights bill praising both themselves and the ability of the Senate to legislate successfully on such a complicated and emotionally charged issue. Senator Winston Prouty, a Republican from Vermont, compared Everett Dirksen's efforts on behalf of the civil rights bill to Abraham Lincoln's efforts during the Civil War. Prouty told the Senate:

Mr. President, 103 years ago -- when the



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House of this Nation was divided -- to serve the cause of freedom and make our people one, a man came out of Illinois.

One hundred and three years later, to open the doors of our National House and to serve the cause of freedom, another man has come out of Illinois.

True it may be that no one man was responsible for the abolition of slavery. True it may be that no one man is responsible for our statute to prohibit discrimination. But, without Lincoln there would have been no Emancipation Proclamation, and without Dirksen there would have been no civil rights bill.<sup>26</sup>

Hubert Humphrey decided to base his final words on Benjamin Franklin's closing statement to the Constitutional Convention held at Philadelphia in 1787. Humphrey told the Senate he would "consent to this measure because I expect no better and because I am not sure it is not the best."<sup>27</sup>

In line with his goals throughout the entire filibuster, Democratic Leader Mike Mansfield praised the Senate for being able to make a decision over such a controversial and divisive issue as civil rights. The fact that there was a final vote, Mansfield concluded, was of even greater significance than the outcome of the vote itself. Mansfield told the Senate:

It [the vote on the civil rights bill] underscores, once again, the basic premise of our government -- that a people of great diversity can resolve even its most profound differences, under the Constitution, through the processes of responsible, restrained, and reciprocal understanding.<sup>28</sup>

As on the cloture vote, Mansfield again recognized Senator

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Dirksen's role in Senate passage of the bill and allowed him to deliver the last speech before the vote. Dirksen used this opportunity to further develop his theme that irresistible forces of change and progress were guiding the civil rights bill toward final adoption in the Senate. Dirksen said:

Mr. President, . . . in the history of mankind there is an inexorable moral force that carries us forward. No matter what statements may be made on the [Senate] floor, no matter how tart the editorials in every section of the country, no matter what the resistance of people who do not wish to change, it will not be denied. Mankind ever forward goes. There have been fulminations to impede, but they have never stopped that thrust....

In line with the sentiment offered by the poet, "Any man's death diminishes me, because I am involved in mankind," so every denial of freedom, every denial of equal opportunity for a livelihood, for an education, for a right to participate in representative government diminishes me.

[That] is the moral basis for our case.

It has been long and tedious, but the mills [of change] will continue to grind, and, whatever we do here tonight as we stand on the threshold of a historic roll call, those mills will not stop grinding.

So, Mr. President, I commend this bill to the Senate, and in its wisdom I trust that in bountiful measure [this bill] will prevail.<sup>29</sup>

Moments after Dirksen finished speaking, the final Senate roll call on the Civil Rights Act of 1964 began. Once again all 100 senators were present, and once again ailing Senator Clair Engle of California was brought in in a wheel chair and voted in the

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affirmative by pointing to his eye. For this final vote the administrative assistants and legislative aides to the various senators were allowed on the Senate floor, and they crowded the limited space at the back and the sides of the Senate chamber. The bipartisan civil rights bill passed the Senate by a vote of 73 to 27, and upon the official announcement of the vote by the chair, there was spontaneous clapping and cheering from the packed Senate galleries. The junior Democrat in the chair, Lee Metcalf of Montana, quickly pounded the gavel and called for silence, but not too quickly. It seemed the customary decorum and quiet of the Senate might be suspended for this one historic occasion, at least for 10 seconds or so.<sup>30</sup>

And then, almost as if the filibuster, the historic cloture vote, and the vote on final passage had never occurred, Democratic Leader Mike Mansfield rose at his desk and announced the Senate's debate and voting schedule for the next few days. Mansfield said:

Mr. President, for the information of the Senate, it is anticipated that on Monday the Senate will start consideration of the Interior appropriations bill, to be followed, although not necessarily in this order, by the Treasury and Post Office appropriation bill, the atomic energy authorization bill, [and] the National Aeronautics and Space authorization bill.<sup>31</sup>

And so the Senate moved on. It moved from the greatly consequential to the comparatively inconsequential, the rhythm that had been broken by the long filibuster instantly restored as if nothing that important had taken place. The filibuster of the Civil Rights Act of 1964 had been successfully overcome. The Senate of the United States of America turned its attention to other business.

THE CELEBRATION ON THE CAPITOL LAWN

Shortly after the roll call vote on final passage of the Senate

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version of the civil rights bill, Humphrey and Dirksen and other key supporters of the bill gathered for a round of hand shaking, press statements, and photographs. An aide reported to Humphrey that a crowd of several thousand persons had ringed the approaches to the Senate wing of the Capitol, waiting to congratulate and applaud the senators who had led the successful fight. Responding to the natural instinct to acknowledge the cheers of joyous supporters, Humphrey left the press conference and hurried down the long marble steps leading toward the crowd. One of Humphrey's biographers described the scene:

The people recognized him and applauded. Many were Negroes. Humphrey shook hands, gazed into their faces, and said, "Isn't this fine? You're happy, aren't you?" Some of the people shouted "Freedom" as he walked among them. Others called, "God bless you." One woman whispered, "I hope you get picked to be Vice-President." An old man said, "I'm from Georgia, and I want you to know a lot of us are with you." A student said, "You gave us justice, Senator. Thank you." Others cried, "Good job -- you did a good job."<sup>32</sup>

Fully three hours later, when Senator Humphrey and several key legislative aides started out for a celebratory dinner at a downtown Washington restaurant, they were astounded to find several hundred persons still milling around the Senate end of the Capitol grounds and continuing to celebrate Senate passage of the bill. "Their enthusiasm appeared boundless. In his 15 years in the Senate, [Hubert Humphrey] could recall no similar outpouring of public sentiment over a bill's passage."<sup>33</sup>

## BITTERSWEET

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But the sense of total elation which Hubert Humphrey and the other bipartisan Senate leaders should have felt over the passage of the bill was denied to them. In Humphrey's case, he had been informed two days earlier that his eldest son had a lymph node in his neck which, when removed, turned out to be malignant. Although the youth recovered completely in the coming weeks, Humphrey was, quite naturally, deeply disturbed by this great family concern.

Then, as Humphrey and his aides were enjoying their victory dinner at Paul Young's Restaurant in Washington, the news was brought to them that Senator Edward Kennedy of Massachusetts and Senator Birch Bayh of Indiana, who had left Washington after the final vote in a private plane to fly to Boston, had crashed. First reports of the airplane accident claimed that Ted Kennedy had been killed, although it later turned out he had only sustained a serious and painful back injury. The combination of Humphrey's ailing son and Kennedy's and Bayh's plane crash turned the victory dinner into a "drag."<sup>34</sup>

HOUSE CONSIDERATION OF  
THE SENATE VERSION OF THE BILL

Due to the close contact which Deputy Attorney General Nicholas Katzenbach had maintained with the bipartisan leaders in the House of Representatives, the Senate amendments to the civil rights bill had been fully accepted by the House leadership even before the bill passed the Senate. The only obstacle that lay in the path of routine and overwhelming approval of the Senate version of the bill in the House was Representative Howard Smith and his House Rules Committee.

Howard Smith at least was honest and above board about his continued opposition to the civil rights bill. He had pointedly warned the speaker of the house, Democrat John W. McCormack of Massachusetts, of his "enthusiastic and complete lack of cooperation"

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on moving the bill.<sup>35</sup> It was clear that Smith would not call the Rules Committee together to recommend the Senate version of the bill to the House floor unless he was forced to do so.

The White House staff anticipated strong opposition from Rules Committee Chairman Smith and began formulating plans for getting the civil rights bill out from under Smith's control before the bill passed the Senate. A memorandum from Lawrence F. O'Brien to President Johnson dated 18 June 1964 reviewed various strategies for wresting control of the Rules Committee away from Smith. It also described Smith's probable strategy:

We must assume that Howard Smith will delay as long as possible on granting a rule, and that he can parade witnesses through for several weeks unless we move to cut him off.<sup>36</sup>

Under the leadership of Democratic Representative Ray J. Madden of Indiana, a bipartisan coalition was formed to wrest control of the Rules Committee from Chairman Smith and move the bill to the House floor as quickly as possible. The first step in the process was to file a formal request with Smith asking for a meeting of the committee, a request which Smith granted only because, if he had refused, the bipartisan committee members could have called the meeting themselves. The meeting date was set for 30 June 1964.

Once the meeting of the Rules Committee began, Chairman Smith was administered rebuff after rebuff by the committee majority. Smith had planned to filibuster the bill in the Rules Committee, hoping to drag out committee consideration of the Senate version of the bill for several days, but the bipartisan coalition now running the committee voted to hold a final vote to report out the bill at 5 P.M. that day. When the appointed hour of 5 P.M. arrived, the Rules Committee moved the civil rights bill to the House floor by a vote of 10 to 5.

But the bipartisan committee majority had even more public

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embarrassment in store for Chairman Smith. Although Smith had accepted the fact that the Rules Committee would send the bill to the House floor, he had at least expected to be in charge of presenting the bill to the House. That would have allowed him, under House rules, to have delayed the bill a full ten days, thereby putting the critical House vote off until just before the Republican National Convention, when Republican members of the House would be anxious to get away. In order to avoid such a conflict, President Lyndon Johnson was pressuring the House leadership to have the bill on his desk for his signature before July 4.

In "the unkindest cut of all," the bipartisan coalition, now fully in charge of the Rules Committee, voted to have Representative Madden rather than Chairman Smith present the bill to the House. Madden, of course, made the bill immediately available for House action. "Smith may have been hurt by this insult, but no remedy was available to him." His public embarrassment and humiliation were complete.<sup>37</sup>

On 2 July 1964 the House of Representatives, by a vote of 289 to 126, adopted a resolution to approve the civil rights bill as amended by the Senate. The bipartisan administration civil rights bill was now an Act of Congress. It lacked only President Johnson's signature to make it the law of the land.

ABANDONING "ANOTHER LOST CAUSE"

At the time of House approval of the Senate amendments to the civil rights bill, considerable press attention was given to Representative Charles L. Weltner, a Democrat from Atlanta, Georgia, who had voted against the civil rights bill when it first came up for passage in the House. In a surprise development, Representative Weltner switched his position and voted for the House resolution accepting the Senate amendments. He was the only Southern Democrat to make such a switch.

Weltner had first attracted attention as an unusually

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progressive Southerner when he voted to continue the work of the Civil Rights Commission in October 1963. At that time he made reference to the song "Dixieland," the historic theme song of the Confederacy and the regional anthem of the American South. The last line of the song, Weltner noted, is, "Look away, look away, look away -- Dixieland." Weltner then said:

Like all Southerners I grew up to the tune of "Dixieland." But we in Dixieland cannot "look away" forever -- nor can the rest of the nation [fail to acknowledge] its own paradox of prejudice.

Weltner went on to wonder just how much longer the South would continue to "look away" from the reality of the civil rights demonstrations and the continuing pleas of a significant segment of the Southern population for equal rights.<sup>38</sup>

Weltner's speech to the House at the time he voted for the Senate version of the civil rights bill was equally emotional. Weltner said:

Change, swift and certain, is upon us, and we in the South face some difficult decisions. We can offer resistance and defiance, with their harvest of strife and tumult. We can suffer continued demonstrations, with their wake of violence and disorder. Or we can acknowledge this measure as the law of the land. We can accept the verdict of the nation.

I will add my voice to those who seek reasoned and conciliatory adjustment to a new reality, and, finally, I would urge that we at home now move on to the unfinished task of building a new South. We must not remain forever bound to another lost cause.<sup>39</sup>



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THE LAW OF THE LAND

President Lyndon Johnson wasted no time affixing his signature to the Civil Rights Act of 1964. Within hours of House of Representatives approval of the Senate amendments, Johnson had one of the largest bill signing ceremonies in United States history arranged at the White House. Ordinarily the president signs bills in the Oval Office, but in order to accommodate as large a crowd of onlookers as possible, President Johnson arranged this particular signing ceremony in the East Room of the White House with more than 100 notables in attendance. The guests included key members of the House and Senate, several cabinet members, important foreign ambassadors, and the major leaders of the civil rights movement.

The ceremony was carried live on national television at 6:45 P.M., Eastern Daylight Time, on 2 July 1964. Most of the newsmen covering the signing noted that it was 101 years to the day since Abraham Lincoln had announced his intention to issue his Emancipation Proclamation freeing the slaves during the Civil War. The president, who had spoken out strongly urging the House and the Senate to pass the civil rights bill, had a few last words to say to the nation:

We believe all men have certain inalienable rights, yet many Americans do not enjoy those rights. We believe all men are entitled to the blessings of liberty. Yet millions are being deprived of those blessings -- not because of their own failures, but because of the color of their skin.

The reasons are deeply imbedded in history and tradition and the nature of man. We can understand -- without rancor or hatred -- how this happened, but it cannot continue. . . . Our Constitution, the foundation of our republic, forbids it. The principles of our freedom forbid it. Morality

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forbids it. And the law I will sign tonight forbids it.<sup>40</sup>

In line with maintaining his image as an action oriented chief executive, President Johnson used the signing ceremony to announce that he would nominate former governor Leroy Collins of Florida, a Southern Democrat, to be director of the Community Relations Service established by the bill. The president also told the television audience that at a cabinet meeting that afternoon he had directed all pertinent government agencies and government officials to begin implementing and enforcing the new law, and he promised that he would ask Congress for supplemental appropriations of money to pay the costs of implementing the new law.

The actual request for funds was transmitted to the House of Representatives on 20 July 20 1964 and totaled \$13,088,000. In his letter of transmittal, President Johnson noted that passage of the Civil Rights Act of 1964 would earn "a place of honor" for the 88th Congress. The letter continued:

By enacting this charter, the Congress has assured that we shall achieve ultimate victory in the long struggle to guarantee the fundamental rights of every American . . . . The more promptly we are able to make effective the act's protections, the sooner justice will be provided to all our citizens in the manner prescribed by the Constitution. To delay that justice would be to deny it.<sup>41</sup>

As the civil rights bill was nearing final passage in the Senate, there was considerable concern within the Johnson administration that there would be widespread noncompliance with the equal accommodations section and that the result would be civil rights protest demonstrations. In mid May 1964 Attorney General Robert Kennedy sent President Johnson a five page memorandum reviewing such possible developments:

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At a meeting on May 15 [1964], I am informed that the SCLC [Southern Christian Leadership Conference] leaders decided to cooperate with any compliance demonstration program which could be achieved in Birmingham. This would involve the testing of facilities which had in advance agreed to comply with the Civil Rights Act [of 1964]. On the other hand, if there is no compliance with the Civil Rights Act by hotels, theaters, and restaurants in Birmingham, there is wide anticipation of new, large scale demonstrations. The SCLC organizer in Alabama is Reverend James Bevel, who believes in direct action and street demonstrations of a provocative type. . . . The chances of disturbances . . . will probably turn on whether there is compliance with the provisions of the public accommodations title of the Civil Rights Act, when it becomes effective, and on the occurrence of unpredictable events. In this connection it should again be noted that there are white extremist groups, such as the Klan, which are active. . . . If there is noncompliance on a large scale, there are bound to be a great many protests, and the federal government is bound to become involved since federal rights will be asserted.<sup>42</sup>

President Johnson took direct action to head off concerns such as those expressed in the memo from Attorney General Robert Kennedy. Following the signing ceremony for the Civil Rights Act of 1964, President Johnson held a brief meeting at the White House with the prominent black political leaders who attended the signing ceremony. The president emphasized the twin themes that there was no longer any need for protest demonstrations and that any court tests of the new civil rights law should be carefully chosen. A White House staff member's memo to the files summarized the meeting:

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The president indicated . . . how essential it was that there be an understanding of the fact that the rights Negroes possessed could now be secured by law, making demonstrations unnecessary and possibly self-defeating. He made clear how important it was that the court tests be carefully selected to guard against any initial decisions ruling the Act unconstitutional (regardless of the fact that ultimately the Supreme Court would find it to be constitutional).<sup>43</sup>

At the time he signed the Civil Rights Act of 1964, Lyndon Baines Johnson had been president of the United States for only seven months. In his memoirs, Johnson pointed out that he had thrown his total support behind the civil rights bill, even though some of his most trusted staff members and advisers did not think the bill could be passed.

"Mr. President," one of the advisers had said, "you should not lay the prestige of the presidency on the line."

"What's it for if it's not to be laid on the line?" the president replied.<sup>44</sup>

In deciding to put the full prestige of his office and his political career behind the civil rights bill, President Johnson was following the advice of an old politician who also happened to be a good poker player. The man had told Johnson that there comes a time in every president's career when he has to throw caution to the winds and bet his entire stack of chips. Johnson had studied the political tumult surrounding the civil rights bill and "decided to shove in all my stack on this vital measure." The president gambled, and the final result was the Civil Rights Act of 1964.<sup>45</sup>

In his memoirs, Johnson revealed what he was thinking about at the moment he signed the bill:

I signed the bill in the East Room of the White

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House. My thoughts went back to the . . . day I first realized the sad truth: that to the extent Negroes were imprisoned, so was I. On this day, July 2, 1964, I knew the positive side of that same truth: that to the extent Negroes were free, really free, so was I. And so was my country.<sup>46</sup>

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1. Stewart notes, undated "final dictated thoughts," p. 7.
2. Stewart, Independence and Control, 278.
3. Stewart notes, undated "final dictated thoughts," p. 8.
4. Stewart, Independence and Control, p. 282.
5. Dodd and Oppenheimer, Congress Reconsidered , 3rd ed., p. 282. A postcloture filibuster on an energy bill in 1977 tied up the Senate for 14 days, required all-night sessions, and resulted in 128 roll call votes. See also Charles O. Jones, The United States Congress (Homewood, Illinois: Dorsey Press, 1982), pp. 323-324.
6. Stewart notes, undated "final dictated thoughts," p. 10.
7. Stewart, Independence and Control, p. 283.
8. Stewart notes, undated "final dictated thoughts," p. 11.
9. Stewart notes, undated "final dictated thoughts," pp. 12-13.
10. Stewart, Independence and Control, pp. 284-285. See also Stewart notes, undated "final dictated thoughts," p. 13.
11. Personal recollection of the author.
12. Congressional Record 110, Pt. 11 (18 June 1964) 14300-14301.

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13. Donald J. Cronin, former executive secretary to Senator Lister Hill, interview by the author, Washington, 16 August 1983.
14. "Johnson's Power and Prestige Force Cloture Vote in Senate," The New York Times, June 1964. Copy of article in Russell Papers, Series X, Box 115.
15. CQ Weekly Report, 19 June 1964, p. 1207.
16. Humphrey memorandum, p. 12.
17. Stewart notes, May 19, 1964, p.13.
18. CQ Weekly Report, 19 June 1964, p. 1206.
19. Stewart, Independence and Control, p. 283.
20. Stewart notes, undated "final dictated thoughts," p. 11.
21. Donald J. Cronin, interview by the author, 16 August 1983.
22. Kane, The Senate Debate, 232-233. The phrase "die on the barricades" was said to Kane by Roger Mudd, then of CBS television news, in an interview on 21 April 1966.
23. New York Times, 10 June 1964, p. 1.
24. MacNeil, Dirksen, p. 238.
25. Congressional Record 110, Pt. 11 (18 June 1964) 14318-14319.

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26. Congressional Record 110, Pt. 11 (19 June 1964) 14508.
27. Congressional Record 110, Pt. 11 (19 June 1964) 14443.
28. Congressional Record 110, Pt. 11 (19 June 1964) 14508.
29. Congressional Record 110, Pt. 11 (19 June 1964) 14510-14511.
30. Personal recollection of the author.
31. Congressional Record 110, Pt. 11 (19 June 1964) 14511.
32. Griffith, Humphrey, pp. 284-285.
33. Stewart, Independence and Control, p. 289.
34. Stewart, Independence and Control, 287. See also Stewart notes, undated "final dictated thoughts," 15.
35. CQ Weekly Report, 3 July 1964, p. 1332.
36. Memorandum, Lawrence O'Brien to President Johnson, 18 June 1964, LBJ Library, EX LE/HU2, Box 65.
37. Berman, A Bill Becomes A Law, pp. 129, 134.
38. CQ Weekly Report, 11 October 1963, p. 1749.



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39. CQ Weekly Report, 3 July 1964, p. 1331.
40. CQ Weekly Report, 3 July 1964, p. 1331.
41. Letter, President Johnson to speaker of the House of Representatives, 20 July 1964, LBJ Library, Legislative Background CR64, Box #1, p. 1.
42. Memorandum, Attorney General Robert F. Kennedy to President Johnson, 21 April 1964, 3-5, EX/HU2, Box 2, LBJ Library.
43. Memorandum, Lee C. White to The Files, 6 July 1964, LBJ Library, EX LE/HU2, Box 65, p. 1.
44. Johnson, The Vantage Point, pp. 37-38.
45. Johnson, The Vantage Point, p. 37.
46. Johnson, The Vantage Point, p. 160.