CHAPTER 14

CONCLUSIONS

In his speech closing the Senate debate on the Civil Rights Act of 1964, Senator Everett Dirksen of Illinois used the terms "tedious" and "inexorable." These two words provided an apt description of the legislative history of the Civil Rights Act of 1964, from the moment when President Kennedy presented the civil rights bill to the Congress in June 1963 until the signing of the bill into law by President Johnson in July 1964. Throughout the entire period of congressional consideration of the bill, the Southerners made the process tedious through their many attempts at delay and dilution. On the other hand, supporters of the bill were able to keep the bill moving (even though at times that movement seemed almost imperceptible) toward inexorable final passage.[1]

The Senate filibuster was the ultimate example of the tedium created as the bill moved toward enactment. The Senate debate set many records which lasted into the 1990s and which, because of subsequent changes in Senate rules of procedure, could possibly stand forever.[2] The Senate debate lasted a total of 83 days. It consumed more than 6,300 pages in the Congressional Record. One estimate held that over 10 million words were spoken, with at least 1 million more words spoken during the earlier House debate on the bill. The 4 months Senate debate also set a record of 166 quorum calls and 121 roll call votes.[3]

It is important to note that not all senators were equally involved in the extended Senate debate on the Civil Rights Act of

1964. Eleven of the 100 Senators never bothered to speak on the civil rights bill. Another 42 spoke only 10 or fewer times. Combining these 2 groups, a total of 53 senators, or a slight majority of the Senate, were not involved in the civil rights debate to a great extent.

At the other extreme 5 senators spoke more than 100 times during the debate, 2 of them Northerners speaking for the bill and 3 of them Southern Democrats speaking against. The two Northerners were Hubert Humphrey of Minnesota and Jacob Javits of New York. The three Southern Democrats were Sam Ervin of North Carolina, Russell Long of Louisiana, and John Stennis of Mississippi.

Ironically, the senator who gave the most speeches during the filibuster of the Civil Rights Act of 1964 was Hubert Humphrey, who rose at his desk and orated on the bill a grand total of 153 times.[4] Although Humphrey could not claim to be the greatest filibusterer of all time, in terms of number of speeches given he could claim to be the greatest "speaker during a filibuster" of all time.

The Senate debate on the Civil Rights Act of 1964 was not a true debate in the sense that discussion of proposed legislation was guiding a body of rational individuals toward an enlightened decision. The debate was conducted haphazardly, with the various parts of the bill being discussed out of order and most of the main arguments being repeated several times over. In reality, the Senate filibuster was an elaborate marking of time by both the Northerners and the Southern Democrats during which Hubert Humphrey and Thomas Kuchel were struggling to find the necessary votes for cloture. That struggle led them inevitably to Everett Dirksen.

DIRKSEN THE KEY

The fact that Everett Dirksen was the key to the cloture vote and final passage of the civil rights bill is perhaps the major conclusion to be drawn from any study of the Civil Rights Act of 1964. As early as 29 June 1963, less than three weeks after President Kennedy had sent the administration civil rights bill to Congress,

Deputy Attorney General Nicholas Katzenbach wrote a memo to Attorney General Robert Kennedy pointing out that "we have to work out some tentative strategy" designed to get Dirksen to support the bill. Katzenbach went on to say that the Kennedy administration could not hope to get the bill through the House of Representatives until they could convince House members they had a reasonable chance of getting Dirksen's support in the Senate. Although the memo did not say it specifically, the implication was that the House members all knew that Dirksen was the key to Senate passage of the bill and would not support civil rights in the House until they were reasonably convinced Dirksen could be persuaded to support the bill in the Senate.[5]

By 8 July 1963, less than a month after the introduction of the Kennedy civil rights bill, the Kennedy Justice Department had already identified a "Dirksen Group" of Republicans in the United States Senate and noted that their votes for cloture "could well depend on the opinion of Dirksen. . . ."[6] Prophetically, the memo also noted that Republican Senator Bourke Hickenlooper of Iowa might also be critical in the effort to get the "Dirksen Group" to vote cloture on civil rights.

Dirksen's principal biographer, Neil McNeil, argued that the Kennedy Administration considered Dirksen so crucial to passage of the bill that they purposefully gave House Republicans a large role to play in the House passage of the bill as a way of putting additional pressure on Dirksen to support the bill when it came over to the Senate. McNeil wrote:

> By having the House of Representatives act first, the administration had the opportunity to carry Dirksen further in civil rights legislation than the senator intended to go. The president's men hoped to find a way to persuade Dirksen to agree to some kind of federal protection for Negroes to use public accommodations. They hoped it could be done by

> bringing the Republicans in the House massively behind the whole bill. . . .
>
> The plan of the president's men was to persuade [Representative William] McCulloch [of Ohio] to support the whole Kennedy bill in substance, and then through McCulloch to win the mass of the Republicans in the House, including the Republican floor leader, Charles Halleck. By so doing, the administration's strategists calculated to put Dirksen in such a position with his party that he would have to go along with at least some kind of public accommodations guarantees.[7]

Thus it appears that Dirksen was the ultimate target of the pro-civil right forces from the very moment President Kennedy sent his civil rights bill to Congress. Even the emergency meetings at the White House in October 1963, ostensibly designed to win the support of McCulloch and Halleck in the House of Representatives, were aimed, through McCulloch and Halleck, at Dirksen. Can one man have so much power over the legislative process in a large nation that his vote and support have to be sought from the very beginning of the legislative process? That is apparently what happened with Everett M. Dirksen and the Civil Rights Act of 1964.

HOW MUCH DID DIRKSEN CHANGE THE BILL?

Although there is general agreement that Senator Dirksen's support was crucial to getting the bill through the Senate, there is considerable disagreement over whether Dirksen's "amendments" changed the bill very much. Although he strenuously opposed Dirksen's amendments at the time they were being considered for inclusion in the bill, Joseph Rauh, Jr., of the Leadership Conference on Civil Rights, later took the position that Dirksen really did not change very much at all. In fact, Rauh contended, Hubert Humphrey

received much more from Dirksen than Dirksen needed to give. Rauh said:

> What a genius Hubert Humphrey was in letting Dirksen think he was writing the final draft of the bill. Dirksen was only switching "ands" and "buts." Humphrey pulled the greatest charade of all time. Dirksen sold out cheap. We would have paid a higher price if Dirksen had really demanded it. Humphrey talked Dirksen out of it. Dirksen wanted the credit; Humphrey wanted the bill.[8]

As would be expected, Dirksen's aides do not agree with the view that Dirksen was "trapped" or "tricked" into permitting a stronger civil rights bill than he might otherwise have wanted. When told that the Democrats (primarily Humphrey and his staff) had a grand strategy for "hooking" Dirksen, one of Dirksen's "Bombers" commented:

> Dirksen approached the 1964 civil rights bill no differently from any other bill. Dirksen was what I like to call an "activist at the middle." His goal was a bill that would satisfy the vast majority of Americans, most of whom are somewhere in the middle on most political issues. If some people thought they were going to trap Dirksen into supporting the civil rights bill, they were mistaken. Dirksen would have done what he did whether they tried to lay a trap for him or not. No one needed to set him up to be part of it and to do his share in it.
>
> While others were concocting elaborate plots to get the civil rights bill through the Senate, Dirksen and his "Bombers" played it straight, and that confused the plotters. Dirksen always said that if you

> were telling the truth and the other guys weren't, it would "confuse the hell out of them." Dirksen stated exactly where he stood -- in the middle -- and he made sure the bill would fit the needs of the entire country. It was those who were concocting the devious plots who were out-maneuvered.

The Dirksen aide then repeated the idea that Dirksen's major contribution to the Civil Rights Act of 1964 was amendments that made the new law easier to enforce:

> Dirksen and his people worked at finding a self-enforcing way of requiring access to public accommodations. It was an emotional issue, but we worked to diffuse the issue. By the time Dirksen was finished with the bill, violations could easily be proved (you either served minority citizens the same as others or you did not). As a result the public accepted it. More legislation should be as self-enforcing.[9]

The argument over who "hooked" whom comes down to this. The Democrats, from the very beginning, had an elaborate series of strategies for getting Dirksen to support the bill. Because Dirksen eventually did support the bill, they naturally claim that these strategies worked. The Dirksen people, on the other hand, argue that Dirksen had a standard way of amending legislation as it moved through the Senate, and he would have amended and then supported the bill no matter what the Democrats might have done.

WHO WAS THE HERO?

Who was the hero in the successful passage of the Civil Rights Act of 1964? Was it Martin Luther King, Jr., who completely

changed the atmosphere on Capitol Hill where civil rights was concerned with his nonviolent demonstrations in Birmingham? Was it Nicholas Katzenbach, the deputy attorney general who served as top legislative strategist for both the Kennedy and Johnson administrations and who, from the very beginning, orchestrated every move of the bill so as to eventually end up with Dirksen's support? Was it Clarence Mitchell, Jr., and Joseph Rauh, Jr., the lobbyists for the Leadership Conference on Civil Rights who, for more than a year, put unrelenting pressure on all concerned for as strong a civil rights bill as possible? Was it William McCulloch of Ohio, the House Republican who pressed both Everett Dirksen and the Senate Democratic leadership to make sure that the strong House passed civil rights bill was not significantly weakened in the Senate? Was it Hubert Humphrey, the Democratic whip in the Senate, who did the final persuading and negotiating with Dirksen and, with his "great man hook," tried to catch Dirksen and haul him into the civil rights boat? Or was the hero Everett M. Dirksen himself, the man who had carefully and effectively organized his small band of Republican supporters in the Senate so that, at key moments in the legislative process, he had the final say on exactly what did and did not become law?

No matter which of these men is cast as the ultimate hero, one fact remains clear. Everett Dirksen was so powerful that he had a choice in the matter, but King, Katzenbach, McCulloch, and Humphrey had little choice but to do what Dirksen wanted. Dirksen could have decided to support the civil rights bill, and it would have passed, or he could have decided not to support the civil rights bill, and it would have failed. No such all-powerful choices existed for King, Katzenbach, Mitchell and Rauh, McCulloch, and Humphrey. They wanted the bill passed, and therefore their only choice was to get Dirksen's support and, in the end, give him whatever he demanded in return for his support. King, Katzenbach, Mitchell and Rauh, McCulloch, and Humphrey were fortunate that, in the end, Dirksen did not demand as much as he might have for delivering the key votes

for cloture.

WHO COULD HAVE ACHIEVED A STRONGER BILL - KENNEDY OR JOHNSON?

Many persons involved with the successful passage of the Civil Rights Act of 1964 commented on the question of whether President Kennedy, had he not been assassinated, could have delivered as strong a civil rights bill as President Johnson did. One of Lyndon Johnson's biographers put the point this way:

> The greatest difference between the 1964 civil rights bill as it would probably have been passed in that year under Lyndon was that Lyndon made sure he got everything he asked for. Kennedy, faced with inevitable Senate opposition, would almost surely have compromised somewhere, traded the deletion of one section, say, for the passage of the rest. Lyndon refused to delete, refused to compromise, anywhere.[10]

Robert C. Weaver, a leading black official in the Johnson administration, saw Johnson as both more committed and more skillful than Kennedy in getting a civil rights bill through Congress. Weaver said:

> I think Kennedy had an intellectual commitment for civil rights and a broad view of social legislation. Johnson had a gut commitment for changing the entire social fabric of this country. . . . I don't think we would ever have got the civil rights legislation we did without Johnson. I don't think Kennedy could have done it. He would have gone for it, but he was a lot more cautious than Johnson.[11]

Clarence Mitchell, Jr., of the NAACP, argued that Kennedy could not have won as strong a bill as Johnson did but believed the key difference was in the ability of the two men to lobby Congress. Mitchell explained:

> Unhappily it may have been true no bill could have passed without the assassination of President Kennedy. It certainly would have been more difficult if Kennedy had remained as president. Lyndon Johnson just had powers for getting Congress to act that John Kennedy lacked.[12]

A similar view was expressed by Roy Wilkins of the NAACP:

> John Fitzgerald Kennedy had a complete comprehension and an identity with the goals of the civil rights movement. Intellectually he was for it. . . . But, I think that precisely the qualities that Lyndon Johnson later exhibited, and which only Lyndon Johnson could have, by reason of his experience and his study and the use of materials of government -- precisely that lack in President Kennedy forced him to hesitate and weigh and consider what he should do in the civil rights field. I don't think it was from any inner nonconviction. I think he was convinced that this ought to be done. He just did not know how to manipulate the government to bring it about.[13]

Apparently Georgia Senator Richard Russell, the leader of the filibustering Southerners, was another person who saw the rise of Lyndon Johnson to the presidency as critical to the passage of such a strong civil rights bill. Clarence Mitchell, Jr., told a pro-civil rights Senate aide that he had a "frank discussion" with Senator Russell.

The aide put Mitchell's report in his notes:

> As Mitchell reports this discussion, Russell also knows the jig is just about up. The main distinction which Russell drew between the situation now and the situation when President Kennedy was alive was that they [the Southerners] have absolutely no hope of ultimately defeating President Johnson on the bill itself or even gaining any major compromises or capitulations from President Johnson. Interestingly enough, Senator Russell stated that he felt they could have gained major compromises from Kennedy.[14]

The general consensus seemed to be that President Kennedy probably would have obtained some sort of civil rights bill from Congress in 1964, but that it would not have been anywhere near as strong a bill as Lyndon Johnson obtained. It is sad to have to say it, but a large number of those involved with the Civil Rights Act of 1964 believed that the tragic assassination of President Kennedy helped the final passage of the bill by putting Lyndon Johnson in the White House.

In retrospect, therefore, John F. Kennedy and Lyndon B. Johnson appear to have had something of a symbiotic political relationship (in the sense that each needed something important from the other). With his great speaking ability and his talent for inspiring political followers, John F. Kennedy convinced many Americans of the great need to pass civil rights legislation. Kennedy apparently lacked, however, the ability to get Congress to pass such legislation in a strong enough form to please strong civil rights supporters. Lyndon Johnson, on the other hand, lacked Kennedy's speaking ability and inspirational quality, but he had great talents for getting definite action on Capitol Hill. It might be said of the two men that, in terms of civil rights, President Lyndon Johnson was able to deliver on the exciting goals and promises so inspirationally presented by

President John F. Kennedy.

NO COMPROMISE POSSIBLE

One view of the United States Congress is the idea that most pieces of legislation are based upon compromise. Traditionally these compromises are worked out in such a way that they accommodate the vital interests of all major ethnic, economic, and regional segments of the society. Above all compromise is traditionally applied to those persons and groups who are directly affected by the proposed law under consideration. In line with this tradition, the two previous civil rights acts to come out of the Congress prior to 1964 had been compromised -- compromised in such a way that small gains were given to black Americans but no fundamental change was made in the ability of Southern whites to practice racial segregation.

On the question of civil rights in 1964 no such compromise was possible. Any new law which would have satisfied the demands of black Americans and their committed white allies could not have been remotely acceptable to Southern whites. The demands of civil rights supporters in the past had been muted, but by 1963 and 1964 these demands were well articulated, highly dramatized, and had significant national political support. As the expectations of American blacks rose and were supported by the courts, the old solution, the satisfaction of only the minutest part of black demands, was no longer possible. At the same time, however, the Southern white commitment to a racially segregated way of life was so great that giving in to only a small portion of black civil rights demands was regarded as totally out of the question. It was these circumstances which generated the absolute Southern white opposition which made the legislative process so long and difficult. Since no compromise was possible, a fight to the finish was the only possible outcome for the Civil Rights Act of 1964, and such a fight to the finish was what occurred.[15]

THE GETTYSBURG OF THE SECOND CIVIL WAR

Throughout the debate on the Civil Rights Act of l964, the Southern Democrats made many references to the Civil War and the fact that, in their opinion, the civil rights bill literally called for a "reinvasion" of the South by U.S. Government officials and a new period of vindictive "Reconstruction."[16] Although the comparison runs the risk of being overdrawn, the civil rights movement of the early 1960s can be described somewhat aptly as a second Civil War. The white violence against black demonstrators at Birmingham was the equivalent of the Southern attack on Fort Sumter. The "Irrepressible Conflict" of the 1860s had, by 1963, become the "Irrepressible Debate."

Clearly the Civil Rights Act of 1964 was the Gettysburg of this second Civil War. The entire structure of Southern segregation was based on keeping the United States Government from interfering in the "Southern way of life," and the key to keeping the United States Government out of the South had always been the filibuster weapon in the United States Senate. As a result, final passage of the Civil Rights Act of 1964 was nowhere near as important as the breaching of the filibuster citadel by the successful cloture vote. The cloture vote freed the Senate to act on civil rights, which in turn freed the entire Congress to act on civil rights, which in turn freed the United States Government to enter the South and put an end to most legal and governmental forms of racial segregation.

Southern public segregation patterns thus were as thoroughly destroyed by the cloture vote on the Civil Rights Act of 1964 as General Robert E. Lee's Confederate Army was destroyed (in terms of winning the final victory) at Gettysburg. In fact, to carry the simile to its final conclusion, the final speeches of the Southern Democratic Senators just prior to the cloture vote were the "Pickett's Charge" of this second Gettysburg, a final, desperate, foredoomed attempt to stop the North from enforcing its political and governmental ideas about relationships between the races on the South.

Just as Gettysburg was the "turning point" in the first Civil War, the passage of the Civil Rights Act of l964 was the "turning point" in the second Civil War. Up until this point in the conflict, the South had always won congressional battles over civil rights. After the successful cloture vote on 10 June 1964, however, the South never won another one. The second Civil War continued through the successful passage of the Voting Rights Act of 1965 and the Housing Rights Act of 1968, but in both cases the Southern filibuster was overcome by a cloture vote made much easier by the precedent of the victorious cloture vote of 1964.

FIGHTING THE RULES

As much as they were fighting the Southern Democrats, however, the pro-civil rights forces were fighting the rules of the Senate and the House of Representatives as they went about the task of enacting the Civil Rights Act of 1964. The inordinate power of the House Rules Committee in the House of Representatives and the total control of Committee Chairman James Eastland over the Senate Judiciary Committee were the first two "rules" problems encountered, but even these two great legislative roadblocks paled when compared with the filibuster and cloture rules of the Senate. As one researcher noted:

> These rules, designed to balance the rights of the majority on the one hand and the protection of the minority on the other, were of critical importance in shaping both the debate and its outcome. From the time H.R. 7l52 was sent to the Senate from the House until it was passed by the Senate these rules were the chief weapon in the hands of the [Southern] opposition who used them to prevent or at least delay action. The actions of the [pro-civil rights forces] supporting the bill were governed by both the rules

> and the rule based tactics of the opposition. The significance of the rules is clearly demonstrated when one formulates a picture of what the Senate debate would have been if the rules had been the same as those in the House of Representatives. The attempt to prevent passage of the bill would have to have been made in committee, and the issue would have been clearly decided prior to a relatively brief floor debate.[17]

One of the major lessons to be learned from the Civil Rights Act of 1964 is the fact that procedural rules have substantive effects. In this case, the rule requiring a 2/3 vote for cloture in the Senate forced the Democratic leadership to bid for the support of a considerable number of Republican senators. To get those Republican senators to support the bill, substantive changes had to made in the bill, changes that would not have been required if the bill could have been passed by a simple majority in the Senate. The end result of the 2/3 vote for cloture rule, therefore, was that the Senate Republicans were able to leave their substantive mark on the bill and take much of the credit for passing the bill.

To put this idea another way, one of the substantive effects of the procedural rule requiring a 2/3 vote for cloture was to give power to minority party legislators who, under ordinary circumstances, would not have had such power. If the civil rights bill could have passed the Senate with a simple majority, the Democratic leadership would have needed only the votes of a relatively small number of liberal and moderate Republicans. They would have not needed Everett Dirksen, nor would they have had to make substantive concessions to Dirksen in the language of the bill.

Dire effects might have resulted if the pro-civil rights forces in the U.S. Senate had been unable to come up with a 2/3 vote for cloture and the 1964 civil rights bill had not been enacted. In such a situation, it would have been clear that procedural rules were denying

a substantive change in the laws of the nation supported by both a majority of the national legislature as well as a majority of the population at large. To put the proposition another way, suppose the rules of procedure had proven stronger than the ability of the Senate leadership to meet a national need for substantive change. In the spring of 1964, many observers thought, and some feared, that this would be the likely outcome. Some even wondered if the Senate, as an institution, could survive such an outcome.

STRATEGY MAKING

Rather than there being a single strategy for getting the 1963-1964 civil rights bill through Congress, there were several strategies. One of the reasons there were so many different strategies was that, among strong civil rights supporters, there were frequent and heated arguments over what was the best strategy to pursue. The fight within the civil rights camp over choosing the right strategy at times eclipsed the battle with the filibustering Southern Democrats that was taking place on the Senate floor.

There were seven major groups making and pursuing strategy where the 1963-1964 civil rights bill was concerned:

1. Clarence Mitchell, Jr., and Joseph Rauh, Jr., of the Leadership Conference on Civil Rights. They were pressing for as strong a bill as possible, arguing strenuously against any major compromises, even those required to get Senator Dirksen's support.

2. Hubert Humphrey. He was mainly attempting to get Dirksen's support for the bill but trying at the same time to compromise the bill as little as possible (mainly because he was under so much pressure from Mitchell and Rauh).

3. William McCulloch. His major goal was to stop both the Democratic leadership in the Senate and Senator Dirksen from watering down the House passed bill to please the Southern Democrats in the Senate.

4. The Kennedy-Johnson administrations. Their major goal

was to get Dirksen's support for the bill, but they appeared somewhat more willing than Humphrey to support a more moderate bill, particularly if that was what was required to keep the support of William McCulloch and the House Republicans.

5. Senate Majority Leader Mike Mansfield. He appears to have been mainly interested in getting the Senate to pass a civil rights bill, but he apparently was much readier to compromise with either Dirksen or the Southern Democrats in order to achieve that goal.

6. Everett Dirksen. According to his staff assistants, his goal was to write a more moderate, more easily enforceable bill which Republicans could support and for which Republicans could take a major portion of the credit.

7. Southern Democrats. They used the filibuster to delay action as long as possible in hopes that events external to the Senate would cause a widespread public reaction against the civil rights bill.

One impression that emerges clearly about strategy making for the 1963-1964 civil rights bill is the fact that, for all concerned, there was no clear and obvious "correct" strategy. What to do next was often unclear and, as a result, strenuously debated. There also was much trial and error. There was little sense that these men were legislative masters who always knew what to do and always had a surefire plan for keeping the bill moving. The correct legislative choices were not always obvious. Day after day all concerned searched for strategies, debated and critiqued these strategies, and struggled to solve the puzzle. At times, chance and luck seemed to have more to do with what happened than the legislative skills of the various participants involved.

IMPACT

Despite the frequent claims by the Southern Democrats that the public accommodations section of the civil rights bill was unconstitutional, equal access to public accommodations and every other major section of the bill were quickly declared constitutional

when tested in court and appealed to the United States Supreme Court. Within five months of final passage of the Civil Rights Act of 1964, the Supreme Court ruled in Heart of Atlanta Motel v. United States that the commerce clause of the Constitution gave the Congress all the power it needed to integrate public accommodations, even when the wrong being corrected was "moral and social" rather than "economic." In something of a surprise move, the high court applied the law not only to restaurants and motels whose customers came mainly from out of state but also to restaurants and motels that received a substantial portion of their food and supplies from out of state.[18]

Once the constitutional issue had been disposed of by the Supreme Court, the implementation of equal access to public accommodations throughout the American South went very smoothly. As pro-civil rights supporters had argued all along, racial integration of restaurants and motels was easily implemented by "voluntary compliance" once it was the law of the land and no restauranteur or motel owner had to fear losing customers to a competitor who was still segregated. The primary impact of the successful passage of the Civil Rights Act of 1964, therefore, was that virtually overnight black Americans could and did receive services in innumerable places of public accommodation that had previously been unavailable to them. The South's "peculiar institution" of racial segregation in public places disappeared almost immediately once the filibuster weapon was bested and Congress was free to end the "peculiar institution."

After equal access to public accommodations, clearly the most important part of the Civil Rights Act of l964 was the provision calling for the cutting off of U.S. Government funds to state and local governments and institutions that practiced racial discrimination. As predicted, the desire for (if not the dependence on) U.S. Government dollars led all but the most reactionary governments and institutions to rapidly desegregate their facilities and the administration of their services. Congress subsequently became quite enamored of the funds

"cutoff" as a tool for enforcing compliance with Congressional law, including it in several subsequent pieces of legislation (such as laws guaranteeing access to public facilities for the physically handicapped).

The equal employment opportunity provision of the law that was so strongly supported by the AFL-CIO had a significant impact on hiring practices in the United States and on the composition of the American work force. The law was used to gain wider access to equal employment opportunity for all minority groups, not just blacks, and was particularly effective in gaining greater employment opportunities for women. When combined with the funds "cutoff" provision, the EEOC caused an immediate, dramatic, and visible increase in the number of minority and women workers in United States factories and offices.

By giving the United States Government strong powers to enforce school desegregation in the United States, the Civil Rights Act of 1964 brought about the quick demise of all forms of legal (de jure) school segregation. The law did not, however, bring an end to racially segregated schools caused by the existence of all black and all white neighborhoods (de facto segregation). The Congress attempted to further address this problem of segregated neighborhoods producing segregated schools in the Housing Rights Act of 1968, but the problem of de facto segregation continued to be a controversial one, particularly when United States courts began ordering the busing of students to schools in different neighborhoods in order to achieve integration.

Whether the voting rights provisions of the Civil Rights Act of 1964 were effective or not is a moot point. Within little more than one year after the passage of the 1964 act, Congress passed the Voting Rights Act of 1965 and included in it virtually all of the strong provisions which were suggested for the 1964 act but failed to be enacted. Clearly, the precedent of breaking a filibuster with a successful cloture vote was the great contribution of the Civil Rights Act of 1964 to voting rights. The major improvements in black

voting participation in the American South that occurred in the late 1960s and early 1970s were the direct result of the 1965 act, not the 1964 act.

POLITICAL IMPACT

At the Republican National Convention held in San Francisco in July of 1964, Senator Barry Goldwater of Arizona received the Republican nomination for president on the first ballot. Throughout the fall election campaign against Democratic incumbent Lyndon Johnson, Goldwater continued to argue that he was a supporter of civil rights but that he voted against the Civil Rights Act of 1964 because it represented too great an expansion of U.S. Government power.

The 1964 presidential election campaign went badly for the Arizona Senator. In addition to exploiting Goldwater's ambivalent position on civil rights, President Johnson succeeded in portraying Goldwater as a "trigger-happy" person who would be much more likely than Johnson to use nuclear weapons in time of war. On election day in November 1964, Johnson defeated Goldwater by one of the largest margins in United States electoral history.

Largely as a result of his votes against the civil rights bill, Goldwater carried the five "Deep South" states of Louisiana, Mississippi, Alabama, Georgia, and South Carolina. However, he lost every other state in the Union except for his home state of Arizona.

Lyndon Johnson carried the upper South, all of the West except for Arizona, and the entire Midwest and Northeast sections of the nation. His strong stand in favor of the civil rights bill won him almost unanimous support from black voters, Johnson's percentage of the vote in some urban black precincts in the North exceeding 95 percent. In some cases this exceeded by almost 20 percent the percentage vote John F. Kennedy had received from blacks in the 1960 presidential election.

This movement of black voters out of the Republican party and into the Democratic party continued throughout the late 1960s and the 1970s. The passage of the Voting Rights Act of 1965 and the Housing Rights Act of 1968, both of which occurred while Johnson was still president and the Democrats were still in control of both houses of Congress, further cemented the allegiance of most black Americans to the Democratic party. Although the Republican leader of the United States Senate, Everett M. Dirksen of Illinois, was instrumental in the passage of all three of these major civil rights bills, black voters did not repay Dirksen by going to the voting booth and voting Republican.

As a result of his highly successful pro-civil rights legislative record, President Johnson earned both the friendship and respect of key black political leaders. According to Roy Wilkins of the NAACP:

> Mr. Johnson will go down in our history as the man who, when he got in the most powerful spot in the nation, . . . committed the White House and the administration to the involvement of government in getting rid of the inequalities between people solely on the basis of race. And he did this to a greater extent than any other president in our history. It will take many, many presidents to match what Lyndon Johnson did. . . . When the chips were down he used the great powers of the presidency on the side of the people who were deprived. And you can't take that away from him.[19]

Whitney Young, Jr., of the National Urban League, credited Lyndon Johnson with "the greatest leadership job in civil rights done by any president." Young concluded:

> The moment he was placed in the position of being

> president of all the people, I don't know anybody who exhibited a greater respect for the Constitution and the Bill of Rights as far as black people are concerned than did President Johnson.[20]

Equally strong praise came from Thurgood Marshall, who was appointed solicitor general and then named to the Supreme Court by President Johnson. Marshall said:

> [When it comes to] minorities, civil rights, people in general, the inherent dignity of the individual human being -- I don't believe there has ever been a president to equal Lyndon Johnson -- bar none![21]

Clarence Mitchell, Jr., Washington director of the NAACP, compared Lyndon Johnson to Lincoln, Roosevelt, and Kennedy. He concluded:

> President Johnson made a greater contribution to giving a dignified and hopeful status to Negroes in the United States than any other president, including Lincoln, Roosevelt, and Kennedy.[22]

LEGITIMATING PROTEST DEMONSTRATIONS

There is no question that successful passage of the Civil Rights Act of 1964 legitimated the nonviolent protest demonstrations of Martin Luther King, Jr., as an effective and acceptable technique for bringing about political change in the United States. Virtually all participants in the titanic struggle over the Civil Rights Act of 1964 agreed that it was the Birmingham demonstrations that created the national drive that put the law on the books.

Passage of the Civil Rights Act of 1964, however, tended to delegitimate many subsequent protest demonstrations, particularly

those that were not carefully kept nonviolent and which took place in areas where legal remedies to problems had been created by the 1964 act itself. The result was that racial disturbances continued to be a part of the American political scene, but the public reaction to many of these demonstrations was highly negative in view of the fact that a strong law now was on the books to provide redress of minority grievances.

The White House staff became increasingly concerned during July and August 1964 about racial protest demonstrations and their possible connection to a "backlash" among white voters. A staff memorandum to President Johnson, dated 17 July 1964, summed up the problem this way:

> I am disturbed about the continued demonstrations and what I see on radio and TV. I am convinced that a great deal of the Negro leadership simply does not understand the political facts of life, and think that they are advancing their cause by uttering threats in the newspapers and on TV. They are not sophisticated enough to understand the theory of the backlash unless they are told about it. . . . We have not done with the Negro leaders what we did with the business community and with Southern public officials -- i.e., make a major and organized effort to direct their thinking along a proper course, but I believe this is possible and that demonstrations and picketing can be avoided through personal contact and explanations of the seriousness of the problem.[23]

Five days later a magazine article was circulated among President Johnson's staff that further revealed White House concern over the possibility of "white backlash." The article, by David Danzig, was entitled, "Rightists, Racists, and Separatists: A White Bloc In The Making?"[24] Less than two weeks later a White House

staff member received a memorandum from Senator Hubert Humphrey expressing Humphrey's and Clarence Mitchell, Jr.'s, concern over the way the television networks and the news services were playing up the possibility of black protest demonstrations and riots.[25]

Apparently an attempt to reach out to black leaders and quiet the demonstrations was successfully undertaken. In mid October of 1964 a memorandum from a White House staff member to President Johnson summarized both the program and its success:

> Lee White and I had a series of meetings with Negro federal officials. . . . They have established regular lines of contact and through them we have eliminated major sources of frictions in St. Louis, Chicago, and Seattle. . . . The development of these procedures has served to correct many misunderstandings and led to substantial changes in the pronouncements and activities of local civil rights leaders. There is less belligerence and more constructive activity. . . . There has been no more rioting and all of the activist leaders I talk to agree that no more is to be anticipated.[26]

Any discussion of protest demonstrations and the Civil Rights Act of 1964 raises uneasy questions, however, about why black Americans had to organize nonviolent protests in order to gain rights that were theoretically guaranteed to them by the United States Constitution. Political scientist Daniel M. Berman pointed out:

> It is a sad commentary on the American system of government that the Negro had to go into the streets before anything even approximating serious attention was paid to his legitimate grievances. Those who glorify the [American] system [of government] in terms of its responsiveness to the long range public

> interest will not find it easy to explain why it required street demonstrations and the imminence of chaos to awaken presidents and congressmen to their responsibilities.[27]

A TRIUMPH - OR MUCH TOO LATE?

The American system of government "oscillates fecklessly between deadlock and a rush of action," one prominent political scientist has noted.[28] Clearly passage of the Civil Rights Act of 1964 was a great "rush of action" following a "deadlock" over civil rights for black Americans that had lasted for almost 100 years. The Civil Rights Act of 1964 therefore proved that, when the crisis is great and the need is clear, Congress does have the power to act to solve the problems of the nation. The extensive "checks and balances" built into the American system of government can frustrate the national will only so long. In fact, it was those famous "checks and balances," by frustrating early action on civil rights problems in the 1940s and the 1950s, which created the need for that great burst of long delayed reform that was the Civil Rights Act of 1964.

Was the passage of the Civil Rights Act of 1964 a triumph, or simply a late surge of reform necessitated by decades of neglect and failure to act? A reasonable conclusion might be that both propositions were true. Passage of the law was a triumph, but part of what made that triumph so glittering and important was that the reforms included in the legislation were so long overdue.

CALLS FOR SOUTHERN COMPLIANCE

Tribute was paid to many Southern senators for the manner in which they called on their constituents to comply with the new law. "There is no alternative but compliance," said Senator Herman Talmadge of Georgia. Violence "could leave scars for a long time to come. . . . I would hope now that all the American people would

exercise restraint, wisdom, and good judgement [in following] the law of the land."

Senator Allen J. Ellender of Louisiana warned in a Fourth of July statement that violent disobedience of the new law would be "foolhardy and indefensible." The new civil rights law, he said, must be tested "within the framework of the orderly processes established by law." If laws are defied, he concluded "then respect for all law will be diminished."[29]

Thus it was that voices that had filled the Senate chamber with denunciations of the civil rights bill called for compliance and acceptance once the bill had become law.

The Johnson White House had sought to stimulate such speeches by Southern senators. In a memorandum dated 21 May 1964, Attorney General Robert F. Kennedy proposed to President Johnson that he encourage Southern senators who had opposed the civil rights bill to give speeches calling for compliance with the new law.[30] On 23 July 1964 President Johnson sent thank you letters (written by Lee C. White) to the first three Southern senators who gave such speeches.[31]

LESSONS FOR OTHER PEOPLES

The events leading to the introduction and passage of the Civil Rights Act of 1964 do provide some lessons for other peoples facing similar racial problems. One obvious lesson is the necessity for civil rights demonstrators to keep their protests defiant but <u>nonviolent</u>. As long as civil rights protests remained orderly and nonviolent, they built national support for the civil rights bill in Congress. When various protest groups turned to more violent demonstrations, some of them bordering on riots, support for civil rights reform was harmed rather than strengthened.

Another lesson is the necessity for groups protesting racial discrimination to present a unified front in their drive for civil rights reforms. One of the most important factors in the successful passage

of the Civil Rights Act of 1964 was the key role played by the Leadership Conference on Civil Rights in unifying the various civil rights groups and lobbying Congress with a single voice. The lobbying influence of Clarence Mitchell, Jr., and Joseph Rauh, Jr., was greatly enhanced by the fact that they were representing virtually all of the established groups supporting the civil rights bill.

To be effective, nonviolent protest demonstrations must be covered extensively by the news media. Demonstrations that do not receive widespread news coverage have little or no effect. Birmingham was absolutely crucial in building public support, through the news media, for the civil rights bill. It thus must always be kept in mind that the target of civil rights demonstrations is not the immediate government officials involved but national or international public opinion to be reached through the news media.

Perhaps the most important lesson to be learned is the difficulty, in a democracy, of trying to exclude any major group from participating in the political process. Despite the great extent of racial segregation in the American South and the procedural barriers to reform established in the Congress, civil rights supporters still were able to harness the machinery of a representative democracy and enact a major civil rights bill. Once a society has extended democratic freedoms to one group of citizens, it can be argued it is only a matter of time until those democratic freedoms have to be extended to all citizens.

"TO ELIMINATE THE LAST VESTIGES OF INJUSTICE"

In his speech at the time of the final signing of the Civil Rights Act of 1964, President Lyndon Johnson had particularly emphasized the theme of complying with the new law, and he paid unacknowledged tribute to Everett Dirksen by pointing out that the law provided for local and state action prior to U.S. Government action. The president said:

> Most Americans are law-abiding citizens who want to do what is right. That is why the Civil Rights Act relies first on voluntary compliance, then on the efforts of local communities and states to secure the rights of citizens. It provides for the national authority to step in only when others cannot or will not do the job.[32]

Toward the end of his bill signing address, President Johnson called on the American people to go beyond the strict legal requirements of the new law and eliminate racial discrimination everywhere it occurred in the United States. The president said:

> This Civil Rights Act is a challenge to all of us to go to work in our communities and our states, in our homes and in our hearts, to eliminate the last vestiges of injustice in our beloved America.

TO END ALL SEGREGATION

1. Kane, The Senate Debate, 226-227.

2. In 1975 the Senate changed its rules so that only a 3/5 vote (60 votes) rather than a 2/3 vote (67 votes) was required for cloture. This rule change made it less likely that any future Senate filibuster would last as long as the filibuster of the Civil Rights Act of 1964.

3. Kane, The Senate Debate, 228-229.

4. Kane, The Senate Debate, 228, 63-67.

5. Memorandum, Nicholas Katzenbach to Robert F. Kennedy, 29 June 1963, Robert F. Kennedy General Correspondence, John F. Kennedy Library, p. 1.

6. Memorandum, Assistant Deputy Attorney General Joseph F. Dolan to Katzenbach, 8 July 1963, Robert F. Kennedy General Correspondence, John F. Kennedy Library, p. 2.

7. MacNeil, pp. 224-225.

8. Joseph Rauh, Jr., interview by the author, 15 August 1983.

9. Cornelius B. Kennedy, interview by the author, 14 August 1984.

10. Miller, Lyndon, p. 367.

11. Miller, Lyndon, p. 345.

12. Clarence Mitchell, Jr., interview by the author, 17 August 1983.

13. Roy Wilkins, interview, 1 April 1969, 8-9, Oral History Collection, LBJ Library.

14. Stewart notes, 21 April 1964, p. 2.

15. Kane, The Senate Debate, pp. 232-233.

16. Kane, The Senate Debate, 233-234.

17. Kane, The Senate Debate, pp. 234-235.

18. Bernard Schwartz, Statutory History of the United States: Civil Rights, Part II (New York: McGraw-Hill, 1970), pp. 1453-1455. See also Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964).

19. Roy Wilkins, interview, 1 April 1969, Oral History Collection, LBJ Library, pp. 23-24.

20. Whitney Young, Jr., interview, 18 June 1969, Oral History Collection, LBJ Library, p. 15.

21. Thurgood Marshall, interview, 10 July 1969, Oral History Collection, LBJ Library, p. 19.

22. Clarence Mitchell, Jr., interview, 30 April 1969, Tape 2, 30, Oral History Collection, LBJ Library.

23. Memorandum, Hobart Taylor, Jr., to President Johnson, 17 July 1964, LBJ Library, EX/HU2, Box 3.

24. Memorandum, Hobart Taylor, Jr., to George Reedy, 22 July 1964, LBJ Library, EX/HU2, Box 3.

25. Memorandum, Senator Hubert H. Humphrey to Jack Valenti, 5 August 1964, LBJ Library, EX/HU2, Box 3.

26. Memorandum, Hobart Taylor, Jr., to President Johnson, 13 October 1964, LBJ Library, EX/HU2, Box 3.

27. Berman, A Bill Becomes A Law, 2nd ed., pp. 139-140.

28. James MacGregor Burns, The Deadlock of Democracy (Englewood Cliffs, New Jersey: Prentice Hall, 1963), pp. 324-325.

29. CQ Weekly Report, 10 July 1964, p. 1454.

30. Memorandum, Attorney General Robert F. Kennedy to President Johnson, 21 April 1964, LBJ Library, EX/HU2, Box 2, p. 5.

31. Letter, President Johnson to J. W. Fulbright; Letter, President Johnson to Allen J. Ellender; Letter, President Johnson to Richard B. Russell; 23 July 1964, LBJ Library, EX/HU2, Box 3.

32. CQ Weekly Report, 10 July 1964, p. 1471.