

CHAPTER 7

MIKE MANSFIELD AND HUBERT HUMPHREY; "CONDITIONING FOR THE LONG ORDEAL"

"The big job of getting it through the Senate," President Lyndon Johnson had called it. To those faced with the direct responsibility of getting the civil rights bill through the Senate, the phrase "big job" must have appeared to be an understatement. First civil rights supporters would have to bypass the Senate Judiciary Committee, which previously had refused to report out 121 consecutive civil rights bills. Then they would have to overcome the filibuster, that firmly established Senate practice that had successfully defeated or weakened those few civil rights bills that had ever made it to the Senate floor.

THE FILIBUSTER

The filibuster is a well-known activity of the United States Senate, but few average citizens of the United States understand how the filibuster actually works. To many the word filibuster symbolizes bombastic Southern senators giving never ending speeches on irrelevant subjects. Filibustering senators are often portrayed in a comic manner, held up for ridicule as they read from the Bible, or the morning newspaper, or tell long stories that, they argue, relate in some way to the bill being debated.

By the early 1960s this type of "comic" filibuster no longer occurred in the Senate. By that time senators participating in a filibuster tended to stay on the subject and only introduce

TO END ALL SEGREGATION

materials that were directly relevant to the debate. To do otherwise would result in extensive criticism in the press for wasting time and unnecessarily slowing the legislative process.

One major misconception about the filibuster is the idea that one senator alone can conduct an extended filibuster. The image here is of the lone individual staging a marathon oratorical effort day and night on the Senate floor. Seemingly unaffected by either exhaustion or the need to visit the rest room, this legendary lone filibusterer reputedly speaks in the Senate for as much as 24 hours at a time.

In reality, the lone filibusterer presents no long-term problem to the Senate. Since no one individual can remain awake and talk without relief for much more than 24 hours, the Senate membership need only wait a day or two for the single senator filibuster to come to an end.

The single senator filibuster can be effectively used, however, to dramatize an issue and get the particular senator's point of view covered in the newspapers and on television. There is also the situation that, late in the congressional session and with a majority of senators anxious to adjourn, a single senator filibuster can pose the threat of a day or two delay at a time when there is not a day or two to spare. Under such end of session conditions, a single senator filibuster can kill, delay, or significantly modify an important bill.¹

There are two claimants to the honor of having delivered the longest Senate speech of all time. Senator Strom Thurmond, a Democrat from South Carolina, gave a 24 hour speech against the Civil Rights Act of 1957. That was the longest speech in Senate history, but Thurmond's fellow Southerners helped him by requesting quorum calls every few hours, thus permitting him to leave the Senate chamber briefly. Senator Wayne Morse, a Democrat from Oregon, gave a 23 hour speech against an offshore oil drilling bill and never once left his desk on the Senate floor, thus illustrating that he had somehow solved the major problem connected with an uninterrupted single senator filibuster.²

The type of filibuster that presents a major problem to the

"CONDITIONING FOR THE LONG ORDEAL"

Senate occurs when a sizable group of senators unite to continuously debate a bill until it is either withdrawn or seriously weakened by amendments. By dividing up into teams, and by holding "debates" with each other which in effect are no more difficult to carry on than a pleasant conversation, they can hold the floor indefinitely. Knowing that the legislation they oppose will be enacted if it ever comes to a vote, they talk on endlessly and thereby prevent other senators from taking action on other bills until they finally give up and capitulate to the filibusterers.

The filibuster exists because of Senate Rule 19. This rule provides simply that "no senator shall interrupt another Senator in debate without his consent." That rule exists in the United States Senate because, completely separate from the issue of civil rights, a majority of senators have believed in it.

THE SENATE AS A UNIQUE INSTITUTION

Carved in marble on the west side of the New Senate Office Building are the words: "The Senate Is The Living Symbol Of Our Union Of States." This slogan, emblazoned in letters more than one foot high and stretching for over 1/2 block long, attempts to sum up the unique role which the United States Senate plays in the American democracy. The Senate was not intended by the Founding Fathers to be a popular body, subject to the will of whatever temporary majority won the last general election. The Founding Fathers, working through the instrument of the United States Constitution, insulated the Senate from the popular will in several ways.

In the first place, representation in the Senate is not based on population but is distributed equally among the several states. The major historical role of the Senate, therefore, was to protect the smaller states from being dominated by the larger states. The filibuster fits perfectly with this historical role. By banding together and filibustering a bill they oppose, small state senators have an additional weapon with which to protect their constituents from

TO END ALL SEGREGATION

oppressive legislation favored by large states.

The Senate was further removed from the will of the popular majority by having senators serve 6 year terms of office and by having only 1/3 of the Senate elected every 2 years. The result is that the Senate is a "continuing body" that cannot be completely changed by the results of just one election. In every 2 year cycle, 1 out of every 3 senators is up for reelection, but 2 out of every 3 senators are held over without having to face the wrath of the voters. The result is a unique legislative body designed to respond mainly to long-term changes in United States politics and somewhat insulated from temporary or short-term political changes.

Senators as a group are very proud and very protective of their unique institutional role as the defenders of the interests of the small states and the legislative body most removed from the "mad passions" of the most recent congressional elections. In such an atmosphere, the filibuster does not appear to be an unusual or oppressive institution at all, but more a logical extension of the Senate's special position as the most "deliberative" of the two houses of Congress. As Professor Lindsay Rogers of Columbia University put it: "The filibuster is a weapon that the constitutional framers who constructed the Senate failed to anticipate but one that they would view with favor."³

The irony of the filibuster was that it was rarely used in the Senate to protect the interests of the smaller states. It was mainly used by Southern senators to prevent Northern and Western senators from passing national laws that would protect the basic civil rights of Southern blacks. Thus the filibuster, proclaimed as an instrument for the protection of minority rights, was mainly used to oppress a minority rather than protect it.

THE FILIBUSTER AT FULL FORCE AND FURY

By the early 1960s the Southern Democrats in the Senate had perfected the filibuster into a formidable instrument. Under the

"CONDITIONING FOR THE LONG ORDEAL"

skillful tutelage of Georgia Senator Richard Russell, the post World War Two leader of the Southern Democrats, the 18 hard core filibusterers divided into 3 teams of 6 senators each and assigned each team to cover the Senate floor for one day. This provided each Southern senator at least 2 days rest between assignments, plus additional rest on the weekends. Even when it was a filibusterer's day on the Senate floor, the work was not very hard. Only 3 of the 6 senators had to be on the floor at any particular time, therefore each member of the team had half the day off. When on the floor itself, only 1 of the 3 senators had to be speaking, and he was helped out by the other two senators. They would periodically interrupt him with lengthy, complex questions or spontaneous thoughts that had popped into their minds as the first senator was talking.

The filibustering senators thus had a very easy time of it, a complete contrast to the popular image of the leather-lunged, near exhaustion filibusterer making an all-night stand on the Senate floor. In reality, the situation was much tougher physically on those trying to defeat the filibuster, and again the problem was a Senate rule. In order to be officially in session, the Senate must have a quorum of 51 senators present. Every 2 hours, just like clockwork, the filibustering Southerners would suggest the absence of a quorum, thereby requiring the civil rights forces to round up and rush to the floor a minimum of 51 senators.

Whereas the Southern Democrats conducting the filibuster only had to work one 1/2 day every 3rd day, the civil rights forces had to come up with a quorum of 51 senators every 2 hours. Anytime a senator opposing the filibuster wanted to go back to his home state to campaign or leave Washington to give a speech, he would have to make sure that at least 51 senators opposing the filibuster were remaining in Washington. This regimen of having to stay on Capitol Hill every day and answer a quorum call every 2 hours soon became both physically and emotionally wearing on the senators opposing the filibuster. As the weeks would go by and the filibuster did not end, the Southerners would become ever more chipper and relaxed, the

TO END ALL SEGREGATION

anti-filibuster forces ever more harried and pale looking.

Of course nothing suited the filibustering Southerners better than for the pro-civil rights forces not to be able to make a quorum of 51 senators. Debate on the Senate floor would immediately come to an end, and the speeches the Southerners had prepared to give that day could be put away and saved for another day. Even more importantly, when the Senate fails to make a quorum, it adjourns rather than recesses until the next day. This really suited the interests of the filibusterers because, when the Senate reconvenes after an adjournment, several time-consuming formalities must take place. The Congressional Record for the preceding day must be read, and the Senate must hold a "morning hour" during which senators may introduce bills and insert items of interest, such as newspaper articles from their hometown newspapers, in the Congressional Record. If there was a morning hour during a filibuster, the Southern Democrats always found plenty of bills to introduce and many newspaper articles to place in the Congressional Record, thus eating up ever more time.

A skillful team of filibustering senators will disrupt the Senate's normal routine in as many ways as possible. Procedural shortcuts in the consideration of legislation, made possible by unanimous consent of all the senators present, will be eliminated because one of the filibustering senators will automatically object. Under this situation, minor Senate business that is usually dispatched instantly, such as reading bills and bringing bills up for consideration, can take hours. Filibusterers will not permit committees to meet while the Senate is in session, with the result that legislation starts to back up on the various committee calendars. Under such hostile working conditions, the tempers of those trying to defeat the filibuster are apt to fray and their emotions start to rise. Clearly the filibuster exacts a much greater toll from those trying to break the filibuster than from those working to continue it.

During the late 1950s and the 1960s, when the Democrats had solid control of both houses of Congress, the senator most harmed by a civil rights filibuster was the Senate Democratic leader. His ability

"CONDITIONING FOR THE LONG ORDEAL"

to schedule and control the conduct of the Senate disappeared. Suddenly it was the filibustering senators who were in control of what was happening on the Senate floor. Furthermore, a civil rights filibuster made it virtually impossible for the Democratic leader to avoid fragmentation of his party in the Senate. Once a civil rights filibuster began, differences between the Northern and Southern wings of the Democratic party in the Senate became more difficult to resolve. "Senators tend to assume public positions that cannot be compromised easily. Some senators simply get mad at each other. But the fact that a filibuster takes place on the Senate floor, the Democratic leader's domain, means it will be largely his responsibility to somehow bring the Senate through its time of trouble."⁴

In 1964 the Senate Democratic Leader was Mike Mansfield of Montana. There was going to be a major filibuster of the House passed bipartisan civil rights bill, and it was going to be Mansfield's problem to end the filibuster, one way or another.

ANTIDOTES FOR THE FILIBUSTER

A party leader faced with a filibuster has three alternatives if he desires further action on the bill in question: (1) concede to the substantive demands of the opponents so the filibuster stops voluntarily, (2) break the filibuster by exhausting the filibusterers, or (3) produce a 2/3 majority to apply cloture and thereby limit the debate and produce a final vote on the bill.⁵

As noted previously, option (1), conceding to the demands of the filibusterers, had been the traditional way to end a civil rights filibuster in the Senate. In both 1957 and 1960, the Democratic and Republican leaders in the Senate had removed most of the "objectionable" provisions from the two civil rights bills in order to get the Southern Democrats to stop talking. The result, of course, was laws that barely affected the institution of racial segregation in the American South.

TO END ALL SEGREGATION

Also as previously noted, it is a myth that option (2), exhausting the filibusterers, can be used. The filibuster exhausts those who must meet the periodic quorum calls, not those who are filibustering. "Hold their feet to the fire," shout strong proponents of the bill being filibustered as they demand round-the-clock sessions, but in reality it is their feet that will be held to the fire, and the Southerner's toes will stay "as cool as a cucumber."

Then Senate Democratic Leader Lyndon Johnson had tried round-the-clock sessions to end the 1960 civil rights bill filibuster. He succeeded only in demonstrating that a team of filibustering senators cannot be exhausted. Although Johnson had provided civil rights supporters with a wide choice of "uncomfortable places in which to nap," such as army cots, office couches, and even rundown tables in the Old Senate Office Building, the round-the-clock sessions turned out to be a comedy rather than a way to end a filibuster. The entire situation hit bottom when Republican Senator Clifford Case of New Jersey roused himself from a deep sleep in his office chair and dashed into the Senate chamber to answer a quorum call that he had only dreamed about.⁶

Option (3) for ending a filibuster, producing a 2/3 vote for cloture, presented many problems to the Democratic leadership in 1964. "The infrequency of cloture being applied on any bill, much less a civil rights bill, suggests the difficulty of this approach."⁷ From 1927 to 1964 the Senate successfully invoked cloture on a filibuster only once, and that was in 1962 on a communications satellite bill that only a small number of senators were filibustering. The historical record therefore suggested that a cloture vote would not be a likely outcome of the Southern filibuster of the 1964 bipartisan civil rights bill.

If party leaders in the Senate decide to "go for cloture," they must give special attention to the group of 8 to 15 Senators who represent the difference between a simple majority for the bill and the two-thirds majority needed for cloture. Although cloture is strictly a procedural device, these 8 to 15 senators usually will demand

"CONDITIONING FOR THE LONG ORDEAL"

substantive changes in the legislation as their price for votes for cloture. Notice here the direct effect which a procedural rule, cloture, comes to have on a policy outcome, civil rights. Since the filibuster cannot be stopped by cloture without the votes of this final group of senators, their bargaining leverage with the party leaders in the Senate is greatly enhanced. "A major effect, then, of any filibuster is to involve the Senate Democratic leader far more deeply than usual in questions of substance as he struggles to accumulate the 2/3 majority required [for cloture]."⁸

The filibuster rule, therefore, puts the Senate Democratic leader in a position where he must negotiate with someone and make substantive changes in the bill to get that someone's support. If a civil rights filibuster is to end voluntarily, the Democratic leader must negotiate with the Southerners and weaken the bill to virtual impotence. If the filibuster is to end with a cloture vote, the Democratic leader must negotiate with the group of senators who will produce those 8 to 15 final votes for cloture, meeting their demands for amendments, whatever those demands may be. In 1964, as the Senate debate on the bipartisan civil rights bill began, it was clear to all concerned that the critical 8 to 15 senators were a band of conservative Republican senators, mainly from the Midwest and the Rocky Mountain West. It also was generally agreed that their leader was Everett M. Dirksen of Illinois, the Republican leader in the Senate.

As the bipartisan civil rights bill entered the Senate, strong civil rights supporters had no idea which way Democratic Leader Mansfield would choose to go. Would he negotiate a settlement with the Southern Democrats? After all, they were his fellow Democrats, and he would need their votes in the future to pass other Johnson administration bills. But the price would be very high. Reportedly equal accommodations, the funds cutoff, and equal employment opportunity would have to be stripped from the bill in order to get the Southerners to stop talking voluntarily.

Or would Mansfield choose instead to negotiate with Dirksen

TO END ALL SEGREGATION

and his band of conservative Republicans? This meant cooperating with the opposition party, which coincidentally meant giving the opposition much of the credit for getting the civil rights bill enacted. And what sort of substantive concessions would the Republicans demand? The entire EEOC section of the bill appeared to be the most likely candidate here, but it also had to be kept in mind that Senator Dirksen said he had strong objections to the equal accommodations section, to most observers the most important part of the bill.

One simple fact was clear. Senate Democratic Leader Mansfield, sooner or later, was going to have to negotiate with someone to end the filibuster. As the debate began, no one in the nation's capital could be absolutely certain of which of the two "someones", the Southerners or Dirksen, that was going to be.

MANSFIELD'S STRATEGY

As the House of Representatives was completing action on the bipartisan civil rights bill in early February 1964, two factors were pressing Senate Democratic Leader Mansfield to think in terms of cloture rather than compromise with the Southern Democrats, at least at the start. One factor was the tough line being taken by William McCulloch and the House Republicans that they would not accept major dilution of the bill in the Senate. The second factor was that President Lyndon Johnson had given a blanket endorsement to the House passed bill, repeatedly calling for the bill's adoption, without any amendments whatsoever, in the Senate.

With these two factors firmly in mind, Mansfield developed, in conjunction with President Johnson and Democratic and Republican civil rights supporters in the Senate, an elaborate strategy for surviving an extended filibuster and, if necessary, eventually achieving a 2/3 vote for cloture.

STAYING ABOVE THE FIGHT

"CONDITIONING FOR THE LONG ORDEAL"

One of the first things Mansfield decided to do was to not become overly involved in the floor debate in the Senate on the civil rights bill. Although Mansfield would officially be working for passage of the bill, he would make an effort to "stay out of the trenches" where day-to-day debate on the bill was concerned. The main reason to stay somewhat aloof from the debate was so that Mansfield would be available for negotiations. These negotiations probably would be with Senator Dirksen and the conservative Republicans, but, who knew, perhaps they would be with the Southern Democrats. By staying out of heated, vituperative, pro-civil rights debates on the Senate floor, Mansfield could negotiate with either Dirksen or the Southerners without losing face or giving the appearance of abandoning strongly held positions.

If Mansfield was not going to fight for the bill on the Senate floor, who was?

NO REGULAR FLOOR MANAGER

Ordinarily a bill before the Senate or the House of Representatives has as its floor manager the chairman of the committee that considered the legislation and marked up a committee version of the bill for consideration on the Senate or House floor. Thus, when the bipartisan civil rights bill was before the House of Representatives, its floor manager was Emanuel Celler, chairman of the House Judiciary Committee.

Under regular conditions, therefore, the bipartisan civil rights bill should have been reported to the Senate floor by the Senate Judiciary Committee and the committee chairman, James Eastland of Mississippi, should have served as floor manager. As previously noted, however, it was obvious to all concerned that Eastland would neither allow the Judiciary Committee to report the bill or himself to be designated as floor manager. "The aversion of . . . Eastland . . . to assuming the job of floor manager was exceeded only by the administration's determination to keep the bill out of his hands."⁹

TO END ALL SEGREGATION

Senator Eastland's refusal to serve as floor manager for the civil rights bill gave Mansfield a power the Democratic leader in the Senate usually does not possess -- the power to appoint a floor manager for a critical piece of legislation coming before the Senate. Ordinarily the Democratic leader has to accept as floor manager for key administration bills whoever is chairman of the appropriate committee, and often that chairman is not very enthusiastic about the bill in question. From this perspective, Eastland's renowned negativism toward civil rights actually worked to Mansfield's advantage and gave him more control over the civil rights bill than he otherwise would have enjoyed.

HUBERT HUMPHREY AS FLOOR MANAGER

Mansfield selected his Democratic Whip, Senator Hubert H. Humphrey of Minnesota, to be floor manager of the bipartisan administration civil rights bill. For many reasons, Humphrey appeared to civil rights supporters to be an excellent choice. He was a longtime and clearly identified champion of civil rights. Humphrey first came to national attention as a civil rights supporter in 1948 when he presented a strong civil rights plank at the Democratic National Convention and succeeded in getting it adopted as part of the official Democratic party platform. As a result of this and his reflex action cosponsorship of virtually every civil rights bill that had ever been presented in the Senate, Humphrey's credentials with civil rights lobby groups were impeccable.

In addition to being a well-known supporter of civil rights, Humphrey was also a well informed and realistic legislator. Since becoming Democratic whip in January 1961, Humphrey had proven very adept at floor leadership, doing well at such tasks as nose counting, stalling for time, timing amendments, switching votes, etc. If Mike Mansfield was the perfect senator to remain "above the fray" and "out of the trenches," Hubert Humphrey was the perfect senator to "jump in the trenches" and "gut fight" it out with the Southerners

"CONDITIONING FOR THE LONG ORDEAL"

on a day-by-day, point by point basis.

In a memorandum which he dictated concerning his role in Senate consideration of the Civil Rights Act of 1964, Humphrey pointed out that he had been part of administration planning for the civil rights bill from the very beginning: "I recall that after the troubles in Birmingham, the president [John Kennedy] had the attorney general [Robert Kennedy] discuss with Senator Mansfield and myself, along with a few others in the Senate, the possibility of some legislation in the civil rights field."¹⁰

Humphrey went on to note that, from that point on, "there were innumerable meetings. Some at the majority leader's [Mansfield's] office, some at the White House, some at the Department of Justice." At all of these meetings, and also at the regular Tuesday morning White House breakfasts which the president holds with his party leaders in Congress, Humphrey said he "fought hard . . . for a broad program of civil rights and for a strong message on the part of the president. I urged the president to take command, to be the moral leader, and recall time after time urging that his message go all the way" Humphrey one time bluntly told President Kennedy: "The leadership for civil rights has to either take place in the White House or it is going to take place on the streets."¹¹

"CONDITIONING FOR THE LONG ORDEAL"

Humphrey had desperately wanted the job of floor leader for the bipartisan civil rights bill, but at the same time he recognized that taking direct responsibility for beating a Southern Democratic filibuster was an awesome task. He recalled:

This assignment was one that I appreciated, and yet one that I realized would test me in every way. I had to make up my mind as to my mental attitude and how I would conduct myself. I can recall literally talking to myself, conditioning myself for the long ordeal. I

TO END ALL SEGREGATION

truly did think through what I wanted to do and how I wanted to act.¹²

REPUBLICAN FLOOR LEADERSHIP

The Republican leadership in the Senate organized itself in exactly the same way the Democrats did. Everett Dirksen, the Republican leader, elected to hold himself aloof from the day-to-day floor fight with the Southern Democrats, preferring to make himself available, as Mansfield had done, for critical negotiations and compromise. Just as Mansfield had named Democratic Whip Hubert Humphrey to floor manage the civil rights bill for the Democrats, Dirksen named his Republican whip, Senator Thomas H. Kuchel of California, to floor manage the bill for the Republicans. Following their respective appointments, Humphrey and Kuchel met every day to plan strategy and tactics for getting the bill passed, frequently issuing joint press releases and always presenting a united bipartisan front in favor of the bill.

Hubert Humphrey and Thomas Kuchel were kindred political spirits. Although Kuchel was from Anaheim, California, one of the more conservative communities in the greater Los Angeles area, he was a committed Republican liberal and a consistent civil rights supporter. Kuchel was a strong political ally of Earl Warren, a former Republican governor of California who, in 1964, was chief justice of the United States Supreme Court. Kuchel was the acknowledged leader of a small but effective group of liberal Republicans in the Senate who, like their liberal Democratic counterparts, were ready to do everything possible to get the civil rights bill enacted. Senator Kuchel's efforts on behalf of the civil rights bill were recognized and appreciated by the White House staff. One White House staff memorandum described Kuchel as "a Senate Republican who is working his heart out for us on Civil Rights."¹³

Clarence Mitchell, Jr., recalled that he and Joseph Rauh, Jr., had a part to play in the naming of Humphrey and Kuchel as

"CONDITIONING FOR THE LONG ORDEAL"

bipartisan floor managers for the bill:

Joe Rauh and I went to see President Johnson and told him that Mansfield and Dirksen were too far removed from the civil rights struggle to be effective floor managers for the bill. We lobbied Johnson strongly to have two people really committed to civil rights, Humphrey and Kuchel, do the job.¹⁴

Clarence Mitchell, Jr., gave the following description of working with Humphrey and Kuchel on a daily basis:

Senator Humphrey was the real general and his cogeneral, if that's the proper title, was Senator Kuchel of California. This was a wonderful demonstration of bipartisan cooperation. We were together every morning with Mr. Kuchel and Mr. Humphrey. . . . All during the day we were in touch, each day, about tactical matters, and at the end of the day there was never a day that Senator Humphrey was not available for a meeting. Joe Rauh and I always met with him, I guess. We may well have worn out our welcome but he never showed it.¹⁵

A HIGH LEVEL OF DEBATE

Humphrey decided that he would place great emphasis on maintaining a dignified debate, working hard to not let the civil rights fight in the Senate degenerate into acrimonious confrontations and wild name-calling:

I made up my mind early that I would keep my patience. I would not lose my temper and, if I could do nothing else, I would try to preserve a reasonable degree of good nature and fair play in the Senate. I

TO END ALL SEGREGATION

had good working relationships at all times with the Southerners, even on some of the more difficult days. . . . At all times I tried to keep the Senate on an equilibrium with a high degree of respect and friendliness."¹⁶

GETTING ORGANIZED

Most importantly, Humphrey believed that he had to organize the pro-civil rights forces in the Senate in such a way that they could oppose a 3 to 6 month filibuster without growing tired or starting to fight among themselves. This meant that all quorum calls would have to be answered promptly with a quorum of 51 senators, all weakening amendments to the bill would have to be promptly voted down, and all Southern arguments against the bill would have to be promptly refuted on the Senate floor.

The impression had to be created that, for just as long as the Southern Democrats could keep talking against the bill and thereby maintain the filibuster, the pro-civil rights forces would be able to go on meeting quorum calls and voting down weakening Southern amendments to the bill. Only under this condition -- that it was crystal clear the pro-civil rights forces could last just as long as the Southern forces could -- would uncommitted senators stop thinking about making a compromise with the Southerners and start thinking about voting for cloture. As Humphrey's legislative assistant expressed it: "It meant, in short, generating confidence among the bill's supporters that victory was possible and fighting the normal pressures for concession and compromise that were bound to spring up once the filibuster had run for several weeks."¹⁷

Humphrey knew that if weakness, discouragement, or disorganization ever appeared in the pro-civil rights camp, the probability of losing the support of those senators holding the balance of power in the Senate would greatly increase. Humphrey's legislative assistant noted:

"CONDITIONING FOR THE LONG ORDEAL"

Dirksen, in particular, could be expected to assess carefully the desire of the civil rights forces to match their stirring words in behalf of racial justice with specific deeds. His judgments on cloture and the substance of the legislation could not help but be influenced by the commitment and tenacity demonstrated by the supposed advocates of the bill.¹⁸

With all of the above strategies and worries firmly in mind, Humphrey and civil rights supporters of both political parties in the Senate agreed on the following plan of action:¹⁹

1. Title Captains. If the Southern Democrats could make life easier during a filibuster by dividing up the work, so could the civil rights forces. Humphrey assigned responsibility for each title of HR 7152 to a different Democratic Senator who was strongly in favor of civil rights. At the same time, Kuchel appointed a Republican captain for each title. When a particular title came up for debate during the filibuster, only the particular bipartisan title captains and their legislative staff needed to be actively working on the Senate floor. Senators assigned to a different title could retreat to their offices and get much needed office work done.

This arrangement had two main purposes. First, it relieved Humphrey and his overworked legislative staff of the burden of mastering the details of each individual section of the bill. Second, it involved a large number of civil rights senators in the task of defeating the filibuster and gave them each an important role to play. As Humphrey later explained it:

When our senators had a chance to debate the bill, title by title, they also had an opportunity to get some press for themselves, to be known as part of the team fighting for civil rights. This was good not only for the issue itself, but also for the senators and their

TO END ALL SEGREGATION

public relations, and they seemed to like it. It involved them also in active floor duty, in constant and sharp debate with the opposition. They became ever more committed."²⁰

Clarence Mitchell, Jr., and Joseph Rauh, Jr., of the Leadership Conference on Civil Rights were both present at the meeting where the idea of individual title captains was first suggested. Mitchell recalls that he either presented the idea or strongly supported it once someone else presented it. He explained:

If it was my idea, I got it from the Southerners. They taught me more about legislative techniques than any other group on Capitol Hill. I had nothing but respect for Richard Russell and the other Southern Democrats as legislative technicians.²¹

2. Quorum duty lists. If the civil rights forces were going to produce a quorum of 51 senators every time the Southerners demanded a quorum call, a special whip system would have to be established. As in the House of Representatives, the regular Democratic whip system in the Senate could not function because a number of the assistant whips were Southern Democrats. The result was a bipartisan "quorum duty list." The pro-civil rights Democrats pledged to have at least 35 senators on Capitol Hill each day to answer quorum calls while Republicans promised a minimum of 15. These 50 senators plus the Southern Democrat who made the quorum call would produce the 51 senators needed for a quorum. The system recognized the fact that some senators had to be away from Washington part of the time, particularly those who were up for reelection and had opponents in spring or early summer party primaries. On any day a senator had been assigned to quorum duty, he had to find and recruit a replacement if he could not be present as scheduled.

"CONDITIONING FOR THE LONG ORDEAL"

For the Democrats, the Senate Democratic Policy Committee set up and maintained a master chart which kept track of the daily whereabouts of all pro-civil rights Democrats. The Republican Senators supporting civil rights turned down the offer to be part of this Democratic quorum operation, preferring to operate their own civil rights whip system instead. "These special arrangements had but one objective: to produce 51 senators as quickly as possible whenever a filibustering Southern Democrat 'suggested the absence of a quorum.'"²²

3. The Civil Rights Corporal's Guard. In addition to the title captains, Humphrey arranged for a small group of pro-civil rights Senators to be on the Senate floor each day. Their job would be to monitor the floor debate and guard against any sudden parliamentary maneuvers by the Southern Democrats. They also were to occasionally pepper the filibustering senators with questions, particularly when the Southerners made questionable statements about the nature of race relations in the South and the protection of black rights in the South. Senators were assigned to this corporal's guard on a rotating basis, the assumption being that most senators not on duty would rarely choose to spend their time on the floor and would appear only to answer quorum calls.

In addition to the corporal's guard, Humphrey planned that he himself would spend several hours each day on the Senate floor personally debating the bill. Humphrey viewed this as probably the greatest legislative debate of his political career, and, as Democratic floor manager for the civil rights bill, he wanted to be present as much as physically possible. There also probably were some political motives at work here. If Humphrey were present on the Senate floor virtually every day and confronting the filibustering Southerners face-to-face with a strong defense of the civil rights bill, the view would certainly grow in the minds of the press and the public that Humphrey was the nation's chief protagonist for civil rights. Then, if a strong civil rights bill was enacted into law, Humphrey would get a major share of the credit.

TO END ALL SEGREGATION

4. The Civil Rights Newsletter. In an effort to further the impression that the civil rights forces really were well organized this time around, Humphrey and Kuchel decided to publish a daily newsletter to be distributed to Capitol Hill offices and to the press. This mimeographed single sheet provided friendly senators with a schedule of the day's activities on the Senate floor, a list of the day's corporal's guards, rebuttals to Southern Democratic arguments against the civil rights bill, and an occasional joke or two. The newsletter apparently served its purpose. Newspaper accounts of the filibuster were soon mentioning the existence of the newsletter as proof that the civil rights forces were much better organized and much more effective than in the past.

5. Daily staff meetings. Humphrey held a staff meeting approximately 15 minutes before the Senate convened each day. Kuchel attended these meetings, as did the Democratic and Republican title captains, their staff assistants, and representatives of the Justice Department. Two mornings a week Clarence Mitchell, Jr., and Joseph Rauh, Jr., of the Leadership Conference on Civil Rights were allowed to attend. The purpose of the meetings was to keep the various leaders in close touch with what was going on and to debate the various tactics and strategies which could be adopted in order to get the civil rights bill through the Senate.

WHEAT AND COTTON

The record of these meetings in Humphrey's office, as well as other meetings that were being held at the same time, indicates that the civil rights supporters had many strategic options available to them and that which option to choose was often hotly debated. One of the first issues to cause dissension within the civil rights group was the administration's wheat and cotton bill.

President Lyndon Johnson had very skillfully arranged for the Senate to pass every piece of legislation he considered critical before the civil rights filibuster began. Thus the Kennedy tax cut bill had

"CONDITIONING FOR THE LONG ORDEAL"

been moved out of the Senate before the civil rights bill came over from the House of Representatives. Joseph Rauh, Jr., explained the Johnson strategy:

President Johnson had made it clear . . . that he would not care if the Senate did not do another thing for three months until the civil rights bill was enacted. This removed the filibusterer's greatest weapon -- that they could hold out until other needed legislation required the Senate to put aside the civil rights bill.²³

In an off the record conversation with Clarence Mitchell, Jr., concerning the Southerners and their filibuster, President Johnson simply said, "Let them talk until summer."²⁴

Still pending in the Senate, however, was an omnibus agricultural bill that would have provided market subsidies and other benefits to wheat and cotton farmers. Since cotton was the principal agricultural product in the South, several civil rights supporters argued that making the wheat and cotton bill wait until after the civil rights filibuster was concluded would put pressure on the Southerners to end the civil rights debate fairly rapidly.

The White House staff was particularly concerned that the wheat and cotton bill not be passed prior to the civil rights filibuster. A memorandum summarized the logic:

It seems to me that if we permit . . . [the] cotton-wheat legislation ploy, we are taking away a really fine inducement to counteract a filibuster. Nothing speaks louder to Southern senators than cotton and wheat. If this legislation is passed before the civil rights bill is disposed of, the Southerners will have behind them the tremendous pressure which undoubtedly will build up for congressional action with each passing day of the filibuster.²⁵

TO END ALL SEGREGATION

Other supporters of the civil rights bill pointed out, however, that preserving racial segregation was so much more important to Southerners than cotton farming that holding up the wheat and cotton bill would have virtually no effect at all on the civil rights filibuster. One of those holding to this point of view was Hubert Humphrey, who led the fight to clear the wheat and cotton bill out of the Senate before the civil rights filibuster began. Humphrey was from Minnesota, one of the largest wheat states in the nation, and he carefully pointed out that many of the Midwestern Republicans who they wanted to vote for cloture were also from large wheat states. Humphrey noted:

I insisted [on taking up the wheat and cotton bill] because I felt there would be serious economic consequences if we failed to take such action. The president, however, was very adamant about taking up civil rights, and so was Mansfield. However, I pleaded the case for the cotton and wheat bill over at the White House and finally was joined by Mansfield, providing that the bill would not take too long.²⁶

Liberal Republicans supporting civil rights made Humphrey and Mansfield "pay the price" for taking up wheat and cotton prior to the civil rights bill. Senators Javits and Keating of New York took to the Senate floor to chide the Democratic leaders for missing the chance to pressure the Southerners by holding up the cotton bill.²⁷ Republican Senator Hugh Scott of Pennsylvania put the issue even more bluntly when, at a civil rights rally in Philadelphia, he charged that Humphrey and Mansfield were putting "cotton before people."²⁸

CONCLUSIONS

The filibuster was a formidable obstacle. As Senator Humphrey so plaintively noted, one needed to think long and hard

"CONDITIONING FOR THE LONG ORDEAL"

before setting out to defeat one. In many ways, getting "psyched up" for the long ordeal was the most important part of the process.

Shortly after the House of Representatives passed the bipartisan civil rights bill, Senator Mansfield addressed the Senate on the subject of civil rights and the tense legislative battle that lay ahead:

Let me say at the outset that I should have preferred it had the civil rights issue been resolved before my time as a senator. . . . The senator from Montana has no lust for conflict in connection with this matter; yet this matter is one which invites conflict, for it divides deeply. . . . [But] the time is now. The crossroads is here in the Senate.²⁹

The Senate Democratic leader went on to say that he would not attempt to use obscure legislative rules or smooth parliamentary tricks to defeat the expected filibuster of the civil rights bill. Referring to himself, he said:

The majority leader has no suave parliamentary tactics by which to bring legislation to a vote. He is no expert on the rules, and he is fully aware that there are many tactics which can forestall a vote. . . .

Even if there were parliamentary tricks or tactics, the majority leader would not be inclined to employ them. I can think of nothing better designed to bring this institution into public disrepute and derision than a test of this profound and tragic issue by an exercise in parliamentary pyrotechnics.

Mansfield then called upon the Senate to stop arguing over rules and to begin dealing with civil rights as an issue. He concluded:

TO END ALL SEGREGATION

For the truth is that we will not find in the Senate rule book even the semblance of an answer to the burning questions which now confront the nation and, hence, this Senate.

We senators would be well advised to search, not in the Senate rule book, but in the Golden Rule for the semblance of an adequate answer

"CONDITIONING FOR THE LONG ORDEAL"

1. Bruce I. Oppenheimer, "Changing Time Constraints on Congress: Historical Perspectives on the Use of Cloture," in Lawrence C. Dodd and Bruce I. Oppenheimer, Congress Reconsidered, 3rd ed. (Washington: Congressional Quarterly, 1985), pp. 393-413.
2. Berman, A Bill Becomes A Law, 2nd ed., 64.
3. The views of Professor Rogers on the filibuster and those of other prominent scholars are summarized in Berman, A Bill Becomes A Law, 2nd ed., 64-65.
4. John G. Stewart, Independence and Control: The Challenge of Senatorial Party Leadership (Ph.D dissertation, University of Chicago, 1968), p. 139. Stewart was the legislative assistant to Senator Hubert H. Humphrey at the time the civil rights bill was debated in the Senate.
5. Stewart, Independence and Control, 137.
6. Berman, A Bill Becomes A Law, 2nd ed., 67.
7. Stewart, Independence and Control, p. 137.
8. Stewart, Independence and Control, 137. For a fuller discussion of the impact of procedures on policy outcomes, see Walter J. Oleszck, "Functions of Rules and Procedures," David C. Kozak and John D. McCartney, Congress and Public Policy (Homewood, Illinois: Dorsey, 1982), 214-217.
9. Stewart, Independence and Control, p. 180.
10. Hubert H. Humphrey, Memorandum on Senate Consideration of the Civil Rights Act of 1964, Hubert H. Humphrey papers, Minnesota Historical Society, St. Paul, Minnesota, Summer 1964, 1.

TO END ALL SEGREGATION

11. Humphrey memorandum, 2-3.
12. Humphrey memorandum, p. 5.
13. Memorandum, Mike Manatos to Larry O'Brien, 11 May 1964, LBJ Library, EX/HU2, Box 2.
14. Clarence Mitchell, Jr., interview by the author, 17 August 1983.
15. Clarence Mitchell, Jr., interview, 30 April 1969, Oral History Collection, LBJ Library, Tape 1, p. 35.
16. Humphrey memorandum, pp. 12-13.
17. Stewart, Independence and Control, p. 183.
18. Stewart, Independence and Control, p. 184.
19. The plan of action is summarized from Stewart, Independence and Control, pp. 185-186.
20. Humphrey memorandum, pp. 9-10.
21. Clarence Mitchell, Jr., interview by the author, 17 August 1983.
22. Stewart, Independence and Control, p. 186.
23. Rauh manuscript, p. 21.

"CONDITIONING FOR THE LONG ORDEAL"

24. Stephen Horn, Periodic Log Maintained During the Discussions Concerning the Passage of the Civil Rights Act of 1964, unpublished, p. 24. Horn was legislative assistant to Senator Kuchel.

25. Memorandum, Mike Manatos to Larry O'Brien, 15 February 1964, LBJ Library, EX LE/HU2, Box 65.

26. Humphrey memorandum, p. 209.

27. Congressional Record 110, Pt. 3 (27 February 1964) 3850-3854.

28. Washington Post and Times Herald, 24 February 1964, p. 1A.

29. These and subsequent quotes from Mansfield's speech are from the Congressional Record 110, Pt. 3 (17 February 1964) 2882-2884. See also Kane, The Senate Debate, 68-69.