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THE CIVIL RIGHTS ACT OF 1964

The various forces contributing to the passage of the Civil Rights Act of 1964 in the United States House of Representatives, 88th Congress, 1st and 2nd sessions.

by

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To

Marilyn

PREFACE

This paper is an account of the passage of one of the major pieces of legislation of this century, the Civil Rights Act of 1964, in the United States House of Representatives. It traces the background of civil rights legislation and some of the events which led to the introduction of the Civil Rights Bill by the President of the United States, John F. Kennedy, in June of 1963. However, the aim of this study is not merely to present the formal legislative history of the bill in the House of Representatives, but to indicate how closely related the formal legislative process is to the informal pressures and influences which are exerted upon the legislators. Thus the role of pressure groups, the Administration, and national events are analysed in this context. Because of the very central and unique role of pressure groups lobbying for enactment of a strong civil rights measure, special attention is given to the Leadership Conference on Civil Rights, a confederation of all of the organizations desiring the passage of the civil rights bill. Though the study emphasizes the forces which contributed to the successful passage of the bill, brief mention is also made of some of the forces which attempted to block the legislation. However, since these forces were much more limited in scope and had considerably less influence upon the various stages of the legislative history of the bill

than the forces seeking the enactment of the measure, they do not receive as much attention. The role of the Administration is a crucial one and clearly points to the active involvement of the Executive in the legislative process and the very important role which he played in regards to the piece of legislation in question. The national events which contributed indirectly to the passage of the bill were various manisfestations of the civil rights protest movement in the South and elsewhere across the nation. The study points out how these events influenced both the Administration and Congress.

The study also indicates how the House of Representatives operates and points to the many formal and informal structures and forces which are central to that legislative chamber and bear their mark on all legislation which finally emanates from its complicated procedures.

Though the study does not include a detailed analysis of the various versions of the bill which came out of the various stages of its legislative history, a task which goes beyond the scope of this paper, a brief breakdown of each version is provided at the appropriate place in the text. The Appendix includes a more detailed summary of each of the versions, placed side by side, in order to facilitate comparison. The study does indicate some of the constitutional basis for the bill, and in the introductory chapter, provides

a brief sketch of the trends within the Supreme Court which have made this constitutional interpretation possible. It also indicates, in the final chapter, some of the arguments of Southern Congressmen who presented a different constitutional interpretation. In general, however, the study is not aimed at dissecting the various titles of the bill, of arguing its constitutional rational, but of merely presenting the various forces, formal and informal, which contributed to its final passage.

Finally, since this study deals with the role of the House of Representatives and of the Executive solely in regards to the question of civil rights legislation, it may give the impression that the House and the President were preoccupied only with this legislation during the approximately nine months in which the bill was in the House. This interpretation, of course, is a distortion of reality. At the same time that the civil rights bill was being considered, both the House of Representatives and the President were handling a multitude of other issues and directing their attention to many other important questions.

METHOD OF RESEARCH

The author was very fortunate to have access to some of the files of the Leadership Conference on Civil Rights and to a considerable amount of research material

through the national office of Americans for Democratic Action, one of the participating organizations of the Leadership Conference on Civil Rights. Valuable material in the form of letters, memoranda, and assorted mimeographed publications from the Leadership Conference and organizations within the Leadership Conference was therefore readily available. These provide indispensable information on the role of the pressure groups in influencing the piece of legislation in question.

Another source of information which proved to be very useful in some instances was the use of interviews of Congressmen, lobbyists, and officials of the Leadership Conference on Civil Rights. The interview material supplemented some of the written sources and provided a clearer and fuller picture of the various forces surrounding the civil rights bill. Interviews with Congressmen were somewhat limited in value, however, because of the general consensus on what occured at different stages and because of the availability of written reports by the majority and minority members of the Judiciary Subcommittee and Committee which explained in detail some of the more important events.

Government publications, such as the Hearings before the Judiciary Subcommittee, the Hearings before the Rules Committee, majority and minority reports accompanying the bill to the floor of the House, the Congressional Record

and others, were also indispensable in piecing together the various developments surrounding the progress of the Civil Rights Bill. These were supplemented by the use of the Congressional Quarterly, which presented a very useful and accurate account of many phases of the bill's legislative history, newspaper articles, notably from the New York Times, and various magazine articles. Finally, valuble secondary material was obtained from several books,which provided much of the theoretical material necessary to understand Congress, pressure groups and the Administration as well as providing for the general history of civil rights legislation.

It must be added that the author spent countless hours on many different occasions observing first hand the debates on the Civil Rights Act of 1964 in the House of Representatives and was able to see some of the lobbying techniques on and off the House floor. These experiences proved to be interest as well as of help in the preparation of this paper. It should be said that this project would not have been possible had not the author participated in the Drew University Washington Program; for only in Washington can the student get the flavor of the legislative process as well as availing himself of the necessary interviews and research materials.

TABLE OF CONTENTS

CHAPTER I

INTRODUCTION: BACKGROUND OF CIVIL RIGHTS LEGISLATION

On February 10, 1964, the United States House of Representatives passed the strongest piece of civil rights legislation since the days of Reconstruction. The measure was introduced almost eight months prior to that date, on June 19, 1963, at the request of the President of the United States, John F. Kennedy. The bill immediately became the center of controversy both inside and outside governmental circles. "No legislation of greater significance to the Nation has come before this Congress in our lifetime", declared Republican members of the Committee on the Judiciary when the final bill was committed by that committee to the Committee of the Whole House on the State of the Union.[1] On the other hand six members of the same committee in a dissenting opinion declared that the bill was unconstitional and consisted of the "greatest grasp for executive power conceived in the 20th century"[2], adding that if the bill became law "our fire ball of liberty will spin into darkness, suffocate [sic]"[3]

The passage of this bill in the House of Representatives was indeed a very significant event. Only 3 years earlier the House had passed the second civil rights act since reconstruction days. This act, however, was very limited in scope as compared to the stronger provisions of the 1964 bill approved by the House of Representatives.

A dramatic change had taken place in the short period between the House action on these two measures. This chapter will examine some of the influence which led to this important change as well as examining the general historical background of civil rights legislation.

History of Legislation in the Field of Civil Rights

The question of civil rights legislation dates back to the period of Reconstruction following the Civil War. In 1863 Abraham Lincoln issued the Emancipation Proclamation by which all slaves in states still in rebellion by January 1, 1863 were declared free. In 1865 the Thirteenth Amendment was adopted declaring that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction".[4] [In the original "neither" is the first word of a sentence.] However, the authors of this amendment fully realized that a mere declaration of abolishing slavery would not suffice and thus in Section 2 they added that "Congress shall have power to enforce this article by appropriate legislation".[5] The Reconstruction Congress accepted this power and between the years of 1866 and 1875 five major civil rights and reconstruction acts enacted by Congress became law.[6] Within these same years two other amendments to the Constitution, relating to the question of slavery and civil rights, were adopted. These amendments sought to guarantee the abolition of slavery and granted Congress considerably more power. Though the Thirteenth Amendment empowered Congress to enforce the abolition of

slavery, the question which arose was whether this power could extend to the states. The Fourteenth Amendment adopted in 1868 granted citizenship in the United States and state of residence to all individuals born or naturalized in the United States. The amendment further added that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[7] [In the original "no" is the first word of a sentence.] In 1870 a third amendment, the Fifteenth Amendment, was adopted stating that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude".[8]

The strongest of the major pieces of civil rights legislation, and the last for that matter, was the Civil Rights Act of 1875. This act sought to guarantee the equal enjoyment of places of public accomodation, such as inns, public conveyances, theatres and other amusement centers, without regard to race, color, or previous condition of servitude.[9] The Act qualified all citizens regardless of race, color or previous condition of servitude to serve on juries, and also provided for a vindication of these rights

by civil and criminal penalties in federal courts.[10] This Act was very significant for it recognized that the freed slave would not be able to achieve full citizenship and freedom unless he was able to enjoy fully and equally the places of public accommodation available to all citizens.

In general, congressional civil rights legislation during the Reconstruction period established the right to vote without discrimination; the right to sue and be sued; the right to give evidence in courts of law (including cases where a Negro was not involved); the right to own and lease property; the right to make and enforce contracts; the right to be protected by law in personal and property relations; and the right to enjoy places of public accommodation. "In all respects the Negro was to enjoy 'the full and equal' benefit of all laws. decisions, regulations and customs [and] in all public relations the Negro was to enjoy equality of treatment and dignity".[11]

With such a large body of legislation in this field one wonders why it is necessary to consider new civil rights legislation today. Unfortunately little remains of the civil rights legislation of the Reconstruction period. Eight years after the adoption of the 1875 Civil Rights Act the Supreme Court in the civil rights cases of 1883 declared that Act unconstitutional. The court claimed that the Fourteenth Amendment did not allow Congress to legislate

"upon subjects which are within the domain of state legislation; but to provide modes of relief against state legislation...[or] state action of every kind, which impairs the privileges and immunities of citizens of the United States..."[12] Thus Congress could only prohibit state legislation or state actions which resulted in discrimination, but could not require nondiscriminatory conduct of individuals not acting under state authority. Discriminatory action by individuals was subject only to state regulation. Therefore places of public accomodation did not come within the sphere of the Federal Government if they were privately owned. Justice Harlan disagreed with this interpretation and in his vigorous dissent pointed out that facilities of public accommodations are "In every material sense applicable to the practical enforcement of the Fourteenth Amendment...because they are charged with duties to the public, and are amenable, in respect to their duties and functions, to governmental regulation."[13] Furthermore Justice Harlan stated that the Fourteenth Amendment was not merely prohibitory, but had a positive character and the citizenship granted can be actively protected not only by the courts but also by Congressional legislation.[14] This dissent by Justice Harlan was a very significant one and, as will be pointed out later in the chapter, had a great impact on future court decisions.

Civil rights legislation was not only eradicated by

the Supreme Court. In 1894, Congress, by a single Act, struck down all but seven of forty-nine sections of the Enforcement Acts. With the adoption of the Criminal Code in 1909, civil rights and sufferage enactments in the code were reduced further. However, as Milton Kouvitz has stated "even these provisions are not to be taken at face value. Judicial reconstruction has circumscribed the generality of the meaning one might be inclined to read into such phrases as 'any right or privilege of a citizen of the United States' or 'equal privileges and immunities under the law'..."[15]

By 1960 these statutes, struck down or narrowly construed by the Supreme Court or greatly modified by Congress were virtually nonexistent.[16] All that remained in the statute book was one section (U.S. Code Title 42, section 1984) which provided that civil rights cases be reviewed by the Supreme Court under the same provisions and regulations as are provided by law for review of other cases in the court.[17] The complete eradication of all legislation which sought to realize the Third Amendment's declaration of an end to conditions of slavery and the Fourteenth and Fifteenth Amendments' declaration of the Negro's right to full citizenship and protection of the law contributed to the fact that the Negro would make very little real progress in achieving full citizenship in the century after the Civil War.

It was not until the administration of Franklin D. Roosevelt that some attention was once again paid to the problem of Negro rights and citizenship. In 1939 Roosevelt by administration action set up a civil rights section within the Department of Justice. Though Roosevelt was the champion of minorities, capturing the Negro for the Democratic party with his concern for social and economic questions, he never actually championed the Negro's cause, nor did he attempt to make any inroads on the question of civil rights legislation. His contribution was great, however, in that the Negro was included in the many relief programs of the New Deal. "It was the first time in his history that the Negro received the same wages for the same amount of work done as the white man."[18] Another significant development in the field of civil rights, came on June 25, 1941 when Roosevelt created, by Executive Order 8802, a Federal Fair Employment Practices Committee. This order was issued after A. Phillip Randolph had threatened to bring a hundred thousand Negroes to Washington to press for that directive. This development was important for it showed that Negroes could function well as a pressure group within society.[19]

It was not until the Truman years, however, that some genuine steps were taken to examine more fully the question of deprivation of human rights. In 1947 President Truman appointed a committee on civil rights. This committee,

among other things, recommended that the civil rights section of the Department of Justice be elevated to the status of a full division; that a permanent commission on civil rights be created; that a statute against police brutality and a federal anti-lynching act be enacted; and that a federal statute protecting the right of qualified persons to vote in federal primaries and elections without the interference by public officials and private persons be approved.[20] The recommendations of this committee served as a basis for a message which Truman sent to Congress on February 2, 1948, urging the Congress to pass necessary civil rights legislation.

Truman later supported the efforts of liberal Democrats, including Hubert Humphrey, in their successful attempt to incorporate the committee's suggestions in the platform of the Democratic Party in its July convention.[21] Some southern Democrats were so outraged at this development that they walked out of the convention and formed the "Dixiecrat" party with Strom Thurmond as candidate for President, polling 1,169,021 votes and carrying four states.[22]

On July 26, 1948 Truman supplemented his demands for legislation by issuing Executive Orders No. 9980 and 9981 which respectively instituted fair employment practices in federal government agencies and abolished segregation and unequal treatment because of color in the armed services.[23]

Congressional legislation was not enacted in the Truman days; and it was not until 1957 in President Eisenhower's second term that the first civil rights bill since 1875 was enacted into law. In the 1956 Presidential campaign, President Eisenhower had set forth a four point civil rights program devised by Attorney General Brownell. This program consisted of the creation of a civil rights division in the Justice Department, the creation of a civil rights commission to investigate violations of civil rights, the enactment of laws to aid in enforcing voting rights and the enactment of laws to seek from the civil courts preventive relief in civil rights cases.[24]

The following year the House of Representatives passed a modified version of the Eisenhower Civil Rights Bill, but the Senate changed it by eliminating the section permitting the Attorney General to institute civil action for preventive relief in civil rights cases and a seetion giving the President power to use troops to enforce existing civil rights laws.[25] The 1957 bill provided for the following:

1. A Civil Rights Commission to study problems of denial of equal protection of the law and second class citizenship.
2. A Division on Civil Rights within the Department of Justice, to be headed by an Assistant Attorney General.

3. Authorization of the Attorney General to seek injunctions in federal courts to restrain interferences with the right to vote.

4. A distinction between civil and criminal contempt proceedings and provision for a trial by jury available in the latter if a penalty of more than 45 days in jail or a fine of more than $300 was to be imposed.[26]

Though this act was an improvement it was a weak measure. In two and one-half years that it was on the books it produced little results. The Eisenhower administration initiated only ten cases in this period. Only two were won and one was settled with a third undecided.[27]

In view of this fact, the new Civil Rights Commission recommended in its first report that further legislation to protect the right to vote be enacted. This recommendation was influential in the passage of the second civil rights bill since Reconstruction, the Civil Rights Act of 1960.[28] This was not an easy task and the 1960 civil rights battle in Congress was quite intense. The Congressional Quarterly Almanac reports that it was clear throughout that the moderate forces were firmly in control. These included Lyndon Johnson (D. Texas), Senate Majority leader, Minority leader Everett R. Dirksen (R. Ill.), House Speaker Sam Rayburn (D. Texas) and Minority leader Charles A. Halleck (R. Ind.).

The liberals constantly fought to strengthen the bill while considerably more organized southerners sought to kill undesired provisions. The southerners were more successful than the liberals and even the voting referees plan was considered by them as extreme. Strom Thurmond (D. S.C.) wrote his constituents saying that the Senate action indicated "a pattern of defeat for the NAACP and its spokesmen."[29] The liberals had attempted to reintroduce Part III of the 1957 bill which was excluded by the Senate and which enabled the Attorney General to institute civil action for preventive relief in civil rights cases, but were frustrated in their efforts. Eisenhower had omitted this section entirely in his 1960 message and lent no support for its reintroduction.[30] When the legislation was finally enacted it was the sheerest anti-climax. "In its final form it provoked only the most perfunctory reactions among both friends and foes of civil rights."[31]

The 1960 Civil Rights Act included the following provisions:

1. After a successful lawsuit by the Federal government in which voting discrimination is established, Federal Courts can appoint voting referees to supervise registration. If a Negro is again unable to register, the referee can grant voting certificates.

2. State officials must retain voting records for 22 months after an election and allow Justice Department inspection.

3. A person or state obstructing Federal court orders is guilty of Federal crime.[32]

Like the 1957 Act, the Civil Rights Act of 1960 is very weak. The procedure which the Act set up to combat discrimination in voting is very cumbersome and lenthy.[9] The Federal Government can only act after a law suit, establishing that discrimination does exist, has been won. When discrimination is established, the Government can appoint voting referees to supervise the voter registration procedures. The party which had been discriminated against must try to register once again. If he is subject to discrimination once again, then he can be granted a voting certificate by the referee. Because a law suit can be extended for a very long period of time and because a law suit must be filed in each instance of discriminatory practices, the Act's value is very minimal. Commenting on the Civil Rights Act of 1960, Thurgood Marshall said that it "isn't worth the paper it's written on."[33]

Though in 1960 the Congress of the United States passed a very weak piece of civil rights legislation, in that same year both major parties engaged themselves in a bitterly contested presidential campaign in which civil

was a major issue
rights, it is necessary to consider briefly some important developments in the Supreme Court which affect civil rights legislation.

Civil Rights and the Supreme Court

As was seen above, the 1883 Civil Rights Cases declared the Civil Rights Act of 1875 unconstitutional by stating that the Fourteenth Amendment could not apply to private individuals or places of public accommodation owned by private individuals, but could only apply to the State itself. All private actions, including those relying on the state police power for their effectiveness were beyond the reach of the Fourteenth Amendment.[34] In 1896, the Supreme Court went even further in destroying the idea that public accommodations should be open to all citizens. In Plessy v. Ferguson,[35] the Court declared that it was perfectly acceptable to have separate public facilities for individuals of different races. The Court sustained a Louisiana statute which forced the segregation of individuals of different races on railroad trains.[36] The only qualifier which the Court suggested, was that such separate facilities be equal for both races.[37] John Roche says of that decision that "In essence, Negroes were held to be a different species of man; thus the requirement that they receive 'equal protection of the laws' was interpreted to validate <u>different</u> treatment from white."[38] [In the original "in" is the first word of a sentence.] The Supreme Court decision validated and gave impetus to the passage of many state and local statutes legalizing the segregation of the "races". It made legally possible for

decades a social system in which one race would obstruct the other's participation in American society.

It was not until 1954 that the Supreme Court, in one of the most significant decisions in its history, overruled the 1896 case. In Brown v. Board of Education[39] the court rejected the doctrine of "separate but equal." While dealing with the matter of segregation in schools, the Supreme Court declared that "we conclude that in the field of public education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal. Therefore we hold that the plaintiff and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."[40] [In the original "we" is the beginning of a sentence.]

The Brown decision had an enormous impact on American society. John Roche said that it "presaged a revolution in race relations. In the cities of the North, the Negroes...began increasingly to assert their autonomy and to demand their full rights in the political community."[41] On the other hand, Southerners objected vehemently to this upset of the status quo. "In the Southern states, the situation was radically different. The Supreme Court's decision was greeted with the slogan of massive resistance

and the burgeoning of 'white citizens' councils' as unofficial organs of white supremacy."[42]

Though the Supreme Court overruled the Plessy v. Ferguson decision, it did not overrule the Civil Rights Cases of 1883. However, as Representative John Lindsay (R., N.Y.) said during the civil rights hearings before the House Judiciary subcommittee, "it...seems that it has been at least 50 per cent reversed now."[43] Lindsay's comments rest on the fact that in the past few decades the concept of what state action is has been broadened greatly, to the extent that agencies which are commonly considered private in character are covered by the "equal protection" clause of the Fourteenth Amendment.[44] Thus in Marsh v. Alabama[45] the Court declared that "the more an owner, for his own advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."[46] [In the original "the" is the first word of a sentence.] Through a broader interpretation of State action the court has declared that the actions of a state university (Missouri ex rel. Gaines v. Canada, 305 U.S. 414 (1948)); a labor union (Steele v. Louisville and Nashville Ry. Co., 323 U.S. 192 (1944)); (Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768 (1952)); a company town (Marsh v. Alabama, 326 U.S. 501 (1946)); an agent of the

State even if his is acting outside of his authority or in direct violation of State Law (Raymond v. Chicago Traction Co., 207 U.S. 20 (1907)); (Home Telegraph Co. v. Los Angeles, 227 U.S. 278 (1913)) can all be covered by the Fourteenth Amendment.[47] ~~(D. & E)~~ The Supreme Court has also held that a political party can come under the Amendment.[48] In addition it has stated, in Shelly v. Kraemer,[49] "that state court enforcement of a racially-restrictive covenant, by which private persons had agreed not to permit occupancy of certain land by Negroes, violated the Fourteenth Amendment."[50] These decisions clearly weaken the 1883 Civil Rights Cases.

In testimony before the subcommittee of the Judiciary Committee of the House of Representatives, Joseph L. Rauh, a civil rights lawyer who has argued many cases before the Supreme Court, pointed out that the 1883 Cases have also been weakened in another area. This area concerns the idea that property can be regulated in the public interest.[51] In Nebbia v. New York,[52] the Supreme Court established this principle when it said that the state could regulate the selling price of milk. In that decision, the Court declared that "equally fundamental with the private right is that of the public to regulate it in the common interest...The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large."[53]

In view of these developments Joseph Rauh stated that "my feeling is that the 1883 case is a shell that is only waiting for its obituary notice. It is a shell, because on the one side the court has taken away the narrow concept of State action and on the other side they have taken away the idea that property may not be regulated in the public interest."[54] However Rauh did not feel that these developments meant that the Government would be able to control every aspect of private business. On the contrary, a broad interpretation of the "equal protection" clause in regards to discrimination against Negroes does not necessarily require a broad interpretation for other purposes. "A restaurant can be the State for purposes of the 14th amendment in relation to discrimination against Negroes without being the State for any other purpose, because the 14th amendment was passed to give the Negro a different status than he had before."[55]

Thus the Court actions since the 1883 cases profoundly changed the sense of the 1883 cases to the extent that by the time the civil rights hearings were held in the summer of 1963, it was widely felt that the 1883 cases were no longer applicable and that a public accomodations civil rights bill would be acceptable. (It will be seen later that many House Republicans introduced a civil rights bill based on this premise and that the Attorney General of

the United States among others agreed to the proposition that the 1883 cases would probably not stand a court test).

In concluding this section one additional area of Supreme Court action, which proved to be very important in the discussion of civil rights legislation in 1963 and 1964, must be considered. This concerns the Supreme Court's interpretation of the "interstate commerce" clause, Article I, Section 8 of the United States Constitution. In one of his most famous decisions, Gibbons v. Ogden,[56] Chief Justice John Marshall defined commerce in the widest possible terms. "Commerce among the states cannot stop at the external boundary line of each state but may be introduced into the interior."[57] Marshall added that the commerce power "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed by the constitution... The wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at election, are... the sole restraints on which they have relied to secure them from abuse."[58]

Though Marshall's decision was very broad, the commerce power did not become a reality until 1887 with the passage of the Interstate Commerce Act. In 1890 this Act was followed by the Sherman Anti-Trust Act and, especially after 1903, by many others.[59] At first the sweeping views of

Gibbons v. Ogden, supra, were very restricted. The narrow interpretation of the commerce clause can be seen especially in United States v. Knight,[60] in which the Court declared that manufacturing was not commerce and therefore could not be controlled by Congress, even if the goods manufactured flowed in interstate commerce.[61]

With the advent of the New Deal the picture changed considerably. In National Labor Relations Board v. Jones and Laughlin Steel Corporation,[61] the Court declared that a labor dispute in a key company, where goods were manufactured for interstate commerce, could affect interstate commerce and thus was subject to Congressional regulation. The Court declared that "it is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of Congressional power."[62] [In the original "it" is the first word of a sentence.] Thus a company within a State could be covered by an elastic interpretation of the commerce clause. In United States v. Darby,[63] the Supreme Court reaffirmed this principle when it said that Congress could regulate labor standards in an industry which produced raw materials for goods in interstate commerce. The Court claimed that the "production of goods for interstate commerce is so related to the commerce and so affects it as to be within the reach of the power of Congress to regulate it."[64] The Court went

even further in Borden v. Bordella,[65] holding that maintenance workers in the office building of a milk business which engaged in interstate commerce were covered by the interstate commerce clause.[66] Finally, the Supreme Court not only held that Congress could regualte activities affecting interstate commerce, but also maintained in Wickard v. Filburn,[67] that Congress could "stimulate" interstate commerce.[68]

The principle that a situation affecting interstate commerce is subject to Congressional regulation would prove to be very useful and important in the debate over the Civil Rights Act of 1964. As will be pointed out later in the paper, the Kennedy Administration relied heavily on the commerce clause in order to support the constitutionality of a section on public accomodations of the Administration bill.

The 1960 Presidential Campaign

One of the foremost questions during the hotly contested campaign of 1960 was the question of civil rights. As will be seen more fully later, the Negro leadership by the year 1960 was deeply immersed in a campaign of direct action to impress upon the nation their demands. These included demonstrations, sit-ins, freedom rides, picketting, as well as lobbying and political maneuvering. Theodore H. White in his account of the 1960 campaign states that "Never in any election before 1960 had any group, under leadership of such talent, presented its specific demands in such blunt and forceful terms."[69] These demands had to be catered to, for both candidates were aware that the large populations of Negroes in crucial northern cities could make the difference between victory and defeat.

This awareness was vividly illustrated in both the Republican and Democratic platforms of 1960. Both contained the strongest civil rights planks in their party's history. The Republicans pledged "The full use of the power, resources and leadership of the Federal government to eliminate discrimination based on race, color, religion, or national origin and to encourage understanding and good will among all races and creeds."[70] They also pledged to seek new legislation in civil rights and action in the areas of voting, public schools, employment, housing, public facilities and

legislative procedures. The Democrats proclaimed that "the Constitution of the United States rejects the notion that the rights of man means the rights of some men only. We reject it too."[71] [In the original "the" is the first word of a sentence.] The Democrats also pledged to act in the areas of voting, public education, and employment, by establishing a Fair Employment Practices Commission. They pledged a permanent Civil Rights Commission and the granting of power to the Attorney General to file civil injunction suits in the Federal courts to prevent denial of civil rights on grounds of race, creed, or color.[72] Both of these platforms went far beyond any legislation which existed at the time, and provided a bold base for action on civil rights.

The preeminence of the civil rights question during the campaign, in which both candidates made speeches endorsing equal opportunities for all Americans, can be illustrated by one instance which involved a crucial decision on the part of candidate John F. Kennedy. On October 19, 1960, Martin Luther King, Jr. was arrested in an attempt to desegregate Rich's Department Store in Atlanta, Georgia. King was sentenced to four months of hard labor. Three southern governors warned Kennedy that if he interfered in the situation he would lose the South. Nevertheless, at the suggestion of Harris Wofford, the director of Kennedy's

civil rights section, the candidate did not hesitate to call Mrs. Martin Luther King, Jr. to assure her of his concern and, if necessary, his intervention. This act by Kennedy had an enormous impact on the Negro community. White notes that "when one reflects that Illinois was carried by only 9,000 votes and that 250,000 Negroes are estimated to have voted for Kennedy; that Michigan was carried by 67,000 votes and that an estimated 250,000 Negros voted for Kennedy, that South Carolina was carried by 10,000 votes and that an estimated 40,000 Negros there voted for Kennedy, the candidate's instinctive decision must be ranked among the most crucial of the last few weeks." [73] [In the original "when" is the first word of a sentence.] Kennedy was an urban candidate and vividly aware of the importance of urban areas and the close relationship between urban politics and the Negro vote.

Candidate Richard Nixon's reaction to the same crisis was very different. Right after King's arrest the Department of Justice of the Eisenhower administration composed a draft statement to support the application for release. One draft was sent to President Eisenhower and the other to Richard Nixon. Somewhere the draft statement was withdrawn. Theodore White speculates that Nixon, with the increasing disturbances in the South, began to have more hopes about carrying the traditionally democratic region.[74]

Whereas Kennedy's decision to act was crucial, Nixon's decision not to act was equally as crucial, for he should have realized that his chances for the presidency hinged on the large northern states with large Negro populations.

The Kennedy Administration: The First Two Years

Upon assuming the highest office of the land, Kennedy was faced with a grave dilemma. On the one hand he had made strong commitments on the issue of civil rights and was probably aware of the total importance of the Negro vote. On the other hand, Kennedy confronted a narrowly divided Congress on his "priority" welfare and general legislative program. The President realized that if he antagonized the southern Democrats, his legislative program would be endangered.[74] In a news conference prior to his election, held on September 1, 1960 candidate Kennedy announced that he had asked Senator Joseph Clark (D. Pa.) and Representative Emanuel Celler (D. N.Y.) to draw up a civil rights proposal containing the principles set forth in the 1960 Democratic platform, adding that "we will seek the enactment of this bill early in that Congress."[75] In 1961 the Clark-Celler Bills were reported in March but actually not introduced until May 8. On May 4 the Presidential Press Secretary Pierre Salinger announced that the Clark-Celler Bills were "not administration backed bills. The President does not consider it necessary at this time to enact new civil rights legislation."[75] After a conference with the President on the same day, Majority leader of the Senate, Mike Mansfield (D. Montana) said "we want to get the program outlined by the President through, and after that

we will consider civil rights if necessary."[77] It was plain that the President chose not to risk his legislative program for an early appeal for civil rights legislation. John Kennedy had been a member of both houses of Congress "and he appreciated the quid pro quo of politics. He had other bills he wanted to pass and could not alienate Southern Democrats, and the bipartisan Republican support which would make them law."[78] The only piece of civil rights legislation which the President supported in 1961 was the extension of the Civil Rights Commission for two years. Other civil rights proposals, receiving no administration support were defeated.[79] This inaction in regards to legislation did not mean however that the President disregarded civil rights completely. Through the use of executive action he was able to turn his attention to civil rights questions.

Thus on March 6, 1961 Kennedy issued Executive Order No. 10925 establishing the President's Committee on Equal Employment Opportunity to combat racial discrimination in the employment policies of government agents and private concerns possessing government contracts. Lyndon Johnson, Vice President of the United States, was appointed chairman of the committee and Arthur J. Goldberg, Secretary of Labor, was appointed vice chairman. The order was very broad, going beyond previous orders of this nature.[80] In addition

to the Executive Order, Justice Department officials concentrated on carrying out the directives of the 1957 and the 1960 Civil Rights Acts. Harry Golden has said that "President Kennedy interpreted the Civil Rights Acts of 1957 and 1960 to mean that his Attorney General had the responsibility-not just the authority- to investigate and to bring legal action where citizens are denied the right to register and vote on account of race."[81]

Whereas under Eisenhower the Justice Department filed nine suits between 1957 and January 1961, between January 20 and December 1, 1961, Robert Kennedy, Attorney General of the United States, had filed fourteen suits none of which were lost by the government.[82] During the same year also, the Justice Department, based on the Interstate Commerce Commission Act, sought to desegregate[9a] facilities in interstate travel terminals. These actions of the Justice Department were not initiated in a void, however, for it can be assumed that they were directly spurred by the Freedom Rides in the South.[83]

Even the issuance of Executive Orders, however, was influenced by the political realities in Congress. Though Kennedy had announced several times during the campaign that the President must "issue the long delayed Executive Order, putting and end to racial discrimination in federally assisted housing",[84] he himself did not sign such an order

until November 20, 1962.[85] One of the priority measures on Kennedy's agenda was the Trade Bill for which the President needed the support of Representative Alfred Rains and Senator John Sparkman (both from Alabama), and against the housing order.[86] The Executive Order, No. 11063, which finally was issued on November 24, 1962, after passage of the Trade Bill, established the President's Committee of Equal Opportunity in Housing. The order, which took effect immediately, prohibited discrimination in housing built, purchased, or financed with federal assistance.[87]

The New Militancy in Civil Rights

At the same time that the President was stalling on civil rights legislation and action, a new militancy in civil rights was sweeping the country. Though it is hard to pinpoint the start of this new movement, (it may date back to A. Phillip Randolph's threat to march on Washington to secure FEPC in Roosevelt's third term) the Montgomery (Alabama) bus boycott of 1955-56 signalled a milestone in the civil rights struggle. The boycott started after Mrs. Rosa Parks was arrested on December 1, 1955 when she refused to give up her bus seat to a white passenger. The boycott was particularly important, for out of it emerged Martin Luther King, Jr. as a leader of the civil rights movement and a man who also provided the movement with the philosophy of Christian non-violence.[88] Though the Montogomery bus boycott was slow to inspire similar action in other places it "quickly became a bright and widely believed symbol... It brought a new vision to Negroes and, just as important, to the white people of the South it brought the first clearly perceived view of Negro discontent and determination and courage."[89]

It was not until 1960, however, that the real wave of Negro demonstrations and protests began. On February 1, 1960, at 4:30 p.m., in Greensboro (N.C.) four Negro students

sat down at a segregated lunch counter of a Woolworth Five-and-Ten-Cent Store. Within a week this action touched off sit-ins all over North Carolina including the cities of Winston-Salem, Durham, Charlotte, Fayetteville, Raleigh, Elizabeth City, and High Point. Within six weeks the demonstrations reached every state in the South with the exception of Mississippi, which was reached in 1961. The sit-in movement was a truly remarkable phenomena. It was completely spontaneous and imitative.[90] The Southern Regional Council reported in a publication issued on September 29, 1961 entitled The Student Protest Movement: A Recapitulation, that at least 70,000 Negroes and whites actively participated in sit-ins in twenty states.[91] Out of the sit-ins a very important civil rights organization, The Student Non-Violent Coordinating Committee, was formed. The organization was created after two meetings held in April and October of 1960, and has permanent headquarters in Atlanta, Georgia.[92]

A new chapter in the intensive civil rights protest which manifested itself in the early Kennedy months opened on May 4, 1961 when the first Freedom Ride of 1961 took place. On May 20,21, and 22 violence and tension was so high in Montgomery that Kennedy ordered 600 federal marshalls into that city to protect it, and the riders. The Justice Department, in addition, mobilized its resources to see

that facilities in interstate commerce were desegregated. By November 1, 1961, there was practically no racial segregation in bus terminals.[93]

The Freedom Rides were rapidly followed by the Albany Movement in the continuing drama of civil rights demonstrations. "The energies of discontent were set off in Albany so furiously that it was to become notorious worldwide as a site and symbol of Negro protest and white resistance."[94] The Albany protest was the first across-the-board protest against all forms of segregation. As marches and demonstrations took place, and as city officials and police arrested civil rights leaders and followers, the Justice Department attempted mediation. The Southern Regional Council said afterward "The Department apparently decided not to exercise any enforcing power in Albany; it confined its efforts to attempted persuasion and mediation... By its nature, as an enforcing agency, the Department is not a good instrument of mediation and persuasion..."[95] The nation witnessed riots and brutality in Albany.

Birmingham, Alabama was the next focus of the Negroes drive for equality. Dr. Martin Luther King, Jr. went into Birmingham and initiated a series of demonstrations and sit-ins that lasted for five weeks. During these weeks "The nation awoke with the Birmingham campaign to a final full knowledge of the meaning of direct action."[96] In

pictures on the front pages of newspapers all over the world, Birmingham presented itself not only with marchers being driven to jail and singing children parading down the streets, but with police dogs, fire hoses, and cattle prods.

Civil Rights Action in 1963

The Birmingham events not only rocked the South, but they rocked the entire nation. Washington was deeply concerned over the events which embarassed the United States abroad. Kennedy had hoped that he could calm the situation through mediation, but he was largely unsucessful. Anthony Lewis Smith, reporting for the New York Times on June, 1963, remarked that though the President had attempted to move through Executive Orders and litigations to solve the continuing riots, the pace of events and demonstrations made the tactic of merely reacting to crisis obsolete. The need for Federal legislation in civil rights became more apparent than ever.[97]

Harry Golden notes that "Mr. Kennedy readily admitted that he was controlled by events. To a Negro leader he said that the Negroes owed their heaviest debt to the dogs of Birmingham, Alabama, and to those who unleashed them, provoking a national crisis. The order of events, each augmenting the terror of the preceding event and promising an even more virulent succession, decided Mr. Kennedy's comprehensive policy. He resolved to make Congress and the people particpate in the struggle."[98] On June 11, 1963 the President addressed the nation on radio and television in what turned out to be an appeal to conscience. "We preach freedom around the world, and we mean it, and we

cherish our freedom here at home, but are we to say to the world, and much more importantly, to each other, that this is a land of the free except for the Negroes; that we have no second-class citizens except Negroes; that we have no class or caste system, no ghettoes; no master race except with respect to Negroes?"[99] The President also let it be known that he could not wait any longer before recommending strong civil rights legislation to the Congress. "The events in Birmingham and elsewhere have so increased the cries for equality that no city or state or legislative body can prudently choose to ignore them...It is time to act in Congress...Next week I shall ask the Congress of the United States to act, to make a committment it has not fully made in this century to the proposition that race has no place in American life or law."[100] The following week, on June 19, 1963, Kennedy sent to Congress the strongest civil rights proposals in this century, which served as a basis for H.R. 7152. (These will be listed at the beginning of the next chapter.)

Though it was not until June of 1963 that Kennedy actually transmitted to Congress some of the strong civil rights proposals of the Democratic party, it must be indicated that the June message was not the first of Kennedy's civil rights messages. Rather three months earlier on February 28, 1963, almost exactly two years after his

inauguration, the President sent Congress his first civil rights message. In it he urged enactment of further voting legislation and legislation of the Civil Rights Commission, while extending it for four years. It also called for legislation to provide Federal technical and financial aid to school districts in the process of desegregation.[101] The message had neither the scope nor the sense of urgency which the June message would have. This can be seen in the fact that the administration made no effort to have the proposals introduced into Congress right away. It was not until April 4, 1963, that Emanuel Celler, Chairman of the Judiciary Committee, introduced the legislation as H.R. 5455 and 5456.[102] These bills contained the voting legislation (whose most important provision called for the establishment of temporary voting referees to wait the outcome of a voting suit) and the legislation of the Civil Rights Commission. Apparently it was decided not to introduce any legislation on desegregation of school facilities. The administration was still unwilling to present a strong program.

Up to this point the influence of the various crises throughout the nation has been noted as an important influence on the President's decision to act. Though it is not possible in this study to ascertain all the influences which led him to the June 19th message it is necessary to indicate that the Republican pressure in 1963 was probably

quite an important influence. Early in January, at the opening of the 88th Congress, Republican members of the House Judiciary Committee gathered informally to discuss civil rights legislation. Out of the conversations the Omnibus Civil Rights Bill, H.R. 3139, was drafted and introduced by Representative William McCullough (R. Ohio), the ranking minority member on that committee. The same bill was also introduced by nine other Republican members of the House Judiciary Committee and 31 other Republicans in the House of Representatives.[103]

This bill, following the Republican platform, provided for a permanent Civil Rights Commission, the creation of a Commission on Equality of Opportunity in Employment, a provision for Federal aid to desegregation schools and a provision on literacy in voting in Federal elections.[104] This bill, which was stronger than the one recommended by the President on February 28 and introduced on April 4, was designed, besides for providing for civil rights legislation, to embarass the administration. The New York Times observed editorially on February 5, 1963 that "If this is a move to embarass the Democratic majority and the Kennedy administration, the easiest way for the Democratic majority and the Kennedy administration to get unembarrassed is to provide a similarly good bill and act on it."[105] David Cohen, legislative Representative of Americans

for Democratic Action, and a close observer of civil rights legislation, said that the civil rights organizations were very pleased at the Republican action of pointing to administration failure in civil rights, though they felt the bill was not strong enough.[106]

On June 3, 1963, four Republicans of the Judiciary Committee (Lindsay of New York, Cahill of New Jersey, MacGregor of Minnesota, and Mathias of Maryland) introduced bills to prohibit segregation in places of public accommodation.[107] Twenty-seven other Republicans joined in introducing companion bills which also seemed aimed at embarrassing the administration at the height of the Birmingham incident. The bills proved to be perfectly timed, for the administration had already been working on its proposals to be presented on June 19. On June 1, for instance, President Kennedy met with the Attorney General and special assistant Theodore Sorenson to confer on strategy for the bill.[108] On June 2 the President decided to delay a message containing recommendations with a section on public accommodations because of last minute "tinkering with draft bills" and various conferences the President wanted to keep. This was a difficult decision because the Republicans were "Plainly intent on beating the administration in offering a measure"[109] Some of the criticism of the administration from Republicans and others will be reviewed further in

chapter 2 when the hearings of the Judiciary Sub-committee Number 5 are discussed.

In closing this section it must be emphasized that the mention of the various criticisms and influences upon the President's course of action should not indicate that the author feels that the President had no personal commitment to civil rights. On the contrary, it would seem, from the forcefulness of the President's messages, the spontaneity of his decision to act in the King incident during the campaign, the cordial relations which were maintained with Negroes and civil rights leaders, the enthusiastic endorsements of sit-ins and freedom rides, the endorsement of the March on Washington and other instances, that John Kennedy was genuinely dedicated to the cause of equality for all Americans. Though the President recognized that he had to rely on executive actions, in order to clear his program in Congress, he was probably aware that the day would come when civil rights legislation would have to be introduced. It would seem that that day came sooner than expected.

The Administration's Civil Rights Bill

The civil rights bill sent to Congress by the Adminstration following the President's message of June 19, 1963, contained seven titles covering a wide range of subjects pertaining to the question of civil rights. The main provisions of each title of HR7152 (Union Calender 386) are as follows:

TITLE I: VOTING RIGHTS

The title on Voting Rights repeats without substantial change the Administration's voting bill sent to Congress in February of 1963. The title would prohibit discrimination and the application of different standards in voting registration for Federal elections. The title would strengthen the 1960 Civil Rights Act by providing for the appointment of temporary voting referees during the lenghthy litigation period in which the court establishes whether discrimination in voting exists or not.

TITLE II: PUBLIC ACCOMMODATIONS

This is the most important title of the Administration bill. Like the 1875 Civil Rights Act, this title would prohibit segregation and discrimination in places of public accomodations. Unlike the 1875 Act, however, this section of the bill is based on the Commerce Clause of the Constitution and not the Fourteenth amendment. The title would prohibit discrimination in: a) any hotel, motel, or other public place furnishing lodging to individuals in interstate commerce; and b) any motion picture house, theater or other place of amusement presenting entertainment which moves in interstate commerce; and c) any retail shop, department store, market, gas station or other public eating places, if goods and services are provided substantially for interstate travellers.

Those refused service could sue for preventive relief, and the Attorney General could enter suit on receipt of a written complaint if the complainant is unable to bring suit for financial reasons or fears of reprisal.

TITLE III: SCHOOL DESEGREGATION

This title would make provision for technical and financial assistance to areas undergoing desegregation of

schools. It also would authorize the Attorney General to institute civil actions for school desegregation upon receipt of complaints and a determination that the complainants are unable to institute legal proceedings.

TITLE IV: COMMUNITY RELATIONS SERVICE

Title IV would provide for the creation of a new agency, the Community Relations Service. It would help to resolve problems arising from discrimination by bringing influential people of both races in the community together for discussions.

TITLE V: CIVIL RIGHTS COMMISSION

This title would extend the life of the Civil Rights Commission for another four years.

TITLE VI: WITHHOLDING OF FEDERAL FUNDS

Title VI would authorize withholding of Federal Funds from projects or programs which receive Federal assistance, directly or indirectly through loans, contracts, insurances or otherwise, when the project or program exhibits patterns of discrimination in their operation.

TITLE VII: EQUAL EMPLOYMENT OPPORTUNITY

This title would expand the President's Committee on Equal Opportunity giving it the statutory authority to operate as a Commission. The Commission would continue its work to prevent discrimination by Government contractors and sub-contractors, and by contractors and sub-contractors participating in programs or activities in which direct or indirect financial assistance is provided by the U.S. Government.

This Commission would not be a Federal Employment Practices Commission (FEPC) prohibiting discrimination in general hiring and firing practices of private businesses or labor unions.

The Leadership Conference on Civil Rights

On July 2, 1963, a few days after President Kennedy sent his civil rights message to Congress, several civil rights organizations met in the Hotel Roosevelt in New York City to discuss how they would contribute to the passage of the Administration bill. Some of the top leaders of the civil rights movement, including Martin Luther King, Jr., Arnold Aronson, Roy Wilkens and Joseph Rauh, had met with President John Kennedy to discuss the means of mobilizing public opinion in favor of the President's bill. At the meeting with the President it was made clear that the civil rights organizations would strongly support the President's measure while at the same time seek a stronger bill. This would serve the purpose of working for a stronger civil rights bill as well as the strategic purpose of making the Administration bill look like a very moderate piece of legislation; a precondition for the creation of favorable public opinion.[110] A background document was prepared for the Hotel Roosevelt meeting outlining the major provisions of the bill, and pinpointing some of the "legislative problems in both the House of Representatives and the Senate and some of the immediate target areas for mobilization of opinion." The document stated that "the President's bill is wholly necessary if freedom and equality are to win in America. It is a strong and good bill-yet...it is far from

an extreme or all encompassing measure. There is no room for compromise or weakening. The tasks of the groups who are meeting and mobilizing is to see that neither the House of Representatives nor the Senate weaken the vital measure."[111] [In the original "The" is the first word of a sentence.]

The organizations which met on July 2 and enthusiastically committed themselves to the passage of strong civil rights legislation in 1963 were members of the Leadership Conference on Civil Rights.

The Leadership Conference on Civil Rights was founded in 1949 by 20 organizations interested in civil rights.[112] A loose confederation, it was set up to coordinate the activities of national civil rights groups in obtaining effective civil rights legislation. Consequently it only comes into active work when there is civil rights legislation pending before Congress. In the beginning, member organizations, through the Leadership Conference, aimed their efforts primarily at securing legislation for the establishment of a Federal Employment Practices Commission. Later they dedicated themselves to securing cloture on civil rights measures in the Senate in order to close debate and prevent a filibuster. They also worked for the passage of the 1957 and 1960 Civil Rights Acts. Though member organizations grew from 20 in 1949 to approximately 35 in 1960 and 55 in July of 1963, the Leadership Conference was never a

very powerful confederation. It has no constitution or by-laws or qualifications for membership. Groups are generally accepted if they ask to participate. The Leadership Conference has only two officers, Roy Wilkins, chairman and Arnold Aronson, Secretary, who serve without pay and are not elected. The confederation never had any permanent office space nor did it have any hired personnel. In essence it was merely a formal structure for cooperation and discussion between autonomous organizations interested in civil rights legislation, which organizations cooperate with each other anyway.[113]

With the July 2 meeting, however, the character of the Leadership Conference changed substantially. The participating organizations decided to establish for the first time a large Leadership Conference office in Washington, D.C. to seek the passage of the President's bill. Ample quarters were rented in a very central location; one block from the White House. Arnold Aronson, Secretary of the Leadership Conference served as Director of the office. Marvin Kaplan, a legislative representative (lobbyist) on leave from the AFL-CIO, served as Associate Director and performed many of Aronson's duties. Mrs. Violet Gunther, former National Director of Americans for Democratic Action, served as the Leadership Conference's Legislative Consultant. Besides these officers, the Leadership Conference hired several secretaries.[114]

As will be seen in Chapter II, many other individuals, besides the officers and staff, played key roles in the Leadership Conference's activities and helped guide its decisions.

The Hotel Roosevelt meeting not only pledged support for strong civil rights legislation and called for the establishment of an office, but it also pointed to the direction which the Leadership Conference would take in its efforts to secure passage of the Administration bill. In calling for a stronger bill than the one introduced by the Administration the meeting was subscribing to the theory that it is better to get the strongest bill possible to the House floor and to the Senate because any weakening of the bill would always tend to leave a relatively strong measure. This theory is in contradiction to the theory that it is best to report a mild bill to the House floor or the Senate because it has a better chance of surviving the legislative process.[115]

CHAPTER II

THE CIVIL RIGHTS BILL AND SUBCOMMITTEE NUMBER FIVE OF THE COMMITTEE ON THE JUDICIARY

When President Kennedy sent his civil rights message to Congress on June 19, 1963, the Civil Rights Bill embodying his proposals was introduced in the House of Representatives by Representative Emanuel Celler (D. New York), chairman of the House Committee on the Judiciary. This was a vital step in the legislative history of the bill because of the great importance of the committee chairman and committee system in the United States Congress. It can be safely said that had Emanuel Celler, whose committee had to consider the bill, been against civil rights, the propects for final pagsage of the bill would have been drastically reduced.

The backbone of the United States Congress is formed by the various standing committees of which there are nineteen in the House of Representatives.[116] Senator Joseph S. Clark of Pennsylvania notes that Woodrow Wilson's phrase "Congress in its committee rooms is Congress at work", is even more applicable today. "It is in the committee room that the Congressman spends a good deal of his time, and there the real legislative work is done."[117] The committee system is absolutely necessary. A body such as the United States House of Representatives with 535 members could not possibly operate without standing committees. In addition to the unwieldy size of the body, it would be impossible for every Congressman to master the vast range

of topics which must be covered by legislation. This is particularly true because most of the Representatives' time must be spent on matters which do not have a direct relationship to the legislative process, such as attending receptions and dinners, writing speeches, answering mail, entertaining constituents, and helping to solve problems of the district. Some members have testified that as much as 80% of their time is "drained away on nonlegislative work".[118] Nevertheless, these activities are vital, for as Representative Adam Clayton Powell has put it, "the primary and overriding duty and responsibility of each member of the House of Representatives and the Senate is to get re-elected",[119] and these non-legislative activities contribute to re-election. Senator Clark further notes that the "difficulty of the time factor is compounded by the widely held belief that legislative work is not particularly noticed or appreciated by the constituents, and that it does less to help the Congressmen get re-elected than 'bringing home the bacon'-providing service to constituents-and good public relations."[120]

In order to accomplish the legislative tasks the Congressman must therefore concentrate his energies and interests in the working of one or two committees. For the remainder of decisions he must make on the many different bills he faces he simply relies on the decisions made by

party leaders and colleagues on the various other committees.[121]

A further and crucial characteristic of the United States Congress is found within this committee structure. The great power of the standing committees is directly reflected in the great power of their chairmen. The committee system is based upon the system of seniority. As a Congressman gets re-elected he steadily rises to the chairmanship of his committee. Thus it is common to find Congressmen from safe constituencies in the South and Midwest as chairmen of important committees. The chairman of a committee is extremely powerful. Woodrow Wilson, writing in 1885, said that "the leaders of the House are the chairmen of the principle standing committees...I know not how better to describe our form of government in a single phrase than by calling it a government by the chairmen of the standing committees of Congress..."[122] This is still true today. The chairmen of the committees can arrange the agenda of the committee, and appoint the members and chairmen of the subcommittees, refering the bills to the sub-committee of his choice. The chairman considers what pending measures will be considered and at what time, calls all the meetings of the committee, and decides whether to hold hearings. He further approves lists of scheduled witnesses, selects the staff of the committee and authorizes staff studies. When in executive sessions, strong chairmen

are able to induce the kind of action they desire. When a bill is reported favorably to the Committee on the Whole House, the committee chairman manages the bill on the floor, allotting time to whomever he pleases during house debate; he also can open and close debate on bills reported by his committee and may move the previous question whenever he thinks best. Committee chairmen may expedite business if they so desire or pigeonhole it completely.[123] The committee chairmen are truly the dictators of the legislative process.

Though the chairman's power may be resented by Congressmen, particularly the ones with little seniority, their power is seldom questioned for various reasons. In the first place the patronage power of the chairman with his ability to determine committee staff jobs cannot be neglected. In addition, and more importantly, a favorable relationship with the committee chairman may be indispensible in establishing a good congressional career. By his power to appoint sub-committee chairmen, for example, the chairman of a committee can promote or hinder the career of a fellow congressman. "The newcomer who persistently questions the behavior of his chairman or is in general too forward may find himself isolated, without effectiveness and probably without a future on the committee".[124] Though there are some congressmen who object to the seniority

system, such as Congressman Henry S. Reuse(D. Wis.), these are rare. As Representative Reuse has put it, "while first-term Congressmen are traditionally opposed to seniority, it is surprising how quickly they decide that the system has virtues they never perceived, since the majority of Congress is reasonably Senior, the seniority is not likely to go."[125]

One additional aspect of the legislative process in the House of Representative which must be mentioned concerns the introduction of a bill. An official House of Representatives document published by the Committee on the Judiciary to explain the legislative process states that: "Any member and the Resident Commissioner in the House of Representatives may introduce a bill at any time while the House is actually in session."[126] [In the original "any" is the first word of a sentence.] The document goes on to describe how the bill is referred to the appropriate committee and the various steps which it undergoes from there. The actual reality in the House of Representatives is different. Though any member may introduce a bill by throwing it in the "hopper" at the side of the clerk's desk in the House chamber, not every member's bill will be considered by the appropriate committee. Seniority is once again important. In order to even have a bill considered by a committee, the Congressmen submitting the bill

must have a degree of seniority. Robert Bendiner has said that "Until he has reached an advanced tenure, which he is much more likely to attain if he has a one-party constituency than otherwise, any bills of substance he may introduce are as good as dead from the moment he brings them in; for they will not be taken seriously in committee."[127] [In the original "until" is the first word of a sentence.] David Berman adds that "it is usual for a committee to consider seriously only legislation that has been introduced by a senior Congressmen, particularly if he is the committee's own chairman or its ranking minority member."[128]

The above discussion illustrates the importance of having Emanuel Celler introduce the adminstration measure. Celler, who became Dean of the House after the 1964 elections when Carl Vinson (D. Georgia) resigned, could be counted on to maximize the chances of the administration bill in the Congressional maze. Elected to Congress in 1923, Emanuel Celler is an independent Democrat from an urban district in Brooklyn which abounds with ethnic, racial and religious minorities which have provided him with a very safe constituency (81.4% of the vote in 1958). Celler likes to present himself as a friend of civil rights.[129] He was also a close friend of the urban Kennedy Adminstration, which shared with him a concern for urban problems and a realization of the importance of the urban vote.

Subcommittee Number 5 and The Civil Rights Hearings

When the administration bill was introduced as HR 7152 there had been 142 other bills already introduced, including the series of Republican bills mentioned in Chapter I (Though many of these bills were the same, only sponsored by different members), and HR 5455 and HR 5456, the adminstration bills introduced by Celler on April 4. The many bills which had been referred to the Judiciary Committee before and after the introduction of the Republican bills in January, made it necessary for the chairman to begin to consider the holding of hearings. As was seen in Chapter I, Republicans, Democrats, and civil rights leaders were pressing for Congressional enactment of a civil rights bill. On May 8, 1963, Celler began to hold hearings on the approximately 89 proposals before his committee. At the start of the hearings the chairman underscored the need for civil rights legislation: "Since the enactment of [the 1957 and 1960] laws and the subsequent executive activity we have made some progress, but hardly sufficient to call our work completed."[130] Celler indicated the impact of contemporary events upon his actions when he said "for those who would be complacent with the past record, I need only to refer to what is occuring as reported on television, radio, and in the press. In Birmingham, Alabama, in Greenwood, Mississippi, police clubs and bludgeons,

firehoses and dogs have been used on defenseless school children who were marching and singing to protest denial of civil rights...Our image here and abroad, as "The land of the free and the home of the brave" has been indeed marred."[131] Celler called for a bipartisan support for the legislation and warned "I intend to do all and sundry to expedite these hearings and will not permit any unnecessary delay or procrastination for dilatory purposes."[132]

To conduct the hearings and consider the legislation Chairman Celler selected sub-committee number 5. This was a very significant decision which affected the course of the legislation considerably. Not only was committee number 5 chaired by Emanuel Celler himself, but it was also composed of William M. McCulloch (R. Ohio) the ranking minority member of the Judiciary Committee, and a majority of liberal procivil rights Congressmen. McCulloch's pressure would prove to be indispensible in serving the necessary bipartisan consensus on the bill. The Democratic members of the sub-committee were as follows: Emanuel Celler (N.Y.), Peter W. Rodino, jr. (N.J.), Byron Rogers (Colo.), Harold Donohue (Mont.), Jack Brooks (Texas), Herman Toll (Pa.), and Robert Kastenmeir (Wis.). The Republican members of the sub committee were: William McCulloch (Ohio), William Miller (N.Y.), George Meader (Mich.) and William Cramer (Fla.)

When a committee of Congress is considering important legislation it holds public hearings. These are designed to provide the members of the committee with testimony from various points of view which they can use when the committee meets in executive session to decide the fate of the bill. The House of Representatives document, How Our Laws Are Made states that "the views of both sides are studied in detail and at the conclusion of deliberation a vote is taken."[133] Though there would seem to be much value in holding public hearings, it is difficult to say whether they accomplish the purpose of providing Congressmen with the objective alternatives from which they will make up their minds. The hearings are valuable in that they aid in the education of the general public on the main points of the legislation. They also provide a framework in which pressure groups can make their views known to the committee and the general public. However, as Congressman Clem Miller (D. Cal.) pointed out, "many times the hearings seem to be pro forma, just going through the motions, with the key decisions already made."[134] [In the original "Many" is the first word of a sentence.] Representative Miller took issue with the idea that hearings develop the facts of the case. Rather, he felt that the hearings served more to develop "the prejudice of the sitting members and through them the relative party stances which will be displayed later."[135]

To a large extent the nature of the hearing is controlled by the chairman. The chairman can decide when the hearings will begin and finish. He also can decide whom they will hear and what they will hear. Whether a particular hearing develops the facts of a case or not, it is possible to say that the basic trends of the hearing will establish precedents for what is to come later. As Schattschrieder has put it, "The hearings largely define and formulate the questions on which Congress is able to debate and, in so doing, delineate the character of the ultimate decision."[136]

The hearings held by the Sub-committee Number 5 lasted twenty-two days, extending from May 8 to August 2, 1963. In this period the sub-committee heard 101 witnesses whose testimony is contained in three volumes of 2,649 pages. It is possible to divide these hearings into two distinct groups. The first are the hearings held from May 8 until June 13, before the President sent his message to Congress on June 11. The second period, after the Presidential message, extended from June 13 to August 2.

The first period comprised only eight days. The first two days were reserved for Congressmen who wanted to testify. The second two days contained the testimony of administration officials, and the remaining four featured private citizens and heads of organizations. Every single testimony offered, both orally and in writing, was strongly

in favor of civil rights legislation, indicating that the committee had made an effort to have a certain type of testimony at the beginning. It is interesting to note that to a great extent the testimony of the administration officials lauded the Administration. In general almost everyone referred to the violence which was occuring in the South, submitting that this violence was the proof of the need for civil rights legislation. "I would daresay that, if this type of bill is passed, there will be an improvement of the situation in parts of the United States where they are now unstable and dangerous", said Representative Steven B. Derounian (R. N.Y.).[137]

Another characteristic of this first group of hearings was that most of the Republicans stated that they appeared before the committee in support of the bill introduced by Republicans and most called for enactment of a stronger bill than the one presented by the adminstration. Republicans also chided the administration for not introducing stronger civil rights legislation. The first to really criticize the administration was Senator Jacob Javits (R. N.Y.). Testifying on Thursday, May 9, 1963, Senator Javits said "I think the real failure has been that we have not had the powerful urging that legislation is needed...there is a place for very strong Presidential leadership in the legislative field as well as in the field

of purely executive action... I must most respectfully dissent from the administration's view that there are no legal remedies, which is what the President said yesterday."[138] On May 19, 1963, Senator Javits renewed his attack on the Administration. He announced that he was considering a legislative showdown on civil rights by attacking anti-segregation amendments to bills pending before the Senate. Javits charged that the Adminstration had drafted its 1960 promise to seek strong civil rights measures. "We've got to have a showdown on this issue. I would want the President to ask for it and lead it, but if he doesn't we will have to", said the New York Republican.[139] Another attack on the President's position came from the chairman of the Republican State Committee for the District of Columbia, Carl Shipley. Referring to the President, Mr. Shipley said, in his testimony on May 24, 1963, that "he frequently has it called to his attention that one of his great campaigning proposals in September of 1960 was the introduction of comprehensive civil rights legislation as one of his first acts, particulary in the Senate, which, of course, has not occurred yet... Now all of that is by way of preface to the fact that I am here to speak up very strongly in favor of HR 3139, which is the Republican bill, a Republican Party proposal, which we like to call the Republican Civil Rights Act of 1963."[140] [In the original "he" is the first word of the sentence.]

Attacks on the adminstration did not come only from Republicans. Many of the testimonies by organization heads and private citizens pointed to a need for broader legislation than that recommended by the President. John De J. Pemberton, Jr. Executive Director of the American Civil Liberties Union, for example, declared that it was unfortunate that the administration had not submitted a Title III legislation. (Title 3 was the title left out of the 1957 bill giving the Attorney General the power to institute civil action for preventive relief in civil rights cases. The response of Chairman Celler is an interesting one and points to the fact that within the hearings one could see "the character of the ultimate decisions being delineated." The dialogue between Celler and Pemberton went as follows:

The Chairman: "Of course, you know, Mr. Pemberton, that the fact that the administration has not presented any bill containing that famous provision called Part III does not mean that we cannot offer it in the committee, ourselves, when we go into executive session."

Mr. Pemberton: "And I was hoping that the committee would. Your comment encourages me."

The Chairman: "I can assure you of that."[141]

In a long testimony, three members of the Student Non-Violence Coordinating Committee also showed displeasure

with the Adminstration's efforts. Much of the account in this testimony was aimed at illustrating the abuses which exist in the South from "constant villification in public, to attempted murder in private." Finally, Jenkins, special assistant to the Executive Director of SNCC indicated that "It is our belief that the Federal government has only weakly asserted its existing powers to act in our defense. Accordingly, we have initiated a Federal suit against both Attorney General Robert F. Kennedy, and J. Edgar Hoover, Director of the Federal Bureau of Investigation, to compel them to perform their duties on our behalf."[142] The testimony of SNCC was one of many which dealt more with the conditions in the South rather than the legal and technical aspects of the legislation.

The strongest attack on the Adminstration during this first part of the hearings came from John Roche, National Chairman of Americans for Democratic Action. In one of the testimonies which received the most publicity Roche declared: "The sad fact is that the executive and legislative branches have failed to protect, aid, and encourage those seeking their constitutional rights... The executive branch, as the enforcer of the Constition, should propose legislation that will guarantee protection of rights now being violated. To date the administration proposals, though lofty in rhetoric, would make no real dent in the power structure that buttress white supremacy."[143]

The first group of hearings ended on June 13, 1963, when Celler declared the committee adjourned without indicating, as had been done previously, when it would reconvene. "We will reassemble subject to the discretion of the chair."[144] Two days prior to that date the President had gone on national television announcing that he would recommend legislation on civil rights to the Congress. (See Chapter I, p.36) Celler had apparently decided to wait until after the Administration bill had been introduced to continue the hearings.

On June 26, 1963, seven days after the administration bill was introduced by Emanuel Celler, the hearings were resumed with testimony from the Attorney General, Robert Kennedy. A characteristic of this second group of hearings was the obvious fact that now the Administration was fully behind a strong civil rights measure. This strong support was evidenced by testimony in favor of the measure by top officials in the Kennedy Administration. Attorney General Kennedy's appearance before the committee was followed on June 27 by the appearance of Willard Wirtz, Secretary of Labor, and by the appearance on July 10 of Anthony Celebrezze, Secretary of Health, Education, and Welfare. A marked change in the administration's role was seen in the appearance of these three cabinet ministers; for at the beginning of the hearings the government officials who testified were of lesser stature.[145]

Attorney General Robert Kennedy, in his testimony before the committee, further indicated the impact of national events upon the administration's posture when he said: "The events that have occurred since the President's first message [of February 28, 1963] in Birmingham, in Jackson, in nearby Cambridge, in Philadelphia and in many other cities-make it clear that the attack upon these problems must be accelerated."[146] The Attorney General's lengthy testimony (lasting from 10:00 a.m. to 5:00 p.m.) was largely devoted to a discussion of the bill, section by section, like many other testimonies that were to follow.

One aspect of the Attorney General's testimony was particularly important for it pointed to an important constitutional question, and led to a partisan disagreement between the Attorney General and several Republican members of the Judiciary Committee. The Attorney General emphasized that the Administration was relying primarily on the Commerce Clause (Article I, Section 8) of the U.S. Constitution for the constitutionality of the public accomodations section of the bill. The Administration felt that the commerce power of Congress had been sufficiently expanded by the Supreme Court so as to cover racial discrimination inpplaces of public accomodations. "Under this clause of the Constitution, as you know, the Congress has enacted a wide variety of statutes in such fields as labor relations

or trade regulations. There can be no real question about the authority of the Congress to deal with discriminating practice by enterprises whose business affects interstate commerce or interstate travel."[145] Though the Attorney General stated that he thought that the 1883 Civil Rights Cases (maintaining that the Fourteenth Amendment could not be applied to Public Accommodations) would not stand up in a court test he felt that because that decision had not as yet been reversed it would be wiser to base Section II on the Commerce Clause.[147] (See Chapter I for a background discussion of this question.) This position disturbed some of the Republican Congressmen who had submitted bills on Public Accommodations on June 3, 1964, which bills relied on the Fourteenth Amendment. The Attorney General was asked by Representative George Meader (R. Mich.) whether he was familiar with the Republican bills. When Kennedy replied in the negative, Representative Lindsay, the original drafter of the Republican bill, exclaimed: "I am quite deeply disturbed, Mr. Attorney General, that you have not bothered to read this very important piece of legislation that was carefully drafted and introduced by four of us on the minority side of the committee and many additional Republican members long before the administration saw fit to take any position on this subject at all."[148] [Underlining not in the original.] Lindsay further indicated

that he thought that the Fourteenth Amendment approach was a better one. It would avoid having to define what interstate commerce was and "in effect would cover any public facility which it privately owned and which is authorized to do business by the State."[149] He added that each case could be tested through the courts; establishing a body of law in regards to this question. The Attorney General responded by saying: "Congressman, I am sorry I have not read all of these bills and I am sorry I have not read your bill."[150] He then persisted on the point that the 1883 cases had not been over turned, and added that the commerce clause approach would cause less difficulty and ensure passage of the bill. The Subcommittee would have to wrestle with these two approaches when the hearings were over and it met in executive session.

Now that the Administration had introduced its bill the Republicans could no longer point at inaction and concentrated their efforts on placing their imprint on the legislation. They knew that the Adminstration realized that Republican votes would be crucial to the passage of strong civil rights legislation. In answer to President Kennedy's call for bipartisan efforts in the passage of the legislation, the Republicans asked on June 28: "Is the Democratic party the true majority party in the United States...or is it in fact two minorities

over which he [The President] exercises little or no leadership."[151]

Another characteristic of the second group of hearings was that they no longer contained strong attacks on the administration. Most witnesses seemed to be pleased with the Adminstration measure and strongly endorsed it, though many called for a further strengthening of the Administration bill. This changed tone can be illustrated by the second testimony of Americans for Democratic Action. It will be recalled that one of the strongest attacks on the Administration came from John Roche, National Chairman of A.D.A. who testified during the first group of hearings. On July 18, 1963, Joseph L. Rauh, Vice-chairman of the same organization stated; "Mr. Chairman, our position can be very simply stated. We favor HR 7152 with all the vigor at our command. If we have any reservations, it is that we are for civil rights legislation, only more so."[152] Mr. Rauh did not criticize the Administration as his predecessor had, but rather embarked on a discussion of the constitutionality of Part II of the bill, the section on public accomodations. With the testimony of Attorney General Kennedy apparently in mind, Mr. Rauh called for Constitutional support for Section II by both the Fourteenth Amendment and the Commerce Clause. He argued that the Fourteenth Amendment approach would be

upheld by the court and should be included because of the Republican tradition of the Fourteenth Amendment. (It was passed by a Republican Congress.) The Commerce Clause on the other hand should also be included because it was equally sound and would please the Democrats who had a tradition closely linked with the Commerce Clause. (The Commerce Clause gained significance in the New Deal). This approach would guarentee a truly bipartisan spirit and endorsement.[153]

Though the great majority of testimonies called for a stronger bill, particularly by adding a provision for a Fair Employment Practices Commission and the controversial Part III (of the 1957 bill enabling the Attorney General to institute civil action for preventive relief in civil rights cases), a few testimonies were clearly anti-civil rights. Representative Joe D. Waggoner, Jr. (D. La.) in a prepared text indicated of the President's bill that "This civil rights proposal that freedom be exchanged for faceless equality adds coals to this explosive situation. The advocates of this legislation do not see, or will not see, that pure equality is Communism. Nor do they recognize the fact that there never has been equality within any one race nor will there ever be. By the same token, there has never been equality between the races and never will be."[154] It is interesting to

note that the first southerner did not testify until July 11, 1963, when the sub-committee heard the views of Representaitve W. J. Bryan Dorn from South Carolina.

In general it may be said that the hearings held by sub-committee number 5 were merely pro-forma. Many of the statements presented little of value for the committee's final deliberation. In addition, the testimonies became extremely repetitive after the first few days of the hearings, and especially after the Kennedy bill was introduced, since most witnesses referred to its provisions. However, it must be said that the hearings did present the general questions which the sub-committee was to consider in executive session. The real question which cannot be answered, is the extent of the influence of the testimony on the legislation. It would seem that to a great extent the questions and comments of members of the sub-committee revealed that they knew what kind of bill they might support. At any rate, the impact of the hearings on the legislation cannot be viewed alone, but must be viewed in the context of other influences on the legislators, such as the influence of pressure groups.

The Hearings and the Leadership Conference

One of the most significant aspects of the hearings was the large number of organizations who testified for a strong civil rights bill.[155] A large proportion of these testimonies come from organizations affiliated with the Leadership Conference on Civil Rights. These testimonies, however, were not coordinated by the Leadership Conference. No effort was made, for example, to plan a unified approach with different organizations taking certain aspects. This approach would have been difficult, due to the loose nature of the confederated organization, and the autonomy of the organizations, each wishing to present its own testimony on the legislation. In addition, it would have had a limited value since a coordinated approach was not really necessary in a basically pro forma set of hearings. It would also have taken away some of the spontaneity of the testimonies of different organizations. Moreover, the Leadership Conference did not present any testimony of its own. Rather, because of the difficulty of getting a consensus, the leaders of the Leadership Conference in testifying did so on behalf of their own organizations. Thus, for example, Joseph Rauh testified on behalf of Americans for Democratic Action, and Roy Wilkins, chairman of the Leadership Conference, testified for the National Association for the Advancement of Colored People,

of which he is Executive Secretary. In his testimony Wilkins said "This testimony has not been approved by all members of the Leadership Conference on Civil Rights, and is therefore a statement of the NAACP, but it is being submitted to them for their possible concurrence."[156]

The Leadership Conference, nevertheless, did make certain recommendations. One of the most interesting was a recommendation made at the strategy session at the Hotel Roosevelt on July 2, 1963. On that same day, three religious organizations, the National Council of Churches of Christ, the National Catholic Conference and the Synagogue Council of America, became members of the Leadership Conference. It was suggested that "possibly some of the organizations will want to combine their testimony. Thus, for example, if the three religious faiths were to present joint testimony (for the adminstration's bill and possibly for strengthening amendments) this would have a real impact upon the committee."[157] This suggestion was taken up by the religious organizations, who, as will be seen later, played a vital role in urging the passage of the bill. On Wednesday, July 24, 1963, a joint testimony was offered by Dr. Eugene Carson Blake, Vice-Chairman of the Commission on Religion and Race of the National Council of Churches; Rabbi Irwin Black, Chairman of the Commission on Social Action, Synagogue Council of America; and Father John

Cronin, Associate Director of the Social Action Department, National Catholic Welfare Conference. The significance of the event was emphasized by Dr. Blake in his introductory remarks when he noted: "It is an unprecedented and indeed historic event that I speak for the social action and racial action departments not only of the Council of Churches, but of the National Catholic Welfare Conference and the Synagogue Council of America."[158] Chairman Emanuel Celler agreed with Dr. Blake and added "This is very significant. I think this is the first time that it has ever happened that we have a group of information coming from the three great religions of the country, acting together on the bills."[159]

The Leadership Conference was also influential in getting many of the organizations to testify by communicating to them the importance of having a large representation of favorable testimony before the committee.

In concluding this section it must be added that though the leaders of American churches overwhelmingly supported the civil rights bills, this sentiment was not universal. For example, the last testimony of the entire hearings, presented by Dr. Albert Garver, President of the Florida Baptist Institute and Seminary at Lakeland, Florida, was a biting condemnation not only of the bill but of the clergy who had testified for it. Dr. Garver's

position was that "both the Old and New Testaments indicate that segregation of the races in social, business, and religious life is of divine origin and was administered by divine decree accompanied by divine blessings. We hold that moral principles never change and that segregation of the races in social and religious life is still of divine order."[160] As to the testimony of Dr. Blake, Rabbi Black and Father Cronin, Dr. Garner said "I submit to you that the testimony given by these three gentlemen before this committee on July 24, 1963, is a classic example of apostate Christian and Hebrew concepts, designed to revolutionize and remold the social, economic, business, and religious life of Americans along the limes of a new social order of atheistic and anti-Christian views."[161] The minister also attacked the President claiming that "the President of the United States is showing favoritism and partiality to minority groups in our nation, who hold ideologies that are basically un-American and that consideration of adoption of any part of this proposed civil rights bill should be approached with much caution."[162] According to Dr. Garner, a resolution containing an identical position to his own was passed by the American Baptist Association on June 20, 1963. He indicated that the Association had some 3,000 congregations with almost a million members.[163]

The Subcommittee Report

On August 2, 1963, subcommittee number 5 of the Committee of the Judiciary ended approximately three months of hearings. Twelve days later, on August 14, the committee commenced seventeen days of executive hearings to consider and mark up the Administration Bill, HR 7152.[164] The executive hearings were to last almost three months.

Before discussing what took place in the executive hearing of the subcommittee, an important development relevant to the legislation at hand must be mentioned. On July 22, 1963, The House Education and Labor Committee under the chairmanship of Representative Adam Clayton Powell (D. N.Y.), reported a bill, HR 405, which would enact a Fair Employment Practices Commission.[165] This was a provision which had been talked about extensively in the hearings and was vigorously supported by the Leadership Conference on Civil Rights. The President also supported the Powell measure, though he did not seek to write such a measure in his omnibus bill which created a problem of jurisdiction; should the FEPC measure go to the Judiciary Committee for incorporation in the omnibus bill, or should it remain in the Education and Labor Committee? It will be recalled that the President's bill contained in Title VI a provision aimed at giving statutory power to the President's Committee on Equal

Employment. The difference between this committee and a Fair Employment Practices Commission is that the former deals with discriminatory practices in government agencies and corporations doing business with the government, while the latter would deal with discrimination in employment on a much broader scale, covering private businesses and laboratories as well. When Secretary of Labor W. Willard Wirtz testified on June 27, 1963, the subject of FEPC was raised.[166] Chairman Celler referred to the bill under consideration by the Education and Labor Committee, pointing to the problem of jurisdiction. Because the FEPC measure dealt with employment it was being considered by the Education and Labor Committee, and yet the Omnibus Bill being considered by the Judiciary Committee "contained a number of provisions which also are undoubtedly within the jurisdiction of another committee", as Celler pointed out.[167] Celler's evaluation of the situation went as follows "I don't know what is going to happen to that bill [the FEPC Bill of the Education and Labor Committee]. The President indicated in his message he wants all of that bill as well as the provisions of this bill [HR 7152]. I don't think we are going to have any difficulty with the Committee on Education and Labor as far as jurisdiction is concerned."[168] This last statement, though subtle, is very significant because it shows that Celler already had plans

to attempt to add the FEPC provision to the administration bill by taking over the Education and Labor Committee provision. This would assure a more unified omnibus civil rights bill and place within the hands of the Brooklyn Democrat the responsibility of dealing with a comprehensive piece of legislation.

On July 22, 1963, the House Education and Labor Committee reported favorably HR 405, the Fair Employment Practices Commission Bill.[169] The Congressional Quarterly of August 2, 1963, confirmed the view that Celler wanted to include the FEPC portion in HR 7152. On July 30, it reported that Celler voiced great concern about Powell's FEPC provision going to the floor of the House too early, particularly since HR 7152 was not even close to being reported out by committee. Celler felt that if Powell's bill were defeated it would be psychologically very damaging for his own proposal. Therefore Celler indicated that he would try to incorporate FEPC into the Civil Rights Bill. However, he made no definite promises indicating that there might be opposition in his committee to this course of action.[170]

At the beginning of the executive session of the subcommittee, Representative George Meader (R, Michigan) raised a question of committee policy; "namely whether it would be the objective of the subcommittee to produce a well worded, workable bill which stood a chance of becoming

law without major modification or whether it would be the purpose to add to the bill controversial provisions which could be sloughed off as trading material during the legislative process."[171] In other words the question was whether the subcommittee would attempt to refine the administration bill so that a moderate measure could be presented in the House for passage, or whether the subcommittee would take the Leadership Conference approach and pass the strongest bill possible, so that crippling amendments would still produce a good bill. According to Representative Meader and Representative William C. Cramer (R. Florida), the subcommittee decided to take the first approach. According to Representative Cramer, the spirit of the subcommittee was that "the bill would be considered on an impartial bipartisan basis and in an attempt to write as good a bill as possible."[172] Indications were that the subcommittee would approve a bill similar to the one submitted at the request of the President by the chairman of the committee. As early as June 29, 1963, the New York Times reported that Celler had predicted that the Judiciary Committee would produce a bill very similar to the President's bill.[173] The subcommittee therefore proceeded title by title to consider the provisions of the Administration bill, modifying the language, arriving at tentative decisions as to phraseology and pinpointing the clauses which required further research

and study. The work of the committee proceeded in "nonpartisan, largely unanimous fashion."[174] By the third week in September the subcommittee had gone through all of the titles of HR 7152 and had arrived at tentative decisions on each of them. Then a phenomenal thing happened. The House of Representatives passed the controversial bill HR 8368, the Adminstration Tax Cut Bill; and the harmony of subcommittee number 5 crumbled.

While the Civil Rights Bill was being reviewed by the Judiciary Committee Subcommittee, the House of Representatives was considering one of the top priority measures of Kennedy Administration on which the President had staked much of the prestige of his high office. After much discussion, both in and outside of Congress, the tax cut was passed on September 25, 1963. As soon as this occurred, in the words of Representative Meader, " a curious change in the atmosphere of subcommittee consideration abruptly took place."[175] The nonpartisan and conciliatory mood of the subcommittee completely vanished. Representative Cramer reported that "The majority on the subeommittee submitted previously prepared amendments, many of which had not been theretofore considered; they were crammed through and a much stronger bill emerged than the very strong bill recommended by the adminstration."[176] [In the orginal "the" is the first word of tha sentence.] The "cramming

through" to which Representative Cramer refers, occured simply because all of the Democrats on the sub-committee were in favor of the stronger provisions. Since the Democrats out-numbered the Republicans by seven votes to four, and the chairman concurred heartily with the majority, it was possible to enact the strengthening amendments." The subcommittee then struck out of HR 7152, as amended, all after the enacting clause and inserted in lieu thereof an amendment in the nature of a substitute.

Though the Meader and Cramer reactions to the procedure within subcommittee number 5 may have exagerated somewhat the change of attitude within the subcommittee, it is nevertheless clear that the subcommittee worked only on the original adminstration bill in order to wait for passage of the tax cut bill. The majority on the subcommittee had no desire to jeopardize the prospects of the Adminstration's prime economic measure. It is very possible that had stronger amendments been approved earlier than September 25, the Adminstration might have lost much support from Representatives of the minority party and southerners within its own party. Legislative Representative of Americans for Democratic Action, David Cohen, confirmed this concern of the Adminstration and remarked that "it was good for civil rights that the tax bill was passed before civil rights because it left open the chanel for passage of a civil

rights bill and helped insure a good tax bill and a good civil rights bill." With the developments in subcommittee number 5 the delicate nature of civil rights legislation and the threat it had to the President's over-all program becameeapparent once again. Even after three years of being in office, the Chief Executive was forced to deal carefully with the question of civil rights to safeguard his general legislative aims.

On October 2, 1963, subcommittee number 5 reported the modified bill to the full Judiciary Committee for the latter's consideration.[177] Some of the provisions of the subcommittee bill are briefly described, comparing them to the administration bill:

TITLE I: VOTING RIGHTS

The subcommittee bill would have barred discrimination in all elections rather than just in Federal elections as provided by the administration bill.

TITLE II: PUBLIC ACCOMODATIONS

The subcommittee bill called for a much broader Public Accomodations section than the administration's bill did; covering virtually all places of public accomodations to the limit of the Federal government's power to legislate. This section was based on both the Commerce Clause and the Fourteenth Amendment.

TITLE III: AUTHORITY OF ATTORNEY GENERAL TO INTERVENE IN EQUAL PROTECTION CASES

This strong title was added by the subcommittee and allowed the Attorney General to intiate suits in virtually any situation where a person, under the color of state law attempts to deprive another of his civil rights.

TITLE IV: DISCRIMINATION IN PUBLIC FACILITIES

Like the Administration measure, the subcommittee bill allowed the Attorney General to file suits to desegregate public schools and colleges. However, it went further by allowing for suits by the Attorney General in all public facilities such as parks and beaches.

TITLE V: COMMUNITY RELATIONS SERVICE

Like the Adminstration Bill it provided for the establishment of a community relations service, which would help ease local racial tensions and mediate racial disputes.

TITLE VI: CIVIL RIGHTS COMMISSION

The subcommittee bill provided for an unlimited Civil Rights Commission, whereas the Administration bill for an extension of four years.

TITLE VII: WITHDRAWAL OF FUNDS

Like the Administration Bill, this title barred federal aid to any programs which practiced discrimination. However the subcommittee made this action mandatory rather than discretionary as had the Adminstration.

TITLE VIII: FEPC

Like Title III, Title VIII was added by the subcommittee and provides for the establishment of a Federal Employment Practices Commission. This commission would be able to hold hearings and issue enforceable orders on a finding of discrimination in hiring or union membership, and would cover private industries.

TITLE IX: REGISTRATION AND VOTING STATISTICS

This title was another new section providing for registration and voting statistics-which could be used to reduce membership in the House of Representatives in districts which discriminate, under the Fourteenth Amendment.

TITLE X: PROCEDURE AFTER REMAND OF CIVIL RIGHTS CASES

An additional new section, provided for review of the decision of a Federal district court to remand a civil rights cases to the state court from which it was removed.

As can be seen in the above outline, the subcommittee bill was substantially stronger than the original administration measure. Not only were several sections, such as Title III and FEPC, added, but most of the titles were strengthened. It is significant to note that the subcommittee chose to rely both on the Fourteenth Amendment and the Commerce Clause for the constitutionality of Part II, making this section of the bill very wide in scope, covering almost all places of public accomodation. The subcommittee report was indeed a significant development. Not only had the administration introduced the strongest civil rights bill ever to be introduced by an American President, but a body in Congress had actually strengthened this bill. In order to see some of the reasons for this occurrence, it is necessary to examine some external forces of Congress which had a very important impact on the developments as described.

The Leadership Conference on Civil Rights and the Subcommittee Number 5

While the Committee on the Judiciary subcommittee conducted hearings on civil rights and considered the civil rights bill in executive session, the Leadership Conference on Civil Rights undertook a campaign to utilize all of its resources in order to influence the outcome of the subcommittee deliberations. The Leadership Conference fully realized that the subcommittee stage was an extremely important one in view of the absolute majority of pro-civil rights members and the necessity of turning out a strong bill at this stage, if a strong bill was to be obtained at all. The Conference chose not to influence ~~members of the Judiciary Committee~~ members of the House itself while the subcommittee was considering the bill. This was done for two reasons. In the first place, the resources of the Leadership Conference could be more efficiently utilized by channeling them all into the immediate phase in which the bill was found, rather than diffusing them into other stages. In the second place, it was not possible to "work on other members" while the bill was in the subcommittee phase because of the frequent possibility of changes in the content of the bill and changes in the strategy of the Leadership Conference.[178]

Before considering some of the most important methods and actions of the Leadership Conference, it is necessary to

briefly describe the decision making process within the Conference.

The meetings of the Leadership Conference on Civil Rights, reflecting the nature of the organization itself, were carried out in a very informal manner. (It will be recalled that the Leadership Conference has no constitution or by-laws.) Policy decisions were formulated in weekly meetings held in the meeting room of the Leadership Conference offices. These meetings were attended by the Washington representatives of each of the member organizations. Interestingly enough, the meetings were not chaired by Roy Wilkins, Chairman of the Leadership Conference, or Arnold Aronson, Secretary. (Roy Wilkins was never very active in the Leadership Conference and seldom attended the meetings.) Rather the meetings were generally chaired by Clarence Mitchell, Director of the Washington Bureau of the National Association for the Advancement of Colored People and a man with considerable experience in the field of civil rights legislation. At times the meetings were chaired by Joseph Rauh, Jr., Vice-chairman of Americans for Democratic Action and a civil rights lawyer, who invariably sat at the front table with Clarence Mitchell and Arnold Aronson.

The meetings consisted simply of a report on the latest developments concerning the fate of the civil rights

bill and a discussion of the course of action to be followed. At each meeting the various Washington representatives would report on visits to congressmen made during the week, indicating whether these congressmen supported or opposed civil rights legislation and strengthening amendments.

Though the meetings were informal and each Washington representative could contribute to the discussion, these discussions were definitely dominated by several strong personalities. The most important of the strong personalities was Joseph Rauh who was called very "autocratic" by one of the Washington representatives.[180] Joseph Rauh, along with Clarence Mitchell, had a very intimate knowledge of the many developments on the "hill" and their assessment of the immediate situation and recommendations for action carried much weight. It is interesting to note that business was carried out and decisions were arrived at not through voting but by consensus. If any significant opposition arose over a certain matter, the subject of controversy was modified so as to produce a consensus.[181] This procedure gave much power to the dominant leaders of the Leadership Conference and the staff for it was up to them to interpret the nature of the consensus. This is particularly true in view of the fact that the meetings had no transcribed minutes.[182]

It can therefore be said that the policies of the

Conference were not necessarily the creation of a group of representatives from many organizations, but were formulated by the official and unofficial leaders of the Leadership Conference. The meetings served more as information sessions in which the Washington representatives could familiarize themselves with the latest developments and communicate to their various organizations the latest strategies. This character of the decision making process within the Leadership Conference did not hinder the Conference's effectiveness. The dominant leaders were respected and the organizations were in amazing agreement as to their general goals of obtaining strong civil rights legislation.[183] Joseph Rauh himself remarked that "I have never seen such unity in these groups."[184]

In spite of this great consensus, the author found evidence of one major difference of opinion. This difference arose between Joseph Rauh and William Higgs, representative of the Student Non-Violent Coordinating Committee, in the strategy meeting of August 21, 1963.[185] William Higgs proposed that the Leadership Conference should urge that the subcommittee add an amendment to the section on voting of the Administration bill. His proposed amendment included a provision whereby the Chief Judge of the Circuit would be able to designate two Judges of the circuit to hear a civil rights case with the Federal District Judge of the

district where the violation occurred. Higgs' argument was that the federal district judges who normally handle civil rights voting cases were all segregationists and had no interest in abiding by the law. Since the Chief Judge of the Fifth Circuit, with jurisdiction in the southern states, was not a segregationist, he would appoint judges who would carry out the law.

Rauh objected strenuously to the approach and indicated that the recommendations of such a provision would anger the Justice Department because it called for a gerrymandering of the jurisdiction of the Federal District courts under the guise of legislation. He said in a written statement, "I would urge that we keep our dispute with the Administration over the civil rights bill to the minimum essential to obtain a truly meaningful bill...I would deeply hope that the groups would unite <u>now</u> in urging the Administration and the House Judiciary Committee to agree to add FEPC and Part III to the bill, and not dilute our efforts in so dangerous a venture as the Judge shaffing provisions under condideration."[186] Joseph Rauh was apparently concerned with the problem of obtaining certain amendments such as FEPC, which he considered more important, and believed that a politically explosive amendment might reduce the Leadership Conference's chances to get the other amendments.

Since many of the representatives present at the August 21 meeting did not understand the background of the Higgs-Rauh controversy, both Rauh and Higgs prepared written statements of their position. The Leadership Conference officially said that it was unable to commit organizations to either point of view and said that "It is hoped the memo's will help each organization arrive at its own decision."[187] Though organizations were allowed to make up their own mind on the matter of controversy, legislative representatives working with the Leadership Conference did not urge legislators to consider the Higgs proposal, and the subcommittee bill did not contain it. (Ironically, however, the Judiciary Committee later dropped the Administration's temporary referee provision in the voting title and substituted for it the same exact provision which Higgs favored.) James Hamilton, Director of the Washington Office of the National Council of Churches and the Council's representatives to the Leadership Conference indicated to the author that the Higgs-Rauh controversy had caused a minor problem, but that there were no other problems afterwards, and the work of the Leadership Conference progressed "harmoniously."[188]

Among the activities of the Leadership Conference, one of the most significant was the establishment of close personal contacts between the leaders and some of the legislative representatives of the Conference and the members of

the Judiciary subcommittee. This close contact was very important in order to assure that the Leadership Conference's views would be represented in the executive sessions of the subcommittee. Some of the principal legislative representatives aiding Joseph Rauh and Clarence Mitchell were Tifford Dudley and Frank Paulhaus of the NAACP, David Cohen of ADA and James Hamilton of the National Council of Churches.[189]

Access to subcommittee members did not prove to be very difficult because a majority of them were in favor of civil rights to begin with. The lobbyists not only urged the addition of such things as FEPC and Title III, but they also tried to answer any objections which the legislators voiced and provided them with material which they could use in assessing their own positions. Since congressmen are very busy this was a valuble service to them.

The Leadership Conference, once it had established good relationships with the members of the subcommittee, was able to go even further than just urging for the adoption of strong amendments. Leaders of the Conference actually contributed to the drafting process. After drafting certain amendments, the Leadership Conference would seek out a Congressman willing to introduce them. This is what happened with two of the most important provisions which were added by the subcommittees to the Adminstration bill. The Leadership Conference asked Representative Byron Rogers

to introduce Title III and Representaitve Peter Rodino to introduce FEPC. Both congressmen agreed to the requests. The leaders of the Leadership Conference were very pleased with this development because both Representaitves Rogers and Rodino had considerable seniority on the Judiciary Committee and therefore substantial influence. In addition they are considered to be Administration Democrats a fact which enhanced the possibility that the amendments would be approved by the Administration.[190] As mentioned in a previous section, Emanuel Celler was in agreement with these amendments, especially FEPC which was successfully extracted from the Education and Labor Committee. When asked by the author about direct lobbying and his role in drafting some of the legislation, Joseph Rauh said that above all the lobbyist must have an unhostile approach. He said that he had dealt at length with the leadership of the Judiciary Committee and the House and emphasized the necessity of showing "humility" in such dealings.[191]

Direct persuasion of legislators by key leaders of the Leadership Conference and drafting of amendments was by no means the only method used to influence the subcommittee's activities. On August 6, 7, and 8, 1963, the Leadership Conference sponsored a large Legislative Strategy Conference on Civil Rights at the Statler Hilton Hotel in Washington, D.C. The Conference was attended by over 600

delegates from various areas across the country. A kit, which included a detailed discussion of the civil rights bill and the amendments necessary to strengthen the bill, was distributed to each participant. The kit indicated that "failure to include the strengthening amendments in the final product of the Judiciary Committee will make it extremely difficult to strengthen the civil rights bill on the House floor. It will be more possible on the House floor to maintain majority support for the strongest possible Judiciary Committee bill."[192] Once the delegates had familiarized themselves with the bill and the important amendments, each was urged to visit members of the Judiciary subcommittee to enlist their support for a stronger bill. The delegates also visited their own Congressmen to get "pledges" for the Civil Rights Bill. The Leadership Conference office kept a tabulation of these pledges.

Throughout the entire legislative history of the bill organizations within the Leadership Conference sent many members to Washington at all times to press for strong civil rights legislation.

While the Leadership Conference was conducting much of the direct pressure on members of the subcommittee, many of the organizations, encouraged by the Leadership Conference through their Washington representatives, undertook a massive campaign of indirect pressure. Many of

these organizations sent out periodical newsletters and publications to their chapters and members urging them to establish letter writing campaigns in support of strengthening amendments. Since the Leadership Conference now had over 70 affiliate organizations, the response was phenomal. Thousands of letters, telegrams, petitions and resolutions poured into Washington in support of a strong civil rights bill. In an interview with the author, David Cohen maintained that this avalanche of letters and telegrams was extremely important in convincing the members of the subcommittee that they had to turn out as strong a bill as they possibly could. Cohen stated that he thought that he alone was responsible for 200 telegrams sent to Representative Peter Rodino after he had spoken in Rodino's district in New Jersy.[193] Chairman Celler admitted that the Leadership Conference had contributed enormously to the stronger provision.[194]

Organizations in the Leadership Conference also sponsored mass meetings and demonstrations in favor of the civil rights bill. The most notable of these meetings was the mass meeting which occurred on August 28, 1963 and brought over 200,000 people to Washington to "march for jobs and freedom". The march was not aimed only at the civil rights bill but attempted to dramatize the Negro's general situation. One of the 10 announced goals of the march was

"Comprehensive and effective civil rights legislation from the present Congress...without compromises or filibuster,... to guarantee all Americans access to all public accommodations; decent housing; adequate and integrated education and the right to vote." Another was the enactment of a Federal Fair Employment Practices Act "barring discrimination by federal, state, and municipal governments, and by employers, contractors, employment agencies, and trade unions."[195] Before the march was held there was much debate as to whether it would help or hinder the passage of the civil rights bill. Chairman Celler in joining this debate expressed the predominant view:

> The march certainly won't change the vote from the members from the South. It won't change my vote. It won't change the vote of the members from the northern cities, but you may change your votes to the disadvantage of the Negro people with reference to those who come from the midcontinental area, the Western States. They don't want to be pressurized, bludgeoned, and coerced into actions. I do know of a number of cases where members have stated in both Houses that if there is such a march on Washington, while they now would vote for a civil rights bill that march would cause them to change their minds.[196]

Representative McCulloch agreed with Celler and noted that "people have a right to peacefully assemble, but legislation by pressure, in the long run, cannot be good."[197] It seems that skepticism about the march's impact stemmed largely from the widespread fears that the march would lead to violence. When James Farmer, National Director of the Congress of Racial

Equality testified before the subcommittee, Chairman Celler voiced these fears when he asked Farmer, "Will that be definitely and assuredly a peaceful march?"[198] [In the original "Will" is the first word of a sentence.]

When the march took place, however, there was no violence whatsoever. The peaceful nature of the march and the size of the turnout could not help but impress Congressmen that there was urgent need and vast popular support for civil rights legislation.

In concluding this section it must be emphasized that the bill which came out of the subcommittee cannot be viewed without referring to the activities of the Leadership Conference on Civil Rights and its affiliated organizations. Through their many efforts they were able to convince the members of Subcommittee Number 5 that they had to turn out a bill even stronger than the one introduced by a liberal Administration. This was done through patient direct contacts with the legislators as well as through the generation of a vast public demand for such a measure. Fortunately for the Leadership Conference there were no significant pressure groups against the bill operating directly on the subcommittee members.. Anti-civil rights groups were concentrating at this stage in creating opposition to the bill mainly in the South and did not really organize themselves for the legislative battle until the bill reached the Senate.[199]

CHAPTER III

THE CIVIL RIGHTS BILL AND THE COMMITTEE ON THE JUDICIARY

On October 8, 1963, the House Judiciary Committee began consideration of the bill amended by Subcommittee Number 5. The atmosphere of the committee, however, was far from congenial. Tha actions of the majority on the subcommittee had contributed to a breakdown in bipartisan cooperation over civil rights. Representative William McCulloch, the ranking minority member of the committee, was particularly upset over the subcommittee developments. On September 19, 1963 he had conferred with officials of the Justice Department and reached agreement with them on the vital public accommodations section of the administration bill, about which he still was dubious. Representative Celler approved of the agreements reached between McCulloch and the Justice Department. However, after the passage of the tax bill Celler gave way to pressure from the Leadership Conference and sought a stronger measure. Congressman McCulloch was very indignant at the whole affair.[200]

The breakdown of bipartisan support for civil rights was of grave concern to the Administration who did not want to get embroiled in any party disputes. The Adminstration was also vary concerned about the stronger provisions added to the subcommittee bill. Though it had approved of the strategy of allowing the civil rights group to press for stronger amendments, it did so because this action would make the Kennedy bill look more moderate.

However, the administration did not expect the pressures for a stronger bill to work as well as they did. The unusual subcommittee action had the immediate effect of turning the Administration bill into the strong measure from which the President wished to stay away. Not only did the President recognize that the stronger bill, which was inevitably linked to his administration, might further antagonize some of the Southern Congressional support which he needed for the rest of his legislative program. He also feared that the strong bill might be damaging in the coming election year. Though he knew that he would have no trouble in getting the Negro vote, extensive talk of a "white backlash" engendered fears that he might lose much of the white vote in the South and in other places of the country.

Therefore, in order to appease some of the Republicans like William McCulloch and reduce the strength of the subcommittee proposal, the Attorney General of the United States, Robert Kennedy, appeared before the Judiciary Committee on October 15, and 16, of 1963. Mr. Kennedy's testimony before the committee, which met in executive session, called for a trimming of some of the portions of the subcommittee bill which he thought legally unwise or so sweeping that they would provoke unnecessary opposition to the bill. Robert Kennedy said, "What I want is a bill, not an issue".[201] The Attorney General then took each of

the titles of the subcommittee bill and stated the position of the Administration on them. Title I, the Attorney General said, the Administration would be willing to accept, though it preferred the original version. In regards to the section on public accommodations, he disagreed with the wider coverage given by the subcommittee bill and stated that the Administration version was preferable. Title III received grave critisism from the Attorney General who thought the title gave excessive powers to the Attorney General allowing him to file suits for the protection of constitutional rights which go beyond mere civil rights. Title VII was supported by the Attorney General but he voiced concern as to whether it would endanger the bill's chances in the Rules Committee. The other provisions were endorsed by the Attorney General, though he indicated he would be more pleased with the original administration bill.

This action of the Attorney General of the United States was very significant and very difficult, for it once again placed the Administration in the position of desiring weak civil rights legislation in the eyes of civil rights leaders. The civil rights organization were very disturbed at the Administration's actions and renewed their efforts to get commitments for a strong bill from the members of the committee. Leadership Conference representatives visited many members of the Judiciary Committee seeking

"pledges" to support the subcommittee version. Large numbers of constituents visited and wrote Congressmen on the committee urging them to report the subcommittee bill. Clarence Mitchell, one of the top leaders of the Leadership Conference, issued the following statement against the Administration: "There is no reason for such a sell out, the Administration should be in there fighting for the subcommittee bill."[203] James Farmer, Director of Core, decried the Administration's position and viewed the events as a result of the President's belief that Barry Goldwater would be his opponent in 1964.[204]

On October 16, 1963, the second day that the Attorney General appeared before the Judiciary Committee, the Leadership Conference sent Chairman Celler a three page letter urging him not to give in to White House pressure and back the subcommittee measure.[205] This time, however, the Leadership Conference's appeal was not successful. Emanuel Celler had begun to realize that he could no longer contradict the wishes of the Administration. David Cohen speculated that Chairman Celler had made a tactical error in his handling of the bill. According to Cohen, Celler had been genuinely persuaded by the vast popular support for a strong subcommittee version, that he had miscalculated on the impact which such a measure would have on the Administration.[206] Though still personally committed to

the subcommittee bill, by October 18 he had made it known that he would do what was necessary to get a "good" bi-partisan bill along Administration lines.[207]

To follow up this commitment, Chairman Celler asked Representative Roland V. Libonati, a Democrat from a safe district in Chicago, to introduce some weakening amendments to the subcommittee bill. Representative Libonati readily consented to Celler's request. The Chairman hoped that he would be able to satisfy the Administration. Celler's strategy broke down, however, when he offended the man who introduced the weakening amendments. Libonati explained the circumstances of this offence in the following terms:

> So then I'm sitting down...and I'm watching television and who do I see on the television but my chairman. And he's telling 'em up there in his district that he's for a stronger bill, and that he doesn't have anything to do with any motion to cut the bill down. So when I hear that, I says to myself "Lib, where are we at here, anyway?" And I think that...if the chairman says he doesn't have anything to do with my motion then certain representations that were made to me is out the window, so I withdraw my motion.[208]

On Tuesday, October 22, 1963, the Administration's position was tested in the Judiciary Committee. On that date several amendments which were offered previously, including Libonati's amendments, were withdrawn. Action was taken on one amendment which was defeated.[209] A motion made by southerners to return the bill to the subcommittee was also defeated by a vote of 21 to 9.[210] Then, Representative Arch Moore (R. W. Va.) moved that the Committee on the

Judiciary report out intact the subcommittee version of HR 7152. This motion was immediately seconded by Representative Byron Rogers (D. Colo.).[211] A role call vote was ordered on the pending motion. At that point, and just before the roll call commenced, a point of order was raised that the House of Representatives was in session. Since a committee is not supposed to meet while the House is in session the committee meeting had to terminate.[212] The chairman called for a meeting to consider the Moore motion for the following morning on the 23rd of October.

The failure of the Judiciary Committee to even consider some weakening amendments to the subcommittee bill was a severe set back for the Administration. A real impasse had been created within the committee. Liberal Representatives were convinced that they should not modify their views, but stick to their original commitments. The Congressional Quarterly reports that this impasse on civil rights was reached in spite of the fact that Chairman Celler and Representative McCulloch were both pressing for a revision of the subcommittee measure. "A coalition of liberal Republicans and liberal Democrats, under pressure form civil rights groups, refused to go along with compromise efforts."[213] The liberals claimed that they would be able to win the subcommittee measure if a majority of the fourteen Republicans backed them.[214] It seemed that a majority of the fourteen

Republicans were amply committed to the strong bill. This placed many of the northern Democrats in a difficult position. If they backed down from the subcommittee bill to please the Administration, the Republicans might get all the credit for being better civil rights advocates. Ironically, however, the final result of the vote depended to a great extent on the position of the Southerners, for it was feared by Celler and the administration that they would vote for the subcommittee bill under the theory that it had a better chance of being defeated completely in the House or in the Senate.[215] On the basis of the above line up of votes, it seemed almost certain that the House Judiciary Committee would report the subcommittee bill at its next meeting on the morning of the 23rd of October.

In light of these circumstances the administration decided to intervene directly in the situation. On the 23rd itself, within one hour of the scheduled meeting, the committee session was postponed until the next day, Wednesday the 24th of October. The President of the United States then called into his office the top leaders of the House of Representatives. Besides the President and the Vice President, the following were present; Representative John McCormack, Speaker of the House (D. Mass.); Representative Carl Albert (D. Okla.), Majority Leader of the House; Representative Charles Halleck (Rep. Ind.) Minority

Leader of the House; and Representative Leslie Arends (Rep. Ill.) Minority Whip of the House. Also present were Representatives Emanuel Celler, Chairman of the House Committee on the Judiciary and Representative William McCulloch, Ranking Minority Leader. In a room near the President's office were Robert Kennedy, Attorney General and Burke Marshall, Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice. These three men were there to give advice if this was needed. The President impressed upon the House leaders the need to revise the subcommittee bill and report a milder measure. He indicated that all efforts should be made to influence Congressmen on the Judiciary Committee to accept a more moderate proposal.[216]

On Thursday, October 24, 1963, a short while before the Judiciary Committee meeting was scheduled, it was once again postponed.[217] Celler announced that he hoped the President's intercession would win support for the more moderate administration bill.[218] This gave Justice Department officials and House leaders time to talk with members of the Judiciary Committee. Particular pressure was placed on Representatives Harold Donohue (D. Mass.), Herman Toll (D. Pa.) and Robert Kastenmeir (D. Wis.).[219] These three Representatives were all members of subcommittee number 5 and staunch supporters of its bill. One of the most significant pressures on Capitol Hill came from Minority Leader

Charles Halleck, who began to speak immediately to some of his colleagues. Not long after the meeting with the President, Representative Halleck had already spoken to 10 of the fourteen Republican members of the Judiciary Committee.[220]

The pressure came not only from the Administration and House leaders, however, it also came from civil rights groups and constituents. Congressmen inevitably found themselves in a political vice. On the one hand it was very difficult to go back on previous commitments made to constituents and Leadership Conference Representatives, but on the other hand it was equally difficult to go against the desires of the House leadership and the leaders of the political party. Leadership Conference Representatives were donstantly on the Capitol Hill speaking to Representatives and urging them to remain firm in their commitments.[221] That some week the National Council of Churches' General Board meeting in special session gave its full support to keeping the legislation in the subcommittee form. The General Board stated that "unfortunately it has become apparent, in the last few days that the subcommittee version of the bill lacked the support of many who have failed to identify this issue as the greatest moral cause of our time...The Board is convinced that a strong civil rights bill is necessary to prevent major social disruption in this country."[222] The New York Times

also joined editorially in decrying the abandonment of the subcommittee bill. On Sunday, October 27, 1963, it said that "The Administration's over hasty attempt to water down the strong civil rights bill approved by the House Judiciary subcommittee had had the effect of creating in Congress precisely the kind of impasse the White House was trying to prevent." The New York Times added that "It is still not too late for the Administration to cooperate with the committee majority in correcting the flaws in the language of the revised bill and thus making it sounder. Such a course offers a better basis of accomplishing the President's stated objections than his own bill. It also offers a better jumping off point for whatever compromise must eventually be made to assure that the session does not end without a good civil rights law."[223]

The Leadership Conference realized that many of the provisions of the subcommittee bill were open to criticism. Leadership Conference officials had urged subcommittee members not to include the strong provision in Part III which would allow the Attorney General to sue not only for civil rights but other constitutional rights. From experience with the 1957 Civil Rights Act, they knew that the provision would cause much controversy. Nevertheless the Leadership Conference strongly endorsed the bill, calling merely for minor changes to meet the Attorney General's

objections and some of the loopholes which Senator Russell (D. Ga.) revealed. The Leadership Conference could not, however, call for a milder bill. If it did, the door might have been opened to all forms of compromises.

The pressure placed on Judiciary Committee members by the Administration and House leaders of both parties finally began to produce more results than the pressure applied by the Leadership Conference. By Friday, October 25, 1963, Representative McCulloch had dis missed much of his pessimism occasioned by the subcommittee report and sounded very optimistic about the immediate propests for a compromise. On that day the ranking minority member of the Judiciary Committee said: "I think climate is better than it was three days ago. I think there are improved relations between both parties without thinking about who gets the credit."[224] Throughout the three days of behind-the-scenes manuevering, Representative McCulloch had been in very close touch with the Department of Justice by telephone.[225]

The Republican cooperation came as a surprise to many observers who thought that the Republicans would attempt to postpone the issue and blame the Democrats for this impasse on civil rights. Such a move would have aimed at taking advantage of the situation for the coming presidential campaign.[226] However, Representative Charles

Halleck, the House Minority leader did not choose to follow this course of action. He said, "I've always been for a good effective bill...This was a determination of what we ought to do, not as a political question but as a matter of what's right."[227] Altruistic reasons were probably not only ones motivating Halleck's behavior. While it is possible that the Republicans might have gained some political advantages by being uncooperative, they also stood to lose much. The Civil Rights groups were well organized in the Leadership Conference and would have been able to detect any stalling measures and publicize them extensively. The administration would also have been in a good position to blame their failures on the Republicans. The explosive nature of the issue of civil rights also probably influenced both parties calculations.

Regardless of the motivations of the Republican leaders in the House it is clear that they sought to capitalize as much as possible on the administration's need for their support. The House Republicans had not forgotten the fact that the Attorney General had stated in the subcommittee hearings that he had not read the Republican bills and sought to impress their influence on whatever compromise measure came out of the committee. Representative Clark MacGregor (R., Minn.) warned Deputy Attorney General Nicholas Katzenbach that Republican support would only come if the Republican measures were incorporated into the Administration bill

and the President publicly acknowledged the bipartisan nature of the bill.[228] The President agreed to these conditions as the only way of saving civil rights legislation.

In the frantic deliberations between the Administration officials and House leaders of both parties, it became clear that it would be impossible to come up with a compromise bill which would be agreeable to both the Republicans and the Administration, within the regular channels of Judiciary Committee debate. In the first place it would have taken a very long time to propose weakening amendments to the bill and discuss them in the committee, because of the strong support for the subcommittee measure. This approach had already failed when Libonati withdrew his weakening amendments. In the second place, the Administration and Republican leaders could not be assured that the Judiciary Committee would necessarily change the bill in such a way as to please them. In the third place there was the fear that the Moore motion, which was the pending item of business, might be approved; thus sending the subcommittee version to the House as the Judiciary Committee report. Since there was no bill to replace the subcommittee bill and since civil rights legislation had an element of urgency, this third possibility was very real. In view of these facts, the Administration and House Republican leaders

decided to write a substitute bill outside of committee.

Over the weekend of October 26, 1963 several Representatives of the Justice Department and House Republicans sat down in Room 410 of the Congressional Hotel to draft a compromise bill which would please the administration and contain Republican proposals.[229] Representing the Republicans were Robert Timball, Legislative and Research Director of the Republican Legislative Research Association and a former aide of Representative John Lindsay, and William H. Copenhaver, the Minority Counsel of the Judiciary Committee. The Justice Department sent Deputy Attorney General Nicholas Katzenbach and Burke Marshall, head of the Civil Rights Division of the Justice Department.[230] Representative John Lindsay who had originally backed the subcommittee bill, but had acceded to Halleck's and McCulloch's pleas also aided in the writing of the compromise.[231] By Monday evening, October 28, a 56 page rewrite of the bill had been completed. The Administration and House Leader had reached a substantial agreement on the civil rights bill thus breaking the immediate political stalemate.[232] The crucial test, however, would come on the following day, Tuesday, October 29, when the committee was scheduled to meet again.

The drafting of the compromise proposal had been kept a secret, though most of the liberals on the Judiciary

Committee were aware of the latest developments as they had been contacted by liberal Republicans.[233] The bill was distributed late at night, Monday, October 28 to the members of the Judiciary Committee. The southerners and a couple of northern Republicans who disliked the strong subcommittee proposal deplored the fact that the bill had been drawn up out of committee and given to them only a few hours before the Judiciary Committee meeting. Republican George Meader of Michigan said that "The origin of the substitute language is not entirely clear since it was not drafted by the committee. A copy was delivered to the home of the undersigned at 10:10 p.m. on Monday only a few hours before the session the following Tuesday..."[234] Representative William Cramer of Florida remarked that "although I was a member of the subcommittee that considered the matter for months, I was not invited to participate nor was I informed of its contents until 10:30 p.m. when a Justice Department messenger delivered my copy on the Monday before the Tuesday meeting."[235]

Officials of the Leadership Conference, in spite of their influence were not sure what was occuring either. During the subcommittee's consideration of the bill they had actively helped to write the measure. However at this point they were not even invited to the compromise sessions. However, if they had been invited, they probably would not

have accepted such an invitation because of the Leadership Conference's strong stand in support of the subcommittee measure.[236]

Early on Tuesday morning October 29, House Minority Leader Charles Halleck went to the White House to confer with the President and ratify the final agreement on the compromise measure.[237] This agreement cleared the way for committee action. At 10:30 a.m. that Tuesday morning Emanuel Celler called his committee to order. The parliamentary situation was a rather difficult one and it was still not clear as to whether the Administration's wishes would be approved. The first order of business was the motion made by Representative Arch Moore (R., W. Va.) at the last committee meeting. This motion, if approved would have made the subcommittee bill the official Judiciary Committee report to the House. However, by a close vote of 19 to 15 the subcommittee report was defeated. The margin of victory was provided by Representative John Lindsay and several other liberals who had decided to follow the wishes of the Administration and House leaders. Voting for the subcommittee bill were seven Southermers, of which five were Democrats (E. L. Forester, Georgia; William Tuck, Virginia; Robert Ashmore, South Carolina; John Dowdy, Texas; and Basil Whitener, North Carolina) and two were Republicans (Richard Poff, Virginia and William Cramer, Florida). Voting

with the southerners to support the bill were five northernn Democrats (Byron Rogers, Colorado; Robert Kastenmeir, Wisconsin; Jacob Gilbert, New York; Don Edwards, California; and Roland Libonati, Illinois) and three northern Republicans (Arch Moore, West Virginia; Carlton King, New York; and Patrick Minor Martin, California).[238] From this vote it is clear that had the vote on the Moore motion been taken on the previous Tuesday, October 22, it would have been approved. The Administration had succeeded in persuading four Democrats on Subcommittee Number 5 to vote against their bill. These were Peter Rodino, Jr., New Jersey; Harold Donohue, Massachusetts; Herman Fall, Pennsylvania; and Jack Brooks, Texas. If they had been joined by the Republicans John Lindsay of New York, Clark MacGregor of Minnesota and Charles Mathias, Jr. of Maryland, who were for the subcommittee bill, it would have passed with a clear margin. The intensive pressure of Administration officials and House leaders had clearly paid off.

Once the Moore motion was disposed of and the subcommittee bill defeated, Chairman Celler immediately offered the 56 page mimeographed compromise bill as a substitute and moved that the committee approve this bill. Then the chairman announced that he would recognize someone to move the previous question.[239] A Democrat moved the previous question and a Republican seconded the motion.[240] The obviously pre-

arranged motion, however, had certain restrictions. The motion ordered that no amendments could be offered to the proposal; no debate had; and no questions answered or asked. The chairman then directed the clerk to read the bill; which he did without pausing or providing any opportunity for amendments. Some members protested the action of their chairman requesting permission to ask questions and offer amendments. The chair refused to recognize the members who were attempting to raise such questions, and even rejected parliamentary inquiries and points of order. When the clerk finished reading the bill, Emanuel Celler announced that he would give himself one minute to discuss the bill and then grant to the ranking minority member, William McCulloch, one minute to do the same. During their two minute discussion they did not allow for any interruptions. When McCulloch finished his short discourse in support of the bill, the clerk began to call the role on the motion to approve the measure. However, before the tally could be completed a point of order was raised that the House of Representatives was in session and that the committee had to adjourn. In spite of this fact the tally was completed and announced.[241] The substitute compromise bill was adopted by the ample vote of twenty to fourteen. Everyone who had voted against the subcommittee bill voted for the compromise except for Representative George Meader,

Republican of Michigan, who cast another negative vote. On the other hand everyone who voted for the subcommittee proposal voted against the adoption of the substitute, except for Byron Rogers (D. Colo.) and Ronald Libonati (R. Ill.), who approved of the substitute bill by casting affirmative votes.[242] Liberal Democrats Robert Kastenmeir (Wis.) Don Edwards (Calif.) Jacob Gilbert (N.Y.) were still allied with the southerners and Republicans Arch Moore (W. Va.), Carlton King (N.Y.) and Patrick Minor Martin (Calif.)

The Committee on the Judiciary did have to adjourn because the House was in session. However it met once again on Tuesday afternoon to condider a third motion. This motion was to refer HR 7152 as amended to the House of Representatives. As was expected this motion carried very easily. The final vote was twenty-three to eleven.[243] On the negative side were eight southerners and three northern Republicans. The former apparently realized that they could no longer exert any influence as the subcommittee report had already been defeated and the compromise report was sure to be adopted anyway. The three Republicans who voted against the measure were Representative Arch Moore, of West Virginia, Patrick Minor Martin of California and George Meader of Michigan. Arch Moore had offered the original motion to adopt the subcommittee bill

and was very insensed at the origin of the compromise. He later observed that though the majority of the committee had favored his motion to adopt the subcommittee bill "a 'compromise' bill was sprung upon the committee from out of the night. Where it came from or who were its benefactors remains to this day a deep, dark secret." Moore added that "The bill reported was conceived in segregation, born in intolerence, and natured in discrimination."[244] Representative Patrick Minor Martin, who had voted for the subcommittee bill, said later that he voted against the compromise bill because he was very disturbed at the way the committee session was conducted and wanted to register a protest vote.[245] Representative George Meader voted against the compromise bill as he had against the subcommittee bill because he thought it was still too strong. Representative Meader declared later that he was opposed to "the principle of enforcing public policy by injunction..." and "strained interpretations of the interstate commerce clause or the equal protection of the laws clause tending to undermine the vitality and authority of state and local governments..."[246]

On the affirmative side there was one southerner, Representaitve John Brooks (D. Texas), nine northern Republicans and thirteen northern Democrats. The liberals who had voted for the subcommittee and against the substitute bill, voted for the compromise on the motion to

refer it to the House of Representatives.

The entire prodedure surrounding the Judiciary Committee's consideration of the Civil Rights Bill came under sharp criticism by several members of the committee. As was mentioned above, one member, Patrick Minor Martin (R. Calif.) voted against the final measure in protest over the hasty actions of the committee. Carlton King, (R. N.Y.) said that "the provisions of the substitute bill were never sufficiently debated either from a legal standpoint or from their social, economic, and political ramifications."[247] Representative William Cramer in referring to the committee procedure remarked; "Such steamroller tactics on a subject of such vital importance...cannot be permitted to occur without calling them to the attention of the public unless we are to abdicate our individual rights under the rules of the House or unless we are to be accused of tacitly acquiescing in such prodedures by failing to expose them."[248] The Minority Report, prepared by the Southern members of the Judiciary Committee stated that "the full committee substitute for HR 7152 was railroaded through the committee on the Judiciary without an opportunity by members of that committee to discuss, debate or amend the 56 page mimeographed document."[249]

When asked about these events, Emanuel Celler acknowledged to the author that he had run the meeting as

was described above. However to the accusations that the bill had been railroaded through, Chairman Celler said that they were "lots of nonsense" and that it was his duty to rule "like a chairman". Celler said that plenty of time had been spent in hearings and in the subcommittee discussing the various aspects of the bill and that it was time that it be reported to the House.[250]

The compromise measure differed in many respects from the subcommittee report and clearly showed the Republicans influence. The basic provisions of the compromise proposal, in comparison with the subcommittee bill , are as follows:

TITLE I: VOTING RIGHTS

The compromise, in a concession to McCulloch's views, eliminated coverage of state elections. It also substituted a three judge court for the temporary voting referees. This provision was apparently adopted at the insistence of Republicans also. As it will be recalled, The Justice Department was vehemently against that provision when William Higgs suggested that the Leadership Conference lobby for it. Joseph Rauh had dissaproved of such prodedure.

TITLE II: PUBLIC ACCOMODATIONS

The compromise had much more limited coverage than the subcommittee bill, limiting its coverage to hotels and lodging houses (with certain exceptions), eating places and places of entertainment and spectator sports. The committee bill, however, was better than the subcommittee bill in that the Attorney General could move on his own to open public facilities. Like the subcommittee proposal, the committee measure rested both on the commerce clause and the Fourteenth Amendment for its constitutionality.

TITLE III: AUTHORITY OF ATTORNEY GENERAL TO INTERVENE IN EQUAL PROTECTION CASES

The broad Title III of the subcommittee was deleted and the Attorney General, instead of having the power to initiate a suit when a person is deprived of his constitutional rights, he is only allowed to intervene in such a suit. Like the subcommittee proposal, this title gave the Attorney General power to seek desegregation of public facilities.

TITLE IV: PUBLIC EDUCATION

This section was the same in both bills.

TITLE V: CIVIL RIGHTS COMMISSION

Like the subcommittee proposal, the committee's proposal created a permanent Civil Rights Commission. However, it added the provision that vote frauds could be investigated.

TITLE VI: CIVIL RIGHTS COMMISSION

Unlike the subcommittee proposal, the Attorney General could not bring suit to enforce nondiscrimination in federally assisted programs.

TITLE VII: FEDERAL EMPLOYMENT PRACTICES COMMISSION

The FEPC section of the committee bill is weaker than thetsame section of the subcommittee measure. The Federal Employment Practices Commission envisioned by the subcommittee would have been able to hold hearings and issue enforceable orders of a finding of discrimination in hiring union membership. This cease and desist clause was left out of the committee bill which envisioned a legal agency which could bring a court suit on behalf of the discriminated person. This is a much slower procedure. The subcommittee proposal also said that the decision of the commission could be reviewed in the Federal Courts of Appeals, with the agency's decision carrying heavy weight. In the compromise the commission would have to file a fresh suit in a Federal District Court, which would reexamine all evidence in discrimination. This slower process was a primary concession to Republican views and was based on a bill by Representative Robert P. Griffin, Republican of Michigan.[251]

TITLE VIII: FEPC

Like the subcommittee bill, the committee bill provided for registration and voting statistics. However it was more limited.

TITLE IX: REGISTRATION AND VOTING STATISTICS

Like the subcommittee bill, the committee bill provided for review of the decision of a Federal District Court to remand a civil rights case to the state court from which it was removed.

The Title V of the subcommittee bill, providing for the establishment of a Community Relations Service was completely left out in the compromise bill. Robert Kastenmeir (D. Wis.) attributes the elimination of the section and the modification of others to some mistakes made in the subcommittee draft which left it open to modification rather than correction. "It was probably a mistake to try to limit the Community Relations Service to six members... that mistake played a part in the elimination of that useful service in the reported version of the bill."[252]

Though the Judiciary Committee version was weaker in many respects than the subcommittee bill, it was nevertheless substantially stronger than the original Administration bill. Some of the stronger provisions were as follows:

1. Use of both the Fourteenth Amendment and the Commerce Clause as the constitutional base for the section on Public Accomodations, rather than just the Commerce Clause.

2. Allowing the Attorney General to initiate suits to desegregate all public facilities and not just schools.

3. Mandatory rather than discretionary cutting off of federally assisted projects which discriminate.

4. Establishing of a census of registration and voting statistics, which could lead to decrease of House representation from states where citizens are disenfranchized.

5. Providing for review of the decision of a Federal district court to remand a civil rights case to the State Court from which it was removed.

6. Making the Civil Rights Commision permanent.

On the same day that the Committee on the Judiciary reported HR 7152, President Kennedy expressed his pleasure at the outcome in the following words:

"The House Committee on the Judiciary in appointing a bipartisan Civil Rights Bill today has significantly improved the prospects for enactment of effective civil rights legislation in Congress this year... From the very beginning enactment of an effective civil rights bill has required that sectional and political differences be set aside in the interest of meeting an urgent national crisis. The action by the committee today reflects this kind of leadership by the Speaker of the House, John McCormack, the House Minority Leader, Charles Halleck, the Committee Chairman Emanuel Celler and the ranking Minority member, William McCulloch."[253]

The civil rights groups did not fully agree with the President's views on the matter and further decried the Administration's role in the weakening of the subcommittee proposal. This sentiment was demonstrated on the Monday evening of October 28, the day before the committee action. President Kennedy had gone to the Americana Hotel to address the Convention of Theatre Owners of America, calling for a strong civil rights bill. Outside, 100 people form the

Congress of Racial Equality picketed in protest over the administration's efforts to water the bill down.[254] On October 29, 1963, Roy Wilkins, Chairman of the Leadership Conference, thanked those who had supported the stronger measure and acorned the Administration. Mr Wilkins said: "The Leadership Conference thanks the pro-civil rights members of the Judiciary Committee who supported the subcommittee recommendations. The limited improvements in the bill reported out over the Administration's original proposals are due not to the architects of compromise but to the unceasing efforts of the bipartisan alliance of civil rights advocates in the committee and the untiring efforts of the civil rights groups outside of Congress."[255]

In a memo which the Leadership Conference sent out to all of its affiliates on November 4, 1963, the Leadership Conference again blamed the Administration for the weaker version and lamented the fact that the Administration had found it necessary to "cancel committee meetings, and call in proponents of the strong measure for conferences with the President and muster the full power of House leadership to prevent the subcommittee from being reported."[256]

Though publically civil rights leaders were attacking the bill, privately they realized that the bill was actually a very good one and more than they had hoped for. The bill turned out by the Judiciary Committee was substantially

stronger than the original Administration bill. The Leadership Conference could give itself much credit for such a development. Its effective pressure had contributed to a virtual acceptance of the subcommittee report in the House Judiciary Committee. This acceptance meant that a compromise could not deviate too much from the subcommittee measure. Leadership Conference officials were aware of their work and in a memo to affiliate organizations they indicated that the fact that so many Congressmen insisted on the subcommittee version "is a tribute to what you and your members did. It was the strength you were able to mobilize that encourages these men to work for the broadened bill."[257] The Leadership Conference did not merely accept the compromise proposal, however, and immediately set out to mobilize its forces to strengthen the bill with amendments. On November 1, 1963, a strategy meeting of the Leadership Conference was held in which the representative unanimously pledged to work for strengthening amendments in the areas of public accomodations, FEPC, and authority for the Federal Government to initiate action in cases involving civil rights abuses.[258] The Washington Post, noting the contributions of the Leadership Conference, commented editorially:

> "We think it is most heartening that 50 Representatives of the Leadership Conference on Civil Rights have unanimously pledged to continue their efforts for strengthening amendments and to work unceasingly for swift enactment of the measure. The Leadership Conference..,spearheaded the demand for vigorous

civil rights legislation...It deserves very great credit indeed, in our judgement for the contributions it made to the final product. The Administration measure has been strengthened and improved by its efforts."[259]

It is interesting to note that the southerners on the Judiciary Committee were not at all convinced that the substitute was really a compromise bill. They felt all along that there was a coordinated agreement between the Administration and civil rights groups to make the bill look moderate, while presenting at the same time a strong civil rights measure. Thus the Minority Report of the Judiciary Committee said that the bill "was hailed as 'moderate' legislation and as a 'compromise' when in truth and in fact it was no less extreme and vicious than the subcommittee proposal. In coordination with these statements, the reported bill was denounced, publicly, by civil rights political pressure groups for the apparent purpose of creating the impression the substitute measure was, [sic] in fact, a 'watered down' version of the unacceptable subcommittee proposal."[260] Though there had been an agreement between the administration and the civil rights groups early in July which went along these lines; such and agreement clearly did not exist during the committee deliberations as the Leadership Conference actually wanted the subcommittee version. However, throughout the course of the legislative history of the bill the Leadership Conference

did try to demand a stronger bill than it thought it could get so that any compromise could yield strong legislation.

In an interview with the author, Representative E. L. Forrester (D. Ga.), a member of the Committee on the Judiciary, agreed with the minority report. Representative Forrester felt that the bill was merely a conglomeration of political manuevers of the Administration and civil rights groups. He stated that the bill reported by the subcommittee was "un-American" and "fit in with the Communist Party platform of 1928 like a glove." Congressman Forrester was convinced that the bill was going to produce a "mulatto race" and that southerners had to oppose it to keep their "racial purity." He added; "you don't know anything about the nigger until you live with him; in my district we are outnumbered three to one."[261]

When the civil rights bill emerged from the House Judiciary Committee it had undergone one of the most important phases of its legislative history. This phase was vital, for the bill reported out by the Judiciary Committee would be the strongest possible measure of which Congress could approve. It was very significant and encouraging to the civil rights groups that the reported bill was actually stronger than the Administration measure.

Though the civil rights groups were pleased with the bill, the Administration was also very pleased for it had won

a major victory in obtaining the modified version. The role of the Administration throughtout the entire Judiciary Committee phase was predominant. This account of the Administrations position would seem to controvert the widely held impression that President Kennedy sought the strongest piece of legislation possible and that he had to force Congress to accept a stromg measure. To the contrary, it was the Administration which had to exert pressure in order to prevent the Congressional Committee from adopting a stronger bill.

Before the Judiciary Committee bill could go to the House of Representatives, it still had one more dangerous obstacle to overcome in the House Rules Committee. The next chapter will examine the bill in the House Rules Committee and the final debate.

CHAPTER IV

THE RULES COMMITTEE AND HOUSE DEBATE

This final chapter deals with the Rules Committee stage and final passage of the bill. Because of the very important role of the Leadership Conference in these stages and the fast movement of events, it was decided to incorporate the Leadership Conference's activities within the narrative, rather than placing them in a separate section as was done in previous chapters. Though the Leadership Conference's primary role is emphasized heavily, mention will be made of the less active lobby in opposition to the bill, the Coordinating Committee for Fundamental American Freedoms.

After the House Committee on the Judiciary approved the substitute measure on October 29, 1963, the members of the committee were given two weeks to write the majority and minority reports to the bill. This meant a considerable delay in the sending of the bill to the House Rules Committee, the next stage in the legislative process. On November 15, 1963, the southerners on the Judiciary Committee asked to be given two extra days to file their minority report, which led to further delays.[262] Civil rights groups were getting impatient. In a memo issued November 18, the Leadership Conference on Civil Rights voiced great concern on the very slow procedure of the Civil Rights Bill and called on its affiliate organizations to exert "great pressure" on Congress to get the bill through the House at an early date. The Conference realized the importance of the Rules Committee stage and

indicated that "our entire effort from now on must be concentrated upon getting the bill through the Rules Committee in enough time to bring it to a vote on the House floor this year."[263] The day before, Sunday, November 17, 1963, a huge rally "Write in for Rights" had been sponsored in Pittsburgh to express the same sentiment and urge the many participants to write their congressmen to secure early passage of a strong bill.[264] Finally, on November 20, 1963, the Chairman of the Judiciary Committee, Emanuel Celler, formally asked House Rules Committee Chairman Howard W. Smith (D. Va.) to schedule an early hearing on a rule for floor debate of HR 7152.[265]

Since the Rules Committee has a very significant function in the House of Representatives it is necessary to briefly indicate its role in the context of the House's elaborate set of procedures.

When a bill is favorably reported by a legislative committee it is assigned to one of various calendars which are in fact lists of bills awaiting debate. This classification is an important one because so many bills and resolutions of different kinds come before the House each year. (In the 84th Congress, 2,698 bills and resolutions were favorably reported by legislative committees.)[266] To the Union Calendar are referred bills "raising revenues, general appropriation bills, and bills of a public character directly

or directly appropriating money or property."[267] The House Calendar receives all bills not raising or appropriating money or property. The Consent Calendar is provided for noncontroversial measures and consists of requests by members that a bill either in the House or Union Calendars be passed without debate. This requires unanimous consent. A fourth calendar is the Private Calendar, provided for bills of personal relief in the nature of claims against the United States or private immigration bills. This calendar also provides for unanimous consent approval of bills. By far the largest quantity of bills is channeled through the Private and Consent Calendars and are of a routine nature.[268]

Since some of the bills pending in the House and Union Calendars are more important than others and since all bills are placed on these calendars in the order in which they were reported by the legislative committee, ~~it is committee~~, it is necessary to have a system by which the most important bills can be considered ahead of others. This is where the House Rules Committee enters the picture. By granting a special resolution or rule, the Committee makes it possible for important measures to be considered out of order. This gives the House Rules Committee enormous power in that it can affect the House's agenda and consequently affect House decisions. James A. Robinson, in his book

The House Rules Committee,[269] lists several aspects of the Committee's power.

First, the Committee can decide whether to have a hearing on a rule. "If no hearing is held...it is unlikely that the Committee will grant a rule; [and] refusal of a hearing means probable defeat."[270] Second, once a hearing is held, the Committee can still refuse a rule. If the bill is so controversial that it can't receive Rules Committee approval its chances of passing the House are minimal. Though "a rule does not assure passage,...no rule most probably assures defeat."[271] Third, the Committee, in exchange for a rule, may require the bill to be changed. This gives the Committee enormous power over the other committees. If the legislative committee consents to changes, these changes are brought through amendments on the floor. Fourth, different rules can be devised by the Committee which can help or hinder the legislation. The Committee not only grants a rule to take a bill out of calendar order, but it can specify how the bill will be debated. For example the committee can issue a closed rule which prohibits all amendments. A rule can also stipulate a time limit for debate. Fifth, the Committee participates in resolving differences in House and Senate versions of the same bill. Sixth, the House Rules Committee can arbitrate when there is competition between legislative

committees for jurisdiction of a bill and in disputes as to how it should go to the House floor.

The above points clearly illustrate the Committee's vast power. When one considers this power in light of the discussion of the key role of committee chairman and the seniority system of Chapter II, one can see the enormous influence which the chairman of the Committee on Rules has in the House of Representatives.

The granting of a rule by the Rules Committee is not, however, the only way in which a bill may be taken out of the House or Union Calendar for considerations. Three alternate methods exits. The first is the discharge petition. This is a simple method by which a bill can be discharged by a committee when a majority (218) of the total membership of the House has signed a petition.[272] However, this procedure is rarely used successfully. Since the adoption of this rule in 1932, 333 motions to discharge committees have been filed. Of these only 32 received enough signatures to be placed on the special Petition Calendar and only 14 were passed by the House. There have been only two bills which become laws after being referred to the House though Discharge Petitions. These were the Fair Labor Standards Act of 1938 and the Federal Pay Raise Bill of 1960.[273] The second method is Calendar Wednesday. Every Wednesday, unless dispensed

with by unanimous consent or by affirmative vote of two-thirds of the members voting, the speaker calls each standing committee in alphabetical order. When called, any committee could then bring up a bill, in the Union or House Calendars, for consideration.[274] This procedure is also seldom used because a bill can only be debated two hours on that Wednesday. On the following Wednesday the call of committees resumes where it left off. If each committee used this prodedure, each committee would have at most only two Wednesdays each session of Congress.[275] This procedure, however, is only good for noncontroversial bills and is thus in the same category as the Consent and Private Calendars.

Though there are several methods to take an important measure out of the House or Union Calendar, none of these are of any real significance. The House Rules Committee is therefore the only really available channel for important legislation to reach the House. Thus when Emanuel Celler asked chairman Smith for an early rule, an important episode in the bill's legislative history opened.

The House Rules Committee and the Discharge Petition

Judge Howard W. Smith, after having received the Judiciary Committee Chairman's request, showed no sign whatever that he would hold hearings on a rule for the Civil Rights Bill.[276] Judge Smith is one of the oldest members of the House (83 years old at the end of 1964) and is elected by one of the smallest constituencies, with only 20,000 votes.[277] He began his service in the House in 1931[278] and became Chairman of the Rules Committee in 1955.[279] He has been consistently against progressive legislation such as minimum wage, housing and aid to depressed areas.[280] Above all, Judge Smith has been an ardent foe of civil rights legislation. One of his favorite tactics to prevent the referral of liberal legislation to the floor is to disappear from Washington altogether and thus prevent his committee from meeting.[281] This is exactly what happened during the 1957 Civil Rights battle. At one particularly crucial moment Chairman Smith left the Capitol claiming that he had to inspect a barn of his that had burned down. Speaker Sam Rayburn remarked on that occasion: "I knew Howard Smith would do almost anything to block a civil rights bill, but I never suspected he would resort to arson."[282] Howard Smith's stalling on a rule was typical of his efforts to fight civil rights legislation and the strong

bill reported out of the Judiciary Committee had probably determined him to do his best to delay and maybe even modify the bill. The Administration and the Leadership Conference had a difficult task ahead of them.

Two days after Celler had sent his request to Smith, however, the issue of civil rights was momentarily lost in a national tragedy. President John F. Kennedy was assassinated in Dallas, Texas, and the whole nation mourned. In a matter of minutes, the United States had a new President; a man from the South. Everyone wondered what would happen to the many pieces of major legislation pending in Congress and what would happen to civil rights.

On November 27, 1963 the new President went before a joint session of Congress and the American people to state his assesment of the unfinished work. In his speech the President said:

> "No memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the Civil Rights Bill for which he fought so long...We have talked long enough in this country about equal rights. We have talked a hundred years or more. It is time now to write the next chapter--and to write it in the books of law."[283]

The Leadership Conference and civil rights leadership were greatly encouraged by the President's message. On that same day, and in response to his message, the Leadership Conference called an extraordinary meeting of leaders and

Washington representatives to plan a mobilization of resources. The meeting was to be held on December 4, 1963. The Leadership Conference urged member organizations to ask members to write the President commending him on his message.[284] Richard Bolling (D. Mo.) a member of the Rules Committee, took the first step toward dislodging the bill from the Rules Committee by introducing HR 574, providing for House Debate. This procedure would make it possible for Celler on December 9, 1963 (10 legislative days later), to file a discharge petition which, if successful in obtaining 218 signatures, could bring the bill to the floor without a Rule.[285] Bolling's move was beautifully timed for it came at the same time that the President had made a strong plea for civil rights and made it difficult to be criticized. In spite of this fact, however, on December 2, 1963 Judge Smith persisted in saying that he had no hearings planned.[286] The following day, a very significant event occured. The President, in a meeting with Congressional leaders, indicated his full support for the efforts to pry the civil rights bill out of committee.[287] This was an unusual occurence, for the President was involving himself directly and openly in the struggle on Capitol Hill. Since President Johnson had been a key figure in Congress, his influence was very great. With the President's full backing the prospects of getting 218

signatures increased greatly. White House aide Larry O'Brian was sent to Capitol Hill with instructions to display "what muscle the Executive Branch could employ."[288] House Speaker McCormack announced that he backed the discharge petition.[289]

On December 4, 1963, the Leadership Conference held its strategy meeting at the Mayflower Hotel in Washington, D.C. The purpose of the meeting was to rally support for the discharge petition as well as urge affiliate organizations to have their members flood Washington with delegations, letters, and telegrams to urge their Congressmen to vote for the final bill. The conference at this point had to concentrate both on the Rules Committee and on the House as a whole. Representative Bolling spoke at the meeting outlining the discharge petition plans but warned of the impossibility of House consideration of the bill before January.[290] At the meeting the Leadership Conference issued the following statement: "We commit the resources of our more than 70 organizations to the efforts to force the House Rules Committee through the use of a discharge petition. We leave today's meeting with one thing uppermost in our minds: that it is our determination to mobilize the millions of Americans we represent in a vast nation-wide drive to convince 218 members to sign the petition."[291] Following the meeting Roy Wilkins said

that his organization would work for the defeat of Congressmen who voted against the bill and indicated that many religious organizations would join civil rights groups in pressing Congressmen to sign the discharge petition. At the same time the President of the AFL-CIO, George Meany, and the AFL-CIO Vice President, Walter Reuther, issued a joint statement in which they said that organized labor would launch a vast letter and telegram campaign urging support of the discharge move.[292] Most of the 200 individuals who attended the meeting went to see their Congressmen to urge them to vote for the bill and sign the discharge petition.

On December 5, 1963, Judge Smith, apparently realizing that there was much sentiment for the discharge petition, announced that he was planning to hold hearings on HR 7152 "reasonably soon in January."[293] This announcement did not, however, dissuade Bolling who went ahead and filed the discharge petition on December 9. The Leadership Conference was not convinced either by Smith's statement and felt that January was too late anyway. In a memo issued on December 9, the Leadership Conference further emphasized the importance of establishing a mass direct and indirect pressure appeal. It said that "Though the President and leadership are supporting the Discharge Petition, Congress is largely immune to pleas and shocks...Our chance lies in evoking

an outpouring of public feeling, though messages, delegations, rallies and whatever other means we can devise so that we get enough signatures..."[294] Responding to the Leadership Conference's appeal, the National Council of Churches of Christ meeting in Philadelphia for a triennial session urged its 4,000 delegates to go home via Washington in order to visit their Congressmen.[295]

The Leadership Conference's hopes to get the discharge petition completely signed and the bill reported to the House before Congress adjourned for the year at Christmas time, were overly optimistic. A bill for which a successful discharge petition (with all 218 signatures) had been filed, can only be brought up before the House on the second or fourth Monday of each month.[296] This meant that a successful discharge petition could only be brought before the House on December 9, or December 23, 1963. Because the petition had only been filed on December 9, that date had to be ruled out. December 23, also presented difficulties because House rules provide that a successful discharge petition must be placed on a discharge Calendar for at least seven days prior to the second or fourth Monday.[297] This meant that a successful discharge petition had to be placed on the Discharge Calendar at the latest by December 16, 1963. Since the petition was filed on December 9, that gave the advocates of the Discharge Petition only five days, from

December 9 to December 16 to acquire 218 signatures. In the House of Representatives this was a monumental task. Its proponents failed. By December 24 when the House adjourned, there were only 173 signatures on the petition, all but a handful from Northern Democrats.

298

The failure of the discharge petition to receive all 218 signatures was more than a mere matter of timing. For one thing, the fact that Judge Smith had announced that he would hold hearings early in January, convinced many members of the House that it would not be necessary to take the risky step of signing the Petition. Though the House Democratic Leadership had said that they would support the petition, they did not sign it themselves. This made it very difficult for the average Congressmen to sign the petition because it is considered politically dangerous to sign one unless the leadership is ardently behind the action. The Discharge Petition is distasteful to the House leadership because it threatens the power of committee chairmen by establishing the precedent of taking bills out of their hands. Robert Bendiner has said: "A Representative will think long before originating a discharge petition, or even signing one when he knows that the move may eventually cost him influential support for future bills, especially those private bills and pork-barrel projects that Congressmen thrive on politically; without which, in fact, they do

not remain on Capitol Hill."[299]

Smith's announcement and the failure of the leadership to sign the petition were important factors. However, even more important a factor in the failure of the petition was the posture of the House Republicans. If the Republican leadership had remained neutral it is possible that 60 Republicans would have signed the discharge petition.[300] This was not the case however for Charles Halleck, House Minority Leader, William McCulloch, ranking minority member and Gerald Ford, Chairman of the Republican Conference, all announced opposition to the discharge move.[301] McCulloch declared that as a former speaker of the Ohio House, he would be "violating his parliamentary principles if he signed so irregular a thing as a discharge petition."[302] As a result Republican signers dwindled. It would seem, however, that Republican objections to the discharge petition went a little deeper than a mere violation of parliamentary principles. Many Republicans had indicated privately that Bolling might have filed the discharge petition merely to appeal to "Negro civil rights pressure groups or for partisan purposes."[303] It will be recalled that it was Bolling who spoke before the Leadership Conference on December 4, 1963, and no Republican had been invited. This may have given the impression that civil rights groups were largely partisan and that the petition was only

a Democratic "gimick". The President's strong intervention in support of the Discharge Petition also contributed to making it an apparently partisan device. The Republicans claimed that in pursuing this partisan approach, the Democrats had violated a long standing agreement on a bipartisan method to get the bill out of the Rules Committee. Though a chairman has great power mainly because the members of his committee don't want to question his authority, technically a majority of the committee can reverse a chairman. Thus the Civil Rights Bill could have been reported out of the Rules Committee with the approval of eight members of the committee.. The Republicans claimed that they had agreed to provide all five Republican votes in the Rules Committee to follow this procedure, but that the Democrats changed their minds.[304]

The Republican discontent with the discharge petition, finally led to a very partisan dispute on December 11, 1963. On that Wednesday, the Republicans attempted to bring the Civil Rights Bill up before the House through the Calendar Wednesday procedure.[305] The Republicans were tired of being accused of anti-civil rights sentiments just because they did not sign the discharge petition and wanted to turn the tables on the Democrats by forcing them to decide whether they were "for" coming to an early vote on civil rights. The Republicans, headed by Representative Thomas B. Curtis, were prepared to force the Calendar Wednesday method

when Majority Leader Carl Albert (D. Okla.) moved to adjourn the House for the day as an alternative. The motion to adjourn won by 214 votes to 166 and was clearly split along party lines. All but four Democrats voted for adjournment and all but two Republicans against.[306] The Republican scheme had also failed.

In a Memo issued December 16, 1963 the Leadership Conference recognized that it probably had made a mistake in not seeking more bipartisan support for the discharge petition. However it decried charges made by the Republicans that they were not consulted. The Leadership Conference apparently did feel that had a greater effort been expended to cater to the Republicans, the discharge petition might have obtained the necessary 218 signatures.

Though the discharge petition had failed to receive the necessary number of signatures it cannot be said that the discharge petition itself was a failure. On December 18, 1963, Howard Smith announced that the Rules Committee would begin hearings on a rule for HR 7152 on January 9, 1964.[307] He did not say then how long the hearings would last. In all probability Smith called the hearings because of the wide publicity which the discharge petition was receiving and the threat that more members might decide to sign it if he did not announce the hearings. The Judge was probably also afraid that the bill might be taken away from him by

his own committee. Representative Clarence Brown (R., Ohio), the ranking minority member was reported to have given Smith a schedule of hearings to end January 30. If Brown, Bolling and six other members of the Rules Committee had gotten together they could have given the bill a rule over the chairman's objections.[308] Murray Kempton, writing in The New Republic said that "the old Judge...could only preserve the glow of his power and the face of his dignity only by accepting a compromise early in January--the alternative was to face loss of his committee to his members."[309]

The Leadership Conference on Civil Rights redognized that the pressure on Judge Smith from the petition and his committee had led to his capitulation. On December 23, the Conference said that Smith's announced plans for hearings on January 9, 1964 "must be counted as a victory for those of us who support the legislation. One factor that moved Mr. Smith to set a definite date was the Conference's ability to organize prompt nation-wide support for the petition to discharge the Rules Committee from consideration.of the bill."[310] The Leadership Conference also said that another important factor was the success of a special Leadership Conference delegation which met with the top leaders of the House to explore with them the possibilities of a fixed schedule of hearings. The Leadership Conference had learned that five Republicans and five Democrats had said that they would be

willing to take the bill out of committee if necessary. After Smith had announced his intention to hold hearings he said: "I know something about the facts of life around here and I know that many members want this bill considered." He conceded that the Rules Committee members could take the bill "away from me, and they can do it any minute they want to."[311]

Much pressure had been put on individual members of the Rules Committee by organizations within the Leadership Conference which contributed to the development. The Leadership Conference had sent to all of its affiliate organizations a list of all of the members of the Rules Committee which could be very useful in direct lobbying. The list included the Congressmen's religion, organizational affiliations and major campaign contributions. For example, it pointed out that Representative Ray J. Madden (D. Ind.) had received $750 from the AFL-CIO's Committee on Political Education, $500 from the Political Education Fund of the Building and Construction Trades and $200 from the Indiana Democratic State Committee. The list also included the main towns and cities in each of the Congressmen's districts.[312] Such information could be effectively used by the various organizations within the Leadership Conference in influencing Congressmen to vote for a favorable rule.

On January 9, 1964, Judge Howard W. Smith began

hearings on a rule for HR 7152. These hearings continued for nine days on January 14, 15, 21, 22, 23, 28 and 29. In all, thirty-three Congressmen testified, five for the bill and twenty-eight against the bill.[313] Those testifying against the bill were mostly southerners who shared Judge Smith's views.

On January 9 and 14, Emanuel Celler testified before the Rules Committee. In his testimony the Chairman of the Judiciary Committee said the American Negro "still wears some of the badges of slavery" and "it is a small wonder that Negro patience is at an end."[314] Referring himself to the movement for civil rights, Celler said "you can no more stop it than you can stop the tide...It means changing patterns of life that have existed for a century or more. I wish it could be otherwise, but it cannot. The die is cast, the movement cannot be stayed."[315] Howard Smith did not quite agree and proceeded to question Celler on the "nefarious bill" concluding at the end of the hearing that "this bill is as full of booby traps as a dog is of fleas."[316] One of the main points which the Rules Committee members emphasized was the rushing through of the bill in the final stages of Judiciary Committee consideration. On the first day of the hearings Smith charged Celler with "railroading" the bill through. On January 14, the ranking member of the Rules Committee, Clarence J. Brown (R. Ohio)

asked Celler specifically why he had pushed the bill through his committee in "40 or 50 minutes". Celler's reply was that no part of the bill was unfamiliar to the Committee and was essentially a "refurbishing" of the subcommittee measure.[317] On January 15, Representative William McCulloch delivered a strong testimony in favor of the bill and hoped that the Administration would not compromise any sections of the bill in the Senate. The Leadership Conference was very pleased with McCulloch's testimony and in a gesture which indicated the Leadership Conference's evaluation of the importance of Republican support, Roy Wilkins personally congratulated McCulloch on his testimony.[318] When Representative Byron Rogers (D. Colo.) testified on January 21, 1964, the question of the Judiciary Committee procedure was again brought up. Representative Carl Elliott (D.Ala.) asked Rogers the following question: "Would not that bill have been improved if you had had sometime in the full committee to have improved it, rather than just push it through in a proceeding the like of which you seldom have in the Congress, in the U.S. House of Representative [sic]?"[319] Roger's reply was similar to the one previously given by Emanuel Celler. He said that the bill had been amply considered by the subcommittee. When asked directly who had written the compromise, Rogers evaded the question.[320]

Leading the testimonies against the bill was Representative Edwin E. Willis (D. La.), the highest ranking

Southerner on the Judiciary Committee. Testifying on January 16, 1964, Representative Willis called the bill "the most drastic, and far-reaching proposal and grab for power ever to be reported out of a committee of the Congress in the history of our Republic."[320] In general the testimony of the Southern Congressmen brought out the same objections to the bill that were brought out by the minority report of the Judiciary Committee. In particular they objected most strenuously to the provisions on voting, public accomodations, and FEPC. In regards to voting they pointed out that the Constitution (Article I, section 2, paragraph 1; Article II, section 1, paragraph 2; and the Seventeenth Amendment) indicated that the States alone can set voting standards. Therefore Title I of the bill, which sought to prevent discrimination in elections through Federal controls, was deemed unconstitutional.[321] The Title on public accomodations received severe criticism. Opponents of the bill cited the 1883 decisions of the Supreme Court stating that "State action" cannot be construed as applying to private establishments. Siding with the 1883 Court the Southerners stated that the Fourteenth Amendment applied only to actions by the State itself. They also objected to the efforts to rest the public accomodations section on the commerce clause of the Constitution, saying that the bill's use of the commerce clause went beyond the bounds delineated by the

Supreme Court for the clause. Such an interpretation of of the commerce clause, they argued, would completely destroy all concepts of commerce and allow complete Federal control in every area of life.[322] Southern Congressmen objected to FEPC on the same grounds. They saw FEPC as another clear example of distortion of the commerce clause which allowed government to intervene in hiring and firing practices of private firms.[323] In essence the objections which the Southern Congressmen raised against the bill were also objections against the whole trend of constitutional law in this century. They were expressing the idea that the Supreme Court has erred in its interpretation of the Constitution and has consequently interposed itself to violate the division of powers of the Constitution. These actions of the Supreme Court have contributed, therefore, to an erosion of "States' rights." This feeling was clearly expressed by Representative E.L. Forrester, the second ranking southern member on the majority side of the Judiciary Committee, when he said in testimony before the Rules Committee that:

> Our liberties, privileges, rights, responsibilities, and freedoms set out in our Constitution cannot be eroded by the times, held out of fashion, or of the "horse and buggy era." They are as enduring as the marble and granite of our Nation's hills...I just wonder, Mr. Chairman, how a Supreme Court Justice would feel standing in the presence of Franklin, Jefferson, Madison, and the other stalwarts who drafted our Constitution, and declaring that the Constitution, like a chameleon, changes its character

> according to the times, and that the Commerce Clause could be tortured and strained to such an extent that it could be used as an excuse to justify holding a law constitutional that otherwise would undoubtedly be unconstitutional.[324]

The various testimonies before the Rules Committee, therefore, revealed two different interpretations and conceptions of the role of the Federal Government and of the Supreme Court. On the one hand those supporting the bill indicated approval of the Supreme Court's decisions and of Federal Government intervention in civil rights. On the other hand, those opposing the bill decried the growing power of the Federal Government and the decisions of the Supreme Court, holding that matters of civil rights should be left up to the States.

The hearings in the Rules Committee were very slow and most Congressmen testified to the substance of the bill rather than to the procedure of granting a rule, which is purpose of the Rules Committee hearings. The Leadership Conference began to get impatient as the lengthy hearings dragged on. However, on January 15, 1964, Majority Leader Carl Albert reassured the Leadership Conference's chairman Roy Wilkins, that a rule would be granted before February.[325]

While the Committee on Rules conducted its hearings, Emanuel Celler prepared his leadership of the House Debate, and the Leadership Conference continued its efforts to arouse public opinion so as to assure passage of the Civil

Rights Bill. On January 20, 1964 the Leadership Conference issued a memo calling on its affiliate organizations to send members who knew Congressmen personally to Washington in order to speak to the legislators and receive assurance of their support for a strong measure. The Leadership Conference asked to be informed on any contacts made with Congressmen so as to keep their records up to date.[326] During the Christmas vacation period many of the Leadership Conference organizations remained active, urging their members to write, wire and visit their congressmen. The National Student Christian Federation Quadrennial meeting in Athens, Ohio urged passage of the bill and 500 students were said to have come to Washington to lobby for the bill. The Unitarian Universalist Fellowship for Social Justice sent 297 letters to ministers and laymen in key areas urging them to visit Congressmen during the Christmas recess. The United Steel Workers sent calls to action to 3,000 members urging them to mobilize more support for passage of the bill. The National Council of Catholic Women sent out 500 messages urging support for the bill.

These are but a few of the activities of various organizations which were working for civil rights and the pressures were massive. Of particular significance was the involvement of the churches. The churches had been completely absent in the 1957 and 1960 battles for civil rights legislation.

In January of 1963, the first Interfaith Conference on a particular issue was held, and that issue was civil rights. The three major religious faiths decided to stop merely talking about equal rights and participate actively in the issue.[327] Many churches of the three major faiths became involved in the Leadership Conference. Among the religious groups in the Leadership Conference are the Catholic Interracial Council, the National Catholic Conference for Interracial Justice, the National Council of Churches Commission on Religion and Race, The National Student Christian Federation, The United Church Women, the National Baptist Convention, USA, The Union of American Hebrew Congregation, and the United Synagogue of America. These and other church groups sought to mobilize the clergy and laymen in support of the bill. Many religious leaders came to Washington to urge their congressmen to vote for it. The contribution of the churches was very significant in particular regards to the influencing of Republican Congressmen. It was very difficult for civil rights or labor groups to approach many of the Republicans because they are predominantly from the mid-west where labor and civil rights groups have little influence. However, it is precisely in the mid-west where the churches are strong so that they were able to place pressure on many of the Republicans.[328] Joseph Rauh later commented that

"the new dimension in the civil rights fight is the church groups; they have done a wonderful job, it is a beautiful sight to see them working with us."[329]

The Administration had also been watching the Rules Committee activities very carefully and had made it clear that it wanted early action. In his State of the Union message, delivered on January 8, 1964, the day before Smith began the Rules Committee hearings, President Johnson had said "Let me make one principle of the Administration abundantly clear...As far as the writ of Federal law will run, we must abolish not some but all racial discrimination. For this is not merely an economic issue--or a social, political or international issue. It is a moral issue--and it must be met by the passage this session of the bill now pending in the House."[330] Later, on January 18, 1964, the President invited Roy Wilkins, James Farmer, Martin Luther King, Jr. and Whitney Young to the White House and assured them of his support for the bill.[331] Towards the close of the House Rules Committee hearings the Administration began to put pressure on Congressmen to vote for the bill. There was a clear rise in activity on Capitol Hill as members were constantly approached and asked of their position. The Leadership Conference in a memo issued January 27, said that "much credit for this welcome spurt of activity must go to President Lyndon B. Johnson. He has made it unmis-

takenly clear that he wants the House to pass the bill."[332]

Though the Leadership Conference on Civil Rights was by far the most active lobby working in Washington on the Civil Rights Act of 1964, it must not be construed that there was no lobby in opposition to the bill. Organized lobbying in opposition to the bill was provided by the Coordinating Committee for Fundamental American Freedoms. This group was created specifically to oppose civil rights legislation in 1963 and was the only organized lobby against the bill.[333] The organization established headquarters about 3 blocks from the Capitol in a hotel at 301 First Street, N.E., Washington, D.C. Chairman of the organization was William Loeb, publisher of the Manchester (N.H.) Union-Leader; secretary-treasurer was John C. Satterfield, a former advisor to Governor Ross Barnett of Mississippi; public relations man and director was John J. Synon, Director of Americans for Constitutional Action. Most of the money for the organization's operation came from the Mississippi Sovereignty Commission, an agency of the State of Mississippi. The main effort of the organization was not in direct lobbying but in indirect lobbying through public relations campaigns. Thus advertisements were placed in many newspapers in the West, Mid-West and New England States, as well as in the South. Congressmen and Washington newspapers received the same advertisements and press releases.

This group had no direct contact with the Judiciary Committee stage of the bill, but it kept two staff men at the Rules Committee hearings.[334] Another group which did not have an organized lobby in Washington, D.C. but which distributed much anti-civil rights bill material was the Virginia Commission on Constitutional Government. The commission is a state agency composed of several prominent members of the State. The Governor of the State of Virginia sits ex-officio.[335] The Commission distributed many copies of several pamphlets, among them Civil Rights and Legal Wrongs and Civil Rights and Federal Powers. Because of the heavy flow of mail to Southern Congressman against civil rights legislation, various other groups in the South engaged in arousing public opinion against the bill.

On January 30, following the predications of the Majority leader, Carl Albert, the House Rules Committee granted an open rule to the civil rights bill sending it to the floor of the House. The vote in the Rules Committee was 11 to 4, and it came after a motion made by Representative Elliot, that the Civil Rights Bill be indefinitely postponed, and a motion by Representative Colmer, that the bill be sent back to the Judiciary Committee, were defeated.[336] Voting to clear the bill from the Rules Committee were six Democrats and five Republicans. The Democrats were Roy Madden, Indiana; James Delaney, New York; Richard Bolling, Missouri;

Thomas O'Neil, Jr., Massachusetts; B.F. Sisk, California; and John Young, Texas. The Republicans were Clarence Brown, Ohio; Katherine St. George, New York; H. Allen Smith, California; Elmer Hoffman, Illinois; and William Avery, Kansas. Voting to deny clearing of the bill from the Rules Committee were four Democrats, Chairman Howard Smith, Virginia; William Colmer, Mississippi; James Trimble, Arkansas; and Carl Elliot, Alabama. HR 616, the rule for the Civil Rights Bill, provided that the House of Representatives would resolve itself in to the Committee of the Whole House on the State of Union in order to consider HR 7152. (The Committee of the Whole House is a parliamentary device by which the House can act with a quorum of only 100 members instead of the normal 218.)[337] It provided debate could be held on the bill, not to exceed ten hours, to be equally divided, and controlled by the chairman and ranking minority member of the Committee on the Judiciary."[338] When the ten hours were up, the bill would be read title by title, and amendments would be offered and debated with a limit of five minutes for each Congressman (the Five Minute Rule). Though each amendment would be voted on by the Committee of the Whole, these votes were not to be recorded. When the Committee on the Whole House had concluded its consideration of the bill, it would rise and report the bill to the House with whatever amendments it had adopted. Any member of the House

could ask for a recorded, rollcall vote on any of the amendments adopted by the Committee on the Whole. In addition, all points of order were to be waived so as to prevent parliamentary technicalities that might obstruct consideration of the bill.[339]

The House Debate and Final Passage

Almost eight months after HR 7152 had been introduced in the House of Representatives, it had finally reached the floor for debate. In this debate a last minute battle would be waged to preserve the relatively strong bill from weakening amendments. This section will deal mostly with the forces which made up that battle and will not attempt to cover the many points raised in the lengthy debate which lasted from January 31 to February 10, 1964. Some of the most important amendments which were adopted will be mentioned at the end.

On January 31, 1964, Representative Roy J. Madden (D. Ind.) the highest member in seniority on the Rules Committee who supported the bill, called up the House Resolution 616 and asked for its immediate consideration. Representative Madden then began the debate which would last ten hours and finish at the close of the legislative day of February 1, 1964. On February 3, 1964, the Committee on the Whole House began a reading of each title and accepted amendments to them. The floor manager for the bill on the majority side was chairman Emanuel Celler. He was aided in his task of defending his bill by Representative Byron Rogers (D. Colo.), Peter Rodino (D. N.J.) and James Corman (D. Cal.), all members of the Judiciary Committee.[340] Helping the majority were William Foley,

General Council of the Judiciary Committee and Benjamin Zelenco, Counsel of Subcommittee Number 5.[341] Chairman Celler took his job very seriously performing very well under the stress and tension of the House debate. In describing his task, Emanuel Celler told the author that he was "like a general leading his troops into a difficult war. Each title of the bill was like a separate battle."[342] On the Republican side the bill was managed by ranking minority member William McCulloch (R. Ohio) who was aided by minority members of the Judiciary Committee John Lindsay (R. N.Y.), Clark MacGregor (R. Minn.) and Charles Mathias (R. Md.). On hand to help the Republicans were William H. Copenhaver, the minority counsel, and Robert Kimball of the Republican Legislative Research Association.[343] Both men had helped write the Judiciary Committee compromise. The Southern opposition to the bill was led by Representative Lewin E. Willis (D. La.), the Southerner with the highest seniority on the Judiciary Committee. He was aided in his endeavors by William Cramer (R. Fla.), William Colmer (D. Mississippi) and Judge Howard Smith(D. Va.) They did not have the help of professional staff.[344]

One of the main characteristics of the debate was the close bipartisan cooperation between the Republican and Democratic managers of the bill which clearly aided in its successful passage. However, on two occasions this

bipartisan support broke down and the prospects for successful passage of the bill were threatened.

The first breakdown of bipartisan cooperation came on Friday, February 7. On that occasion Representative Oren Harris (D. Ark.) offered a perfecting amendment" to the title on nondiscrimination in federally assisted programs. The amendment would have substituted the provision of the Judiciary Committee which made it mandatory for funds to be cut off from federally assisted programs that discriminate, for the original Administration version which said that such action was purely discretionary. This weakening amendment could have been interpreted as merely another in the series of amendments being offered by southerners if it had not been for the fact that Representative Hale Boggs (D. La.), the House Majority Whip stood up to support the measure. Boggs said "Mr. Chairman, I have been reluctant to participate in the debate for a variety of reasons. The main one being that a great many people wanted to be heard and have been heard. But I am constrained to support the perfecting amendment..."[345] Right after Boggs finished speaking, Celler stood up and pointed out some limitations in the Harris amendment, but did not oppose it.[346] After a brief exchange between Celler and Boggs, Representative John Lindsay asked for the floor and said: "Mr. Chairman and members of the Committee, this

amendment is an empty box all tied up in a beautiful ribbon, and is the biggest mousetrap that has been offered since the debate on this bill began. Do members realize what is being attempted here...? This amendment would be a gutting of one of the most important titles in this bill. Frankly, I am appalled that this is being supported in the well of the House by the majority whip... Does this mean there is a "cave in" on the important title?"[347] Representative James Roosevelt (D. Cal.) quickly got to his feet and stated: "The gentleman asked whether there was any cave-in on this side..." there is no cave in on this side."[348] A few minutes later Representative William McCulloch who had been absent, rushed in on the floor and stated "If we pick up this old provision from the bill which did not get consideration...I regret to say that my individual support of the legislation will come to an end."[349] It was at this point that Chairman Emanuel Celler rose and asserted that "I am unalterably opposed to the amendment to the amendment offered by the gentleman from Arkansas..."[350] The amendment was defeated on a teller vote, 206 to 80.[351] The near collapse of bipartisan support came because the Republicans thought that Hale Boggs' support of the amendment, was official strategy of the Democrats and the Administration. The defeat of the amendment marked the end of the first episode.

The second episode, which threatened bipartisan

support of the bill and led to a clear split on partisan lines, occurred on Saturday, February 8, 1964. About 9 o'clock in the evening Representative Burt Talcott (D. Cal.) suggested that "we should adjourn to an early time Monday, if we will not conclude the debate tonight. I have no speech commitments over the Lincoln week."[352] Chairman Celler agreed with Talcott and moved that the Committee on the Whole House rise. However, House Minority Leader Charles Halleck (R. Ind.) opposed the move and said that "my constant position was and I thought the understanding was we would finish consideration tonight."[353] The Republicans were very eager to get the debate on the bill over with in order to take advantage of the week of Lincoln's birthday. Representative Clarence J. Brown appealed to his colleagues to finish consideration of the bill that night. "I have been in Congress for a long time...but I have seen the sun come up many times on Sunday morning when the House was still in session... What is wrong with that now...If you want to discuss it, why not stay here and do just that, instead of taking all the time that has been taken in a vain attempt to rise and to shut debate or do something else."[354] The whole issue generated much tension in the House as Congressmen discussed the matter of adjournment for over an hour. The author, who was in the House galleries at the time, was able to appreciate this tension which

followed purely partisan lines. The motion to adjourn finally came to a vote. Representative Halleck called for division and the vote was 175 for adjournment and 154 against. Representative Stimson then called for a teller vote and the vote was 169 for adjournment and 159 against.[355] When the Committee on the Whole House rose, Halleck demanded a roll call vote. On the roll call vote 220 voted for adjournment and 175 against. The Republicans unanimously voted against adjournment and were joined by 11 Democrats. The House adjourned at 10:07 p.m. This second instance of a threat to bipartisan support was not as severe as the first but it temporarily set back the bipartisan cooperation. In general, however, it must be reemphasized that the bipartisan cooperation on the bill was very intense.

During the course of the debate on the bill 122 amendments were offered and disposed of by the Committee on the Whole House. Of these amendments, not a single one was adopted which did not receive the support of the managers of the bill. Of the 122 amendments offered, only 28 were accepted. These amendments were mostly of a technical nature, though as will be seen later, some had substantial importance.[356] This overwhelming approval of the Judiciary Committee bill was very significant development because, in the Committee of the Whole House, representatives could have easily voted for weakening amendments as they did not have

recorded votes, only to vote later for the bill itself, thus showing their support for civil rights. In order to prevent this likely occurence, envisioned by the Leadership Conference and supporters of the bill, an amazing set of informal forces entered into the picture of the House debate.

When it became apparent that the Rules Committee would grant a rule for HR 7152 by the end of January, the Leadership Conference sent out an appeal to its member organizations. "We expect a fight on the House floor and we are urging organizations to bring their highest officials and most politically astute members to Washington the week of February 3rd."[357] At this point the Leadership Conference did not want the rank and file alone to visit Washington, rather it was more interested in getting the top leaders of ~~each leaders of~~ each organization to come and impress upon the Congressmen the need to fight weakening amendments and support the bill. The response was very good and many of the top leaders of each organization came to the Capitol.[358]

Unlike other occasions these leaders were not only invited to Washington to visit their Congressmen; they were also urged to stay and aide in the Leadership Conference strategy to keep supporters of the bill in line on key amendments. The Conference strategy, which was thought up by Clarence Mitchell, went as follows: Each representative of an organization of the Leadership Conference sat in the

House Gallery and was charged with watching four or five Congressmen. The "spotter" would keep track of the Congressmen by recording their various votes on all amendments and would check on their attendance. If the Congressman was on the floor and voted for a weakening amendment, the "spotter" would go downstairs and call the Congressman, whom he knew personally, off the floor, asking him to vote a certain way. If the "spotter" did not know the Congressman or if the Congressman was not on the floor for a key amendment, the spotter would go to a nearby phone and call the offices of the Leadership Conference which had been temporarily established in the Congressional Hotel a few blocks from the Capitol. He would inform the Leadership Conference office of the missing or wavering Congressman and return to the House Gallery. In the Leadership Conference office, the staff would consult a master chart which contained all of the offices of Representatives by floors. On each floor of both House Office buildings, in the office of a friendly Congressman, were stationed two representatives of the Leadership Conference. When the Leadership Conference staff found out on which floor the delinquent Congressman's office was located, they would call the two Leadership Conference representatives who would promptly visit the Congressmen's office and urge him to return to the floor to vote against weakening amendments. Both leaders from

the churches, as well as labor leaders played a key role in this stategy.[359] The system worked well because Congressmen knew they were being watched and endeavered to vote correctly. In an interview with the author, Representative Peter Frelinghuysen (R. N.J.), ranking minority member of the House Education and Labor Committee, admitted to the effectiveness of this system which "helped to intensify pressures on those who were wavering." However Frelinghuysen indicated that he, and other members, resented the spotter system.[360] Because of increasing resentment on the part of some members, the spotter system was dropped about half way through the House Debate.

The spotter system, however, was quickly replaced by the "buddy system". This buddy system was conceived by the Democratic Study Group, an organization of House Democratic liberals that worked very closely with the Leadership Conference."[361]

The Democratic Study Group had been organized in September of 1959, just prior to the adjournment of the first session of the 86th Congress. Its purpose was to "implement the legislative goals of the Democratic Party Platform...and to assist the Democratic leadership in the struggle against the conservative coalition."[362]

The buddy system was a simple system by which each member of the Democratic Study Group was responsible

for keeping track of five other Congressmen both in regards to attendance and voting. If one of these Congressmen was absent or did not vote he might be approached by the members of the DSG. The DSG also placed men at the head of the teller line to check on those voting, a system devised by Representatives Neil Stoebler (D. Mich.) and Donald Fraser (D. Minn.). (In the Committee on the Whole House for the State of the Union there are three ways of voting: the first is by voice vote, the second is by division where members in favor stand and are counted, and members against stand and are counted; the third is the teller vote, by which the chair appoints two tellers from opposite sides and directs the members in favor of the proposition to walk between the tellers and be counted. Then the chair directs the members opposed to the proposition to walk through.[363]) The Democratic Study Group also helped to develop research materials and legislative tactics on the bill. For this purpose the Democratic Study Group had a staff of four permanent and several part time workers headed by William Phillips.[364] The efforts of the Democratic Study Group were very significant and contributed to the large turnout of members voting against weakening amendments. This contrasted sharply with the Southern Democrat effort to defeat the bill. "The Southern Democrats appeared to enter the battle with minimal organization and little guts for

the fight."[365] Unlike previous years, the Southerners did not rally a great resistance. On January 30, 1964 the caucus of the Southern group had met on the initiative of Joe Waggoner Jr. (D. La.) to plan tactics on the bill. However the group did not meet again throughout the entire debate and the Southerners relied on strategy sessions. A whip system sponsored by the Southern caucus and headed by Representative Thomas G. Abernathy (D. Miss.) attempted to keep track of members and make sure that they were present for important votes. However the system was in complete disarray and functioned only a few times during the entire debate, in marked contrast to the efficient system of the Democratic Study Froup.[366] This fact was admitted by Representative Edward F. Hebert (D. La.) in the debate of February 5, when he said that "vote after vote has come here, only half of the southerners have been on this floor."[367] Congressman Hebert, in contrast, realized the great efforts of the pro civil rights forces and congratulated the Democratic Study Group. "To my friends who sit in this section, known as the Study Group, let me pay you a tribute and a compliment. You are here on the job. I disagree with you but I respect and admire your courage and your determination to be here and to be counted."[368]

The Coordinating Committee for Fundamental American Freedoms had representatives on hand for the House debate.

However, unlike the Leadership Conference, they did not do much in trying to round up votes for weakening amendments or against the bill. It was reported that the group planned to place its emphasis on the Senate debate and vote.[369]

The efforts of the Democratic Study Group and the Leadership Conference were carefully coordinated by a small group of leaders which included top administration advisors. President Johnson had sent to Capitol Hill Deputy Attorney General Nicholas de B. Katzenbach and Burke Marshall, head of the Civil Rights Division of the Department of Justice. They were present in the House Galleries throughout the debate on HR 7152 and served as liaison men between the Administration and the bill's backers. Aiding Katzenbach were three of his aides, William O. Geoghegan, Joseph F. Dolan and David B. Filvaroff.[370]

Strategy meetings were held each morning before the debate began in the office of Representative Frank Thompson Jr., the leader of the Democratic Study Group. Participating in these meetings most frequently were Mitchell (NAACP), Rauh (A.D.A.) Biemiller and Conway (AFL-CIO), representing the Leadership Conference; Richard Bolling, head of the Democratic Study Group Campaign Committee, and Frank Thompson, representing the Democratic Study Group; and Lawrence O'Brien, Special Assistant to President Johnson, representing the Administration.[371] Spontaneous strategy

meetings were also often called to discuss emergency situations. The author recalls watching Joseph Rauh and Clarence Mitchell suddenly spring up from their seats in the House Gallery and rush to the door followed a few seconds later by Nicholas Katzenbach. Joseph Rauh later indicated to the author that whenever a crisis arose, Bolling or another leader of the Democratic Study Group would make a signal. Immediately the civil rights leaders would rush down for emergency strategy meetings.[372] Sometimes these meetings met in thespeakers office and they were held in very close contact with Emanuel Celler and the floor leaders of the bill who at all times were informed of the various developments.

In addition to providing for the presence of pro-civl rights Congressmen, for various important amendments, the Leadership Conference and the Democratic Study Group made sure that pro-civil rights Congressmen remained in Washington and came to Capitol Hill. Every morning, leaders of the Leadership Conference and the Democratic Study Group studied the quorum calls of the previous day in order to get the names of absent Comgressmen to call them back to Washington or make sure they were not allowed to stay away on an important bill.[373]

There can be no doubt that the lobby techniques of the Leadership Conference and the Democratic Study Group,

with the pressure of the Administration, made it possible for the Judiciary Committee bill to remain almost intact. The Congressional Quarterly indicated that the civil rights bill "was the subject of some of the most intensive and effective behind the scenes lobbying in modern legislative history."[374] It is interesting to note however, that even the usually reliable Congressional Quarterly was somewhat deceived by the actual effectiveness of the lobbying, particularly in regard to the spotter system. Though agreeing fully with The Congressional Quarterly account on the lobbying in most respects David Cohen pointed out to the author that the spotter system did not work as smoothly as had been reported. This was due mainly to the fact that there were not really enough spotters to cover all Congressmen well.[375] Cohen himself had tried to cover the entire Minnesota and the New Jersey delegations which included twenty-three Congressmen. This was far too large a number of Congressmen to observe. The fact that the spotter system did not work as well as was thought did not detract, however, from its effectiveness because the Congressmen themselves thought that it was working well. Joseph Rauh agreed with Cohen's interpretations of what occured. He also indicated to the author that on many occasions the leaders of the civil rights forces working in the House were not so sure of victory and "on many teller votes, sweat was on our foreheads."[376]

On Monday February 10, 1964, the House of Representative finally passed the Civil Rights Act of 1964 which had been introduced on June 19, 1963, at the request of the late President Kenndy. The bill that passed the House was stronger than the Kennedy bill and very similar to the Judiciary Committee substitute partially written by the Administration. Among the significant amendments there was one changing the life of the Civil Rights Commission back to four years, another required 30 days notice to Congress before Administration agencies could cut off Federal funds from programs practicing discrimination. Two amendments widened the scope of the bill, one adding discrimination in employment because of sex to the list of prohibited practices, and another reinstated the Community Relations Service dropped by the Judiciary Committee.[377] The final vote on the bill was a real victory for the Leadership Conference, the Administration and civil rights advocates. The House passed the version by the overwhelming vote of more than two to one, 290 to 130.[378] The strongest civil rights bill since the Reconstruction days had cleared a major hurdle, the House of Representatives. It now had to go to the Senate where a new chapter in the legislative history of the bill would unfold.

CONCLUSION

This paper has presented the various forces which contributed to the passage, in the House of Representatives, of one of the most important pieces of legislation in this century. The passage of the bill meant that the House of Representatives (and later the Senate) was able to put forth some tools by which the Federal Government could aid in making equal rights for all Americans a reality. The bill which emanated from the House would not in itself help to cure the complex problems presented by racial discrimination, nor was the bill the most complete and effective piece of legislation which the House could have produced. As this paper is being completed, less than a year after the Senate passed a bill substantially similar to the one approved by the House, a new civil rights Act seems imminent. The Civil Rights Act of 1964, however, was a start, and passage by the House contributed to a growing awareness by the American people on one of the most crucial issues facing it today.

Though most of the forces and events surrounding the passage of the bill speak for themselves, it is possible to point to some important aspects revealed by this study. In addition to merely describing the passage of an important piece of legislation the study has revealed in the various forces which contributed to the passage of the bill, certain,

characteristics of the American Congress and of American government. In general it can be said that Congress cannot be viewed merely as a formal process in which legislators, by prescribed rules, write the law of the land. Rather, the formal processes of Congress must be viewed in close conjunction with the many informal forces and pressures which seek to influence human legislators and mold the final product of their endeavors. While bearing this in mind, the role of pressure groups, the Administration and National events will be briefly discussed.

PRESSURE GROUPS:

The Leadership Conference on Civil Rights, a confederation of civil rights, labor, religious and fraternal groups played a very important role in obtaining passage of the Civil Rights Bill in the House of Representatives. Its use of direct and indirect lobby techniques during the subcommittee stage, in which the Leadership Conference was able to convince friendly congressmen that a strong bill was imperative, clearly contributed to the creation of a stronger civil rights bill. This lead to the unusual development of a committee in a traditionally conservative Congress reporting out a stronger measure than that introduced by an urban liberal Administration. Not only did the Leadership Conference mobilize opinion and pressure for a strong measure, but it actually participated in the drafting of the legislation

by getting friendly congressmen to introduce in executive session various measures which it had written. The Leadership Conference was also very effective in influencing members of the Committee on the Judiciary to vote for the strong subcommittee bill and, if it had not been for the interaction of the Administration and Republican leaders, the subcommittee measure probably would have been reported to the House. Significant also was the pressure which the Leadership Conference brought to bear on the Rules Committee by channeling strong popular support for a discharge petition. Finally its spotter system and general lobbying during the House debate was an amazing development in which the pressure group actually participated in many of the manuevers on the House floor.

Referring to the general role of pressure groups, V.O. Key, Jr. has said that "A well organized and united group that lacks significant opposition is likely to be able to get what it wants from the legislative body. The process of arriving at agreement with the pressure group in these situations becomes virtually a part of the legislative process. It is difficult to tell at what point private association ends and governemnt begins."[379] In the case of the passage of the Civil Rights Act of 1964, it was difficult to tell at what point the influence of the Leadership Conference stopped and the role of the legislators began.

The Leadership Conference was a well organized and

united group. Its most significant and unique characteristic is that it is a confederation of many different and diverse interests. The influence and power of the Leadership Conference was due to the fact that it represented the combined efforts of more than 70 organizations with membership numbering in the several millions. Every time a representative of the Leadership Conference spoke to a congressman he could emphasize the fact that he was speaking for all of these organizations. The large number of organizations within the Leadership Conference made it possible to get a wide response from constituents for indirect pressure upon Congress. In addition the different nature of the organizations made it possible for them to divide up their tasks very effectively. Thus labor unions and civil rights groups were able to influence Northern Democrats whereas the church and fraternity groups could influence Republicans. The great consensus which existed among the organizations made it possible for them to operate quickly and effectivly. This consensus also enabled a few leaders to direct the course of the organization's activities, reducing to a minimum lengthy litigations.

One of the interesting aspects of lobbying around the civil rights bill was the small scale lobbying efforts of the Coordinating Committee for Fundamental American Freedoms, the only organized lobby against the bill. Though

several conservative groups were represented by virtue of the organizational affiliations of the leaders, the opposition lobby did not have the vast affiliations, power or influence of the Leadership Conference. It is interesting to speculate why there was not more opposition to the bill, especially since it contained strong F.E.P.C. and Public Accomodations provisions which could have drawn the opposition of the traditionally conservative business groups. A possible reason why organizations such as The National Association of Manufacturers or the Chamber of Commerce did not involve themselves in the question of civil rights legislation was that at the same time that the civil rights bill was being considered by the House, Congress was considering the Administration's tax cut bill which was of much more importance to the business groups. Had this not been the case, it is likely that a weaker civil rights measure might have resulted.

The strength of the Leadership Conference on Civil Rights raises a final question. Though the federated lobby was utilized in this case by organizations which were seeking legislation to protect the rights of individuals and grant them equal citizenship, one wonders, if the power of a strong lobby or of a federated lobby could not also be used for selfish interests or to deprive individuals of their civil rights. Though the first amendment to the constitution

guarantees the right to petition, one wonders whether such a right would include intensive lobbying of the nature of the spotter system utilized by the Leadership Conference "to keep representatives in line".

THE ADMINISTRATION:

Though following the doctrine of separation of powers between the legislative and executive branch of government, the Constitution of the United States grants the President power of legislative leadership by enabling him to "recommend to their [the Congress'] consideration such measures as he shall judge necessary and expedient", to call special sessions of either or both houses of Congress, and to adjourn Congress in certain cases. (Article II Section 3). It also empowers the President to veto measures passed by Congress. (Article I Section 7). These measures constitute part of the scheme of "checks and balances" which is written into the Constitution. The President's legislative role was actually not fully used until recent times. The use of the constitutional power of recommendation as an important aspect of the President's role is a modern development that dates from the Presidency of Theodore Roosevelt who used his State of the Union messages to present his legislative program and sent bills to Congress as Administration measures. President Roosevelt's example has been followed by contemporary Presidents who, as party

leaders and the only elected representatives of the people on a national basis, are forced to see that legislative programs are submitted and acted upon favorably.

The great importance of the passage of President Kennedy's general legislative program was observed in this study. Though the President had committed himself more strongly than any other American President to the question of equal rights, he delayed in introducing civil rights legislation for fear that the rest of his legislative program would be impaired. Thus for over two years the President sought to rely on less controversial executive orders to deal with civil rights questions. Like Congress, however, the President is also subject to strong pressures. With the tradegy of the Alabama crisis, pressure by civil rights groups and the threat of the Republicans outdoing the Democrats on civil rights, John Kennedy introduced a civil rights bill. As the paper showed, however, the President did not merely "recommend" to Congress that it enact his legislative measure as prescribed by the constitutional "check", but went further and actually involved himself intimately in the legislative process to secure his measure. Thus, after the bill was introduced, top members of the Administration not only testified before the committee considering the bill, but followed all of the developments very closely. It will be recalled that

not only was the Administration in close contact with Congress, ~~but it was also in close contact with the Congress~~, but it was also in close contact with the Leadership Conference on civil rights. The most obvious and spectacular involvement of the executive branch in the legislative process in the case of the Civil Rights Bill occured when the Administration, in cooperation with Republican leaders, actually wrote a compromise version of the bill outside of Congress itself. Faced with a bill it deemed too strong and with the clear prospect of the Judiciary Committee approving this strong bill, the Administration by-passed Congress to write a bill more to its liking. The Administration was worried that the strong measure might damage the rest of its legislative program and that it might contribute to a "white backlash" that could impair the President's chances in the coming election. In addition, under the weak measure theory, it thought that a strong bill would have less of a chance of being approved in the congressional maze. This episode clearly shows that the constitutional separation of powers is in practice very flexible and that the Executive actually does intervene in direct legislation.

Though the Executive does intervene in Congress and directly contributes to the legislative process, this is not done solely because of the extra-constitutional

phenomenon of political parties, and the necessity of assuring party victories. It is argued that the extra constitutional party which is found in Congress and in the executive, provides and institution for the redistribution of the powers divided in the Constitution.[381] This is true to a certain extent, but as the discussion of the civil rights bill has shown, occasions arise when there are no fast allegiances between the executive and members of the same party in Congress. In other words there are times when party discipline and party responsibility areat a minimum. Thus President Kennedy, when confronted with the prospect of members of his own party reporting out a bill which he considered too strong, allied himself with the Republican leadership to write the compromise measure. In essence he did this because the strong bill was thought to be detrimental to the Administration, though not necessarily detrimental to the party since many House Democrats from the North favored the stronger measure. This points to the fact that though the President does participate in legislative affairs, thus blurring the Constitutional separation of powers, this separation of powers still exists as the President, with a different constituency from Congress, seeks to establish what is favorable to his own position. (Of course, an even clearer evidence of party responsibility was seen in the fact that the

Southern members of both parties opposed the bill in contradiction to their party leaders and party platforms.)

President Kennedy's very active role in seeking the passage of the Civil Rights Bill and his success in obtaining a modified version of the bill tends to discredit two popular assumptions about the late president. The first is that President Kennedy was actually responsible for the strong measure and that he did everything possible to secure strong civil rights legislation. Though it is possible to speculate that had the President not introduced a relatively strong bill in the beginning, the final product would have been weaker; it is nonetheless clear that the President shied away from the strong measure for reasons already given. The second popular view of the President which is not borne out is that Kennedy did not know how to deal with Congress. The experience of the Civil Rights Bill shows that the President was rather forceful and effective in obtaining what he wanted. Of course, this experience can not be generalized into describing all of the President's relations with Congress. The President was certainly aided in his endeavors by Chairman Celler. Nevertheless it is clear that the Administration had a very significant influence upon Congress and contributed substantially to the outcome on civil rights legislation.

In concluding it should be noted that President Johnson, upon President Kennedy's death, also took a very

active role in the matter of civil rights legislation and also intervened directly in the passage of the bill by urging Congressmen to vote for the bill and supporting openly the discharge petition of the House. Since President Johnson had had tremendous power in Congress as Majority Leader of the Senate, he was in an even better position than Kennedy to deal with his ex-colleagues. Johnson apparently emphasized more the personal contact and used his telephone very often to talk to Congressmen. However, since Johnson had been in office for only two months, he had not as yet fully developed his own techniques to deal with Congress, and still relied on the services of Kennedy men such as Lawrence O'Bien. President Johnson, along with the Leadership Conference and the Democratic Study Group, contributed greatly to the passage of the bill in the House.

NATIONAL EVENTS

A final and very important influence on Congress and on the President was the various national developments in race relations which shook the nation. The various demonstrations in the South starting with the sit-ins and continuing with the Albany movement, the Meredith case and the Birmingham crisis clearly affected the President's introduction of the bill and the Congressmen's approval of the measure. Though many Congressmen spoke out against it,

the March on Washington of August 28 was another example of a national occurence which had an impact on Congressmen.

Therefore, one cannot look at the formal processes of Congress themselves, but must view them in the context of the various influences which sustains such as the influence from; pressure groups, the Administration and national events.

In concluding it is necessary to point briefly to one additional aspect brought out in this paper which is of grave importance. This concerns the functioning of the House itself. The paper pointed to the necessity of having strong committees in the House of Representatives, but it also pointed to the great importance of the committee chairman within the House hierarchy. It noted their autocratic power and their ability to stiffle the ambitions of newer Congressmen should they refuse to agree with the latter's actions. The power of the chairman was clearly seen in some of the actions of Emanuel Celler. He was able to call or cancel hearings or committee meeting. He was able to determine the course of events in the legislative history of the Civil Rights Bill and displayed all of a chairman's power when he allowed the compromise bill to be drawn up outside of Congress and later when he rushed the revised version through his committee. The power of seniority and the power of the leadership of the House was

also seen in the reluctance of the members to sign a discharge petition. In addition one would see the great power of the Rules Committee and its chairmen and their ability to virtually control the destiny of the most important legislation acted upon by the House.

It is not possible to mention all of the various reforms which have been advocated by such persons as Senator Joseph Clark, Congressman Henry Reuss and Congressman Richard Bolling. However, since the seniority system is at the root of much of the problems which the House faces it is worthwhile to mention one reform, suggested by Congressman Bolling, which would seek to correct many of the problems of seniority. It must be made clear that the author does not necessarily endorse this proposed reform because an assessment of its merits and defects would require study which goes beyond the scope of this paper. The reform is mentioned as an illustration of the kind of change which might be considered. Bolling would place more responsibility for the actions of committee chairmen in the caucus of the political party. The party leaders would become the leaders of a party legislative team and would be responsible for appointing the top party member of each committee. However, the ability of the party leader to nominate men to positions in the various committees would be approved or vetoed by the majority of the members of the party voting in secret ballot.

This procedure would enable to the majority to approve of a congressman for head of a committee or veto his nomination. In this way the chairman of the various committeess would be responsive to the majority of their parties and thus exercise less autocratic control. The values of the seniorityy system, such as service of a competent and experienced congressman, could also be maintained for the party leader could appoint older and more experienced congressmen who could be approved of by the members of their party.[382] In addition to approval of committee chairman by the party majority, each committee could be made more responsive to the majority on the committee allowing this majority to assert its influence over the chairman. This technique would encourage the creation of more party discipline and responsibility and may even contribute to even closer interaction between the executive and legislative branch.

It is clear to the author that there is much to be done in order to make the House of Representatives of the United States more democratic and more able to cope with the great demands placed upon Congress in this rapidly changing world.

APPENDIX

Composition of the Subcommittee No. 5 of the Committee on the Judiciary, 88th Congress

Emanuel Celler, New York, Chairman

Democrats

Peter W. Rodino, Jr., New Jersey
Byron G. Rogers, Colorado
Harold D. Donohue, Massachusetts
Jack B. Brooks, Texas
Herman Toll, Pennsylvania
Robert W. Kastenmeir, Wisconsin

William M. McCulloch, Ohio
William E. Miller, New York
George Meader, Michigan
William C. Cramer, Florida

William R. Foley, General Counsel
William H. Copenhaver, Associate Counsel
Benjamin L. Zelenco, Counsel

Composition of the Committee on Rules, 88th Congress

Howard W. Smith, Virginia, Chairman

Democrats

William M. Colmer, Mississippi
Ray J. Madden, Indiana
James J. Delaney, New York
James W. Trimble, Arkansas
Richard Bolling, Missouri
Thomas P. O'Neill, Jr., Massachusetts
Carl Elliot, Alabama
B. F. Sisk, California
John Young, Texas

Clarence J. Brown, Ohio
Katherine St. George, New York
H. Allen Smith, California
Elmer J. Hoffman, Illinois
William H. Avery, Kansas

Thomas M. Carruthers, Counsel
Mary Spencer Forrest, Assistant Counsel
Frank E. McCarthy, Minority Counsel

Composition of the Committee on the Judiciary, 88th Congress

Emanuel Celler, Chairman

Democrats

Michael A. Feighan, Ohio
Frank Chelf, Kentucky
Edwin E. Willis, Louisiana
Peter W. Rodino, Jr., New Jersey
E. L. Forrester, Georgia
Byron G. Rogers, Colorado
Harold D. Donohue, Massachusetts
Jack B. Brooks, Texas
William M. Tuck, Virginia
Robert T. Ashmore, South Carolina
Roland V. Libonati, Illinois
Herman Toll, Pennsylvania
Robert W. Kastenmeier, Wisconsin
Jacob H. Gibert, New York
James C. Corman, California
William L. St. Onge, Connecticut
George F. Senner, Jr., Arizona
Don Edwards, California

William M. McCulloch, Ohio
William E. Miller, New York
Richard H. Poff, Virginia
William C. Cramer, Florida
Arch A. Moore, Jr., West Virginia
George Meader, Michigan
John V. Lindsay, New York
William T. Cahill, New Jersey
Garner E. Shriver, Kansas
Clark MacGregor, Minnesota
Charles Mathias, Jr., Maryland
James E. Bromwell, Iowa
Charleton J. King, New York
Patrick M. Martin, California

Bess E. Dick, Staff Director
William R. Foley, General Counsel
Walter M. Besterman, Legislative Assistant
Charles J. Zinn, Law Revision Counsel
Murray Drabkin, Counsel
Herber Fuchs, Counsel
William P. Shattuck, Counsel
William H. Copenhaver, Associate Counsel

Cooperating Organizations of the Leadership Conference on Civil Rights (As of December, 1963)

A. M. E. Zion Church

Alpha Kappa Alpha Sorority

Alpha Phi Alpha Fraternity

Amalgamated Meat Cutters and Butchers Workmen

American Civil Liberties Union

American Ethical Union

AFL-CIO

American Jewish Committee

American Jewish Congress

American Newspaper Guild

American Veterans Committee

Americans for Democratic Action

Anti-Defamation League of B'nai B'rith

Brotherhood of Sleeping Car Porters

Catholic Interracial Council

Christian Methodist Episcopal Church

Congress of Racial Equality

Council for Christian Social Action-United Church of Christ

Delta Sigma Theta Sorority

Frontiers International

Hadassah

Hotel, Restaurant Employees & Bartenders International Union

Improved Benevolent & Protective Order of Elks of the World

International Ladies Garment Workers Union of America

International Union of Electrical, Radio & Machine Workers

Japanese American Citizens League

Jewish Labor Committee

Jewish War Veterans

Labor Zionist Organization of America

National Alliance of Postal Employees

National Association for the Advancement of Colored People

National Association of Colored Women's Clubs, Inc.

National Association of Negro Business & Professional Women's Clubs, Inc.

National Baptist Convention, USA

National Bar Association

National Beauty Culturists League, Inc.

National Catholic Social Action Conference

National Catholic Conference for Interracial Justice

National Community Relations Advisory Council

National Council of Catholic Men

National Council of Catholic Women

National Council of Churches-Commission on Religion and Race

National Council of Negro Women

National Farmers Union

National Medical Association

National Newspaper Publishers Association

National Student Christian Federation

National Urban League

Negro American Labor Council

North American Federation of the Third Order of St. Francis

Phi Beta Sigma Fraternity

Phi Delta Kappa Sorority

Pioneer Women

Retail, Wholesale & Department Store Union

Southern Christian Leadership Conference

State, County, Municipal Employees

Student Nonviolent Coordinating Committee

Textile Workers Union of America

Transport Workers Union of America

Union of American Hebrew Congregations

Unitarian Universal Fellowship for Social Justice

United Automobile Workers of America

United Church Women

United Hebrew Trades

United Packinghouse, Food & Allied Workers

United Rubber Workers

United Steelworkers of America

United Synagogue of America

United Transport Service Employees of America

Women's International League for Peace and Freedom

Wokers Defense League

Workmen's Circle

Young Women's Christian Association of the U.S.A.

Zeta Phi Beta Soroity

Rollcall in House on Civil Rights Bill

FINAL VOTE: 290-130.
Vote for the bill: R
Vote against the bill: W
Absent: A; Paired for: PR;
Paired against: PW; Not voting:
NV; At large: AL.

ALABAMA
AL Andrews (D) W
AL Elliott (D) W
AL Grant (D) W
AL Huddleston (D) W
AL Jones (D) W
AL Rains (D) W
AL Roberts (D) W
AL Selden W

ALASKA
AL Rivers (D) R

ARIZONA
1. Rhodes (R) W
2. Udall (D) R
3. Senner (D) R

ARKANSAS
1. Gathings (D) W
2. Mills (D) W
3. Trimble (D) W
4. Harris (D) W

CALIFORNIA
1. Clausen (R) R
2. Johnson (D) R
3. Moss (D) R
4. Leggett (D) R
5. Vacancy
6. Mailliard (R) R
7. Cohelan (D) R
8. Miller (D) R
9. Edwards (D) R
10. Gubser (R) R
11. Younger (R) R
12. Talcott (R) R
13. Teague (R) R
14. Baldwin (R) R
15. McFall (D) R
16. Sisk (D) R
18. Hagen (D) R
33. Sheppard (D) R
34. Hanna (D) R
35. Utt (R) W
36. Wilson, Bob (R) R
37. Van Deerlin (D) R
38. Martin (R) W

Los Angeles County
17. King (D) R
19. Holifield (D) R
20. Smith (R) W
21. Hawkins (D) R
22. Corman (D) R
23. Clawson (R) W
24. Lipscomb (R) W
25. Cameron (D) R
26. Roosevelt (D) R
27. Burkhalter (D) R
28. Bell (R) R
29. Brown (D) R
30. Roybal (D) R
31. Wilson, Charles (D) R
32. Hosmer (R) R

COLORADO
1. Rogers (D) R
2. Brotzman (R) R
3. Chenoweth (R) R
4. Aspinall (D) R

CONNECTICUT
AL Grabowski (D) R
1. Daddario (D) R
2. St. Onge (D) R
3. Giaimo (D) R
4. Sibal (R) R
5. Monagan (D) R

DELAWARE
AL McDowell (D) R

FLORIDA
1. Sikes (D) W
2. Bennett (D) W
3. Pepper (D) R
4. Fascell (D) W
5. Herlong (D) W
6. Rogers (D) W
7. Haley (D) W
8. Matthews (D) W
9. Fuqua (D) W
10. Gibbons (D) W
11. Gurney (R) W
12. Cramer (R) W

GEORGIA
1. Hagan (D) W
2. Pilcher (D) W
3. Forrester (D) W
4. Flynt (D) W
5. Weltner (D) W
6. Vinson (D) W
7. Davis (D) W
8. Tuten (D) W
9. Landrum (D) W
10. Stephens (D) W

HAWAII
AL Gill (D) R
AL Matsunaga (D) R

IDAHO
1. White (D) R
2. Harding (D) R

ILLINOIS
12. McClory (R) R
14. Hoffman (R) A
15. Reid (R) R
16. Anderson (R) R
17. Arends (R) R
18. Michel (R) R
19. McLoskey (R) R
20. Findley (R) R
21. Gray (D) R
22. Springer (R) R
23. Shipley (D) A
24. Price (D) R

Chicago-Cook County
1. Dawson (D) R
2. O'Hara (D) R
3. Murphy (D) R
4. Derwinski (R) R
5. Kluczynski (D) R
6. O'Brien (D) PR
7. Libonati (D) R
8. Rostenkowski (D) R
9. Finnegan (D) R
10. Collier (R) R
11. Pucinski (D) R
13. Rumsfeld (R) R

INDIANA
1. Madden (D) R
2. Halleck (R) R
3. Brademas (D) R
4. Adair (R) R
5. Roush (D) R
6. Roudebush (R) R
7. Bray (R) R
8. Denton (D) R
9. Wilson (R) R
10. Harvey (R) R
11. Bruce (R) R

IOWA
1. Schwengel (R) R
2. Bromwell (R) R
3. Gross (R) W
4. Kyl (R) R
5. Smith (D) R
6. Hoeven (R) R
7. Jensen (R) W

KANSAS
1. Dole (R) R
2. Avery (R) R
3. Ellsworth (R) R
4. Shriver (R) R
5. Skubitz (R) R

KENTUCKY
1. Stubblefield (D) W
2. Natcher (D) W
3. Snyder (R) W
4. Chelf (D) W
5. Siler (R) PW
6. Watts (D) W
7. Perkins (D) R

LOUISIANA
1. Hebert (D) W
2. Boggs (D) W
3. Willis (D) W
4. Waggonner (D) W
5. Passman (D) W
6. Morrison (D) W
7. Thompson (D) W
8. Long (D) W

MAINE
1. Tupper (R) R
2. McIntire (R) R

MARYLAND
AL Sickles (D) R
1. Morton (R) R
2. Long (D) R
3. Garmatz (D) R
4. Fallon (D) R
5. Lankford (D) A
6. Mathias (R) R
7. Friedel (D) R

MASSACHUSETTS
1. Conte (R) R
2. Boland (D) R
3. Philbin (D) R
4. Donohue (D) R
5. Morse (R) R
6. Bates (R) R
7. Macdonald (D) R
8. O'Neill (D) R
9. McCormack (D) (Speaker) NV
10. Martin (R) R
11. Burke (D) R
12. Keith (R) R

MICHIGAN
AL Staebler (D) R
2. Meader (R) W
3. Johansen (R) W
4. Hutchinson (R) W
5. Ford (R) R
6. Chamberlain (R) R
7. O'Hara (D) R
8. Harvey (R) R
9. Griffin (R) R
10. Cederberg (R) R
11. Knox (R) W
12. Bennett (R) R
18. Broomfield (R) R

Metropolitan Detroit
1. Nedzi (D) R
13. Diggs (D) R
14. Ryan (D) R
15. Dingell (D) R
16. Lesinski (D) W
17. Griffiths (D) R

MINNESOTA
1. Quie (R) R
2. Nelsen (R) R
3. MacGregor (R) R
4. Karth (D) R
5. Fraser (D) R
6. Olson (D) R
7. Langen (R) R
8. Blatnik (D) R

MISSISSIPPI
1. Abernethy (D) W
2. Whitten (D) W
3. Williams (D) W
4. Winstead (D) W
5. Colmer (D) W

MISSOURI
1. Karsten (D) R
2. Curtis (R) R
3. Sullivan (D) R
4. Randall (D) R
5. Bolling (D) R
6. Hull (D) W
7. Hall (R) W
8. Ichord (D) R
9. Cannon (D) R
10. Jones (D) W

MONTANA
1. Olsen (D) R
2. Battin (R) W

NEBRASKA
1. Beermann (R) W
2. Cunningham (R) R
3. Martin (R) R

NEVADA
AL Baring (D) W

NEW HAMPSHIRE
1. Wyman (R) W
2. Cleveland (R) R

NEW JERSEY
1. Cahill (R) R
2. Glenn (R) R
3. Auchincloss (R) R
4. Thompson (D) R
5. Frelinghuysen (R) R
6. Dwyer (R) R
7. Widnall (R) R
8. Joelson (D) R
9. Osmers (R) R
10. Rodino (D) R
11. Minish (D) R
12. Wallhauser (R) R
13. Gallagher (D) R
14. Daniels (D) R
15. Patten (D) R

NEW MEXICO
AL Montoya (D) R
AL Morris (D) R

NEW YORK
1. Pike (D) R
2. Grover (R) R
3. Derounian (R) R
4. Wydler (R) R
5. Becker (R) R
25. Barry (R) R
26. Reid (R) R
27. St. George (R) R
28. Wharton (R) R
29. O'Brien (D) R
30. King (R) R
31. Kilburn (R) W
32. Pirnie (R) R
33. Robison (R) R
34. Riehlman (R) R
35. Stratton (D) R
36. Horton (R) R
37. Ostertag (R) R
38. Goodell (R) R
39. Pillion (R) R
40. Miller (R) R
41. Dulski (D) R

New York City
6. Halpern (R) R
7. Addabbo (D) R
8. Rosenthal (D) R
9. Delaney (D) R
10. Celler (D) R
11. Keogh (D) R
12. Kelly (D) R
13. Multer (D) R
14. Rooney (D) R
15. Carey (D) R
16. Murphy (D) R
17. Lindsay (R) R
18. Powell (D) R
19. Farbstein (D) R
20. Ryan (D) R
21. Healey (D) R
22. Gilbert (D) R
23. Buckley (D) R
24. Fino (R) R

NORTH CAROLINA
1. Bonner (D) W
2. Fountain (D) W
3. Henderson (D) W
4. Cooley (D) W
5. Scott (D) W
6. Kornegay (D) W
7. Lennon (D) W
8. Jonas (R) W
9. Broyhill (R) W
10. Whitener (D) W
11. Taylor (D) W

NORTH DAKOTA
1. Andrews R
2. Short (R) W

OHIO
AL Taft (R) R
1. Rich (R) R
2. Clancy (R) R
3. Schenck (R) R
4. McCulloch (R) R
5. Latta (R) R
6. Harsha (R) R
7. Brown (R) R
8. Betts (R) R
9. Ashley (D) R
10. Abele (R) R
11. Bolton, Oliver (R) R
12. Devine (R) R
13. Mosher (R) R
14. Ayres (R) R
15. Secrest (D) R
16. Bow (R) R
17. Ashbrook (R) W
18. Hays (D) R
19. Kirwan (D) R
20. Feighan (D) R
21. Vanik (D) R
22. Bolton, Frances (R) R
23. Minshall (R) R

OKLAHOMA
1. Belcher (R) W
2. Edmondson (D) R
3. Albert (D) R
4. Steed (D) R
5. Jarman (D) W
6. Wickersham (D) W

OREGON
1. Norblad (R) R
2. Ullman (D) R
3. Green (D) R
4. Duncan (D) R

PENNSYLVANA
6. Rhodes (D) R
7. Milliken (R) R
8. Curtin (R) R
9. Dague (R) R
10. McDade (R) R
11. Flood (D) R
12. Whalley (R) R
13. Schweiker (R) R
14. Moorhead (D) R
15. Rooney (D) R
16. Kunkel (R) R
17. Schneebeli (R) R
18. Corbett (R) R
19. Goodling (R) R
20. Holland (D) R
21. Dent (D) R
22. Saylor (R) R
23. Johnson (R) R
24. Weaver (R) R
25. Clark (D) R
26. Morgan (D) R
27. Fulton (R) R

Philadelphia
1. Barrett (D) R
2. Nix (D) R
3. Byrne (D) R
4. Toll (D) R
5. Vacancy

RHODE ISLAND
1. St. Germain (D) R
2. Fogarty (D) R

SOUTH CAROLINA
1. Rivers (D) W
2. Watson (D) W
3. Dorn (D) W
4. Ashmore (D) W
5. Hemphill (D) W
6. McMillan (D) W

SOUTH DAKOTA
1. Reifel (R) R
2. Berry (R) W

TENNESSEE
1. Quillen (R) W
2. Vacancy
3. Brock (R) W
4. Evins (D) W
5. Fulton (D) R
6. Bass (D) R
7. Murray (D) W
8. Everett (D) W
9. Davis (D) PW

TEXAS
AL Pool (D) W
1. Patman (D) W
2. Brooks (D) R
3. Beckworth (D) W
4. Roberts (D) W
5. Alger (R) W
6. Teague (D) W
7. Dowdy (D) W
8. Thomas (D) R
9. Thompson (D) A
10. Pickle (D) R
11. Poage (D) W
12. Wright (D) W
13. Purcell (D) W
14. Young (D) W
15. Kilgore (D) W
16. Foreman (R) W
17. Burleson (D) W
18. Rogers (D) W
19. Mahon (D) W
20. Gonzalez (D) R
21. Fisher (D) W
22. Casey (D) W

UTAH
1. Burton (R) R
2. Lloyd (R) R

VERMONT
AL Stafford (R) R

VIRGINIA
1. Downing (D) W
2. Hardy (D) W
3. Gary (D) W
4. Abbitt (D) W
5. Tuck (D) W
6. Poff (R) W
7. Marsh (D) W
8. Smith (D) W
9. Jennings (D) W
10. Broyhill (R) W

WASHINGTON
1. Pelly (R) PR
2. Westland (R) R
3. Hansen (D) R
4. May (R) R
5. Horan (R) A
6. Tollefson (R) R
7. Stinson (R) R

WEST VIRGINIA
1. Moore (R) R
2. Staggers (D) R
3. Slack (D) R
4. Hechler (D) R
5. Kee (D) A

WISCONSIN
1. Schadeberg (R) R
2. Kastenmeier (D) R
3. Thomson (R) R
4. Zablocki (D) R
5. Reuss (D) R
6. Van Pelt (R) W
7. Laird (R) R
8. Byrnes (R) R
9. Johnson (D) R
10. O'Konski (R) A

WYOMING
AL Harrison (R) W

Note: Numerals denote districts.

The evolution of the civil rights bill from the Kennedy administration proposal to the bill ordered reported by the House Judiciary Committee

TITLE I—VOTING

Kennedy administration bill, H.R. 7152, June 20, 1963	Subcommittee bill reported to committee Oct. 2, 1963	Bill ordered reported by House Judiciary Committee, Oct. 29, 1963
(a) State registration officials were required to: (1) apply standards, practices and procedures equally among individuals seeking to register to vote in *Federal* elections; (2) disregard minor errors or omissions in registering for Federal elections; (3) administer literacy tests in writing in Federal elections.	(a) Provisions were expanded to include *all* elections.	(a) Provisions were limited to Federal elections.
(b) Create a presumption that, where a State administers a literacy test, any individual who has completed the 6th grade of school shall be presumed to be literate to vote in *Federal* elections.	(b) Provisions were expanded to include *all* elections, but the literacy presumption was made *rebuttable* in a court action.	(b) Provisions were limited to Federal elections.
(c) Whenever the Attorney General alleged that, in any election district, 15 percent or less of the Negroes of voting age were registered to vote, a Federal district court on its own, or through a temporary Federal voting referee, appointed by the court, could register any Negro within the district if the Federal official found him qualified to vote even though the court had not determined that State voting officials have engaged in a pattern or practice of discrimination.	(c) An applicant, who was ordered qualified to vote by a Federal judge, would have his vote *impounded* unless and until the court found a pattern orpractice of discrimination.	(c) The entire section was eliminated and, in its place, there was substituted the authority of the Attorney General to request that voting cases be heard by 3-judge district courts.
TITLE II—PUBLIC ACCOMMODATIONS		
(a) Required that no individual should be denied access to any place of lodging or amusement, any eating establishment, or other retail or service establishment because of race, color, religion, or national origin. Bona fide private establishments were excluded.	(a) The establishments to be covered by the title were expanded to include every form of business establishment, including private schools, law firms, medical associations, etc., except that an owner-occupied dwelling containing 5 or less rooms for rent was excluded.	(a) The title was limited to places of lodging and amusements, eating establishments and gasoline stations. Service establishments were eliminated, as were all other types of businesses, including those covered by the broadened subcommittee bill, *except* where State or local laws required segregation or State or local officials required, fostered or encouraged segregation or in those instances where eating establishments were located within retail stores.
(b) A party aggrieved or the Attorney General, was authorized to institute a civil complaint against a person who violated the title after failure by a State agency or the Community Relations Service to achieve voluntary compliance.	(b) Authority to institute the action remained unchanged.	(b) Authority to institute the action remained the same except that, with deletion of the title on the Community Relations Service, the Attorney General must first seek voluntary compliance through Federal, State, or local agencies equipped to handle such matters.
(c) The party aggrieved, if he instituted the action and prevailed was entitled to costs, including reasonable attorney's fees.	(c) A defendant would also be entitled to costs, including attorney's fees, if he prevailed.	(c) Authority concerning receipt of costs by prevailing party remained the same.
(d) Not included.	(d) Not included.	(d) There was included the same protection of jury trial incases of criminal contempt as was written into the voting title of the 1960 Civil Rights Act.
TITLE III—DESEGREGATION OF PUBLIC FACILITIES AND AUTHORITY OF ATTORNEY GENERAL TO INTERVENE IN EQUAL PROTECTION CASES		
(a) Not included.	(a) Attorney General was authorized to institute a civil action in behalf of any individual whom the Attorney General believed had been denied or deprived of his rights under the Constitution or the laws of the United States by any person acting under color of law.	(a) The authority of the Attorney General to institute such legal action was eliminated. In its place there was substituted a provision contained in title IV of the subcommittee bill. This would authorize the Attorney General to institute a civil action in behalf of an individual who has been denied access to or full and complete utilization of any public facility (except schools) owned, operated or managed by a State or political subdivision thereof. This provision, as incorporated in title IV by the subcommittee, would have included facilities *controlled* and *supported* directly or indirectly, by any State or political subdivision. This added authority was eliminated since such nonpublic facilities as school utilities and chambers of commerce would have been covered and, with regard to schools, the language would have been broad enough, if not excluded, to sanction legal action in behalf of problems frequently referred to as "racial imbalance."
(b) Not included.	(b) The Attorney General was authorized to intervene in an action brought by a private party who claimed that his constitutional or legal rights were being violated by a person acting under color of law.	(b) The authority of the Attorney General to intervene was modified to instances of denial of equal protection of the laws because of race, color, religion, or national origin.
TITLE IV—EDUCATION		
(a) Commissioner of Education was authorized to extend technical and financial assistance to school boards and school personnel in order to aid problems of desegregation and racial imbalance.	(a) The scope and extent of the Commissioner's authority to extend technical and financial assistance was modified, particularly in that such assistance would only be granted in cases of desegregation, but not in cases of "racial imbalance."	(a) No additional changes were made.
(b) Attorney General was authorized, upon receipt of a signed complaint, to institute a legal action in behalf of schoolchildren or to intervene in a legal action already commenced in behalf of schoolchildren in order to desegregate public schools and colleges.	(b) Authority of the Attorney General to institute or intervene in a legal action to desegregate schools was broadened to permit the Attorney General to institute or intervene in civil actions whenever an individual complained that he was being denied access to or full and complete utilization of any facilities which were *operated, managed, controlled* or supported, directly or indirectly, by any State or political subdivision. This would have granted the Attorney General authority to institute "racial imbalance" suits and to interfere in such private facilities as chambers of commerce, utilities, and private schools.	(b) This authority was left unchanged. But the broad authority granted him to institute legal action in all cases where a person alleged a denial of access to or full and complete utilization of all facilities was transferred to title III and limited in scope as described in the analysis of title III.

The evolution of the civil rights bill from the Kennedy administration proposal to the bill ordered reported by the House Judiciary Committee—Con.

TITLE V—COMMUNITY RELATIONS SERVICE

Kennedy administration bill, H.R. 7152, June 20, 1963	Subcommittee bill reported to committee Oct. 2, 1963	Bill ordered reported by House Judiciary Committee, Oct. 29, 1963
(a) The Community Relations Service was authorized upon its own motion or upon invitation to provide assistance to communities and persons who were involved in racial disputes and unrest.	(a) Authority of the Director to appoint personnel was limited and the Service was placed in the Department of Commerce.	(a) The Service was eliminated on the theory that its function could be performed far better by personal emissaries of the President and also because of a reluctance to launch a new Federal bureaucracy whose concern would turn more toward protecting its own internal interests than in protecting the interests of those who are the objects of racial discrimination.

TITLE VI—CIVIL RIGHTS COMMISSION

(a) The Civil Rights Commission was extended for 4 years. (b) Granted the Commission added authority to serve as a national clearinghouse for information and to provide advice and technical assistance to Government agencies, communities, industries, organizations, and individuals in respect to all aspects of equal protection of the law whether associated with racial problems or not. (c) Not included.	(a) The Commission was made permanent as was provided for in the Republican bill of January. (b) No change. (c) Not included.	(a) Permanent status for the Commission was retained. (b) Authority to provide advice and technical assistance was eliminated because it was believed that this added authority went far afield of the true purposes of the Commission. (c) The Cramer Voting Fraud Amendment was added on the theory that an individual can be denied the right to vote as easily through fraud as through strict racial injustice.

TITLE VII—CUT OFF OF FEDERAL FINANCIAL ASSISTANCE

(a) Each Federal department or agency, administering a program of financial assistance pursuant to a grant, contract, loan, insurance, guarantee, or otherwise was granted discretionary authority to cut off such assistance upon a finding of racial discrimination. (b) Not included. (c) Not included.	(a) Coverage remained the same except that the cut off of assistance would have been mandatory. (b) The Attorney General was given authority to institute civil actions to compel desegregation in any instance where Federal funds were being extended to States or political subdivisions. (c) A State or political subdivision was given the authority to obtain judicial review if funds were cut-off.	(a) Coverage was reduced to grant, contract and loan programs. Programs of insurance, guarantee, or otherwise were eliminated. (b) Authority of the Attorney General to institute civil actions was eliminated. (c) Remained unchanged.

TITLE VIII—EQUAL EMPLOYMENT OPPORTUNITY

(a) The President's Commission on Equal Employment Opportunity involving Government contracts was given statutory authority.	(a) There was substituted the broad FEPC title which would have created an NLRB-type Commission to investigate and hear all charges of discrimination in employment agencies. The Commission would have been authorized to hold formal hearings and to issue judicially enforceable orders. A defendant would have been restricted to limited review in an appellate court.	(a) The Commission was limited to investigatory and conciliatory functions. If the Commission wishes to compel action it must institute a civil suit in a Federal district court where the businessman or labor union will be entitled to a trial de novo and in which he can only be found liable if the charges against him are supported by a preponderance of the evidence.

TITLE IX—REGISTRATION AND VOTING STATISTICS

(a) Not included.	(a) Bureau of Census was instructed to conduct nationwide compilation of registration and voting statistics for the purpose of counting persons of voting age in every State by race, color, and national origin who are registered to vote and who have actually voted since Jan. 1, 1960.	(a) Remained in bill but limited to those areas where the Civil Rights Commission requires the necessary information.

TITLE X—PROCEDURE AFTER REMAND OF CIVIL RIGHTS CASES

(a) Not included.	(a) The remand of any civil rights cases to a State court by a Federal court after the case had been removed to the Federal court shall be reviewable by appeal.	(a) Remained in bill.

Note: This breakdown of the various versions of the bill was prepared by Rep. George Meader (R., Michigan) and introduced into the record when he testified before the Rules Committee on January 21, 1964. Mr. Meader includes in this summary of the three versions of the bill some of his own interpretations. This breakdown should therefore be read with caution.

FOOTNOTES

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