Senate Approves 1964 Civil Rights Act, 73-77

The Senate leadership had decided in 1963 to await the House-passed bill, and to prevent it from being referred to the Judiciary Committee, which had never willingly reported a civil rights bill. Other Senate committees had already reported bills providing equal access to public accommodations and to jobs, but these were set aside in favor of the House bill. (See box p. 53)

Problems Facing the Leadership. In addition to avoiding delay or inaction by the Judiciary Committee, Senate leaders hoped to pass a bill that differed so little from the House-passed measure that the House would approve it without a conference. If there were a conference, another filibuster over the conference report was possible.

Southerners, led by Sen. Richard B. Russell (D Ga.), were expected to wage a lengthy filibuster on the bill, probably after it was formally before the Senate, although a fight was also expected on the question of bypassing the Committee. The Senate Democratic leaders were faced with the task of breaking, or wearing down, the filibuster without compromising important sections of the bill. House Republican leaders had warned that they would reject the bill if it were gutted by the Senate, and Negro groups were warning that the civil rights movement would take to the streets again if the Senate did not approve a strong bill.

Yet the Senate had never voted cloture on a civil rights bill (see box p. 65) and key Senate Republicans, including Minority Leader Everett McKinley Dirksen (R Ill.), had indicated that the House bill was too "strong" for them. In particular, Dirksen felt that the public accommodations provision should be voluntary. Other Republicans were opposed to the equal employment opportunity section. This made the leadership's job difficult because substantial Republican support was essential to end the filibuster, either by imposing cloture or by forming a solid consensus that would influence Southerners to give way. Only by having in hand the votes of two-thirds of the Senate (67 Senators) could the civil rights leaders cut off, or threaten to cut off, the filibuster.

The traditional holdouts on cloture votes had been, in addition to an 18-member Southern bloc, a group of about 24 Northern, Western and border-state Democrats and Republicans, mainly from small states, and states with no civil rights problems. To end the filibuster, a sufficient number of these had to be won over to the cause of cloture -- either through a new commitment to the cause of civil rights, or through displeasure at the length of the filibuster. The strategy evolved was in two parts: to work inside the Senate through Dirksen, and on the outside through the church groups which joined the civil rights movement in full force for the first time in 1963 and who provided the only possible civil rights constituency for most of the uncommitted Senators.

Floor Leaders. Majority Whip Hubert H. Humphrey (D Minn.) was tapped by President Johnson to manage the bill in the Senate. Humphrey had a long record of work for the civil rights cause and had developed a reputation as an able floor leader. He determined from the outset to keep in touch with the church groups and with Dirksen. Dirksen was the likely conduit to the uncommitted Republicans, both because of his position as GOP leader and because his record put him between the liberal and conservative wings of his party.

Humphrey's Republican counterpart in backing the bill was Minority Whip Thomas H. Kuchel (R Calif.). In addition, a number of other Democrats and Republicans were named "floor captains," in charge of various titles of the bill. One Republican, Sen. Norris Cotton (N.H.), later removed himself from a role as a floor captain. Humphrey had hoped to spread the commitment to passage of the bill by having a number of people responsible for it.

Before the debate began, Majority Leader Mike Mansfield (D Mont.) let it be known that the Senate would meet in lengthy sessions and on Saturdays, in order to wear down the filibuster, but no around-the-clock sessions would be held. (Then-Majority Leader Lyndon B. Johnson employed around-the-clock sessions to try to break a 1960 civil rights filibuster.)

In a Feb. 17 Senate speech, Mansfield spelled out his current position on tactics against a filibuster on the civil rights bill: "The Majority Leader has no suave parliamentary tactics by which to bring legislation to a vote. He is no expert on the rules and he is fully aware that there are many tactics which can forestall a vote. That such is the case was evident in the Telstar (communications satellite) debate in 1962, when the brilliant parliamentary tacticians in opposition to the measure tied up the Senate for weeks. A vote on the measure came not because of the parliamentary skill of the Majority Leader but because Senators -- two-thirds of this body -- were prepared to put aside their reluctances to end discussion, their understandable reluctance to apply the cloture rule of the Senate. It was no trick.... It was a preponderance of the Senate rising to its responsibilities irrespective of their feelings about the particular issue involved.

SENATE INTERCEPTS BILL

The Senate Feb. 26, by a roll-call vote of 54-37, voted to place HR 7152, the civil rights bill passed Feb. 10 by the House, directly on the Senate calendar rather than refer it to the Senate Judiciary Committee, headed by Sen. James O. Eastland (D Miss.). The effect of the vote was to bypass the Judiciary Committee, where Southerners could have bottled up the bill.

Senate debate on the bill was expected to begin early in March after action on a pending farm bill.

The Feb. 26 Senate vote came on a motion by Majority Leader Mansfield to table (reject) an appeal made by Sen. Russell against a ruling of the presiding officer overruling a point of order raised by Russell against placing the bill on the calendar.

After the "second reading" of HR 7152, Mansfield objected to referring it to committee. He based his objection on Senate Rule 14, paragraph 4, which provides that "...every bill...of the House of Representatives which shall have received a first and second reading without being referred to committee shall, if objection be made to further proceeding thereon, be placed on the calendar."

(Continued on p. 53)

Strategy Leading to Enactment of Rights Bill Analyzed

When President Kennedy sent his civil rights bill to Congress June 19, 1963, even its strongest supporters expected that parts of it would have to be watered down to overcome a Senate filibuster. Yet the Civil Rights Act, as signed into law, was a broader bill than Mr. Kennedy submitted.

Two factors were chiefly responsible for the strong 1964 law: the temper of the times and the successful legislative strategy.

In the 14 months between the catalytic Negro demonstrations in Birmingham, Ala., and the Senate's June 10 vote imposing cloture, an overriding consensus developed that a strong civil rights bill must be passed "because it is right," as Mr. Kennedy said. The House bill's controversial provisions on public accommodations, cutoff of federal funds where discrimination was practiced, and fair employment practices gradually became synonymous with a strong bill.

Legislative strategy focused on building an unshatterable coalition of Northern Democrats and Republicans. Partisan politics could at any point have wrecked the coalition. After passage of the bipartisan House bill, itself the fruit of close Democratic-Republican cooperation, the Administration undertook the painstaking negotiations with Sen. Dirksen over amendments that would produce overwhelming Republican support on the Senate floor. Dirksen was the pivotal man who made the difference between cloture and no cloture. Without cloture, the leadership would have had to make major concessions to win any bill at all.

Tactics. The essential factors in Senate approval of the House measure without major change were: the leadership of floor manager Humphrey, the cooperation of Dirksen and the strategic error of Richard B. Russell (D Ga.), leader of the Senate Southern bloc, in seeking unconditional surrender.

The keys to Humphrey's success were his organization, his patience and his good humor.

Throughout the three-month Senate debate, the liberals were organized as never before. Humphrey, working closely with Minority Whip Kuchel, worked out a system for keeping a quorum at hand at all times, and floor captains to watch and respond to Southern speakers. The system slipped up only once or twice. A tight check was kept on Senators' speaking dates and essential trips out of Washington. Duty rosters were drawn up. A newsletter was circulated to keep the civil rights forces informed.

Democratic and Republican captains were appointed to defend and discuss each title of the bill. The staffs of these Senators met every evening. Every morning, the staff, the Senators and representatives of the Justice Department met. Twice a week, representatives of outside civil rights groups attended the meetings. All of this contact gave backbone to the civil rights effort. It kept the liberals together, and strengthened their unwillingness to give in.

Humphrey was anxious that the debate not become bitter or contentious. He resisted suggestions that he be tougher on the filibusterers and keep the Senate in longer sessions. He went out of his way never to question the motives of the Southerners and to accommodate them when he could. He even had the newsletters toned down in their references to the Southern bloc. He did all this in the belief that the less bitterness there was and the fewer tempers lost, the more likely a better bill.

For a time Dirksen worked over amendments that would have pulled teeth from the accommodations and employment titles of the bill. Humphrey warned civil rights groups not to castigate the Minority Leader. Eventually, in negotiations among the liberal bloc, Justice Department officials and Dirksen, a compromise was worked out that allowed the Attorney General to initiate court action against patterns or practices of discrimination in the two fields.

This was the essence of the leadership-supported compromise version of HR 7152 that led to the successful cloture vote.

Johnson Role. During all of this, President Johnson played a muted role. He exhorted the leaders, when they breakfasted with him each Tuesday, to keep up the fight. He was in frequent telephone contact with Humphrey. But he left the detailed negotiating to the Senators and the Justice Department. Whatever part he played in lining up the last votes needed for cloture remained a closely guarded secret.

It was generally believed that Mr. Johnson's role was unusually muted for two reasons: Southerners' support was vital to the part of his program which would come to a vote in the summer, and to his reelection, so he wanted to antagonize them as little as possible; and there was never a crisis which needed the full powers of the President for solution.

Russell Strategy. The strategy of the Southerners had much to do with the fact that the bill was not in deeper trouble. Russell's strategy was to play for time and prevent cloture, and he lost. His loss was total. Northern sources said that had Russell come to them at the outset of the filibuster and tried to make a bargain, it is likely that he could have extracted some teeth from the bill. It is also likely that had Southerners allowed more voting on amendments before cloture, especially before Dirksen and other Republicans were committed to the bill, several amendments would have carried. "They could have caused us fits," one Northern source said.

Once cloture was invoked, it was too late for Southerners to have an impact on the bill. Amendments were voted down in swift succession.

Russell apparently hoped that time would be on his side. Perhaps the liberals would fall to fighting among themselves. Perhaps they would anger Dirksen, or Dirksen would alienate them with his amendments. Perhaps Alabama segregationist Gov. George Wallace's strong showing in some primaries would raise the fear of a "white backlash."

Although Russell was the acknowledged leader of the Southern bloc, he cannot be charged with total responsibility for its strategy. Some of the Southerners were more intransigent than others, and it took the objection of only one Senator to prevent voting before cloture was imposed.

Russell based his point of order against Mansfield's procedure on Rule 25, which defines the jurisdiction of Senate committees and says "all proposed legislation" on civil liberties "shall be referred" to the Judiciary Committee. Sen. Lee Metcalf (D Mont.), in the chair, overruled Russell's point of order, citing as precedent a June 20, 1957, vote of the Senate by which it rejected, 39-45, a similar Russell point of order against placing the Civil Rights Act of 1957 directly on the calendar.

Immediately after the vote rejecting Russell's point of order, Mansfield asked for unanimous consent to refer the bill to the Judiciary Committee with instructions that it report the bill back to the Senate by March 4 "without recommendation or amendment." Mansfield had said that the Senate did not plan to consider civil rights in the next few days anyway, but to take up other bills. Sen. Jacob K. Javits (R N.Y.), however, objected to Mansfield's unanimous consent request, thus blocking it. When Mansfield renewed his request the following day, it was blocked by Eastland, who said "no self-respecting committee should consider a bill under such a procedure." He said Mansfield would "handcuff" his committee by barring any amendments or recommendations.

Mansfield's request for a limited number of days of Judiciary Committee hearings was designed to meet the objections of Minority Leader Dirksen, Wayne Morse (D Ore.) and other Senators, who felt there should be at least some hearings on the House-passed measure. They pointed out that in 1963 the Senate Judiciary Committee had held hearings on the Administration civil rights bill, but called only one witness, Attorney General Robert F. Kennedy. (Hearings, however, were held on the public accommodations and fair employment bills reported by other committees. See below)

President Johnson Feb. 29 responded to charges by some Senate Republicans that he was prepared to "make a deal" with Southerners in order to get the bill through. Mr. Johnson said at his press conference that "the civil rights bill which passed the House is the bill that this Administration recommends. I am in favor of it passing the Senate exactly in its present form."

SENATE OPENS DEBATE

The Senate March 9 began debate on HR 7152, the House-passed bill. Technically, debate was on a motion by Mansfield to take up the bill for consideration. Such a motion is non-debatable if made during the "morning hour," which must end at 2:00 p.m., but Russell forced Mansfield to delay his motion until the morning hour was concluded. Russell's tactic was to demand a reading of the Journal and then to speak for the rest of the hour on an amendment to the Journal. After the morning hour Mansfield's motion was subject to unlimited debate.

Accommodations, Equal Employment Bills Reported

The Senate Commerce Committee Feb.10 reported the public accommodations bill (S 1732 -- S Rept 872) it had approved on Oct. 8, 1963. S 1732 forbade discrimination in essentially the same accommodations enumerated in Title II of the House bill but was based exclusively on the commerce clause, with no reference to the 14th Amendment. The bill also barred discrimination in labor unions or professional, business or trade associations where membership affects an individual's ability to deal in interstate commerce. Power given the Attorney General to instigate suits and the bill's enforcement procedures, including jury trials in criminal contempt cases, paralleled House provisions.

Individual views were filed by Sens. A.S. Mike Monroney (D Okla.), who said the bill should be limited to establishments catering primarily to interstate trade, Strom Thurmond (D S.C.), who opposed any federal action in the field, Norris Cotton (R N.H.), who favored a more limited bill based exclusively on the 14th Amendment, and Winston L. Prouty (R Vt.), who insisted that the 13th and 14th Amendments could and should be used as the basis of comprehensive public accommodations legislation. "Man is not an article of commerce" and should not be treated so by the legislation, Prouty said.

EQUAL EMPLOYMENT OPPORTUNITY

The Senate Labor and Public Welfare Committee Feb. 5 reported an amended bill (S 1937 -- S Rept 867) to promote equal opportunities in employment without regard to race, color, religion or national origin and to establish an independent Equal Employment Opportunity Board to adjudicate complaints of discrimination. The report said the bill, which was broader than Title VII of the House bill, was designed to "reach into all institutionalized areas and recesses of discrimination including the so-called built-in practices preserved through form, habit or inertia."

The bill would have applied to all employers with eight or more employees engaged in businesses "affecting" interstate commerce, and all labor unions. It would have covered 40 million employees and 700,000 employers. Religious organizations and U.S. employers hiring foreign citizens abroad were excepted. The Act was to be administered by an Administrator, within the Labor Department, who could investigate all covered institutions and prosecute probable violations before an independent adjudicative body -- the Equal Employment Opportunity Board. Any Board decision would be subject to review in a U.S. court of appeals.

The House-passed bill applied only to employers or labor unions with 100 employees or more in the first year, extending after the third year to those with 25 employees or members (29 million employees and 259,000 employers). It established an independent Equal Employment Opportunity Commission which had powers only to investigate complaints and attempt conciliation. For enforcement, the EEOC had to bring suit in court.

Minority Views. In separate views, Committee Chairman Lister Hill (D Ala.) and Sens. Barry Goldwater (R Ariz.) and John G. Tower (R Texas) challenged the constitutionality of S 1937 and charged that it would lead to a quota system for employing minorities.

The Southerners' second tactic was to drum up support for a motion to be made by Morse to send the bill to the Judiciary Committee with instructions that it be reported back in 10 days.

Morse, a civil rights supporter, March 10 argued that there would be much litigation arising out of the new civil rights law and that Judiciary Committee hearings would add to its legislative history. Majority Whip Hubert H. Humphrey (D Minn.), floor manager of the bill, March 11 said that between 1953 and 1963 there were 121 civil rights bills sent to the Committee, and that only one had ever been reported, and that that action was taken under instructions by the Senate. Humphrey pointed out that the Committee had held only 11 days of hearings on the bill submitted by President Kennedy in 1963, heard only one witness, Attorney General Robert F. Kennedy, who was questioned for nine days by Sen. Sam J. Ervin Jr. (D N.C.), and then it reported no bill. Minority Leader Everett McKinley Dirksen (R Ill.) said he was given no opportunity to question Kennedy at the hearings.

Organization of Forces. Both sides were organized for a long debate which Mansfield said might go on "for months." Southerners divided into three platoons, under Sens. Allen J. Ellender (D La.), John Stennis (D Miss.) and Lister Hill (D Ala.). Each group had six members, except for Hill's, which also had the lone Republican in the 19-man Southern bloc, Sen. John Tower (R Texas). While one team held the floor, the others could be absent.

Northern Democrats, meanwhile, set up an alerting system so that a quorum could be quickly rounded up when demanded by Southerners. Because of their smaller number, Republicans did not set up the same type of formal warning system. Humphrey and Kuchel, floor manager for the Republicans, March 10 distributed the first issue of a daily newsletter for civil rights forces. The newsletter stressed the importance of answering quorum calls. The alerting system faltered, however, March 11, when 63 minutes were taken to round up a quorum during the dinner hour.

At the opening of the debate Humphrey said, "Everything is going to be talked over with the Republicans -- strategy, tactics and timing." "We have obligations not only to the Republicans in the Senate," he said, "but also to those of both parties in the House who were so faithful and effective" in passing HR 7152.

Humphrey March 3 had said that he would resist all changes in the House bill, which he said took a "good, sound, middle course." Humphrey also said that around-the-clock sessions were ruled out, and that Administration forces hoped to end the filibuster by wearing out its participants rather than trying for cloture. This strategy was later changed when it became clear that the filibusterers would not give in of their own accord. At a March 8 news conference, President Johnson said, "I think we passed a good civil rights bill in the House. I hope that same bill will be passed in the Senate."

Dirksen, however, let it be known that he was working on amendments to the public accommodations, public funds, and equal employment opportunity sections. Humphrey kept in touch with Dirksen, and on March 10 Humphrey said that backers of the Administration bill and Dirksen were "not too far apart" on the public accommodations section.

Between March 9 and 26, the Senate continued to debate the Mansfield motion. Southerners argued against the bill, and urged that the Senate refer the bill to the Judiciary Committee for 10 days.

Debating Title I, the voting rights provision, Sen. Allen J. Ellender (D La.) March 11 acknowledged that Negroes were prevented from registering to vote in Southern counties where they heavily outnumbered whites. "The few whites in these counties would be scared to death to have Negroes in charge of public office without qualification," he said.

Humphrey March 17 attacked, as containing "outright lies," an advertisement placed in many newspapers by the Coordinating Committee for Fundamental American Freedoms, Inc. The ad called the bill a "$100-Billion Blackjack" and said that "the American people are being set up for a blow that would destroy their right to determine for themselves how they would live." It said the bill would "abolish the rule of law" and make the Attorney General a "dictator." Humphrey said the Committee in 1963 received $131,201 in contributions, of which $120,000 had come from the Mississippi State Sovereignty Commission, an agency of the state. Other Northern Senators charged that this was a misuse of Mississippi taxpayers' funds.

Sen. John Stennis (D Miss.) defended the ad, which he said was "bottomed" on the (Southern) minority report of the House Judiciary Committee.

In a related development, a group of more than 100 members of the United Church of Christ came to Washington March 17 to visit with Senators and urge their support of the bill.

COMMITTEE CONSIDERATION VOTED DOWN

The Senate March 26, by a roll-call vote of 67-17, voted to formally take up the civil rights bill. The vote came after 16 days of debate on the March 9 Mansfield motion to take up the bill. The Senate then voted, on a 50-34 roll call, to table (reject) a motion by Morse that HR 7152 be referred to the Judiciary Committee until April 8.

Morse, a supporter of civil rights legislation, said that the debate thus far had shown confusion on many points of the bill and that there were many undefined terms. He said the courts would need a majority and minority report to help them interpret Congressional intent. He argued that 9 of the 15 Judiciary Committee members presumably were civil rights supporters, and that they should be able to control the proceedings, despite the opposition of Chairman James O. Eastland (D Miss.).

Morse said the Democratic leadership opposed his motion because "they want us to rubberstamp the House bill." He declared that the House in 1957 and 1960 had been willing to accept Senate civil rights amendments and would do so again.

Sen. Kenneth B. Keating (R N.Y.), a member of the Judiciary Committee, said that Morse was "unrealistic about what is going to happen in committee." Jacob K. Javits (R N.Y.) pointed out that in 1960, when a civil rights bill was referred with instructions that the Committee report it within five days, the group filed a one-paragraph report with no recommendations. (The Committee did, however, make a number of amendments, most of them technical, but a few substantive. The House Rules Committee allowed final House consideration of the Senate-amended bill without much delay.)

In arguing for tabling Morse's motion, Mansfield pointed out that if the referral motion carried, under the

rules the bill would not be the pending business of the Senate when it was reported. It would be placed on the calendar, would have to lie over one legislative day, a motion would have to be made to call it up, and this would be debatable. "How many days would we have to repeat the ordeal of the last two-and-a-half weeks?" he asked. The Morse motion was "an invitation to unconscionable delay."

Supporting Morse's motion, Dirksen, also a Judiciary Committee member, listed a number of technical and substantive objections that he had to the bill and said that it needed "the most careful scrutiny." "If this bill is as important as the zealots say," Dirksen said, "that is all the more reason that it should be referred." "This bill is going to remake the social pattern of this country...nobody should be fooled on that score," he said.

Goldwater said Senators should remember their obligations "to right and justice and equity, yes. But never at the price of the American constitutional system."

Thomas J. Dodd (D Conn.), a member of the Judiciary Committee, arguing against Morse's motion, said that altogether six committees had held 83 days of hearings on the bill, with 280 witnesses, compiling 6,438 pages of testimony. Several Senators argued that sufficient legislative history would be made on the Senate floor.

Clarence Mitchell, Washington representative for the National Assn. for the Advancement of Colored People, had wired Morse March 19 that "if there is any one thing that strains the faith of citizens, it is a persistent effort to give an aura of respectability to committee hearings on civil rights" run by Sen. Eastland. "To the man in the street this is the equivalent of the stacked deck, the hanging judge and the executioner who enjoys his work," Mitchell said.

Following the two roll calls, Sen. Richard B. Russell (D Ga.), leader of the Southern bloc, said, "We lost a skirmish...in the battle for constitutional government. Now we begin to fight the war." Russell's comments signalled the beginning of a formal Southern filibuster to begin Monday, March 30.

Also following the two roll calls, the Rev. Martin Luther King, president of the Southern Christian Leadership Conference, held a press conference in the Capitol building. King said that if the filibuster lasted more than one month, beyond May 1, his group would "engage in a direct action program here in Washington and around the country." He also said Negro demonstrations would continue even if the bill passed, because then its enforcement and compliance must be tested.

In a related development, President Johnson, speaking to a group of Southern Baptists March 25, said that "no group of Christians has a greater responsibility in civil rights than Southern Baptists.... Help us to pass this civil rights bill and establish a foundation upon which we can build a house of freedom where all men can dwell."

FORMAL DEBATE ON THE BILL

Formal debate on the civil rights bill was initiated March 30 by Humphrey, followed by Kuchel.

Opening the debate, Humphrey said: "We know that until racial justice and freedom (are) a reality in this land, our Union will remain profoundly imperfect. That is why we are debating this bill. That is why the bill must become law." Humphrey made a title-by-title explanation and defense of the bill, interspersed with general appeals for the legislation.

Like Humphrey, Kuchel said that the bill was a "modest" one.

Title VI. In his discussion of Title VI, on withdrawal of federal funds from programs administered with discrimination against Negroes, Humphrey said that its purpose was "to end discrimination and not to cut off federal funds." He emphasized that it would not affect the existing executive order covering discrimination in federally sponsored housing, which exempts individually owned homes, nor cover FHA and GI guaranteed housing. He also pointed out that it would not cover farm programs in which the individual was the recipient of federal aid. He said it was mainly aimed at "impacted areas" school programs, federally aided state employment services, and jobs on road-building programs.

Fair Employment. Humphrey also dealt at length with Title VII, establishing an Equal Employment Opportunity Commission to try to break racial discrimination in the employment practices of unions and businesses with over 25 workers. Not only Southerners, but also Dirksen had objections to parts or all of the provisions. Dirksen, whose home state already had a fair employment practices law, expressed concern that the Commission's investigatory powers were too broad, the record-keeping requirements imposed on businesses might be burdensome, and that there would be conflicts with the 25 state fair employment practices laws. Southern opponents charged that it would interfere with a private businessman's right to hire and fire and promote as he wished, that it would wreck seniority systems and set up quota systems, and that it would make small businessmen subject to federal harassment.

Humphrey's arguments: the Commission must take its cases to the courts, therefore judicial restraints and guarantees would be imposed; the courts would have no power to direct anyone to hire, fire or promote anyone on any grounds other than that he had been discriminated against because of his race, religion, sex or national origin; no quota system could be set up; the burden of proof would be on the Commission to prove that the other party had in fact discriminated, a difficult thing to prove; state laws are of unequal coverage -- where they are as inclusive as the federal law, they could be used instead; the investigatory power, which is contingent on written complaints, is narrower than that of other federal agencies, such as the Federal Trade Commission; record requirements are a necessary concomitant of federal statutes, most of the records to be required are already kept, and a business with complaints about record requirements may request a public hearing before the Commission.

The bipartisan leadership group in charge of the bill was embarrassed Saturday, April 4, when it was unable to produce a quorum (51 Senators) to conduct Senate business. A motion subsequently offered by Majority Leader Mike Mansfield (D Mont.) to recess the Senate until April 6 was accepted on a 27-14 roll call. Not voting were 59 Senators (R 17, ND 25, SD 17), including 21 up for reelection in 1964 and GOP Presidential hopeful Barry Goldwater (Ariz.).

Mansfield said he had sent telegrams to all Democratic Senators requesting their presence April 4 and bill manager Hubert H. Humphrey (D Minn.) had telephoned to ask Senators to attend. He said the Senate

was "face to face with a travesty on the legislative process."

Five quorum calls April 6 averaged 19 minutes. This led Humphrey to announce that calls would not be completed in less than 20 minutes, to permit Senators to reach the chamber in time to be listed.

Humphrey April 7 inserted in the Congressional Record a defense of the constitutionality of HR 7152's Title II (public accommodations) and Title VII (equal employment) by 22 lawyers, including former Attorneys General Francis Biddle, Herbert Brownell and William P. Rogers, and former American Bar Assn. presidents David F. Maxwell, John D. Randall, Charles S. Rhyne and Whitney North Seymour.

Proponents continued to present their case for enactment of the bill through April 10, the second week of formal debate. A few opposition speeches by Southerners were mixed into the debate, and the Southerners continued their attack in the third week, April 13-18.

Dirksen Amendments. Hoping for a "consensus" of Republican Senators on revising the employment title, Dirksen April 7 presented a series of amendments to the party's Policy Committee and the next day discussed them at a meeting of all GOP Senators. Two amendments provoked bitter criticism by liberals who said they might cripple the proposed Equal Employment Opportunity Commission. The amendments would bar the Commission from seeking court orders to enjoin discriminatory employment practices and would permit state fair employment agencies, at their request, to handle complaints of discrimination. Critics feared Southern states might set up "paper" FEPCs to thwart the federal Commission.

Dirksen indicated his concern at the scope of Title VII Feb. 26, in arguing for further Judiciary Committee hearings. He said President Kennedy had promised him in 1963 there would be no fair employment practice title in the bill the Administration submitted "and he kept his word" (though Mr. Kennedy did endorse a separate House FEPC bill). Dirksen, noting that "28 states...have some sort of civil rights group or anti-discrimination body," expressed fears of conflicting or overlapping actions by the federal and state commissions. He criticized as undefined the language in the section forbidding the federal commission to bring action where a state or local FEPC has "effective power" to halt discriminatory practices and, in the federal commission's opinion, "is effectively exercising such power."

Deferring the two most controversial proposals, Dirksen April 16 formally offered 10 Title VII amendments to the Senate. The most important of these would forbid interested organizations from bringing charges of unlawful employment practices; only an aggrieved person or a member of the Employment Commission could bring the charges. Another amendment would exempt from the section permitting the EEOC to require full records on employment practices all employers in states that have fair employment practice laws and all Government contractors subject to the 1961 executive order on fair employment.

Warning Against Violent Demonstrations. The civil rights floor leaders, Sens. Humphrey and Kuchel, April 15 issued a statement warning that "illegal disturbances and demonstrations which lead to violence or injury" would hamper efforts to enact the civil rights bill.

"Civil wrongs do not bring civil rights," they said, and the cause of civil rights is not helped by "unruly demonstrations and protests that bring hardships and unnecessary inconvenience to others."

The Senators listed no specific incidents but apparently had in mind the death of a minister during a Cleveland, Ohio, demonstration and plans to stall hundreds of cars on highways leading to the New York World's Fair. The proposed "stall-in" was suggested by the Brooklyn chapter of the Congress of Racial Equality for the opening day of the Fair, April 22. It was denounced by New York's Republican Senators, Kenneth B. Keating and Jacob K. Javits, April 14 as irresponsible and potentially damaging to the civil rights cause. Leaders of six national Negro organizations, including James Farmer, CORE director, John Lewis of the Student Non-Violent Coordinating Committee and Roy Wilkins of the NAACP, sharply criticized the proposal April 16.

The minister in the Cleveland incident was the Rev. Bruce William Klunder, a white member of a group protesting construction of a school they said would continue de facto segregation. He was killed April 7 by a bulldozer which backed over him as it moved away from demonstrators lying in its path.

McCulloch Rebuttal. Rep. William M. McCulloch (R Ohio) April 23 issued a statement defending the civil rights bill in rebuttal to a newspaper advertisement sponsored by the Coordinating Committee for Fundamental American Freedoms. Excerpts from the statement follow:

"The Bill does not permit the Federal Government to transfer students among schools to create "racial balancing"...to force religious schools to hire teachers they do not want...to interfere with the course content or day-to-day operations of public or private schools. The Bill does authorize the Attorney General to bring civil suits to desegregate public schools where individual citizens are too poor or are afraid to bring their own suits.

"The Bill does not permit the Federal Government to tell any home or apartment owner or real estate operator to whom he must sell, rent, lease, or otherwise use his real estate.

"The Bill neither authorizes nor permits the Federal Government to interfere in a state's right to fix voter qualifications. The Bill does provide limited procedural safeguards to assure that citizens are not denied the right to vote because of their race, color, religion or national origin.

"The Bill does not permit the Federal Government to tell general retail establishments, bars, private clubs, country clubs or service establishments whom they must serve...to interfere with or destroy the private property rights of individual businessmen...to tell a lawyer, doctor, banker or other professional man whom he must serve. All the Bill does is to require that the owners of places of lodging (having 5 or more rooms for rent), eating establishments, gasoline stations and places of entertainment are to serve all customers who are well-behaved and who are able to pay. This requirement is weaker than the public accommodation laws of 32 states.

"The majority of the states have enacted legislation which is as strong or stronger than the major provisions of the Civil Rights Bill. Nothing in the Bill interferes with the effective enforcement of these state laws.... Where the states do so, the Federal Government will have no cause to enforce the Federal Civil Rights Law in those states. Thus, for the Americans who do not discriminate against their fellow citizens because of race, color or religion, the Federal Civil Rights Bill will have no effect on their daily lives."

JURY TRIAL AMENDMENTS SUBMITTED

In the fourth week of formal debate on the civil rights bill, April 20-25, the Senate neared its first vote on amendments to the bill. Dirksen April 21 submitted his long-worked-over amendment to prohibit the proposed Equal Employment Opportunity Commission from seeking court action to ban unfair employment practices. Sen. Herman E. Talmadge (D Ga.) April 21 made the "pending business" an amendment of his that would entitle defendants in criminal contempt cases to jury trials.

In the fifth week, April 27-May 2, debate centered on competing proposals to guarantee jury trials in some or all criminal contempt cases, and took place in an atmosphere of growing impatience over Southerners' continuing refusal to let any amendments come to a vote.

An amendment offered April 24 by Mansfield and Dirksen to limit the sentence for criminal contempt under any section of the bill to 30 days in prison or a $300 fine unless the defendant had a jury trial had become the "pending business." It was offered as a substitute for the Talmadge amendment to entitle defendants in any criminal contempt case, not just those arising under the bill, to a trial by jury. The only exception under the Talmadge amendment would be contempt in the presence of the court.

Mansfield and Dirksen argued that their amendment was in line with the recent Supreme Court decision in the Barnett case which held that the defendant was not necessarily entitled to a jury trial in a criminal contempt case, and also with a footnote in the decision indicating that this was only true if the penalties were limited to those imposed for "petty offenses." A series of prior Supreme Court decisions had held that the constitutional right to a jury trial did not cover contempt cases. (The Court April 6, in a 5-4 decision, returned to the 5th Circuit Court of Appeals the criminal contempt case of former Miss. Gov. Ross R. Barnett and then Lt. Gov. Paul B. Johnson Jr., who had claimed they were entitled to a jury trial.)

As passed by the House, HR 7152 contained a limited jury trial right in only two of the five titles out of which contempt cases might arise. Titles I (voting rights) and II (public accommodations) guaranteed the jury trial right written into the 1957 Civil Rights Act. This limited punishment to $300 or 45 days in prison if a judge tried a contempt case without a jury. It also set a maximum sentence -- with or without jury trial -- of $1,000 or six months in jail. The Mansfield-Dirksen amendment retained this maximum. It would amend the House provision for Titles I and II, lowering the possible jail term to 30 days rather than 45, and would also cover Title III (suits to desegregate public facilities and permitting the Government to enter pending civil rights suits), IV (school desegregation) and VII (equal employment opportunities). Under the amendment, there was no apparent bar to a combined sentence -- e.g., as much as 29 days in jail plus a $299 fine -- without a jury trial.

The 1957 jury trial guarantee arose out of a bitter, two-week Senate debate which resulted in a provision for jury trials in voting rights cases, without limitation. (See p. 27)

There had been no criminal contempt cases under the 1957 or 1960 Civil Rights Acts. There had been only one civil contempt case.

Southerners argued that the Mansfield-Dirksen amendment contained an arbitrary cutoff that guaranteed only partial constitutional rights. Sen. Russell April 25 told reporters that the amendment was "just a mustard plaster on a cancer."

Mansfield April 24 said that despite the "cherished and revered" jury concept, "willful and contemptuous acts of disobedience of court orders historically have been treated as attacks on the basic structure of the judiciary, and have been punished by the courts, without the assistance of a jury." Talmadge April 27 argued that criminal contempt cases had led to abuses in which defendants had been sentenced to jail for lengthy periods without jury trials. As in 1957, the unspoken but underlying fear of Northerners was that Southern juries would be unlikely to convict in civil rights cases, and therefore an unconditional jury trial right would vitiate the civil rights guaranteed in the bill.

With Southerners still giving no indication of allowing any votes on the bill, Dirksen April 29 announced that if they did not allow a vote on the jury trial amendment shortly, he and Mansfield would file a petition for cloture on debate on the amendment. However, Southern intransigence appeared to weaken later in the day. Dirksen told reporters after a leadership meeting with Russell, "I think we'll probably be voting on the amendment without cloture by Wednesday" (May 6). (Even if a cloture motion on the amendment were successful, the rest of the bill would be open for unlimited debate. Humphrey estimated that supporters were still about four votes shy of the necessary two-thirds for cloture on the entire bill.)

Sen. George D. Aiken (R Vt.) April 27 warned that "President Johnson must know that continued insistence on the Senate passing the bill identically as it came from the House will likely result in killing the legislation." Humphrey April 30 said he thought the President would sign a bill with some amendments in it. In a related development, Attorney General Robert F. Kennedy April 28 met with Senate Democratic leaders and later said that "generally" Dirksen's 11 amendments to the fair employment practices section "are changes we could accept" with some refinements.

Rights Convocation. The National Interreligious Convocation on Civil Rights April 28 met at the Georgetown University, Washington, D.C. The conference was called to demonstrate that support for the civil rights bill embraced all religious faiths. Protestant, Catholic, Eastern Orthodox and Jewish leaders stressed that civil rights was a moral issue and urged prayers for passage of the bill. President Johnson April 29 told the religious leaders: "It is your job -- as men of God -- to reawaken the conscience of America...to direct the immense power of religion in shaping the conduct and thoughts of men toward their brothers in a manner consistent with compassion and love."

JURY TRIAL VOTED ON

The Senate May 6 took its first votes on amendments to the civil rights bill. In five roll-call votes, the bipartisan civil rights leadership beat off two alternatives to their own limited jury trial amendment. The votes came in the sixth week that the bill was formally before the Senate -- the ninth since it was first brought up.

Voting on the jury trial amendments was permitted through an informal agreement between the bipartisan leadership and the Southern bloc. However, several jury trial amendments remained pending when the Senate recessed late May 6, and Russell let it be known that further

votes would not be allowed until the following week because several Southern Senators were to accompany President Johnson on his May 7-8 trip to inspect poverty areas. Until the Senate voted cloture, the Southerners were free to resume their filibuster at any time.

In the meantime, the bipartisan leaders and Justice Department officials, including Attorney General Kennedy, May 5 began negotiations on Dirksen's proposed changes in the bill. By this time, Dirksen had worked up some 70 proposed changes.

The Senate took four roll-call votes in narrowly rejecting an amendment by Sen. Thruston B. Morton (R Ky.) to permit jury trials in criminal contempt proceedings arising under any provision of the bill. Morton's amendment would have modified the Talmadge amendment to permit jury trials in any criminal contempt case. The Mansfield-Dirksen amendment submitted April 24 remained to be voted on after the weekend delay.

The Senate first rejected the Morton amendment on a 45-45 tie vote. It then rejected, on a 44-47 roll call, a usually routine motion to table (prevent) a motion to reconsider the vote on the amendment -- a procedure used to nail down a vote. It then voted 46-45 to reconsider the first vote on the Morton amendment and finally, on a 45-46 roll-call vote, rejected the amendment again.

In the voting, the leadership was supported in its position against the Morton amendment by a majority of Northern and Western Democrats and 10 or 11 of the 30 Republicans voting. The Morton amendment was supported by a majority of Southern Democrats and Republicans and 6 to 7 Northern Democrats. (The Morton amendment was almost identical to another amendment also submitted by Talmadge but not yet called up.) To accommodate absent Senators, Mansfield, Dirksen and Humphrey, though present on the Senate floor, withheld their votes in order to form pairs with absentees.

Dirksen urged that the amendment be rejected because the House had opposed a similar Senate amendment in 1957, and because he did "not want to see the courts' contempt weapon diluted."

The Senate next rejected, on a 19-74 roll-call vote, an amendment by John Sherman Cooper (R Ky.) to grant an automatic jury trial right under the sections of the bill which covered public accommodations (Title II), Government entry into pending civil rights cases (Title III), cutoff of federal funds (Title VI) and fair employment practices (Title VII). In the other sections where contempt trials might arise, the judge would have discretion on whether or not to use a jury. This would have covered voting rights (Title I), access to public facilities (section 301 of Title III) and school desegregation (Title IV). There would have been no limit on the sentences under the amendment.

Cooper said he made the distinction in the sections on two grounds. The titles under which he would deny automatic jury trials, he said, covered established constitutional rights and the defendants were likely to be public officials. The others, he said, covered new rights to be established by legislative fiat and the defendants were likely to be private persons.

LEADERS PRESENT COMPROMISE VERSION OF BILL

In the seventh week of formal debate, May 11-16, the major action took place off the Senate floor. A package of compromise amendments was worked out by the Democratic leaders, Dirksen and the Justice Department. The package was incorporated in a "clean bill" to be offered as a substitute for HR 7152.

Many of the amendments in the package were technical or clarifying. Only a small percentage of the 70-odd changes affected the original intent of the House-passed bill.

Effect on Cloture. The chief purpose of the amendments was to pick up the needed votes from conservative Republicans to produce the two-thirds majority to end the filibuster. But Bourke B. Hickenlooper (R Iowa), influential chairman of the Senate Republican Policy Committee, said that the amendments "don't go far enough to meet the real evils of this bill." Sen. Milward L. Simpson (R Wyo.) said "they've just warmed it over like hash to make it more palatable," but it was not more palatable to him.

Leaders of both parties indicated that there would be no cloture attempt until after the first week in June. This would allow about ten days of discussion of the compromise, a three-day Memorial Day recess, and the June 2 California primary to take place before cloture. There were indications that some supporters of Sen. Barry Goldwater's (R Ariz.) Presidential bid were willing to vote for cloture but did not want to embarrass Goldwater, an opponent of cloture, before the primary.

Reaction to Amendments. Republicans and Democrats held separate caucuses May 19 to consider the amendments. Southern Democrats attended the Democratic caucus but Sen. Russell told reporters before the caucus met that the new amendments would make the bill "more obnoxious" than before. Sen. John O. Pastore (D R.I.) said that "of course" Southerners found the compromise bill "more obnoxious, because now it is more likely to pass."

Sam J. Ervin Jr. (D N.C.) said the effect of the new bill was "to lessen the impact on Northern states and increase the impact on Southern states." The bill "puts the stamp of approval on de facto school segregation in the North" by denying courts power to order their desegregation, Ervin said. (The compromise contained a section strengthening House language declaring the bill was not to be used to overcome "racial imbalances" not caused by official segregation policies.)

Liberals of both parties were not particularly happy about the compromise, but indicated in party conferences that they would go along with it as the only way of shutting off the filibuster. The liberals currently also planned to offer amendments to the bill after cloture was voted.

While the compromise was being worked out, negotiators kept in touch with Rep. William M. McCulloch (R Ohio), ranking Judiciary Committee Republican, and one of the men most responsible for the House-passed bill. McCulloch had made it clear that he did not want the Senate to return a watered-down bill to the House. Reportedly, he was generally satisfied with the compromise. However, there were also reports that there were one or two changes with which he disagreed. One of these was the negotiators' decision to delete authority for the Civil Rights Commission to investigate vote frauds. This was later restored before the amendments were introduced.

Before formally introducing the substitute May 26, the leaders made a few more changes in the package submitted to party conferences the previous week. One of the additions was inclusion of the Mansfield-Dirksen jury trial amendment, limiting sentences for criminal contempt under the bill to 30 days in prison or a $300 fine unless there were a jury trial.

Most of the other changes had been suggested at party caucuses. Several suggestions, however, had been rejected. One of these was a proposal by Sen. Cotton to limit coverage under the equal employment opportunity provisions to employers and unions with 100 or more workers, dropping the three-step plan to cover those with 25 workers. Cotton May 25 said that the Republican meetings were "a farce," because "when you offer an amendment that goes to the essence of the bill, they tell you that the Attorney General frankly doesn't approve." Most of the changes made in the leadership's package before its formal presentation were technical or clarifying, without real effect on the bill.

COMPROMISE AMENDMENTS ANALYZED

The Mansfield-Dirksen substitute for HR 7152 as passed by the House made numerous changes in House language but only a few substantive revisions.

The major changes were in the enforcement of Titles II and VII, covering public accommodations and fair employment practices. In both cases, the Government was allowed to intervene only where there was a "pattern" of discrimination; otherwise, suits would be up to individuals, and local agencies, where they existed, would be given time to work out the problems. A comparison with the comparable provisions of the House-passed bill (see below) indicates that this was the general intent of the House bill; the Senate bill defined the limits of the Government power more clearly and wrote into the statute the requirement for reference to local agencies.

These changes, however, were those that most troubled the liberals. Among other things, they were concerned that Southern states would set up "dummy" local accommodations and employment laws, and, in concert with sympathetic Southern judges, could frustrate individual attempts to sue. The negotiators apparently considered this and concluded that it was not likely. Legislatures in deep Southern states, they felt, were not likely to set up anything even suggesting equal accommodations or fair employment practices laws. In other areas, totally intractable states and judges were considered unlikely. Finally, the greater the state resistance, the more likely was use of the Attorney General's power to intervene.

Following is a section-by-section résumé of the bill, with the significant changes proposed by the Dirksen-Mansfield amendments. The original Kennedy proposal is also compared:

Title I -- Voting Rights. House Bill: In voting for federal elections, bar unequal application of voting registration requirements, denial of the right to vote because of errors or omissions by applicants on records of applications, if not material in determining voter eligibility, and the use of literacy tests not taken in writing, unless the applicant requests and state law permits oral literacy tests. Make a sixth-grade education a rebuttable presumption of literacy. Authorize the Attorney General or a defendant to request three-judge federal courts to hear voting rights suits and direct federal courts to expedite voting suits (the opinions of a three-judge court are immediately appealable to the Supreme Court, skipping the circuit court stage).

Amendments -- Make clear that errors or omissions by voting registrars also are not to be held against the applicant; bar any oral literacy tests, even if requested by the applicant, but authorize the Attorney General to certify that a given state's literacy tests had been fairly administered and they therefore would not have to be in writing; limit the use of three-judge courts to cases where the Attorney General brings suit against a "pattern" of discrimination. In suits against intimidation of those attempting to vote, require expeditious handling of the suits by the district courts.

Kennedy Bill -- Barred all oral literacy tests, made a sixth-grade education a conclusive presumption of literacy, provided for court-appointed referees to register Negroes in areas where voting rights suits are filed and less than 15 percent of eligible Negroes are registered even before suit is tried; and contained no comparable machinery for calling three-judge federal courts to hear voting rights suits.

Title II -- Public Accommodations. House Bill: Bar discrimination on grounds of race, color, religion or national origin in public accommodations enumerated below, if discrimination or segregation in such an accommodation is supported by state laws or official action, if lodgings are provided to transient guests or interstate travelers are served or if a substantial portion of the goods sold or entertainment presented moves in interstate commerce. Covered were restaurants, cafeterias, lunch rooms, lunch counters, soda fountains, gasoline stations, motion picture houses, theaters, concert halls, sports arenas, stadiums, or any hotel, motel or lodging house except owner-occupied units with five or less rooms for rent (the "Mrs. Murphy clause"). Not specifically covered: barber shops, retail stores, places of amusement such as bowling alleys, or bona fide private clubs. But any establishment within or containing an accommodation otherwise covered was brought under the terms of the title. Thus, a store with a lunch counter or a barber shop in a hotel would be covered.

Make it unlawful to deny any person access to such facilities because of race, color, religion or national origin, or to threaten or intimidate anyone seeking his rights established under this title.

Permit anyone denied access to the accommodations, or threatened, to sue in court for preventive relief through civil injunction, and permit the Attorney General to bring such suit if the purposes of the title would be "materially furthered" by such action. Where local public accommodations laws exist, require the Attorney General to afford local officials a "reasonable time" to act.

Amendments -- Strike the enforcement section and insert a new one which would allow the Attorney General to bring suit only where he "has reasonable cause to believe" that a person or group of persons is engaged in a "pattern or practice" of resistance -- e.g., where a chain of restaurants or a group of restaurants in an area is practicing discrimination. The Attorney General would be barred from initiating suits on behalf of an individual, but he could intervene in a suit brought by an individual if permitted by the court. (It was considered unlikely that some Southern courts would not permit such intervention.) The Attorney General, but not the defendant, could request a three-judge court (different from Title I because there the defendant would be a state official). Otherwise, suits would be up to the individual. If the alleged action occurred in one of the 34 states with a public accommodations law, he could not bring suit until 30 days after he notified local authorities of the discriminatory action, and

the court could stay the proceedings further pending termination of state or local proceedings.

Where there is no state public accommodations law, the suit could be brought immediately. The court may, but is not required to, refer the problem to the new Community Relations Service established under the bill, which would try for voluntary compliance. The Service could be given from 60 to 120 days to handle the matter.

Kennedy Bill -- Was similar in scope and enforcement powers to the House-passed bill, except that it contained no specific references to discrimination supported by state laws or action, did not contain the "Mrs. Murphy" clause, and specifically covered retail shops, department stores and markets.

Title III -- Public Facilities, Intervention in Civil Rights Suits. House Bill: Upon written complaint of aggrieved individuals, permit Justice Department suits to secure desegregation of state or locally owned, operated or managed public facilities when the Attorney General certifies that the aggrieved persons are unable to initiate or maintain appropriate legal proceedings because of financial limitations or potential economic or other injury to themselves or their families.

Also, permit the Attorney General to intervene in suits filed in federal courts by private persons alleging deprivation of equal protection of the laws on account of race, color, religion or national origin.

Amendment -- Move the latter provision to Title IX, because it was not related to the public facilities section of Title III, and represented a broader power than that in the first section of Title III.

Kennedy Bill -- Contained no language comparable to either section of the House bill.

Title IV -- Desegregation of Public Education. House Bill: Require the U.S. Office of Education to report within two years on progress of public school desegregation at all levels; authorize the Office to give technical and financial assistance, if requested, to local school systems in the process of desegregation, both through grants and loans; authorize the Attorney General to file suit for the desegregation of public schools and colleges if he receives signed complaints and certifies that the aggrieved individuals are unable to initiate or maintain proper legal proceedings because of financial limitations or potential economic or other injury to themselves or their families. A floor amendment was adopted to make it clear that desegregation would not mean pupil assignment "to overcome racial imbalance."

Amendments -- Require the Attorney General to notify the school board or college authority of complaints he has received alleging segregation, and authorize him to allow a reasonable time for compliance before bringing suit. Strengthen the House language covering de facto segregation by: specifying that the bill does not authorize federal courts or officials to order the bussing of children from one school district to another in order to overcome de facto segregation; and stating that nothing in this law is meant to enlarge the courts' existing powers to ensure compliance with constitutional standards. Bar payment of costs of dependents of school personnel who attend summer institutes under the technical assistance section, and allow stipends only to those who attend summer institutes on a full-time basis.

Kennedy Bill -- Was essentially the same as the House-passed bill, except that it authorized grants to aid in ending "racial imbalance in public schools."

Title V -- Civil Rights Commission. House Bill: Extend the Civil Rights Commission for four years and broaden its powers so that it may function as a national clearing house on civil rights information. Also give the Commission authority to investigate vote frauds as well as denial of the right to vote. Bar it from investigating membership practices or the internal operations of fraternal organizations, fraternities, sororities, private clubs and religious organizations.

Amendments -- Write in procedural requirements for the Commission's investigatory rules. (These would not be inconsistent with current Commission practice.) Require bipartisan political participation in all Commission actions.

Kennedy Bill -- Was essentially the same as the House-passed bill, except that it contained no provision for investigation of vote frauds.

Title VI -- Federal Programs. House Bill: Require each federal department or agency extending financial assistance to any program or activity through grants, loans or most kinds of contracts to take steps to prevent any program, except insurance or guarantee programs, from excluding persons from benefits because of race, color or national origin. Agencies must first seek voluntary compliance, but if it is not forthcoming, may, after giving Congress 30 days' notice, cut off federal funds to discriminatory programs. The cutoff would be subject to judicial review.

Amendments -- Require an express finding, on the record after a hearing, that there has been discrimination. Clarify that the cutoff would be limited to the particular political subdivision, or part thereof, where the finding has been made. Thus, a finding of discrimination in administration of the school lunch program would lead to a cutoff only in the school district, or districts, involved, not in the state as a whole. Make clear that this title is not to be used to enforce equal employment practices, except where the purpose of the federal program is to provide employment. (Thus, this title could affect employment practices in the federally aided highway construction program, but not those of a farmer receiving subsidies.)

Kennedy Bill -- Repealed any sections of existing law permitting segregation in federally assisted programs and gave the President discretionary authority to cut off programs where discrimination was practiced. This request was later revised by Attorney General Kennedy to make the nondiscrimination policy mandatory for Government agencies.

Title VII -- Equal Employment Opportunity. House Bill: Establish a five-member Equal Employment Opportunity Commission with powers to prevent and eliminate discrimination in employment based on race, color, sex, religion or national origin on the part of employers, employment agencies or labor unions. First-year coverage, to begin one year after enactment of the bill, would apply to firms with 100 or more employees or labor unions with 100 or more members, those with 75 members or employees in the second year, 50 members or employees in the third, and 25 persons thereafter. Exempt all religious groups, private clubs and state governments and their subdivisions, but not the U.S. Employment Service and federally aided state and local employment services. Also exempt refusal to hire because of religion, sex or national origin where these are bona

fide job qualifications. Authorize the Commission, upon receiving sworn complaints, or a written charge by a member of the Commission, to investigate and first seek compliance with fair employment practices through the use of conciliation and persuasion. If those fail, the Commission could sue in federal court for an injunction to force compliance. Floor amendments also exempted discrimination against atheists and Communists.

Amendments -- Make the following changes in coverage: exempt employers whose employees work less than 20 calendar weeks out of the year -- thus excluding seasonal workers; treat a union hiring hall as an employment agency, even though the union may not be covered; narrow the exemption for religious groups to free them from the requirements only in the hiring of individuals to perform work connected with their religious activities (as opposed to their business activities), or where religion might be a bona fide job qualification; add a statement that the policy of nondiscrimination applies to all federal employees; delete the section exempting discrimination against atheists (but leave in the section exempting discrimination against Communists); provide exemptions in the cases of individuals who do not meet requirements of a security program established by statute or executive order; exempt American Indians on or near reservations who discriminate in favor of hiring Indians for work on or near reservations; specifically permit employers to apply different standards of pay, requirements, and conditions of work in different areas of the country, provided that such differences are not with intent to discriminate (this to protect plant seniority systems and the use of different standards in different parts of the country).

Delete authority for an outside group, such as the NAACP, to bring a charge "on behalf of" a worker (but this would not prevent the NAACP from giving the worker step-by-step advice).

Make the following changes in enforcement: permit the Attorney General, not the Commission, to bring suit, and allow him to do so only where he "has reasonable cause to believe" that a person or group of persons is engaged in a pattern or practice of discrimination with intent to deny equal employment opportunities. The Attorney General may request a three-judge court, as under Titles I and II. Otherwise, the Attorney General could only intervene, at the discretion of the court, in a suit brought by a private individual.

Provide that before an individual may bring suit, he must first exhaust the remedy of a state or local fair employment law. Where there is a state or local law, the individual may file a charge with the Commission only after the local agency has had 60 days to handle the matter (120 days in the case of a newly established law). The same reference to local agencies and waiting period would be imposed on a charge filed by a member of the federal Commission.

Require that the individual must file his complaint with the federal Commission within 90 days after the alleged unlawful practice took place, unless state or local agencies are handling the matter. In this case, he would have 210 days to bring the complaint (90 plus the 120 for local proceedings).

Give the Commission from 30 to 60 days to seek voluntary compliance. If that fails, allow the individual to bring a court suit, in which the Attorney General might intervene. Allow the court to stay the suit 60 days, pending state or local proceedings.

Change the venue pattern from the House bill. The House allowed the suit to be brought in the district where the alleged discrimination took place, or in the district where the employer has his principal office. The amendment would allow the suit where the discrimination took place, or where the company's records are kept, or where the plaintiff would have worked; only if the defendant would not be found in any of these districts could the suit be brought in the district of the home office. Behind the House language was a desire to bring more suits before presumably more sympathetic Northern judges.

Require that the court find that the defendant had "intentionally" discriminated before it could grant relief. Allow the Commission to initiate contempt proceedings where there is a violation of a court order in an action brought by an individual.

Spell out some of the requirements for record-keeping (the House bill allowed the EEOC to establish what records were to be kept) by stating that persons under state employment laws need not keep duplicate records, but may be required to keep certain additional records by the EEOC because of differences in coverage or enforcement methods between state and federal laws.

Modify the Commission's investigatory powers.

Add a section making it clear that this title is not to be used to require racial quotas in employment, unions, or training programs.

Add provisions to ensure confidentiality of proceedings before the Equal Employment Opportunity Commission.

Kennedy Bill -- Did not contain an equal employment section, but the President's message endorsed pending Congressional bills.

Title VIII -- Registration and Voting Statistics. House Bill: Require the Census Bureau to gather registration and voting statistics based on race, color and national origin in such areas and to the extent recommended by the Civil Rights Commission, both on primary and general elections to the U.S. House since 1960. Require such information on a nationwide scale in connection with the 1970 Census. (Such information could be used as the basis for reducing U.S. House representation of states that discriminate against voting applicants because of race, as permitted under a section of the 14th Amendment.)

Amendment -- Make clear that persons have the right not to disclose race, color, national origin, party affiliation, or how they have voted, and that they must be apprised of this right.

Kennedy Bill -- Had no comparable provision.

Title IX -- Removal of Civil Rights Cases. House Bill: Make reviewable in higher federal courts the action of federal district courts in remanding a civil rights case to state courts.

Amendment -- Add here the provision originally in Title III, allowing the Attorney General to intervene in private suits where persons allege denial of equal protection of the laws. Make clear this is limited to rights under the 14th Amendment.

Kennedy Bill -- Contained no provisions comparable to either of the two sections of this title as amended.

Title X -- Community Relations Service. House Bill: Create a new Community Relations Service in the Commerce Department to aid communities in resolving

disputes relating to discriminatory practices based on race. Authorize the Service to offer its services either on its own accord or in response to a request from a state or local official or other interested person. Limit its staff to a director and six aides.

Amendment -- Remove the limit on the number of aides (reflecting its increased activities under Title II).

Kennedy Bill -- Proposed a similar body, but not under the Commerce Department, and with no limit on aides. It was deleted by the Judiciary Committee and reinstated on the House floor.

Title XI -- Miscellaneous. House Bill: Provide that nothing in the law shall restrict existing powers of the Attorney General or other Government agencies; authorize appropriation of whatever sums are necessary to carry out the Act; provide that if one section of the Act is held invalid, the remainder of the Act shall not be affected thereby; the Act does not preempt and thus nullify state civil rights laws unless those laws are inconsistent with the purposes of the Act.

Amendment -- Add the pending Mansfield-Dirksen jury trial amendment, stipulating that in any criminal contempt proceeding arising under this law, the judge may not fine the defendant more than $300 or order a jail sentence of more than 30 days unless there is a jury trial.

Substitute Introduced, Cloture Vote Planned

The package of leadership amendments was introduced May 26 during the ninth week of formal floor debate. It was introduced as a "clean bill," to be offered as a substitute for the pending measure.

Humphrey tentatively set June 10 as the date for a vote on cloture. This would allow a three-day Memorial Day weekend plus a week of debate on the substitute amendment. He also made it clear that the offering of the substitute amendment would not preclude other Senators from calling up amendments if cloture were imposed. Under the cloture rule, each Senator may speak for one hour and any amendments that had previously been submitted may be called up if they are germane. Southerners had been submitting many amendments. As of May 26, Senators as a whole had offered 175 amendments. Some had conditioned a pledge to vote for cloture on a guarantee that their amendments would be considered.

Introducing the leadership amendment, Dirksen said that, "We have now reached the point where there must be action; and I trust that there will be action. I believe this is a salable piece of work; one that is infinitely better than what came to us from the House." "I doubt very much whether in my whole legislative lifetime any measure has received so much meticulous attention," Dirksen said. Mansfield, Humphrey and Kuchel then praised Dirksen for his work on the bill. Jacob K. Javits (R N.Y.) said that "no title has been emasculated; and...the fundamental structure of the bill remains." Humphrey said that "we have strengthened the responsibility for community action."

Russell said he hoped to be pardoned for not "adding my bouquets to the praise that covers" Dirksen.

Russell said that the bill, with the leadership amendments, had been "stripped of any pretense and stands as a purely sectional bill.... Provisions have been written into the bill which draw up a monumental wall...(protecting) the states that are north of the Mason-Dixon line."

'Time for Civil Rights Has Come'

At a May 19 meeting with reporters, asked about his role as a "hero" in the civil rights fight, Dirksen gave at length the first public statement of his feelings about the principles of the issue.

The Minority Leader took as his theme the statement Victor Hugo is said to have made on the night that he died: "No army is stronger than an idea whose time has come." Dirksen then related the histories of a number of ideas which were at first ridiculed and later became embedded in American laws: the Civil Service system, woman suffrage, the direct election of Senators, pure food and drug laws, and regulation of working hours. Each, he said, was an idea whose time had finally come.

Then Dirksen said: "Civil rights -- here is an idea whose time has come." "Let editors rave at will and let states fulminate at will," Dirksen said, "but the time has come, and it can't be stopped."

He said states with equal accommodation and fair employment laws were "exempted from the most punitive provisions" of the revised bill.

(In a June 10 speech Russell declared: "Equal rights in this land of ours means that each citizen has an equal opportunity to acquire property through honest means, that once that property has been acquired, he has a right to exercise dominion over it. Under our system, many Negroes have accumulated great amounts of property.... It is not equality to pass laws that give any group, whoever they may be, the right to violate the property rights of another that are guaranteed by the Constitution."

Mansfield June 1 announced that the cloture vote would be held June 9.

The day after Mansfield made his announcement, Russell told the Senate that the Southerners were ready to allow further voting on pending jury trial amendments. Russell's move presumably was aimed at lessening the pressure for cloture. Mansfield replied that Russell was "talking to the winds." The leadership needed time to explain its substitute amendment, Mansfield said. Also, Senators had been told that there would be no roll-call votes that week. (Several were away giving commencement speeches.) Russell promptly charged the leadership with beginning a "counterfilibuster" but said that he, as a champion of free speech, would "support them vigorously." Mansfield June 4 offered to begin voting on amendments June 8 if Southerners would agree to an overall debate limitation. Russell refused.

Debate explaining the leadership package was opened June 3 by Humphrey, who defended the pending Mansfield-Dirksen jury trial amendment. Humphrey said it would "grant a more extensive right to jury trial than is granted to defendants in criminal contempt cases arising in Southern states."

At a June 2 press conference, President Johnson said that he was "very pleased" with the House-passed bill, but that "Administration lawyers" felt that the proposed changes "generally have been helpful and would be acceptable." Asked if he was exerting pressure on the cloture vote, Mr. Johnson said, "It is a matter for the Senate leadership and not for me."

CLOTURE PETITION FILED

The cloture petition was filed June 8 by Mansfield and Dirksen. It was signed by 28 Democrats and 11 Republicans (16 signatures were needed). Under the rules, the vote on cloture was to be taken one hour after the Senate met two days later. (The hour was consumed by speeches by Sens. Russell, Mansfield, Humphrey and Dirksen.)

VOTES PRECEDING CLOTURE

The leaders' original June 9 date for a cloture vote was moved back by one day when they assented to a request by Sen. Bourke B. Hickenlooper (R Iowa) and several other Republicans for votes on three amendments before the cloture vote was taken. Debate and voting on the amendments were governed by time limits set by unanimous consent. Neither the Southerners nor the bill's supporters raised objections because neither side dared alienate the on-the-fence Hickenlooper group before the vote on cloture.

Hickenlooper, who said he had the support of some 17 to 20 Republicans, wanted action on the three amendments before cloture so that they could be thoroughly considered. Although Hickenlooper denied there was any quid pro quo linking agreement to his request and votes for cloture, Sen. Karl E. Mundt (R S.D.) told reporters: "We went to the leaders and told them we had the controlling votes for cloture and that we were insisting on these votes before we would consider cloture." Mundt added, "We represent the mainstream of thinking in the party and we were getting tired of deals made by our leaders with Bobby Kennedy."

The three amendments were: a jury trial proposal by Thruston B. Morton (R Ky.), which was adopted; and a Hickenlooper amendment to cut out training of school personnel in desegregation problems and a Norris Cotton (R N.H.) amendment to limit the application of the fair employment practices title, both of which were rejected. An attempt to delete the entire employment practices title also was beaten.

Morton Amendment. The Senate June 9, by a roll-call vote of 51-48 (R 20-13; ND 9-34; SD 22-1), accepted Sen. Morton's amendment entitling defendants in criminal contempt cases arising under the Act to a jury trial upon demand, with a limit on the sentences of six months in prison and a $1,000 fine. The amendment did not cover Title I, on voting rights, and thus left intact the 1957 Civil Rights Act's jury trial provision. This allowed a judge to try a criminal contempt case in voting rights suits without a jury, but, if he did so, limited the sentences to 45 days in prison or a $300 fine. The leadership's jury trial amendment, submitted to the Senate April 24, but never voted on, covered all provisions of HR 7152 and also amended the 1957 Act. It permitted a judge to try criminal contempt cases arising under the Act without a jury, but limited sentences in this instance to 30 days in prison or a $300 fine.

Before the vote Humphrey said that if Morton's amendment were agreed to, the leadership would insert it in their substitute bill in place of their own jury trial provision.

Morton's amendment was similar to one he had sponsored which was narrowly rejected by the Senate on several roll calls May 6.

Morton said his new amendment would continue to allow judges discretionary authority to deny jury trials in voting rights suits because the principle of the right to vote was well established, and here the defendants would be public officials who should be aware of their duties.

Arguing that jury trials in criminal contempt cases were as essential as in criminal prosecutions, George A. Smathers (D Fla.) said: "It is inconceivable to me that Senators would be inclined to allow criminals of every description, persons charged with dope peddling, murder, arson, robbery and the like, to have the right of trial by jury, but would prohibit the right of trial by jury to good

Historic Filibusters

The Senate filibuster on the 1964 Civil Rights Act occupied 57 days of debate starting March 26, when the Senate voted to consider the bill, and ending June 10, when it imposed cloture.

Sen. William Proxmire (D Wis.) May 12 had said "the present debate is already the granddaddy of all filibusters." He inserted a list of past filibusters that indicated the longest had been the 1922-23 ship subsidy filibuster that covered 75 days, with numerous interruptions, the 1846 Oregon bill that was filibustered for two months, and the Versailles Treaty, on which cloture was imposed, breaking off 55 days of debate.

Other bills, though not overtly filibustered against, have encountered even longer "extended debate" in the Senate. The Smoot-Hawley tariff bill debate stretched over six months. It began Sept. 4, 1929, and concluded with passage of the bill March 24, 1930. During this time the Senate recessed for one week and took up other business intermittently. The Tariff Act of 1922 also tied up the Senate for months -- it was debated from April 11 until passage Aug. 19, 1922. Cloture was unsuccessfully sought.

Following are the longest filibusters cited in Sen. Proxmire's list. (For more extensive list, see Senate Document 30, Aug. 15, 1963, "Senate Cloture Rule," prepared by George B. Galloway of the Library of Congress):

1841 -- Bank of the U.S. bill -- 14 days.

1846 -- Oregon bill -- 2 months.

1891-92 -- Federal supervision of elections "Force Bill" -- 45 days.

1893 -- Repeal of Silver Purchase Act -- 46 days, including 13 continuous day-and-night sessions.

1915 -- Ship purchase bill -- 33 days.

1919 -- Treaty of Versailles -- 55 days, with cloture imposed four days before ratification.

1922-23 -- Ship subsidy bill, Dec. 11, 1922-Feb. 28, 1923 -- 75 days.

1938 -- Anti-lynching bill, 29 days.

1953 -- Tidelands oil bill -- 35 days.

1957 -- Civil Rights Act -- 38 days, in two segments.

1960 -- Civil Rights Act -- 37 days, Feb. 15-April 8, including 9 days of day-and-night sessions.

1962 -- Communications satellite bill -- filibustered intermittently over two-month period; cloture was imposed for the first time since 1927.

citizens...in cases involving actions growing out of this civil rights bill...school board members, supervisors of public instruction, owners of public accommodations..."

John O. Pastore (D R.I.) warned against being "carried away" by Smathers' argument. Criminal contempt, he said, "is not a breach of the social code or its dictates, but is rather an attack on the dignity of the judiciary as an institution." Mansfield said the Morton amendment would "dilute the traditional and constitutional power of the federal judiciary in criminal contempt cases to enforce its own orders, vindicate its own dignity, and protect itself from insult without the assistance of a jury." He noted that a number of Southern states did not allow jury trials in criminal contempt proceedings.

A major factor in adoption of the amendment was the fact that the Senate Commerce Committee's public accommodations bill (S 1732), reported Feb. 10, provided for jury trials in all criminal contempt proceedings. For this reason, Commerce Committee Chairman Warren G. Magnuson (D Wash.) and several other civil rights supporters backed the Morton amendment.

Hickenlooper Amendment. Rejected on a 40-56 roll call, Hickenlooper's amendment would have deleted from the school integration section (Title IV) authorization for federal funds for institutes and programs for training school personnel to handle desegregation problems.

Supporting his amendment, Hickenlooper said that the federal aid would set a "dangerous precedent," and would be like the Federal Government subsidizing students. Sen. Abraham A. Ribicoff (D Conn.) said adoption of the amendment would be a "tragedy," because it "would hinder the easing of many problems that will still remain after the bill is passed." He pointed out that whether communities accepted the federal help was "entirely voluntary."

Fair Employment. The votes on the amendments to the equal employment section (Title VII) were unexpectedly one-sided, since this had been the most controversial title of the bill. Before the House passed HR 7152 Feb. 10, there was speculation that the EEOC title might be deleted on the floor. It had not been included in the Administration's civil rights draft although President Kennedy endorsed it in principle. The House upheld Title VII, 150 to 90.

June 9, an amendment by Sen. Sam J. Ervin Jr. (D N.C.) to delete the title was rejected on a 33-64 roll call (R 12-20; ND 1-41; SD 20-3). Ervin made his proposal as a substitute for Cotton's amendment, which would have limited the title's coverage to employers and unions with 100 workers, rather than the 25 eventually to be covered under the bill's language. The Cotton amendment was defeated, 34-63.

Ervin argued that "the idea that you can legislate equality among men has been exploded," and that "this bill is going to be used to harass businessmen throughout the U.S." Joseph S. Clark (D Pa.) countered that there had been "fantastic misstatements" about the title and that it "doesn't make anybody hire anybody else." Answering charges that it would swell the bureaucracy and cost untold amounts, Clark estimated the title would add 190 federal employees and cost $4.8 million a year to enforce. Dirksen said that to delete Title VII would "leave a gaping hole" in the bill with respect to employment and that the Cotton amendment would "emasculate" the bill.

Cotton's major argument was that "the personal relationship is predominant" in small businesses. "When a businessman selects an employee," Cotton said, "it is almost like he is selecting a partner, and when he selects a partner he comes dangerously close to selecting a wife." He said his amendment would cover over 21 million workers -- some 8 million less than in the bill.

Humphrey, opposing further dilution of the title, said that when businesses reach the 25-employee level, they "lose most of whatever intimate personal character they might have had."

Speeches Before Cloture Vote

In the speeches just preceding the cloture vote June 10, Mansfield said "the Senate now stands at the crossroads of history and the time for decision is at hand."

Russell termed the bill "an unbridled grant of power to appointed officers of this Government" and said questions raised by the measure "go to the very heart of our constitutional system." Russell said the bill would have "tremendous impact on our social system...our economic system...and what we are proud to call the American way of life." He said that the same arguments that had been made for the bill could be made "for a purely socialistic or communistic system, that would divide all of the property of the U.S." among all of its people. The Southern leader said the pending bill was "not a moral question, it is a political question." "I appeal to the Senate to vote down this gag rule," Russell concluded.

Humphrey said that "the Constitution of this country is on trial...the question is whether there will be two kinds of citizenship or one."

Dirksen quoted a line which Victor Hugo was supposed to have written in his diary the night that he died: "Stronger than all the armies is an idea whose time has come." He continued: "This is an idea whose time has come. It will not be stayed. It will not be denied." Dirksen appealed to all Senators to recognize "that we're confronted with a moral issue;" he urged them to "face up to the issue and approve cloture."

Senate Votes Cloture on Civil Rights Bill, 71-29

For the first time in its history, the Senate June 10 voted to close off debate on a civil rights filibuster. The vote for cloture was 71-29. With all 100 Senators present and voting, 67 votes were needed. The vote ended a filibuster that occupied 57 days after formal Senate consideration of the Civil Rights Act began March 26, and 74 days after the bill was put before the Senate Feb. 26. (Between the February and March dates, the Senate passed several major bills; after March 26 it passed a few non-controversial measures.)

Forty-four Democrats and 27 Republicans joined in voting to end the Southern filibuster. The cloture motion was opposed by 23 Democrats and 6 Republicans. The 6 Republicans were: Wallace F. Bennett (Utah), Barry Goldwater (Ariz.), Edwin L. Mechem (N.M.), Milward L. Simpson (Wyo.), John G. Tower (Texas) and Milton R. Young (N.D.). The following Democrats joined 18 from the deep South in voting against ending the debate: Alan Bible (Nev.), Robert C. Byrd (W.Va.), Albert Gore (Tenn.), Herbert S. Walters (Tenn.) and Carl Hayden (Ariz.), dean of the Senate, who had never voted for cloture.

Sen. Hayden was the last to enter the Senate chamber and cast his vote. He stood ready to help the pro-cloture forces if necessary but the leadership had picked up unexpected last-minute support from Howard W. Cannon (D Nev.) and J. Howard Edmondson (D Okla.) and had won over all other Senators considered on the fence, including Bourke B. Hickenlooper (R Iowa). Retiring Sen. Clair Engle (D Calif.), who in April had a second brain operation, was brought onto the floor in a wheel chair. Unable to speak, he cast his vote for cloture by motioning with his hand. (Engle died seven weeks later, on July 30.)

This was the first time that Sen. Cannon had ever voted for cloture. Both he and his Nevada colleague, Sen. Bible, had always argued that the filibuster was the ultimate protection for the small states against the superior voting strength of the large. Cannon, up for re-election, reportedly was under pressure from Nevada labor groups to change his position. Ten other Senators joined Cannon in casting their first pro-cloture vote on a civil rights filibuster. Seven had lengthy opposition records: Hickenlooper, Jack Miller (R Iowa), Frank Carlson (R Kan.), Carl T. Curtis (R Neb.), Roman L. Hruska (R Neb.), A.S. Mike Monroney (D Okla.) and Karl E. Mundt (R S.D.); three were relative newcomers: Inouye (D Hawaii), Jordan (R Idaho) and Edmondson.

Hruska, Curtis and Mundt were supporters of Goldwater's Presidential candidacy. Goldwater later told reporters that he voted against cloture, as he always had, to protect the interests of Arizona as a small state. He indicated that he might vote for passage of the final bill.

This was the first successful cloture move against a civil rights filibuster since Rule 22, permitting cloture, was first adopted in 1917. (See box) It was the sixth successful cloture attempt on any issue. The last was in 1962, when the Senate shut off a filibuster against the communications satellite bill.

President Johnson applauded the vote as a demonstration "that the national will manifests itself in Congressional action." Although the President had said June 2 that lining up votes for cloture was a job for the Senate leaders, "not for me," he was known to have talked to a few Democrats who were resisting the leadership's pressure. Speculation centered on Ralph W. Yarborough (Texas), who ultimately voted for cloture, and Sens. Cannon, Bible, Hayden and Edmondson. (This group, plus hold-out Republicans, was also being worked on by steel and other labor unions located in the West, the National Farmers' Union, church groups and American Indians.)

Sen. Russell said cloture never would have been imposed except for pressure from Mr. Johnson and much of the nation's clergy. In his speech before the vote, Russell said: "During the course of the debate, we have seen cardinals, bishops, elders, stated clerks, common preachers, priests and rabbis come to Washington to press for the passage of this bill. They have sought to make its passage a great moral issue," whereas, he reiterated, it was strictly a political issue.

Of Senators generally considered as from the South, the 18 from Ala., Ark., Fla., Ga., La., Miss., N.C., S.C. and Va., plus GOP Sen. Tower (Texas) and Tennessee's two Democrats, voted against cloture -- a total of 21 votes. Oklahoma's two Democrats, Kentucky's two Republicans and Yarborough of Texas voted for cloture.

12th Cloture Attempt Succeeds

Of the 30 cloture votes taken since Rule 22 was adopted in 1917, 12 have been on civil rights legislation. The first 11 failed. On only 4 of these were the supporters of cloture able to produce a simple majority in favor of the motion. The 12 civil rights cloture votes:

Issue	Date	Vote	Yea Votes Needed
Anti-lynching	Jan. 27, 1938	37-51	59
Anti-lynching	Feb. 27, 1938	42-46	59
Anti-poll tax	Nov. 23, 1942	37-41	52
Anti-poll tax	May 15, 1944	36-44	54
FEPC	Feb. 9, 1946	48-36	56
Anti-poll tax	July 31, 1946	39-33	48
FEPC	May 19, 1950	52-32	64*
FEPC	July 12, 1950	55-33	64*
Civil Rights Act	March 10, 1960	42-53	64
Literacy tests	May 9, 1962	43-53	64
Literacy tests	May 14, 1962	42-52	63
Civil Rights Act	June 10, 1964	71-29	67

* *Between 1949 and 1959 the cloture rule required the affirmative vote of two-thirds of the Senate membership rather than two-thirds of those Senators who voted.*

In addition to these cloture votes on civil rights bills, the Senate has twice voted on cloture motions to stop filibusters against proposed changes in the filibuster rule. Each was rejected:

Rule 22	Sept. 19, 1961	37-43	54
Rule 22	Feb. 7, 1963	54-42	64

The 30th cloture vote was taken Sept. 10, 1964, during debate on an amendment to delay court orders for legislative reapportionment. It was rejected, 30-63.

The vote for cloture left each Senator with one hour of speaking time on the bill or pending amendments. Parliamentary inquiries, procedural motions and quorum calls would not be counted against a Senator's time. Dilatory tactics could be ruled out of order.

Displaying anger at his defeat, Russell made it clear that Southerners would insist on calling up amendments they had submitted, and on taking roll-call votes on them. "We're confronted here not only with the spirit of the mob but of the lynch mob," Russell shouted. "There is no reason to expect any fairness."

VOTES AFTER CLOTURE

By the time cloture was imposed, approximately 560 amendments, most of them Southern-sponsored, had already been submitted and were eligible to be called up. Ten amendments were accepted after cloture, one of which was the omnibus substitute sponsored by the Senate leadership. The Senate defeated, with a minimum of debate, 99 amendments called up after the cloture vote.

Major Titles of Bill Upheld

During Senate voting on the Civil Rights Act separate attempts were made to delete eight major titles of the bill. Each attempt was defeated by lopsided votes, though on six of them the Southerners picked up some Republican support -- 12 Republicans voted to delete the fair employment title.

The amendments to delete the eight titles follow, with sponsor's name, party breakdown, and the date:

- Delete Title I, on voting rights. Ervin (D N.C.), rejected 16-69: R 0-29; D 16-40 (ND 0-38; SD 16-2), June 13.
- Delete Title II, public accommodations. Byrd (D W.Va.), rejected 23-63: R 5-25; D 18-38 (ND 1-35; SD 17-3), June 15.
- Delete Title IV, desegregation of schools. No amendment to the entire title was offered but Thurmond (D S.C.) proposed to delete the key section, authority for the Attorney General to file desegregation suits. Rejected 15-74: R 0-29; D 15-45 (ND 0-41; SD 15-4), June 16.
- Delete Title VI, permitting cutoff of federal funds. Gore (D Tenn.), rejected 25-69: R 4-27; D 21-42 (ND 1-40; SD 20-2), June 10.
- Delete Title VII, fair employment. Ervin (D N.C.), rejected 33-64: R 12-20; D 21-44 (ND 1-41; SD 20-3), June 9.
- Delete Title VIII, statistics on registration and voting. Thurmond (D S.C.), rejected 19-74: R 2-30; D 17-44 (ND 0-40; SD 17-4), June 17.
- Delete Title IX, which consisted of two parts: (1) authorizing the Attorney General to intervene in pending civil rights suits and (2) permitting appeal from a decision of a district court remanding a case to state courts. Byrd (D W.Va.), rejected 25-66: R 5-25; D 20-41 (ND 1-39; SD 19-2), June 16. When separate votes were taken on the two sections, the margins were closer. Ervin (D N.C.), delete Attorney General's authority, rejected 34-47: R 10-11; D 24-36 (ND 4-35; SD 20-1); Ervin, delete appeal provision, rejected 31-51: R 9-12; D 22-39 (ND 2-38; SD 20-1), both June 11.
- Delete Title X, Community Relations Service. Ervin, rejected 16-69: R 1-28; D 15-41 (ND 0-38; SD 15-3), June 16.

Final Senate Action

The Senate June 17 adopted the Mansfield-Dirksen substitute by a 76-18 roll-call vote. This came 81 days after the bill was first put before the Senate Feb. 26. Only Southern Democrats voted against acceptance of the substitute bill; but several Republicans announced that they would vote against the bill on passage.

The substitute bill was more acceptable to Republicans than the House-passed measure. The major differences were that it placed more specific authority in local agencies to work out problems of discrimination in public accommodations and employment; it authorized the Attorney General to sue only against patterns or practices of discrimination in these fields, and set out procedures for individuals to sue on their own behalf. It placed more emphasis on conciliatory efforts by two new Government agencies -- the Community Relations Service and the EEOC. The substitute also contained the Morton jury trial amendment and the few amendments adopted after the cloture vote. All of these were acceptable to the leadership and were approved on voice votes.

The Senate took 106 roll-call votes after cloture and through adoption of the substitute bill (there were 121 Senate roll calls on the civil rights bill in all). The leadership acknowledged that some of the Southern amendments rejected after cloture might have been acceptable at an earlier stage, but under the strict regulations of the cloture rule they were loath to open the bill to amendment.

Life Under Cloture. The first Senator to use up his hour of speaking time under cloture was Ervin, who exhausted his time June 17, after he had offered a spate of amendments to the bill. Other Southern Senators were more inclined to give up after cloture was voted.

Using their time sparingly, Senators would rise and say, "I yield myself two minutes," or "thirty seconds," or some other time. Some Senators used none of their time. And some were generous in yielding their own time to a colleague for a question or a statement.

Final Speeches. With Senate passage certain, attention in the last two days of debate centered on the position to be taken by Goldwater, then front-runner for the Republican Presidential nomination. Goldwater had split with the majority of his party in opposing cloture but had indicated that he might vote for passage of the bill. In the end, he opposed passage. Goldwater's position was to be of major importance in the tone of the upcoming political campaign. (See box p. 68)

In a June 18 speech explaining why he would vote against the bill, Goldwater said that its provisions "fly in the face of the Constitution and...require for their effective execution the creation of a police state" and would encourage an "informer psychology." Goldwater said he was "unalterably opposed to discrimination or segregation on the basis of race, color or creed, or on any other basis," but that "this is fundamentally a matter of the heart." He said that "laws can help -- laws carefully considered and weighed in an atmosphere of dispassion, in the absence of political demagogery, and in the light of fundamental constitutional principles." Goldwater said he found "no constitutional basis" for federal regulation of public accommodations or equal employment opportunities.

Dirksen, in his final speech the following day, stressed the Republican role in civil rights and said that "we are dealing with a moral force."

He cited earlier measures that had been called unconstitutional intrusions of federal power into private life -- food and drug, wage and hour laws, social security, etc. -- and said they required no change in the Constitution because "there was latitude enough in that document...to embrace within its four corners these advances for human brotherhood." Finally, Dirksen read a June 10 telegram he had received from 40 of the state Governors meeting in Cleveland, urging prompt enactment of the bill pending in the Senate.

Mansfield said that "there is no room for unwarranted sentiments of victory if the legislation we have molded is to be given constructive meaning for the nation in the years ahead."

Following are excerpts from other Senators' final speeches June 18 and 19:

John O. Pastore (D R.I.) -- "We have acted neither in haste nor in hate. We have acted only in hope. It is our hope that once this measure is signed into law it will be accepted without hate. We have surrounded it with safeguards so that it shall not be administered in haste."

Allen J. Ellender (D La.) -- "I hope that I am in error when I say that its passage...will bring on more strife than one can contemplate. For those who see progress in this civil rights bill they will be sadly disappointed.... The moral, intellectual and cultural standards of the white race perhaps leave a lot to be desired, but until the American Negro approaches this standard in large numbers, he will not be accepted.... Make no mistake about it, this is what we have been debating these past weeks -- the social acceptance of the American Negro by his white countrymen.... It is not possible to force one, by law, to associate with another not of his own choosing.... What is not recognized is that in many parts of the nation, and especially in the South, integration is considered immoral."

John Stennis (D Miss.) -- "There has been a conscious, deliberate, and bold plan to remove or delete from the bill the features to which the areas of the nation ordinarily called the East and the North are opposed."

Jacob K. Javits (R N.Y.) -- "It is now clear that the mainstream of my party is in support of civil rights legislation, and, particularly, support of this bill."

Richard B. Russell (D Ga.) -- "There were many ministers who, having failed completely in their effort to establish good will and brotherhood from the pulpit, turned from the pulpit to the powers of the Federal Government to coerce the people into accepting their views under threat of dire punishment."

Bourke B. Hickenlooper (R Iowa) -- "I am compelled to conclude that the far-reaching authority given to the Attorney General -- far beyond his accepted prosecuting responsibilities -- and the discretionary powers to be lodged in an appointed commission and its inevitable army of bureaucratic investigators, will establish the pattern by law for the erosion of those rights of personal decision and responsibility essential to a private economy and a free system."

John G. Tower (R Texas) -- "As a native Southerner I am deeply ashamed of the way that we have treated our Negro citizens in the South. I cannot justify that.... We have held them down.... We cannot overturn the mores of a whole society overnight, and that is what we are trying to do in this punitive bill."

SENATE PASSAGE

The Senate passed the civil rights bill June 19 by a 73-27 roll-call vote The passage vote came exactly one year after the bill was submitted to Congress by President Kennedy. The Senate had spent almost four months debating and voting on the bill.

In the voting, six Republicans joined 21 Southern and border-state Democrats in opposing passage. The six Republicans were Sens. Barry Goldwater (Ariz.), Norris Cotton (N.H.), Bourke B. Hickenlooper (Iowa), Edwin L. Mechem (N.M.), Milward L. Simpson (Wyo.) and John G. Tower (Texas). The 18 deep-South Democrats who, with Tower, had conducted the three-month filibuster were joined in opposition to passage by the two Tennessee Senators, Albert Gore and Herbert Walters, and Robert C. Byrd (W.Va.).

Passage followed defeat of a motion by Gore to send the bill to the Judiciary Committee with instructions that it be reported "forthwith," amended to say that federal funds could not be withheld from any school district unless it was in defiance of a court desegregation order. The Gore motion was rejected 25-74.

Speaking in San Francisco that evening, President Johnson hailed Senate passage as "a major step toward equal opportunities for all Americans," and said he looked forward to signing the bill. "That will be a milestone in America's progress toward full justice for all her citizens."

Reps. Celler and McCulloch in a statement said, "We will accept the Senate version.... Not all the amendments accepted by the Senate are to our liking. However, we believe that none of the amendments do serious violence to the purpose of the bill. We are of the mind that a conference could fatally delay enactment of this measure" (through a renewed Senate filibuster).

REACTIONS

Across from the Capitol, representatives of the Protestant, Catholic and Jewish faiths June 19 held a prayer meeting to give thanks for passage of the bill. At the meeting, representatives of the National Council of Churches, the National Catholic Welfare Conference, the Union of American Hebrew Congregations and the Interfaith Theological Students Vigil for Civil Rights ended a 63-day vigil on behalf of the bill that had begun April 19. Every day, 24 hours a day, three divinity students representing each of the faiths stood before the Lincoln Memorial as a "dramatic witness to the moral cause of civil rights."

Senate passage was also hailed by Negro leaders, who indicated that their job now would be to provide test cases for enforcement.

James L. Farmer, national director of the Congress of Racial Equality, said, "The passage of the civil rights bill may well be the single most important act of our Congress in several decades." He said that CORE would press for implementation: "There will be no breathing spell on demonstrations." Farmer said Negroes want "the reality of equality" and that "we will continue to demonstrate and to use our body and spirit to secure that reality."

Roy C. Wilkins, executive secretary of the National Assn. for the Advancement of Colored People, called the bill "a giant step forward, not only for the Negro citizens but for our country."

The Rev. Dr. Martin Luther King Jr., head of the Southern Christian Leadership Conference, said that "the civil rights bill will bring a cool and serene breeze to an already hot summer." James Foreman, a leader of the Student Nonviolent Coordinating Committee, said that he was concerned about enforcement. Whitney M. Young Jr., executive director of the National Urban League, sent a telegram to President Johnson praising him for the "strong and impressive leadership you have given in the dramatic fight for legal weapons to abolish racial segregation and discrimination."

Malcolm X, leader of the Black Nationalists, said "you can't legislate good will.... The passage of this bill will do nothing but build up the Negro for a big letdown by promising that which cannot be delivered."

Gov. George C. Wallace (D Ala.) said that "this is a sad day for individual liberty and freedom." Mayor Ivan Allen Jr. of Atlanta, Ga., said passage was "another major step in the elimination of racial discrimination."

Civil Rights and the 1964 Presidential Election

The issue of civil rights played a major role in the 1964 Presidential election. The nominee of the Republican party, Sen. Barry Goldwater (R Ariz.), voted against passage of the 1964 Civil Rights Act; the strategy he and his campaign officials drew up called for carrying all states in the South.

The political potency of the civil rights issue had been pointed out in the spring, when Alabama's segregationist Governor, George C. Wallace (D), entered the Democratic Presidential primaries in three Northern or border states and won sizable proportions of the Democratic vote: Wisconsin, April 7, 33.8 percent; Indiana, May 5, 29.8 percent; and Maryland, May 19, 42.8 percent. Although analysts could point to other factors (including the "crossover" of Republicans into the primary to embarrass the Administration), the phenomenon of a "white backlash" to the pressures of the civil rights movement encouraged the Goldwater forces.

The major difference between the Democratic and Republican platforms in 1964 was that the Democratic document pledged "enforcement" of the 1964 Act, while the Republican party pledged "execution" of the new law. This seemingly minor semantic difference reflected major policy decisions by the two parties. The Goldwater-controlled Republican platform committee deliberately eschewed use of the word "enforced," provoking the moderate forces at the July convention to stage a floor fight to strengthen the civil rights planks. They were roundly defeated.

Taking their cue from the Republicans, the Democrats in August pledged "enforcement" of the 1964 Act. President Johnson, a Southerner, warmly endorsed it.

Sen. Goldwater in his campaign did not condemn the civil rights bill per se, or express opposition to the cause of Negro rights. Nor did he hold out any hope that the law would be repealed. What he did talk about was lawlessness, street riots, attempts to "legislate morality," and the "usurpation" of states' rights by the Supreme Court.

As a counterbalance to the possible "white backlash," Negroes registered to vote in the 1964 election in unprecedented numbers. Their bloc vote for the Democratic ticket swelled Democratic pluralities in the North and was decisive or almost decisive in five Southern states: Florida (LBJ plurality 42,599; estimated Negro turnout 211,800); Tennessee (LBJ plurality 126,082; estimated Negro turnout 165,200); Virginia (LBJ plurality 76,704; estimated Negro turnout 166,600); Arkansas (LBJ plurality 70,933; estimated Negro turnout 67,600); North Carolina (LBJ plurality 175,295; estimated Negro vote in excess of 168,400); Texas (LBJ plurality 704, 619; estimated Negro turnout 325,500). By contrast, Goldwater won in the five Southern states -- Georgia, Louisiana, South Carolina, Alabama and Mississippi -- where the fewest Negroes, percentagewise, were registered.

Criticism of Republican Campaign

During the campaign Democratic speakers made much of the divergent positions taken on the civil rights bill by Goldwater and the majority of Republicans in Congress. The contrast was repeatedly stressed by the Democratic Vice Presidential candidate, Hubert Humphrey.

After the Nov. 3 election the Ripon Society, a spokesman for many moderate Republican voters, issued a harsh indictment of Goldwater's Southern strategy:

"Its implicit racist appeal attracted significant support only in the 'redneck' rural areas of the South.... A whole new generation of Negro voters has been alienated from the Republican side at a time when Negro registration is at an all-time high -- close to 6 million persons. In Atlanta, moderate Democrats defeated Republican candidates for Congress who traded heavily on the race issue and the alleged unconstitutionality of the civil rights bill.... In the North, the radical appeal of the national ticket was overwhelmingly rejected.... The 'white backlash' was scarcely noticeable...."

Congressional Elections

House -- Of the 34 Republicans who voted against the Civil Rights Act, 14 -- 11 Northerners and 3 Southerners -- were defeated for re-election: Reps. Snyder (Ky.), Alger (Texas) and Foreman (Texas), the Southerners; and Reps. Martin (Calif.), Jensen (Iowa), Johansen, Knox and Meader (Mich.), Beermann (Neb.), Wyman (N.H.), Short (N.D.), Van Pelt (Wis.) and Harrison (Wyo.), plus Rep. Wilson (Ind.), who voted for the bill Feb. 10 but against the final version July 2.

One of the 4 Northern Democrats who voted against the bill -- Rep. Lesinski of Detroit -- was defeated in a primary where his vote was used against him.

Of the 12 Southern Democrats who voted for the bill (original or final version), not one was defeated for re-election.

Senate -- Of the six Republicans who voted against the bill, only two had races in 1964: Barry Goldwater, the GOP Presidential nominee, and Sen. Mechem (N.M.). Both were defeated.