

Memorandum on Senate Consideration of the Civil Rights Act of 1964

Hubert H. Humphrey

Hubert H. Humphrey (1911-1978) was born and raised in South Dakota. He was educated at the University of Minnesota, and he had a long and illustrious career in Democratic Party politics in that state. In 1948, when he was the mayor of Minneapolis, he went to the Democratic National Convention and led the fight to put a strong civil rights plank in the 1948 Democratic Party Platform. "The time has come," Mayor Humphrey told the convention, "for the Democratic Party to get out of the shadow of states' rights and walk forthrightly into the bright sunshine of human rights."

The 1948 Democratic National Convention took Humphrey's advice and adopted a pro-civil rights platform. Humphrey subsequently was elected to the U.S. Senate from Minnesota, and in 1960 he ran for the Democratic nomination for president. Humphrey lost the nominating race to John F. Kennedy, of Massachusetts, who defeated Humphrey in both the Wisconsin and the West Virginia presidential primaries and then went on to win the presidency for the Democrats the following November.

In 1961 Humphrey was elected the assistant Democratic leader, more often called the Democratic whip, in the United States Senate. This meant he was the No. 2 person in the Senate, second in power only to Democratic leader Mike Mansfield of Montana. When the civil rights bill that later became the Civil Rights Act of 1964 passed the House and arrived for consideration in the Senate, Democratic Leader Mike Mansfield named Democratic Whip Hubert Humphrey the Democratic floor leader for the bill.

That meant it was Humphrey's job to plot the strategy and mobilize the forces that would defeat the expected southern Democratic filibuster and get the civil rights bill enacted in the Senate.

Immediately following the successful cloture vote in the Senate on the Civil Rights Act of 1964, Hubert Humphrey did something few U.S. senators have ever done. He sat down at his dictaphone and dictated a lengthy memorandum describing the techniques he had used to defeat the southern filibuster and thereby get the civil rights bill through the Senate. Humphrey's memorandum is one of the few first-person accounts ever written by a major congressional leader on his or her immediate role in getting major legislation enacted. Humphrey did not put his name on the memorandum, but every scholar who has worked with it has concluded that it is definitely Humphrey's.

Humphrey begins his account of the enactment of the Civil Rights Act of 1964 in the early summer of 1963, immediately after the civil rights demonstrations in Birmingham have inspired President Kennedy to send a strengthened civil rights bill to Congress. Humphrey's account is shorter and less detailed than that of Joseph Rauh, Jr., but Humphrey gives insights that only a member of the Senate leadership could provide.

This is a memorandum concerning the civil rights bill, its background and the procedures, tactics, and strategy used to accomplish its passage.

This memo starts in the early summer of 1963. I recall that, after the troubles in Birmingham, President [John F.] Kennedy had Attorney General Robert Kennedy discuss with Senator [Mike] Mansfield and myself, along with a few others in the Senate, the possibility of some legislation in the civil rights field.

It should be recalled that the Kennedy administration had not presented a civil rights program other than a leprosy bill. As I recall it, it was sometime in April that we started discussing in a serious vein civil rights programs and mes-

sages. There were innumerable meetings. Some [were] at the majority leader's office, some at the White House, some at the Department of Justice. Generally present at these meetings were the attorney general, Senator Mansfield, myself, occasionally Senator [Clinton] Anderson [Dem., NM], Senator [Joseph] Clark [Dem., PA], and on occasion, some of the Republicans including [Everett] Dirksen [Rep., IL], [Thomas] Kuchel [Rep., CA], [Kenneth] Keating [Rep., NY], [Jacob] Javits [Rep., NY], and [Hugh] Scott [Rep., PA].

There was no real program until somewhere in May when President [Kennedy] decided, after a number of discussions, that we would prepare a rather comprehensive program. We discussed this at many of the breakfast meetings on Tuesday mornings. The main argument for some period of time was whether or not the president's message, and the bill which the [Kennedy] administration was to send to Congress, would have FEPC [Fair Employment Practices Commission] and would have statutory authority for the president's Committee on Equal Employment Opportunities. [There was also an argument over] whether a type of over-all Powell Amendment, namely cutting off federal funds where such funds were used in a discriminatory manner—whether such an amendment would be included.

[Humphrey Presses for a Strong Bill]

I urged upon President [Kennedy] a broad, comprehensive program. I recall saying to the president one time that the leadership for civil rights had to either take place in the White House or it was going to take place on the streets. I fought hard in the breakfast meetings of the congressional leaders for a broad program of civil rights and for a strong message on the part of the president. I urged the president to take command, to be the moral leader, and recall time after time urging that his message go all the way. [The message should include] voting rights, school desegregation, public

accommodations, F.E.P.C., the cutoff of federal funds where discrimination exists, and the right of the attorney general to move into court and protect the rights of American citizens. This [last] is what we call the old Part III of the 1957 act.

There was considerable discussion of the civil rights message itself, and I recall President [Kennedy] having me look it over in the early part of June. In fact, I talked with the president just a short time before he sent the message to the Congress, and also spoke several times with Ted Sorensen [President Kennedy's speech writer], who was doing a great deal of the writing of the message. I urged that if the president was not going to include FEPC in his bill, that he surely should include it in his message. This is what he did. In fact, it was only a few hours before the message came to the Congress that this matter was settled, along with the matter of what is now Title VI in the bill, the cutoff of federal funds.

[House Action]

So much for the background. The summer of 1963 was spent in hearings, primarily in the House. Little or nothing [was] done in the Senate, except the attorney general testifying [at committee hearings] and being cross-examined at length by Senator [Sam] Ervin [Dem., NC].

And then in the fall of 1963, when things were sort of bogged down in the House, Attorney General [Robert Kennedy], [Deputy Attorney General] Nick Katzenbach, [Assistant Attorney General] Burke Marshall, and President [Kennedy] met with the Republican and Democratic leaders of the House, including [Charles] Halleck [Rep., IN], Bill McCulloch [Rep., OH], Carl Albert [Dem., OK], Manny Celler [Dem., NY], and House Speaker [John McCormack (Dem., MA)]. They put together the package that was finally passed by the House.

The bill was reported out of subcommittee and out of full committee and therefore was ready for action in the

House right after the first of the year, 1964. The House did proceed. It got a rule and, as we know, there were over 100 amendments, some 30 or more being adopted, and a good bill came from the House.

[The Farm Bill]

Then it came to the Senate. It rested on our Senate calendar for some time until we were able to take up the Farm Bill [containing subsidies] for wheat and cotton. I insisted on this because I felt there would be serious economic consequences [in the farm states] if we failed to take such action. President [Johnson], however, was very adamant about taking up civil rights, and so was Mansfield. However, I pleaded the case for the cotton and wheat bill over at the White House and finally was joined by Mansfield, providing that the bill wouldn't take too long. The Republicans tried to stall [the Farm Bill] a bit, but we were able to put it over without too much trouble, and then on March 9 we took up the civil rights bill.

[Preparing for the Filibuster]

Prior to this, I had been named as the floor manager for the bill. This assignment was one that I appreciated, and yet one that I realized would test me in every way. I had to make up my mind as to my mental attitude and how I would conduct myself. I can recall literally talking to myself, conditioning myself for the long ordeal. I truly did think through what I wanted to do and how I wanted to act. I proceeded to cancel a number of engagements that were on my calendar. I insisted on being on the floor of the Senate, in particular in the early days when the bill was just being brought up, lest it be derailed.

We then had meetings to set up our team captains and to spread the work and responsibility. Because Senator [Jo-

seph] Clark [Dem., PA] had handled FEPC in committee, and Senator [Warren] Magnuson [Dem., WA] had handled public accommodations in committee, they were made team captains. Also, Senator [Philip] Hart [Dem., MI], who was on the Judiciary Committee and had handled much of Title I [voting rights] there, was made a team captain. And others were brought in to handle each title. I determined that it would be best to divide up the work on the bill title by title, asking certain senators to be responsible for the titles and sharing that responsibility with the Republicans.

The material on this is in our records, in the newsletters, which, by the way, was another innovation. We decided to put out a civil rights newsletter each day, and have done so. It was sort of a review of the day's proceedings. Each evening the debate was analyzed and capsuled in our newsletter. This was an innovation which commanded attention, and I think demonstrated that we knew what we were doing and were capable of mobilizing our resources.

We also decided to work out what we call a quorum duty list, recognizing that some senators had to be away part of the time, particularly those who were running for [reelection]. Each day we had a quorum duty list of 36 Democrats and, as I recall, there were to be 16 or 18 Republicans. These did not include the southerners, so each day we were to have 4 captains who would monitor the floor. All of [this was] worked out. We also set up a command center for quorums with Pauline Moore in charge. We also set up a research center where we could have staff members, including members of the Department of Justice, working with us closely on all amendments and other items relating to the bill. Senator Magnuson provided us with [a] room. Our group then was called into meeting several times so that we knew what we were doing.

We also met regularly with the Leadership Conference on Civil Rights [lobbyists], particularly Clarence Mitchell [Jr.] and Joe Rauh [Jr.]. We were in close liaison with them

all of the time. Andy Biemiller, from the AFL-CIO, also. We realized at the beginning that we needed the active cooperation, support, and understanding of the so-called Leadership Conference on Civil Rights. We also needed more active participation from business and church groups. We had the full participation of the civil rights groups and the labor movement and the Jewish community, but even there we needed to accelerate or improve our contacts.

We met early in March with the representatives of the three faiths—Catholic, Protestant, and Jewish—in my office. We selected the date of April 28 [1964] at that time for the interfaith civil rights convocation to be held at Georgetown University. This was a plan that was worked out almost two months in advance. Plans were also designed to have civil rights meetings in the states, such as we were doing in Washington, with the clergy taking the lead. Close contact was maintained at all times with the clergy. Often this contact was due to the Leadership Conference on Civil Rights or through our staff. The staff work was excellent. Ray Wolfinger, John Stewart, Charlie Ferris, Ken Teasdale, Jerry Greenfield—all of these were hard at work every minute keeping a watchful eye on the legislation, as well as on quorum problems.

[Ready to Debate the Southerners]

We determined early not to let the southerners occupy the press, so in the very opening days, starting with March 9 [1964] on the motion to take up, we proceeded to debate the southerners. We took the offensive and we were able to get good press. We followed up by taking the offensive when finally on March 30 [1964] we were able to get the bill before us and have it as the pending business. I opened the debate, followed by Kuchel. Each day a team of our people would take a title so that, for better than 12 days, we held the floor giving detailed information about the bill and being able to get the public's attention as to what was in this bill.

It is fair to say that, for about one month, the proponents of the legislation were able to demand press attention more often than the opponents. We encouraged our people, that is, the pro-civil rights senators, to be on radio and television. I wrote to each senator suggesting radio and television programs, suggesting newsletters [and] enclosing sample copies of newsletters that other senators had prepared. We encouraged reprints of key material that had been put in the *Congressional Record* so that there could be answers to the questions of the people back home. We answered the propaganda of the anti-civil rights groups.

In other words, we were active, at no time passive, and at all times challenging the opposition. Furthermore, when each senator had a chance to debate the bill, title by title, they also had an opportunity to get some press for themselves, to be known as part of the team fighting for civil rights. This was good not only for the issue itself, but also for the senators and their public relations, and they seemed to like it. It involved them also in active floor duty, in constant and in sharp debate with the opposition. They became ever more committed.

[Republican Efforts]

The Republicans set up early a team of captains headed by Senator [Thomas] Kuchel [Rep., CA], who was my co-partner. We emphasized the bipartisan, nonpartisan nature of this struggle and, indeed, that is exactly what it was, is, and will continue to be. Regrettably, one or two of the Republicans were not too deeply committed. In fact, [some were] opposed to certain sections. I refer to [Roman] Hruska [Rep., NE] and [Norris] Cotton [Rep., NH]. Neither of them were willing to stay with their duties and asked to be relieved later on. However, men like [Hugh] Scott [Rep., PA], [Kenneth] Keating [Rep., NY], [Jacob] Javits [Rep., NY], [Thomas] Kuchel [Rep., CA], [Gordon] Allott [Rep., CO], and

[John Sherman] Cooper [Rep., KY] were good and helpful. We did have a number of meetings between Republicans and Democrats, and this was particularly true when we met with the Leadership Conference on Civil Rights. These meetings were held every morning, one-half hour before the session, sometimes at 9:30, sometimes at 10:30.

We determined early that it would do little or no good to have round-the-clock sessions. It was possible for the southerners to amend and amend and thereby to keep going, but we preferred to make the sessions long enough to be disagreeable, and to continue the sessions so that senators recognized that their time was being frittered away.

[Importance of Quorum Calls]

Furthermore, we put great emphasis upon the quorum calls. And one time—and only once—were we unable to get a quorum. This focused public attention upon the situation, and senators were very much aware of the fact that they were supposed to be present for quorums. Newspapers, magazines and periodicals kept constant watch on who was present and who wasn't. To be present for a quorum became very important, and this meant that senators had to cancel engagements. This made them all the more unhappy when the filibuster was under way, because it meant they had to be away from their duties back home and be present in Washington only to answer quorums and, frankly, to get very little else done. It was a pre-determined program on our part to arouse the public, to create a sense of wrath and indignation in the public, and also in the Senate.

The heavy barrage of newsletters going out from senators pointed out that this filibuster was wasting time. The refusal of [the southern] senators to [allow] any voting, except in one or two instances on minor amendments, contributed to this situation. Frankly, I was rather surprised at the southerners' tactics. I never could quite understand why

they didn't let us vote more often, because they had so many amendments in. If they had done so, they could have insisted that the legislative process was working, that amendments were being voted upon. Instead of that, they just kept talking and talking. It seemed to me that they lost their sense of direction and really had little or no plan other than what they used to have when filibusters succeeded.

[Patient and Friendly]

Now a few more observations. I made up my mind early that I would keep my patience. I would not lose my temper and, if I could do nothing else, I would try to preserve a reasonable degree of good nature and fair play in the Senate. I had good working relationships at all times with the southerners, even on some of the more difficult days. Only once or twice did I appear to be quick tempered, and on one occasion it was by design and not by accident.

I knew that, if the southerners could get the pro-civil rights people divided and fighting among themselves, the opponents would win. I also knew that it would hurt me politically and reflect adversely upon the Senate if we got into an acrimonious, bitter name-calling debate. And therefore at all times I tried to keep the Senate on an equilibrium with a degree of respect and friendliness. I believe that we succeeded.

[Winning Senator Dirksen's Support]

I also recognized that we must have the closest bipartisan cooperation, and this included the help of Senator [Everett] Dirksen [the Republican leader in the Senate]. On my very first TV appearance—Meet the Press—I praised Senator Dirksen, telling the nation that he would help, that he would support a good civil rights bill, that he would put

his country above party, that he would look upon this issue as a moral issue and not a partisan issue. I believed it then, and my faith has been vindicated.

Several times on other occasions I praised Dirksen. I did so not only because I believed what I said, but because we also needed him. I knew that it was impossible to pass a civil rights bill, because we couldn't possibly get cloture without Dirksen and his help. Therefore every effort was made to involve him. With few exceptions, I visited with Senator Dirksen every day, encouraging him to take a more prominent role, asking him what changes he wanted to propose, urging him to call meetings and discuss his changes.

You may recall that [Dirksen] was opposed to the compulsory enforcement powers of Title II [integration of public accommodations] at the beginning. He also was opposed to anything called FEPC, such as Title VII. He had his doubts also about Title VI, the funds cutoff. This is where Dirksen was in March and April, and by working with him, talking with him day after day, appealing to his sense of patriotism and duty, which I did regularly, I was able to involve Dirksen more directly into this legislation.

I can recall, time after time, asking him: "Well, Dirksen, when do you think we ought to meet and talk over some of your amendments?" And he'd say: "Well, give us a couple more days. It isn't time yet." And this went on week after week. And finally we were able to get him to call a meeting.

In the meantime he had been working with his staff and had gone over this bill very carefully. The meetings in Dirksen's office were, as we know, successful. Actually, Dirksen gave a great deal of ground. The bill which he finally supported—the substitute—in my mind is as good or better a bill than the House bill. Dirksen supported with his own amendments an effective enforcement of Title II, integration of public accommodations, but he mainly insisted on some time for conciliation and more involvement of local and

state government, both of which were very good ideas, and I vigorously supported them.

In fact, I worked very closely with Dirksen at all times so there would be no split between us. I was told a number of times by Democrats that Dirksen was stealing the show, that I should be out in front. I knew that if I tried to push myself [into the spotlight] any more than I had, the bill would fail. Dirksen had to be out in front. Dirksen is a leader, he is a great dramatist, and a fine legislator. He had the right to be out in front, and I gave him every opportunity to be so.

[Involving Senator Mansfield]

I also knew that we needed [Senate Democratic Leader Mike] Mansfield more directly involved. Mansfield gave me all possible cooperation. He wanted to be at liberty to work closely with Dirksen and not be too directly involved with the day-to-day details on the floor, and that's the way we did it. He was more or less a free man, able to contact Dirksen at will, while I was in charge of the routine day-to-day duties on the floor of the Senate.

I knew that to get Mansfield involved it would require that he become a bit angry, and this worked out even better than I planned or hoped for. It came about when Senator [Richard] Russell [Dem., GA] [the southern leader] refused to let the Senate proceed to vote on some of the jury trial amendments. Mansfield thought he had an understanding with Russell on two occasions for votes. On both occasions Russell blocked the votes and didn't let us proceed. In each instance Mansfield had announced to the Senate that we would be voting, and then, of course, found out that no votes were permitted. This irritated Mansfield in particular. As time went on, he became more irritated and more involved. At all times he was a great help and constant source of encouragement and strength.

[Building National Support]

We needed the help of the clergy, and this was assiduously encouraged. I have said a number of times, and I repeat it now, that without the clergy, we couldn't have possibly passed this bill. They were very helpful.

We had close contact with key people back in the states. Particularly where we had senators who were doubtful on cloture, these [home town] people were brought into the contest again and again by telephone calls and asked to get hold of their senators [and lobby them to vote for the bill].

And as we know, there were a number of visitations to Washington by church people, and these people repeatedly called on their senators. I met with them time after time. I must have had better than a hundred meetings during this period of time, all of them, with a few exceptions, at the Capitol. I would talk privately with the civil rights groups who came to our Capitol, and labor groups and others. My staff man, John Stewart, was very busy doing the same thing. We knew that we must keep the public stirred up [and], at least, genuinely interested in passing this legislation. Too, the leaders of this public must be [made] aware of the inside details of what was going on. I tried to keep them so informed. It was quite a job.

We did not bother President [Johnson] very much. We did give him regular reports on the progress of civil rights over at the Tuesday morning breakfasts. But the president was not put on the spot. He was not enlisted in the battle particularly. I understand he did contact some of the senators, but not at our insistence. I felt we would need the president when the bill went to the House again, and I'm sure we will, and he should save himself for that situation, particularly the Rules Committee, and I'm confident he can be very helpful in this instance.

[Trouble with Senator Hickenlooper]

It became apparent after a while that there was a growing conflict between Dirksen and [Bourke] Hickenlooper [Rep., IA]. Senator Hickenlooper is the chairman of the Republican Conference Committee. He was resenting the publicity and the play that Dirksen was getting. Therefore, Hickenlooper started to balk, and not only to balk quietly, but openly and publicly. He started to hold meetings, particularly when Dirksen was ill. I had a way of knowing what was going on at those meetings. One of the members attending was reporting to me quite regularly.

I recognized that Hickenlooper was picking up strength. I informed Dirksen of this. On two or three occasions he told me not to worry, that he still thought he had 26 votes for cloture. I told him that I seriously doubted it. From what I gathered, Hickenlooper was picking up votes, and we were in trouble. This proved to be the case.

Finally, as we know, the southerners began to feel that we might get enough votes for cloture. So they wanted to start voting. We refused to vote and held the floor for about a week, simply because we knew we needed a little more time to nail down those cloture votes.

During that period of time, the Hickenlooper group demanded that they have a specified period of time to debate certain key amendments—the jury trial amendment; the FEPC amendment; and some amendments to Title IV, desegregation of public education. After some negotiating we were able to work out a deal wherein each of these amendments would have 4 hours, and we would vote on them all on Tuesday, June 9 [1964].

Prior to my being willing to join in this, I got personal commitments for cloture from [Karl] Mundt [Rep., SD], [Roman] Hruska [Rep., NE], and [Norris] Cotton [Rep., NH]. I felt then Hickenlooper would join with us. I knew that if Hruska would join with us, so would [Carl] Curtis [Rep.,

NE]. So it seemed that we were well on the way. I also gave a commitment, as the record will show, that any of the amendments adopted out of these three would be added to the [civil rights] bill. One of them, the jury trial [amendment, was passed] and was promptly added to the [civil rights bill].

I do believe that this unanimous consent agreement, known as the Hickenlooper Unanimous Consent Package, brought us the extra votes that we needed for cloture. I can recall Senator Russell [the southern leader] complaining quite bitterly that we hadn't cooperated with him when he wanted to vote. I said to him, somewhat in jest, but also in truth: "Well, Dick, you haven't any votes to give us in cloture, and these [Hickenlooper group] fellows do." That was the sum and substance of it.

[The Vote for Cloture]

When we came to the cloture vote, it was a great day. I knew we had the votes. In fact, one hour before the vote was taken, I gave Senator [Philip] Hart [Dem., MI] a note and said we had 69. I thought there was a possibility of one more, and, as the *Congressional Record* shows, we had 71. I had worked very hard, even the night before, to nail down the votes of [Howard] Edmondson [Dem., OK], [Ralph] Yarborough [Dem., TX], and [Howard] Cannon [Dem., NV]. It was doubtful about Cannon, but we were terribly pleased when he came through.

I informed President [Johnson] on Tuesday night at 7:30 that we had the votes. He said he hoped so, but he said it would be very difficult. I told him I was sure of it.