

By Edwin Guthman

A Landmark in DIVERSITY

An insider offers a fascinating glimpse into the origins of the Civil Rights Act of 1964

The dreadful violence that rocked Birmingham, Alabama, in the spring of 1963 convinced President John F. Kennedy to ask Congress to pass the landmark Civil Rights Act of 1964, but the administration's involvement in the civil rights crisis began well before that. In fact, the civil rights bill presented to Congress reflected the ongoing concerns of President Kennedy as well as the character and interests of his brother, U.S. Attorney General Robert Kennedy.

One of most engaging hallmarks of Robert Kennedy's character was his unrelenting compulsion to act once he saw the need for action. For him, it was not enough to make a speech or express regret; he had to do something that would make a difference. So it was early in the Kennedy Administration that RFK, noticing as he drove around Washington, D.C., that the public schools were beleaguered, began visiting senior and junior high schools—not to give speeches, but just to talk to the students and teachers. After a few visits, he began taking athletes from the two professional Washington teams—the Senators and the Redskins—with him.

One day, accompanied by the school

superintendent, Carl F. Hansen, RFK spoke to a large group of students at Cardozo High, where he learned that many students were dropping out of school because they had to work to help their families. While driving Hansen back to his office, Kennedy expressed dismay that students had to drop out for economic reasons. He asked Hansen how many dropped out annually.

"More than 400," Hansen said, "but we have a fund to help them."

"How many students are you helping?" Kennedy asked.

"About 15."

Upon returning to his office, Kennedy immediately sent a letter to the Washington school board. In response, he received only a form letter thanking him for his interest. So Kennedy called a meeting of about 20 people whose judgment he valued to discuss how best to address the issue of financially driven student dropouts. The result of that meeting was a program that paid students to stay in school by providing them with an opportunity to earn money through an on-campus job. This program served as the prototype for the Summer Jobs Program, in which federal agen-

cies hire students during the summer to enable them to remain in school.

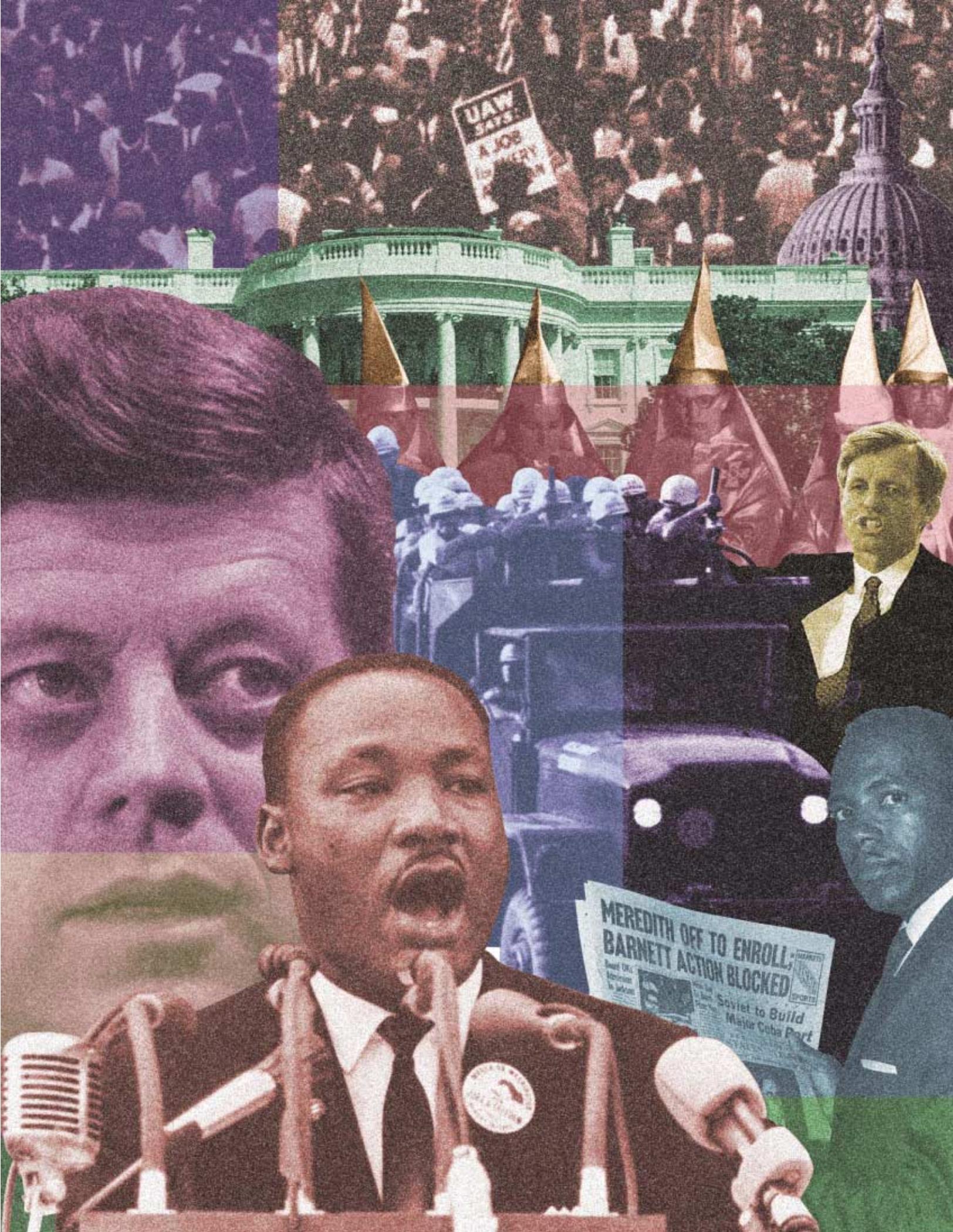
THE CIVIL RIGHTS ISSUE

Anticipating that civil rights would become a significant issue during his brother's administration, Robert Kennedy chose Burke Marshall, a smart and well-respected Washington attorney, to head the Department of Justice's Civil Rights Division. Although Marshall did not have a background in civil rights, Kennedy selected him because of his credibility on Capitol Hill. The wisdom of Kennedy's choice soon became clear as Marshall began strengthening the Civil Rights Division, in part by securing additional funding from Congress.

It did not take long for the civil rights issue to begin its slow boil. In May 1961, just four months after Kennedy's inauguration, a

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DENNIS IRWIN



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group of civil rights activists known as Freedom Riders left Washington for the South to register African American voters. Although they issued a press release upon their departure, no one paid much attention as they passed through Virginia, the Carolinas, and Georgia without any incident. But in Anniston, Alabama, they were attacked—several Freedom Riders were badly beaten and their bus was burned. Suddenly, the American people became aware of the Freedom Riders. The Justice Department soon learned that the FBI knew the Ku Klux Klan was planning to attack the Freedom Riders when they arrived in Alabama but did nothing to prevent it.

In fact, the FBI had such a close relationship with Southern lawmen that Robert Kennedy realized that he could not count on the bureau to help protect the Freedom Riders, other civil rights activists, or the black community. That meant that the Justice Department would have to work alone in its civil rights efforts. Kennedy dispatched John Doar, assistant attorney general in the Civil Rights Division, as head of a team of lawyers to gather data throughout the South on issues such as the denial of the right to vote to blacks. In addition, he petitioned the Interstate Commerce Commission to abolish racial discrimination in interstate travel.

To further desegregation efforts, the Justice Department identified every Southern city that was planning to desegregate its schools for the first time in the fall 1961 semester. The list consisted of at least 10 cities, including Atlanta, Georgia, and Memphis, Tennessee. In the summer of 1961, Burke Marshall traveled to each of these cities to lend federal support to desegregation efforts and to encourage peaceful desegregation. He spoke with mayors, police chiefs, school board members, church people, and businesspeople—anyone who would be influential or important in implementing desegregation. He offered federal law enforcement assistance, but also let it be known that federal assistance would be sent, whether or not requested, if the situation grew out of control. The meetings were never publicized.

The following fall, on October 1, 1962, James Meredith was admitted to the University of Mississippi after a showdown between the administration and Mississippi Governor Ross Barnett. In May 1961, Meredith had filed a federal suit against the state of Mississippi, asserting that he had been denied admission to the University of Mississippi simply because he was black. Meredith lost in the trial court but won on appeal to the U.S. Fifth Circuit in June 1962. Still, it took an

order from U.S. Supreme Court Justice Hugo Black in September to ensure that Meredith would be admitted to the university. In response to the Supreme Court order, Governor Barnett announced that Mississippi would not “surrender to the evil and illegal forces of tyranny.”

Robert Kennedy called the governor to discuss Mississippi’s compliance with the court order—specifically, the details of Meredith’s admission to the university. His efforts were unsuccessful. After Barnett personally blocked Meredith’s attempt to enter the university registrar’s office, the federal district court held the board of trustees and top officials of the university in contempt and issued a restraining order against the governor that prohibited him from interfering in Meredith’s enrollment.

To settle these suits, Barnett proposed a face-saving charade. He promised, that he, the governor, would step aside and allow Meredith to register if U.S. marshals first drew guns on him. But after learning that Klansmen were headed to Mississippi from across the South, Barnett called Robert Kennedy to tell him that he would be unable to handle the crowds and that he was withdrawing the face-saving proposal. On September 28 or 29, President Kennedy, Robert Kennedy, and the

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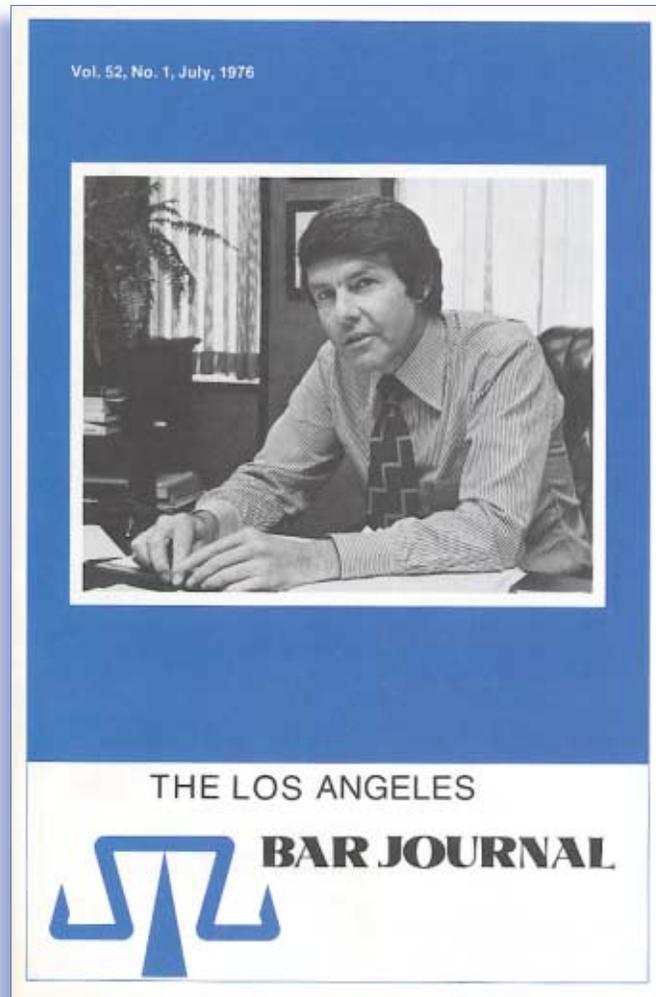


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governor agreed on a plan that would have Meredith register in secret in Jackson, Mississippi, while the crowds assembled in Oxford. But one day later, the governor called Robert Kennedy to urge him to postpone Meredith's arrival and registration. The attorney general refused and threatened that the president would appear on national television and tell the nation that the governor had agreed to admit Meredith secretly and then had reneged on the agreement. Only then did Barnett agree to a plan to bring Meredith on the campus.

On Sunday afternoon, September 30, Deputy Attorney General Nicholas Katzenbach and John Doar escorted Meredith to Baxter Hall, a dormitory where he would spend the night guarded by 24 U.S. marshals while other marshals surrounded the Lyceum Building where he would register the following morning. However, by nightfall on Sunday, an angry crowd had gathered and started throwing rocks. Most of the Mississippi Highway Patrol left the campus to avoid the violence, so the U.S. marshals were left to fill the void alone. Many marshals were hit by bricks, bottles, and lead pipes. In return, the marshals fired tear gas into the crowd, which did not disburse. A French journalist and an Oxford man who was a bystander

were killed. More than one-third of the marshals—160 in all—were injured, 28 were wounded by gunfire, and a state trooper was badly injured.

President Kennedy asked Governor Barnett to bring the highway patrol back to the campus, and the president called in the National Guard and the U.S. Army. However, except for 55 men in the Oxford unit of the National Guard who arrived 45 minutes later, it took Army contingents, standing by in Memphis, four and one-half hours to reach the scene. At 2:00 A.M. they finally dispersed the mob. At 9:00 A.M. on October 1, 1962, Meredith, escorted by Katzenbach, Doar, and Chief U.S. Marshal James J. P. McShane, completed his registration and attended his first class.

Even after the difficult dealings with Governor Barnett, the protracted efforts required to admit Meredith to the University of Mississippi, and the riots at the university, the administration did not propose federal legislation. This did not mean that civil rights was not an important topic. Robert Kennedy continued his dialogue with businessmen, educators, and church leaders throughout the country to get them interested in voluntary integration. But progress was very slow. Then in May 1963 violence in Birmingham,

Alabama, awakened the nation.

For several weeks African Americans, with many schoolchildren in their ranks and led by Dr. Martin Luther King Jr., marched steadily in the streets of Birmingham to protest discrimination in employment and in places that served the public. The demonstrators sought jobs that required wearing a tie in a local department store, nonsegregated fitting rooms, and nonsegregated water fountains. The Birmingham police repeatedly routed the demonstrators with night sticks, fire hoses, electric prods, police dogs, and mass arrests. Television coverage and photographs of demonstrators knocked down by streams of water from high-pressure hoses and attacked by police dogs aroused nationwide sympathy for the demonstrators and their cause. Burke Marshall and other Justice Department attorneys on the scene became convinced that Congress had to pass a civil rights bill.

THE CRISIS IN BIRMINGHAM

The turmoil in Birmingham required an immediate solution, but none was forthcoming. Black leaders asked President Kennedy to dispatch the army, but the president believed that martial law would not bring the demonstrators closer to their goals.



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Instead, Marshall travelled to Birmingham to try to mediate the situation. One obstacle was that black leaders did not know whom to speak with in the white community to solve the problems and white leaders did not know whom to speak with in the black community to end the protests. Marshall bridged the gap. He spoke with elected officials, business people, newspaper people—anyone with influence in either community. Finally, on May 17, 1963, with extreme difficulty, he negotiated a truce and the demonstrations ended.

Marshall promptly left Birmingham, fearing that the agreement was likely to disintegrate. On the plane back to Washington, he and Joseph F. Dolan, assistant deputy attorney general, talked about the kind of federal legislation that would be necessary to resolve permanently the tensions that, while most visible in Birmingham, were present throughout the country. Upon landing, they went directly to Robert Kennedy's office.

The violence in Birmingham also had convinced Kennedy that stronger federal civil rights laws were needed. It was a late Friday afternoon, and Kennedy was scheduled to speak the next day in Charlotte, North Carolina. He asked Marshall and Dolan to fly with him to Charlotte and to draft a bill en route. It was on this flight that the historic Civil Rights Act of 1964 was first drafted.

In Charlotte, Kennedy and I went to the hotel, where he gave his speech, while Marshall and Dolan remained on the plane to work on the legislation. They were joined by other Justice Department attorneys, including Lewis Oberdorfer, assistant attorney general in charge of the Tax Division, who had grown up in Birmingham, and Norbert A. Schlei of Los Angeles, deputy assistant attorney general in the Office of Legal Counsel. The group reached agreement on the bill's essential elements on the return flight, with Robert Kennedy fully participating in all of the discussions.

The bill was broadly designed to enforce the constitutional right to vote, which Kennedy saw as the key to racial justice, and to prohibit discrimination in employment and public accommodations based upon race, color, religion, sex, or national origin. The bill empowered the attorney general to initiate legal action in any area where he found a pattern of resistance to the law. Upon returning to Washington, Kennedy and the others went directly to the White House to tell President Kennedy what they had done. The president, who also had become convinced of the need for national legislation, instructed them to draft the bill.

While drafting the bill, the Justice Department's attention was again drawn to Alabama. In January 1963, Alabama Governor George

Wallace had delivered a speech calling for "segregation now, segregation tomorrow, segregation forever." Five months later, the governor threatened to "stand in the schoolhouse door" to prevent the admission of two African American students to the University of Alabama in Tuscaloosa. Publicly, he made good his word on June 11, 1963, but the Justice Department knew that his posturing was a charade. The governor soon backed down, and the students were admitted to the university without incident. But the enduring image broadcast throughout the nation was that of Governor Wallace blocking the schoolhouse door. Again, the nation was appalled and increasingly sensitized to the need for civil rights protection.

That night, June 11, President Kennedy told the nation in a televised address that he would send to Congress a bill that would give all Americans the right to be served in all public facilities, authorize the federal government to participate fully in lawsuits designed to end segregation in the public schools, and protect every individual's right to vote. "We face...a moral crisis as a country and as a people," the president said. "It cannot be met by repressive police action. It cannot be left to increased demonstrations in the streets. It cannot be quieted by token moves or talk. It is time to act in the Congress, in your state and local legislative body and, above all, in all of our daily lives." This was the first step towards passage of the Civil Rights Act of 1964.

IN THE HALLS OF CONGRESS

At the president's request, Marshall met with Vice President Lyndon Baines Johnson to seek his advice on what to include in the legislation and how best to get it passed. Johnson suggested that President Kennedy thoroughly discuss the legislation with congressional leaders before presenting it to Congress, and Kennedy followed this advice. The president also worked to secure Republican congressional support and, unsuccessfully, to limit opposition from Southern Democrats. He marshaled support from businesspeople, religious leaders, labor officials, and other groups so that Congress would be politically and privately pressured to act favorably on the civil rights bill.

On June 19, 1963, President Kennedy officially sent the administration's omnibus civil rights bill to Congress. It included the components drafted on the airplane ride from North Carolina, protecting the right to vote and banning employment discrimination, and it included other provisions that had been languishing in Congress to outlaw complicated tests and other unfair practices that had been used to prevent African Americans

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from voting. The bill proposed a ban on use of federal funds in discriminatory state or local programs and, most controversially, proposed ending discrimination in restaurants, stores, hotels, lunch counters, and theaters.

Robert Kennedy led the administration's fight in Congress, appearing before the House Judiciary Committee on June 26 and October 15, the Senate Commerce Committee on July 1, and the Senate Judiciary Committee on July 18 and August 28, 1963. On each occasion he argued for the bill using the evidence of discriminatory practices collected by John Doar and other Justice Department lawyers. He included a powerful moral plea:

All thinking Americans have grown increasingly aware that discrimination must stop—not only because it is legally insupportable, economically wasteful and socially destructive, but above all because it is morally wrong....The Federal Government has no moral choice but to take the initiative. How can we say to a Negro in Jackson, "When a war comes you will be an American citizen, but in the meantime you're a citizen of Mississippi and we can't help you?"

After President Kennedy was assassinated, President Johnson put his full power behind the effort to gain passage of the bill in Congress. The House passed the bill first, by better than a 2-1 margin in February 1964, with its key provisions not only intact but slightly strengthened. However, in March, as anticipated, Senate opponents began a filibuster.

Full credit for breaking the impasse in the Senate and securing passage of bill often goes to President Johnson. In doing so, the importance of the Republican Senate leadership is often overlooked or ignored. The filibuster by the Southern Democrats lasted from March through June. That spring, Illinois Senator Everett Dirksen (the Republican minority leader) and California Senator Thomas Kuchel (the minority whip) worked closely with Democratic Senator Hubert Humphrey of Minnesota and the civil rights forces to secure passage of the bill. It was not President Johnson's pressure but Senator Dirksen's realization that the time had finally come—that the nation needed civil rights legislation—that enabled the bill to pass the Senate. Senator Dirksen broke the immobilizing filibuster and provided the votes necessary for the bill to pass in the Senate.

The bill, as amended in the Senate, returned to the House, where it passed, and was sent to President Johnson for his signature. The Civil Rights Act of 1964, conceived on the streets of Birmingham, Alabama, and given life on an airplane ride to North Carolina, was signed into law on July 2, 1964. ■