THE VOTING RIGHTS ACT OF 1965 (B): LBJ AND THE DEPARTMENT OF JUSTICE

Part B of this three-part case on the Voting Rights Act of 1965 deals with the reaction of the Johnson Administration to the events at Selma--the drafting of a new voting rights bill.

The Department of Justice

Justice Department lawyers had been thinking about legislation to protect the voting rights of black people long before the events in Selma focused national attention upon the problem. In testimony before the U.S. Civil Rights Commission in Mississippi early in 1965, Burke Marshall, then Assistant Attorney General in charge of the Civil Rights Division, outlined the early history of voting rights legislation:

> A number of lawsuits were brought between 1957 and 1960 under the authority of the new Act [the 1957 Civil Rights Act]. . . . The experience with these lawsuits quickly pointed to the need for further voting legislation. It was at once apparent that voting discrimination suits could not adequately be prepared without full access to the relevant registration papers and documents and that, even where a suit was brought to a successful conclusion, the scope of the relief had to be wider than what was being afforded by the courts at that time. In 1960, Congress set out to remedy these defects. The Civil Rights Act of that year granted to the Attorney General full powers of inspection of documents in the custody of local voting registrars. It further provided that where a pattern or practice of discrimination was found, a new and more comprehensive procedure for the registration of Negroes was to be employed. This new procedure permits any Negro in the affected area whose application has been rejected by local officials to apply directly to the federal court or a federal voting referee for an order certifying him to vote. The orders of the court so obtained are binding upon state voting officials with respect to both state and federal elections.
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> The Department of Justice brought 40 discrimination suits between the date of enactment of the 1960 Act and the enactment of the Civil Rights Act of 1964.

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By 1965, many of the people favoring new, tougher voting rights legislation were attorneys in the Justice Department responsible for civil rights litigation under existing laws. However, resources within the Justice Department were allocated according to the priorities dictated by these laws, and as a result of the 1964 Civil Rights Act, a large proportion of the Department's manpower was being devoted to litigation of public accomodations cases. Although the 1964 legislation had given the Civil Rights Division enhanced powers, it had not increased the size of the Division's staff; as a result, even attorneys concerned primarily with protection of voting rights were faced with a staggering number of cases to litigate. No one in the Civil Rights Division could afford the luxury of musing about new voting rights legislation or drafting a bill which in all likelihood would be shelved for a long time because of supposed apathy toward voting rights in both the civil rights movement and the Congress.

Still, key individuals within the Department had voting rights on their long-range agendas. For example, Jack Rosenthal, who served as special assistant to Attorney General Katzenbach in 1965, argues that there was support for stronger voting legislation at the top levels of the Justice Department before 1965:

> I can tell you about Katzenbach's view. As a matter of personal philosophy of both his job on civil rights and public policy, Katzenbach thought that the vote was key to all. This view was shared by both Burke Marshall and John Doar, who succeeded Marshall as head of the Civil Rights Division. Yes, you had to deal with other civil rights issues, public accomodations, etc. But if you really wanted to talk about long term civil and human rights, the vote was where it was at. It's like the old story: if you teach a man to fish he could feed himself for life. The vote became a self-enforcing way of guaranteeing civil rights over the long run. So it was of extreme importance to key people in the Department as early as 1961, 1962, and 1963.

Former Attorney General Katzenbach explains why it was hard to push for voting legislation before 1965:

> Burke Marshall, John Doar and I wanted to make voting a very important aspect of the whole Justice Department's program. There was a feeling that that was the key thing. This feeling goes back to 1961. The problem was that nobody was interested in this except the Justice Department and Jack Greenberg of the NAACP Legal Defense Fund. I think the reason you were never able to get civil rights legislation of any significance through the Congress before the sixties was the fact that there was no visible support for it in the black community in the South. The NAACP was a contrived spokesman. All this changed when Dr. King came on the scene. But Dr. King was not talking about voting rights until 1965. This subject was of disinterest to him before then. He was talking about desegregating public facilities and equal accomodations. I don't think Congress or anybody cared about equal accomodations unless it could

be demonstrated that blacks in the South cared about it. The same holds true for voting rights. No one really cared until Selma came along.

President Johnson

President Johnson had also been considering voting rights legislation prior to the Selma disturbances. Johnson had signed the omnibus Civil Rights Act into law in July, 1964, and he regarded the election results of November, 1964, as a mandate for him to lead the nation toward greater social progress. In a self-laudatory passage from his memoirs, Vantage Point, he wrote:

> On November 3, 1964, the American voters gave me that mandate. I moved to use it quickly. I directed Attorney General Nicholas Katzenbach to begin the complicated task of drafting the next civil rights bill--legislation to secure once and for all, equal voting rights. In many ways I believed this act would be even more critical than the previous one. Once the black man's voice could be translated into ballots, many other breakthroughs would follow, and they would follow as a consequence of the black man's own legitimate power as an American citizen, not as a gift from the white man.

In fact, however, Johnson was not nearly as enthusiastic about the prospects for voting rights legislation in 1965 as his memoirs suggest. Doris Kearns, Johnson's biographer, states:

> Johnson admitted that many people thought that after the Civil Rights Bill of 1964 had passed, there should be a breathing space before doing anything more in civil rights until the bureaucracy had digested the Act of '64. Also, I'm sure that good politics would say, "Let's do other things right now--in the normal incremental way--we've done something for blacks, we better get on to do some things that the whites are going to want, too."*

Attorney General Katzenbach argues that the President was interested in voting rights but was in no position to push for major civil rights legislation after the 1964 Act:

> Johnson did have a feeling that he had not yet gained the trust of blacks, that he was still a southern president and they would be suspicious of him despite the success of the '64 Act. He gained a lot of prestige through that but he was still uneasy about that and so he did want civil rights legislation. ...

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*At this time President Johnson also had pending before Congress numerous pieces of Great Society legislation, including Medicare and the Elementary and Secondary Education Act of 1965.

> As a politician he was interested in getting to the voting process for blacks. He believed in that very strongly. I'm qualifying that by saying that he didn't want '65 to be a major civil rights litigation or legislation year. I think he did want to put some voting legislation down. He did want to concentrate some attention on voting but he didn't really want all that occurred in 1965. There was going to be some voting legislation. It wasn't going to be of this major type. I think essentially the reason for that was the feeling we legitimately had in November or December of 1964 that you weren't going to be able to get another major piece of civil rights legislation. By February that had changed. It probably could not have happened without Selma and television. ...
>
> He didn't just do it because people were angry after Selma. He was enough of a politician to know, "I've got this. I can ride this way and we can do something." I think one side of him would have been happy to have a strong voting rights act without the Selma demonstrators and deaths. The other side of him said, "I ain't going to get it."

The Administration's first public statement on voting rights in 1965 was contained in the President's State of the Union message, which he delivered on January 4. The promise of voting rights protection was extremely vague:

> We must open opportunity to all our people. . . . Let a just nation throw open to them the city of promise: to the elderly, by providing hospital care under Social Security and by raising benefit payments to those struggling to maintain the dignity of their [later] years; to the poor, through doubling the war against poverty this year; to Negro Americans, through enforcement of the civil rights law and elimination of barriers to the right to vote . . .

Early in 1965, the President met several times with civil rights leaders to discuss voting rights legislation. In his memoirs, he states:

> I discussed this legislation several times early in 1965 with Roy Wilkins, Executive Director of the NAACP; Martin Luther King, Jr., leader of the Southern Christian Leadership Conference; Whitney Young, Jr., Executive Director of the National Urban League; Clarence Mitchell, Director of the Washington Bureau of the NAACP; A. Philip Randolph, and others. We all knew that the prospects for Congressional passage were unpromising, but we decided to go ahead. I would work within the federal government; the black leadership would take their case directly to the people.

In early February Johnson and Vice President Humphrey met with Dr. Martin Luther King, as described in Part A of this case. Katzenbach recalls the sentiment at the White House and the Justice Department after the meetings with King and the other civil rights leaders:

> At the time the idea was to put down some civil rights legislation that would be more or less modest and spend some time trying to implement the '64 Act that had been enacted. There was still lots to be done on that act, not to mention some of the work that had to be done on the poverty programs. So the White House's and the Justice Department's plans for voting were not what we eventually got. As the demonstrations went on in Selma it became clearer and clearer that we had to have more than what we initially envisioned. So I'd say the demonstrations were the catalyst in terms of changing our thinking.

Thus, work was being done in February on a modest voting rights bill, but the prospects of the President's introducing any voting rights bill in 1965 were uncertain.

The Bill is Drafted

As described in Part A, the day of the second unsuccessful march to Montgomery (March 9) ended with an attack on James Reeb, a white Unitarian minister from Boston; Reeb died two days later. Johnson recalls this death and his reactions to Selma in his memoirs:

> Lady Bird and I were hosting a congressional reception in the East Room of the White House.* The reception was several hours old when one of my aides brought me an urgent note. James Reeb had been clubbed to death in Selma by a band of four white men, to the shouts of "Hey, nigger lover."
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> We excused ourselves and went upstairs to call Mrs. Reeb. No matter what I could find to say to her, I had no answer to the one question that kept turning over and over in my mind: How many Jim Reebs will die before our country is truly free?
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> As I watched the reruns of the Selma confrontation on television I felt a deep outrage. I believed that my feelings were shared by millions of Americans throughout the country, North and South, but I knew that it would probably not take long for these aroused emotions to melt away. It was important to move at once if we were to achieve anything permanent from this transitory mood. It was equally important that we move in the right direction.

Within twenty-four hours after Reeb's death, LBJ told Katzenbach, "You draft the strongest legislation that has any chance of constitutionally surviving." The Departmental panel that Katzenbach designated to supervise the drafting process included newly appointed Assistant Attorney General for Civil Rights John Doar, Deputy Attorney General Ramsey Clark, Solicitor General Archibald Cox, and Harold Greene, who headed the Appellate Section of the Civil Rights Division. The earliest draft of the bill which finally became law was dated March 12, 1965--one day after Reeb's death.

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*At the same time, protesters were camped outside the White House grounds to demonstrate against the violence in Alabama and in favor of strong federal action.

Most of the actual drafting of the legislation was performed by lawyers within the Appellate Section, and the product reflected the experience they had gained from trying numerous cases.* The March 12 draft was narrowly focused: it suspended literacy tests and provided for assignment of federal registrars to localities where state officials persisted in their refusal to register blacks. The drafters were responding to two problems with which they were familiar.

First, states had often manipulated apparently fair literacy tests in such a way as to discriminate against blacks who sought to register. In a letter to a Congressman regarding voting rights, John Doar quoted what former Senator Theodore Bilbo of Mississippi once said about the test in his state:

> The poll tax won't keep 'em from voting. What keeps 'em from voting is section 244 of the constitution of 1890, that Senator George wrote. It says that a man to register must be able to read and explain the constitution when read to him. . . . And then Senator George wrote a constitution that damn few white men and no niggers at all can explain. . . .

Second, even when the Justice Department had prevailed in lawsuits and courts enjoined discriminatory practices, resourceful state registrars found means of circumventing the court orders. The use of federal registrars would end this. Thus, the initial legislation was a conservative response to recognized problems. It removed one set of statutory obstacles to voting and strengthened enforcement of rights which had already been affirmed through litigation.

One aspect of this early bill was less conventional. Its provisions would be effective only in those jurisdictions where:

1. Less than 50% of all voting age citizens actually voted in 1964, or

2. Less than some as yet unspecified percentage of all potentially eligible persons were registered to vote.

This "trigger" was designed to focus the impact of the law, and the resources required to enforce it, on areas of the nation most delinquent in protecting voting rights--primarily the South. While this would ulimately serve to solidify opposition to the Voting Rights Act among Southern Congressmen, it also minimized potential opposition from other parts of the country.

Early in the drafting process attention was given to the identity of states which would be covered under such a formula. Even before the first draft was completed, a staff attorney submitted to Harold Greene a memorandum indicating the likely extent of coverage. Mississippi and Virginia would certainly come within the reach of the law. In all probability, the states of Alabama, Georgia, Louisiana, South Carolina and Alaska would as well. Finally, selected counties in North Carolina, Arizona, California, New York and Hawaii might also be covered.

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*See Appendix A for a summary of major issues facing the drafters and alternative solutions to these problems.

The elements of this early draft came from a variety of sources. The desire of Department attorneys to have assistance from federal registrars was first manifested in an embryonic draft dated January 19, 1965. Solicitor General Cox may have been first in suggesting the triggering mechanism, for he recommended it in a memorandum to the Attorney General late in February. Suspension of literacy tests was actually a cutback from a proposal in January for a constitutional amendment doing away with literacy tests (and, indeed, with all voting requirements except residency requirements not exceeding sixty days, minimum age qualifications, and disqualifications for felony convictions and mental incompetency).* Though each of these initiatives which contributed to the final draft had been begun before Selma, no coherent strategy emerged until after the march. Only then did new legislation become an important enough priority to warrant diverting resources from litigation.

The March 12 draft was altered substantially before President Johnson submitted it to Congress. One might have expected that continued consideration of the bill would result in its being watered down as additional objections were raised by various interests. Such was not the case with the Voting Rights Act. While remaining concerned about the constitutionality of the final bill, the drafters nevertheless went about appending additional sections which strengthened the legislation.

This process was encouraged by two factors. First, the members of the Attorney General's special panel--Clark, Doar, Cox, and Greene--brought to bear their own experience, introducing a breadth of views beyond that of the litigators who developed the first draft. Second, while the revisions were being made, the full political impact of Selma was becoming apparent. After operating very cautiously under one set of assumptions about the political environment, the authors of the legislation became bolder as they recognized that Selma had created a broad measure of support for a strong voting rights bill.

One of the major additions embodied in the final draft was first hinted at in a letter sent to the Attorney General in February by Joseph Rauh, an attorney who had spent a lifetime litigating civil rights causes. Rauh suggested an additional trigger that would activate the use of federal registrars. He proposed that voter lists be nullified and federal registrars assigned where:

> the state has, during the period from September 9, 1957, . . . enacted any law which added or changed any qualifications (other than qualifications of age or residence) of individuals who are entitled to vote. . . .

The purpose of this provision was to focus upon jurisdictions which had sought to evade even the weak voting rights provisions of the 1957 Civil Rights Act by adopting tests of "good moral character" and other qualifications which were wholly subjective and could be applied in a discriminatory manner.

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*After Selma, Congress appeared willing to deal directly with voting rights legislation, and the Justice Department was confident that it could draft legislation capable of withstanding a constitutional challenge. Hence the idea of a constitutional amendment was shelved.

When Rauh first introduced this concept, it was designed to reverse changes in voter qualifications which had undercut the effectiveness of previously enacted federal law. In the course of the drafting process, however, it evolved into a prospective instrument for preserving the gains expected under the new act. It was feared that in the states where literacy tests were suspended, other devices would be developed to prevent blacks from registering. The answer was to freeze all voter qualifications at the status quo. As discriminatory state practices were eliminated by legislation or found invalid by the courts, new qualifications could not be superimposed, and progress toward voting rights, even if slow, would at least be steady.

Even within the Justice Department, however, there was some concern over the constitutionality and administrative viability of an across-the-board freeze. Three drafts written over successive days incorporated three different versions of the freeze. The first was absolute and not subject to appeal. The second permitted states and counties to appeal to the courts on the ground that proposed changes had no discriminatory intent or effect. In the third bill, the date of the freeze was pushed back from March, 1965 to November, 1964. This was designed to overturn discriminatory qualifications which might have been added in anticipation of the upcoming voting rights legislation.

Then, in a memorandum to the Attorney General, Solicitor General Cox complained that the wording of the draft would prevent switching from paper ballots to voting machines or changing the hours during which polls were open. As an alternative, Cox wrote:

> I suggest that it is quicker and simpler for everyone concerned to allow the Attorney General an opportunity to object to any state changes before they may take effect, with his disapproval subject to judicial review. There should also be a provision making it clear that his failure to object does not bar the United States from challenging the constitutionality of a new law in operation.

It was in this form that the "freeze" on qualifications was embodied in the final legislation.

In the same memorandum, Cox also expressed concern about the constitutionality of the whole trigger mechanism by which selected states would be subject to certain provisions of the law. He objected that:

> One might equally well make the Act applicable to any state whose name begins with Vi or Mi or Lo or Al or Ge or So. Indeed, since even this description covers Alaska as well as Alabama, it has exactly the same effect as the determination now required to be made.

As at least a partial remedy, Cox suggested that the Act be more closely tied to the Fifteenth Amendment which prohibits racial discrimination with respect to the right to vote. To do this, a third trigger would be added. The Act would only operate where "according to the most recent census, more than 20 percent of the persons of voting age were of the Negro race." While this provision was added in some versions of the bill, it was deleted from the final draft.

A final suggestion which emerged during the drafting process was legislative abolition of all poll taxes.* This was seen as desirable because such taxes prevented poor whites as well as blacks from voting; however, this color-blindness also made the connection between poll taxes and racial discrimination a tenuous one. Therefore, there was a strong question whether their abolition by statute would be constitutional, since the Constitution explicitly grants to the states the responsibility for establishing voter qualifications. Including the poll tax provision thus seemed to endanger the constitutionality of the entire bill by attacking one voter qualification which had not been shown to be used for racially discriminatory purposes. Furthermore, Attorney General Katzenbach was confident that a pending court challenge to poll taxes would result in their being struck down. The final Justice Department bill did not include an abolition of poll taxes.

As the above discussion shows, the Department's experience under existing law had enabled the draftsmen to quickly prepare a strong piece of legislation. David Marlin, a trial attorney with the Civil Rights Division, says:

> What we had learned painfully and slowly through litigation gave us an awareness of what kind of remedy would be needed in order to make voter registration a reality. And so the Department was certainly prepared with the kind of legislative suggestions that were reflected in the voting bill, and we came up with some good legitimate suggestions. There was a great deal of discussion and argument about the form the bill would take. There were many differences of opinion as to whether it would be most effective to send into a particular county federal voter registrars or what would trigger sending in a federal voter registrar. And we knew that the act had to be constitutional and that it could be applied in any state and not just in the five states proven to be the most discriminating when it came to voting. [In short,] there were many intricate legal issues to be resolved, but our experiences gave us the motivation and the know-how to resolve them.

Katzenbach recalls that the strength and the boldness of the draft legislation surprised civil rights leaders:

> I'll never forget how when we showed civil rights leaders the draft we were prepared to send to the Hill, they were quite surprised. They did not think we could or would come up with something that strong. Actually we were surprised because we were afraid that they were going to cut it to shreds but they didn't.

The draft prepared by the Justice Department was a far-reaching, and in many ways unique, piece of legislation. It replaced state officials with federal registrars where discrimination had occurred. By the trigger mechanism, it operated only in certain states and counties. Finally, the modified freeze on voter qualifications actually gave the Attorney General a form of veto power over state legislation.

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*A constitutional amendment ratified in 1964 had eliminated payment of the tax as a qualification for voting in any federal election.

Moreover, the Justice Department had produced a strong bill despite the fact that, in general, civil rights leaders had made few direct contributions to the drafting process. Katzenbach found that Dr. Martin Luther King did not play a critical role in the struggle for voting rights legislation after the Selma demonstrations ended:

> I don't think Dr. King ever gave any thought to legislative solutions or using the legal process. He was interested in dramatizing rather large moral problems and if the registration for voters served as a focal point to dramatize discrimination, then he would address the voting issue.
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> When trying to engage in a discussion with him about legislative solutions and problems, he was on another wavelength. Once I recall he began to rock in his chair. It was almost a prayer meeting kind of thing and he went off into an eloquent expression of things--of the problems of blacks, of the evils of discrimination, of the need to have more love and goodwill and so forth. Nobody could disagree with him. But what he said didn't help a great deal in coming to terms with the problems at hand.
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> After the Selma demonstration the administration had little cause to discuss the legislation with Dr. King. It was more likely that we would talk to his lawyer, Harry Wachtel, who understood the legislative problems better. King would be called on, let's say, if it was important to let Congressmen know where Dr. King stood on a particular issue. I vaguely remember communicating to him how it would help if Congressmen fighting over the poll tax provision in the earlier drafts of the voting rights bill knew exactly where he stood.

However, Katzenbach added that King "was good at dramatizing the voting problems and convincing the members of Congress that the black community in the South was in support of voting legislation. The legislation would never have happened just because of what he did, but it never could have happened without him."

The Bill Is Introduced

After directing the Justice Department to draft the "strongest legislation," President Johnson had played a passive role until the bill was to be submitted to Congress. Indeed, staff members in the Justice Department had even begun drafting a presidential message to Congress to accompany the voting rights bill. Their draft ranged far beyond the problem of racial discrimination: it cited the disturbingly low voter turnout in the United States and compared this to the record of other free world nations. As the speech contended:

> These figures are in part the result of the indifference of some citizens who could vote but would not. To them we must say, do not forfeit your part in America. But these

> figures are also the result of obstacles barring the voting booth to those who would vote but could not. And it is those citizens who must be our great concern today.

Discrimination was cited as only one obstacle to voting. Residence requirements were pictured as disenfranchising an increasingly mobile people. The difficulty of absentee voting barred many others. Finally, cumbersome registration procedures were another deterrent to full voter participation.

Richard Scammon, who had been chairman of the Commission on Registration and Voting Participation, read this draft and expressed some criticisms of it to the Attorney General through Harold Greene. Mr. Scammon made these points:

- The message ought to concentrate solely on the racial problem. If there were any discussion of the broader issue of low voter participation it would detract and deflect support from elimination of racially discriminatory practices.

- If nonracial issues must be included, they should be limited to exhortations to the states to eliminate voluntarily obstacles to registration.

- The message should make no hint of a possible constitutional amendment. Such an implication would merely provide an excuse for delay on the bill itself.

The Attorney General had no occasion to consider Mr. Scammon's advice, however. When it came to the presentation of legislation to Congress, the President was in his element. He had no need for the scholarly message drafted by the Justice Department, full of statistics and general suggestions for increasing voter turnout.

On Sunday, March 14, the President met with Senators Mansfield, Dirksen, and Kuchel and Representatives McCormack, Albert, Boggs, and William McCulloch of Ohio to go over the main provisions of the first voting rights draft and to ask for their best judgment on whether to transmit the voting message to the Congress in person or in writing.* Johnson deemed it extremely important that he "reassure the people that we are moving as far and as fast as we could." He also knew that "reassurance would not be provided by [the] cold words of a written message." After some disagreement, the Congressional leaders were unanimous in recommending that the President address the Congress before a Joint Session at 9 p.m. the next evening.

Jack Rosenthal, special assistant to Katzenbach and the Justice Department's Director of Public Information, was assigned the task of preparing the message; he worked on it for the entire weekend before it was delivered to the Congress. He recalls:

> I never worked harder on anything in my life than that message. I think I ended up spending something like 36 straight hours in what had been Larry O'Brien's office. Anyway, I sat

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*No President had gone before Congress since 1946 to recommend the adoption of a piece of domestic legislation.

in some office in the White House drafting and drafting and marks would come back from the President or somebody else and I would rewrite.

At 9 p.m. on March 15, President Johnson delivered one of the most memorable speeches of his political career. He vividly recalls that particular evening:

> I had to be at the podium in the House Chamber at 9 p.m., but I was still writing about my experiences in a Cotulia, Texas, schoolroom. The speech still had to be typed and put on the teleprompter. We never made it with the teleprompter. I had to deliver most of the speech from a rough copy lying on the rostrum.
>
> As I stood before the assembled Chamber, the lights were blinding. I began slowly:
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> "I speak tonight for the dignity of man and the destiny of democracy. . . . At times history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama"
>
> I could feel the tension in the Chamber. I could hear the emotion in the echoes of my own words. I tried to speed up a little.
>
> "There is no constitutional issue here. The command of the Constitution is plain. There is no moral issue. It is wrong--deadly wrong--to deny any of your fellow Americans the right to vote in this country. There is no issue of states' rights or national rights. There is only the struggle for human rights. . . . This time, on this issue, there must be no delay, no hesitation, and no compromise with our purpose."
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> I looked up to the Presidential box. I could barely distinguish the faces of Lady Bird and our daughter Lynda. But I felt them with me. Then I looked straight ahead in the Chamber at my Southern friends. I knew that most of them were not with me. I went on:
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> "But even if we pass this bill, the battle will not be over. What happened in Selma is part of a far larger movement which reaches into every section and state of America. It is the effort of the American Negroes to secure for themselves the full blessings of American life."
>
> I paused for a breath. In that fleeting moment, my thoughts turned to the picket lines in Birmingham, the sit-ins in North Carolina, the marches in Selma. A picture rose before my eyes--a picture of blacks and whites marching together, side by side, chanting and singing the anthem of the civil rights movement.

I raised my arms.

"Their cause must be our cause too. Because it is not just Negroes, but really it is all of us who must overcome the crippling legacy of bigotry and injustice. And . . . we . . . shall . . . overcome."

For a few seconds the entire Chamber was quiet. Then the applause started and kept coming.* One by one the Representatives and Senators stood up. They were joined by the Cabinet, the Justices, and the Ambassadors. Soon most of the Chamber was on its feet with a shouting ovation that I shall never forget as long as I live.

The bill was sent to Congress a few days later.

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*According to the New York Times' report on March 16, the President's speech was interrupted thirty-six times for applause and twice for standing ovations.

APPENDIX A

The following is a synopsis of the major issues facing the drafters of voting rights legislation in 1965:

ISSUE: Form of protection for voting rights

ALTERNATIVES:
A. Litigation under existing statutory and constitutional provisions
B. New statutory authority
C. Constitutional amendment

POLICY CONSIDERATIONS: Progress through litigation had been slow because court rulings could be circumvented by initiating new discriminatory voter qualifications. Prior to Selma, the chances for passage of major civil rights legislation in 1965 appeared dim. Furthermore, the validity of federal legislation in this area was open to question, since the Constitution appeared to grant to the states the power to set voter qualifications. A constitutional amendment would avoid these problems, but ratification could take a long time and would be subject to changing public opinion.

ISSUE: Federal assistance to persons denied the right to vote because of race

ALTERNATIVES:
A. Federal registrars
B. Registration at post offices

POLICY CONSIDERATIONS: In order to facilitate speedy registration of persons wrongfully denied the right to register and vote by state registrars, a parallel federal registration apparatus was required. Federal registrars could simply be assigned as adjuncts to county boards of elections where discrimination had taken place. This proposal carried the danger of friction between the two sets of registrars. Registration could be done in federal post offices, as suggested by Dr. King, but this would require coordination between two federal bureaucracies.

ISSUE: Coverage

ALTERNATIVES:
A. Nationwide applicability
B. Designated states
C. Formula

POLICY CONSIDERATIONS: Considerations of equity argued in favor of applying voting rights legislation even-handedly in all states. However, this might have meant losing votes from northern congressmen and also spreading resources over states where the

problem was negligible. Designating the covered states by name would be open to constitutional challenge as a violation of the guarantee of equal protection. Using a formula would generate problems of deciding whether it actually provided the desired coverage. Also, it would have to be sufficiently rational to meet any constitutional challenge.

ISSUE: Limiting coverage to states with large minority populations

ALTERNATIVES: A. Legislation would be operative only in states where more than X% of the population is non-white
B. No such limit on coverage

POLICY CONSIDERATIONS: The constitutionality of legislation hinged on whether it was closely enough related to the 15th Amendment which authorized actions to prevent abridgement of voting rights on account of race. The suggested trigger would make explicit this connection. However, it might also thwart protection of small minority populations in some states who would be forced to rely on previously existing remedies against discrimination.

ISSUE: Poll tax

ALTERNATIVES: A. Eliminate through legislation
B. Challenge constitutionality through the courts

POLICY CONSIDERATIONS: The same constitutional problem that affected voting rights legislation in general proved particularly thorny in the case of poll taxes. Could the federal government abolish by legislation a state voter qualification not shown to have been used in a racially discriminatory way? The alternative of litigation raised other problems. Attacking poll taxes through the courts would take longer; even a successful result might be subject to judicially-imposed qualifications; and the possibility remained that poll taxes might be upheld.

ISSUE: Subsequent changes in voter registration and election procedures

ALTERNATIVES: A. Attack discriminatory provisions as they arise
B. Freeze procedures at the status quo
C. Freeze procedures, permitting states to appeal to the courts
D. Permit changes in procedures not objected to by the Attorney General

POLICY CONSIDERATIONS: The perceived need for some type of restraint on changes in state voting procedures arose from past experience. Recalcitrant states

had continually altered procedures to delay and prevent progress in voting rights. Any federally-imposed embargo on changes in state law was open to constitutional challenge, however. This problem would be most serious if the freeze were absolute, but it would still exist even if the states could appeal through the courts. Furthermore, any such freeze could inhibit progressive as well as discriminatory changes. Assigning to the Attorney General the power to object to discriminatory changes would provide greater discretion to permit innocent alterations, but it would also give the Attorney General unprecedented power over state legislation.