The 1964 Civil Rights Act
Then and Now

By Juan Williams


Associated Press, AP

President Lyndon Johnson used seventy-two pens to sign the 1964 Civil Rights Act. He gave the pens to King and others as keepsakes of the historic event.

Forty years after the passage of the 1964 Civil Rights Act, it is hard to understand and even remember the furious battle over the passage of that law. Today, in 2004, with more than a third of the nation made up of African Americans, Hispanics, and Asians, it seems as if the impassioned filibuster in Congress took place in a different century and maybe on a distant galaxy. How could well-respected senators ranging from West Virginia Democrat Robert Byrd to Arizona Republican Barry Goldwater really oppose the idea of ending legal racial discrimination against blacks at hotels, restaurants, and department stores? How could they view it as a threat to the nation?

In 1964, however, opponents of the Civil Rights Act (Act) argued that it was a gross violation of every American's freedom to decide who they wanted to work with, do business with, and even eat with. Southern Democrats, also known as Dixiecrats, portrayed the law as an attack on the "southern way of life" and prime evidence of the federal government's intent to force racial mixing on the South. The idea of a civil rights act stirred old resentments among segregationists. Just ten years earlier, southern separatists had sparked the so-called "massive resistance" movement in an attempt to halt the implementation of the Supreme Court's *Brown v. Board of Education* decision, which ended the legal segregation of public schools. Using Confederate rhetoric from the Civil War era, Senator Strom Thurmond mounted a historic filibuster effort to block the Act. Speaking for twenty-four straight hours on the Senate floor, he charged that the federal government was once again intruding in the affairs of sovereign states and, even worse, interfering in the lives of free citizens.

When the filibuster finally ended and the Senate passed the Act by a vote of seventy-three to twenty-seven, the nation's racial and political landscape was reshaped. Senator Goldwater, who voted against the Civil Rights Act, made it the basis of his GOP campaign for president in 1964. Senator Thurmond, once a Democrat, threw his support to Goldwater in a show of political solidarity. Thurmond also encouraged a steady stream of southern Democrats to leave their party and join Goldwater and the Republicans. Forty years later, we understand this switch as the first step toward the Republicans' absolute political control of the South. The GOP has made the South its base for the election of every Republican president since 1964.

Meanwhile, the Act's key provisions banning racial discrimination by employers remain at the heart of politically explosive arguments over affirmative action. At the start of the twenty-first century, most people accept the fact that all Americans, regardless of race, sex, or religion,

- Number of African American elected officials in 1970: 1,469; in 2002: 9,101
- States with highest numbers of black elected officials in 2001: Mississippi, Alabama, and Louisiana

Source: http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/001800.html

have the right to eat in any restaurant and stay in any hotel. Today, this is beyond debate, at least in acceptable company. Instead, the Act triggered key racial debates that have continued for more than forty years. These range from whether minority students should be given preference in college admissions to whether minority businesspeople should have access to contract set-asides. The Civil Rights Act of 1964 also opened the door to years of legal and political fights over court-ordered plans for hiring blacks and women previously excluded from some police and fire departments as well as some labor unions.

In Search of "Elementary Rights"

The advocates of the 1964 Civil Rights Act simply wanted a law to strengthen the government's meager efforts to protect the rights of freed slaves after the Civil War. In 1868, just after the end of the "War Between the States," Congress passed the Fourteenth Amendment requiring equal rights for all citizens without regard for race. But nearly a hundred years later, the reality of American life was "separate but equal," as reflected in the Supreme Court's 1896 decision in *Plessy v. Ferguson,* which ruled that it was legal for a Louisiana passenger train line to separate black and white travelers in different rail cars.

The key to the *Plessy* ruling was separation—not equality. Once separated, blacks never experienced equality. They always got inferior facilities, second-class treatment, and even outright harassment, right down to being lynched. That oppression by private businesses and the government, as well as the likes of the Ku Klux Klan, flouted the intent of the Fourteenth Amendment. The Supreme Court acted only in 1954, when the *Brown* decision outlawed segregation in public schools on the basis of the Fourteenth Amendment's requirement of equal rights. Still, serious questions remained about the government's power to undo racial discrimination in employment and other areas. A similarly thorny set of questions existed about the rules of racial equality at private businesses such as hotels, restaurants, and department stores.

But in the aftermath of the *Brown* decision, black citizens and their allies in the integrationist movement had a heightened expectation that the federal government would act to protect their rights. The Supreme Court demonstrated its willingness to do so with the *Brown* case. Later, President Eisenhower offered further proof by sending the 101st Airborne to Little Rock, Arkansas, to protect black schoolchildren as they integrated Central High School.

In the meantime, however, Congress was paralyzed on the race issue because of the presence of southern Democrats, all white and many holding important positions as heads of leading committees in the Senate. President Eisenhower and later President Kennedy feared risking major political fights with leading senators, much less opening old wounds with voters in the South. It was clear that there was a high political price to pay for formally proclaiming through federal law that blacks had a right to equality in public as well as private areas of American life. President Kennedy, narrowly elected to office in 1960 with 70 percent of the black vote, settled on a strategy of having the attorney general press the federal courts to review cases of discrimination against blacks. His plan ran into trouble because the federal judges he had appointed to the bench to satisfy southern Democrats were segregationists, generally indifferent or in some cases hostile to the idea of mandating equal rights for blacks.

Faced with the political stalemate in Congress and the courts, civil rights activists developed their own strategy. They pursued a series of highly visible protests and boycotts intended to force the Kennedy administration and those in Congress who supported civil rights to defend the rights of blacks to eat at lunch counters, to ride buses without sitting in the back, and to spend the night in any hotel. Civil rights groups were also pushing for an end to employment discrimination.

Despite the pressure, Congress and the federal courts—even those courts free of segregationist thinking—had trouble dealing with the question of a private business's right to choose its own employees without government interference. Housing presented a similar issue, with owners and landlords of apartment buildings and housing developments arguing that their decisions on whom to rent or sell to were based on business. In areas where whites preferred to flee the neighborhood instead of living with blacks, there was a real cost attached to selling property to African Americans.

On June 11, 1963, President Kennedy appeared on national television and said that the country was facing a "moral crisis" over the issue of civil rights. Earlier that day, Alabama Governor George Wallace had stopped two black students from registering at the University of Alabama, literally positioning himself to block them from walking through the doors. A month earlier, Dr. Martin Luther King Jr. had led demonstrations to end segregation in stores in downtown Birmingham; Eugene "Bull" Connor, the police chief of the city, responded by attacking the protestors with vicious dogs and painful blasts of water from firemen's hoses. Connor and Robert Shelton, the grand dragon of the Ku Klux Klan, even tried to get local businessmen to refrain from negotiating a settlement with the protestors. All the while, the federal government feared that the

Stats: Economics

- Poverty rate for African Americans in 1966: 41.8%; in 2002: 23.9%
- Median family income for African Americans in 1964: $18,859; in 2002: $33,634 (both figures show inflation-adjusted 2002 dollars)

Source: http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/001800.html

widespread media coverage of arrests and physical abuse might spark nationwide race riots.

While King was in jail in Birmingham for leading the protests against segregation, he wrote a letter that directly challenged the Kennedy administration's cautious approach to civil rights. In emotional language, King wrote, "We have waited for more than 340 years for our constitutional and God-given rights. The nations of Asia and Africa are moving with jet-like speed towards gaining political independence but we still creep at horse and buggy pace towards gaining a cup of coffee at a lunch counter." King's letter was published in *The New York Times* and widely circulated in churches.

During this period of racial confrontations in the South, Kennedy addressed the topic at a White House news conference, saying that he couldn't understand why some southern leaders refused to negotiate a settlement with civil rights leaders. Speaking with exasperation of a man who had introduced a civil rights act in 1961 and seen it die in Congress, the president said it should be possible for Americans of different races to negotiate at a time when "the U.S. government is involved in sitting down at Geneva with the Soviet Union." Later, speaking on television, Kennedy announced a new plan to deal with racial discontent in the country: "I am therefore asking the Congress to enact legislation giving all Americans the right to be served in facilities which are open to the public—hotels, restaurants, theaters, retail stores, and similar establishments. This seems to me to be an elementary right. Its denial is an arbitrary indignity that no American in 1963 should have to endure. . ."

The president was caught between the moral power of the civil rights protests and the political power of segregationists. He had seen his 1961 effort at a civil rights act go down in defeat. He was not convinced that he could be any more successful with a new act. But King and Clarence Mitchell, National Association for the Advancement of Colored People (NAACP) lobbyist on Capitol Hill, insisted on a new attempt.

On June 19, 1963, Kennedy sent a civil rights act to Congress. It asked for an end to segregation on interstate buses and trains and also gave the attorney general the power to end federal funding for any state or local government program that practiced discrimination. Kennedy also requested that the Justice Department be empowered to begin filing suits against school districts that refused to integrate.

The bill stalled through the summer of 1963. A. Philip Randolph, the union leader who was then the senior leader of the civil rights movement, got King and the leadership of the NAACP, the Urban League, and other major civil rights groups to agree to participate in a massive March on Washington for Jobs and Freedom (March). The Kennedy administration and Congress opposed the March.

Administration officials told civil rights leaders that a major gathering of black people might turn into a riot and set back the cause of civil rights. Members of Congress told reporters that the march was an attempt to intimidate them. The administration, sensing that it could not stop the march, switched tactics and convinced white religious leaders and major trade unions to join the protest. They also alerted the National Guard and persuaded the March's organizers to hold it on one day in the middle of the week. That way, people coming to Washington would be more likely to go home on the same day. The March was a success, and President Kennedy met with its leaders afterwards. Once again, they pressed him to put his name and political muscle behind the Civil Rights Act.

In the months following the March, however, the act appeared to be stalled. In November, President Kennedy was assassinated. In early 1964, as pressure continued to build over civil rights protests, the new president, Lyndon B. Johnson, asked Congress to honor Kennedy by passing the Civil Rights Act. But first, President Johnson, a former Senate majority leader, got his supporters in Congress to strip provisions on voting rights out of the bill to reduce opposition from segregationists. They also assured employers that the act did not institute any racial quotas for hiring employees. The two major provisions were found in Titles II and VII. Title II made it federal law to open hotels, restaurants, gas stations, and stadiums to all Americans without regard to their race. Title VII banned racial, sexual, or religious discrimination in hiring, promotions, or assignments. Congress voted to approve the Civil Rights Act on July 2.

Looking Forward

In 2004, it seems as though the days of public support for denying blacks the right to have a hamburger or go to the movies took place more than forty years ago. But the political arguments at the heart of the Civil Rights Act of 1964 continue to be relevant. The controversy surrounding the debate over whether colleges and universities can engage in affirmative action to diversify their student bodies is only one example. The broader argument on civil rights for blacks still exists as well, as when Senator Trent Lott of

continued on page 15

lines of cases and, as a result, recent cases have held that LGBT people may be entitled to protection under Title VII in some circumstances. In *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), the Supreme Court held that Title VII was not limited to discrimination on the basis of one's biological status as a man or a woman but instead prohibits the "entire spectrum" of discrimination on the basis of sex, including discrimination on the basis of gender stereotypes. In *Price Waterhouse*, plaintiff Ann Hopkins was denied a partnership at an accounting firm because she was deemed to be insufficiently "feminine." *Id.* at 234–35. To improve her chances for partnership, Hopkins was told she should "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." *Id.* at 235. The employer argued that Title VII did not prohibit discrimination based on gender stereotypes. The Supreme Court disagreed. "As for the legal relevance of sex stereotyping, we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for 'in forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.'" *Id.* at 251 (internal citations omitted). Nine years later, in *Oncale v. Sundowner*, 523 U.S. 75 (1998), the Supreme Court removed another barrier when it held that a plaintiff could state a Title VII claim where sexual harassment was perpetrated by a person of the same sex.

Based on these Supreme Court decisions, courts across the country have held that LGBT people may be entitled to protection under Title VII. For example, in *Heller v. Columbia Edgewater Country Club*, 195 F. Supp. 2d 1212 (D. Or. 2002), the district court denied summary judgment for an employer in a Title VII suit brought by a lesbian employee. The plaintiff presented evidence that throughout her employment, her female supervisor made disparaging and harassing comments based on gender stereotypes, including: "Oh, I thought you were a man", "Do you wear the dick in the relationship?" and, "I thought you wore the pants." In ruling in favor of the employee, the court relied upon a recent Ninth Circuit case—*Nicholas v. Azteca Restaurant Enterprises, Inc.*, 256 F.3d 864 (9th Cir. 2001)—abrogating its earlier decision in *DeSantis* and holding that a male employee is entitled to redress under Title VII if he can prove that he was discriminated against for failing to comport with stereotypical notions of how men should appear and behave. Similarly, a concurring opinion in the en banc decision *Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061 (9th Cir. 2002), revived a Title VII claim brought by a gay male plaintiff who had presented evidence that his former coworkers taunted him by calling him feminine names and endearments, and ridiculed him for walking in a feminine manner.

With respect to transgender people, courts have similarly held that if a transgender person is targeted for failing to conform to stereotypes about how men and women are expected to appear and behave, they may be protected under Title VII. In *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000), the plaintiff was a transgender prisoner who sued under the Gender Motivated Violence Act after being assaulted by a guard. Relying on the old case law on this issue, including *Ulane*, the guard argued that sex discrimination laws do not protect transgender people. The Ninth Circuit rejected this argument, holding that the "initial judicial approach taken in cases such as *Holloway* [and *Ulane*] has been overruled by the logic and language of *Price Waterhouse*." *Id.* at 1201. The court concluded that "[d]iscrimination because one fails to act in the way expected of a man or a woman is forbidden under Title VII," and that a transgender person who is targeted on this basis is entitled to protection.

Forty years after the passage of the Civil Rights Act of 1964, there is still no explicit federal protection for LGBT employees. In at least some circumstances, however, courts are increasingly finding that LGBT employees are entitled to protection under Title VII.

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The Civil Rights Act: Then and Now

continued from page 8

Mississippi praised South Carolina Senator Strom Thurmond for his lifetime of political leadership by saying that the nation would not have had "all these problems over the years" if Thurmond—who ran for president on a segregationist ticket in 1948 and later voted against the Civil Rights Act—had won that race.

In a nation that is now one-third people of color, the issue of ending discrimination is even more critical today than it was in 1964, although the deep-seated racism of years past is not the norm today. The arguments over how to heal those wounds of race continue to be debated and most of them rise out of the historic 1964 Civil Rights Act.

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