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SENATOR THOMAS C. HENNINGS, Jr., AND CIVIL RIGHTS

WAYNE MORSE*

Of the hundreds of men and women who have sat in the Congress of the United States, few have the opportunity to place a personal imprint upon the work of the Congress. Senator Thomas C. Hennings, Jr., of Missouri was one who did, and he did it in the area of legislation most difficult to achieve—that of civil rights.

While the record and contributions of Senator Hennings in the field of civil rights and liberties must extend to the full list of them specified in our Constitution, perhaps his most notable contribution lay in the extension of equal protection to colored Americans. This area of public law is commonly referred to as “civil rights” legislation. Yet the foundation of his work stems from Senator Hennings’ accurate and frequent re-statement of the fact that “civil rights” are really constitutional rights, and that Americans who seek to exercise them and those who seek to prevent others from exercising them would do well to remember that it is the Constitution itself which carries in it not only the powers of the Government but the supposedly inviolable rights of each citizen.

Senator Hennings once said of the former Civil Rights Subcommittee of the Senate Judiciary Committee:

Because of the semantics involved, and because of a general misunderstanding of what constituted civil rights, it being generally understood that civil rights relate to race relations, I moved that the name be changed to the Subcommittee on Constitutional Rights; and the committee agreed with me. It was done because many matters coming within the purview of the first ten amendments to the Constitution would be considered by the subcommittee.¹

But nearly all governments with written constitutions—including Communist governments—have similar statements of rights. The vital question in whether they are respected and enforced by legislatures, administrators, and courts.

*United States Senator from Oregon.
1. 103 CONG. REC. 1281 (1957).

The greatest difficulty America has had in enforcing constitutional rights has come in the area of race relations, and it was to this area that Hennings devoted much of his time and energy. He did not read *only* those parts of the Constitution which pleased and furthered the interest of a particular faction or class, be it economic or social. He read and believed in the entire Constitution; more important, he tried to make it a reality for every American.

In 1956, when he told the Senate of the correspondence of the Judiciary Committee with the Justice Department about pending civil rights legislation, he said:

I know of no elected member of this assembly who was chosen to come here to represent merely the fortunate, or the privileged, or the secure within his community. I know of no Senator here who was chosen to represent only the white men or only the Negroes within the state which gave him the high privilege and honor of our legislative responsibilities. As for me, I was sent here to represent as best I may, an entire community, including rich and poor, young and old, people of diverse faiths, and diverse ancestries. And in particular, it seems to me, a responsibility was laid upon me to speak and to vote and to act on behalf of those people within this American Republic who are wrongfully deprived of their just rights, under our Constitution.²

It was no accident that the Constitutional Rights Subcommittee of the Senate Judiciary Committee developed and flourished under Senator Hennings' chairmanship. This subject was probably more important to him than any other aspect of his service in government, though his range of interests was wide.

To those of us who sought the same objectives, it was a helpful coincidence that Senator Hennings came from the border state of Missouri. His leadership in the effort to enforce the rights guaranteed under the fourteenth and fifteenth amendments was never subject to any charge of "outside agitation" in the affairs of the South. Hennings frequently referred to his southern ancestors and was rightfully proud of the fact that many of them had fought for the South in the Civil War. But he was a thoughtful student of that war. He knew what it was all about, and he knew what the meaning of its outcome was for the history of the United States and the world.

2. 102 CONG. REC. 6192 (1956).

Moreover, Missouri is a border state both geographically and in its race structure. The impact of school integration was hard in Missouri, but there was not the inclination to resist it which has existed in other states. Negro voting rights have not been contested in Missouri as elsewhere. Senator Hennings was both a product of the progressive race relations in his State and a contributor to them.

But the simple statement of his creed is never the test of any man's contribution. The test is what he did to apply his principles to specific situations, what efforts he made to effectuate them. It was here that Senator Hennings rose far above the ordinary. There is probably no field of congressional endeavor which is more frustrating, more difficult, and more painstaking in which to labor than that of extending equality of the law to colored Americans.

No one knew better than Hennings that "civil rights" was, and is, a time honored political football, an issue to which more lip service is given and less accomplished than in any other area of political promises.

The reason has never been lack of devotion; the reason has been the legislative obstacles in the way of the enactment of such legislation. Carrying any civil rights measure, however meager, through to final enactment is a time consuming task that requires the constant attention not of just one Member, but of many Members. It demands attention often to the exclusion of other business which Members may consider just as important. It demands constancy of purpose and attention, because our legislative system is designed to put the burden upon those who seek to enact laws, rather than upon those who oppose them. A determined minority in Congress can very often prevail over a determined majority.

Behind this legislative situation lies the social and economic basis for opposition to civil rights legislation which is only reflected in the Congress.

It is simply true that great numbers of Americans do not want Negroes to have the same rights as white Americans. They do not want Negroes to vote, to hold public office, or to receive the same treatment in public places and in public services as white people receive. This feeling is held most strongly in the South, but it is held in the North, East, and West, too.

It has a social meaning for many white people that Negroes have been used for servile purposes in the past, and that association with them now on a basis of equality is demeaning to the white. The differences in color and appearance accentuate this attitude, and make it easier to hold.

It has an economic meaning, too. Colored labor is still cheap labor, especially in the South. Just as the northern immigrant of Civil War days saw the Negro slave and even Negro freemen as competition for work already poorly paid, so Negroes today are commonly regarded by working white people as men and women who are to do the menial work for the lowest wages while whites are to have the more skilled jobs and the higher wages. Again, the visible racial differences of color and appearance become the focal point of economic grievances.

I think it has also been true that the Negro minority in America has been less insistent upon its rights than almost any other, except possibly the American Indian. The Germans, the Irish, the Jews, the Italians, quickly learned what political rights they had coming and demanded them. The Negro has had a much more difficult time because of his more evident differences, but even so, Negroes have been late in asserting their rights as Americans.

To relate these generalities to the Congress, it is evident that the subject of civil rights means far more to the South and to its representatives in Congress than to nonsoutherners. The full participation by Negroes in the political life of the South would mean the end of many political careers, and even of political dynasties. For Members of Congress coming from the North, East, and West, civil rights is just one more of many political battles; to the southern politician, civil rights is a question of political survival. The southern Member of Congress fights for his life on civil rights issues; most other Members fight only another legislative battle, and one which means nothing at all in many States. This fact works to the great advantage of the Southerners, because a civil rights filibuster always works its attrition not on the northern Members with many colored voters who are watching proceedings closely, but on the Midwesterners and Westerners whose constituents simply prefer that Congress get on with other things.

The struggle over civil rights in 1957 was a good example of how much time and effort must go into this subject by the proponents of the legislation, as well as the opponents. At that time, Senator Hennings demonstrated vividly the tenacity he was willing to put into the effort.

The chronicle of his work to bring a civil rights measure before the full Senate Judiciary Committee and get it reported to the Senate was detailed on the Senate floor by Senator Hennings on June 20, 1957.³

3. 103 CONG. REC. 9791-792 (1957).

In the opening days of the 85th Congress, Hennings had reintroduced four bills which had been considered and favorably reported by his subcommittee the previous year. They were to expand the safeguards of federal voting rights, to outlaw lynching, to improve the handling of civil rights violations in the Justice Department by creating an Assistant Attorney General in charge of civil rights division within the Department, and to extend to all people in the armed forces the federal protection against bodily attack now enforceable for Coast Guard and certain other federal employees.⁴

In introducing them, he described the first by saying:

The full, free, and unhampered right to vote is one of the most distinguished rights of an American citizen. The right itself, or the unfettered use thereof, today is still denied to millions of people in other lands, principally due to the continued presence of tyranny in the world. But there can be no excuse for any failure of the United States Government to adequately protect this right in the full process of participating in the selection of government officials. . . . The right here recognized, protected by criminal sanctions and strengthened with civil remedies, should no longer be denied to anyone on such inexcusable grounds as race, color, religion, or national origin.⁵

At almost the same time, Senator Dirksen introduced a bill for himself and thirty-two other Republican Senators.⁶ It provided for the establishment of a Civil Rights Division in the Justice Department, the creation of a Civil Rights Commission, greater protection for voting rights, and also empowered the Attorney General to initiate action to protect civil rights other than the voting right of the fifteenth amendment. This latter provision was intended to permit the Justice Department to enter school desegregation cases on behalf of children who were being denied the equal public education which is their right under the fourteenth amendment.

A similar provision in the House bill⁷ came to be best known as Title III, and became the focal point of the civil rights debate of 1957.

Senator Hennings promptly began a campaign to get action on these measures within the Judiciary Committee of the Senate. On January 22, he moved in full committee that a deadline be set for ending hearings on

4. S. 426, 427, 428, 429, 85th Cong., 1st Sess. (1957).

5. 103 CONG. REC. 348 (1957).

6. S. 83, 85th Cong., 1st Sess. (1957).

7. H.R. 6127, 85th Cong., 1st Sess. (1957).

civil rights bills, and that a decision on them by the full committee should follow within a week. The motion was not acted on. On January 30, he presented an omnibus civil rights bill and sought to have it reported to the full committee; this motion was defeated.

The subcommittee did agree to hold hearings, although the ground had been fully covered in hearings held by the subcommittee in the previous Congress. Hennings moved to limit these hearings to two weeks, with a decision by the subcommittee to follow promptly. This motion was defeated. The subcommittee hearings lasted three weeks; two weeks later a civil rights bill with bipartisan backing was reported to the full Judiciary Committee.

Throughout April and May, Senator Hennings sought repeatedly to bring the bill out of the Judiciary Committee. Each time he was unable to obtain recognition to make a motion, or a quorum was lacking, or his motions were not voted on. At the June 10 and June 13 committee meetings, Hennings was unable to gain recognition at all.

On June 18, the House of Representatives passed its own version of a civil rights bill, and it was then that the decision was made by many civil rights supporters in the Senate to have the House bill go directly to the Senate calendar instead of being referred to the Senate Judiciary Committee.⁸

Had not Senator Hennings demonstrated by his persistence that the Judiciary Committee was itself the scene of a filibuster on civil rights legislation, the Senate would never have taken the drastic step of by-passing the Committee.

Thereafter, Senator Hennings was a central figure in the fight to enact a meaningful civil rights bill.

Whenever the Senate acts without benefit of a committee report, and without the formal leadership of a committee or subcommittee chairman who is managing a bill, the backers of any measure find themselves severely handicapped. One Senator's opinion of the meaning of a phrase has equal standing with every other Senator's opinion in the absence of a report, and this measure was especially subject to endless legal and technical questions and interpretations of its meaning and effect.

But Senator Hennings served as an informal floor manager for civil rights supporters. He could not bring the measure past the roadblock of

8. *Ibid.*; 103 CONG. REC. 9365 (1957).

the full committee; but he did respond to questions which would have been put to a floor manager; he gave us the benefit of his expert advice and opinion on the meaning and intent of the language of the bill and of the amendments offered to it.

Throughout the lengthy Senate sessions on the bill, Senator Hennings was constantly at hand to guide the proponents of that measure and to point out publicly and privately the defects in the arguments of its opponents.

It was over his strenuous objections that the bill was stripped of its provisions extending federal enforcement of rights supposedly guaranteed by the fourteenth amendment. It was over his telling arguments that the so-called jury trial amendment was added, greatly reducing the power and responsibility of the federal courts to uphold the fifteenth amendment.

Yet, if there was any virtue, any advancement in what finally became the 1957 Civil Rights Act,⁹ as much credit for it must go to Tom Hennings as to any one man. The main argument made for the bill by the time the Senate voted on its final passage was that for the first time in two generations a measure bearing the title of a civil rights bill would go on the books. It did enable the Justice Department of the United States to initiate action to help people vote who were being denied the right to do so by state or local officials. It established a Civil Rights Commission. It created an Assistant Attorney General in charge of a Civil Rights Division in the Justice Department.

If it did nothing to enforce the guarantee of equal protection of the law, perhaps it might be said for the 1957 law that it established a modern precedent for further legislative enforcement of constitutional rights.

Hennings renewed his battle within the Senate Judiciary Committee immediately upon the outset of the new Congress. In January of 1959, he joined several of us in reintroducing the stricken Title III. The Constitutional Rights Subcommittee commenced hearings on March 18 on all civil rights measures introduced to that date. The hearings continued for twenty-one days, during which time sixty witnesses were heard.

When the subcommittee finished its work, the only measure reported to the full committee extended the Civil Rights Commission for two more years and required the States to preserve records relating to fulfillment of

9. 71 Stat. 634 (1957); 5 U.S.C. § 295-1, 28 U.S.C. §§ 1343, 1861; 42 U.S.C. §§ 1971, 1975a-c, 1995 (1958).

voting requirements for at least two years. When he introduced this "clean bill,"¹⁰ on behalf of the subcommittee on July 15, Hennings expressed his disappointment with its inadequacy, and introduced as amendments several versions of Title III of the 1957 bill.

At that time, he also took note of the fact that of the three branches of the federal government, the Congress alone had remained silent on the Supreme Court decisions on the fourteenth amendment. He and Senator Carroll of Colorado, also a member of the Constitutional Rights Subcommittee, tried to remedy this failure of the Congress by offering a concurrent resolution. It declared it to be the sense of Congress that "a healthy public school system is an essential element today in American life," and that:

In the field of public education the doctrine of "separate but equal" has no place; separate facilities on the basis of racial discrimination are inherently unequal; and racial discrimination in public education should be eliminated with all deliberate speed.¹¹

As the first session of the new Congress drew to a close, it was evident that once again the chances for Senate action on civil rights were dim, if the Senate was to wait for a bill to come from the Senate Judiciary Committee. Senator Hennings himself told the Senate on August 17 that he was offering civil rights provisions as amendments to still another bill, because he was convinced the full Judiciary Committee was no closer to reporting S. 2391 than when it came from the subcommittee.

A reluctant Senate leadership took note of the difficulty, and the following year the majority leader felt obliged to bring "civil rights" to the floor by offering civil rights amendments to a bill which transferred certain federal property to a Missouri school district.

On February 15, 1960, the Senate was again plunged into a "lengthy debate" on civil rights. Again, the Senate was acting without benefit of a committee report or a floor manager. And again, those of us working for the fulfillment of the fourteenth and fifteenth amendments found our bulwark of strength in Senator Hennings.

The hearings of his Constitutional Rights Subcommittee were the best single source of information at hand.¹² They indicated that the suits au-

10. S. 2391, 86th Cong., 1st Sess. (1959); remarks printed in 105 CONG. REC. 13448 (1959).

11. S. Con. Res. 64, 86th Cong., 1st Sess. (1959).

12. *Hearings on S. 435 Before a Subcommittee of the Senate Committee on the Judiciary*, 86th Cong., 1st Sess. (1959).

thorized in 1957 had proven ineffective in obtaining the suffrage for Negroes in states where a determined effort was made to keep the great mass of them from voting. It was the Hennings amendment calling for enrollment of voters by federal officers which became the key enforcement provision of the bill.¹³ Under the Hennings proposal, these federal enrollment officers would be brought into the picture when a federal court found the Negroes had been denied the right to vote because of their color, or when the Civil Rights Commission made a similar finding.

The tabling of the Hennings amendment by a vote of 58 to 26 was perhaps the most severe blow to the effective protection of the right to vote. All that remained in the protection of the fifteenth amendment was a complex referee system, requiring a long and costly court proceeding to bring it into play.

The Congress of the United States still has not gotten down to the earnest protection of the right to vote which is set forth in the fifteenth amendment as a right which shall not be denied because of race or color.

But in 1957 and 1960, it made some tentative, hesitant steps in that direction. That it did so is due in large part to Tom Hennings. These two laws have opened the door. If the American people are now ready and able to walk through that door, Senator Hennings will have left a mark on the nation's history that will stand in the company of the statement of those ideals of representative government which he helped make a reality.

13. Amendment to H.R. 8315, 86th Cong., 2d Sess. (1960); printed at 106 CONG. REC. 4753 (1960).