

1961

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### Recommended Citation

Edward V. Long, *Tom Hennings-The Man from Missouri*, 26 MO. L. REV. (1961)  
Available at: <https://scholarship.law.missouri.edu/mlr/vol26/iss4/3>

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# TOM HENNINGS—THE MAN FROM MISSOURI

EDWARD V. LONG\*

## INTRODUCTION

Valiant soldier—happy warrior—noble protagonist. Editors across our nation and overseas and Members of the Senate used these and similar terms in their attempts to describe Tom Hennings and his service in the United States Senate. If one traces the life of this man from Missouri, there can be little question but these terms mirror a most accurate reflection.

Tom Hennings was born in St. Louis, Missouri, on June 25, 1903. He received his early education in the public schools of St. Louis. He graduated from Cornell University in 1924 with a B.A. degree. He was a member of Cornell's track team and the straight back and graceful stride obtained from this training were marked physical traits as he walked on the Senate floor on his last day on Capitol Hill.

After graduating from Cornell, he entered the law school at Washington University in St. Louis and received his LL.B. in 1926. He became a member of the Missouri Bar that same year. While attending law school, he coached the university's track team and taught in the English department.

From 1929 to 1934, Tom Hennings served as an Assistant Circuit Attorney in St. Louis handling, in the main, felony cases. In 1934 he was elected to the House of Representatives, becoming the first Democrat in twenty-two years to represent Missouri's then Eleventh Congressional District. He served in the House until 1940 when he resigned to run for Circuit Attorney of St. Louis.

In 1941, four months prior to Pearl Harbor, although above draft age, he took leave of absence and volunteered for active duty in the Navy. After serving in both the Caribbean and Pacific, he was discharged from active duty in 1944 as a lieutenant commander. His discharge was caused by physical disability incurred in the line of duty. From 1945 through 1950,

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\*United States Senator from Missouri. The author wishes to express his appreciation to his Legislative Assistant, Robert L. Bevan, who was Administrative Assistant to the late Senator Thomas C. Hennings, Jr., for his aid in the research and preparation of this article.

he was engaged in the active practice of law in the St. Louis firm of Green, Hennings, Henry and Evans.

### I. HENNINGS' ROLE IN THE McCARTHY CENSURE

This brief sketch of Tom Hennings' life brings us to his entry into the Senate. The experiences of these earlier years were to serve him well in the Senate. It was here that he fought his greatest battles, save one, and it is in these fights that one can learn the most about this man from Missouri.

Normally, the tough battles in the Senate are fought for the most part by those who have been in the Senate for a number of years. The freshman Senator usually has the opportunity to get his feet firmly planted on the ground and to learn the ways of the Senate before he becomes engaged in major struggles.

However, the fates had different plans for Tom Hennings. In January, 1951, on the organization of the 82d Congress, he was assigned to the Senate Committee on Rules and Administration and further assigned to its Subcommittee on Privileges and Elections. One of the first orders of business for this subcommittee was an investigation of the Maryland senatorial election of 1950. This was the well known senatorial campaign in which the late Senator Joseph McCarthy played a big part. Within a very short time of his coming to the Senate, Tom Hennings became engaged in a conflict with McCarthy which was to continue until the censure of McCarthy in 1954. The part Tom Hennings played in the McCarthy story was a most important one for his role was primarily played in the early days when McCarthy was riding on the crest. It was played during the height of the witch hunt.

The subcommittee, after thorough hearings during which Senator McCarthy refused to respond to invitations to appear, reported that due to the absence of any specific rule by the Senate on the distinction between fair comment and political defamation in the conduct of a campaign, the information developed by it was insufficient to recommend action for unseating the victorious candidate. The subcommittee further reported that in respect to the second matter complained of, namely, the financial irregularities, there was no conclusive evidence before it that the victorious candidate resorted to or made use of excessive expenditures of money to corrupt large segments of the electorate. As to Senator McCarthy, the subcommittee found he was actively interested in the campaign to the

extent of making his staff available for work on research, pictures, composition, and printing of the tabloid *From the Record*. Members of his staff acted as couriers of funds between Washington and the winning candidate's campaign headquarters in Baltimore. Evidence showed that some of the belatedly reported campaign funds were delivered through his office. His staff also was instrumental in materially assisting in the addressing, mailing and planning of the picture post card phase of the campaign.<sup>1</sup>

The subcommittee further observed:

Much of the 1950 Maryland senatorial campaign was in the regular and traditional American political pattern. And like any vigorously fought election, it had good and bad features that stand out.

But the Maryland campaign was not just another campaign. It brought into sharp focus, certain campaign tactics and practices that can best be characterized as ones destructive of fundamental American principles. The subcommittee unreservedly denounces, condemns, and censures these tactics.<sup>2</sup>

. . . [I]f the tabloid "From the Record" constitutes "fair comment" within the intent and meaning of the law, then surely the law must be changed and adequate statutes enacted which would afford candidates for public office protection against wrongful and unfounded attack upon their loyalty and patriotism.<sup>3</sup>

The subcommittee in its report then made nine specific conclusions and recommendations which are of interest not only with respect to their part in the Hennings-McCarthy conflict, but because several of them have a direct bearing on another battle which Tom Hennings was to wage during the remainder of his life. This was his struggle for a "clean elections bill."

Two of the conclusions and recommendations bear directly on these two matters and warrant being set out here. The first:

5. The question of unseating a Senator for acts committed in a senatorial election should not be limited to the candidates in such elections. Any sitting Senator, regardless of whether he is a candidate in the election himself, should be subject to expulsion by action of the Senate, if it finds such Senator engaged in practices

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1. S. REP. NO. 647, 82d Cong., 1st Sess. 3, 5 (1951).

2. *Id.* at 6.

3. *Id.* at 7.

and behavior that make him, in the opinion of the Senate, unfit to hold the position of United States Senator.<sup>4</sup>

The second:

7. The subcommittee is convinced from its findings in the Maryland case that extended studies of the Federal Corrupt Practices Act, looking to a revision thereof, should be made at the earliest possible moment. Such study should be made in all States where abuses of the election machinery have been noted.

Such studies should include means of enforcing the reporting of all campaign donations used in a candidate's behalf. They should include not only the donations to and expenditures by the candidate himself and his official campaign organization, but also all affiliated or supporting clubs or other organizations.

Since the limitations upon expenditures in the Federal Corrupt Practices Act were set in 1925, many new and informative means of communication have come into common use as well as tremendous increases in costs of campaigning in other well-established media.

Because of these necessary increased costs, the subcommittee feels that the formula for calculating the limits on donations and expenditures should be realistic and should reflect current costs and modern campaign techniques. Campaigns must always be limited to reasonable amounts and those amounts so set should be enforceable.

The present law, granting exemptions from the expenditure limits, on a large block of usual campaign expenditures, makes it almost impossible to determine with accuracy whether the legal limits have been violated.<sup>5</sup>

Tom Hennings was to struggle singlehandedly for the enactment of legislation to carry out the seventh recommendation for his remaining years in the Senate. The clean elections bill will be discussed in greater detail below.

Four Senators carried out the Maryland election investigation and prepared the report subsequently filed with the Senate. In addition to Tom Hennings, they were Senator Monroney of Oklahoma, Senator Hendrickson of New Jersey and Senator Smith of Maine.<sup>6</sup> The report was unanimously adopted by the Subcommittee on Privileges and Elections and was then submitted to the Senate by the Rules Committee along

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4. *Id.* at 8.

5. *Id.* at 9.

6. *Id.* at 10.

with the individual views of Senator McCarthy who at that time was a member of the Rules Committee.<sup>7</sup>

At a time when the innuendo and the false charge were being hurled at all who dared counter him, these four Senators held their ground and proceeded with courage and determination to do the job which was theirs. They conscientiously and judiciously heard the evidence and reached their decision.

Senator McCarthy had an answer, however. In his individual views, he accused the subcommittee of failing "to take any account of the big issue of the 1950 senatorial election in the State of Maryland. . . . Communists in Government."<sup>8</sup>

Prior to the subcommittee investigation, Mrs. Smith of Maine and Senator Hendrickson had joined in a declaration of conscience which was critical of the Democratic administration. This declaration was also critical of "certain elements of the Republican Party" which it charged with "the selfish political exploitation of fear, bigotry, ignorance and intolerance."<sup>9</sup>

While McCarthy was not mentioned in the declaration, in his individual views he had this to say, among other things, with respect to his Republican colleagues Smith and Hendrickson:

It long has been the wise and honorable practice of Senators to refuse to sit in judgment where it would appear to the public that they might not be absolutely fair and impartial. Perhaps it should be made clear at this point that we should not be unduly critical of Senators Smith and Hendrickson because of their failure to disqualify themselves in this case. They are both obviously honest, loyal Americans and capable Senators. If they had a background of either judicial or legal training, I am certain they would not have insisted on continuing on the subcommittee which would ultimately be obliged to either uphold or repudiate the position taken in their declaration of conscience against what they considered McCarthy's unfair fight against Communist influence in the State Department and Tydings' whitewash.<sup>10</sup>

Beyond this, McCarthy accused the subcommittee of implying this was not a free country and accused them of embracing "the totalitarian doctrine of a Goebbels or a Stalin."<sup>11</sup>

7. S. REP. NO. 647, 82d Cong., 1st Sess. (1951).

8. *Id.* at 41.

9. 96 CONG. REC. 7895 (1950).

10. S. REP. NO. 647, 82d Cong., 1st Sess. 42 (1951).

11. *Id.* at 44.

The subcommittee undoubtedly filed its report with the full committee with a feeling of relief that a difficult and onerous task was finished. However, this was not the case, for on August 6, 1951, even before the Maryland elections report was filed in the Senate, Senator William Benton of Connecticut introduced a resolution which called for an investigation to determine whether expulsion proceedings should be instituted against Senator Joseph R. McCarthy.<sup>12</sup>

This resolution also landed in the Senate Subcommittee on Privileges and Elections. Before the subcommittee made its report on this resolution, three Senators resigned from the subcommittee and another Senator was appointed and resigned. When the subcommittee filed its report, only Tom Hennings and Robert Hendrickson remained of the original membership. Senator Carl Hayden, chairman of the full committee, was the third member. Tom Hennings was chairman of the subcommittee when it made its report.

The record of the subcommittee's investigation of this resolution was one of unpleasantness and frustration. Senator McCarthy was invited on three occasions prior to April 10, 1952, to present his explanations of the issues raised in the Benton resolution and the investigation made pursuant thereto.<sup>13</sup> However, McCarthy refused to appear. In a letter to Senator Gillette, then chairman of the subcommittee, he had this to say in reply to the subcommittee's original invitation:

Frankly Guy [Gillette], I have not and do not intend to even read, much less answer, Benton's smear attack. I am sure you realize that the Benton type of material can be found in the *Daily Worker* almost any day of the week and will continue to flow from the mouths and pens of the camp-followers as long as I continue my fight against Communists in government.<sup>14</sup>

In December of 1951, after the subcommittee's staff had undertaken an investigation of the matters involved, McCarthy sent Senator Gillette a letter which he had previously released to the press. In the letter, McCarthy charged:

When your elections subcommittee, without Senate authorization, spends tens of thousands of taxpayers' dollars for the sole purpose of digging up campaign material against McCarthy, then

12. S. Res. 187, 82d Cong., 1st Sess. (1951).

13. SENATE SUBCOMM. ON PRIVILEGES & ELECTIONS, 82d CONG., 2d SESS., REPORT TO THE COMM. ON RULES & ADMINISTRATION 10 (Comm. Print 1952).

14. *Id.* at 3.

the committee is guilty of stealing just as clearly as though the members engaged in picking pockets of the taxpayers and turning the loot over to the Democrat National Committee.

If one of the administration lackies were chairman of this committee, I would not waste the time or energy to write and point out the committee's complete dishonesty, but from you, Guy, the Senate and the country expect honest adherence to the rules of the Senate. . . .

While the actions of Benton and some of the committee members do not surprise me, I cannot understand your being willing to label Guy Gillette as a man who will head a committee which is stealing from the pockets of the American taxpayer tens of thousands of dollars and then using this money to protect the Democrat Party from the political effect of the exposure of Communists in government. To take it upon yourself to hire a horde of investigators and spend tens of thousands of dollars without any authorization to do so from the Senate is labeling your elections subcommittee as even more dishonest than was the Tydings Committee.<sup>15</sup>

Later in December, McCarthy sent another letter to chairman Gillette repeating his charges of dishonesty and improper motives.<sup>16</sup> This letter also was released to the press prior to its being received by the chairman.

While there was no question as to the jurisdiction of the subcommittee to conduct the investigation, it decided because of the publicity being given to McCarthy's charges to submit the specific issue to the Senate. So McCarthy was offered an opportunity to submit a resolution to the Senate to discharge the subcommittee. McCarthy refused to do so. Therefore, on April 8, 1952, Senator Hayden, chairman of the Rules Committee, introduced a resolution<sup>17</sup> asking that the Rules Committee be discharged from the further consideration of the Benton resolution.

The Senate, by a unanimous vote of 60 to 0, upheld the subcommittee's jurisdiction and confirmed its confidence in the honesty and integrity of the members of the subcommittee.<sup>18</sup>

McCarthy did not oppose the subcommittee in the Senate's consideration of this resolution but rather, on the day it was considered, introduced a resolution calling on the Rules Committee to investigate certain alleged activities of Senator Benton in violation of the federal and state election

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15. *Ibid.*

16. *Ibid.*

17. S. Res. 300, 82d Cong., 2d Sess. (1952).

18. SUBCOMM. REPORT, *op. cit. supra* note 13, at 5.



laws in order for the committee to recommend appropriate action to the Senate.<sup>19</sup>

After the Senate action supporting the subcommittee's jurisdiction, three further invitations were extended to McCarthy to present his explanation of the issues raised by Benton's resolution and the subcommittee investigation.<sup>20</sup> McCarthy refused all of these invitations. McCarthy's reply to an invitation to appear on May 12, 1952, is an example of the abuse he heaped on the subcommittee. The letter addressed to Senators Gillette, Monroney and Hennings said:

Gentlemen: I have learned with regret that your public hearings are to open tomorrow without the presence of your star witness. You have my deepest sympathy.

Some Doubting Thomases might question the importance of this witness, except that after nearly a year of investigating, you and your staff decided that the public hearings must open with his intelligently presented, clear-cut expose of the dangers of McCarthyism. The Nation owes you a debt of gratitude for so carefully and honestly developing this witness who could have advised the Senate and the voters of Wisconsin to get rid of McCarthy. If only you had set the hearings 10 days earlier before the judge committed your star witness to an institution for the criminally insane, you would not have been deprived of this important link in the chain of evidence against McCarthy.

Some shallow thinkers may say that you gentlemen are dishonest to have planned to use your committee as a sounding board to headline the statements of a witness after your staff had reported he was mentally unbalanced. I beg you not to let this distract you from the honest, gentlemanly job you are doing. Those critics fail to realize that everything is ethical and honest if it is done to expose the awfulness of McCarthyism. After all, had not your staff reported that while this witness was mentally deranged, his mental condition would help to make him an excellent witness for you.

Certainly, you cannot be blamed for not knowing that some unthinking judge would do the country the great disservice of committing him to a home for the insane before the committee had a chance to publicize and place its stamp of approval on his statements about McCarthy. Certainly, you cannot be blamed for being unable to distinguish between his testimony and the testimony of the other witness, Benton, who asked for and was given the right to appear before your committee and publicly "expose" McCarthy.

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19. S. Res. 304, 82d Cong., 2d Sess. (1952).

20. SUBCOMM. REPORT, *op. cit. supra* note 13, at 10.

The Communist Party, which is also doing an excellent job of exposing the evils of McCarthyism, has repeatedly proclaimed that no stone be left unturned in the effort to remove McCarthy from public life. As Lenin said, "resort to lies, trickery, deceit, and dishonesty of any type necessary," in order to destroy those who stand in the way of the Communist movement.

I ask you gentlemen not to be disturbed by those who point out that your committee is trying to do what the Communist Party has officially proclaimed as its No. 1 task. You just keep right on in the same honest, painstaking way of developing the truth. The thinking people of this nation will not be deceived by those who claim that what you are doing is dishonest. After all, you must serve the interests of the Democrat Party—there is always the chance that the country may be able to survive. What better way could you find to spend the taxpayers' money? After all, isn't McCarthy doing the terribly unpatriotic and unethical thing of proving the extent to which the Democrat administration is Communist ridden? Unless he can be discredited, the Democrat Party may be removed from power.

Again may I offer my condolences upon your failure to have your star witness present as planned to open the testimony. Do you not think the judge who committed him should be investigated?<sup>21</sup>

The subcommittee report on the Benton resolution identified the one referred to as the "star witness." The report states that "the person referred to was Robert Byers, Columbus, Ohio builder, who apparently just prior to the subcommittee's May 1952 hearings had a breakdown."<sup>22</sup>

McCarthy did appear before the subcommittee on July 3 at a public hearing held on his resolution calling for an investigation of Benton. Senator Benton also appeared and gave testimony in refutation of McCarthy's oral charges and other matters contained in McCarthy's resolution.<sup>23</sup>

On September 9, 1952, Senator Welker of Idaho submitted his resignation.<sup>24</sup> He had earlier been appointed to the subcommittee to fill the vacancy created by the resignation of Senator Smith of Maine. On September 10, Senator Gillette submitted his resignation effective September 26.<sup>25</sup> At a meeting of the subcommittee on September 26, Tom Hennings was delegated chairman and its membership was reduced to three

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21. *Id.* at 83-84.

22. *Id.* at 18.

23. *Id.* at 7.

24. *Id.* at 8.

25. *Ibid.*

members.<sup>26</sup> Subsequently, in view of Senator Monroney's absence in Europe, his resignation from the subcommittee was accepted and Senator Carl Hayden became a member.<sup>27</sup>

Two further invitations were extended to McCarthy, but he again refused to appear. Senator Benton appeared again before the subcommittee on November 23 and was examined in executive session.<sup>28</sup>

McCarthy answered the invitations by a letter to Senator Hennings questioning the honesty of the subcommittee and the loyalty of the Democratic administration.<sup>29</sup>

It was with this background that the subcommittee filed its report with the Rules Committee. The exhibits and facts contained in the report were presented to the subcommittee by witnesses under oath.<sup>30</sup> The report covered the following issues: whether under circumstances, it was proper for Senator McCarthy to receive \$10,000 from the Lustron Corporation; whether funds supplied to Senator McCarthy to fight communism or for other specific purposes were diverted to his own use; whether Senator McCarthy used close associates and members of his family to secrete receipts, income, commodity and stock speculation and other financial transactions for ulterior motives; whether Senator McCarthy's activities on behalf of certain special interest groups, such as housing, sugar, and China, were motivated by self-interest; whether loans or other transactions Senator McCarthy had with Appleton State Bank or others involved violations of the tax and banking laws; and whether Senator McCarthy violated Federal and State Corrupt Practices Acts in connection with his 1944-1946 senatorial campaigns or in connection with his dealings with Ray Kiermas.<sup>31</sup>

The subcommittee did not reach decisions on these issues because Senator McCarthy never appeared before it to explain his position. He had, however, answered all these issues with a simple "no" in the letter to Senator Hennings in December 1952.<sup>32</sup>

The report made no recommendations; rather it said:

The record should speak for itself. The issue raised is one for the entire Senate.

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26. *Ibid.*

27. *Ibid.*

28. *Id.* at 9.

29. *Id.* at 102-03.

30. *Id.* at 15.

31. *Id.* at 15-45.

32. *Id.* at 9.

This report and the subcommittee files, of course, will be available to the Department of Justice and Bureau of Internal Revenue for any action deemed appropriate by such agencies.

This does not, however, resolve the issue presented by S. Res. 187, which is a matter that transcends partisan politics and goes to the very core of the Senate body's authority, integrity and the respect in which it is held by the people of this country.<sup>33</sup>

This report was to play a part in the case for Senate censure of McCarthy in 1954.

The filing of this report did not mark the end of Tom Hennings' part in the McCarthy story. In May 1954, he delivered a statement on the floor of the Senate concerning the Mundt committee investigation of the Army-McCarthy dispute. At that time, he said:

These proceedings are, of course, unsavory and sordid because important public officials are repeatedly calling each other liars.

The investigation is, nonetheless, necessary because it involves fundamental issues of integrity and the abuse of power and influence. It is necessary and useful because the American people can see at first hand some of the methods that have been employed, such as doctored pictures and counterfeit, phony letters. It is necessary and useful because it shows clearly the arrogance and the challenge to lawful procedures involved in inviting Government employees to violate security laws and defy regulations in order to provide a Senator with top secret information to which he is legally not entitled.

It is necessary and useful because it shows clearly that President Eisenhower has failed to protect his executive departments from attacks and the invasion of their proper functions and responsibilities by individual Members of Congress. . . .

If these hearings serve no other end than to demonstrate to each and every American the flagrant violation of the spirit of our Constitution that continues unchecked they may have served some useful purpose.<sup>34</sup>

Later in 1954, when Senator Flanders of Vermont had introduced his censure resolution, Senator Knowland of California moved that it be referred to a select committee.<sup>35</sup> Tom Hennings opposed the motion on the basis that the Senate had already spent the better part of four years investigating

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33. *Id.* at 45.

34. 100 CONG. REC. 6215-216 (1954).

35. S. Res. 301, 83d Cong., 2d Sess. (1954).

the activities of McCarthy. In a colloquy with Senator Fulbright of Arkansas, who also opposed the motion, Tom Hennings said:

Can the Senator from Arkansas foresee that there might be a repetition of the experiences had by the previous committees? I care not how high-minded or how honest or how impartial the proposed committee might undertake to be in its report to the Senate and in its trusteeship, Mr. President. Does any Member of the Senate think for a moment that the proposed committee would not encounter the same kind of difficulties that other Senate committees have encountered and have found confronting them when they undertook the discharge of the responsibility given to them, namely, to study, if not to investigate, the methods of the junior Senator from Wisconsin?<sup>36</sup>

The Select Committee was appointed, and, subsequently, McCarthy was censured on December 2, 1954.<sup>37</sup>

Considerable space has been given to the McCarthy matter because the role of Tom Hennings does not lend itself to a simple brief explanation. Only a small part of his long drawn out struggle has been set out. However, the writer believes it gives a good indication of the circumstances and nature of Tom Hennings' first major encounter in the Senate. His action and work in this encounter was a front runner of what was to follow. He was greatly disturbed by the assault McCarthy was making on the Constitution, not only as it affected individual liberties, but as it affected the separation of powers between the three branches of Government. One of the great dangers he found in McCarthy's actions was set out clearly when he addressed the student body of Haverford College on May 4, 1954. He said that the atmosphere of political thinking had become so saturated in the preceding two years with charges of communism that it was very difficult for policy makers to think realistically about the problem of communism, Communist aggression and internal subversion. He said that this inability to think except in simple ideological terms was reflected in the speeches of Vice-President Nixon and many other Republican leaders and that this intellectual atmosphere which permeated officialdom in Washington made it most difficult for Secretary Dulles or any of his advisors to explore publicly the difficulties of a rigid policy toward Russia. Referring to Secretary Dulles' trip to Geneva, he said: "Secretary Dulles could not have approached the Indo-Chinese problem

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36. 100 CONG. REC. 12984 (1954).

37. *Id.* at 15275.

with any flexibility because he would have been attacked by members of his own party as being 'soft' on communism."<sup>38</sup> He further stated:

[T]he paralysis afflicting our foreign policy cannot be overcome until the executive branch of the federal government vigorously resists the unwarranted invasions by certain elements of the legislative branch into the functions and prerogatives that have been historically and are properly the responsibility solely of the Executive.<sup>39</sup>

## II. HENNING'S AND THE BRICKER AMENDMENT

Tom Hennings, during his entire ten years in the Senate, was to find himself continuously between the Constitution and those who would do it harm.

Even before the McCarthy raids on the executive branch of Government were brought to an end, another threat on the constitutional separation of powers came to a head in the Senate. Once again, Tom Hennings found himself in the vanguard of those protecting the Constitution, and, again, in this case, the Executive. Senator Bricker of Ohio strongly advocated a change in the Constitution which would weaken the power of the President in the conduct of foreign affairs by drastically reducing the President's treaty-making power. His resolution<sup>40</sup> proposing a constitutional amendment was called up for consideration in January 1954. By the third of February, it was reported that there were at least 150 drafts of proposed changes in the amendment.

Tom Hennings strongly opposed the Bricker amendment. He believed that the Constitution of the United States should not be amended by the presentation of amendment after amendment on the Senate floor. He was firmly convinced that the Constitution should not be amended without the safeguards that come from extensive public debate of the precise language and careful study of it by informed scholars in the field of constitutional and international law. During the weeks of debate, he made it clear that if any proposed compromise would affect the broad historic power of the President to conduct our foreign affairs, it would be contrary to the interests of our country and he would oppose it. If the compromise did not hamstring the President or weaken his needed powers in any way, but was merely an empty

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38. Press Release, Office of U.S. Senator Thomas C. Hennings, Jr., May 4, 1954.

39. *Ibid.*

40. S.J. Res. 1, 83d Cong., 1st Sess. (1953).

gesture in order that it would appear that the Senator from Ohio had won something, he would also oppose it.

He held that the Constitution was the supreme law of our land and it must not be degraded by adding meaningless surplusage of language in order that a political party already badly divided against itself might seem to be in agreement.

On February 5 Tom Hennings addressed the Senate.<sup>41</sup> He spoke at length, pointing out how the Bricker amendment or the George substitute would adversely affect the Constitution, how they would shift power to the more populous states, how they would increase the use of executive agreements and how the President could not act swiftly in an emergency. In concluding his remarks, he said:

I might point out just in passing that not even the Congress of the United States is immune to error. Some legislation has been passed which we acknowledge to be poor, and we have repealed or amended it. Even had the proposed amendments been in effect ever since the framing of the Constitution, they could not have guaranteed infallibility in the conduct of our foreign affairs.

Nor can constitutional amendments and acts of Congress bestow wisdom upon a President. When the American people elect a man to the highest office in our land, we do so because we have confidence in his judgment, trust in his ability and devotion to the ideals of democracy, and faith in his determination to act always in the best interest of our country.

Are we then to turn upon the man on whom we have bestowed this high honor and say to him, in front of the rest of the world, "Mr. President, we have no confidence in you?"

Removing the present flexibility from our system of executive agreements would be doing just this, and it would, moreover, create a rigid condition contrary, I think, to our national interest.

I submit that this is not the American way to do things. A vote of no confidence in our Chief Executive is a matter to be decided at the polls every 4 years; it is not a matter which should be resolved by rewriting the Constitution.<sup>42</sup>

Tom Hennings also made speeches concerning the substitute amendment proposed by Senator George of Georgia on February 11<sup>43</sup> and February 15.<sup>44</sup> In clear, precise language, he pointed out the adverse effect this sub-

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41. 100 CONG. REC. 1400 (1954).

42. *Id.* at 1407.

43. *Id.* at 1650.

44. *Id.* at 1724.

stitute would have on our nation. He analyzed in detail the decision of the Supreme Court in the *Pink* case<sup>45</sup> which had become an important element in the debate. He pointed out clearly why this case gave no cause for the pending proposal.

On February 26, Tom Hennings made his final speech on the George substitute.<sup>46</sup> His statement on this day was one of the finest pleas ever made in the Senate. His complete dedication to our constitutional democracy was expressed in these words:

The Senate of the United States stands on trial today before the court of world opinion. If we abandon our historic position, we stand convicted as men of little faith. If we sacrifice statesmanship for expediency, we shall have gained no profit by our barter, and we will have lost immeasurably in stature and prestige throughout the world.

We cannot be driven by a spirit of expediency or the counsel of fear, Mr. President, to accept any proposal. We must not debase the Constitution of the United States by embedding in it some vague words which have no precise meaning to us even now.

In the opinion of many Senators and of many qualified constitutional lawyers and students, this would serve only to open broad areas of doubt and confusion for some unknown and unpredictable future interpretation. When we undertake to improve upon the work of the Founding Fathers, every presumption, in my opinion, should abide with our Constitution as it now stands. We should at this hour remember the 18th amendment and its unhappy effect upon our country. I hope that we will act with maturity and reason to defend and protect the Constitution of the United States. Let us, by our vigilance, preserve that testament of the faith of a free people. Let us preserve inviolate this charter of our liberties which has been our inspiration for 165 years that it may endure as the foundation stone of our strength in a troubled and perilous world.<sup>47</sup>

In concluding his speech, Tom Hennings made this observation concerning our nation's role in world affairs:

As I see it, the philosophical origin of the present efforts to amend the Constitution lies in an honest desire on the part of many Americans to avoid entangling alliances. The Senator from Georgia only yesterday referred us to Washington's Farewell Address, which

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45. *United States v. Pink*, 315 U.S. 203 (1942).

46. 100 CONG. REC. 2355 (1954).

47. *Id.* at 2356.



was read to the Senate last Monday by the distinguished Senator from Wyoming [Mr. Hunt]. I do not label the Senators who have this deep and sincere concern over international and world affairs isolationists. I do not like labels, because they are never accurate. I think they are misleading and oftentimes unfair. It is obvious, however, that those who wish to amend the Constitution in a manner which I think will render ineffective the Presidential powers in foreign affairs, view our role in the present world situation, with all its dangers, far differently than some of the rest of us do. Just as I think it inappropriate to place the label of isolationists on all those who advocate these proposed changes, so likewise I think it inappropriate for anyone to place the label one worlder or internationalists on all those who think the United States must assume leadership in the free world, with all the awesome responsibility and anguish lying in such a role.<sup>48</sup>

After Tom Hennings' remarks, Senator Wiley obtained the floor and said:

In my opinion, at least, Mr. President, we heard one of the finest addresses the Senate has ever heard, when today the distinguished senior Senator from Missouri [Mr. Hennings],—not in a loud voice, not with a roar of emotion, but with the still, small voice of reason—told us plainly the direction in which we are going. Nothing can be added by me to what he said.<sup>49</sup>

Senator Wiley then asked unanimous consent to insert his statement in the *Record*.

The impact of Tom Hennings' speeches on the Bricker amendment was made clear by Senator Dirksen of Illinois during the memorial services in the Senate for Tom Hennings. In his tribute, Senator Dirksen said:

He had two attributes that impressed me then and continue to impress me. The first was his complete dedication to what he deemed to be sound policy, and the intense effort he devoted to it. This attribute comes sharply to mind, for within the past hour I have submitted for reference a proposal for a constitutional amendment in the nature of what is known as the Bricker resolution. Of all the scholarly, documented speeches that were made on that subject, probably none was more profound than that of Tom Hennings, and no one pursued the subject with greater vigor than he. He was convinced that my position was wrong. I was convinced that his position was wrong. But he advanced his cause like the great warrior

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48. *Ibid.*

49. *Id.* at 2370.

that he was, and in every one of his speeches there was a reflection of the amount of time and energy that he devoted to that subject.<sup>50</sup>

After this reference to Senator Dirksen's statement in 1961, there is little need to say that the Senate upheld Tom Hennings' position in 1954 by turning down the amendment and the substitutes. However, it should be noted that the decision was made by a margin of one vote.<sup>51</sup>

Since 1954, the Bricker amendment has been introduced each Congress but it has never been taken up for consideration in the Senate.

In 1954, with the Republicans in control of the Senate and with President Eisenhower in the White House, it was Tom Hennings who led the fight to protect the office of President.

### III. HENNINGS AND THE SUPREME COURT

Some have said that the Bricker amendment was Tom Hennings' greatest Senate fight, but others look to the 1958 Supreme Court fight as his most outstanding.

Max Freedman, Washington correspondent for the *Manchester Guardian*, had this to say in an article which appeared in the *Winnipeg Free Press* shortly after Tom Hennings' death:

His opportunity for matchless service came during the long-continued and sullen campaign to discredit the Supreme Court. This campaign had sinister overtones because of the support it commanded in Congress. The court was under attack by a coalition which united southern members, smarting with anger over the segregation decisions, and northern critics who opposed giving the generous protection of the Constitution priority over the arbitrary standards imposed by the false plea of national security.

A tragic and unexpected thing happened during this controversy. The Supreme Court found itself deserted in the hour of challenge by most of the liberal spokesmen who had regarded its decisions as master strokes of freedom. The most charitable excuse for this vacation from the barricades is that these liberals never had understood the data embodied into the bill to limit the jurisdiction of the Supreme Court.

With his knowledge of currents of congressional opinion Senator Hennings never allowed his judgments to be flattered by any such complacent delusion. Alone among the friends of the Supreme Court he stood in the breach and held it with gallant fortitude

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50. 107 CONG. REC. 2516 (daily ed. Feb. 24, 1961).

51. 100 CONG. REC. 2374 (1954).

until the forces of liberalism in the country rallied their strength to overwhelm the Jenner-Butler bill.

Had he done nothing else in his 10 years as a Senator, this one achievement would have given Senator Hennings an enduring renown as a master of debate and legislative skill.<sup>52</sup>

The Supreme Court during its October 1956 term handed down a number of decisions in the field of individual liberties that caused great furor in the Congress.<sup>53</sup> Bills were introduced by many Congressmen to overturn or offset these decisions. One bill, introduced by Senator Jenner of Indiana, would have taken from the Supreme Court appellate jurisdiction in cases involving functions of congressional committees; programs for dealing with subversives in the executive branch; state laws and regulations dealing with subversion; acts and policies of boards of education designed to deal with subversion; and acts of State courts and boards of bar examiners concerning the admission to the practice of law in their states.<sup>54</sup>

Tom Hennings in 1957 prepared a speech for delivery in the Senate which was printed in the *American Bar Journal* and the *Missouri Bar Journal*. In it he said:

[I]t is not the Supreme Court that should be criticized in the present circumstances. It is the unconstitutional and unlawful procedures which have been permitted to develop in this country in recent years that should be criticized. . . .

Rather than being denounced for its decisions of recent weeks, the Court should be praised for fulfilling its function as the ultimate guardian of human rights and freedom in our society.<sup>55</sup>

In the fall of 1957, he also prepared an article for the *Georgetown Law Journal* on Supreme Court decisions of the October 1956 term. In concluding the article, he said:

It is not the contention of this article that the Supreme Court is perfect. However, it is my contention that an *independent judi-*

52. Winnepeg Free Press, Oct. 1, 1960, p. 30, col. 3.

53. *Konigsberg v. State Bar*, 353 U.S. 252 (1957); *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957); *Watkins v. United States*, 354 U.S. 178 (1957); *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); *Mallory v. United States*, 354 U.S. 449 (1957); *Chessman v. Teets*, 354 U.S. 156 (1957); *Jencks v. United States*, 353 U.S. 657 (1957). Also, some decisions of prior Supreme Court terms were receiving severe criticism in Congress. *Nardone v. United States*, 308 U.S. 338 (1939); *Brown v. Board of Educ.*, 347 U.S. 483 (1954); *Pennsylvania v. Nelson*, 350 U.S. 497 (1956).

54. S. 2646, 85th Cong., 1st Sess. (1957).

55. Hennings, *In Defense of the United States Supreme Court*, 13 J. Mo. B. 164, 165 (1957); Hennings, *The United States Supreme Court, The Ultimate Guardian of Our Liberties*, 44 A.B.A.J. 213, 215 (1958).

*ciary* is an essential element of our democratic system. If the history of our country has taught us anything, it is that a democratic government functions best under three separate branches. The Supreme Court has, over the years, proved its necessity to our way of life. Our forefathers very wisely left to us this independent judiciary. It is a heritage in which each one of us can take great pride. . . .

I have no doubt that the Supreme Court will emerge from the present conflict with all its traditional powers. "Equal Justice Under Law" will endure as long as free men are willing to meet the challenge.<sup>56</sup>

The Senate fight to determine the accuracy of his prediction was soon to come.

On February 3, 1958, the Judiciary Committee brought up for consideration the Jenner bill, S. 2646. Tom Hennings obtained recognition and pointed out to the committee the gravity of the bill. He explained that the only time in our history that Congress had taken from the Court appellate jurisdiction was shortly after the Civil War when the Reconstruction Congress withdrew the Court's jurisdiction to review habeas corpus proceedings. The reason for this action at that time was to prevent review of a case then pending which involved the Reconstruction Acts. Tom Hennings pointed out to the committee they were considering this bill after only a very brief hearing. He moved that the bill be again referred to the Subcommittee on Internal Security for further hearings. This was agreed to and the subcommittee was ordered to report back the bill by March 10.<sup>57</sup> Extensive hearings were held and the bill came before the committee on the 10th. On March 24, Senator Butler offered substantial amendments to the bill. His amendments would have retained the withdrawal of Supreme Court appellate jurisdiction in one area and then added four provisions to overturn Court decisions.<sup>58</sup> The committee accepted the Butler amendments except for one proposal and the bill was reported on

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56. Hennings, "*Equal Justice Under Law*," 46 GEO. L.J. 1, 19-20 (1958).

57. S. Rep. 1586, 85th Cong., 2d Sess. 13 (1958).

58. Butler amendments would (1) retain withdrawal of appellate jurisdiction in cases involving acts of State courts and boards of bar examiners concerning the admissions to the practice of law in their states; (2) add provision making congressional committees final judges as to the pertinency of questions to an investigation in cases of contempt; (3) extend Summary Suspension Act to all federal jobs whether sensitive or non-sensitive; (4) add provision to allow enforcement of State laws on subversion against the United States; (5) amend Smith Act in attempt to eliminate the distinction between advocacy as an abstract doctrine and as an incitement to action.

May 15, 1958.<sup>59</sup> Tom Hennings was joined by Senators Wiley, Kefauver and Carroll in filing minority views. In addition, Senators Langer and Dirksen filed individual views.<sup>60</sup>

On August 19, 1958, as the Congress was drawing to a close, the Senate took up for consideration, H.R. 11477, the Mallory bill.<sup>61</sup> As originally introduced and as it passed the House, the bill would have reversed the *Mallory* decision of the Supreme Court.<sup>62</sup> However, after several hours of debate in which Tom Hennings took a prominent part, the Senate adopted an amendment so the bill in effect made the Mallory rule statutory.<sup>63</sup>

After the Senate passed the Mallory bill as amended, a minor bill was called up for consideration, and Senator Jenner offered the text of the Jenner-Butler bill as an amendment. Tom Hennings, in opposing this amendment, said:

I am sure that each Member of this body agrees that the danger of communism must be met. However, we are a civilized and self-confident society. Our Government, as we all know, is democratic in form and is limited by a written Constitution. Therefore, it is incumbent upon this body to make certain that we combat the Communist danger only by the methods and with the weapons of free men. True, the methods of tyranny would be far more effective in meeting this danger, but our forefathers have set our course, and we must continue along this path of liberty and justice if we are to survive and prosper as free people. Certainly, to protect our nation from tyranny we must not adopt the method of the tyrant.

On occasion in the past unwise and unjust deeds have been committed in the name of security. I hope that we will prove ourselves a responsible legislative body or, as some people like to say, the greatest deliberative body in the world.

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59. S. Rep. 1586, 85th Cong., 2d Sess. (1958). Committee rejected Butler amendment to extend Summary Suspension Act.

60. *Ibid.*

61. H.R. 11477, 85th Cong., 2d Sess. (1958).

62. *Mallory v. United States*, *supra* note 53.

63. H.R. 11477 as it was introduced and as it passed the House of Representatives provided that, "Evidence, including statements and confessions, otherwise admissible, shall not be inadmissible solely because of delay in taking an arrested person before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States." The amendment adopted by the Senate inserted the word "reasonable" before the word delay so the bill read "evidence, including statements and confessions, otherwise admissible, shall not be inadmissible solely because of reasonable delay in taking an arrested person before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States."

I hope that, in the closing days of the 85th Congress we will act in a responsible manner and not join the ranks of those who have committed excesses and outrages and have infringed upon the liberties and the rights and the lives of others, all in the name of security and protection from the Communist threat.<sup>64</sup>

In summing up, Tom Hennings pointed out:

The pending amendment has in reality only one purpose. That is to visit retribution on the Supreme Court for some of its past decisions and to put a foot in the door in anticipation of future attempts to strip the Court of its jurisdiction whenever there is disagreement with its decisions.

I am constrained to say that it is an unmitigated attempt to impose the will of Congress upon the Supreme Court. It is in complete violation of the spirit of our Constitution.<sup>65</sup>

The Senate again responded to the advocacy of Tom Hennings and the Jenner-Butler proposal was defeated. The Senate then proceeded to consider a bill<sup>66</sup> introduced by Senator Bridges which would reverse the Supreme Court decision in the *Steve Nelson* case.<sup>67</sup> If enacted, it would have allowed States to enforce statutes prohibiting subversion against the United States. The Supreme Court had held that the Congress had preempted the field by the very comprehensive laws which it had passed. Senator McClellan offered as an amendment to the Bridges bill his more comprehensive preemption bill most commonly known as H.R. 3.<sup>68</sup> It applied to all acts of Congress and provided unless an act specified it preempted the field, then state laws would be enforceable if not in direct conflict. Tom Hennings opposed this amendment, as well as the Bridges bill, and spoke against them, but his motion to table the McClellan amendment failed.<sup>69</sup> However, Senator Carroll moved to recommit the entire matter to the Judiciary Committee and the next day this motion carried by one vote.<sup>70</sup> So all the bills respecting Supreme Court decisions had been killed except the Mallory bill which was then in conference.

The conferees reached agreement on August 23 by adding some vague wording. Since the Senate had added the word "reasonable" which brought the bill around 180 degrees from the House-passed version, it was really

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64. 104 CONG. REC. 18685 (1958).

65. *Id.* at 18686.

66. S. 654, 85th Cong., 1st Sess. (1957).

67. *Pennsylvania v. Nelson*, *supra* note 53.

68. H.R. 3, 85th Cong., 1st Sess. (1957).

69. 104 CONG. REC. 18748 (1958).

70. *Id.* at 18928.

impossible to reach a compromise. Either the Senate version or the House version had to prevail. The conference report was laid before the Senate late at night on the 23rd. Tom Hennings then engaged Senator O'Mahoney of Wyoming, who was in charge of the bill and who had presented the conference report, in a colloquy.

MR. HENNINGS: I thank the distinguished Senator from Wyoming, my colleague on the Committee on the Judiciary.

Let me ask him whether the language of the conference report which provides that "such delay is to be considered as an element in determining the voluntary or involuntary nature of such statements or confessions," was in either the House version or the Senate version of the bill.

MR. O'MAHONEY: It was in neither.

MR. HENNINGS: Then that language is entirely new matter, is it?

MR. O'MAHONEY: It is entirely new matter.<sup>71</sup>

A short time later, Senator Carroll raised a point of order that the conference report violated the rules of the Senate in that it contained new matter.<sup>72</sup>

After some debate, Vice-President Nixon, who was presiding over the Senate, sustained Senator Carroll's point of order and the Senate adjourned sine die.<sup>73</sup> So the 85th Congress came to an end without one anti-Supreme Court bill becoming law.

Tom Hennings was right when he predicted a year earlier that the Court would escape unscathed. At least, it did as far as legislation was concerned.

#### IV. HENNINGS' CLEAN ELECTIONS BILL

There was one other battle which was mentioned earlier which deserves further comment. That was Tom Hennings' struggle to enact a clean election bill. Revision of the Corrupt Practices Act<sup>74</sup> was recommended in the subcommittee report on the Maryland campaign, and Tom Hennings never forgot. He introduced his first clean elections bill on June

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71. *Id.* at 19557.

72. RULES AND MANUAL UNITED STATES SENATE, 85th Cong., *Standing Committees*, Rule XXVII (2) (1957).

73. 104 CONG. REC. 19576 (1958).

74. Federal Corrupt Practices Act, 2 U.S.C. §§ 241-56 (1925).

10, 1953.<sup>75</sup> Bills introduced by him were reported by the Rules Committee in the 84th<sup>76</sup> and 85th<sup>77</sup> Congresses, but they were never considered on the floor because they could never get Policy Committee clearance. However, in the 86th Congress, the Rules Committee, of which Tom Hennings was chairman, reported a stripped down version of his bill.<sup>78</sup> Policy Committee clearance was received, and in January 1960, he led the fight on the Senate floor which not only resulted in Senate passage but resulted in the addition of the major provisions eliminated in committee.<sup>79</sup> The bill as it passed the Senate contained provisions requiring financial reports in primaries. It also required political committees supporting federal candidates to report even if they operated in only one state. Tom Hennings thought the people had a right to know where candidates received their money and how they spent it in elections. The Maryland campaign had shown him how critical this could be to our democratic system. Regrettably, the House did not take action and the bill died at the end of the 86th Congress.

To return again to Senator Dirksen's eulogy, he had this to say concerning Tom Hennings' struggle for a clean elections bill:

The other attribute that Senators will remember is how patiently and vigorously he labored in behalf of the clean elections bill. What a commentary it was upon his patience. For 11 days he stood every day on this floor to advance that bill. I fought him every step of the way, and I regarded him as a noble protagonist of his cause, because never did he lose his restraint, never did his patience falter. I have never seen Tom Hennings, Jr., become irritated or frustrated.<sup>80</sup>

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The above are some of the fights which Tom Hennings fought. There are many others: civil rights, freedom of information, wiretapping, right to travel. The list goes on and on. These struggles show well the man he was and the work he did. He took on and carried out the long hard campaigns. Whenever anyone attempted an assault on our constitutional Government, Tom Hennings stood ready to take him on.

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75. S. 2081, 83d Cong., 1st Sess. (1953).

76. S. 636, 84th Cong., 1st Sess. (1955).

77. S. 2150, 85th Cong., 1st Sess. (1957).

78. S. 2436, 86th Cong., 1st Sess. (1959).

79. 106 CONG. REC. 1193 (1960).

80. 107 CONG. REC. 2516 (daily ed. Feb. 24, 1961).



Max Freedman in writing of Tom Hennings had this further to say about the man from Missouri: “[H]e was in Washington long enough, and active in strenuous campaigns for freedom and tolerance, to give him a quiet acre of immortality.”<sup>81</sup>

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81. Winnipeg Free Press, Oct. 1, 1960, p. 30, col. 3.