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NOMINATION OF CLEMENT F. HAYNSWORTH, JR.
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MR. DOLE: Mr. President, the responsibility of the Senate imposed by the Constitution to advise and consent to a President's nomination is among the most vital and far-reaching with which we are vested.

As an attorney, I also have a professional responsibility to carefully consider the nomination of *Clement F. Haynsworth, Jr.*

Like most of my colleagues I followed the course of the Judiciary Committee's hearings. I examined the daily reports listened to the speculation and accusations and rebuttals which circulated and kept a close watch on the sometimes sensational media coverage of the proceedings. To obtain further insight I have discussed the nomination with members of the Committee.

I have had an opportunity to discuss the Haynsworth nomination with members of the Executive Branch. The President has made known his views to me and I have discussed several points raised in the course of the hearings with the Attorney General.

However, the best source of information from which to learn the facts, consider the arguments, weigh the responses and make a judgement was the public record. Consequently, I examined the Judiciary Committee's hearings, read all the testimony, reviewed the exhibits and examined the pertinent cases and points of laws therein.

This review ^{also} was conducted as a Senator and as a member of the Bar. I discussed the nomination with members of the Kansas bench and Bar whose competence, judgement and sensitivity to matters of ethics and probity are highly regarded by the legal community and the public in the State of Kansas.

I sought advice and discussed the Haynsworth nomination with three sources: the Bar of my state, the Kansas judiciary, and the Federal Judiciary. I felt it not only my right but my duty to engage in this consultation.

as individual members of the Bar, not in their official capacity
It was impossible and impractical to consult with all members of the Kansas Bar, thus I sought the counsel of a number of members of the associations' Executive Council. Their comments were solicited upon the full record which they had before them. Their opinions were overwhelmingly in favor of confirmation of Judge Haynsworth.

I then contacted Judge Harold Fatzer of the Kansas Supreme Court and asked him to contact the other justices and the 2 Kansas Supreme Court Commissioners. Judge Fatzer reported to me that members of the Supreme Court and the Commissioners were unanimous in their view that Judge Haynsworth should be confirmed.

I also consulted Senior Federal District Judge, Arthur J. Stanley who has known Judge Haynsworth for years through service together on the Judicial Conference of the United States. Judge Stanley was strong in his praise of Haynsworth as a judge and a man of honesty and integrity.

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Former Associate Justice of the U.S. Supreme Court Charles Evans Whittaker was also most helpful. Justice Whittaker who served with great distinction on the U.S. Supreme Court from 1957 to 1962 stated that it would be a "travesty" if the Senate failed to confirm Judge Haynsworth. Justice Whittaker had read the complete record and in his opinion there was no violation of law or the canons of ethics.

Now having done this, of course, the decision to vote for or against confirmation is still mine. The one point which caused me concern was the purchase of Brunswick stock. As the record shows the original opinion in the case in question was agreed upon November 10, 1967 and on December 26, 1967, a month before the decision was made public Judge Haynsworth purchased 1000 shares of Brunswick stock for approximately \$16,000.

Unquestionably, this was a mistake. I am impressed, however, with the fact that the Brunswick stock was purchased not at Haynsworth's request but at the suggestion of Arthur C. McCall, Judge Haynsworth's broker. On page 263 of the Committee Hearings, Mr. McCall states, "...I recommended to him that he buy Brunswick stock. His was no isolated case. I had recommended it to any number of accounts of mine who had bought it."

There is no evidence that Mr. McCall had any knowledge of any case pending involving Brunswick Corporation. This coupled with the fact that McCall had been recommending Brunswick stock to a number of other clients convinces me that while a mistake was made it should not be considered a fatal one.

The testimony of Judge Harrison L. Winter, who also sat on the Brunswick case is highly important. He states on Page 252 of the Committee Hearings in response to a question from Senator Tydings,

"Well, that is correct. My answer to this question, my answer to Senator Tydings' question, is I was convinced at the time, and I am firmly convinced in my own mind, that this case was over on November 10, 1967. True the opinion had not been announced. True it could have been modified theoretically up to the moment it was announced. True it could have been modified after it was announced theoretically, and also true that the parties did not know the outcome until February 2. But there was not any question in my mind as to what the decision was that we had reached, and that it was final, in addition to which if what I understand, and believe me I know only from what newspaper publicity has been given these hearings, but from what I understand about Judge Haynsworth's participation in Brunswick, I think that you could make a strong argument that there was not a substantial personal interest involved, that it was a de minimis interest as far as the outcome of this case is concerned."

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Personally, I have no problem resolving the other questions and arguments raised by the opponents of Judge Haynsworth as they relate to judicial proceedings in which he participated. Should I then vote against Judge Haynsworth because of a technical mistake in one case when he has participated in approximately 3000 cases since becoming a Federal Judge in 1957, and because of other accusations which have not been proved. Admittedly, I have reviewed the entire record as outlined above, in an effort to justify voting for confirmation.

This I have done because of a strong feeling that the President of the United States has a right to nominate whoever he chooses to the U.S. Supreme Court. The President's discretion is a part of the constitutional foundation of our government. His right should be preserved when the nominee is a man of honesty, morality and professional integrity. The appointive power is the only power of the Executive over the Judicial Branch and there is not and should not be a prohibition of nominating a man whose philosophy might generally be that of the President. The record reveals that even the opponents of Judge Haynsworth have not questioned his morality, integrity or honesty. They appear to be "hung up" on what they state is his anti-labor, anti-civil rights record and his alleged "insensitivity." Those who have read the complete record know this charge is unfounded. Unfortunately, some who may not have read the record or attended the hearings by their statements and reports to the American people have cast a cloud upon this nominee and perhaps upon the Court itself. The motives of some of those who have made the strongest attacks on Judge Haynsworth have been questioned.

There are some who ask whether all opposition is based upon concern for the Court or perhaps some on allegiance to special interest groups.

Nonetheless, the issue will soon be before the Senate and the matter will be resolved for or against the nominee. Perhaps the easy choice would be to vote "no" and announce, for all the world to hear, that Judge Haynsworth though honest and a man of integrity is "insensitive" or otherwise unqualified.

Having said this, let me state my conclusions:

1. Purchase of Brunswick stock was a mistake, but a technical one. There is not one scintilla of evidence of any profit by purchasing the stock before the decision in the case was published. *due to the fact of purchase of*
2. A reading of the testimony and a summary of the cases does not indicate that Judge Haynsworth's record is anti-labor. On the contrary, it appears his record is a balanced one.
3. He is not anti-civil rights. The record clearly indicates this as does the testimony, particularly of G.W. Foster, Jr. Professor of Law and Associate Dean of the Law School at the University of Wisconsin.

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4. There is no similarity between the Haynsworth and Fortas cases.

5. Judge Haynsworth has fully cooperated with the Judiciary Committee and has answered every question propounded to him and furnished all records demanded of him.

6. The record clearly indicates that Judge Clement F. Haynsworth has no allegiance to any special group.

7. There have been deliberate attempts by some segments of the media to discredit Haynsworth in the eyes of the public.

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CONCLUSION

Finally, the question posed is not whether I might have made a different nomination, but whether Judge Haynsworth possesses the qualifications required to become an Associate Justice of the United States Supreme Court.

The American Bar Association's Canon of Professional Ethics Number 1, states in part, "Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor." There has been an abundance of unjust criticism and clamor in this instance and unless there is some valid revelation, not heretofore made, when the roll is called I shall vote "Yea."

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