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FOR RELEASE UPON DELIVERY IN THE SENATE NOV. 26, 1969

REMARKS OF SENATOR BOB DOLE

NOVEMBER 26, 1969

THE HAYNSWORTH CODE FOR FEDERAL JUDICIAL NOMINEES

Mr. DOLE. Mr. President, Article II, Section 2, Clause 2 of the Constitution empowers the President of the United States to nominate and by and with the Advise and Consent of the Senate appoint Judges of the Supreme Court and all other Federal courts.

On November 20, 1969 the Senate of the United States by a vote of 55 to 45 gave its advice but not its consent to the nomination of Judge Clement F. Haynsworth to be a Justice of the United States Supreme Court.

The action of the Senate on that date adds new dimensions to the "Advise and Consent" powers of the Senate in the confirming process of Federal judges. From here on it is not only necessary that any nominee for the Federal Bench must be well-qualified by education, experience, integrity, and judicial temperament but he should also meet the newly imposed test of not having any "appearance of impropriety". The majority vote against confirmation implied that while Judge Haynsworth was not guilty of any impropriety, maybe there was the appearance of impropriety, or that he was not "adequate" for the times.

Is it not fair to suggest that in the future the Senate should apply the same rules to all future nominees for the Federal Bench as was used by the majority in denying Judge Haynsworth a seat on the Supreme Court.

Not only will all future nominations for the Federal judiciary have to be well-qualified by education, experience, integrity, and judicial temperament but must also be free from any vague appearance of impropriety.

If a nominee to the Federal Bench has been sitting as a State or lower Federal court judge his entire record of decisions must be minutely examined with the view of determining whether he sat on cases in which he might have had some pecuniary interest or that he might have had a stock interest in one of the litigants before him, or that there could be any possible

conflict of interest that he should have removed himself from hearing such a case. Furthermore, each nominee should be required to disclose every single possible financial interest that might or could have any bearing on any case over which he presided.

In the light of the Haynsworth vote before consent of the Senate be given to the confirmation of future Federal judgeship nominations, the nominees must make full financial disclosure to demonstrate that there could be no possible conflict caused by any financial interest in any corporation or business which might be affected by any decision of the sitting Judge.

If the nominee has not had prior judicial experience then the Senate must examine his record as a lawyer and the cases that he handled during his practice which in any way would pose any possible conflict if he was called upon to sit on cases of former clients.

The Senate action on Judge Haynsworth sets up new guidelines which the Senate itself, the Judiciary Committee of the Senate, the Department of Justice and the President should take note. Henceforth the Haynsworth case shall stand as a precedent for the Senate to view most carefully any nomination to the Federal Bench submitted by the President of the United States. Obviously it is impossible to set up rigid ethical standards to measure each judicial nomination, yet it appears that the Senate did just that on November 20, 1969.

As one member of this Body, I intend to follow the Haynsworth precedent on all future nominations and it would seem to me that the members of the Senate who voted to deny Judge Haynsworth his seat on the Court should adhere to precisely those guidelines they imposed. These guidelines should apply equally to any nominee, irrespective of his political views or judicial philosophy.