

Haynsworth Backs Tight Judicial Canons

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WASHINGTON, Dec. 9 — Judge Clement F. Haynsworth Jr., who failed to win confirmation to the Supreme Court after his judicial ethics were questioned, has become an advocate of more rigid ethical rules to govern judges' conduct.

Two years after the Senate rejected his nomination, Judge Haynsworth feels that time has vindicated him against the conflict-of-interest charges that led to his defeat.

"I still can't walk down Fifth Avenue in New York," he said the other day in Greenville, S. C., "without being stopped by people who say, 'I just want to shake your hand.'"

But the controversy over his ethics has convinced him that the present canons of judicial ethics are too vague to inform judges what they can properly do, and he has quietly lobbied for the adoption of more specific rules.

In his first interview since his nomination was rejected on Nov. 21, 1969, Judge Haynsworth declined to say anything about such subsequent battles over Supreme Court nominees as the one now under way over William H. Rehnquist. But he ranged widely over the subject of judicial ethics.

Asks Detailed Canons

He said he had urged the American Bar Association Committee that is now redrafting the ethical canons for the judiciary to make them as detailed as possible.

During informal conversations with some members of the A.B.A. group he also proposed making public a list of his investments. They managed to dissuade him—they felt that all other judges would then come under pressure to follow suit—but Judge Haynsworth has not given up on the idea and will discuss it with fellow judges on the Fourth Circuit next month.

The fact that Judge Haynsworth's actions on ethical matters would tend to set the standard for judges underscores a phenomenon that has transformed him into a virtual folk hero of the legal profession since his rejection by the Senate.

Darlington Mills Case

At legal meetings he is invariably greeted with cheers and applause. Judge Haynsworth—a bookish man with thinning hair and a slight stammer—has lost the shy reticence that marked his appearances before the Senate Judiciary Committee, and sometimes carries himself with a gait that could only be characterized as a judicious strut.

"I think that the judges thought that the ethical attack on me was unfair—or at least that there was nothing in it," he said. "They looked at me as an innocent victim of other winds that were blowing in the Senate. They thought that I didn't panic and I seemed to them to have kept my head."

Shortly after it became



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Judge Clement F. Haynsworth Jr. with wife, Dorothy, at home in Greenville, S. C. "After it's all done, I am thoroughly happy with my life here in Greenville," he says.

known that President Nixon would name Judge Haynsworth to the Supreme Court, labor and civil rights spokesmen began to attack him for having ruled in favor of the Darlington Mills Company in a labor case at a time when the judge owned a large share of a vending machine company that held profitable contracts with Darlington Mills.

During the Senate hearings it came to light that as Chief Judge of the United States Court of Appeals for the Fourth Circuit, he had also participated in at least three cases involving companies whose stock appeared in his extensive investment portfolio.

And Judge Haynsworth was also criticized for attitudes that were said to be anti-labor and anti-civil rights.

Since then, however, at least one Senator—Mike Mansfield of Montana—has said that in view of President Nixon's subsequent unbroken string of conservative Supreme Court choices, he regretted having voted against Judge Haynsworth.

And when the nomination of Justice Harry A. Blackmun was being considered, little was said by the Haynsworth critics about the Minnesotan's stock portfolio or the ethics of his participation in cases involving companies in which he owned

"I suspect," Judge Haynsworth now says, "that at that time that no Southerner whom the President would wish to appoint could have been confirmed. There are people from the South who could have been. But one of the things that certainly entered into the time I had was the concern that my appointment was part of the so-called Southern strategy."

Opposition Called Political

"It provoked political opposition—and I think anyone who others would associate with the Southern strategy would have been in trouble," he said.

Judge Haynsworth does not fault the Justice Department, as some observers have done, for not anticipating the attack on his ethics by Democrats following criticisms by Republicans of former Justice Abe Fortas on ethical grounds.

He said that before his nomination Attorney General John N. Mitchell had asked him only for his tax returns and about directorships on corporations. There was no inquiry, he said, as to possible conflicts in deciding cases in which he had an interest.

"They weren't talking to me about those things at all," Judge Haynsworth said. "I thought I was not vulnerable to an attack on ethical grounds. I still don't think so."

During the fight over his nomination, the judge offered to place his holdings in a "blind" trust. He has since rejected the idea, partly on the ground that a judge cannot avoid conflicts of interest unless he knows the contents of his portfolio.

Instead, he has asked an investment service to dispose of his litigation-prone stocks—such as Dan River Mills—and put his money in low-silhouette companies. He says he has been forced to withdraw from only one case since this was done.

Specific Rules Are Set

It was largely as a result of the charges leveled at Judge Haynsworth and at Abe Fortas and Justice William O. Douglas that the A.B.A. appointed its committee to update the antiquated canons of judicial ethics.

When Judge Haynsworth heard that the committee was being urged from some quarters to opt for broad admonitions for judicial purity rather than specific rules to guide judges' behavior, he sent word through a friend on the panel that he favored detailed rules. The committee took this tack in its proposed rules, which will be adopted soon.

"Specific rules are not really going to keep a dishonest person from being that way," he says. "But from my own personal position now, I want to see them specific—because then, as long as I abide by the rules, nobody can ever find fault with anything that I ever do."

Inevitably, he feels, the specific rules will pose problems. He mentioned the proposed rules that would disqualify a judge because of stock owned by his parents or children, even though he might have no control over their investments. Judges who serve as trustees of universities would presumably also be barred from deciding any case involving companies in the institutions' endowment portfolio.

Judge Haynsworth says that "what wounds I suffered have healed very quickly." He declines to say whether he thinks members of the Senate treated him unfairly, and his attitude toward the press is benevolent if critical.

"Individual reporters, I think, did some things that might be called unfair, but the press as a whole tried to be objective," he said. He thinks the reporting was "unbalanced" because some witnesses favorable to him had to leave Washington after waiting days to testify, and filed written statements. These were not widely reported, he said.

"After it's all done, I am thoroughly happy with my life here in Greenville," he said. "We are all changed by experiences which are deep, and this one was rather traumatic. I don't think my life could what it is if I had not been through that experience."