

SUPREME COURT OF THE UNITED STATES

The Senate in executive session resumed the consideration of the nomination of Clement F. Haynsworth, Jr., of South Carolina, to be an Associate Justice of the Supreme Court of the United States.

The VICE PRESIDENT. All time on the nomination has expired.

The question is, Will the Senate advise and consent to the nomination of Clement Haynsworth, Jr., to be an Associate Justice of the Supreme Court of the United States?

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The VICE PRESIDENT. The clerk will call the roll.

The VICE PRESIDENT. The Chair wishes to caution the gallery that there will be no outbursts at the announcement of this vote.

The legislative clerk called the roll.

The result was announced—yeas 45, nays 55, as follows:

[No. 154 Ex.]

YEAS—45

Aiken	Ellender	Mundt
Allen	Ervin	Murphy
Allott	Fannin	Pearson
Baker	Fong	Prouty
Bellmon	Fulbright	Randolph
Bennett	Goldwater	Russell
Boggs	Gravel	Smith, Ill.
Byrd, Va.	Gurney	Sparkman
Byrd, W. Va.	Hansen	Spong
Cook	Holland	Stennis
Cotton	Hollings	Stevens
Curtis	Hruska	Talmadge
Dole	Jordan, N.C.	Thurmond
Dominick	Long	Tower
Eastland	McClellan	Young, N. Dak.

NAYS—55

Anderson	Hughes	Nelson
Bayh	Inouye	Packwood
Bible	Jackson	Pastore
Brooke	Javits	Pell
Burdick	Jordan, Idaho	Percy
Cannon	Kennedy	Proxmire
Case	Magnuson	Ribicoff
Church	Mansfield	Saxbe
Cooper	Mathias	Schweiker
Cranston	McCarthy	Scott
Dodd	McGee	Smith, Maine
Eagleton	McGovern	Symington
Goodell	McIntyre	Tydings
Gore	Metcalf	Williams, N.J.
Griffin	Miller	Williams, Del.
Harris	Mondale	Yarborough
Hart	Montoya	Young, Ohio
Hartke	Moss	
Hatfield	Muskie	

So the nomination was rejected.

Mr. ALLOTT. Mr. President, we have just had a vote on a very important question, and of course there is no useful purpose in trying to reargue the questions on that matter. However, there is one discrepancy which has occurred in this whole matter to which I feel it my obligation to call very serious attention.

In Newsweek there appeared an article on the Haynsworth matter in which the junior Senator from Kentucky (Mr. Cook) was quoted, and which I am informed is not the truth. The article takes the President's counsel, Clark Mollenhoff, to task very severely.

While no man, of course, makes points by losing his temper—and I believe Mr. Mollenhoff did on that occasion—I want to call the attention of the Senate to the alleged facts which were contained in the Mankiewicz-Braden article, which were

in issue in Mr. Mollenhoff's television appearance and then compare them with the facts with respect to the situation as it existed. In issue was the transfer of certain property which Judge Haynsworth bought from Furman University, from which he graduated.

The Mankiewicz-Braden article is so slanted with little words that the only conclusion anyone can draw from it is that Judge Haynsworth was indulging in a lot of hanky-panky to deprive the Internal Revenue Service of tax dollars it justly deserved. In fact, the article says that.

Mr. President, for many, many years, gifts made by people to educational institutions have been a valid legal deduction under our income tax system. This article points out that if it can be demonstrated that it was not done by prior arrangement, it was perfectly legal.

What happened was that in 1958 Senator and Mrs. Charles Daniel started the construction of a home, and then conveyed their home in 2 years, half each year, to Furman University at a price of \$115,000. Some time after that, as a matter of fact, 11 days after they received the deed, or the deed had been recorded, Judge Haynsworth purchased that house from Furman University, and in return gave his own house plus \$65,000 in cash to Furman University.

The Mankiewicz-Braden article is so slanted as to be classified completely irresponsible, if not a purposeful attempt to mislead the American people. At one place it reads:

The process of transfer was arranged over a five-year period, during each of which years Haynsworth donated a one-fifth interest, stating the total value of the property still at \$115,000. He claimed a charitable deduction in each of the five years.

If one takes that statement on the face of it, there still is nothing wrong with anything Judge Haynsworth did, but it does not state the truth. If I had been in the position of Mr. Mollenhoff on that newscast with those two particular columnists who had written such things, I think I would have felt the same indignation, the same righteous anger—and it was righteous anger—that he felt at that time.

The article goes on to say:

On April 1, 1968, Haynsworth completed the transaction with a deed of the entire property, as a part of which he and Mrs. Haynsworth retained a life estate—the right to live in the residence as long as either is alive.

When you look at these two paragraphs, it is apparent that the plain and obvious attempt of this misleading article is to make people believe that Judge Haynsworth somehow trimmed the taxpayers of this country in the transaction. The truth is that Judge Haynsworth did have a house, which he traded to the university. After he bought the former Daniel house, he and his wife invested \$10,000 in it, in air conditioning and other improvements, and he still, when he sold the house, valued it at \$115,000. Anyone knows that Judge Haynsworth bent over backward to be more than fair in his evaluation.

The point of it is that out of these two

transactions, Furman University got \$115,000 twice—once from the Daniel family—the house—and once from the Haynsworth family, in cash and other tangibles. Judge Haynsworth bought the house, improved it and then turned around and gave it back to the one who had sold it to him. There is an implication here that his home might not have been worth \$115,000 but the facts are that the university got \$65,000 in cash, and they got \$50,000 for the home which Judge Haynsworth gave them in addition to that. It is unarguable that Judge Haynsworth traded off a home which, at that time, in market value, was worth perhaps as much as \$150,000. They had paid \$115,000 for it in cash, and they put in \$10,000 or more in improvements.

Referring back to the first paragraph I read, he said he claimed a charitable deduction, and this is wholly in the context of \$115,000 over the 5 years.

This article is what Mr. Mollenhoff called a fraud. It is a fraud on the public, because actually Judge Haynsworth did not take a deduction for a charitable contribution of \$115,000, but rather he only took a charitable deduction of \$52,673.44, which is the \$115,000 diminished by the amount that the life estate involved. So his charitable deduction was less than 50 percent of the actual amount that the university did receive by reason of the contribution. We could not fault him if he had claimed the entire \$115,000 but, contrary to the Braden-Mankiewicz report to which I have referred, he actually made allowance for the life estate he and Mrs. Haynsworth retained. A life estate, of course, is a right of use during their lifetime, and Judge Haynsworth therefore discounted the \$115,000 by an amount calculated on the basis of the life expectancy of he and his wife, regardless of how long they really might use it. Braden and Mankiewicz did not mention this, however in giving the public the "true facts."

I think the actual facts should be made clear at this point, Mr. President. I think a great injustice has been done to Mr. Mollenhoff, a Pulitzer Prize winner, a man who had researched this matter to be sure that Judge Haynsworth had not done anything improper, and who knew the facts, which obviously Mr. Braden and Mr. Mankiewicz did not know, even though they purported to.

Therefore, Mr. President, I ask unanimous consent to have printed in the Record at this point, first, the article published in Newsweek magazine entitled "The Judge Come to Judgment," calling particular attention to the last four paragraphs of it, in which Mr. Mollenhoff is referred to. Second, to have printed, the Frank Mankiewicz-Tom Braden column of November 9, 1969, which is entitled "The Strange Case of Haynsworth's House"; and third, an absolutely factual analysis of what did actually occur. If any American can read these three items without becoming fully convinced that it was the desire and the purpose of Mankiewicz and Braden to downgrade and degrade Judge Haynsworth, and that in doing so they have distorted the facts unmercifully, then I