

One Republican's Ordeal

The Haynsworth fight was rough on all Senators, but it was particularly painful to those Republicans who had doubts about the judge's fitness for the high court. Typical of these troubled Senators was Maryland's Charles McC. Mathias Jr., 47, a former Congressman serving his first term in the Senate. He talked about the agony of his decision to vote against Haynsworth to TIME Correspondent Neil MacNeil.

I went to the President's aides very early in the game, when the smoke began to rise, and conveyed my serious doubts about the nomination," says Mathias. "They asked me to keep an open mind to the end. So I did not put myself in the position of an irreversible commitment." But Mathias could not shake his doubts about Haynsworth. "There is a crying need for the Supreme Court to be lifted above controversy and suspicion. I also wondered what effect a condonation of Judge Haynsworth's actions would have on the judiciary at large. I could only conclude that it would lower standards at a time when the expectation is that they will be raised."

Mathias began to get pointed mail and telephone calls from his home state. "It's not so much what they say as the way they say how extreme their disappointment will be. You get the party functionaries who threaten party revolt. You get the man who does business with the Government—and it may well be that he was instigated by someone in the Administration to call." The implication is that the man's business might be taken away if Mathias voted negatively. "A Maryland applicant for a position in the Administration was told that there was no question about his qualifications and that the question was whether a Senator's vote could be delivered for Haynsworth—which the job seeker promptly came to me with."

The Administration handled Mathias tactfully. President Nixon talked to him about the nomination twice. "He never put any personal pressure on me," says Mathias, and he thinks he knows why he was handled so gingerly: because he would blow the whistle on any undue arm twisting. "I know what the Senate floor is for."

When he finally announced his opposition in the Senate, one Republican Senator snarled at him: "Wait until I get in front of that committee and start questioning some of those Maryland judges and ask how pure they've been." Four appointments to the federal bench in Maryland are, in fact, opening up.

Mathias brushed off hints that he might lose patronage power if he went against the party. He thinks that most Administration jobs now require technical competence, and that patronage is not as much of a lever as it once was.

He also feels that the Administration will need his vote in the future. "The President can do a lot of things for you and, I assume, some things to you. But on the other hand, the ability of a President and a member of Congress to get along is not limited to a single vote, no matter how cruel that vote may seem at the moment."

But Mathias is deeply concerned about the alienation of the progressive Republicans from the Administration. The Haynsworth defeat showed that the party must broaden its appeal, not narrow it, Mathias contends, and the Administration ought to work more closely with its own progressive Senators. "There is a whole group of us in this boat. We're in such a rock-bottom situation that if the Administration does not do business with us, every bill that



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comes along will be a Haynsworth. By God, we've been standing in the marketplace for nine months, and it's time we were doing business."

Mathias argues that the Administration is wrong in trying to form a Republican majority in the country by pursuing a Southern strategy. "Are you going to line up with the radical right—which is what the politics of polarization is all about—or are you going to pursue the politics of reconciliation and seek a pluralistic majority?"

Mathias felt that the Haynsworth nomination was an appeal to sectionalism and to the right. He also believed that it threatened the court's standards. So he cast his negative vote—but with sorrow. "It's been such a tough ordeal because you wanted to stick with the President. And then compassion for Haynsworth makes it very personal. So you have all the wrenching of loyalties and compassion pulling against your sense of truth, and you know that people have entrusted you with this kind of decision. So you just have to do the best you can with it."

licans would be willing to buck the President twice. "The President could nominate Lucky Luciano next time and it would go through," said one.

Controversial. The bitter Haynsworth fight has also further politicized a court that in recent years has become increasingly controversial. Although the original furor over Haynsworth arose on ethical grounds, there were many Senators whose objections were based more on ideological grounds; indeed, the Senate vote split primarily along liberal-conservative lines.

There was little reason to expect opposition when the 57-year-old judge was nominated for the high court in August. Haynsworth had served on the Fourth Circuit Court of Appeals for twelve years, and had done little to arouse adamant opposition. During confirmation hearings, however, liberal Senators raised conflict-of-interest charges. They showed that Haynsworth had failed to disqualify himself in two cases where he had financial interest: a 1963 case between a union and a firm that did business with a vending machine company partly owned by Haynsworth, and a 1967 case involving the Brunswick Corp., whose stock Haynsworth bought before releasing a favorable decision. The decision did not affect the stock's price, and the judge's purchase was inadvertent, but it left an appearance of impropriety. Haynsworth also contradicted his own testimony on the vending machine company affair. Haynsworth was opposed by labor and civil rights groups, who contended that his decisions had been contrary to their interests, but it was the ethical charges that caused the Senate to rebel. "That was the crank that got the ideological car started," said a chagrined Justice Department official.

Camellias. The courtly scion of four generations of South Carolina lawyers, who grows camellias for a hobby, Haynsworth had little stomach for the fight. He received the news of his rejection in his characteristically quiet manner, and with some relief: "The ordeal of the past two months has ended," he said afterward. Haynsworth said he was going to consider if he should resign his present judgeship.

Haynsworth, to some extent, was a victim of history. Had he been nominated a decade ago, there is little doubt that he would have been confirmed swiftly. But the court has become increasingly involved in all aspects of national life. This, and the revelations that led to the resignation of Abe Fortas from the Supreme Court, dictate closer scrutiny and higher standards for Justices than in the past. There were feelings in the Senate, never articulated openly, that Haynsworth was just not distinguished enough for the job. Said Illinois Republican Senator Charles Percy, who voted no: "I do not question Judge Haynsworth's ability or his honesty. But they are not enough. The times demand something more."