

Southern strategy and Southern stigma

Two issues dominated the long and unpleasant controversy over the nomination of Judge Clement Haynsworth to the Supreme Court. One was his personal character and qualifications—and at best he appears a lackluster choice. The other, though it did not loom so large in the Senate debate, had a lot to do with how opinion about him originally divided. This was the fact that he is a Southerner.

Opponents saw in Haynsworth's choice the workings of the Nixon administration's "Southern strategy," and the White House never really effectively rebutted the accusation. This strategy is, of course, the politically natural one of attempting to win votes for the Republican party below the Mason-Dixon line, and the objections it evokes from some liberals seem a curious turnabout from their perennial complaint about the absence of a two-party system in the South. True enough, there are grounds for questioning other Administration tactics that are seemingly designed to win votes from Governor Wallace's camp—such as the Administration's attempt to delay desegregating public school systems in Mississippi. But if certain aspects of Nixon's "Southern strategy" are questionable, so is a phenom-

non that might be called the "Southern stigma."

The stigma would in effect imply, as a number of Haynsworth's critics outside Congress have, that because he is a white, Anglo-Saxon Establishment Southerner, Haynsworth could not possibly be a fair judge in, say, civil rights cases. This theory ignores, for one thing, the way that the awesome responsibility of the court often enlarges the vision of men who were once dogmatic and sectional in outlook. Such conversions are not automatically to be counted on, of course. But however narrow Judge Haynsworth may have shown himself in cases involving civil rights, his debilities almost seem petty compared with those that Alabama's Justice Hugo Black began with. Black, at 83 the only Southerner on the Court, was an ex-member of the Ku Klux Klan who had virtually no judicial background when he was elevated from politics to the Supreme Court—and became the Court's most distinguished liberal jurist.

A wider issue has to do with the notion of whether there should be "reserved seats" on the Supreme Court. Before he nominated Haynsworth to the seat previously occupied by Abe Fortas, and earlier held by Justices Brandeis and Cardozo, Frankfurter and Goldberg, the President said he wanted to end the



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tradition of having a fixed "Jewish seat" or "Catholic seat" on the Court. On the same grounds the argument might be made that there should not be a Southern seat on the Court. Since vacancies on the bench usually occur one by one, the requirement of a reserved seat could very well lower the quality of Court appointments by excluding the best-qualified jurists available.

There is something strongly attractive about the ideal of a high court in which as many as possible of the nation's diverse social and geographic voices are heard, and none is excluded. A more pragmatic consideration is that at some particular moments in history, the best interest of both the Court and the nation can be served by the appointment of a qualified Justice from some particular section or group, particularly if he represents a segment of society that has not been sufficiently represented. This was a valid consideration in the appointment of the first Jewish and the first Catholic Supreme Court Justices, and in the more recent appointment of Thurgood Marshall as the first Negro Justice. (Which does not, of course, mean that there now should be a "Negro seat" in perpetuity any more than there should be a Jewish or Catholic one.)

A pragmatic case can also be made for a Southern appointment at this time. The struggle of black Americans for full equality will continue to be a dominant item of the Supreme Court's docket, and it would seem politically unhealthy to have no Southerner on the Court at a time when many of its major decisions—however noble or necessary in themselves—are alienating white Southerners from the Supreme Court as an institution. At best, of course, a Southern Justice displaying high qualities of heart and intellect could enhance many dimensions of the Court's deliberations.