

Nixon and His Motives

Politics and Attitude on Crime Viewed As Possible Reasons for Court Choice

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WASHINGTON, Aug. 18—

Prince Metternich of Austria, who had matched wits on numerous occasions with the equally crafty Viscount Castlereagh, is said to have reacted with characteristic suspicion upon learning that Castlereagh had committed suicide on the eve of an important international conference

News 2 what," Metternich
3 is supposed to
Analysis 1 in 1822. "Now

4 have mused, "could have been his motive?" President Nixon's nomination of Judge Clement F. Haynsworth Jr. to the Supreme Court is being dissected here with almost equal skepticism.

Court buffs are recalling Mr. Nixon's pledge during his election campaign to appoint "strict constructionists" to the bench in an effort to turn the liberal Supreme Court around on crime.

Wise old political heads are recounting his successful "Southern strategy" and are predicting that the nomination of the first Southerner to the court since 1941 will be a hedge against a drift toward George C. Wallace in the South in 1972.

Upon analysis, however there are soft spots in both the "law and order" theory and in the political speculation that Mr. Nixon was basically bent upon mollifying the South.

A Nixon Kind of Man

The best explanation may be the obvious one: That Mr. Nixon is, whether consciously or not, remaking the Court in his own image by picking nominees who are his kind of men.

Like Mr. Nixon, Judge Haynsworth has a record that is basically nondoctrinaire—that includes both liberal and conservative elements, but averages out to a slightly right-of-center position.

In reality, the President's statements that he wishes to reverse the direction of the Court on crime are uncharacteristic of his own operation of the executive branch. His instinct has been to continue in the same direction, only slower.

In naming Warren E. Burger as Chief Justice, Mr. Nixon picked a man who had criticized the entire philosophy behind many of the Warren Court's liberal criminal decisions, and who might actually want to turn the Court around.

But Judge Haynsworth's record on the Court of Appeals for the Fourth Circuit indicates no quarrel with the basic direction of the Warren Court on crime, only a tendency to go slower.

On several occasions, Judge Haynsworth has found confessions voluntary, only to have the Supreme Court disagree. But he has never expressed basic disagreement with the recent trend in criminal law, and he has been generous in permitting state prisoners to challenge their convictions in Fed-

eral habeas corpus actions.

His most decisive initial impact on criminal law could be in the area of capital punishment. The Warren Court had been inching toward an abolition of the death penalty, but Judge Haynsworth has rejected several anticapital punishment arguments and has shown no abhorrence of the death penalty.

Capital punishment will be a major issue before the Supreme Court in the coming year, and his position could determine whether executions will resume in the United States, after a two-year moratorium.

Yet if Mr. Nixon had been determined to add a sure law-and-order vote to the Court, there are numerous other judges, lawyers and law professors who would be considered safer bets to repudiate the Warren Court's handiwork than Judge Haynsworth.

The Political Explanation

As apolitical move to soothe the South, the appointment is easier to explain. Mr. Nixon said he had consulted only with Attorney General John N. Mitchell before he picked his man, and Mr. Mitchell is said to be a believer in the Southern strategy.

Moreover, Judge Haynsworth is a product of the James F. Byrnes branch of South Caroli Democrats, who went heavily for Dwight D. Eisenhower in the Presidential election 1952 and have ever since been the backbone of the Republican party in South Carolina.

A large segment of the current leadership in the Republican party is said to believe that Mr. Nixon's best prospects for re-election in 1972 hinge on building a solid base in the South. If he can nail down the South and hold his ground in the Midwest, mountain states and California, according to this belief, Mr. Nixon can write off the traditional liberal areas and still coast into a second term.

Today the loudest cheers that greeted the nomination on Capitol Hill came from Southern Senators. These included Ernest F. Hollings, the South Carolina Democrat who suggested Judge Haynsworth's name to Mr. Nixon during a White House reception last May; James O. Eastland, Demo-

crat of Mississippi, who is chairman of the Senate Judiciary Committee, and Strom Thurmond, Republican of South Carolina, who previously said that he was for a more conservative South Carolina judge.

Some cynics have speculated that Senator Thurmond actually looked upon Judge Haynsworth with favor but that he believed the judge's chances for nomination and confirmation would be better if the less controversial Sena-

tor Hollings remained in the forefront.

Today Senator Thurmond hailed the nominee as a "strict constructionist" and "a man of outstanding character and distinguished legal attainment."

However, there is no evidence that Mr. Nixon was intent from the first on naming a Southerner. According to some reports, Judge Haynsworth was the only man from the South on Mr. Nixon's final list of five possible nominees.

No Jew on Court

If Mr. Nixon's decision to pick Judge Haynsworth was heavily influenced by political considerations, it was not without its political liabilities. It means that for the first time since Louis D. Brandeis became a Justice in 1916 there will be no Jew on the Supreme Court. This could cost Mr. Nixon political support unless he has an opportunity to remedy the situation by another appointment before 1972.

Judge Haynsworth's actual impact on the Court in civil rights matters is difficult to predict.

The civil rights leaders who have branded him a "segregationist" seem to have overstated their case. He has never attempted to delay or thwart desegregation, but he has also never mustered the impatience and righteous indignation over the slow pace of desegregation that has prompted some Federal judges in the South to tighten the legal screws on Southern officials before the Supreme Court orders this to be done.

The example used by his civil rights critics is Judge Haynsworth's insistence that Southern school districts could satisfy the Supreme Court's desegregation mandate through "freedom of choice" plans that allow all children to attend the school of their parents' choice.

Even after the Court of Appeals for the Fifth Circuit, which has jurisdiction over the Deep South, decided that school districts must take affirmative action to achieve integration, Judge Haynsworth contended that the Constitution does not require integration but merely forbids deliberate segregation.

Last year the Supreme Court reversed him on this score. It held that freedom of choice plans are unconstitutional when they permit the perpetuation of dual school systems in the South.

"Haynsworth is not committed to achieving integration," a civil rights lawyer who argues frequently before the appeals court said today. "It's as simple as that—you have to push and push for integration or you won't get anywhere, and Haynsworth doesn't care."

The Supreme Court has been virtually unanimous in its school desegregation decisions in the last decade, but civil rights lawyers say that the presence of a Justice with Deep South instincts could still be crucial. They note that the Court will soon have to rule on segregation in private clubs and big city schools, and they argue that the previous solid front could melt away.

Although Mr. Nixon's specific motives will remain obscure, it seems likely that he has shifted the Supreme Court decisively to the right.

With Earl Warren and Abe Fortas, two of the liberal stalwarts of the five-man activist majority of the Warren Court, replaced by Chief Justice Burger and Judge Haynsworth, the Supreme Court that begins its new term on Oct. 6 could be a vastly different institution from the one that changed American life so profoundly over the last 15 years.