

11/9

Lamar -

No. I told Waldeman I'd do this on my own book, but now it's too late. But hold this in file; likely to be needed down the road for a backgrounder. 11/29 Excellent job; I'm glad I held it up - Pot

MR. HARLOW

From: Lamar

The President asked you to do a memo for him on why

Haynsworth lost. I asked Belieu to give you my memo or orally

what he thinks. Here is what I think:

(1) SOUTHERN STRATEGY -- We flat out invited the kind of political battle that ultimately erupted by naming a Democrat-turned-Republican conservative from South Carolina. This confirmed the southern strategy just at a time when it was being nationally debated. A republican judge from Tennessee or Georgia or even a Democrat-turned-Republican from Kentucky or North Carolina probably would have won, that is, each step removed from the Southern Strategy would have probably produced one or two votes.

Hindsight shows that the President never should have nominated Haynsworth -- given the political setting -- without advice (not likely) that if a political battle erupted, which was possible from the outset, that he would either be confirmed by about 60-40 or might even lose. To nominate someone in these circumstances is bad from the Supreme Court's point-of-view. For a Justice to be confirmed 60-40 is kind of like being awarded a watch when you retire by a 7-6 vote of the Board of Directors.

Finally, we chose(perhaps unwittingly) to put the Southern Strategy to a straight up-or-down vote in a forum(the Senate) where it will always(given its present composition) be voted down, and where the Republicans will be seriously divided. Note that Sen. Ralph Smith was the only Republican from a major industrial state (other than Murphy) who voted for Haynsworth and ~~Jim~~ I'll bet he would have preferred not to.

And the President's prestige was placed on the line in a forum(the Senate) where on any major controversy he can rarely expect more than between 50 and 60 votes.

CONCLUSION: Given the present composition of the Senate,

we should have told the President that nominating a judge from South Carolina might produce a political brawl, and that if one erupted, he would never get more than 55 or 60 votes and that he likely would lose.

Trouble is - we didn't know  
he was being nominated.  
Felt

(2) LACK OF LEADERSHIP - Dirksen's death produced a vacuum for a month. The leadership fight produced one for another week or two. The opposition of Scott and Griffin(actively) produced a vacuum for most of the rest of the debate. This cost, as Jerry Ford stated, between 6 and 8 votes. Plus it gives the Albert Gores and others an "out" for their reelection campaigns by saying that they voted with the Republican leadership.

~~Conclusion~~

CONCLUSION: Not much we could have done about this.

We couldn't control Dirksen's death. We didn't elect the Senate leaders. And there are no other real leaders in the Senate who we can fall back on.

(3) POOR RELATIONS WITH THE SENATE - Our relations, as we know, are bad with 15 and possibly 20 of the 43 Republicans. In my view ~~this~~ is a wholly political matter. The President's politics are not the politics of 15 to 20 Republican Senators. Most important, many of these 15 to 20 Senators do not see why it is politically disadvantageous to them over the long run to oppose the President on the issues he chooses to draw the line on.

CONCLUSION: We should make it clear to Republican Senators why it is to their political advantage in the long run to support their President on his big issues. This will have to be done by firming up our base of support in the Senate and ~~pick~~ picking off the Boogs, Proutys, Pearsons and Cooks one by one until we isolate the rest.

(4) CAUGHT NAPPING -- Arguably, we should have caught on to the trouble with the nomination a little earlier. It was clear, by hindsight again, that the nomination was in trouble in the Committee in August. We should have been able to find out that labor was going to make this an issue.

CONCLUSION: Since Labor is our biggest adversary, we ought to have a way of finding out more about what they are scheming so that they don't beat us on other big things.

(5) POOR~~LY~~ COORDINATION - Someone should have had central responsibility for this effort from August on. Because it was so important, that responsibility should have been here, tightly under one person.

CONCLUSION: In the future, as soon as something big is upon us, a task force should be immediately established and its head should have clear line of authority over everyone else. It would be the job of the task force to stay in day to day touch with the problem and marshall all resources.

(6) HAYNSWORTH'S QUALIFICATIONS - Haynsworth is a good, solid judge who is qualified to be on the court. But regardless of what others say, he is NOT one of the handful of state and federal appellate judges who are regarded by the law schools and by the other judges and by the bar as the MOST outstanding jurists. He is, in other words, not a Burger, or a Friendly, or a Wisdom, or a Brietel.

CONCLUSION: It might be fair to say that, given the possible political ~~draw~~ <sup>draw!</sup> it would have been better to nominate some judge who was unquestionably one of the <sup>very</sup> best judges in the nation. But this is an awfully high standard; there is no reason why the President's shouldn't be able to nominate Haynsworth if he wants to, at least as far as Haynsworth's qualifications go.

(7) THE ETHICAL QUESTION - I think it would be dead wrong to fault the Attorney General for not dredging up the ethical problems. He should have known about the Darlington Mills case since that had been reviewed before by Atty. Gen. Kennedy. But Haynsworth had a DUTY to sit in that case. The rest of the stuff brought up was either wrong, or silly, or irrelevant to the merits of the case.

CONCLUSION: Even a more intensive review of Haynsworth's ethics prior to his nomination should not have prevented his nomination.