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Book Review of Clement Haynsworth, the Senate, and the Supreme Court

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John P. Frank, *Clement Haynsworth, the Senate, and the Supreme Court*. Charlottesville, Va. and London: University Press of Virginia, 1991. xvi, 158 pp. \$25.00.

The contentious United States Supreme Court nominations of the past five years have sparked tremendous interest in the history of the nomination

process. In the past few years, the histories of two of this century's most significant rejections by the Senate—John Parker and Robert Bork—have been written.¹ John Frank's book on the refusal of the Senate to confirm the nomination of Clement Haynsworth to the Supreme Court in 1969 is the latest contribution to this area of scholarship. Frank writes from the perspective of a participant in the Haynsworth nomination process; he testified before the Senate Judiciary Committee as an expert on the issue of judicial disqualification, giving favorable testimony for Haynsworth. Not surprisingly, Frank's particular focus in his book is on the question of whether the ethical objections lodged against the nominee had merit; Frank concludes that they did not.

Frank contends that the articulated reasons for the Senate's opposition to Haynsworth were certain perceived ethical improprieties, but that the real reason for the opposition was the judge's earlier decisions in certain labor and civil rights cases. According to Frank, the alleged ethical improprieties were largely without substance, but because a frontal attack on Haynsworth's judicial philosophy would have failed, his opponents resorted to attacks on his ethical practices.

Frank is persuasive in arguing that the ethical arguments used against Haynsworth were largely without merit. The central issue was Haynsworth's ownership of a significant share of Vend-a-Matic, a vending machine company that did business with a party that appeared before him. Under existing judicial disqualification standards, ownership in a supplier to a party did not require disqualification; moreover, judges were obliged to sit where disqualification was not required. Nevertheless, the Vend-a-matic issue was highly damaging to the nominee before the Senate. In addition, Haynsworth owned a small share of certain companies that either had appeared before him or whose subsidiaries had appeared before him. Under existing standards, disqualification was not required so long as the ownership share was not substantial. Haynsworth met that standard, but in conjunction with the Vend-a-matic question, the ownership issue caused further damage to Haynsworth's prospects. These ethical concerns received far greater play given the fact that Haynsworth was nominated to fill the seat from which Abe Fortas had previously resigned for alleged ethical shortcomings.

Although ethical issues framed the discussion surrounding the Haynsworth nomination, Frank argues that the subtext was Senate opposition to his labor and civil rights decisions. Seven times as a federal appellate judge Haynsworth had voted against labor in cases that went to the Supreme Court; each time the Haynsworth position was reversed, usually by unanimous vote. Likewise, in the area of civil rights, Haynsworth had cast a few votes that were perceived as anti-civil rights. In particular, Haynsworth had voted on abstention grounds to return the highly charged Prince Edward County school desegregation case to the Virginia Supreme Court, a decision that the United States Supreme Court had reversed with great rhetorical flourish.

These labor and civil rights opinions took on greater importance given the death of Senate Republican leader Everett Dirksen just days before the

1. On the Parker nomination, see Kenneth Goings, *"The NAACP Comes of Age": The Defeat of Judge John J. Parker* (Bloomington, Ind., 1990). Several books on the Bork nomination have been written, one of the best of which is Ethan Bronner, *Battle for Justice: How the Bork Nomination Shook America* (New York, 1989).

commencement of the Haynsworth hearings. The Dirksen death transferred Republican leadership to two Senators facing re-election in states where they could not afford to cast an anti-labor or anti-civil rights vote: Robert Griffin of Michigan and Hugh Scott of Pennsylvania. The failure of the Nixon Administration to hold the Republican leadership in support of the nomination made it much more difficult to control the rest of the Senate. Unfortunately, Frank's treatment of the question of why labor and civil rights issues became so decisive for a majority of Senators is the least satisfactory part of the book.

Frank provides a detailed analysis of the day-to-day turn of events in the nomination process, utilizing a previously unavailable history prepared by the nominee, interview notes with Nixon Attorney General John Mitchell, and certain confidential personal papers. Frank's book is an important contribution to the growing scholarship on Supreme Court nominees, and offers additional material for current discussions over the role a nominee's judicial philosophy should play in the Senate confirmation process. The book deserves a wide audience.

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