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No. 155

Senate

The Senate met at 9 a.m. and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Majestic God, from whom we borrow heartbeats, Your mercies endure forever. Today, we acknowledge our dependence on You. Lord, thank You for directing our steps and for protecting our loved ones. When darkness overtakes us, illuminate our path.

Let Your peace rest upon us today. Teach us to love wisdom and accept Your guidance. Keep us from traps that destroy our joy. Give us the humility that leads to honor and let Your justice reign in the Earth.

Guide our Senators, cheer them in their work, and keep them faithful to the end. Thwart the hopes of our Nation's enemies and bless those who each day risk their lives for liberty. We pray this in Your holy name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. LOTT. Mr. President, we will have the opening statement from the leader ready in a moment. He has been detained, but he will be here. I will review the schedule.

I do believe the first schedule of events would be statements regarding

the nominee to the Fifth Circuit Court of Appeals, Judge Charles Pickering of Mississippi. I believe we will be ready to begin with that momentarily.

Mr. President, this morning we will be proceeding to the debate, as I just outlined, on the nomination of Charles Pickering to the Fifth Circuit Court of Appeals. There will be an hour of debate prior to the vote on invoking cloture on this nomination. The vote will occur sometime shortly after 10 a.m.

Following the vote, the Senate will return to debate on S. 139, the climate change legislation. There will be 2 additional hours for debate prior to the vote on that legislation.

Following the vote, the Senate will resume consideration of the Healthy Forests bill. We expect to have rollcall votes on amendments to that bill throughout the afternoon and hopefully we can complete action on the bill today. It sounds to me as if those involved in that legislation made real progress on the bill. It would be very positive if we could complete that action today.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The acting minority leader is recognized.

Mr. REID. Mr. President, as has been indicated by Senator LOTT, we have a lot to do today. There are a lot of different balls in the air regarding this Senate. I think we have them all where we can balance them quite well. We have, as the Presiding Officer knows, a conference report that has been completed after 2 long, hard days, the supplemental. We are making progress; the Interior appropriations bill has been done. I am hopeful we can finish the Energy and Water appropriations bill. So things are moving along quite well. I hope we can continue our momentum.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF CHARLES W. PICKERING, SR., OF MISSISSIPPI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider Calendar No. 400, which the clerk will report.

The legislative clerk read the nomination of Charles W. Pickering, Sr., of Mississippi, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDENT pro tempore. Under the previous order, there will be 60 minutes equally divided between the chairman and ranking member, with the final 10 minutes divided, with the first 5 minutes under the control of the Democratic leader or his designee and the final 5 minutes under the control of the majority leader or his designee.

The Senator from Utah.

Mr. HATCH. Mr. President, I rise today in support of the nomination Charles W. Pickering, Sr. to be a Circuit Judge on the United States Court of Appeals for the Fifth Circuit. I am pleased that the Majority Leader has brought this nomination to the floor, as it has been nearly 2½ years since Judge Pickering was first nominated to this position. Since then, his record has been carefully considered. He appeared before the Judiciary Committee in not one, but two lengthy hearings. So there has been plenty of opportunity to consider the qualifications of Judge Pickering.

We have received hundreds of letters of support for Judge Pickering from the public, members of the bar, as well as political, academic, and religious

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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leaders. The overwhelming support for Judge Pickering's nomination from his home state of Mississippi speaks volumes, especially since that support comes from across the political spectrum and from various racial and ethnic groups.

Last month, the Governor of Mississippi and the other Democratic elected statewide officials of Mississippi sent a letter endorsing Judge Pickering stating they believe he should be confirmed. In that letter they noted that Judge Pickering has worked for racial reconciliation and "helped unify our communities." They go on to state, "Judge Pickering's record demonstrates his commitment to equal protection, equal rights and fairness for all. His values demand he respect the law and constitutional precedents and rule accordingly. He does. . . . As a judge, he is consistent in his fairness to everyone, and deemed well qualified by those who independently review his rulings, temperament, and work."

Unfortunately, there has also been an unjustified campaign against Judge Pickering, driven largely by Washington special interest groups who do not know Judge Pickering and who have an ideological axe to grind. Make no mistake about it—these groups' political agenda is to paint President Bush's fair and qualified nominees as extremists in order to keep them off the federal bench. It has been reported that a member of this body has accused the President of "loading up the judiciary with right-wingers who want to turn the clock back to the 1890s," stating that America is under attack from "the hard right, the mean people." That news report also quoted that same Senator as having said, "They have this sort of little patina of philosophy but underneath it all is meanness, selfishness and narrow-mindedness."

Now, I am disappointed that this is the level of discourse that Members of this body lower themselves to in their attempt to score political points or pander to their supporters. That is their right, if they choose to do so, but it is unfortunate that the opponents of Judge Pickering have attempted to vilify and destroy his good character and exemplary record with distortions and disparaging remarks. For example, at a recent press event in Arkansas opponents continued their smear campaign, with one group describing Judge Pickering as a "racist," a "bigot" and a "woman-hater." Such remarks reveal which side is based on meanness.

So today I must stand and defend the character and record of Judge Pickering and put these falsehoods, distortions and mean-spirited remarks in the trash bin where they belong.

I was pleased that, despite this intimidation campaign, President Bush in January of this year renominated Judge Pickering for the Fifth Circuit. The propaganda easily gets in the way, so let me remind my colleagues that after fully evaluating Judge

Pickering's integrity, competence, and temperament, the American Bar Association gave him its highest rating of "Well Qualified" not once, but twice—both when he was first nominated in May 2001 and again at the outset of the current Congress.

Now I expect we will hear complaints from the other side that this nomination should not be before the Senate. There are those who say the President should not have renominated Judge Pickering, since the Judiciary Committee had already acted on the nomination. That position, of course, ignores the President's constitutional authority to nominate judges. And the extraordinary action taken by the Judiciary Committee in the last Congress denied the full Senate its constitutional right to advise and consent. Going forward with this nomination today is fair to Judge Pickering, fair to the Senate, and fair to President Bush.

In addition to these procedural complaints, we have heard and will likely continue to hear a recycling of the tired arguments and well-worn parade of horribles—which are horrible in large part because of their gross distortion of Judge Pickering's upstanding reputation and record. It is my fervent hope that opponents of this nomination do not resort to attacks on Judge Pickering based on his personal convictions in an effort to justify their opposition to his nomination. However, I am not optimistic that my hopes will be realized, if the unfortunate attack by the extremist abortion group, NARAL, the National Abortion Rights Action League, is any indication. That group, which represents what this debate is truly about, states "Charles Pickering of Mississippi was a founding father of the anti-choice movement, and a clear risk to substitute far-right ideology for common-sense interpretation of the law."

I reject that characterization, but in any event Judge Pickering's private views on abortion, like any judicial nominee's personal views on political issues, are irrelevant to the confirmation decision. Judge Pickering has publicly affirmed in his confirmation hearings that he will follow established law and Supreme Court precedents—even those with which he disagrees. His record as a jurist demonstrates his commitment to the rule of law and that he understands that all lower courts, including the 5th Circuit, are bound by Roe and by the more recent Supreme Court decision in *Planned Parenthood v. Casey*.

For the record, in 1976, then-political advocate Charles Pickering joined a long line of famous Democrats and liberals who believed that *Roe v. Wade* was wrongly decided. Some who shared his view include Byron White, President Kennedy's appointee to the Supreme Court, Archibald Cox, the special prosecutor who investigated President Nixon, and Professor William Van Allstyne, a former board member of the ACLU. But I repeat—Judge Pickering's

political views are less important than his expressed commitment to follow Supreme Court precedent, even precedents with which he may not agree.

It is outrageous that Judge Pickering, who has three daughters and nine granddaughters, has been smeared as a "woman-hater" or "anti-woman." Indeed, numerous women who know and have worked with Judge Pickering have endorsed his nomination, including civil rights attorney Deborah Gambrell, and Deputy U.S. Marshal Melanie Rube.

Unlike some of my friends on the other side of the aisle, I have steadfastly resisted efforts to inject personal ideology into the confirmation process. We have all seen the destructive effects of such tactics on this institution, on the judicial nominations process, and on the nominees themselves. So as we debate the qualifications of Judge Pickering, and as his record is fairly evaluated on the merits, there can be little doubt that he deserves the support of every Member of the Senate.

Let me step back from the politics of this nomination for a minute and talk about the person. Too often, I fear, we Senators get engaged in the issues to such an extent that the personal side of individual nominees might be forgotten. By many opponents, Charles Pickering is portrayed as the stereotype of the Southern white male, locked in the thought, culture and traditions of his upbringing in the deep South of yesteryear. This is the caricature they attack, but it is not the reality of who Judge Pickering is. Though born and raised in the rural South, and although he has remained geographically near his childhood home, Judge Pickering has traveled far in his personal and professional life. And while the society of his youth has changed dramatically, in Charles Pickering we have a nominee with a lifetime record of civic and community service in improving racial relations and enforcing laws protecting civil and constitutional rights.

Judge Pickering's life story includes an outstanding academic record, an exceptional legal career and a life committed to serving others. He graduated first in his law school class at the University of Mississippi in 1961. While in law school, he was on the Law Journal and served as Chairman of the Moot Court Board. Upon graduating, he became a partner in a law firm in Mississippi.

In the 1960s, when racial tensions were prevalent throughout Mississippi, Judge Pickering served as City Prosecuting Attorney of Laurel and was elected and served four years as County Prosecuting Attorney of Jones County. He condemned racially motivated violence and encouraged citizens to help the government prosecute those guilty of such violence. As County Attorney from 1964 to 1968, he assisted the FBI in investigating and prosecuting the Klan's attacks on African Americans and civil rights workers.

During his time as County Attorney, the KKK infiltrated the Woodworkers

Union at the Masonite pulpwood plant in Jones County. Klan members beat people, shot into houses, fire bombed homes, and even committed a murder at the Masonite plant. Judge Pickering signed the affidavit supporting the murder indictment of reputed Klansman Dubie Lee for the murder at the Masonite plant. He also testified against the Imperial Wizard of the KKK, Sam Bowers, at a trial for the firebombing death of a civil rights activist, indisputably putting himself and his family at risk.

Now some may downplay Judge Pickering's actions during this era, but I want to emphasize the moral courage that he consistently displayed. Let me remind my colleagues of a statement by the chairman of the Mississippi Legislative Black Caucus, state Rep. Philip West, who is a supporter of Judge Pickering and has defended the judge's civil right's record. Representative West observed, "For him to say one word against the Klan was risking his life." Mr. President, to hear Judge Pickering now described as a racist or bigot is simply despicable, and I will challenge anybody who does that on this floor.

Throughout his career Judge Pickering has shown a commitment to his community in both a professional and personal capacity. His numerous civic contributions include serving as the head of the March of Dimes campaign in Jones County; as the chairman of the Jones County Chapter of the American National Red Cross; and as the chairman of the Jones County Heart Fund. In 1963 he was recognized as one of the three Outstanding Young Men in Mississippi. Judge Pickering is active in his church and has served many years as a Sunday school teacher, as chairman of the deacons, Sunday school superintendent, and church treasurer.

He has worked with organizations to advance issues that promote equal opportunity for all individuals in his community, church, political party and State. His work with the race relations committee for Jones County and the Institute of Racial Reconciliation at the University of Mississippi are just two examples of his leadership for equal rights in this area. That is why we find such a broad outpouring of support for Judge Pickering across all groups and political parties. Allow me to share some of these editorials, articles, and letters with my colleagues.

I have already mentioned the letter of support from the current Governor of Mississippi and other Democratic statewide officials. Another letter came from William Winter, the former Democratic Governor of Mississippi, who writes, "I have known Judge Pickering personally and professionally for all his adult life. I am convinced that he possesses the intellect, the integrity and the temperament to serve with distinction on that [Fifth Circuit] court. He is wise, compassionate and fair, and he is precisely the kind of judge that I

would want to decide matters that would personally affect me or my family. While Judge Pickering and I are members of different political parties and do not hold to the same view on many public issues, I have always respected his fairness, objectivity, and decency."

Many Senators are familiar with the name Jorge Rangel, who was nominated to the Fifth Circuit by President Clinton. In his letter supporting Judge Pickering's nomination, Mr. Rangel explains, "I first met Judge Pickering in 1990 in my capacity as a member of the ABA's Standing Committee on the Federal Judiciary. As the Fifth Circuit's representative on the Committee, I conducted the primary investigation into his professional qualifications when he was nominated to a federal district judgeship in Mississippi. The Charles W. Pickering that I have read about in press reports during the pendency of his current nomination does not comport with the Charles W. Pickering that I have come to know in the last thirteen years. Competent, compassionate, sensitive and free from bias are terms that aptly describe him. Attempts to demonize him are both unfair and out of place in a judicial confirmation proceeding." Mr. Rangel notes that Judge Pickering called him during the pendency of his own nomination with words of encouragement, and concludes, "The current impasse in the confirmation proceedings is an unfortunate one, because it continues to ensnare many nominees of goodwill who have answered the call to serve. For their sake and for the ongoing vitality of our federal judiciary, I would hope that you and your colleagues can find common ground. A good starting point would be the confirmation of Judge Pickering."

Yet another letter of support came from renowned Las Vegas criminal defense lawyer David Chesnoff, a registered Democrat who serves on the Board of the National Association of Criminal Defense Lawyers. Mr. Chesnoff, who tried a case before Judge Pickering, writes, "At no time during my experience before Judge Pickering . . . did I ever note even a scintilla of evidence that Judge Pickering did not treat every citizen of our great country with equal fairness and consideration. Based on my experience with Judge Pickering, I am offended that people are attacking his sterling character. I felt it important to register my position on his behalf and believe he would make an outstanding addition to the United States Court of Appeals for the Fifth Circuit. . . ."

I.A. Rosenbaum also wrote to voice his support for Judge Pickering. I will read his letter in its entirety: "I was the Democratic Mayor of Meridian [Mississippi] from 1977 to 1985 and a past President of Congregation Beth Israel. Injustice and character assassination galls me. Charles Pickering is no racist. He stood tall when our Temple was bombed and made every effort to

prosecute Sam Bowers who planned the bombing. Sincerely, I.A. Rosenbaum."

All of these letters, of course, were generated in response to the gross smear campaign waged against Judge Pickering that centered largely on his actions in the Swan case. I expect that we will hear a great deal about that case during the course of this debate. But let me make something perfectly clear to everyone here. Judge Pickering's actions in the Swan case had absolutely nothing to do with racial insensitivity. His lifetime of striving to promote racial reconciliation and fighting prejudice provides irrefutable evidence of that. Rather, Judge Pickering's actions in the Swan case had everything to do with his penchant for going easy on first-time criminal defendants.

Judge Pickering's record is replete with examples where he has seen the rehabilitative potential of first-time offenders and accordingly sentenced them to lighter sentences. Take, for example, the case of a 20-year-old African-American drug defendant who faced a 5-year mandatory minimum. Judge Pickering reduced that to 30 months and recommended the defendant be allowed to participate in an intensive confinement program, further reducing his sentence.

Another young African-American drug defendant with no previous felony convictions faced a 40-month sentence under the Sentencing Guidelines. Judge Pickering continued his case for a year, placed him under strict supervised home release for 1 year, and then used his good conduct during home release to establish the basis for a downward departure. Judge Pickering ultimately sentenced him to 6 months of home confinement, 5 years probation and no prison time.

A third 20-year-old African-American male faced between 70 and 87 months under the guidelines for a drug crime. Judge Pickering downward departed to 48 months and recommended that he participate in intensive confinement, which further reduced his sentence. The defendant's lawyer called Judge Pickering's compassionate sentence a "life changing experience" for this defendant.

In another case, an African-American woman faced a minimum sentence of 188 months. The government made a motion for a downward departure, and Judge Pickering continued the case six times over a period of 2½ years to allow the prosecution to develop a basis for a further downward departure. In the end, Judge Pickering reduced her sentence by more than half, sentencing her to 63 months.

The last case I want to discuss is the Barnett case. The Barnetts, an interracial couple, were both before Judge Pickering, charged with drug crimes. Both were facing sentences between 120 to 150 months but plea bargained with the government for a maximum 5-year sentence. Judge Pickering sentenced Mr. Barnett to the 5 years but with

Mrs. Barnett, who had Crohn's disease and was taking care of one of her sick children, he departed downward 22 levels and sentenced her to 12 months of home confinement. At a later time, the government made a motion for a downward departure for Mr. Barnett and Judge Pickering reduced his sentence as well. Mrs. Barnett later wrote a letter, as she said, out of gratitude for all Judge Pickering did for her and her family. She stated she had learned a valuable lesson, that her family had been brought closer together, and that her husband had changed in many positive ways. She concluded, "I want to thank you for your part in all of this, and I can assure you that your thoughtfulness and just consideration is greatly appreciated and will never be forgotten."

Thirteen years ago Judge Pickering began his service as a U.S. District Judge. He was unanimously confirmed by the U.S. Senate, which included a good number of members who are still serving in the Senate today, including 25 members of the Democratic caucus. That affirmative vote was well deserved given Judge Pickering's excellent academic record, his distinguished legal career, his outstanding character, and his superb record of public and community service. That record has only been enhanced by his service on the bench.

Judge Pickering deserves an up or down vote on the Senate floor. So I urge my colleagues to use proper standards, consider the entire record, and use a fair process for considering Judge Pickering's nomination. Those who know him best, Democrats and Republicans, representing a broad cross section of citizens, endorse his nomination. An unbiased consideration of Judge Pickering's character and experience will lead every fair-minded person that Judge Pickering's record fully justifies his confirmation to the Fifth Circuit Court of Appeals.

As the President said recently, "The United States Senate must step up to serious constitutional responsibilities. I've nominated many distinguished and highly-qualified Americans to fill vacancies on the federal, district and circuit courts. Because a small group of Senators is willfully obstructing the process, some of these nominees have been denied up or down votes for months, even years. More than one-third of my nominees for the circuit courts are still awaiting a vote. The needless delays in the system are harming the administration of justice and they are deeply unfair to the nominees, themselves. The Senate Judiciary Committee should give a prompt and fair hearing to every single nominee, and send every nomination to the Senate floor for an up or down vote."

I agree with President Bush that this obstruction is unfair and harmful. I have taken to the Senate floor on numerous occasions to condemn the tactic of forcing judicial nominees through cloture votes. My position has

been the same regardless of whether the nominee was appointed by a Democratic president or a Republican president. I am proud to say that during my nearly 30 years in the Senate, I have never voted against cloture for a judicial nominee, even on the rare occasion that I opposed a judicial nomination and ultimately voted against it.

Yet, once again, some Senate Democrats are filibustering another "Well Qualified" nominee—preventing an up-or-down vote on this judge who is supported by a majority of the Senate. This is tyranny of the minority and it is unfair. Senator KENNEDY has asked "What's the point of pushing yet again for a nominee who probably cannot get enough support to be confirmed because he doesn't deserve to be confirmed?" With all due respect, I must disagree with the premise of his question. Judge Pickering does deserve to be confirmed, and, if an up-or-down vote were allowed, does have enough support to be confirmed.

As I have stated before, requiring a supermajority vote on this or any judicial nominee thwarts the Senate from exercising its constitutional duty of advise and consent. The Constitution is clear on this matter; it contemplates that a vote by a simple majority of the Senate will determine the fate of a judicial nominee. There is nothing in the Constitution that gives that power to a minority of 41 Senators.

Furthermore, a supermajority requirement for judicial nominees needlessly injects even more politics into the already over-politicized confirmation process. I believe that there are certain areas that should be designated as off-limits from political activity. The Senate's role in confirming lifetime-appointed Article III judges—and the underlying principle that the Senate perform that role through the majority vote of its members—is one such issue. Nothing less depends on the recognition of these principles than the continued, untarnished respect in which we hold our third branch of Government—the one branch of Government intended to be above political influence.

Over the past 2 years I have been accused of changing or breaking committee rules and of pushing ideological nominees. The record will show that these charges are without foundation. In fact, it is Senate Democrats that have pushed the notion of injecting ideology into the confirmation process and have taken unprecedented steps to oppose judicial nominees.

Opponents are using a variety of tactics to obstruct President Bush's judicial nominees. Supported by the extremist liberal interest groups, who themselves use even more shameful tactics to defeat these nominees, we have seen opponents distort the record, make unreasonable demands for privileged information, and force multiple cloture votes. This is all part of the strategy of changing the ground rules on judicial nominations that Senate Democrats have implemented.

I am not the only one who is concerned about the dangerous precedents that some Democrats have established. Before Miguel Estrada, the filibuster was never used to defeat a circuit court nominee. The Washington Post—hardly a bastion of conservatism—warned in a February 5, 2003, editorial that staging a filibuster against a judicial nominee would be "a dramatic escalation of the judicial nomination wars." The Post urged Democrats to "stand down" on any attempt to deny a vote on the particular judicial nominee, Miguel Estrada. The editorial went on to warn that "a world in which filibusters serve as an active instrument of nomination politics is not one either party should want." Unfortunately, this advice was rejected and the Senate was forced to endure an unprecedented seven cloture votes before Mr. Estrada requested his nomination be withdrawn. That was a sad day for the Senate—one I hope is never repeated.

Similarly, the Wall Street Journal, on February 6, 2003 stated "Filibusters against judges are almost unheard of. . . . If Republicans let Democrats get away with this abuse of the system now, it will happen again and again." Unfortunately, that prediction came true, as the Senate is now blocked from acting on numerous judicial nominees because of filibusters.

But it is not just editorial pages which have denounced the use of the filibuster. In fact, some of my Democratic colleagues have expressed similar views. For example, Senator DASCHLE, the Democratic Leader stated: "As Chief Justice Rehnquist has recognized: 'The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.' An up or down vote, that is all we ask. . . ."

Similarly, Senator LEAHY, my friend, colleague, and ranking member of the Judiciary Committee said ". . . I, too, do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41." And Senator KENNEDY, the senior member on the Judiciary Committee stated, "Nominees deserve a vote. If our Republican colleagues don't like them, vote against them. But don't just sit on them—that's obstruction of justice."

I hope that Judge Pickering's nomination is not another example of a double standard or a strategy of some of my Democratic colleagues to change the ground rules on judicial nominees. I hope that my Democratic colleagues will exercise the same independence that I did when I joined them to invoke cloture on the nominations of Clinton judicial nominees. Judge Pickering deserves an up-or-down vote, and he deserves to be confirmed.

Mr. President, there are so many other things I could say, but I want to leave enough time for our Mississippi Senators.

Let me just say this. I know Judge Pickering. I have gotten to know him

better through this ordeal he has gone through over the last 2½ years than I ever thought I would. He is a fine man. His family is a fine family. He sent his kids to integrated schools—the first integrated schools in Mississippi they could go to. One of them now sits in the Congress, CHIP PICKERING, who is one of the fine Congress people here, and everybody who knows him knows it.

What they have done to him is awful. It is awful. I think it is time for the Democrats to break free from these rotten outside groups that just play politics on everything and bring everything down to the issue of abortion.

I ask unanimous consent relevant material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WATKINS LUDLAM WINTER

& STENNIS, P.A.,

Jackson, MS, May 14, 2003.

Hon. ORRIN G. HATCH,
Chairman, Judiciary Committee, U.S. Senate,
Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I take this opportunity to express my support of Judge Charles Pickering of Mississippi for service on the Fifth Circuit Court of Appeals.

I have known Judge Pickering personally and professionally for all of his adult life. I am convinced that he possesses the intellect, the integrity and the temperament to serve with distinction on that court. He is wise, compassionate and fair, and he is precisely the kind of judge that I would want to decide matters that would personally affect me or my family.

While Judge Pickering and I are members of different political parties and do not hold to the same view of many public issues, I have always respected his fairness, objectivity and decency.

He was a member of the Mississippi State Senate when, as Lieutenant Governor, I presided over that body. I found him to be one of the most diligent, hardest working and most respected legislators with whom I served.

I would single out for special commendation his sensitivity and concern in the area of race relations. I had the privilege of serving as a member of President Clinton's National Advisory Board Race several years ago. One of the impressive initiatives that resulted from the work of that Board was the establishment of the Institute for Racial Reconciliation at the University of Mississippi.

Because of his long-standing commitment to the cause of racial equity and racial reconciliation, Judge Pickering was a leader in the formation of the Institute and served as a founding member of its Advisory Board.

As a member of the Mississippi Bar for over fifty years and a former Governor of Mississippi, I am pleased to vouch for Judge Pickering as being most worthy of confirmation as a judge of the Fifth Circuit Court of Appeals.

Sincerely,

WILLIAM F. WINTER.

WATKINS LUDLAM WINTER

& STENNIS, P.A.,

Jackson, MS, October 25, 2001.

Hon. PATRICK J. LEAHY,
Chairman, Judiciary Committee, U.S. Senate,
Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Please permit me to express to you my support for the confirmation of the Honorable Charles Pickering of Mississippi for a position on the Fifth Circuit Court of Appeals.

As a former Democratic Governor of Mississippi and as a long-time colleague of Judge Pickering in the legal profession and in the public service, I can vouch for him as one of our state's most respected leaders.

While he and I have not always been in agreement on certain public issues, I know that he is a man of reason and sound judgment. He is certainly no right-wing ideologue. He will bring a fair, open and perceptive mind to the consideration of all issues before the court.

I have been particularly impressed with his commitment to racial justice and equity. He and I have worked together for a number of years in the advancement of racial reconciliation, and we serve together on the board of the Institute for Racial Reconciliation at the University of Mississippi. He has been one of this state's most dedicated and effective voices for breaking down racial barriers.

Judge Pickering has demonstrated in every position of leadership which he has held a firm commitment to the maintenance of a just society. I believe that he will reflect those values as a member of the Fifth Circuit Court of Appeals, and I commend him to you as one who in my opinion will be a worthy addition to that body.

Sincerely,

WILLIAM F. WINTER.

THE RANGEL LAW FIRM, P.C.,
Corpus Christi, TX, April 1, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S.
Senate, Hart Office Building, Washington,
DC.

Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATORS HATCH AND LEAHY: I write this letter to urge approval of Judge Charles W. Pickering, Sr.'s nomination to the United States Court of Appeals for the Fifth Circuit.

I first met Judge Pickering in 1990 in my capacity as a member of the ABA's Standing Committee on the Federal Judiciary. As the Fifth Circuit's representative on the Committee, I conducted the primary investigation into his professional qualifications when he was nominated to a federal district judgeship in Mississippi. I spent many hours discussing his qualifications with judges, lawyers and lay people throughout the state. I also interviewed Judge Pickering, during which we touched on matters relevant to his qualifications to serve as a federal judge.

The Charles W. Pickering that I have read about in press reports during the pendency of his current nomination does not comport with the Charles W. Pickering that I have come to know in the last thirteen years. Competent, compassionate, sensitive and free from bias are terms that aptly describe him. Throughout his professional career as a lawyer and as a judge, Judge Pickering has tried to do what he thought was right, consistent with his oaths as an officer of the court and as a judge. Attempts to demonize him are both unfair and out of place in a judicial confirmation proceeding.

On a more personal note, I still remember the words of encouragement I received from Judge Pickering while my own nomination to the Fifth Circuit was pending before the Judiciary Committee. On one occasion, Judge Pickering called me and graciously offered to contact Senator Lott's office to see if anything could be done to secure a hearing for my nomination. The word came back that Senator Lott was willing to help, but the process could not go forward until my home state senators returned their blue

slips. That never happened. To this day, I very much appreciate the fact that Judge Pickering reached out to me and offered to help at a time when my pleas for a hearing had fallen on deaf ears.

The current impasse in the confirmation proceedings is an unfortunate one, because it continues to ensure many nominees of goodwill who have answered the call to serve. For their sake and for the ongoing vitality of our federal judiciary, I would hope that you and your colleagues can find common ground. A good starting point would be the confirmation of Judge Pickering.

Thank you.

Yours truly,

JORGE C. RANGEL.

GOODMAN & CHESNOFF,

Las Vegas, NV, January 16, 2003.

Re the Honorable Judge Charles W. Pickering, Sr.'s nomination to the United States Court of Appeals for the 5th Circuit.

Chairman ORRIN HATCH,
Committee on the Judiciary, U.S. Senate,
Dirksen Building, Washington, DC.

DEAR CHAIRMAN HATCH: I had the pleasure of meeting with you when my partner Las Vegas Mayor, Oscar B. Goodman and I represented former United States District Court Judge Harry Chaiborne, in his impeachment proceeding in the United States Senate. I remember your open-mindedness and fairness in considering our case.

I am presently on the Board of the National Association of Criminal Defense Lawyers and a registered Democrat. I have been a financial supporter for the election of President William Jefferson Clinton and a contributor to the campaign of Vice-President Albert Gore, when he ran for President. I have been an aggressive advocate on the part of citizens accused of crimes and have appeared in criminal proceedings in thirty of our fifty states.

I had the privilege and pleasure of meeting Judge Pickering several years ago when I was hired by the former mayor of Biloxi, Mississippi, Peter J. Halet to represent him in a very complex and high profile federal trial assigned to Judge Pickering in the United States District Court in Hattiesburg, Mississippi.

The case was quite celebrated and the allegations were of the most serious nature. There were complicated legal questions and difficult human dynamics. Needless to say, the emotions ran high in the local community as well as among the participants. Having arrived in Judge Pickering's courtroom from across the country, I did not know what to expect in terms of my reception.

Suffice to say, from day-one Judge Pickering treated all of the lawyers I brought with me to assist in the process, my jury expert and myself with courtesy and patience.

Certain tactics and techniques that we utilized may not have been used by other lawyers appearing before Judge Pickering in earlier cases, but he kept an open mind, listened to our position and gave me as fair a trial as I have received in any United States District Court, anytime.

Judge Pickering had a grasp of the difficult legal issues and addressed the case with objectivity and fairness. At no time during my experience before Judge Pickering, including the jury selection process, did I ever note even a scintilla of evidence that Judge Pickering did not treat every citizen of our great country with equal fairness and consideration. Based on my experience with Judge Pickering, I am offended that people are attacking his sterling character. I felt it important to register my position on his behalf and believe he would make an outstanding addition to the United States Court

of Appeals for the Fifth Circuit, of which I am admitted and have appeared.

Very truly yours,

DAVID Z. CHESNOFF, ESQ.

TENTH CHANCERY COURT

DISTRICT OF MISSISSIPPI,

Hattiesburg, MS.

Re the Appointment of Charles Pickering.

Hon. PATRICK LEAHY,

Chairman Senate Judiciary Committee, U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR SIR: I write in support of the appointment of United States Judge Charles W. Pickering, III to the Fifth Circuit Court of Appeals. Charles Pickering is an able, outstanding and fair minded judge. I could not conceive that he would exhibit gender bias toward women inside or outside a court of law.

As an African American I have personal knowledge and experience of his efforts to heal the wounds of racial prejudice, and to resolve conflicts between the races in our state. As someone who experiences racial prejudice, both open and subtle, I can only say that my admiration for Judge Pickering is immense.

I sincerely appreciate all the efforts made by you and your committee in order to insure fairness in our federal judiciary. I urge you and your fellow committee members to recognize diverse opinions of persons, such as myself, who function and work at ground level in our local communities.

Thank you for your time and consideration.

Sincerely,

JOHNNY L. WILLIAMS.

DEBORAH JONES GAMBRELL
& ASSOCIATES,

Hattiesburg, MS, October 25, 2001.

Re Judge Charles Pickering; Nominee: Fifth Circuit Court of Appeals.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR SENATOR LEAHY: A few days ago I ran into Judge Pickering at lunch and congratulated him on his being selected for an appointment to the Fifth Circuit Court of Appeals. I thereafter learned of opposition to his appointment and felt compelled to write this letter.

As an African American attorney who practices in the federal courts of the Southern District of Mississippi, where Judge Pickering has sat for the past eleven (11) years, I am concerned that he has come under scrutiny. I have appeared before Judge Pickering on numerous occasions during the past eleven (11) years, most often than not, in cases involving violations of civil rights and employment discrimination matters. I have found Judge Pickering not only to be a fair jurist, but one who is concerned with the integrity of the entire judicial process and assures every participant of a "level playing field" and a judge who will apply the law without regard for the sensitive nature of cases of this sort, which may have caused him personal discomfort.

I have personally seen him go overboard in working to bring reconciliation in matters wherein parties, because of lack of understanding of the law or actual ill will, may have committed violations because of lack of knowledge, etc. I have even been appointed by Judge Pickering to represent indigents who have legitimate claims but not the expertise or money to litigate the same, when he could have selected attorneys who might not bring the passion and true concern to bear to insure that the litigants rights are

protected. Even when I don't prevail, my clients know that they have had their "day in court" before a judge who is open-minded, fair and just and will follow the law without regard to color, economic status or political persuasion.

I have known Judge Pickering prior to his taking the bench and have seen him advocate the rights of the poor and those disenfranchised by the system. Over the past 11 years, I have seen him bring the same passion for fairness and equity to the federal bench.

Though I personally hate to see him leave the Southern District, I am proud to say that his honesty, integrity and sense of fair play would make him an excellent candidate for the Fifth Circuit Court of Appeals.

Sincerely,

DEBORAH JONES GAMBRELL.

HATTIESBURG, MS,
October 25, 2001.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR SENATOR LEAHY: I am writing to urge you to confirm Judge Charles Pickering as a Fifth Circuit Court of Appeals Judge. I have had the privilege of working in Judge Pickering's courtroom for the past two years as a Deputy United States Marshal.

Judge Pickering brings honor and compassion to the bench. His courtroom is truly a center of justice and fairness for men and women of every race and religion. As a Deputy U.S. Marshal, I have been present for most of his courtroom sessions. I am always impressed by Judge Pickering's rulings and opinions. He puts his heart and soul into preparing each case.

I am overwhelmed at the compassion that Judge Pickering shows each and every defendant. He truly cares for the welfare of these defendants and their families. I believe it grieves him to see mothers and fathers separated from their loved ones. As a man of great conviction, I know that Judge Pickering would make a positive impact on the Fifth Circuit.

As a Deputy U.S. Marshal, I am proud to serve under a man who personifies justice. As a citizen of the United States, I am glad to know that in times like these, we have Judge Charles Pickering in the position to maintain dignity and responsibility in our courtroom. As a woman, I am pleased at the thought that we will have Judge Pickering looking out for the rights of women and children from the beach of the Fifth Circuit Court of Appeals.

Sincerely,

MELANIE RUBE.

HOLCOMB DUNBAR,
Oxford, MS, October 25, 2001.

Re U.S. District Judge Charles Pickering.

Senator PATRICK LEAHY,

U.S. Senate,

Washington, DC.

DEAR SENATOR LEAHY: This letter is to submit for your consideration my unqualified endorsement of U.S. District Judge Charles Pickering for confirmation of his appointment by the President to the Court of Appeals for the Fifth Circuit.

I have practiced law in the State of Mississippi for more than 40 years. I am a past president of the Mississippi Bar Association, and a past member of the Board of Governors of the American Bar Association. I am a fellow of the American College of Trial Lawyers and have known Judge Pickering personally and by judicial reputation for many years.

I am a Democrat and would not want you to confirm any person to the federal courts

of this nation who I felt was gender or racially biased. I have never known Judge Pickering to be a person or judge that was anything other than fair and impartial in his conduct toward women or minorities.

I do not think anyone questions his judicial qualifications. The American Bar Association has deemed him "well qualified."

For these reasons, I strongly endorse his confirmation to the Court of Appeals for the Fifth Circuit.

Respectfully,

JACK F. DUNBAR.

THE RILEY FOUNDATION,
Meridian, MS, May 22, 2003.

Hon. ORRIN HATCH,
Chairman, Senate Judiciary Committee, Senate Dirksen Office Building, Washington, DC.

DEAR SENATOR HATCH: I was the Democratic Mayor of Meridian from 1977 to 1985 and a past President of Congregation Beth Israel.

Injustice and character assassination galls me. Charles Pickering is no racist. He stood tall when our Temple was bombed and made every effort to prosecute Sam Bowers who planned the bombing.

Sincerely,

I. A. ROSENBAUM.

WILLIAM HAROLD JONES,
Petal, MS, October 25, 2001.

Re Charles Pickering, United States District Court of Appeals Nominee.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR SENATOR LEAHY: I have known Charles Pickering for probably 20 years or more. He served as a Senator from a nearby county in the Mississippi Legislature, and I served in the House of Representatives myself for 13 years. I have practiced in his Court on many occasions throughout the last 12 or 13 years and I can only say this is the most fair Judge before whom I have ever appeared. Not only is he fair, he wants to be fair to all parties. I have never known of any indifference or prejudice that he has shown against blacks or women and in my own humble opinion, it is regrettable that he has been accused of such.

I presently serve as Chairman of the Forrest County Democratic Executive Committee and although Charles was prior to his judicial service, a Republican, I do not hesitate to signify to any person that he is fair and impartial, and has been so even to myself, a Democrat.

Very sincerely yours,

WILLIAM H. JONES.

Mr. HATCH. Mr. President, I reserve the remainder of my time. I am happy to yield whatever time the distinguished senior Senator from Mississippi desires.

The PRESIDENT pro tempore. The Senator from Mississippi.

Mr. LOTT. Thank you, Mr. President. I thank Senator HATCH.

It is a pleasure to serve with my distinguished colleague from Mississippi who will be speaking later today.

I say to Senator HATCH, thank you for your leadership, your sensitivity as chairman of the Judiciary Committee, and for your specific help in the confirmation process of Judge Charles Pickering to be on the Fifth Circuit Court of Appeals.

I also want to express appreciation to Senator FRIST, the leader, for giving us time in a very busy schedule to take up

this nomination. But it is time we go forward with a vote on the nomination of this good and honest and very capable Federal judge, Charles Pickering.

Mr. President, as I say, I rise today in strong support of Judge Charles Pickering's nomination to be a judge on the U.S. Court of Appeals for the Fifth Circuit. I am pleased that this day has finally come, and that after almost 2½ years of waiting, we are finally moving forward with the consideration of Judge Pickering's nomination here on the floor of the Senate. I am grateful to Senator HATCH for his hard work in leading the Judiciary Committee to its recent approval of Judge Pickering's nomination to the Fifth Circuit, and this important vote has led to our being able to begin debate on this outstanding nominee.

As many Senators will recall, Judge Pickering was unanimously approved by the Judiciary Committee in the fall of 1990 to be a United States District Court Judge for the Southern District of Mississippi. He was then unanimously confirmed by the full Senate. He has served honorably in this position for 13 years, and I am happy that the President has re-nominated Judge Pickering for a promotion to the Fifth Circuit after his nomination was blocked from consideration by the full Senate during the 107th Congress.

Charles Pickering and I have known each other for over 40 years, which doesn't seem possible, and I can personally attest that there is no other person in the State of Mississippi who is more eminently qualified to serve on the Fifth Circuit Court of Appeals.

Mr. President, Charles Pickering graduated first in his class from the University of Mississippi Law School in 1961, and received his B.A. degree from Ole Miss with honors in 1959. He practiced law for almost 30 years in Jones County, Mississippi, and during this time served stints as the prosecuting attorney for Jones County and the City of Laurel during the 1960's. From 1972 to 1980, Charles served in the Mississippi State Senate. This was a part-time position, with full-time demands I might add, that allowed him to continue his law practice during this period.

Judge Pickering has had an impeccable reputation on the bench in Mississippi, and he is respected by all sectors of the Mississippi and national legal community. Scores of attorneys, community leaders, and other Mississippians from all walks of life have applauded his nomination to the Fifth Circuit. What a compliment to Judge Pickering, Mr. President, for him to have the support of those who know him best—the people he works with in his professional life and spends time with in his personal endeavors. It is no surprise that the ABA's Standing Committee on the Federal Judiciary found him "Well-Qualified" for appointment as a Fifth Circuit judge.

Furthermore, he is highly respected within the federal judiciary. He served

on the Board of Directors of the Federal Judges Association from 1997 until 2001, and was a member of the Executive Committee for the final 2 years of his term. He recently completed a term of service on the Judicial Branch Committee of the Judicial Conference of the United States.

Judge Pickering has been involved in numerous community and public service endeavors. He has headed the March of Dimes campaign in Jones County, Mississippi, and served as Chairman of the Jones County Chapter of the American National Red Cross. He was also a major participant in the formation of the Jones County Economic Development Authority, serving as its first chairman.

Charles Pickering has been a leader in his community and in the state on race relations, and in standing up for what is right. In 1967, at the risk of harm to himself and his family, he testified against the Imperial Wizard of the KKK, Sam Bowers, for the fire-bombing death of civil rights activist Vernon Dahmer. He was active in his community's efforts to integrate their public schools, sending all four of his children to the integrated schools. In 1981, Charles Pickering represented an African American man falsely accused of robbing a white teen-aged girl. Although his decision to provide this legal representation was not supported by some in his community, he aggressively represented his client, who was found not guilty. He was a motivating force behind and currently serves on the Board of Directors of the William Winter Institute for Racial Reconciliation at the University of Mississippi, our mutual alma mater.

He has also volunteered for the Jones County Heart Fund, the Jones County Drug Education Council, and the Economic Development Authority of Jones County. He has always been very active in his church, serving as a Sunday school teacher, Chairman of the Deacons, Sunday school superintendent, and church treasurer. From 1983-85, he was the President of the Mississippi Baptist Convention.

In addition to his many professional and civic activities, Charles Pickering has also been a good farmer. He was the first president of the National Catfish Farmers Association and was a leader in catfish farming during its early days. Most importantly, though, is the fact that Charles has always put his family first, even with the commitments I have just described. He has a wonderful wife and four grown children with spouses and families of their own, including his son, Congressman CHIP PICKERING, who is a former member of my staff. Representative PICKERING's integrity is a further testament to the caliber of Judge Charles Pickering's character.

Mr. President, I am pleased that the Senate is considering this important nomination today, because the Senate needs to act now to confirm Judge Pickering. He is exceptionally well-

qualified for elevation to the Fifth Circuit, and I strongly endorse his nomination. He has been waiting far, far too long for a debate and vote on his nomination. I urge my colleagues to support moving forward with an up-or-down vote on this important nomination. I know that Judge Pickering's elevation to the Fifth Circuit is supported by a majority of Senators, and it is time for this majority to be heard.

As I said, he has been waiting 2½ years in this process. Unfortunately, last year he was defeated on a party-line vote and prevented from being reported out of the Judiciary Committee. But this year he was reported to the floor. He deserves to have his story told, and even a vote to occur on his nomination.

I have known this man and his family and his neighbors, the people in his church, the school officials, the minority leaders in his community for over 40 years.

I think there used to be a time when a Senator vouched for a person, a nominee from his State, and it carried real weight. I am here to tell you, this is one of the finest men, one of the finest family men, one of the smartest individuals, one of the best judges I have known in my life. There is no question that he has the educational background, the qualifications, the experience, the judicial demeanor, and also the leadership to bring about unity, not division.

That has been the story of his life. He has always been a unifier. He has always been willing to step up and take on the tough battles in his home county and in our State of Mississippi.

Senator HATCH made reference to the fact that when he was county attorney, years ago, in the late 1960s he had the courage to actually work with the FBI and to testify against the Imperial Wizard of the Ku Klux Klan, something not very healthy for your political career or even your life at the time. But he took a stand and was defeated for re-election, to a large degree because of that.

He continued to work in his community and provide leadership. He practiced law for 30 years. If you want to look at his qualifications, here they are listed. He was not just an average student. He graduated first in his class from law school. He graduated from undergraduate school with honors. He has the highest rating by Martindale Hubbell. In 1990, he was unanimously confirmed by the Senate to be a district judge. He has been very good in his rulings. In fact, of those that were appealed, the reversal rate is only 7.9 percent, which is extraordinarily good. He received from the American Bar Association—not once but twice—their highest rating of well qualified. They looked into allegations that were made against him after his first consideration by the committee and came back and said: He is still well qualified—not a group known for dismissing allegations or charges that were made against him.

He certainly has the qualifications and the experience. In his community, he is endorsed by Democrats and Republicans, elected officials of both parties, the head of the local NAACP. The people who know him best, who know his family, who see him every day, say this is a good man, qualified to be on the Fifth Circuit Court of Appeals.

He has served on the Federal bench for 13 years. He is highly respected within the Federal judiciary. In fact, he has served in a leadership capacity there. He has been on the board of directors of the Federal Judges Association from 1997 to 2001, and he was on the executive committee for the final 2 years of his term. He recently completed a term of service on the Judicial Branch Committee of the Judicial Conference. He is respected by his fellow judges.

I know some of the Senators on both sides of the aisle have had Federal judges in their States also vouch for this good man to be on the Fifth Circuit Court of Appeals.

He has had letters of endorsement from a wide span of community leaders and State leaders in our State, including all five statewide elected Democrats.

I ask unanimous consent that letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE OF MISSISSIPPI,
OFFICE OF THE GOVERNOR,
Jackson, MI, September 24, 2003.
Hon. BILL FRIST,
Majority Leader, U.S. Senate, Dirksen Senate
Office Bldg., Washington, DC.
Hon. THOMAS DASCHLE,
Minority Leader, U.S. Senate, Hart Senate Of-
fice Bldg., Washington, DC.

DEAR SENATORS FRIST AND DASCHLE: The nomination of Federal District Judge Charles Pickering to the U.S. Fifth Circuit Court of Appeals is once again coming before the U.S. Senate in Washington for consideration. We are the Democratic statewide officials of Mississippi.

We know Charles Pickering personally and have known him for many years. We believe Judge Pickering should be confirmed for this appointment and serve on that court.

Judge Pickering chose to take stands during his career that were difficult and often courageous. He has worked for racial reconciliation and helped unify our communities. Toward that objective, he formed a bi-racial commission in his home county to address community issues and led an effort to start a program for at-risk youth. Furthermore, Judge Pickering helped establish and serves on the board of the Institute for Racial Reconciliation at the University of Mississippi.

We are all active Democrats. Charles Pickering was, before rising to the Federal Bench, an active Republican. It is our hope that Party labels can be transcended in this fight over his nomination. We should cast a blind eye to partisanship when working to build a fair and impartial judiciary.

The U.S. Senate has a chance to demonstrate a commitment to fairness. Judge Pickering's record demonstrates his commitment to equal protection, equal rights and fairness for all. His values demand he respect the law and constitutional precedents and rule accordingly. He does.

He has never been reversed on any substantive issue in a voting rights or employment discrimination case that has come before him. His rulings reflect his support for the principle of one man one vote. Judge Pickering ruled the 1991 Mississippi legislative redistricting plan unconstitutional for failing to conform to one man one vote standards and ordered a new election as the remedy.

In 1963, at the age of 26, Judge Pickering was elected Prosecuting Attorney of Jones County. While holding this office he confronted the effects of racial hatred and saw firsthand its result in the form of extensive Ku Klux Klan violence. It was a horrible time in Mississippi. Judge Pickering took a public stand against the Klan violence and terrorism. He worked with the FBI to prosecute and stop the Klan. Charles Pickering testified against the Klan leader Sam Bowers in the murder of civil rights activist Vernon Dahmer.

In the 1960's Charles Pickering stood up for the voting rights of African Americans, and for the equal protection of all. In the 1970's and 1980's he led his community, his children's school, his political party and his church in integration and inclusion. Today, he is a voice for racial reconciliation across our state. As a judge, he is consistent in his fairness to everyone, and deemed well qualified by those who independently review his rulings, temperament and work.

Mississippi has made tremendous progress in race relations since the 1960s and Charles Pickering has been part of that progress. We ask the United States Senate to stand up to those that malign the character of Charles Pickering, and give him an up or down vote on the Senate Floor.

Very truly yours,

RONNIE MUSGROVE,
Governor of Mis-
sissippi.
ERIC CLARK,
Secretary of State.
MIKE MOORE,
Attorney General.
LESTER SPELL,
Commissioner of Agri-
culture and Com-
merce.
GEORGE DALE,
Commissioner of Insur-
ance.

Mr. LOTT. I have other letters of endorsement and articles supporting Judge Charles Pickering, and I ask unanimous consent that they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

From: Representative Phillip West, Chairman.

Date: April 25, 2003.

Re: Judge Charles Pickering.

POSITION STATEMENT ON JUDGE CHARLES PICKERING

After having listened to Judge Charles Pickering during his meeting with the Mississippi Legislative Black Caucus, reviewed materials concerning Judge Pickering's record as a Jones County attorney, and spoken with some of the members of the Institute of Racial Reconciliation, I have decided to reverse my position regarding Judge Pickering's nomination to the Fifth Circuit Court of Appeals.

When I originally signed the petition against his nomination I was not aware of the information that has subsequently come to my attention. I labored under the impression that opponents had a clear and convincing argument. Now I am not certain that

the ammunition on him is as powerful and as convincing as I was led to believe. I certainly do not believe Judge Pickering is presently a "racist".

Judge Pickering's record of working with both races and working for racial reconciliation in past and present years is beyond what many whites we have supported and continue to support in positions of leadership have done in our state.

While I do not condemn and judge all white men and women to be "staunchn racist", I do believe many have racist tendencies and beliefs as evidenced by the racism instilled in our many institutions. At least Judge Pickering has shown a willingness to work for racial reconciliation prior to his consideration for the Fifth Circuit Court of Appeals position.

I hope and pray understanding of the need for racial reconciliation by Judge Pickering will help strengthen the Fifth Circuit's fortitude in resolving racial issues and concerns in a spirit that God directs.

I recognize different people can review the same facts and reach different conclusions. I respect their right, for "Beauty is in the eyes of the beholder."

It would also be "Politically Correct" for me to remain silent. However, I cannot support a position that may be "Politically Correct" but I feel is "Morally Wrong". I truly believe we all should embrace truth, justice, and fairness whether we are black or white, rich or poor, democrat or republican. Our state needs it. Our children deserve it.

AMERICAN BAR ASSOCIATION,
Houston, TX, February 10, 2003.

Re Charles W. Pickering, Sr., United States
Court of Appeals, Fifth Circuit.

Hon. PATRICK J. LEAHY,
Committee on the Judiciary, U.S. Senate, Dirk-
sen Senate Office Building, Washington,
DC.

DEAR SENATOR LEAHY: The purpose of this letter is to confirm the recommendation of this Committee previously given as to the nomination of Charles W. Pickering, Sr. for appointment as Judge of the United States Court of Appeals, Fifth Circuit.

A substantial majority of our Committee is of the opinion that Charles W. Pickering, Sr. is Well Qualified and a minority of the Committee is of the opinion that Charles W. Pickering, Sr. is Qualified for this appointment.

A copy of this letter has been sent to Charles W. Pickering, Sr. for his information.

Yours very truly,

CAROL E. DINKINS,
Chair.

[From the Clarion-Ledger, Mar. 9, 2003]

JUDGE PICKERING—SENATE SHOULD CONFIRM
NOMINATION

As outlined on the front of The Clarion-Ledger's Perspective section today, the almost two-year-old circus that has become the nomination of U.S. District Judge Charles Pickering Sr. to the 5th U.S. Circuit Court of Appeals has been based allegations that Judge Pickering is a racist.

This is not true and is very unfair to Pickering.

A throng of special interest groups—including very reputable ones—has opposed President Bush's nomination of Pickering on the basis of that charge of longstanding career racism by the Laurel jurist.

Trouble is, those groups and the political faces in the Senate that depend upon the support of them, have failed to make a credible case against Pickering on the racism charge.

Pickering is a what conservative Republican judge who is a devout Christian and a

practicing Southern Baptist. As has been made clear to those following the Capitol Hill controversy, the hue and cry is about racism but the undercurrent of opposition isn't about race at all—it's about the thorny issue of abortion rights.

As in the case of fellow Bush federal appellate court nominee Miguel Estrada, the opposition to Pickering among Senate Democrats isn't about the judge's qualifications. It's about the judge's politics.

And while Senate Republicans played the same political game with the judicial nominees of former President Bill Clinton, the politics of personal destruction in the case of Pickering has reached a new low.

By any reasonable standard, Charles Pickering Sr. has lived the life and done the work of a man with his heart in the right place on race in a state where such a life and work wasn't always easy or appreciated.

Pickering isn't a Johnny-Come-Lately to the concept of meaningful racial reconciliation. He's been part of the solution to Mississippi's vexing racial conundrum for decades. He has been an able jurist, a contributing citizen and a responsible politician and jurist.

Those who seek to oppose Judge Pickering on the grounds of his political philosophy or religious views should do so openly and in aboveboard fashion—not hiding behind the political skirts of dubious charges of racism.

Racism is a serious evil. Mississippians know better than most in America the severity of racism and the vile manifestations it can assume. Mississippi has borne witness to unspeakable acts of cruelty and mayhem in the name of race literally since statehood.

In Mississippi's fragile racial environment—one in which people of good will and good intentions have sought to build bridges—crying “wolf” on false charges of racism is a particularly onerous political and social crime.

On a broader scale, the politics of judicial confirmation threatens to subvert the partisan political give and take of the presidency in judicial nominations to provide philosophical balance to the courts.

Confirmation hearings should be about the qualifications and character of the judicial nominee, not the next presidential election.

The Senate Judiciary Committee owes Judge Pickering a fair hearing based on an examination of his record—his entire record—as a judge, as a public figure and as a man.

Based on what we have known of that record, a fair hearing by the committee will produce no impediment to confirmation.

CONSTANCE IONA SLAUGHTER HARVEY,
Forest, MS, October 23, 2001.

Hon. CHARLES W. PICKERING, Sr.,
U.S. District Court Judge,
Hattiesburg, MS.

DEAR JUDGE PICKERING: Thank you for reminding me of the upcoming Institute for Racial Reconciliation Board Retreat to be held Friday, November 9 through Saturday, November 10, 2001. Unfortunately, my heavy schedule will prevent me from attending. On those dates, I will also be required to participate in the Annual State Convention of Mississippi Action for Progress Head Start and facilitate a session at the Metro Black Women Lawyers' retreat. Both of these events require my personal involvement.

While I will not be in attendance, I am assured, because of your integrity, that you will continue to provide the quality of leadership you have provided in the past. You have served Mississippi and her people well even to the extent of taking positions that were unpopular. This sometimes meant great personal sacrifice and loss of political gain for you.

Thank you for being a human being and for caring what happens to other human beings. I am especially mindful of your commitment to racial reconciliation over the past twenty years. Because of this commitment, our future looks better.

I'll contact you regarding the developments at the Retreat around the 15th of November. My best to you.

Sincerely yours,

CONSTANCE SLAUGHTER-HARVEY.

[From the Atlanta Journal-Constitution,
Mar. 9, 2003]

TRIALS OF A SOUTHERN JUDGE

EVIDENCE DOESN'T SUPPORT CHARGES OF
RACISM AGAINST CHARLES PICKERING
(By Janita Poe and Tom Baxter)

When court is not in session, Deborah Gambrell and U.S. District Judge Charles W. Pickering often hole up with other lawyers in a courthouse anteroom—and debate the law.

They're there to schedule trials or sentencing. But Gambrell, a liberal African-American lawyer, and Pickering, a conservative white judge, invariably fall into spirited exchanges on legal issues and philosophies.

“We've had debates over everything from Clarence Thomas to the details of some case,” Gambrell said. “Judge Pickering is a conservative, but he wants to hear your opinion. And he's amenable to having his mind changed, too.”

Gambrell sees no racial bias in the judge. On the contrary, she said, he appoints motivated lawyers such as her to represent workers—many of them black—who claim they were wronged by employers. “He loves the law and wants you to represent your client well,” Gambrell said, “and I don't think that's discriminatory.”

Strange as it sounds, Gambrell is talking about the same Charles Pickering who made headlines last year as a reputed old-line Southern bigot. The liberal lobbying group People for the American Way, for example, claims Pickering is “hostile to civil rights.” NAACP Chairman Julian Bond says Pickering uses “a racial lens to look at America.”

Pickering drew the criticism after President Bush nominated him for a job on the New Orleans-based 5th U.S. Circuit Court of Appeals, one step below the Supreme Court. A Senate committee controlled by Democrats, heeding complaints about the judge's racial views, rejected him.

With the Senate now in Republican hands, Bush has renominated Pickering, prompting new Democratic charges that Republicans, even after the Trent Lott fiasco, are catering to racist Southern whites.

In Mississippi, however, many describe a different man than the one feared and vilified by critics inside the Beltway.

Rather, their up-close description of Pickering is that he is a relative progressive on race, a man who in the 1960s, when much of Mississippi was still fighting efforts to kill Jim Crow, testified against a murderous Ku Klux Klansman. He is a parent who, despite a poisonous racial atmosphere around Laurel, bucked white flight to send his four children to newly integrated public schools.

Pickering has been excoriated for seeking a lighter sentence for a white man convicted in a cross burning (see related story). But he also sought reduced sentences for many black first offenders. He has pushed to establish a racial reconciliation center at the University of Mississippi, his alma mater. And, both on the bench and off, he has pressed white prison officials to ensure the rights of black inmates.

The judge's record is not spotless on race. In the infamous cross-burning case, he wor-

ried aloud how a tough sentence would play in the community—apparently the white community.

And as a law student in 1959, he published a paper laying out a strategy for maintaining a ban on mixed-race marriages in Mississippi.

Yet these are two exceptions, the second more than four decades old, in an otherwise surprisingly upstanding history on race.

Pickering will not comment publicly, pending Senate action on his nomination, which is expected this month or next.

ROOTS: RELIGION AND RACE

Pickering, the son of a Laurel dairy farmer, has always stayed close to his south-central Mississippi roots. The New Orleans-based appeals court job would be his first post outside Mississippi.

A land of bayous and pine trees, the region around Laurel and Hattiesburg is a place where people take their religion seriously. Methodist and Baptist churches line the main streets; even today, when much of the Bible Belt has succumbed to secularism, day care centers are named “River of Life” and “Alpha Christian.”

Pickering is a 42-year member at First Baptist Church of Laurel, where he has been a deacon, a Sunday school teacher and church treasurer. In the mid-'80s, he was president of the Southern Baptists in Mississippi and was allied with the “inerrantists,” who maintain the Bible is the word of God and its accounts are factual.

Racism once had as strong grip on the region as religion, and Pickering was reared during a period of open, unquestioned apartheid. That upbringing has lent some credibility to critics' charges.

Marilyn Huff, a white 65-year-old who lived next to the Pickering farm, recalls playing hopscotch and marbles with Pickering and several children of black sharecroppers who lived nearby. But the black kids attended a different school.

“We got on our bus and went to our school, and they got on their bus and went to theirs,” she said. “I think the South accepted those things when other areas of the country did not.”

Pickering's 1959 paper on “miscegenation,” or mixed-race marriage, reflects that acceptance. In the article, which was based on a case of that era, Pickering suggests that Mississippi lawmakers could strengthen the state's anti-miscegenation law against legal challenges by reviewing similar laws in 23 other states. Pickering published the article in the Mississippi Law Journal, where he was a staff writer.

The judge's son, U.S. Rep. “Chip” Pickering, 39, explains the article as nothing more than an assigned “exercise” in which students “assessed laws on interracial marriage and told why the Mississippi law was struck down.”

The congressman's account, however, does not fully convey the tone of the brief. The article did not simply analyze problems with the law, but suggested how it could better withstand court challenges. As People for the American Way points out, Pickering “expressed no moral outrage over laws prohibiting and criminalizing interracial marriage” but instead calmly offered a strategy for maintaining a ban—as if the law were as ethically neutral as, say, restrictions on double-parking.

Elsewhere, by the 1950s, people inside and outside the state were beginning to question Mississippi's adherence to Jim Crow strictures. In 1955, Pickering's junior college near Laurel achieved a breakthrough of sorts when its all-white football team, in a quest for a national championship, decided to play an integrated squad from California despite

protests from the state's racist establishment.

In 1962, as Pickering started his law practice, the Federal government forced the University of Mississippi to admit James Meredith, a black Air Force veteran. Students and locals responded by staging a riot that killed two people and injured hundreds.

And that was in relatively genteel Oxford. Laurel, a rougher place to begin with, became a flash point of racial and class tensions, with leftist union and reactionary Ku Klux Klan organizers alike recruiting members from the 4,000 workers at the town's big Masonite plant. The toxic atmosphere soon presented Pickering with a chance to depart Mississippi's well-worn racial path.

Laurel was home to a man who combined fervor for both Christianity and apartheid to produce a vicious, ragtag holy war in defense of the status quo. In 1966, Sam Bowers, the Scripture-quoting imperial wizard of the White Knights of the Ku Klux Klan, led a gang of Klansmen to firebomb the home of Hattiesburg NAACP leader Vernon Dahmer, killing him.

Pickering, then serving as Jones County prosecutor, could have avoided the trial, as the slaying took place in a neighboring county. But Jim Dukes, the prosecutor, who presented the case against Bowers, asked his colleague to testify to Bowers' violent character, and Pickering agreed—despite the risk of Klan reprisals.

"He was putting himself at risk of bodily harm, social ostracism and economic destruction," Dukes said. "These were turbulent times, and testifying against the Klan was not a popular thing to do."

Pickering lost a race for a state House seat later that year. Bowers—whose trial ended in a hung jury and who was not convicted until 1998—took credit for beating him.

REPUBLICAN POLITICS

Like many Mississippians of his generation, Pickering began political life as a Democrat and switched to the GOP. He did so, however, before the party had become a haven for Southern whites disaffected with the national Democrats' liberal racial policies.

Pickering changed parties in 1964, a time when Mississippi's Democratic leadership stood for continued segregation. Most notoriously, Democratic Gov. Ross Barnett had personally turned Meredith away from Ole Miss and helped provoke the later rioting. The Mississippi Democratic establishment, in the thrall of Jim Crow, sent an all-white delegation to the 1964 national convention and was denied seating.

The small but growing Mississippi GOP leaned to the right on many issues, as it still does, reflecting a pro-business bent. But compared with the Democratic leadership, many Republicans were moderate or even progressive on desegregation and on compliance with federal court orders.

The state GOP "was characterized by some very powerful business types who could afford to be more moderate in their political views," said Marty Wiseman, director of the John Stennis Institute of Government at Mississippi State University.

Laurel's powerful state senator, E.K. Collins, led the all-white delegation to the Democratic convention. In 1971, Pickering took Collins on and beat him. "It was considered nervy for a young upstart to run against an established longtime Dixiecrat like E.K.," recalled former Rep. Tucker Buchanan, a Democrat who became friends with Pickering in the Legislature.

In the Senate, Pickering developed a reputation for being able to talk with all sides and occasionally broker a deal—even though, as one of only two Republicans, he was excluded from Senate leadership.

"He was right down the middle. He was a moderate," said former Gov. William Winter, a progressive Democrat who was lieutenant governor when Pickering arrived at the Legislature.

The new governor, Democrat William Waller, was the first in many years who had not made race the focus of his campaign, and as a prosecutor had heroically but unsuccessfully mounted two cases against white supremacist Byron de la Beckwith for the murder of the NAACP's Medgar Evers. "Charles was of that stripe," Winter said.

Robert G. Clark Jr., who is today the House speaker pro tem, in 1968 became the first African-American elected to the Legislature. He did not receive a warm welcome. "It was pretty lonely back then," Clark said.

But Pickering was cordial. "He was one who didn't mind coming up to me to shake my hand and say, 'How are you doing today, Rep. Clark?'"

Pickering was elected state GOP chairman in 1976, serving with then-Executive Director Haley Barbour, who went on to become Republican national chairman, a powerful Washington lobbyist and—this year—a candidate for governor.

Pickering won credit as a party peacemaker after a bruising fight between supporters of Gerald Ford and Ronald Reagan at the 1976 GOP convention. But he lost his one bid for federal office in 1978, when Thad Cochran defeated him in the U.S. Senate primary. He lost again in a run for state attorney general a year later, ending his career in elective politics.

THE SOVEREIGNTY COMMISSION

Pickering's terms as a state senator coincided with the final years of the infamous Mississippi Sovereignty Commission. Created in 1956 in reaction to the U.S. Supreme Court's school desegregation decision, the agency was supposed to protect Mississippi and her "sister states" from federal encroachment, by "any and all acts and things deemed necessary and proper."

The commission used its charge to spy on, intimidate and harass those considered to be racial troublemakers or outside "agitators." It helped fund the reactionary white Citizens Councils and kept up a system of informants who reported to the commission on the activities of the FBI as well as civil rights groups.

As a state senator Pickering voted twice, in 1972 and 1973, along with the majority, to continue funding for the commission—votes his critics have highlighted during the confirmation hearings. By the early '70s, however, Mississippi had generally dismantled legal segregation, and the agency was trying to retool itself as a general investigative organization.

Waller vetoed the funding in 1973, and the commission was officially dissolved in 1977, its files sealed. In the end, Pickering voted with the majority to end the commission and seal the records.

In 1990, during hearings on his nomination as district judge, Pickering said he "never had any contact" with the commission and that he knew "very little about what is in those records." His opponents point out, however, that when the Sovereignty Commission's files were subsequently opened, an investigator's memo was found naming him.

The document suggested Pickering and two other legislators had communicated with the commission on its investigation of labor union activity in Laurel. The three lawmakers were "very interested" and "requested to be advised of developments," according to the memo.

Pickering's son, the congressman, says the agency had approached his father, not the other way around. "His only contact came in

1972, when a Sovereignty Commission employee approached him and said he had information about a radical group infiltrating a union in Jones County. My father's only response was, 'Keep me informed.'"

Again, this may be too easy a dismissal. The nature of the supposed union infiltration is in dispute. The commission memo says the agency was focusing on a pro-civil rights group, but in Pickering's confirmation hearing last year, the judge said he was concerned about Klan activity.

Any alleged connection to the racism of the Sovereignty Commission sharply contrasts with Pickering's public and personal actions in support of integration in the same decade.

AT HOME IN LAUREL

Even though they lived in racially polarized Jones County, Pickering and his wife, Margaret Ann, sent their four children to newly integrated public schools in the '70s.

Allison Montgomery, the judge's second-youngest child, recalls thinking her father had to set an example for other families by supporting integration. She was bused to the formerly all-black Oak Park High the year it debuted as an integrated elementary school.

"It was never discussed in our home, but my sense was that because Daddy had a reputation as being one who supported what was right, that it was what we were expected to do," said Montgomery, 35, a homemaker who lives in Shreveport, La.

"Even though it meant we would end up in a minority situation, I think the powers that be in our community knew he would still support the public school system."

Montgomery has fond memories of learning new games and chants with her black schoolmates, but she remembers several white parents moving their children out of her hometown because the teacher was black. Some families enrolled their children in private schools. "Suddenly people were sending their kids to a little small academy called Heidelberg Academy," she said. "It was in Jasper County, and they probably had a 20- or 30-minute drive, at least."

Black people in the Laurel area took note of Pickering's stance on racial issues.

When Larry Thomas was a child, he watched his father, a local civil rights leader, work out the logistics of demonstrations with Pickering. Later, he dealt directly with Pickering as a fellow economic-development board member. Thomas, 49, a pharmacist, is a black Democrat.

Over the years, Pickering disregarded white criticism to make alliances with black people, Thomas said.

"When things were changing in the '60s and '70s, he always tried to reach a compromise. He was always trying to understand the thinking and concerns of the black community," Thomas said. "To me, that's the most I expect of a white man. The rest is our responsibility."

Melvin Mack, 53, a black county supervisor, grew up about four miles from Pickering's family and, over the years, has seen him at dozens of black gatherings. Pickering may have been reared in an era when discrimination was the rule, he said, but he has always been friendly with blacks.

"You will see him at black family reunions," Mack said. "You will see him at funerals when a black family's loved one has died."

In the '90s, Pickering was an early, prominent supporter for establishing what became the William Winter Institute for Racial Reconciliation at Ole Miss. Among its other functions, the institute promotes programs to combat racial prejudice.

Pickering has also responded to complaints about the abuse of black State prison inmates. Sometimes he has ordered changes

from the bench and other times, when evidence did not fully substantiate the abuse, worked informally. Pickering “will call me afterward and ask that we look into what is going on,” said Leonard Vincent, general counsel for the State Corrections Department.

In one case, such informal intervention led to the firing of at least two guards.

“Judge Pickering was the only white leader we could get to stand up against the guards and the penal system,” said a local civic activist, who spoke on condition of anonymity. “I mean, he called them on the carpet and cleaned them up.”

Pickering, the activist said, did not seek to publicize his behind-the-scenes effort. “I’m not saying Judge Pickering is a saint,” he said. “He is a conservative man. But he’s not afraid to stand up for what is right.”

THE CASE AGAINST PICKERING

Such sentiments do not sway opponents.

“Judge Pickering’s record isn’t erased just because he has African-American friends in his community,” said NAACP Chairman Bond, a former Georgia legislator. “This is a question of what kind of Federal judiciary are we going to have. Are we going to have one occupied by women and men who support justice and fairness, or who oppose it?”

Many Pickering opponents object to his nomination on grounds unrelated to his racial attitudes. The predominantly black Magnolia Bar Association of Mississippi is one such opponent.

The 5th U.S. Circuit Court of Appeals has jurisdiction over Mississippi, Louisiana and Texas, whose population is 45 percent nonwhite. But of 14 judges’ seats that are filled, only two are Hispanic and only one is black. The Magnolia Bar has sought more diversity and more liberal voices on the court for years, President Melvin Cooper said, so Pickering—a conservative white—is the wrong choice.

“We’re looking at . . . the decisions he would make on the bench,” Cooper said.

Abortion-rights groups have joined the fight against Pickering, also because of his conservative personal views. As a State legislator in the mid-1970s, Pickering led an effort to make the national Republican platform anti-abortion, specifically opposing the U.S. Supreme Court’s “intrusion” into the issue with *Roe v. Wade*.

“We’re concerned that would color the attitude he would take to the appellate bench,” said Judy Appelbaum, a vice president of the National Women’s Law Center.

When asked about abortion at his confirmation hearing last year, the judge sounded less militant. “My personal views are immaterial and irrelevant,” the judge responded. “I will tell you that I will follow the constitution, and I will apply the Supreme court precedent.”

Pickering has yet to rule on an abortion matter. But the 5th U.S. Circuit may well consider the constitutionality of state statutes designed to make abortions more difficult to obtain. In Mississippi, for example, legislation is pending that would restrict the time when an abortion is legal and require abortion providers to be board-certified in obstetrics and gynecology.

Yet allegations of bigotry have hurt the judge’s chances—and damaged his reputation—more than concerns about his general conservatism. His son says Pickering is willing to undergo another round of intense scrutiny and heated attacks to restore his good name.

“The stereotype of what Mississippi is can easily be used against someone like my father, who is a Southern Baptist and from an older generation of white Mississippians,” he said. “But my father is not at all the man

they try to say he is. We hope in this second go-round the truth catches up with the false accusations.”

The law-review article on mixed-race marriage laws casts a cloud on that record. But the evidence suggests that the judge has moved on since he wrote it.

“That was 1959,” said Angela Barnett. “Back in the day, everyone was taught to think that way.”

Barnett, who is white, went before Pickering on drug charges in 1997—with her black husband, Harrell. The couple, who now live in Houston, say the judge helped them get their lives together with lenient sentences and advice.

“If he was racist, he wouldn’t even be thinking about helping us,” Barnett said. “He would have said ‘Heck, no, she’s married to a black man, I’m not going to help them.’”

When the Senate debates Pickering’s nomination, his conservative views—on abortion, federalism, the role of the judiciary and other matters—will be fair game. The judge is quite conservative by most measures, and many people would prefer more moderate or liberal nominees.

But in Mississippi, the notion that Pickering is a racial throwback and a friend to cross-burners doesn’t sell.

Pascagoula attorney Richard “Dickie” Scruggs, for example, is a believer in Pickering.

Scruggs is a “mass tort” trial lawyer—the sort who signs up thousands of plaintiffs to join in class-action lawsuits—who was lead litigator in Mississippi’s multibillion-dollar tobacco suit.

“Judge Pickering has been in the camp that was considered liberal to moderate in the 1960s,” said Scruggs, a Democrat who is also Trent Lott’s brother-in-law. “He’s a bright jurist and has a moral compass that gives him a real sense of fairness. . . .

“I think he would be a great [appeals court] judge. I just don’t know why he would want to go through this process again.”

Mr. LOTT. One of the criticisms was, well, the Judge was the intermediary in sending some of the letters of support. I am not going to belabor the point, but as a matter of fact, I have the list of who these people were. They were people he had known for 30 years, former college friends, law school friends, people he practiced law with. It was in the aftermath of the anthrax attack here on the Capitol. The only way he could make sure the letters got to the Judiciary Committee in a timely way was to send them himself. The allegation that there was something inappropriate about that is totally baseless, and it is just the type of thing that has been used against him.

Another allegation is that when he was a State senator he had some relationship with what was then known as the Sovereignty Commission. When he went into the Senate, I think when he was first sworn in, representatives from that organization said they had some concerns about Klan activity with regard to labor unions down in his home county.

He said: Keep me posted.

Seldom do they note the fact that he subsequently voted to abolish the Sovereignty Commission; again, a very frivolous charge. To have your name mentioned 30 years later in a report, that they had some happenstance con-

tact with him, certainly should not be disqualifying.

From all walks of life in Mississippi, people are very much in support of this nomination. He hasn’t just been a lawyer and a judge and family man. He has been involved. He helped bring his hometown school through integration. His kids went to the public schools. The first time I saw his son—now a Congressman—CHIP PICKERING, he was playing linebacker for the football team for the Laurel Tornadoes, R. H. Watkins Laurel High School. He was a great athlete on a team that was probably 80 percent African American. They have always been willing to take a stand.

He was head of the local March of Dimes. He headed the local Red Cross. He has been involved in economic development. He has been involved in the Heart Fund, the Drug Education Council, Sunday school teacher, chairman of the deacons, church treasurer, president of the Mississippi Baptist Convention. Some people look at that almost like it is an indictment. It is a great honor for the people of your faith to honor you to head their organization statewide.

He has even been a farmer and was the first president of the National Catfish Farmers Association. I had contact with him then.

President Reagan once wrote in a note where there was a picture of a mother and her son: The apple never falls too far from the tree. The point was, if the child is really an outstanding person, he probably came from a very strong and good tree. True. In this case, there is not a finer young man I know of than Congressman CHIP PICKERING who has labored valiantly to tell the truth about his dad. If you want to get emotional, watch a son work for his father. I think the kind of man CHIP PICKERING is tells you a lot about the father who brought him into the world, along with his mother.

This certainly is an outstanding individual. He had his reputation besmirched a couple of years ago. He has been willing to continue to stand and fight to have the record corrected and to see this through to a conclusion. I hope the Senate will not filibuster this judge. At least give him a direct vote. Or if we have to have a vote on cloture, vote to invoke cloture, and let’s move this nomination forward.

There is a real fester developing here in this institution, institutionally and individually. We have to lance it or it is going to demean us as individuals and the institution. We have to stop it. This is the place to do it. This man should be confirmed for the Fifth Circuit Court of Appeals.

Mr. HATCH. Mr. President, how much time remains?

The PRESIDENT pro tempore. The Senator has 11 minutes 9 seconds.

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Georgia.

The PRESIDENT pro tempore. The Senator from Georgia is recognized.

Mr. MILLER. Mr. President, I rise today to talk about a good and brave man from the State of Mississippi, Judge Charles Pickering. I also rise today to talk about a judicial nominating process that is badly broken and out of control. Judge Charles Pickering has been victimized by inaccurate race baiting and political trash talk of the news media, Members of Congress, and Washington's liberal elite. Judge Pickering's critics continue to unfairly label him a racist and segregationist. Nothing could be further from the truth.

Judge Pickering has worked courageously in difficult times—difficult times many in this body could not hope to understand—to eliminate racial disparities in Mississippi and the South. My good friend, former Governor William Winter of Mississippi, a Democrat and one of the South's most respected progressives, came to Washington to support Judge Pickering's nomination. Sadly, Governor Winter's praise and firsthand account of Pickering's true record fell on deaf ears by most Capitol Hill Democrats.

Charles Pickering deserves an up-or-down vote on his nomination, as does another fine nominee who has been treated in the same shameful manner, Justice Janice Rogers Brown of California. On both of these nominees, I fear we are about to cave in once again to the left-leaning special interest groups. These special interest groups, like termites, have come out of the woodwork to denounce Justice Brown simply because she is an African American who also happens to be conservative. Never mind that Justice Brown is intelligent, articulate, chock-full of common sense, and highly qualified to serve on the Federal appeals court bench. Never mind that in 1998, 76 percent of Californians voted to retain Justice Brown. That is a job approval rating most of us could only dream of.

The special interest groups don't care about any of that. They don't want to hear how qualified Justice Brown and Judge Pickering are, or how much the voters like the job they have done.

No, their only mission is to assassinate these good people's character and to take them down one way or another because they fear they won't cater to their liberal agenda. They are right; they won't. These fine nominees are much too independent and much too intelligent to be held hostage to anyone's extreme agenda. Or as Thomas Sowell wrote of Justice Brown in a column headlined "A Lynch Mob Takes Aim at Judicial Pick":

What really scares the left about Brown is that she has guts as well as brains. She won't weaken or waver.

So they can publish all the racist cartoons they want and they can demonize Judge Pickering and brutally and callously reduce Justice Brown to tears at her committee meeting. They can sneeringly accuse them both of being outside the mainstream. But President Bush knows and the voters of

California and Mississippi know, and the majority of this Senate knows, Charles Pickering and Janice Rogers Brown are not the ones who are outside the mainstream. The ones who are completely out of touch are the special interest groups that have taken this nominating process hostage and those in this body who have aided and abetted their doing so.

Speaking of lynch mobs, my all-time favorite movie is "To Kill a Mockingbird." In the movie's key scene, you may remember, Atticus Finch, a lawyer who is raising two small children, is defending a black man unjustly accused of rape. That lynch mob also tries to take justice into its own hands. Atticus confronts them at the jailhouse door. His daughter Scout joins him and sees that the leader of the mob is someone she knows. She calls to him by name: Hey, Mr. Cunningham. Remember me? You are Walter's daddy. Walter is a good boy. Tell him I said hello.

After a dramatic pause, Mr. Cunningham turns away and says to the mob: Let's go home, boys.

This group, bent on injustice, was turned aside by a small girl who appealed to them as individuals.

My friends in this Chamber, I know you, and I appeal to each of you as individuals, as fathers, mothers, colleagues and friends. Most of you were taught in Sunday school to do unto others as you would have them do unto you. This is not treating someone as you would want to be treated yourself. This extreme partisanship and deliberately planned obstructionism has gone on long enough in this body. I wish we could do away with the 60-vote rule that lets a small minority rule this Chamber and defeat the majority, reversing the rule of free government everywhere; everywhere, that is, except in the Senate.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. MILLER. I hope we can have an up-or-down vote—just an up-or-down vote, Mr. President.

The PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, how much time remains?

The PRESIDENT pro tempore. Five minutes.

Mr. HATCH. I ask unanimous consent that there be an additional 10 minutes equally divided with, of course, the same understanding that Senator COCHRAN will be the last to speak for 5 minutes.

The PRESIDENT pro tempore. Is there objection?

Mr. LEAHY. Reserving the right to object, and I shan't because I have already spoken about this with the distinguished senior Senator from Utah, but my understanding is this is 10 minutes equally divided on top of whatever time is remaining?

Mr. HATCH. That is right, with the understanding that Senator COCHRAN will be the last to speak for 5 minutes.

Mr. LEAHY. Mr. President, what is the current order—I was off the floor when the order was entered last night—what is the current order on who speaks last?

The PRESIDENT pro tempore. The final 5 minutes is to the majority leader or his designee, and the previous 5 minutes is to the minority leader or his designee.

Mr. LEAHY. It is perfectly all right. I think the Senator from Utah has proposed a very fair proposal. I have no objection.

The PRESIDENT pro tempore. Is there objection? The Chair understands the request is to add 5 minutes to each side.

Mr. HATCH. Right.

The PRESIDENT pro tempore. Under the control of—

Mr. LEAHY. The same way.

The PRESIDENT pro tempore. The same persons controlling the time.

Mr. HATCH. With the understanding that Senator COCHRAN will be given the leader's 5 minutes at the very end of the debate.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HATCH. Does the distinguished Senator care to go ahead?

The PRESIDENT pro tempore. There are 35 minutes on the Democratic side and 10 minutes on the Republican side.

Mr. LEAHY. Will the Chair repeat that, please? I didn't hear what the Chair said.

The PRESIDENT pro tempore. There remains 35 minutes to the Democratic side and 10 minutes to the Republican side, 5 minutes added to each side. The Chair reminds the Senators that the last 5 minutes on each side is under the control of the leaders or their designees.

Mr. HATCH. Mr. President, I yield 2 minutes to the distinguished Senator from Georgia, Mr. CHAMBLISS.

Mr. CHAMBLISS. Mr. President, I appreciate the chairman's strong leadership on this issue. I rise in the strong support of the nomination of Charles Pickering to the Fifth Circuit Court of Appeals.

I want to say, first, that I appreciate the honesty, the integrity, and the forthrightness of my colleague from Georgia on every issue, but particularly on this issue. He has been very much out front, and this Senator greatly appreciates his attitude and his dedication to ensuring that quality judges are confirmed to every circuit of the United States and every district of the Federal bench.

I rise with some special appreciation for Judge Pickering's nomination because he is nominated to the Fifth Circuit Court of Appeals.

In 1969, when this Senator became a member of the Georgia bar, Georgia was a member of the Fifth Circuit. So I have been a member of the Fifth Circuit bar since my early days. The Eleventh Circuit was created in 1980. We split off at that time, so I no longer argue cases on a regular basis in the Fifth Circuit.

The Fifth Circuit has been very blessed with a number of great judges. Look at the judges who came from difficult times, such as my very good friend Judge Griffin Bell who, after serving as a member of the Fifth Circuit, came to be Attorney General; Elbert Tuttle, Judge Frank Johnson—any number of judges such as these judges at the district court level—Judge W.A. Bootle. These individuals came through very difficult times and distinguished themselves as judges.

Judge Charles Pickering came through that same very difficult time in the South, a time in the South when race was a very critical and the most forthright issue. Charles Pickering looked the racial issue in the eye and provided the kind of leadership of which every American would be very proud.

As we now consider his nomination to the Fifth Circuit Court of Appeals, I could not be prouder of any individual than I am of the nomination of Charles Pickering. I am going to have a lot more to say about this, but today we have the opportunity to bring this nomination to an up-or-down vote.

I encourage all of my colleagues to give him a vote on the floor of the Senate. Let's put this good man, this good judge on the Fifth Circuit.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator's time has expired.

Mr. HATCH. I yield the remainder of my time to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee has 3 minutes remaining—2 minutes remaining.

Mr. HATCH. How much time is remaining?

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. ALEXANDER. Mr. President, I come at this differently than the Senator from Mississippi. I don't know Charles Pickering. I have met him briefly only twice. But I care about the Fifth Circuit Court of Appeals. Bridget Lipscomb and I have studied his record diligently.

Nearly 40 years ago, I was a law clerk on the Fifth Circuit for the great Judge John Minor Wisdom. I have been trying to think of something to say to the Members on the other side to help them change their minds on this nomination.

Judge Wisdom was a member of the Federal court that ordered the University of Mississippi to admit James Meredith to Ole Miss. The Fifth Circuit played a crucial role in desegregating the South. Judges Tuttle, Rives, Brown, and Wisdom were real heroes at that time. Crosses were burned in front of their homes. I will have more to say about this, but Judge Pickering is a worthy successor to the court of Judges Wisdom, Tuttle, Rives, and Brown.

While those judges were ordering the desegregation of Deep South schools, while crosses were being burned in

front of their homes, Judge Pickering was enrolling his children in those same newly desegregated schools, and Judge Pickering in his hometown was testifying in court against Sam Bowers, the man the Baton Rouge Advocate called the “most violent living racist,” at a time when people were killing people based on race.

Many of my generation have changed their minds about race in the South over the last 40 years. That is why the opposition to Judge Pickering to me seems so blatantly unfair. He hasn't changed his mind. There is nothing to forgive him for. There is nothing to condemn. There is nothing to excuse. He was not a product of his times. He led his times. He spoke out for racial justice. He testified against the most dangerous of the cross burners. He did it in his own hometown, with his own neighbors, at a time in our Nation's history when it was hardest to do. He stuck his neck out for civil rights.

Mr. President, will our message to the world be: Stick out your neck for civil rights for Mississippi in the 1960s and then we will cut your neck off in the Senate in 2003, all in the name of civil rights? I certainly hope not.

Charles Pickering earned this nomination. He is a worthy successor to the court of Judge Wisdom, Judge Tuttle, Judge Rives, and Judge Brown.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. Mr. President, I understand the time has been used. I know the remarks of the distinguished Senator from Tennessee are much more lengthy. I ask unanimous consent that immediately following the vote, he be given time to finish his remarks.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. What was the request?

Mr. HATCH. That immediately following the vote on Judge Pickering, the distinguished Senator from Tennessee be given time to finish his remarks because he has prepared extensively.

Mr. LEAHY. Would the Senator like to ask for time to finish the remarks now, with the same amount of time given to this side? If my friend from Tennessee wants to finish his speech now, I will ask consent that he be given that amount of time with an equal amount of time added to this side.

Mr. HATCH. That will be fine with me.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. Mr. President, that is very generous. How much time do I have to finish the speech?

Mr. LEAHY. How much time does the Senator need?

Mr. ALEXANDER. May I ask for 10 minutes?

Mr. HATCH. We have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. That is with an equal amount of time to our side.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. Mr. President, this will be pushing the time of the vote back to about 10:20, 10:30.

The PRESIDING OFFICER. It will be approximately 55 minutes from now.

Mr. ALEXANDER. Mr. President, I thank the Senator from Vermont and the Senator from Utah for their generosity.

Let me remake my first point. I care about this case because I care about the Fifth Circuit Court of Appeals. Many of the Senators know or knew Judge John Minor Wisdom. They knew what a great judge he was.

They knew what the times were like in the Deep South during the 1960s and 1970s. I remember Judge Wisdom once telling me the Ku Klux Klan had burned a cross in the intersection between his home and that of Congressman Hale Boggs. Judge Wisdom said: They were getting both of us with one cross burning.

So I set out some time ago, with my staff, to look through the record of Judge Pickering to see what he has done. All the evidence is that Judge Pickering, like Judge Wisdom, like Judge Tuttle, Judge Rives, and Judge Brown, stuck his neck out for civil rights at a time when it was hardest to do. Mississippians know that.

William Winter, with whom I served, a leading former Democrat Governor, a leader for racial justice, strongly supports Judge Pickering. Frank Hunger, who served on that court with me as a law clerk back in the 1960s, President Clinton's Deputy Attorney General, Al Gore's brother-in-law, strongly supports Judge Pickering. I have lived in the South for a long time, about the same amount of time as Judge Pickering. I have learned to tell those who are racists, those who stood silently by, and those who stuck their necks out.

Let me invite my colleagues to go back with me to Mississippi, to the late 1960s. James Meredith had become the only Black to graduate from the undergraduate school at Ole Miss. Reuben Anderson, who has endorsed Judge Pickering, had become the first Black graduate of the Ole Miss Law School.

In Nashville, where I went to school at Vanderbilt, the first integrated class had just graduated from Vanderbilt University. Robert Clark became the first black elected to the Mississippi Legislature since the Reconstruction.

It was not until 1968, that the first blacks were permitted to participate in intercollegiate athletics at the University of Florida and Georgia and Tennessee and other Southeastern Conference schools.

The law had changed but there were still plenty of “colored only” signs on restroom doors in plenty old southern cities during the late 1960s. Martin Luther King was murdered in Memphis during 1968. Alabama Governor George Wallace won the Democrat primary for president in 1976 in Mississippi, and in Boston, Massachusetts.

Perhaps my colleagues saw the movie, "Mississippi Burning." That was about events during 1967 in Mississippi. Civil rights workers Goodman, Schwerner, and Chaney were murdered. They were picked up by three carloads of Klansmen, shot and their bodies were buried in a 15-foot earthen dam. In 1967, seven men were convicted of federal conspiracy charges, eight were acquitted and three received mistrials. At the time, the state of Mississippi refused to file murder charges. To this day, no one has ever been tried for those murders.

Wes Pruden, a young reporter at the time, told me he went to a Mississippi courtroom and everybody in the courtroom except the judge had a button on that said "Never." That was the environment in which Charles Pickering was living in Laurel, Mississippi in Jones County in the late 1960s.

Blacks were just beginning to serve on juries. A few Blacks voted. Schools were being desegregated one grade at a time starting with the lower grades so that older children would have less opportunity to interact socially. Race was not a theoretical issue in Laurel in the late sixties, or even a political issue. People were killing people based on race in the late 1960s in Jones County, MS.

The White Citizens Council, a group of white collar, non-violent segregationists was the country club version of resistance to integration in Laurel. Klan members were known at that time in Laurel for putting on their white robes, opening up their bibles, building a bonfire in a pasture, crossing a sword and a gun over a bible, and proceeding to burn down the home of a black person. The KKK in Laurel shot into homes and beat blacks over the head with baseball bats. One did not speak out lightly against the Klan because its members could very well be your neighbor or your co-worker.

The Klan infiltrated law enforcement departments and juries. The Klan put out fliers instructing residents not to cooperate with the FBI on cases.

Laurel was Klan territory. It was the home of Sam Bowers. Bowers had created the White Knights of the Ku Klux Klan because he believed that the regular KKK was not violent enough. The Klan was out to resist integration, but that was not enough for Sam Bowers. The White Knights set out to oppose racial integration "by any means necessary."

Since 9/11 we have heard a lot of talk about terrorists. This is not the first time we have seen terrorists in America. We had terrorists then. Sam Bowers and the White Knights of the Ku Klux Klan in Laurel, MS, were the terrorists of the 1960s. The FBI said the White Knights were responsible for at least 10 killings then. The Times of London said Bowers himself was suspected of the orchestration of 300 bombings.

According to the Baton Rouge Advocate, Sam Bowers was "America's most violent living racist."

Charles Pickering made public statements condemning Klan violence. He worked with the FBI to prosecute and stop Klan violence. In the late 1960s, Bowers came up for trial for the murder of the slain civil rights worker, Vernon Dahmer, and Judge Pickering testified publicly against Bowers.

I ask unanimous consent to submit for the record two documents. The first is a Klan newsletter from 1967 criticizing Pickering for cooperating with the FBI. The second is Bowers' own Motion for Recusal filed in Federal court, asking Pickering to remove himself from hearing a case involving Bowers because of Pickering's previous testimony against Bowers and taking credit for defeating Judge Pickering in a statewide race for attorney general.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Citizen-Patriot]

A NEWSLETTER DEDICATED TO TRUTH AND THE CHRISTIAN CIVILIZATION

"Where the Spirit of the Lord is, there is Liberty.—2 Corinthians 3:17.

When in the course of human events it becomes necessary for the Truth to be told concerning massive animal corruption in Public Office, it is the Duty of the Public Press to inform the Citizens. Unfortunately for the citizens of Jones County, J.W. West, the Chief-Communist Propagandist, not only refuses to tell the Truth, but actually takes a leading part in the direction of the evil public corruption which is strangling liberty in America. The Responsibility to Truth must there be filled by the Citizens themselves. These are the Publishers and Distributors of the Citizen-Patriot.

PUBLIC OFFICE IS A PUBLIC TRUST

Its successful administration requires from its Officials a Fear of God, rather than a fear of men, and those Officials who serve justly must be ambitious for the Glory of the Heavenly Father rather than ambitious for their own personal advancement or the advancement of some device to which they have a vested attachment. Our Father has promised and amply demonstrated that He will prosper a Nation whose Officers serve Him. And, conversely, He will wreak vengeance and punishment upon a Nation whose officers are self-serving men pleasures. All citizens owe a high Duty to law and government, but all men owe a higher duty to our Heavenly Father, the Author of Truth and Liberty.

LET FACTS BE SUBMITTED TO A CANDID POPULATION

The Base of the Political Corruption which is sweeping our Beloved Land of America lies in the Establishment of a National Police Bureau, which brings pressure to bear upon local officials. By a calculated means of Fear and Lust for Reward, this Beast of Satan directs its pressure in such a way that the local government is, in fact, wrood against the local citizens and their local interests.

The honest citizens of Jones County have recently been defrauded by certain officials in an outstanding and clear-cut example of the above, whereby the Spirit of the Law was frustrated under the Color of the form and letter of legality by the clever manipulations of Chet Dillard and Charles Pickering. Fortunately, this pair were not completely successful in their attempt to pervert justice in the Circuit Court. By the cunning use of their official positions for personal benefit they were able to operate their evil before the Honorable Grand Jury; but the

Honorable Trial Jurors in the Roy Strickland case saw through their scheme, and struck a blow in favor of Justice by returning a verdict of "Not Guilty."

Praise be the Blessed Name of the Heavely Father, The Guardian of our Liberty Whose Holy Word is the only Truth and Anchor in a stormy world ruled by evil men operating under color of Law

The honest facts regarding the Roy Strickland Case are as follows:

In the late summer of 1965 a series of wholesale arrests were made in Jones County with regard to a car theft ring. These arrests were made by local officials at the urging of FBI Special Agent Bob Lee of Laurel, Miss. Lee, following standard FBI practice, misrepresented the amount of evidence which he had regarding the car thefts, and deceived the local officials in order to get them to make a larger number of arrests than his evidence would warrant. Bob Lee's motive in this was not so much to convict anyone with regard to the car thefts, but rather to bring additional underworld characters under FBI control where they could be used for criminal action and as stool pigeons. Roy Strickland was Bob Lee's chief target in this regard. After being arrested in the late summer of 1963, Strickland was allowed and easy bond and released. Strickland was eventually arrested and indicted (and released without bond in two instances) on five separate counts of car theft which alleged to have occurred during August and September of 1965. The arrests and indictments for these offenses spanned a period from September 1963 through March 1966. At no time prior to April of 1967, however, did Dillard or Pickering make an attempt to prosecute Roy Strickland on any of these cases. They were all continued from time to time and from term to term in the Circuit Court of Jones County at the request of the prosecution. Strickland was allowed to walk out of the courtroom without even making bond on two of the indictments until early in 1967. Then, on short notice, the oldest of the five cases was quickly called up for trial on April 22, 1967.

Why? the sudden change of attitude on the part of Messers. Dillard and Pickering from that of a relaxed indulgence for a year and a half to that of a sudden, vicious persecution of Roy Strickland on charges that were nothing more than frame-ups in the first place? Let's look into the Hidden Truth which the Communist, J.W. West is trying to conceal from the citizens of Mississippi.

_____ was out on bond doing work on oil rigs in Louisiana in January of 1966 when he was contacted by Ford O'Neil. O'Neil advanced a proposition to Strickland asking him to help the State Investigators and the FBI in some work to kidnap and torture a confession out to Lawrence Byrd on the Dahmer case. Ford O'Neil promised Ray Strickland that in exchange for this work, the FBI and State Investigators would pressure Chet Dillard not to prosecute Strickland on the car thefts. Strickland agreed to assist in the Lawrence Byrd kidnap and torture, and brought in Jack Watkins, another ex-convict, who at that time was wanted for burglary and armed robbery in the Coast area. Jack Watkins was also promised immunity from his crimes by the State Investigators and FBI agents. Later, Roy Strickland, Jack Watkins, Ford O'Neil, MHSP, Steve Henderson, NHSP, Roy K. Moore, Chief Special agent, FBI, and Bill Dukes, Gulfport Special agent, FBI, got together to make final plans and arrangements for the actual kidnapping and torture of Lawrence Byrd. To show "good faith" Roy Moore gave Ford O'Neil a hundred dollars, and Ford passed it over to Roy Strickland to bind the deal. Several days later Strickland, Watkins and several others did carryout the actual kidnap

and torture of Lawrence Byrd. The FBI men stood in the bushes out of sight and directed Byrd's statements while Watkins tortured Byrd. This was the confession which resulted in the arrest of a dozen or so innocent white men in the Dahmer case.

At first, it seemed that the evil plot of the FBI would succeed. J.W. West was giving them massive doses of propaganda in order to convince the men before the ever entered the courtroom and to the general public they were looking like "Lynden's Little Angels." But there was a cloud on the horizon. The plot started coming to pieces when Strickland was arrested on a drunk charge early in 1967 in Jones County. FBI Chieftain, Roy K. Moore, was getting worried about Strickland, as was Ford O'Neil. They wanted him to stay out of Jones County until after the Dahmer case was tried. Strickland was worrying them by coming back to Jones County at frequent intervals and going on drinking sprees. All during 1966 rumors had been circulating in Laurel that Strickland knew something about the Lawrence Byrd kidnap-torture, and there was an ever-present danger that Strickland might reveal the whole thing to the wrong person during one of his binges. Roy K. Moore could not rest easy as long as Roy Strickland was in Jones County, whether in or out of jail, but it was finally agreed that it was better to leave Strickland in jail, and try to ease him off to Parchman, even if it meant double crossing him.

However, Strickland began to realize that the FBI was trying to use everybody against everybody, and then betray everybody for the sole benefit and advancement of the FBI. Strickland then decided to tell the truth and take his chances in open court. He contacted the defense attorneys in the Dahmer case and gave them the full facts about the FBI-engineered kidnap and torture of Lawrence Byrd. This, and much other supporting evidence was turned over to Chet Dillard in order to obtain a just indictment for kidnaping against Roy K. Moore, Bill Duke, Ford O'Neil, Steve Hendrickson and Jack Watkins. When first given the evidence, Dillard appeared to be interested in enforcing the law without fear or favor, but when the proper FBI pressure was applied to him he caved in like a ripe watermelon, and defended the FBI men before the Grand Jury, and worked against the indictment, using trickery, lies and deceit to hobble the work of the Honest Jurors. (The District Attorney is permitted to lie to the jurors because he is not under oath, all witnesses must testify under the oath.)

The FBI is desperately trying to suppress the truth in this case (just as they did in the Kennedy assassination) and Dillard and Pickering are helping the FBI to conceal its crime against the people of Jones county. Roy K. Moore, Chief special Agent of the National Police Bureaucracy in Mississippi is a highly trained, brilliant, self-serving savage. The American Government means nothing to him, beyond its mechanical ability to collect taxes from honest working people, and then pay money back to him in the form of a large, comfortable, unearned salary, and present him the power and prestige of an official ruler over mankind. Roy K. Moore is a criminal who was smart enough to acquire an education and an official position BEFORE he began to prey upon the honest and productive members of the community. Now, he will, like any other criminal, threaten, beat, rob, torture, persecute and kill anyone who interferes with the advancement of his personal career, which, to him, is the "whole of the law." Truly, it may be said that these highly trained criminals of the National Police Bureaucracy are the most dangerous animals upon the face of the earth.

Understandably, weaklings such as Dillard and Pickering are afraid of the FBI, but they

should realize that Public Service in America requires a Personal Sacrifice on the part of the officeholder, and that the purpose of Law in America, is Equal Justice, rather than the protection of official Bureaucratic Criminals.

Whatever his past, Roy Strickland was working on an honest job when the FBI enticed him to kidnap Lawrence Byrd. Whether or no he stole the car? He is charged with, there is little or no real evidence against him in any of them to establish his guilt. But the Supreme Injustice of the whole business is that he is being persecuted by Chet Dillard not for car theft, or contempt, or perjury, but because he told the Truth about the FBI kidnapping and torturing a "confession" out of Lawrence Byrd. Thanks to the Infinite Mercy of the Heavenly Father, the people of Jones County understand the purpose of the Law better than their Public Officials. We respectfully invite the loyal citizens of Jones County to return to the polls on Aug. 8, 1967, and have Then and There this WRIT.

[From the Citizen Patriot]

In times past, this publication has repeatedly alerted the citizens of Jones County to the danger to Life, Liberty and Property, which is posed by the continued operation of a communist newspaper under the director of the evil J.W. West.

Violence and anarchy always follow in the wake of atheists and materialistic economic claptrap which communists preach, and Laurel is no exception.

Freedom of the Press is predicated upon the press telling the truth. But, of course, West is interested in centralized power and control of the population, so he is not going to print the truth about what is going on in the Circuit Court of Jones County.

District Attorney Chet Dillard and Charles Pickering have been furnished with positive proof concerning the kidnap and beating of Lawrence Byrd in January of 1966 in Laurel, but they will not bring these facts before the Grand Jury. The facts show the following:

1. Lawrence Byrd was kidnapped under the direction of the F.B.I., with collaboration by Mississippi State Highway Patrol investigators and assistance of ex-convicts and wanted felons. The convict felons were hired and paid by the F.B.I. and promised immunity by the state investigators in order to get them to kidnap and torture Byrd.

2. The motive for the kidnap was to beat and torture Lawrence Byrd into confessing to the Dahmer incident and force him into implicating a large number of other men who are politically opposed to dictatorship. This was to enhance the prestige of the F.B.I. as an investigative organization, and to frighten the citizens of Jones County and Mississippi into submitting to dictatorship.

3. The men who arranged and conducted the Byrd kidnap were: Roy Moore, F.B.I.; Bill Dukes, F.B.I.; Steven Henderson, M.H.P.; Ford O'Neil, M.H.P.; Jack Watkins, convict felon, Roy Strickland, convict felon, and others. Dillard and Pickering have sworn affidavits in their possession, but they refuse to do their duty and present the whole body of evidence to the Jones County Grand Jury. They offer as their lame excuse that "too many important persons are involved."

Since when has the LAW been a respecter of persons?

It is high time that we found out the real truth about the American Gestapo, the F.B.I. If some "important persons" get hurt by truth that is just too bad. They are a disgrace to law enforcement.

How about 15 innocent men being thrown into Federal Prison just because they have been a political embarrassment to the police dictators and J.W. West?

How about a Laurel citizen and businessman being kidnapped and tortured into confession something he had not done?

Are you going to enforce the law without fear or favor, Messrs Dillard and Pickering, or are you going to crawl and whine at the feet of the unconstitutional national police bureaucracy? Are you going to do your duty and arrest Jack Watkins or are you going to continue to try and confuse, mislead and manipulate the Grand Jury?

Why were Dillard and Pickering so anxious to persecute old Buck, who only stole a few hundred dollars, yet so reluctant to indict the F.B.I. criminals who are stealing the life and liberty of the whole country. Which way is the money moving now?

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, HATTIESBURG, MISSISSIPPI

Sam Bowers, Katie Perrone, Michelle O'Hara, Jeff Rexroad, and Shawn O'Hara (Plaintiffs), vs. Mike Moore and the State of Mississippi (Defendants).

MOTION FOR RECUSAL

Comes now Shawn Richard O'Hara, on his behalf, and on the behalf of Sam Bowers, Michelle O'Hara, and Jeff Rexroad, asking that both Judge Charles Pickering and the honorable magistrate who is handling this civil action to remove themselves as a result of some or all of the reasons listed below.

1. Both men live in Mississippi and cannot fairly hear this case, since said plaintiffs claim Mississippi has no legal state constitution, thus meaning that if either of the said judge or magistrate was licensed to practice law in said state, since there is, and was no legal state constitution, said judge and/or magistrate may not be legally licensed to practice law.

2. Specifically Judge Pickering has personally prejudiced himself against Sam Bowers by testifying against him in one of Mr. Bowers state hearing, saying Sam Bowers was an "undesirable individual."

3. Specifically Judge Pickering has prejudiced himself against Shawn O'Hara, by tainting this court document, and cannot prove Shawn O'Hara has ever filed four frivolous federal lawsuits. Therefore, the said judge has openly, intentionally, and unfairly lied against Shawn O'Hara, even though the Bible says "thou shall not lie." (See Exhibit A.)

4. In conclusion, since both Judge Charles Pickering and the honorable magistrate both live in Mississippi (a state in which its state constitution is asserted to be illegal), and because both men work together, and because Shawn O'Hara is asserting Judge Charles Pickering has been an unfair judge handling this matter, and that the said judge will never be a fair judge in a case which Sam Bowers and/or Shawn O'Hara is a part of such a case, both Judge Pickering and the federal court's magistrate are asked to remove themselves from said case.

CONCLUSION

It is prayfully requested of this court, that a new federal court judge and magistrate be appointed from a northern state, or from a western state, since a southern judge will not fairly hear the issue that the State of Mississippi is operating under an illegal constitution of 1890, which all state officials are asked to swear to it, and uphold it, even though it was never ratified, voted on by the people of the State of Mississippi.

Respectfully submitted by: on behalf of Shawn Richard O'Hara, Sam Bowers, Michelle O'Hara, and Jeff Rexroad.

V. It is a well-known fact, Charles Pickering was defeated in his personal race for federal office against Thad Cockran, because

Sam Bowers and his thousands of supporters throughout Mississippi worked very hard to defeat Pickering in that political race.

VII. It is a well-known fact that Sam Bowers' friends helped defeat Charles Pickering, Sr. when he ran against Bill Allian for Attorney General of the State of Mississippi.

[From Byron York, NR White House Correspondent, Jan. 9, 2003]

THE CROSS BURNING CASE: WHAT REALLY HAPPENED

In their renewed attacks on Bush appeals-court nominee Charles Pickering, Democrats have focused on Pickering's rulings in a 1994 cross-burning case. Accusing Pickering of "glaring racial insensitivity," they charge that he abused his powers as a U.S. District Court judge in Mississippi to give a light sentence to a man convicted of the crime. "Why anyone would go the whole nine yards and then some to get a lighter sentence for a convicted cross burner is beyond me," New York Democratic Sen. Charles Schumer said Wednesday. "Why anyone would do that—in 1994 and in a state with Mississippi's history—is simply mind-boggling."

But a close look at the facts of the case suggests that Pickering's actions were not only not mind-boggling but were in fact a reasonable way of handling a difficult case. Here is what happened:

The crime took place on January 9, 1994. Three men—20-year-old Daniel Swan, 25-year-old Mickey Herbert Thomas, and a 17-year-old whose name was not released because he was a juvenile—were drinking together when one of them came up with the idea that they should construct a cross and burn it in front of a house in which a white man and his black wife lived in rural Walthall County in southern Mississippi. While it is not clear who originally suggested the plan, it is known that the 17-year-old appeared to harbor some sort of hostility toward the couple; on an earlier occasion, he had fired a gun into the house (no one was hit). Neither Swan nor Thomas was involved in the shooting incident.

The men got into Swan's pickup truck, went to his barn, and gathered wood to build an eight-foot cross. They then drove to the couple's house, put up the cross, doused it with gasoline, and set it on fire.

Because the case involved a cross burning covered under the federal hate-crimes statute, local authorities immediately brought in investigators from the Clinton Justice Department's Office of Civil Rights. After the three suspects were arrested in late February, 1994, lawyers for the civil-rights office made the major decision in prosecuting the case.

In a move that baffled and later angered Judge Pickering, Civil Rights Division prosecutors early on decided to make a plea bargain with two of the three suspects. The first, Mickey Thomas, had an unusually low IQ, and prosecutors decided to reduce charges against him based on that fact. The second bargain was with the 17-year-old. Civil Rights Division lawyers allowed both men to plead guilty to misdemeanors in the cross-burning case (the juvenile also pleaded guilty to felony charges in the shooting incident). The Civil Rights Division recommended no jail time for both men.

The situation was different for the third defendant, Daniel Swan, who, like the others, faced charges under the hate-crime statute. Unlike the others, however, Swan pleaded not guilty. The law requires that the government prove the accused acted out of racial animus, and Swan, whose defense consisted mainly of the contention that he was drunk on the night of the cross burning, maintained that he simply did not have the

racial animus necessary to be guilty of a hate crime under federal law.

The case went to trial in Pickering's courtroom. During the course of testimony, Pickering came to suspect the Civil Rights Division had made a plea bargain with the wrong defendant. No one questioned the Justice Department's decision to go easy on the low-IQ Thomas, but the 17-year-old was a different case. "It was established to the satisfaction of this court that although the juvenile was younger than the defendant Daniel Swan, that nevertheless the juvenile was the ring leader in the burning of the cross involved in this crime," Pickering wrote in a memorandum after the verdict. "It was clearly established that the juvenile had racial animus. . . . The court expressed both to the government and to counsel for the juvenile serious reservations about not imposing time in the Bureau of Prisons for the juvenile defendant."

In addition to the 17-year-old's role as leader, there was significant evidence, including the fact that he had once fired a shot into the mixed-race couple's home, suggesting that he had a history of violent hostility to blacks that far outweighed any racial animosity felt by Daniel Swan. Swan had no criminal record, and seven witnesses testified that they were not aware of any racial animus he might have held against black people. On the other hand, one witness testified that he believed Swan did not like blacks, and Swan admitted under questioning that he had used the "N" word in the past. In the end, Swan was found guilty—there was no doubt that he had taken an active role in the cross burning—and the Justice Department recommended that he be sentenced to seven and a half years in jail.

At that point, the Justice Department had already made a no-jail deal with the 17-year-old. When it came time to sentence Swan, Pickering questioned whether it made sense that the most-guilty defendant got off with a misdemeanor and no jail time, while a less-guilty defendant would be sentenced to seven and a half years in prison. "The recommendation of the government in this instance is clearly the most egregious instance of disproportionate sentencing recommended by the government in any case pending before this court," Pickering wrote. "The defendant [Swan] clearly had less racial animosity than the juvenile."

Compounding Pickering's concern was a conflict between two federal appeals-court rulings over the applicability of a statutory mandatory minimum sentence to the case. The Justice Department insisted that Swan be sentenced to a minimum of five years under one statute and two and a half years under a separate law. Pickering doubted whether both were applicable to the case and asked Civil Rights Division lawyers whether the same sentencing standards were used in cases in other federal circuits. The prosecutors said they would check with Washington for an answer.

Pickering set a sentencing date of January 3, 1995. As the date approached, he waited for an answer from the Justice Department. He asked in November, 1994 and received no response. He asked again in December and received no response. He asked again on January 2, the day before the sentencing, and still received no response. He delayed sentencing, and on January 4 wrote a strongly-worded order to prosecutors demanding not only that they respond to his questions but that they take the issue up personally with Attorney General Janet Reno and report back within ten days.

Shortly after issuing the order, Pickering called assistant attorney general Frank Hunger, a Mississippian and friend of Pickering's who headed the Justice Department's Civil

Division at the time (Hunger was also well known as the brother-in-law of vice president Al Gore). Pickering says he called Hunger to express "my frustration with the gross disparity in sentence recommended by the government, and my inability to get a response from the Justice Department in Washington." Hunger told Pickering that the case wasn't within his area of responsibility. It appears that Hunger took no action as a result of the call. (Hunger later supported Pickering's nomination to the federal appeals courts.)

Finally, Pickering got word from Civil Rights Division prosecutors, who said they had decided to drop the demand that Swan be given the five-year minimum portion of the recommended sentence. Pickering then sentenced Swan to 27 months in jail. At the sentencing hearing, Pickering told Swan, "You're going to the penitentiary because of what you did. And it's an area that we've got to stamp out; that we've got to learn to live, races among each other. And the type of conduct that you exhibited cannot and will not be tolerated. . . . You did that which does hinder good race relations and was a despicable act. . . . I would suggest to you that during the time you're in the prison that you do some reading on race relations and maintaining good race relations and how that can be done."

So Swan went to jail, for a bit more than two years rather than seven. Every lawyer in the case—the defense attorneys, the prosecutors, and the judge—faced the difficulty of dealing with an ugly situation and determining the appropriate punishment for a bad guy and a somewhat less-bad guy. Pickering, who believed the Civil Rights Division went too easy on the 17-year-old bad guy, worked out what he believed was the best sentence for Daniel Swan. It was a real-world solution to the kind of real-world problem that the justice system deals with every day. And it was the end of the cross-burning case until Pickering was nominated by President Bush to a place on the Fifth Circuit Court of Appeals.

[From Byron York, NR White House Correspondent, Jan. 13, 2003]

THE CROSS-BURNING CASE: WHAT REALLY HAPPENED, PART II

After the publication last Thursday of "The Cross Burning Case: What Really Happened," readers have asked follow-up questions about the 1994 trial that Democrats cite to accuse federal appeals-court nominee Charles Pickering of "racial insensitivity." New York Sen. Charles Schumer and others charge that Pickering, a U.S. District Court judge in Mississippi who has been nominated for a place on the Fifth Circuit Court of Appeals, abused his powers to win a light sentence for a man convicted of burning a cross in the front yard of a mixed-race couple. Here are some of the questions that have been asked about the case, along with answers based on the best available information:

Why did the Clinton Justice Department give a no-jail misdemeanor plea bargain to the 17-year-old defendant—who was the ring-leader in the crime, who appeared to be motivated by racial hatred, and who had on an earlier occasion fired a shot into the home of the mixed-race couple—while demanding that the other defendant, Daniel Swan—who was not the ringleader, who apparently did not share the 17-year-old's racial animus, and who had no role in the shooting incident—be sent to jail for seven and a half years?

The answer is not entirely clear; the Justice Department's prosecution memos and other internal deliberation documents are

confidential, and no one who was involved in the prosecution has publicly explained the department's motives, but there is enough publicly available evidence to suggest a few conclusions. First, and most obviously, the 17-year-old agreed to plead guilty, which often helps a defendant receive a reduced sentence. (It's not clear why the Justice Department dealt with the 17-year-old as a juvenile; given the seriousness of the crime, he could have been treated as an adult.) Swan did not agree to plead guilty. While he never denied that he took part in the cross burning, he did deny that he acted out of racial animus, which is required for a heavy sentence under the federal hate crimes statute. He chose to take his chances at trial, and was convicted. At that point, there was no question he would go to prison. Pickering felt strongly that Swan should serve time, but he believed that seven-and-a-half years was too long, in light of the leniency given to the 17-year-old and the other circumstances of the case (discussed below).

Another possible explanation for the easy treatment given to the 17-year-old is that the no-jail plea offer was made by the United States Attorney's Office in Mississippi (and accepted by the defendant) before all the facts of the case were known. The government's insistence on a mandatory minimum seven-and-a-half year sentence for Swan came later, after lawyers from the Justice Department's Civil Rights Division became involved. While they wanted a stiff sentence for Swan, it appears that the Civil Rights Division lawyers also realized that letting the 17-year-old off with no jail had been a mistake. In a February 12, 2002 letter to Republican Sen. Orrin Hatch, Pickering cited the transcript of an open court session in which he told Civil Rights Division lawyer Brad Berry that he felt the Swan case was an example of disparate sentencing. Berry answered, according to the transcript cited by Pickering, that, "Perhaps the lesson—the lesson that I take from that, your Honor, is that perhaps the government should have been more tough—should have asked for a more stringent or stronger or longer sentence for the other defendants in this case."

There are also some indications that at least one Justice Department lawyer involved in the case agreed with Pickering that the department's sentencing demand for Swan was too severe. In a January 5, 1995 memo to Linda Davis, who was head of the criminal section of the Civil Rights Division, federal prosecutor Jack Lacy recounted several sessions with Pickering on the Swan issue (memo was made public as part of Pickering's confirmation hearings). "The impulse to the conversation is always the same," Lacy wrote. "He thinks the sentence facing Swan is draconian, and he wants a way out. He has been careful to phrase his concern in such terms as, 'I wish you could suggest some way that this harsh sentence could be avoided.'" Later in the letter, Lacy wrote that he "personally agreed with the judge that the sentence is draconian," but said he also reminded Pickering that Swan could have pleaded guilty but instead, "the defendant repeatedly chucked our offers in our teeth."

Finally, as the last few words of that passage suggest, it is possible that Swan—and the whole vexing case—simply made prosecutors mad. They could not undo the damage they had done by letting the 17-year-old off with no jail time, but they could compensate by meting out heavy punishment to Swan.

How did Pickering know that the 17-year-old harbored the racial animus required for a severe sentence under the hate crime statute, while Swan did not?

The first and clearest reason is the earlier incident in which the 17-year-old had fired a

shot into the home of the mixed-race couple in whose yard he and Swan would later burn the cross. (The Justice Department allowed the 17-year-old to plead guilty to a felony in that incident, all as part of the no-jail plea bargain.) Swan had nothing to do with that shooting, and had no criminal record. The other evidence of racial animus came out during the sentencing phase of the trial—well after the government had agreed to the juvenile's guilty plea. This is how Pickering explained it in his February 12, 2002 letter to Hatch:

"At sentencing. . . . courts must also take into account evidence of the defendant's history. This is where the breadth of disparity in racial animus between the 17 year-old and Swan became clear. While the 17 year-old and Swan had both used the "N-word" previously, the 17 year-old's own grandmother stated that he did not like "blacks" and his own mother stated that he "hated N - - - s." (Emphasis added.) In contrast, seven witnesses and Swan's mother stated that he had no racial animus; only one witness stated that Swan did not like African Americans, and this was disputed. Further, the 17 year-old had acted on his "hate" by fighting with African Americans at school, resulting in his suspension. Swan had neither fought with African Americans nor been suspended for any racial incident. Moreover, the 17 year-old had shot a firearm into the home of the mixed-race couple in whose yard the cross was later burned and bragged about "shooting at some N - - - s." Swan had never shot at or into the home of African Americans, or anyone else. In short, even though both participated in the heinous crime, the 17 year-old defendant also had a history of escalating violence motivated by the racial hatred that culminated in his participation in the cross burning, while Swan did not."

Was Pickering's communication with the Justice Department improper?

At Pickering's second confirmation hearing, North Carolina Democratic Sen. John Edwards accused him of violating the Code of Judicial Conduct by calling top Justice Department official (and fellow Mississippian) Frank Hunger to discuss the Swan case. In that call, Pickering expressed his frustration with the Justice Department's position; Hunger told Pickering the case wasn't within his area of responsibility, and the two men ended the conversation.

The section of the Code to which Edwards referred is a rule intended to prevent judges from making secret deals with one side or another in a case. It says: "A judge should . . . neither initiate nor consider ex parte communications on the merits, or procedures affecting the merits, of a pending or impending proceeding." Pickering explained to the Judiciary Committee that he had previously discussed his concerns at length with both sides in the Swan case and that the call to Hunger was a "follow-up" to see if the Justice Department was going to respond to his questions about the sentencing. None of that, he explained, touched on the merits of the case, and thus the call was not improper.

In addition, last February, Hunger, a lifelong Democrat who also happens to be Al Gore's brother-in-law, wrote a letter to the Judiciary Committee saying, "I think it appropriate that it be known that I have little or no recollection of the call. The significance of this to me is that had I felt at the time that there was anything inappropriate or improper about Judge Pickering's call I would most assuredly remember it today." Continuing, Hunger told the committee, "I have known Judge Pickering for nearly thirty years and have the utmost respect for him as a fair-minded judge who would never knowingly do anything improper or unethical. . . .

Had Pickering ever shown similar concerns about heavy sentencing of other defendants, particularly African Americans, in cases that had nothing to do with race?

On March 14, 2002, at the Judiciary Committee meeting in which Democrats killed the Pickering nomination, Sen. Edward Kennedy suggested that Pickering practiced a selective form of leniency—that he went easy on a racist cross burner and tough on everybody else, including blacks convicted of crimes in his court. One week later, on March 21, Pickering sent Hatch a letter in which he said, "I have consistently sought to keep from imposing unduly harsh penalties on young people whom I did not feel were hardened criminals." (Swan was a first-time offender.) Pickering went on to describe several cases in which "departed downward," that is, reduced the sentences of first-time offenders from the mandatory minimums required by law.

"One case involved a 20-year-old African American male who faced a mandatory minimum five year sentence," Pickering wrote. "I departed downward to 30 months. I also recommended that he be allowed to participate in the intensive confinement program which further reduced his sentence." Pickering also described the case of a 58-year-old black man who faced a five-year mandatory sentence, plus a minimum of 46 months for a separate drug charge. Pickering again sentenced the man to 30 months. In two other cases, he threw out any jail time for men who faced prison terms of 18 and 40 months, respectively. Both defendants were black. "I have departed downward in far more cases involving African Americans than I have in cases involving white defendants," Pickering wrote.

Pickering sent Hatch the names of the cases, the case numbers, letters from the defense lawyers involved, and the phone numbers of people to call to check his account of his sentencing practices. Of course, by that time, Democrats on the committee had already killed his nomination on a straight party-line vote.

[From the Atlanta Journal-Constitution, Mar. 9, 2003]

THE CROSS-BURNING TRIAL, JUDGE'S HANDLING OF ONE CASE GAVE HIS CRITICS AMMUNITION

(By Bill Rankin)

Charles Pickering has heard hundreds of legal arguments and handed down thousands of rulings, but his judicial reputation hangs almost entirely on one explosive case.

In 1994, the federal judge put extraordinary pressure on federal prosecutors to slash the sentence of Daniel Swan, a man who had burned a cross outside an interracial couple's home in rural Mississippi. Democrats and liberal interest groups have hammered Pickering with the case, branding him as racially insensitive and unfit to serve on a federal appeals court.

"Why anyone would go the whole 9 yards, and then some, to get a lighter sentence for a convicted cross-burner is beyond me," Sen. Charles Schumer (D-N.Y.) said during a hearing on Pickering's first appeals court nomination last year. "Why anyone would do that in 1994, and in a state with Mississippi's sad history of race relations, is simply mind-boggling."

But a review of the case by The Atlanta Journal-Constitution, part of the newspaper's broad look at Pickering's record on the bench, finds that the judge apparently acted out of a concern for fairness. Two cross-burning co-defendants, including the purported ringleader, had received far lighter sentences than Swan, and Pickering saw that as unjust.

Prosecutors would have no reason to sympathize with the judge, as it was the stiff sentence they sought that the judge was attacking. Yet an internal Justice Department account of a closed-door meeting held by Pickering shows the judge deeply troubled by the sentencing disparity.

At the same time, the Justice Department memo, written by a lawyer in the case, lends at least some support to the charges of Pickering's opponents. It depicts the judge worrying about how a harsh sentence on Swan would play in the community—presumably the white community—a factor that should be irrelevant to the pursuit of justice.

In the case, two men and a 17-year-old boy were out drinking on the night of Jan. 9, 1994. They set fire to an 8-foot-tall cross outside the Improve, Miss., home of a white man and his African-American wife.

Two defendants—Mickey Herbert Thomas and the juvenile—pleaded guilty to federal civil rights charges. Following recommendations from prosecutors, Pickering sentenced both to probation with home confinement. As it turned out, the 17-year-old was likely the instigator, who would later admit to firing a shot through the interracial couple's window.

The final defendant, Swan, 20, went to trial. He admitted being at the scene but said he was not there out of racial animosity. The jury found otherwise, convicting him on three counts. Federal prosecutors then asked Pickering to sentence Swan to 7½ years in prison.

Pickering strongly criticized the sentencing disparity. He persuaded prosecutors to drop one count in order to void one conviction that required a five-year mandatory sentence. Pickering eventually sentenced Swan to two years and three months in prison.

FAITH IN JUSTICE “DESTROYED”

That move troubled Brenda Polkey, one of the victims of the cross-burning incident. Last year, she wrote to the Senate Judiciary Committee in opposition to Pickering's appeals court nomination, fueling the Democrats' attack.

Polkey, who had lost a family member to a racial killing, said she had “experienced incredible feelings of relief and faith in the justice system” when a predominantly white jury convicted Swan.

“My faith in the justice system was destroyed, however, when I learned about Judge Pickering's efforts to reduce the sentence of Mr. Swan,” she wrote. “I am astonished that the judge would have gone to such lengths to thwart the judgment of the jury and to reduce the sentence of a person who caused so much harm to me and my family.”

The AJC review of the judge's rulings, however, shows that Pickering—like many other federal judges who face rigid U.S. sentencing rules—has gone out of his way many times to reduce prison sentences in cases where he thought the result would be unreasonable. And many of the defendants who benefited are black.

William Moody, an African-American drug defendant, was arrested in 2000, seven years after his indictment. Authorities could not find him because he was living in New York, holding a steady job and supporting his family. Upon learning about Moody's apparent turnaround, Pickering delayed his sentencing a year, allowing his continued good behavior to be used as a basis for punishment with no prison time.

Five years earlier, in a large-scale cocaine case, Pickering learned months after sentencing black defendant Richard Evans to 12½ years in prison that prosecutors were recommending he sentence a more culpable co-defendant also an African-American, to

no more than nine years. Pickering quickly vacated Evans' sentence and later sent him to prison for 10 years—five months less than what the co-defendant received.

“He has tried to treat people fairly,” said Lloyd Miller, a U.S. probation officer who prepared sentencing reports in Pickering's courtroom for more than a decade. “It didn't matter whether you were black or white, whether you were a pauper or if you had money.”

Pickering, who would not comment for this article pending a vote on his renomination, has said that in almost all the criminal cases that came before him involving non-violent first offenders, he has tried to lessen their sentences.

“I have consistently sought to keep from imposing unduly harsh penalties on young people whom I did not feel were hardened criminals,” Pickering wrote in a letter to Senate Judiciary Chairman Orrin Hatch (R-Utah) following his combative confirmation hearings last year.

Pickering has not addressed his reported worry about a white backlash in the cross-burning case because the Justice Department memo has not been publicized until now. But there is substantial evidence, both from his civic life and judicial record, to believe that he does not cater to white people's particular interests.

In a 1999 essay on race relations in the Jackson Clarion-Ledger, Pickering addressed racial bias in the courts, empathizing with black, not white, concerns. He counseled whites who were angry about the recent acquittal of a black murder suspect to look at the justice system from a black perspective.

White Mississippians may not realize that African-Americans are treated differently by the system, he wrote, but “it is the truth and a most disturbing one if you are black.”

As a judge, Pickering has thrown out only two jury verdicts, both times because he felt the verdicts were biased against minority plaintiffs.

In one of the cases, in 1993, an African-American woman was injured at a restaurant. The jury awarded the woman only what the restaurant argued she should receive. Pickering ordered a new trial, and the second jury awarded the woman a larger judgment.

OTHER ISSUES

Interest groups opposing the judge maintain the cross-burning case is just part of a pattern of the judge's racially questionable rulings.

Opponents point to the Pickering's ruling involving the Voting Rights Act, an important civil rights law that mandates federal oversight of Southern elections to keep white authorities from suppressing the black vote. The law has allowed black-majority voting districts to be created in some cases, boosting the number of minorities elected to political office.

Laughlin McDonald, director of the American Civil Liberties Union's Southern regional office in Atlanta, acknowledged that Pickering had enforced the Voting Rights Act to the satisfaction of minority plaintiffs in some cases.

“But what is disturbing is the philosophy that seems to pervade his decisions,” he said. “He has an obvious hostility to the federal courts getting involved in this issue.”

In several cases reviewed by the AJC, Pickering did question how far the federal courts should go to resolve certain voting-rights issues. The judge wrote from the perspective of a former legislator who once had to draw lines for voting districts himself—and who still respects lawmakers' prerogatives.

In a 1993 decision, Pickering wrote at length about the history of the one-person,

one-vote principle, suggesting courts may have applied it too rigidly sometimes.

The courts “should be cautious in their obstruction into what otherwise would be a legislative manner,” he wrote in denying a challenge to election districts in Forrest County, Miss.

Legislative bodies, when drawing voting districts, must consider the convenience of new districts to voters and their costs, Pickering wrote. Court rulings that ordered some districts be redrawn have shown, Pickering added, “that very few of those responsible for handing down these decisions ever had the responsibility themselves of carrying out these decisions or trying to comply with them.” Pickering's application of judicial restraint is in line with that of many federal judges. Like many other jurists put on the bench by Republican presidents, Pickering appears disinclined to tinker at the margins of social dilemmas as would a more activist judge.

As such, Pickering would find himself at home at the 5th U.S. Circuit Court of Appeals, widely considered one of the more conservative appellate courts in the country.

A WILL TO GET HIS WAY

Liberal critics have complained about the judge's general conservatism. But it is questionable how much those complaints would resonate without the cross-burning case against Swan and his two co-defendants.

The case shows Pickering exerting his will and the power of the federal bench to get his way from the Justice Department's civil rights lawyers in Washington.

At trial, Swan was convicted of three counts: violating the interracial couple's civil rights, interfering with their federally protected housing rights and using fire when he committed a crime, which prosecutors said carried a mandatory, consecutive five-year sentence.

Pickering not only thought the 7½-year sentence sought by prosecutors for Swan was unfair, but he also questioned whether a five-year mandatory sentence for one of the counts applied to the cross-burning case, as prosecutors contended. Pickering noted there was a split in the federal appeals courts on that very issue.

Pickering repeatedly asked Civil Rights Division lawyers to explain to him whether the same sentencing standards were being used in other cases across the country. After receiving no answers, Pickering demanded the issue be addressed to then-U.S. Attorney General Janet Reno. Pickering even called Vice President Al Gore's brother-in-law, Frank Hunger, a longtime friend who headed the Justice department's Civil Division, to express his frustration.

Pickering summed up his thoughts about the sentencing disparities in the cross-burning case clearly when Swan was to be sentenced on Nov. 15, 1994.

“He committed a reprehensible crime, and a jury's found that,” Pickering said from the bench. “And he's going to pay a price for it. But I have never, since I've been on this bench, seen a more contradictory, inconsistent position by the government than they're taking in this case.”

Bradford Berry, a civil rights prosecutor from Washington, responded by saying perhaps the Justice Department should have asked for harsher punishment against Swan's two co-defendants.

“You're the one working for the Justice Department, not me,” Pickering shot back. “I didn't take that position. The Justice Department took that position.”

Pickering postponed the sentencing another two months. He also called all the lawyers involved back to his chambers, without a court reporter to transcribe the discussion.

In a memo written after the meeting, Berry gave an extraordinary account of what transpired.

Pickering told the lawyers about his civil rights background, saying that while not at the forefront of the movement, he was a supporter, according to Berry's memo. Pickering said he'd testified against a Ku Klux Klan leader, had twice thrown out jury verdicts in trials when he thought the results were tainted with racism and had encouraged his son to make certain his fraternity at the University of Mississippi was not discriminating against a black student who wanted to join.

"Pickering said he has carefully examined his conscience in this case and is confident that his discomfort with the sentence is not the product of racism," berry wrote.

But Pickering also gave another reason the case disturbed him, Berry noted. The judge said that "in the current racial climate in that part of the state, such a harsh sentence would serve only to divide the community."

Pickering then asked prosecutors to consider agreeing to dismiss the count against Swan that mandated a five-year sentence. By the time prosecutors returned for Swan's sentencing two months later, they had capitulated, agreeing to drop it.

Don Samuel, former president of the Georgia Association of Criminal Defense Lawyers, who studied Berry's memo, said Pickering's aggressive posture in the cross-burning case is not uncommon among the federal judiciary.

"There are judges who want a just result and try to convince the parties to find a way that enables them to do so under the federal sentencing guidelines, which can be very harsh and rigid," Samuel said. "These things happen. Often it's very well-intentioned to get around a harsh result."

But Samuel said he found troubling Berry's account of Pickering's concern about a harsh sentence dividing the community. "That doesn't seem like a very good basis and it shouldn't be," the defense lawyer said.

University of Georgia criminal law professor Ron Carlson said the only part of the community that would be divided by such a sentence would "probably be rural white people."

But Carlson said it is unfortunate that Pickering has been condemned for his action in the cross-burnings case. "That's because this is certainly not a racist judge overseeing the cross-burning case," he said. "Quite the opposite. He's very fulsome in his condemnation."

When the sentence was finally imposed on Jan. 23, 1995, Pickering told Swan he had committed "a despicable act."

"The type of conduct you exhibited cannot and will not be tolerated," the judge said. He suggested to Swan that "during the time that you're in prison . . . do some reading on race relations and maintaining good race relations and how that can be done."

Mr. ALEXANDER. Mr. President, I will not dwell on the lifelong record of Mr. Pickering. But his testimony against Sam Bowers was not an isolated instance. I will not dwell on the charge some have made about a 1994 case. Senator HATCH dealt with that, although I ask unanimous consent to include two articles, one from the National Review Online and the Atlanta Journal-Constitution explaining what really happened. In short, the Justice Department botched the case and the ringleader in the cross burning was turned loose. Pickering then properly reduced a juvenile accomplice's sentence from seven and one half years to 27 months, severely criticizing him.

In terms of the struggle for equality and freedom, I have seen the South and our Nation change for the better during my lifetime. I have tried to help bring about that change. When I look back now, it seems embarrassingly slow and amazing that it was so hard. I remember as a student at Vanderbilt in 1962, when we raised the issue of integrating the student body, the student body voted no. I remember in 1980 I appointed the first Black Tennessee supreme court justice, and he was defeated in the next election. I remember it was 1985 before we had the Martin Luther King Holiday, and the legislature nearly voted it down. I appointed the first two African American vice presidents of the University of Tennessee, but that did not happen until 1989.

Our country, from its beginning, has truly been a work in progress. And on this issue, racial justice, we have had an especially hard time making progress. We have had a hard time changing our minds. The truth is, most members of my own generation have had one view about race in the 1960's and another view today. Many of the men and women who are judges, who are mayors, who are legislators, who are Senators today, opposed integration in the 1950s, opposed the Voting Rights Act in the 1960s. They were against the Martin Luther King holiday in the 1980s, and we welcome them to society today. We have confirmed some of them to the Federal bench, some of them Democrats, some of them Republicans.

What is especially ironic about this incident is that Judge Pickering was not one of those people whose ideas we have to excuse. He led his times. He spoke out. He would have, I am certain, joined Judge Wisdom, Judge Tuttle, Judge Rives, and Judge Brown in ordering Ole Miss to admit James Meredith to the University of Mississippi 40 years ago.

Why would we not now recognize this man, who lived in the Deep South, who did what we all hope we would have had the courage to do, but might not have done in the late 1960s? Why would we not now honor and recognize that service by confirming his nomination to this appellate court?

I care about the court. I care about these issues. I have studied the record as carefully as I could. All of the evidence supports the fact that Charles Pickering is a worthy successor on the Fifth Circuit to the court of Judge John Minor Wisdom, Judge Elbert Tuttle, Judge Richard Rives, and Judge John R. Brown.

Mr. President, I rise today to say a few words concerning the nomination of Judge Charles Pickering.

Throughout the entire history of the Senate, no judicial nominee has ever been defeated by a filibuster. Yet in this session alone, four nominations have been blocked by this unconstitutional obstruction. Soon, there will be five, six, and likely even more nominees facing partisan filibusters. this

obstruction flies in the face of more than 200 years of Senate tradition, the constitutional role of the Congress, and the consent of the governed.

While all of these filibusters are wrong, it seems to me that the tactics employed against certain nominees is particularly disgraceful.

First, we witnessed the hostile attitude towards Leon Holmes, a nominee for the Eastern District of Arkansas. Despite having earned the support of each of his home state Senators—both members of the minority—Mr. Holmes was sharply criticized—not for his legal work, but for his personal writings about his religious views.

Then we witnessed the strident animus directed toward Alabama Attorney General, Bill Pryor—who was repeatedly challenged over whether his "philosophy" and "deeply held views," particularly those arising from his religious beliefs, precluded him from becoming a judge.

And now, today, we are witnessing the terrible treatment of Judge Charles Pickering. This is an issue that is of particular importance to my state, because Judge Pickering has been nominated to a long-standing vacancy on the Fifth Circuit—which covers Texas and Louisiana in addition to Mississippi.

Like the other nominees, Judge Pickering is a deeply religious man. He is also a man from the South. And I believe he is clearly qualified to serve on the federal bench, as he has been serving for over a decade. Yet Judge Pickering has, like others, become the target of a venomous special interest group campaign, one directed against Southerners and against those who take their faith seriously. A representative of one of these groups recently called Judge Pickering a "racist," a "bigot," and "a woman-hater."

It is sad to see this shameful caricature of a well-qualified, respected man. And it is sadder still to see these special interests dominate the other side of the aisle. I hoped such tactics would never gain apologists among any members of this body, but hearing this debate today, I fear that my hope was all for naught.

This Nation, both North and South, has for too long suffered from the scourge of racism. We have made a great deal of progress so far, and there is more to go, but even as we condemn racism with all our might, we must also condemn false charges of racism. Every false charge of racism weakens a true charge of racism, and ultimately, that hurts us all.

Judge Pickering has been praised and supported by those who know him best—by those who have worked by his side, and seen him fight racism in his home state of Mississippi.

My fellow Southerners who have reviewed the record carefully agree. All six Mississippi statewide officeholders, including five Democrats, have stated that Judge Pickering's "record demonstrates his commitment to equal

protection, equal rights and fairness for all.” The senior Senator from Louisiana has applauded Pickering’s life-long campaign against racism, characterizing them as “acts of courage.” And the Senators from Georgia have written that, “Pickering’s critics have and will continue to unfairly label him a racist and segregationist,” and that “nothing could be further from the truth.”

But perhaps the most compelling views on this subject have been expressed by Mr. Charles Evers. He is the brother of the slain civil rights leader Medgar Evers, and he has personally known Judge Pickering for over 30 years. He is intimately familiar with Judge Pickering’s numerous actions throughout his career to fight racism, often with deep sacrifice and personal cost.

Mr. Evers wrote in the Wall Street Journal in support of Judge Pickering, saying,

As someone who has spent all my adult life fighting for equal treatment of African-Americans, I can tell you with certainty that Charles Pickering has an admirable record on civil rights issues. He has taken tough stands at tough times in the past, and the treatment he and his record are receiving at the hands of certain interest groups is shameful . . . Those in Washington and New York who criticize Judge Pickering are the same people who have always looked down on Mississippi and its people, and have done very little for our state’s residents.

I hope that today the Senate will take a stand against the despicable tactics of radical special interest groups. We must not allow the special interests’ exploitation of religious views, stereotypes, or false caricatures—concerning Southerners or any other people—to decide a vote on any nominee. Such reprehensible practices have no place in this debate. And it is a dark day for the Senate and for America’s independent judiciary when we allow special interests to dictate the basis for disqualification.

I ask my fellow Senators to vote to confirm Judge Pickering, to reject the inhuman caricature that has been drawn by special interest groups intent on vilifying, demonizing, and marginalizing an admirable nominee. I hope that my colleagues will give all these qualified nominees what they deserve, and allow them to have an up or down vote.

For the sake of the Senate, the Nation, and our independent judiciary, I hope that these days of obstruction finally end.

Mr. BUNNING. Mr. President, I speak today in support of Judge Charles Pickering and his nomination to the Fifth Circuit Court of Appeals.

Judge Pickering was unanimously confirmed to be a Federal district judge in 1990, where he has served honorably ever since. He graduated first in his law school class at the University of Mississippi while serving on the Law Journal and Moot Court. In addition to practicing in a law firm, Judge Pickering was both a city and county pros-

ecutor and a municipal court judge. Judge Pickering continued his public service in the Mississippi State Senate. He also has served his fellow man by helping others through organizations like the Red Cross and the March of Dimes. Judge Pickering has also devoted his life to Christ, serving at the First Baptist Church in Laurel, MS, as a Sunday school teacher and a deacon.

Those things tell us much about the man that Charles Pickering is. But there is much more. You see, Judge Pickering has spent his career as a leader in race relations in Mississippi. What is truly telling, however, is he spent his whole career tearing down barriers for minorities in the South, including during the 1960s and 1970s. Those actions did not make him a popular man among many in Mississippi at the time.

I remember the 1960s and 1970s. I regularly traveled around the country during those years and I remember what race relations were like in the South and throughout America. I remember what it was like as professional baseball gradually accepted then embraced minorities. It was a tumultuous time in our country and many brave men and women willingly staked their careers, their reputations, and even their lives on doing what was just and right. Charles Pickering was one of those men.

The stories of how Judge Pickering stepped above the fray and reached out to bring racial equality to Mississippi have been told many times. In recent years Judge Pickering has served on race relations committees in Mississippi including the Institute for Racial Reconciliation at the University of Mississippi. He has spent time working with at-risk minority children.

Those actions are laudable in and of themselves, but the actions that tell the true story of who Charles Pickering really is come from the 1960s and 1970s, those years when racial tensions were at their highest and the South was so volatile. In 1967 Judge Pickering was Prosecuting Attorney Pickering in Jones County, MS. Knowing it was to his own personal detriment, Charles Pickering took the witness stand to testify against the “Imperial Wizard” of the Ku Klux Klan in a trial for killing a black civil rights activist in a fire-bombing attack. By standing up for equality and justice, Prosecuting Attorney Pickering put himself and his family in danger and lost his reelect.

You can never really judge the strength of a man’s convictions until standing up for those beliefs costs him something. Judge Pickering’s willingness to stand up against racial violence cost him his job as a prosecutor. But that did not dissuade him from continuing to fight for racial justice. Possibly the most contentious race issue in the 1960s and 1970s was the integration of the public schools. Integration came to Laurel, MS, in 1973. Integration has been fought for years and cre-

ating a plan was not an easy task. The black and white communities in Laurel were split and Charles Pickering worked to bring them together and create a plan to integrate the schools. In the end many white families still moved their children to private schools to avoid integration and Judge Pickering easily could have done the same with his kids. Instead, he believed in integration and kept his children in the public schools.

Unfortunately, the reason Charles Pickering has been singled out by the radical left has nothing to do with the man or his qualifications. It has everything to do with ideology and the remaining adherents of a failed liberal orthodoxy holding on to their last vestiges of power in this Nation—the courts.

A radical liberal minority in this country is scared of Judge Pickering. They do not think he will do a bad job because he is unqualified. After all, the American Bar Association rated Judge Pickering “well qualified.” Last I had heard, the liberal minority obstructing Judge Pickering’s nomination called that rating their gold standard for judicial nominees.

The reason the liberal special interests are scared of Judge Pickering is that he is a judge who knows his role, who follows the law, and has a stellar civil rights record. These special interests have lost out in the public opinion and mainstream politics. They cannot successfully achieve their goals in the normal course of governance so they turn to the court system, which they have successfully used to roll back traditional values, traditional roles of Government, and individual rights. A judge with a proven record of following the law and understanding the difference between the legislature and the judiciary is a roadblock in their path of legislating through the judiciary.

I really believe Judge Pickering was singled out because of his stellar record on civil rights. It seems to me the liberal special interest groups that seem to be dictating the moves of the minority party in the Senate needed a test case to see if they could stop President Bush’s nominees at will. They researched all his nominees and picked one who would be impossible to defeat on the merits and decided to distort his record and assassinate his character. They needed to see if they could get away with it. So last year they gave it a shot. And it worked. These special interests found willing accomplices in the Senate and in the media. Facts became irrelevant as lies flew and Charles Pickering was demagogued. But that was only a preview of what was to come.

While the filibustering by a minority of the Senate of Judge Pickering is an abdication of constitutional responsibility of the Senate, the wholesale assault on President Bush’s nominees is truly egregious. Judge Pickering is not alone. The minority has taken aim at Miguel Estrada, Carolyn Kuhl, Janice

Rogers Brown, Bill Pryor, Priscilla Owen, and Henry Saad. Each nominee has a fantastic story and a stellar record. Each has been singled out for his or her adherence to the law and the traditional roles of government.

Radical liberals have long fancied themselves as the champions of women and minorities in this country, and I have no doubt that many on the left do strive for equality for all Americans. But the radical left has achieved its power through the politics of division. A conservative Hispanic or conservative woman or conservative Arab or conservative black woman or conservative religious man is anathema to their dominance of these issues. Rather than celebrating the achievements of these gifted human beings ascending to the job for which he or she was selected by the President of the United States, these ultra liberals would rather defame their characters and demagogue their beliefs.

There seems to be no end in sight to these tactics and political showdowns. But I hope and pray that day will soon come.

Mr. McCONNELL. Mr. President, today we will vote on whether the Senate shall be allowed simply to consider the nomination of Charles Pickering to the Fifth Circuit Court of Appeals. From my review of Judge Pickering's record, I have been struck by one resounding virtue—moral courage.

As the tide of racial equality swept America in the 1950s and 1960s, it unfortunately met with fierce resistance in certain areas. Laurel, MS was one. Unlike New England, integration was not popular in Jones County. Unlike New York, the press was not friendly to integration in Jones County. Unlike large Southern cities such as Atlanta and Birmingham, there was no substantial segment of the community that had an enlightened view on race relations. Indeed, the town of Laurel, in Jones County, MS, with a small population was the home territory of the Imperial Wizard of the Ku Klux Klan, Sam Bowers.

In the 1960s, Klan-incited violence escalated in Jones County, MS. The Klan would drive by homes in the middle of the night and shoot into them. The Klan would firebomb the homes of African Americans and those who helped them. The Klan would murder its enemies who stood for civil rights.

Because these shootings, bombings, and murders violated the law, the victims looked for justice. They found it in Jones County Attorney Charles Pickering.

On the one hand, Charles Pickering had his duty to enforce the law. On the other hand, he had public opinion, the press, and most state law enforcement personnel against vigorously prosecuting Klan violence. A 27-year-old Charles Pickering stared in the face his political future, many in his community, and the press and chose to do his duty of enforcing the law against the men who committed such violence. In

the 1960s in Mississippi, this took courage.

Soon County Attorney Charles Pickering found that he had to choose against those in law enforcement who would only go through the motions of investigating the Klan and those who sought to vigorously prosecute and imprison Klansmen. He chose to work with the FBI to investigate, prosecute, and imprison Klansmen. In the mid-1960s in Mississippi, this took courage.

Then came the threats. The Klan threatened to have County Attorney Pickering whipped. With the Klan already firebombing and murdering other whites whom it viewed as helping black citizens, the Pickering family could have easily been next.

At night, County Attorney Charles Pickering would come back to his small home and look into the eyes of his young wife Margaret. He would look into the eyes of his four small children who believed daddy could do anything and who did not understand hate and murder. One can only imagine how his wife Margaret would lie awake in fear, hoping that she would hear her husband's footsteps coming home.

Charles Pickering had no money to protect his family. He had no press to stand up for him and his family. He had no covering of popular opinion to hide behind. And in this time of hate, bombings and murder, Charles Pickering reached down deep in his soul, embraced the only thing he did have, his religious faith.

He then testified against Sam Bowers, the Imperial Wizard of the Ku Klux Klan in the firebombing trial of civil rights activist Vernon Dahmer in 1967. And Charles Pickering signed the affidavit supporting the murder indictment of Klansman Dubie Lee for a murder committed at the Masonite Corporation's pulpwood plant in Jones County. The took courage.

While it is easy in Washington, DC, in 2003, to make a speech or sign a bill in favor of civil rights after decades have changed racial attitudes in schools, in society, and in the press, who among us would have had the courage of Charles Pickering in Laurel, MS in 1967? Who among us would have had the courage of his wife Margaret to stand with him?

There are those who would say "We are pleased that Pickering was one of the few prosecutors who actually prosecuted crimes committed by the KKK in the 1960s, but he should have also gone further by calling for immediate integration of schools and the workplace."

That argument is tantamount to saying, "We are pleased that Harry Truman integrated the federal armed forces in 1948, but he should have gone further and called for the integration of the state national guards as well." Or to say, "We are pleased that Lyndon Johnson signed the Civil Rights Act in 1964, after opposing civil rights, but he should have gone further and demanded

that all businesses adopt an affirmative action hiring plan."

To judge the words and actions of these Civil Rights Champions in the 1940s, 50s, and 60s, by a 2003 standard, would leave them wanting. We must remember that in Mississippi and other Southern States in the 1960s, most elected prosecutors sat on their hands when the Klan committed acts of violence. Young Charles Pickering had to deal with white citizens and politicians who resisted integration and civil rights. He had to deal with these people in language that would not incite further violence and with requests for action that he had a chance of getting people to take. He did so with moral courage.

And because he acted with courage at such a young age, Charles Pickering was able to continue with more progressive actions decade after decade. In 1976, he hired the first African American field representative for the Mississippi Republican Party. In 1981, he defended a young black man who had been falsely accused of the armed robbery of a teenage white girl. In 1999, he joined the University of Mississippi's Racial Reconciliation Commission. And in 2000 he helped establish a program for at-risk kids, most of whom were African Americans, in Laurel, MS—where 35 years earlier he had backed his principles with his and his family's lives. This is a record of courage. It is a record to be commended.

In the years since the 1960s, attitudes in Mississippi and elsewhere have dramatically improved. Schools are integrated. The Klan is no longer a powerful force capable of intimidating whole communities. And the support from Mississippians—black and white, men and women—who have known Charles Pickering for decades has been overwhelming. This support no doubt results from the moral courage of Charles Pickering.

In 1990, the Judiciary Committee unanimously reported the nomination of Charles Pickering, and the Senate unanimously confirmed him to the district court bench. In his 12 years on the bench, he had handled 4,500 cases. In approximately 99.5 percent of these cases, his rulings have stood. The American Bar Association rated Judge Pickering "well qualified" for the Fifth Circuit Court of Appeals—once upon a time, the vaunted "gold standard" of my Democrat colleagues.

I was present at Judge Pickering's confirmation hearing. I listened to the testimony and reviewed the record. I have measured the allegations and those who made them, against the entire record and the courage of Judge Pickering. I have found the allegations to be unfounded and the special interest group accusers lacking in the moral courage that Judge Pickering possesses.

The Senate now has a chance to show the courage that Charles Pickering has consistently demonstrated. Unfortunately, I fear it will shrink from this

moment. And for that I apologize, in advance, to Judge Pickering and his family. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I was going to speak first, but I understand the senior Senator from New York, as happens with so many of us, is supposed to be in two places at once. While he is capable of many good things, that is one thing he has not figured out how to do yet.

I yield 5 minutes to the Senator from New York. Once he has finished, I will then speak and answer some of the things that have been said on the other side.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. I thank my colleague for yielding.

Mr. President, this is a difficult decision in a very certain sense. I listened to the sincere words of my colleague from Tennessee. I think they were heartfelt and well spoken. I have tremendous respect for my two colleagues from Mississippi, and I know particularly to my friend Senator LOTT how much this means. He has worked very hard and diligently on behalf of Judge Pickering's nomination.

I must rise to oppose it, and let me explain both to my colleagues and to everybody, I guess, why. I am a patriot. I love America. My family came to this country 5, 3, and 2 generations ago, poor as church mice, discriminated against in Europe. My dad could not graduate from college, and I am a United States Senator. God bless America. What a great country.

I study the history of America. One of the things I try to study is what are our faults, what are our strengths, how do we make sure what happened to the Roman Empire and the British Empire does not happen to this country. One of the most profound scholars who studied America was Alexis de Tocqueville. He came to America in 1832 or so, traveled across the country, including upstate New York, and he wrote a couple of things. First, he wrote then when we were a small nation, not mighty like the great European nations of Britain, France, or Russia. He wrote that we would become the greatest country in the world. That was pretty omniscient. But he also wrote that there was one thing that could do America in, and that was the poison of race.

We have made great progress. We all know it and everybody knows it. Much of the progress was made—all of it just about—in the last 40 years. We did not make much progress from 1865 to, say, 1960 or 1955.

I guess *Brown v. Board* started the whole wellspring. Frankly, for the first time in my life I am optimistic about racial relations in America. I think, over time, things will heal. I didn't used to think that, even 5 years ago.

But we still have a lot of healing to do, despite the progress. I have to say

I don't think the nomination of Judge Pickering—I know he is people's friend; I know lots of fine people think he is a fine man—helps that healing. I think it hurts it. I base my decision not only on his record, which—I would have to disagree, in all due respect, with my friend from Tennessee—on race issues is, at best, mixed. The cross-burning case bothers me greatly because if you are sensitive to race, even if you think a case was wrongly decided, you don't go through the extra legal means, on a cross-burning case, to do what you have to do.

Does that mean a person should be put in jail or excoriated? No. Does it mean if he runs for public office that he is going to lose? No.

But on the Fifth Circuit, the circuit that has had the great names at healing race and racial divisions that my colleague from Tennessee mentioned, should not we be extra careful about trying to bring a unifying figure to that bench, particularly when it represents more minorities than any other?

The bottom line is, while we can find individual names, to me it is overwhelmingly clear that the Black community in Mississippi—which ought to have pretty good judgment about who did what, when, and how far we have come—is quite overwhelmingly against Judge Pickering.

You can say it is politics. But when we hear the head of the NAACP say, as he told us yesterday, that every single chapter—I don't remember how many there were, like 140—were against Judge Pickering, that means something. When you hear that all but a handful of the Black elected officials in Mississippi are against Judge Pickering, that means something.

Frankly, in this body we don't have an African American to give voice to their view, the African American view, diverse as it is, about whether Judge Pickering is a healing figure and deserves to be on this exalted circuit. We are not demoting him. We are not excoriating him. We are debating whether he should be promoted to this important bench, particularly when it comes to race and civil rights. And the overwhelming voice is no.

I ask unanimous consent from my colleague to be given an additional 3 minutes.

Mr. LEAHY. I yield another 3 minutes to the distinguished Senator from New York.

The PRESIDING OFFICER (Mr. ENZI). The Senator from New York is recognized.

Mr. SCHUMER. So the overwhelming voice is no. The elected Black officials of Mississippi—I don't know the percentage, but I think it is against him. The only Black Member of Congress speaks strongly against him. He doesn't just say, well, I wouldn't vote for him, but it is an either/or situation, and that has to influence us. It is not dispositive. People can say "these groups." Well, the NAACP is not just a

group. It has been the leading organization. It is a mainstream African-American organization.

There are groups on the other side lobbying for Judge Pickering. There are groups on this side against. I don't know why my colleagues, some on the other side, say the groups that lobby against what they want are evil, and the groups that lobby for are doing American justice. That is what groups do, and we listen to them sometimes.

I, from New York, don't know that much about this. I try to study history, but I haven't lived there. I haven't gone through the history that my colleagues from Mississippi or Tennessee have. But I have to rely on other voices as well.

So the fork in the road we come to here is this: On this nomination in this important circuit which has, indeed, done so much to move us forward—and I do believe we will continue to move forward as a country; even as Alexis de Tocqueville said, on the poison of race—do we appoint a man who, on racial issues, has a record that at best is mixed, and who recently, at a very minimum, has shown insensitivity on the cross-burning case? Sure, there was a disparity of sentence. One thing I know quite well, in criminal law there are always disparities of sentence when there is a plea bargain, and prosecutors always go to someone in the case and say: If you plea bargain, you will get fewer years than if you don't. So that is not a great injustice. It happens every day in every court in this land. On this particular case, that is where Judge Pickering's heart was, to take it to a higher level. It is bothersome, particularly when it comes to nominating someone, not just to be a district court judge—which he is now—but nominated to the exalted Fifth Circuit, the racial healer in America for so long.

So in my view—no aspersions to my colleagues from Mississippi who feel so strongly about this; no aspersions to my colleague from Tennessee who was eloquent, in my opinion; and no aspersions to Judge Pickering as well—but we can do better, particularly on the Fifth Circuit, when it comes to the issue of race, which has plagued the regions of the Fifth Circuit and plagued my region as well. We can do better.

I urge this nomination be defeated.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr EDWARDS. Mr. President, I rise today to speak against the nomination of Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit.

I oppose this nomination because Judge Pickering has repeatedly demonstrated a disregard for the principles that protect the rights of so many of our citizens. Judge Pickering's record as a judge is full of instances in which he has elevated his personal views above the law. For example, Judge Pickering has shown a lack of respect for the Supreme Court's landmark