

Statement of

The Honorable Orrin Hatch.

United States Senator
Utah
October 2, 2003

Statement of Chairman Orrin G. Hatch

Before the United Senate Committee on the Judiciary

Executive Business Meeting

On the Nomination of

Charles Pickering, Sr., for the

United States Court of Appeals for the Fifth Circuit

Today we will consider the nomination Charles W. Pickering, Sr. to be a Circuit Judge on the United States Court of Appeals for the Fifth Circuit. I am particularly pleased that Congressman Chip Pickering, who represents the Mississippi Third District in the United States House of Representatives, could be with us for today's vote. He has worked tirelessly to protect his father's reputation and ensure fair treatment of his nomination.

I also welcome two guests of Congressman Pickering: Representative Philip West and the Reverend Edwin King. Representative West, who represents District 94 in the Mississippi Legislature, is current chairman of the Mississippi Legislative Black Caucus. A long time civil rights activist, he is Past Vice President of the Mississippi NAACP and Past President of the Natchez NAACP. Reverend King is widely regarded as one of the most prominent southerners associated with the civil rights movement of the 1960s. He is a celebrated civil rights activist and champion of racial justice.

Congressman Pickering, Reverend King and Representative West lead scores of Mississippians who seek fair treatment for Judge Pickering. We have received hundreds of letters of support from members of the public and members of the bar, as well as political, academic, and religious 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.

Just last week I received a letter signed by every statewide Democratic official in Mississippi. Led by Governor Ronnie Musgrove, they stand united in saying, "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." I will submit a copy of this letter for the record.

Nearly two and a half years ago, Judge Pickering was nominated to be a United States Circuit Judge for the Fifth Circuit. Since then, his record has been carefully considered. He has already appeared before this Committee in not one, but two lengthy hearings. So there has been plenty of opportunity to consider the qualifications of Judge Pickering.

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.

I was pleased that, despite this ill-advised 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.

Today this Committee has an opportunity to correct the injustice done last year to Judge Pickering when an unfair process kept the Senate from voting, up or down, on this nomination. During the Clinton Administration, this Committee never voted down a single Clinton judicial nominee. In fact, fewer than ten times has this Committee voted down a judicial nomination - and two of those instances occurred just last year, when Democrats rejected the nominations of both Judge Pickering and Justice Priscilla Owen.

Now I have heard complaints that this nomination should not be on the agenda today. There are those who say the President should not have renominated Judge Pickering, since the 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 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 the procedural complaints, I expect we will hear today a recycling of the tired arguments and well-worn parade of horrors - 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. I have steadfastly resisted efforts to inject personal ideology into the confirmation process, and I think that we have all seen the destructive effects of that campaign during the debates over President Bush's judicial nominees, particularly in the current Congress. When Judge Pickering's record is fairly evaluated on the merits, there can be little doubt that he deserves the support of every Member of this Committee.

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 nominees who appear before us 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.

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.

Since this Committee's party-line vote prevented the full Senate from voting on Judge Pickering's nomination last year, his supporters have not sat silently by. They have expressed their outrage over the grievous wrong perpetrated against him through editorials, articles, and letters. I want to take a moment to share some of these with my colleagues now.

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."

Even the new members of this Committee are by now 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 very effort to prosecute Sam Bowers who planned the bombing. Sincerely, I.A. Rosenbaum."

I will submit these and other letters of support for the record. 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 today. 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 five 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 one year, and then used his good conduct during home release to establish the basis for a downward departure. Judge Pickering ultimately sentenced him to six months of home confinement, five 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 two and half 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 five year sentence. Judge Pickering sentenced Mr. Barnett to the five 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." Without objection I will place this letter in the record as well.

Thirteen years ago today Judge Pickering began his service as a United States District Judge. He was unanimously confirmed by the United States Senate and received the vote of many who serve on this Committee today. 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.

Because Judge Pickering deserves an up or down vote on the Senate floor, this Committee will once again consider his nomination. His record has been fully debated. 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.