

# ***Under the White Robe***

## **Pickering and Lott's Racist Pasts**

**I**t's possible that by the time you read this, Bush's nominee to the Fifth Circuit Court of Appeals, Charles Pickering, will have been rejected by the US Senate. Then for months to come we'll hear Republican howls about Democratic "partisanship" and similar nonsense. But even though his nomination may be history, it's worth learning just how much of an appalling racist and probable perjurer Pickering is, a man worthy of his prime backer in the US Senate, fellow Mississippian, Trent Lott, current Republican minority leader.

Pickering hails from Laurel, Mississippi. He attended the University of Mississippi with Lott, and served in the all-white Mississippi state senate from 1972 through 1980, where he and Lott became political buddies. He also served as chair of the Mississippi Republican Party during the late 1970s.

After making a nice living in private practice defending corporate polluters and tobacco companies, in 1990 Lott convinced George Bush I to nominate Pickering to the federal bench in the Southern District of Mississippi. Now Lott has convinced George Bush the Second to elevate Pickering to the Fifth Circuit Court, the most reactionary court in the federal system.

Pickering's appalling ideas on race, state's rights, women, and workers are largely an open book. And there's quite a paper trail, starting with a 1960 law review article for the University of Mississippi Law School. In a piece titled "Criminal Law Miscegenation/Incest" Pickering lamented that Mississippi's law criminalizing marriages between blacks and whites wasn't being enforced strictly enough. He took it upon himself to draft a plan to beef up the statute and toughen the sanctions for sex between blacks and whites. Two months after the article appeared in print, the Mississippi legislature turned the Pickering plan into law.

As a legislator, Pickering demonstrated an unremitting hostility for even the most cautious steps toward giving blacks any kind of foothold in the state's political system. In a senate floor speech

in 1975, Pickering denounced the Voting Rights Act as an attack on state sovereignty. He backed reapportionment plans that deliberately submerged black voter strongholds into white dominated districts. And he supported an "open primary" plan for the state, which the Department of Justice said was unconstitutional and the three black members of the Mississippi House of Representatives characterized as an attempt by old-line racists to keep black candidates from winning general elections.

Pickering has long denied any association with the vile Mississippi's Sovereignty Commission, a kind of secret police force which worked to keep Mississippi segregated in the wake of the Brown v. Board of Education ruling. The Sovereignty Commission, often employing KKK thugs, spied on civil rights organizers, politicians, preachers and rockers (in-

further point out that the Commission had, in effect, been abolished for a number of years. During the entire time that I was in the senate, I do not recall really that commission doing anything."

He was being disingenuous on nearly every point. Far from being mothballed, the Commission was regularly coming to the legislature for funds and Pickering was only too happy to oblige, voting to appropriate money for the segregationist snoops in both 1972 and 1973. The governor of Mississippi vetoed state funding for the Commission in 1973, but the plug wasn't officially pulled on it until 1977.

Back in 1990, Pickering may have felt secure that his secret ties to the Sovereignty Commission would never see the light of day. After all, as a senator he had twice voted to keep the records of the Commission sealed from public inspection until 2027. But in 1998, after

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cluding Elvis Presley, B.B. King, James Brown and the Stones). They acted like a racist COINTELPRO operation, paying their snitches \$100 to \$150 for information, infiltrating civil rights groups, and deploying a robust arsenal of dirty tricks and smear tactics. The Commission also helped to cover up attacks on blacks and civil rights workers by the KKK and other vigilantes.

It's scarcely surprising that Pickering would want to maintain a healthy bit of distance between himself and this state-sanctioned goon squad. But he may have been so anxious to hide from his past that he perjured himself. In his 1990 testimony before the Senate judiciary committee, Pickering emphatically denied any association with the Sovereignty Commission.

"I never had any contact with that agency and I had disagreement with the purposes and the methods and some of the approaches that they took...Let me

protracted litigation, the ACLU won a lawsuit opening what remained of the files (much had been lost or destroyed) for public review.

Late last year a review of the Commission's files turned up an astounding memo written by one of the Commission's investigators detailing a request made by Pickering in 1972, while he was a senator, for the snoops to develop a dossier on a union that had launched a strike against the largest employer in Laurel, Mississippi, Pickering's hometown. He had also asked the Commission to pass along to him background information on the strike's leading organizer.

In light of these documents, Pickering's denials amount to willful distortions if not to perjury.

The wonder is that Pickering's lifelong association with racists and his own ante-bellum views on blacks and civil rights were not thrown back in his face

in 1990 when Pickering appeared before the senate to lobby for his seat on the federal bench. At the time, the Democrats controlled the senate and mighty Joe Biden (and Ted Kennedy) ruled the Judiciary Committee. They let Pickering slide through with barely a thought. Here we are presented once again with the noxious consequences of senate comity, wherein supposed champions of civil rights such as Biden and Kennedy simply defer to the wishes of the likes of Trent Lott in exchange for similar deference when it comes to their own personal picks for federal judgeships. Apparently, it doesn't matter if another full-blown racist dons federal robes in southern Mississippi.

But Pickering has done plenty of damage since he ascended to the federal bench, where his evident animus toward blacks has surfaced again and again in his rulings and opinions. In a case called *Fairley v. Forrest County*, Pickering lashed out against the one-man/one-vote doctrine as "obtrusive". In another case, *Citizens Right to Vote v. Morgan*, Pickering characterized the Voting Rights Act as "an unnecessary intrusion" of federal authority into matters that the states are "perfectly capable of resolving." This is perverse legal reasoning to say the least, since the federal role that Pickering is carping about was initiated only after Mississippi's voting procedures had been ruled repeatedly to be racist and unconstitutional.

Pickering has proved to be equally harsh in his rulings in cases involving minorities suits over employment discrimination. Indeed, Pickering has displayed ceaseless animus toward the very idea of such claims. In a case known as *Seeley v. City of Hattiesburg*, Pickering set forth an argument that might even make Antonin Scalia cringe. In dismissing a claim brought by a black worker, Pickering wrote that "the federal courts must never become safe havens for employees who are in a class protected from discrimination, but who in fact are employees who are derelict in their duties."

The judge was even more frank in rejecting a case involving credit discrimination. "This case demonstrates one of the side effects resulting from anti-discrimination laws and racial polarization. When an adverse action is taken affecting one covered by such laws, there is a tendency on the part of the person affected to spontaneously react that discrimination

caused the action. All of us have difficulty accepting the fact that we sometimes create our own problems."

Even a cursory look at Pickering's rulings reveals a judge who is at war with the very notion of federal law and the very role of the court he seeks to join. Often Pickering can't restrain himself from injecting personal diatribes into his opinions that have little direct bearing on the case but reveal the true nature of his reactionary legal agenda. Take the bizarre case of *Randolf v. Cervantes*. In this case, a paranoid-schizophrenic had been civilly committed to a state-run hospital. The deranged woman somehow found a hypodermic needle in a trash can and ended up injecting insulin into her eye. The woman's mother sued the state and the hospital, charging that they had failed their court-ordered duty to provide quality care for her daughter. Pickering swiftly dismissed the suit and went on a tirade in his opinion against any judge who might rule that the state should be held accountable. He declared that such liberal judges were engaging in "judicial pyramiding" and "reaching conclusions that [are] ludicrous." He ended by saying that a judgment for the plaintiff would add to a list of "things that have caused some to question whether the law in many instances has lost touch with reality, reason and common sense."

Of course, Charles Pickering is hardly an aberration. The court to which he aspires is arguably the most reactionary the nation has seen in decades and he would certainly feel quite at home there. Of the 15 judges on the panel only one is black, despite the fact that the Fifth Circuit covers the most racially diverse circuit in the nation, with minorities accounting for 44 percent of the population.

Moreover, the career of Pickering's patron, Trent Lott, has followed a similarly dark trajectory. The scene is Oxford, Mississippi, September 1962. A federal court orders the University of Mississippi to open its doors to James Meredith, who would be the first known black student at the school. The university and the state government refuse and vow to physically prevent Meredith from enrolling in classes. Citizen militias and Klan types converge on the campus carrying weapons. Days of bloody rioting followed.

The Kennedy administration responds by sending in federal troops to clear the way, although in one of his

more infamous acts Bobby Kennedy orders that the troops be pre-segregated before they enter the state. More than 4,000 black soldiers are pulled out of their normal troops. "The Kennedys approved the segregation to avoid the political embarrassment of having black troops with high-powered rifles patrolling the streets of America's most segregated state," William Doyle writes in his excellent, though little noticed, book *American Insurrection: the Battle of Oxford Mississippi*.

On the night of October 1, this white federal strike force descends on the Sigma Nu fraternity house. Frat boys had been particularly outspoken in their desire to see the Oxford campus remain a whites-only school. Inside the Sigma Nu house, the troops seize a cache of weapons, including 21 shotguns, a .22 rifle, a .30 rifle and a .22 Colt pistol. The president of the fraternity is none other than Trent Lott.

Lott has never had to answer for his role in the Oxford riots and there's no evidence that he's had much of a change of heart. In 1992 Lott gave the keynote speech at the annual gathering of the neo-segregationist Council of Conservative Citizens. During his speech Lott praised the group for "standing for the right principles and the right philosophy". Lott's kind words were recorded in an article in the group's newsletter, *The*

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Citizen Informer, a name that suggests the old Sovereignty Commission may not have been disbanded so much as simply privatized.

The Citizens' Council hasn't gone away, just gone online at <http://www.cofcc.org>. Shortly after Dan Pearl was kidnapped and word began to spread that he might be dead, the CCC posted an editorial on its website which suggested that Pearl deserved his fate because he was a miscegenist (not to mention a Jew): "Death by Multiculturalism: Daniel Pearl,

ing soft on crime. He regularly berates defendants and prisoners seeking new trials with quotes from the Bible on the punitive nature of Old Testament justice, routinely denies plaintiffs access to trial transcripts and their requests for DNA tests that might prove their innocence. In fact, Pickering has let it be known that he believes the habeas corpus doctrine applies only to the "truly innocent".

But in this case Pickering took an unwontedly merciful line. The government, using a standard formula under the

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feel that the US will indeed launch a military attack on Iraq later this year.

But one Friend of CounterPunch disagrees, arguing that the net effect of the ranting about the axis of evil has been to redemonize Saddam Hussein and to diminish pressure to lift the sanctions. "The embargo has been under constant assault, but now people will say, 'At least he's not carpet bombing Iraq.' Remember, the whole strategy has always been to sabotage Iraq as a major oil sup-

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a Jewish Wall Street Journal reporter kidnapped last week by Muslim activists, is pictured here with his mixed-race wife, Marianne. Despite rumors of her husband's murder, Marianne remains committed to racial and ethnic amalgamation. "All my life, all his life and our life together is just a big effort to try to create dialogue between civilization[s]," she said. "Remember, Diversity is our Strength!"

But it turns out that Lott is not Pickering's only political fixer. Under withering questioning at his confirmation hearing in February by Senator John Edwards, the North Carolina Democrat and former trial lawyer, Pickering admitted that in 1994 he tried to convince an old friend in the Clinton Justice Department to tell federal prosecutors to propose a more lenient sentence for a defendant in a federal trial he was overseeing.

Now Pickering is not known for be-

US Sentencing Guidelines, wanted Daniel Swann to spend seven years in prison. Pickering thought the sentence was too harsh and that Swann should be released on supervised parole. The man's crime: he burned a cross in the front yard of a mixed-race couple in Mississippi.

The man Pickering had called was one of Janet Reno's top deputies, Frank Hunger, then head of the department's civil division. Hunger and Pickering were old friends from the days when Hunger was a Mississippi lawyer who specialized in defending corporations against civil actions and tort claims. Although Hunger's name popped up in a few stories here and there, his political genealogy was not discussed. Frank Hunger is the brother-in-law of Al Gore and has long been one of his closest political confidants. As they say down in Mouseland, outside Orlando, the South is a small, small world after all. CP

plier. In 1990 it worked brilliantly, sucking Saddam in to invade Kuwait. They wanted a heightened state of tension, a pretext for an embargo. Then Bush broke loose from the whole plan and pushed it to war. They walked into Iraq, the road to Baghdad was clear and then they panicked again, realising, no Saddam, no embargo. It was the most mysterious end to a war we've ever had. US troops were under orders not to shoot at Iraqi divisions, not to disarm them, just to let them go. That came out in Seymour Hersh's piece about McCaffery's massacre."

So the US kept Saddam and the embargo in place.

On some accounts it was Margaret Thatcher who pushed Bush I into war in 1991. We doubt Tony Blair has equivalent clout, but Bush II could stampede himself, just as his old man did. The antiwar movement had better be ready. CP

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## ***Trent Lott's Frathouse Arsenal***