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**Subject:** : In case you missed it yesterday morning....

##### Begin Original ARMS Header #####

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CREATOR:Matthew E. Smith ( CN=Matthew E. Smith/OU=WHO/O=EOP [ WHO ] )

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MR. RUSSERT: We are back. Senators welcome. Let me move first to the appointment, the nomination of Charles Pickering, a federal judge to the Fifth Circuit Court of Appeals, a very important judiciary branch in our country. Senator Feinstein, you're on the Judiciary Committee. Will you vote for Charles Pickering?

SEN. DIANNE FEINSTEIN, (D-Calif.): No, I will not vote for him. I did have the privilege of chairing his hearing, his second hearing, which was a very full hearing. I believe that there's virtually unanimous opinion on the Democratic side of the Judiciary Committee that he will not be confirmed. In other words, he will not voted out of the Judiciary Committee.

MR. RUSSERT: So, all 10 Democrats will oppose him? SEN. FEINSTEIN: I

believe so. Now, you know, obviously, that can change, and I think that this is a recommended appointment that has just been enormously polarizing. And, you know, there isn't a--it's very hard because, obviously, he's a sitting federal court judge. But the views of people are really enormous. It's a polarized community out there. You have every chapter--106 chapters in Mississippi--of the NAACP opposing him, including, his own chapter in Laurel, Mississippi. I think he's had a record of involving some of his personal views and his opinions, and, of course, when he was in public office, he took extraordinary right-wing positions on issues. This is a very sensitive circuit. It represents people of color in a major way. It used to be sort of a breakthrough circuit, in terms of securing rights for people, and it's become much, much more conservative.

I think that people on our side believe that it would be a tremendous mistake to put someone as polarizing in this position now. So I believe he will not be confirmed.

MR. RUSSERT: Senator Brownback.

SEN. SAM BROWNBACK, (R-Kan.): Well, I think he should be confirmed. And I'd sure like us to start getting at least a few judges confirmed. There are over 100 judicial positions, federal district courts, circuit court judge positions that are open in the country today. Judges have been confirmed at a rate of less than 40 percent during the Clinton or first Bush--term Bush One, if you will. We need to get some judges out there and confirmed in positions, if for no other reason than for homeland security, so we can deal with judicial issues coming forward. And they've been continually held on up. Judge Pickering...

MR. RUSSERT: But both parties did that. When President Clinton...

SEN. FEINSTEIN: That's correct. That's correct.

MR. RUSSERT: ...from '95 to 2000, 35 percent of Clinton's appointments to the court of appeals were blocked.

SEN. FEINSTEIN: And then 65 percent the next year.

SEN. BROWNBACK: If you're looking, though, at a comparable period of time, under George Bush, the president now, Bush 43rd, as it was during President Clinton's first years in office, you had a far greater number of people confirmed at that period of time. And plus, the Democrats at that point in time, which--we used to point this out greatly about the number of positions that are open, 100 federal district court and circuit court judge positions that are open. That really is untenable, and it shouldn't continue.

MR. RUSSERT: As for Judge Pickering, let me just ask one question on that that I found quite striking. He has been reversed 26 times.

SEN. BROWNBACK: Out of about 4,009 cases.

MR. RUSSERT: But what's important here is 15 of those cases he was reversed because he did not accept well-settled principles of law. Judge Edith Brown Clement, who's also in that district, who was put on the



bench, extremely conservative, but not opposed, was never reversed on issues of well-settled principles of law. Does that bother you?

SEN. BROWNBAC: And--well, how many total cases, Tim? I mean, I've practiced law. How many total cases? I mean, I think we have about 4,000 cases that you're talking about.

MR. RUSSERT: But well-settled principle law is...

SEN. BROWNBAC: Well...

MR. RUSSERT: ...as a lawyer, as you well know, is very, very important because...

SEN. BROWNBAC: And it's also in the view of the beholder, well-settled principles of law. I mean...

MR. RUSSERT: But a denial of legal precedent is an indication that someone is not willing to accept legal precedent, which suggests, or indicates, perhaps, their personal opinions are being woven in.

SEN. BROWNBAC: Well, out of what percentage is he not willing to accept? And, plus, if I could submit to you, as a lawyer, the issues of well-settled principles of law is open to definition by lawyers, that one would say this is well-settled, others would not. You know, about 26 cases out of 4,000--I would say that the man is very willing to accept well-settled principled cases of law. Plus, you might recall that we went through some of these same sort of arguments with Attorney General John Ashcroft. People said, "OK, he's going to insert his own personal opinions in these cases." He testified in committee under oath, "I'm not going to do that. This is what the law is. I will enforce the law even if my personal opinion is to differ on that." And I think it's very clear that what you have here is an honorable man, son in the United States Congress, as well, been sitting on the federal bench for some period of time--this is a good man that people are really trying to smear in a way that is not becoming of the institution, and yet it seems to be the way that is evolving around here.

MR. RUSSERT: If the Judiciary Committee rejects Judge Pickering by a vote of 10-to-9, what happens?

SEN. BROWNBAC: I think you're going to see a lot of people taking actions to try to move that on forward some other way, to see if we can bring pressure to bear on the committee, and to try to press the committee to start getting more judicial nominations in total, moving on through the process. And we can do it.

MR. RUSSERT: Senator Lott has said, "Pickering will be confirmed or else." What does "or else" mean?

SEN. BROWNBAC: I can't speak for Trent, what he's saying on that. But the Senate is virtually evenly divided, and we really do need to be working together to be able to get things on through because we've got a lot of major legislations, passed the House, been held up in the Senate.

MR. RUSSERT: Senator Feinstein, let me pick up on a point that Senator

Brownback raised and that is the destruction of judicial nominees. This is what The Washington Post had to say. They said there are a lot of grounds to oppose Pickering. But "...opposing a nominee should not mean destroying him. And the attack on Judge Pickering has become an ugly affair. His critics have focused for the most part not on his qualifications, temperament, approach to judging or on the quality of his judicial work. The judge's opponents, rather, have tried to paint him as a barely reconstructed segregationist. To do so, they have plucked a number of unconnected incidents from a long career...None of these incidents, when examined closely, amounts to much, but opponents string them together, gloss over their complexities and self-righteously present a caricature of an unworthy candidate."

Reaction?

SEN. FEINSTEIN: Well, my reaction is this, and I've looked rather carefully at his background, and I think you have a person who has very strong right-wing views, both politically and personally. The question always comes: Can you put those views entirely aside? This is a lifetime appointment. If you can't be assured that the individual is really going to put those views aside, what happens is two years into the term those views creep forward again. And, generally, when you say, "Well, we're going to follow precedent," there are enough edges around precedent that an individual's views do come into it. That's my finding after nearly a decade on that committee.

I think there's another thing. President Bush did not have a large mandate. There is no mandate, in my view, to skew the courts to the right. And so I think you're going to see a Judiciary Committee that's really going to be looking for mainstream judges, and those judges that they find outside of the mainstream I do not believe will have Democratic support.

MR. RUSSERT: If the Judiciary Committee votes against Pickering 10-to-9, is the nomination dead?

SEN. FEINSTEIN: I believe so.

MR. RUSSERT: There's no way to bring it to the floor?

SEN. FEINSTEIN: No. I do not believe there is, unless there's a vote to bring it to the floor. If the committee wants to keep it in the committee, the committee can do so. If there is a separate vote to bring it to the floor, then it will go to the floor.

MR. RUSSERT: Would that happen, a vote would go to the floor without recommendation or a negative recommendation?

SEN. FEINSTEIN: Well, I can't say for sure. I don't know. We have only, you know, discussed this informally amongst ourselves, so I can't answer that.

SEN. BROWNBACK: And I would hope we wouldn't have litmus tests on judges. It used to be that, OK, Ronald Reagan was accused of a litmus test on judge. We shouldn't have a litmus test from the left or the right on judges. And I think it'd be fair to say that that should be a standard for both sides.



MR. RUSSERT: Let me turn to another...

SEN. FEINSTEIN: Let me just say one thing 'cause I can't let that one go. This isn't a federal district court. This is an appellate court. For most people, the appellate courts are very much like the Supreme Court. They decide the cases. There are big cases to be decided. There are points that many of us feel passionately about, one of them being Roe vs. Wade. Sam and I would disagree on Roe vs. Wade. I don't want to see Roe overturned. I'm in a position where I'm going to be very careful that a judge that I vote for to go to a circuit court will not do that. And I think I have every right to do so. It's not a question of a litmus test. It's a question of following established law and keeping that law intact.

SEN. BROWNBACK: I think that was defined as a litmus test under Ronald Reagan what Senator Feinstein just articulated.

MR. RUSSERT: We want to come back and talk about cloning. We're going to take a quick break. Another complicated controversial issue, cloning, either reproductive or therapeutic, right after this.

END SEGMENT