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**From:** "Miranda, Manuel (Frist)" <Manuel\_Miranda@frist.senate.gov> ( "Miranda, Manuel (Frist)"  
<Manuel\_Miranda@frist.senate.gov> [ UNKNOWN ] )

**To:** P6/(b)(6)

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**Subject:** : Holmes Conf Call/ Weds 2:30

[P\\_DY2NF003\\_WHO.TXT\\_1.html](#)

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<Manuel\_Miranda@frist.senate.gov> [ UNKNOWN ] )

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<Manuel\_Miranda@frist.senate.gov> [ UNKNOWN ] )

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For tomorrow's off-the-record discussion on Holmes, attached are the relevant transcript excerpts characterizing the views of Leon Holmes. We are working on more responses.

Please note the views of:

Dianne Feinstein on Christian marriage

Charles Schumer on the morality of abortion and slavery

And Richard Durbin on Catholic social teaching and theology

Please note also in reading Durbin's comments on a 23 year old article by Homes on rape and Miami that 23 years ago Durbin was pro-life.

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ATT CREATION TIME/DATE: 0 00:00:00.00

File attachment <P\_DY2NF003\_WHO.TXT\_1>

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File attachment <P\_DY2NF003\_WHO.TXT\_2>

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Note: The following relates out of context characterizations  
of what Mr Holmes actually wrote or said. Emphasis is ours.

Transcript Excerpts on Judiciary Committee

re Leon Holmes

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THURSDAY, APRIL 10, 2003

The Committee met, pursuant to notice, at 10:10 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Grassley, Specter, Kyl, DeWine, Craig, Chambliss, Cornyn, Leahy, Kennedy, Kohl, Feinstein, Feingold, Schumer, and Durbin.

Chairman Hatch. I would like to welcome everybody to this markup. We have several important matters on today's agenda including five nominations that I would like to have voted on today. They are: J. Leon Holmes to be District Judge for the Eastern District of Arkansas...

Chairman Hatch. The clerk will call the roll on J. Leon Holmes. I am sorry. Excuse me. Senator Feinstein. I am sorry. I apologize.

Senator Feinstein. Let me begin, Mr. Chairman, by saying that I have never voted against a district judge, and in reading this record and listening to the comments that this man has made, I do not see how anyone can divine from these comments that he has either the temperament or the wisdom to be a judge. Frankly, I was shocked by some of them. Let me read a couple.

In 1980 he wrote a letter to the editor stating that abortion should not be available to rape victims because conceptions from rape occur with the same frequency as snow in Miami. That may be a smart kind of statement to make, but nonetheless, I think it shows what is beneath the surface.

He co-wrote an article in which he stated that, "The wife is to subordinate herself to her husband," and "The woman is to place herself under the authority of the man." How could I ever vote for this man to be a judge?

In a recent article written with his son, Jeremy, he argues that, "Christianity in principle cannot accept subordination to the political authorities, for the end to which it directs men is higher than the end of the political order."

He wrote that, "The abortion issue is the simplest issue this country has faced since slavery was made unconstitutional, and it deserves the same response."



He wrote a column attempting to recast the Lincoln-Douglas presidential debates in the 1850s as equivalent to the abortion debate, and stated that Douglas was "pro-choice on the slavery issue."

He has compared abortion to the Holocaust, writing, "The pro-abortionists counsel us to respond to these problems by abandoning what little morality our society still recognizes. This was attempted by one highly-sophisticated historically christian nation in our century, Nazi Germany."

I have a very hard time seeing where this man has the temperament to take his personal views out of his judicial conduct. How could I as a woman ever bring a case before a man that says in everything I do I must be subordinate to the man? So if that is the case, it would leave 50 percent of our population out from any kind of fair decisionmaking. So I guess all things have a first, and I will cast my first "no" vote on a district court judge.

Senator Schumer. Mr. Chairman?

Chairman Hatch. The Senator from New York.

Senator Schumer. Mr. Chairman, I feel the exact same way as Senator Feinstein. I am just amazed that this man is being nominated for district court judge. Again, me too. You give the benefit of the doubt on district court judges. I cannot think of one we have contested...

*We are not trying to have any kind of litmus test here,*

but sometimes you get someone who is *so far off the deep end*, that it is just amazing to me that this man has gotten this far. I find it hard to believe that we are nominating him here. I think it shows what some of us have been trying to say, that some of these nominees are so extreme, can we not do better? Can we not be consistent with what the President and the majority party believe, but not have someone who is so far off the deep end, this man is an embarrassment to be nominated. He is going to make a laughingstock, not of those of us who are opposing him, but of those who are supporting him, to say that--and I just want to get the quote exactly right--he said that, "Rape leads to pregnancy about as often as snow falls in Miami." It is not just insulting. I mean this guy just makes it up as he goes along. We checked the almanac. It snowed in Miami once in the last hundred years.

32,000 women became pregnant last year because of rape, 32,000. Imagine the anguish of each one of them, of each of their families. Now, we can have a debate on what the consequence of that should be, but the man is so blinded by his ideology he does not even look at the facts. These are real women. They are in pain. They have to make traumatic decisions. I am sure many of those women who were raped are not for abortion, and to take their agony, that is not



32,000 total, that is 32,000 a year. Then maybe you say, well, maybe that was a flip comment, but he does it over and over again as Senator Feinstein noted. He said that it's a woman's duty to subordinate herself to her husband and to place herself under the authority of the man. We have had a series of nominees who have done things that just show such disrespect for women.

I asked him some written questions. I asked him if a woman, who was advancing a battered woman's defense against her husband lacked confidence in his impartiality, and he said he does not see why anything he has written would justify any concern that he could not be impartial. Not only does this nominee refuse to disavow...

So these are not slips of the tongue. These are not little mistakes in an otherwise distinguished career. This is a pattern of thought to which he clings.

If a woman were in a legal dispute with a man and my case were assigned to Mr. Holmes, should he be confirmed, I would be worried if I were a woman in a dispute with a man.

There is more to be worried about. He believes that the Supreme Court rulings banning prayer in public schools, those compelling public school busing, those guaranteeing a woman's right to choose, constituted a revolution, and he

accused the judges behind those rulings of being  
authoritarians.

He has defended and endorsed Booker T. Washington's  
view--this is 2003--that slavery was a consequence of divine  
providence designed to teach white people how to be more  
Christ-like. He is saying that the Almighty said that  
slavery was a good thing.

What is going on here? Have we lost all sense of  
reality? I do not know why this man was nominated. But this goes off the deep end. He said that in all the cases in history he would have wanted to argue, the creation case is right there at the top of the list. I am not sure why since John Scopes was convicted back in 1920 whenever, but I guess he thinks he could have done a better job of defending a law that bans the teaching of evolution in our public schools, and he has not disavowed any of these views. He has continued to stand by them. In one sense I admire that. We are not getting somebody in this case who refuses to tell us what he thinks, but the bottom line is what he thinks is so bad.

That is one of the reasons we want to know people's views because there are going to be a few nominees that are off the deep end, and it is not enough in a case like this

for him to say, I will follow the law, and we just march like soldiers and say any time any potential nominee utters that mantra, then we say, yes, sir, and approve it. That is not what we should be doing here. That is not some elixir that banishes all of these views.

I want to work with you. I want to support most judges, even when I don't agree with them. I don't like judges on the far left as well as the far right, and my own Judicial Committee has knocked out judges like that when they have been here. This guy is so far off the deep end, that can't we call a halt to this at some point?....

Chairman Hatch. If we are going to hold them over, could we reserve our comments for the next time, or do you really need to speak today, Senator? Senator Durbin.

Senator Durbin. Mr. Chairman, I will make it brief because I think this is the right thing to do, to hold him over. Words count in life and in the law particularly, and the words of a judge will determine the outcome of a trial and the rights of the parties in the courtroom, and the words of Leon Holmes convict him of insensitivity to some of the most basic values and issues that come before a Federal Court.



I know that we disagree, Mr. Holmes and I, on the issue of abortion, but I can certainly tell you that of the 115 nominees from President Bush, the vast majority of them don't hold the same position that I do on the issue of abortion, and yet I have given the President his nominees. But Mr. Holmes' views reach a much different level. Let me give you a specific illustration.

I asked Leon Holmes in a written question whether he would recuse himself as a Federal District Court Judge if any of the eight different anti-abortion organizations that he has represented as an attorney would come before him in the court. He refused. He will not recuse himself when these organizations that he has represented as an attorney come before him in the court. Nor is he willing to commit to recusing himself on any type of abortion cases, despite his long history.

I also asked a question which is not a trick question. It has become boilerplate. I asked Mr. Holmes to name three Supreme Court cases with which he disagreed. I hope that you will read his response, and I would like to read it. "As a citizen I am troubled by the Supreme Court decisions in Dred Scott, Buck v. Bell," which is a case of involuntary sterilization by the State, "and Roe v. Wade, because in my view, each of those decisions failed to respect the dignity and worth of the human person."

How can a person make that statement about Roe v. Wade and then quickly add that, "I will apply this law with objectivity." I think it is almost impossible.

Let me tell you, when you go into the specific issues that have been raised here, he did say, in fairness to Mr. Holmes--and I don't know if you have seen this, Mr. Chairman; you should, and I am certain that you will quote it back to me at some future point. But when he was asked about this statement, about the likelihood of rape victims conceiving, and was quoted as saying, "Because conceptions from rape occur with the same frequency as snow in Miami," he said, and I quote, "I have to acknowledge that my own rhetoric, particularly when I first became involved in the issue in 1980 and perhaps some years thereafter, but sometimes has been unduly strident and inflammatory. The sentence about rape victims which was made in a letter to an editor in 1980 is particularly troublesome to me from a distance of 23 years later. Regardless of the merits of the issue, the articulation in that sentence reflects an insensitivity for which there is no excuse and for which I apologize."

That was part of his response to me, and that should be part of the record.

Chairman Hatch. I appreciate you bringing that out.



Senator Durbin. But I do want to make another point, and my last point. When I asked him specifically about this statement that he made, that a wife is to subordinate herself to her husband and the woman is to place herself under the authority of the man, I am very troubled by his response to me. And his response, which I will make a part of the record, says that the article that I mentioned was a discussion of the historic teachings of the Catholic Church and is based on the sacramental theology of the Catholic Church. "In my view these teachings ennoble and dignify both men and women. They do not demean either." He goes on to explain that this was in the context of ordaining priests and so forth, but I will tell you, as a person with a Catholic background, that is a troubling statement for him to make. I don't believe that that type of statement, which reflects a narrow view of Catholic theology, should be used to in any way justify a statement which by contemporary standards should not be followed by any Federal District Court Judge in any State.

I will close by saying this: I am certain that of the millions of people in Arkansas and the thousands of attorneys in Arkansas, and maybe the thousands of Republican attorneys in Arkansas, there has to be a nominee that can be brought forward that can do that State proud. Mr. Holmes is not such a nominee.