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CREATOR:Joel Pardue  
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TO:jpardue@fed-soc.org ( jpardue@fed-soc.org [ UNKNOWN ] )

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BCC:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )

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Attached you will find talking points on nominee Leon Holmes and an article addressing the "Borking" of Leon Holmes. Also, a link is below which will take you to the Cornyn hearing transcript:

<http://www.judiciary.senate.gov/hearing.cfm?id=744>

The Arkansas Democrat-Gazette, May 13, 2003, Tuesday

EDITORIALS : How to bork a nominee Leon Holmes gets the treatment BORK IS no longer a proper noun in Washington, as in Judge Robert Bork, but a verb. It means to launch a vicious, irrelevant, roundhouse campaign against a judicial nominee, throwing in everything, including a couple of kitchen sinks.

The term stems from the treatment of Judge Bork when he was nominated to the Supreme Court. Not satisfied with relevant criticisms, the judge's more partisan critics reached back to criticize everything he'd said or done from approximately the age of three, and quite a few things he hadn't.

That borking has become a Washington tradition by now-indeed, an addiction-is illustrated by the sharp but impressively mean-spirited editorial we reprint on today's page from the Washington Post. It's a textbook example of borking; students in political science classes should cut it out and save it, like a ripe specimen of that low art.

Notice that, unable to find anything contemporary to criticize about Little Rock's Leon Holmes-an outstanding scholar, advocate and thinker who has just been nominated to the federal bench-the Post has had to go back years and even

decades to dig up any utterance it could use against him, including one that went back to 1980-yes, 1980-and for which he apologized as soon as it was brought to his attention.

The other citation-a quote from Scripture in an article co-written with his wife in April of 1997-is so wrenched out of context that you might never guess it was a philosophical rumination on the Book of Ephesians.

As any smear artist knows, there's no need to go into detail. Especially relevant detail. In this case the innocent reader would be left with no idea of what kind of nominee, or man, Leon Holmes really is. Which is the whole purpose of borking: to make the nominee look like the biggest, scariest menace that ever came down confirmation road. Instead, to quote an informal recommendation from a colleague, Leon Holmes is the kind of guy he'd be willing to shoot dice with over the phone.

The charge that Mr. Holmes is in favor of the subjugation of women would amuse anyone who's ever met Susan Holmes, his wife and co-author, or any of the women in the law for whom he has been mentor, role model, supporter and encourager.

But we're glad to see that the Post has not lost its talent for irony. Alas, in this case it's unintended irony.

For the Post accuses the president of radicalizing judicial nominations by his choice of Leon Holmes for the bench, when it is the one being radical, going back or decades to find words from a much younger Leon Holmes that fail to show the proper reverence for the politically correct gods of today.

In the process, the Post has ignored the legal acumen and philosophical learning that the mature Leon Holmes has demonstrated day after day, year after year, in his career and life. Forget all that; the Post is determined to crucify this nominee even if it has to use old, rusty nails. It takes a couple of stray quotes and equates them with the man's whole career. A neat trick, if a low one.

A confession: In recent years we've found ourselves growing soft on the Post's editorial page; on its good days it started to look like one of those old-fashioned liberal organs not beyond the reach of reason. Clearly we

were  
mistaken.

When the chance to do a little borking came up, the Post has leaped at it. As if it couldn't help itself. Even if it means using low means to attain a purely ideological end. Which may be the worst thing about borking; it's habit-forming. Once it becomes ingrained in a paper's character, there's no telling when it will seep out again.

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## Leon Holmes: Quote regarding women under the authority of men

**Allegation:** “[Holmes] 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? . . . 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.” –Sen. Feinstein at the April 10 committee mark-up

### **Response:**

- Leon Holmes fully believes that men and women are equals. He has supported women in the legal profession and represented women as clients. The article that Holmes co-wrote with his wife Susan has nothing to do with the secular idea of equality of men and women, but rather, pertains to the Catholic view of gender-neutral liturgical language and the ordination of male priests. These are solely theological issues.
- The article does not claim, and Mr. Holmes does not interpret Catholic theology to hold, that “in everything [she does a woman] must be subordinate to the man.”
  - ✓ Ironically, the criticism launched at this article betrays the same misunderstanding of Catholic theology that Leon and Susan Holmes were trying to dispel in writing the article in the first place. The article was written in a Catholic magazine, for a Catholic readership. The article assumed certain background knowledge, and it did not attempt to explicate Catholic theology for readers of other faiths who would lack that background.
  - ✓ Moreover, the main thrust of the article was to explain why gender-neutral language is inappropriate in the liturgy, and the article did *not* try to explain the Catholic view of marriage.
- Leon and Susan Holmes share an orthodox view of marriage in the Catholic Church. The statements that “the wife is to subordinate herself to the husband” and that “the woman is to place herself under the authority of the man” express the church’s teachings, to which they, as Catholics, subscribe. Those phrases pulled out of context, however, do not do justice to the full teaching. Their view of marriage does not mean that Mr. Holmes and his wife think that “all women must subordinate themselves to all men.”
- Leon Holmes is a member of the Roman Catholic Church. Support for male-only ordination and distinctions between the sexes, as well as opposition to gender-neutral language in the liturgy, are among the religious teachings of the Church.

Membership in the Catholic Church, and faithful adherence to its traditional teachings in one's personal life, cannot be a disqualifying factor in the selection of a federal judge.

- Leon Holmes has clarified his views on this issue in a letter to Senator Lincoln: "This aspect of my faith—the teaching that male and female have equal dignity and are equal in the sight of God—has been manifest, I believe in my dealings with my female colleagues in our firm and in the profession as a whole." –April 11 letter from Leon Holmes to Sen. Lincoln
- In that same letter, Holmes stated that his marriage views are not relevant to his work as a lawyer and would not be relevant to his work as a judge: "[w]hile I am not at all ashamed of my faith, or any part of it, I do not believe that the historic Catholic teaching that the marital relationship symbolizes Christ and the Church is or has been relevant to my conduct in my professional life, nor would it affect my conduct as a judge, should I be fortunate enough to be confirmed."
- Mr. Holmes has stated that, as a judge, he could handle such matters fairly: "Nothing in my theological views would inhibit my ability to be fair and impartial in a case with such issues, if I am confirmed and such a case were to come before the court. I have provided pro bono representation of a woman seeking custody of her children in a divorce action. I have also made my time available to her and to her lawyers who have represented her in attempting to collect child support." –Response to Sen. Durbin's Written Questions
- The article fully supports the equality of men and women:
  - ✓ "All of us, male and female, are equally sons of God and therefore brothers of one another."
  - ✓ "[T]he distinction between male and female in ordination ... has nothing to do with the dignity or worth of male compared to female."
  - ✓ [M]en and women are equal in their dignity and value."

See "Gender Neutral Language," *Arkansas Catholic*, April 12, 1997, p. 10.

- Leon Holmes has been a supporter of and counselor to women in his career: "I have participated in decisions to make female associates partners in two firms. I supported the first woman elected to the Supreme Court of Arkansas and have in my files letters from her thanking me for my support. I have engaged in litigation with and against female lawyers. I have appeared before female judges. I have represented women in litigation against men." –Response to Sen. Schumer's written questions.
- Leon Holmes has practiced law at firms with a large percentage of female partners and associates. His past and present female colleagues in the Arkansas bar support his nomination to this position.



- ✓ “Leon was a strong proponent of my election to the partnership and, subsequently, encouraged and supported my career advancement, as well as the advancement of other women within the firm. ... As a colleague. Leon treated me in an equitable and respectful manner. I always have found him supportive of my career and believe he is very supportive of women in general. Leon and I have different political views; however, I know him to be a fair and just person and have complete trust in his ability to put aside any personal political views and apply the law in a thoughtful and equitable manner. -Jeanne Seewald, Letter to Chairman Hatch and Senators Leahy and Schumer, April 8, 2003
- ✓ “Leon has trained me in the practice of law and now, as my partner, works with me on several matters. His office has been next to mine at the firm for approximately two years. During that time, I worked with Leon as an expectant mother and now work with him as a new mother. Leon’s daughters babysit my eleven-month-old son. I value Leon’s input, not only on work-related matters but also on personal matters. I have sought him out for advice on a number of issues. Although Leon and I do not always see eye-to-eye, I respect him and trust his judgment. Above all, he is fair. While working with Leon, I have observed him interact with various people. He treats all people, regardless of gender, station in life, or circumstance, with the same respect and dignity. He has always been supportive of me in my law practice, as well as supportive of the other women in our firm. Gender has never been an issue in any decision in the firm.” -Kristine Baker, Letter to Chairman Hatch and Senators Leahy and Schumer, April 8, 2003
- ✓ “I am a female attorney in Little Rock, Arkansas. I am a life-long democrat and am also pro-choice . . . I commend Mr. Holmes to you. He is a brilliant man, a great lawyer and a fine person.” -Eileen Woods Harrison, Letter to Chairman Hatch and Senator Leahy, March 24, 2003.
- ✓ “I heartily recommend Mr. Holmes to you. He is an outstanding lawyer and a fine person. While he and I differ dramatically on the pro-choice/pro-life issue, I am fully confident he will do his duty as the law and facts of a given case require.” -Cathleen V. Compton, Letter to Chairman Hatch and Senator Leahy, March 24, 2003.
- ✓ “I support Leon Holmes because he is not only a bright legal mind, but also because he is a good person who believes that our nation will be judged by the care it affords to the least and the littlest in our society. I am not troubled that he is personally opposed to abortion. Mr. Holmes is shot through with integrity. He will, I believe, uphold and apply the law with the utmost care and diligence.” -Beth M. Deere, Letter to Chairman Hatch and Senator Leahy, March 24, 2003.

## Leon Holmes: Gender Equality and Gay Rights

**Allegation:** Leon Holmes's "views on gender equality and gay rights cast into doubt his ability to provide equal justice to women and gays and lesbians who would appear before him."  
Alliance for Justice, Letter to Chairman Hatch and Senator Leahy, March 25, 2003.

### **Facts:**

- Leon Holmes and his wife Susan co-authored an article in an effort to explain the "historic Catholic teaching regarding the relation between male and female." The article was written in a Catholic magazine, for other Catholics, and it should be understood in the full context of explicating Catholic theology. See "Gender Neutral Language," *Arkansas Catholic*, April 12, 1997, p. 10.
- The article fully supports the equality of men and women:
  - ✓ "All of us, male and female, are equally sons of God and therefore brothers of one another."
  - ✓ "[T]he distinction between male and female in ordination ... has nothing to do with the dignity or worth of male compared to female."
  - ✓ "[M]en and women are equal in their dignity and value."
- Leon and Susan Holmes share an orthodox view of marriage in the Catholic Church. The statements that "the wife is to subordinate herself to the husband" and that "the woman is to place herself under the authority of the man" express the church's teachings, to which they, as Catholics, subscribe. That view of marriage does not mean that Mr. Holmes or his wife think that all women must subordinate themselves to all men.
- Leon Holmes is a member of the Roman Catholic Church. Support for male-only ordination and distinctions between the sexes, as well as opposition to gender-neutral language in the liturgy and homosexual marriage, are among the religious teachings of the Church. Membership in the Catholic Church, and faithful adherence to its traditional teachings in one's personal life, cannot be a disqualifying factor in the selection of a federal judge.
- Holmes and his wife discussed in the article gay marriage as a matter of Catholic theology. His point was that, as a matter of Catholic theology, male-only ordination and the refusal to recognize homosexual marriage are both consistent with maintaining distinctions between the sexes.
- Leon Holmes has spoken in favor of the separation of politics and religion. In a speech entitled "From Aristotle to Tocqueville on Church and State," Holmes



ενδορσεδ Τοχθεπιλλε’σ πiew τηατ “Χηριστιανity and the political order are assigned separate spheres, separate jurisdictions: to politics is assigned jurisdiction over the material interests of men; to religion is assigned concern for their spiritual well-being.”

- Leon Holmes has practiced law at firms with a large percentage of female partners and associates. His female colleagues in the Arkansas bar support his nomination to this position.
  - ✓ “I am a female attorney in Little Rock, Arkansas. I am a life-long democrat and am also pro-choice . . . I commend Mr. Holmes to you. He is a brilliant man, a great lawyer and a fine person.”  
Eileen Woods Harrison, Letter to Chairman Hatch and Senator Leahy, March 24, 2003.
  - ✓ “I heartily recommend Mr. Holmes to you. He is an outstanding lawyer and a fine person. While he and I differ dramatically on the pro-choice/pro-life issue, I am fully confident he will do his duty as the law and facts of a given case require.”  
Cathleen V. Compton, Letter to Chairman Hatch and Senator Leahy, March 24, 2003.
  - ✓ “I support Leon Holmes because he is not only a bright legal mind, but also because he is a good person who believes that our nation will be judged by the care it affords to the least and the littlest in our society. I am not troubled that he is personally opposed to abortion. Mr. Holmes is shot through with integrity. He will, I believe, uphold and apply the law with the utmost care and diligence.”  
Beth M. Deere, Letter to Chairman Hatch and Senator Leahy, March 24, 2003.
- The editorial board of the *Arkansas Democrat-Gazette* supports Mr. Holmes’s nomination: “What distinguishes Mr. Holmes is the rare blend of qualities he brings to the law—intellect, scholarship, conviction, and detachment. A reverence not just for the law but for ideas, for the life of the mind. All of that would shine through the clutter of argument that awaits any judge . . . . He would not only bring distinction to the bench but . . . a promise of greatness.”

## Leon Holmes: Abortion

**Allegation:** Leon Holmes, a past president of Arkansas Right-to-Life, holds extreme pro-life views, and he would not be able to judge fairly any cases touching on the abortion issue.

### **Facts:**

- Leon Holmes enjoys support from a number of pro-choice attorneys throughout Arkansas, who strongly believe that he will fairly adjudicate any abortion cases that come before him. These supporters include Kent Rubens, who led the fight to strike down Arkansas's abortion laws in the wake of *Roe v. Wade*.
  - ✓ “I cannot think of anyone who is better qualified to serve. . . . As someone who has represented the pro-choice view, I ask that you urge your members to support his confirmation.”  
Kent Rubens, Letter to Chairman Hatch and Senator Leahy, March 21, 2003.
  - ✓ “I am a female attorney in Little Rock, Arkansas. I am a life-long democrat and am also pro-choice . . . I commend Mr. Holmes to you. He is a brilliant man, a great lawyer and a fine person.”  
Eileen Woods Harrison, Letter to Chairman Hatch and Senator Leahy, March 24, 2003.
  - ✓ “I heartily recommend Mr. Holmes to you. He is an outstanding lawyer and a fine person. While he and I differ dramatically on the pro-choice/pro-life issue, I am fully confident he will do his duty as the law and facts of a given case require.”  
Cathleen V. Compton, Letter to Chairman Hatch and Senator Leahy, March 24, 2003.
  - ✓ “I am proud to be a Democrat. I am also proud to recommend Leon Holmes as a federal district judge for the Eastern District of Arkansas, even though he and I disagree on issues, including a woman's right to choose whether to bear a child . . . . I support Leon Holmes because he is not only a bright legal mind, but also because he is a good person who believes that our nation will be judged by the care it affords to the least and the littlest in our society. I am not troubled that he is personally opposed to abortion. Mr. Holmes is shot through with integrity. He will, I believe, uphold and apply the law with the utmost care and diligence.”  
Beth M. Deere, Letter to Chairman Hatch and Senator Leahy, March 24, 2003.
  - ✓ “I heartily commend Mr. Holmes to you. He is an outstanding lawyer and a man of excellent character. Leon Holmes and I differ on political and personal issues such as pro-choice/anti-abortion. I am a past board member of our local Planned Parenthood chapter and have been a trial



lawyer in Arkansas for over twenty-five years. Regardless of our personal differences on some issue[s], I am confident that Leon Holmes will do his duty as the law and facts of any given case require.”

Stephen Engstrom, Letter to Chairman Hatch and Senator Leahy, March 24, 2003.

- Both Senator Lincoln and Senator Pryor of Arkansas support the nomination of Mr. Holmes.
- Regardless of any personal views, Mr. Holmes will abide by the rule of law. He understands that his personal views play no role in his duty as a judge to honor *stare decisis* and faithfully follow the precedent of the Supreme Court and Eighth Circuit.
  - ✓ Holmes has spoken in support of separating religion and politics. In a speech entitled “From Aristotle to Tocqueville on Church and State,” Holmes argued that “Christianity and the political order are assigned separate spheres, separate jurisdictions: to politics is assigned jurisdiction over the material interests of men; to religion is assigned concern for their spiritual well-being.”
- The *Arkansas Democrat-Gazette*, Holmes’s hometown paper that knows his record best, strongly supports his candidacy. The paper, writing while his candidacy was being considered, indicated that Holmes was a well-qualified, mainstream nominee:
  - ✓ “What distinguishes Mr. Holmes is the rare blend of qualities he brings to the law—intellect, scholarship, conviction, and detachment. A reverence not just for the law but for ideas, for the life of the mind. All of that would shine through the clutter of argument that awaits any judge . . . . He would not only bring distinction to the bench but promise. . . . In choosing Leon Holmes, [the President] could bequeath a promise of greatness.” Editorial, *Name on a List in a Field of Seven, One Stands Out*, ARKANSAS DEMOCRAT GAZETTE, Dec. 1, 2002, at 86.
- Prominent liberal politicians, including recent presidential candidates and members of the Judiciary Committee, have supported measures to extend legal protections to unborn children. Under the litmus test currently applied by some Democrats, Al Gore and Dick Gephardt never could be confirmed to the federal bench.
  - Congressman Al Gore voted to amend the Civil Rights Act to define a “person” to include an “unborn child[] from the moment of conception.” This would have statutorily prohibited abortion. *Vote 269, H. Amdt. 942 to H.R. 5490 (Civil Rights Act of 1984), 93d Cong., 2d Sess. (1984)* .

- Congressman Dick Gephardt issued a press release that read as follows: “Mr. Gephardt pledged in a campaign position paper entitled, ‘Justice, Your Congressman and the Abortion Issue’ released September 5, 1976, that he would sponsor and work for a Constitutional Amendment to prohibit any abortion except to save the life of the mother.”
- Senator Ted Kennedy wrote a letter that stated: “I am opposed to abortion on demand. This opposition is based on my deep personal, moral and religious beliefs.” *Letter of Oct. 5, 1979*. In an earlier letter, Kennedy further explained that “Wanted or unwanted, I believe that human life, even at its earliest stages, has certain rights which must be recognized—the right to be born, the right to love, the right to grow old.” “But once life has begun, no matter at what stage of growth, it is my belief that termination should not be decided merely by desire.” *Letter of Aug. 3, 1971*
- Senator Dick Durbin argued that “the right to abortion is not guaranteed by the U.S. Constitution.” He therefore supported a constitutional amendment to overrule *Roe v. Wade*. “The effect of this Amendment will be to return us to the legal environment which existed before *Roe v. Wade* in 1973. States would be allowed to regulate the practice of abortion under their power to legislate in areas of health and safety.” *Letter of May 12, 1983*.
- Mr. Holmes is a member of the Roman Catholic Church. Opposition to abortion is among the religious teachings supported by the Church. Membership in the Catholic Church, and faithful adherence to its teachings, cannot be a disqualifying factor in the selection of a federal judge.
- Abortion-rights groups have a poor track record of predicting how judicial nominees will vote, particularly on matters involving abortion and sex-based discrimination, after they are confirmed.
- ✓ During Justice Souter’s 1990 confirmation hearings, NOW’s president testified that confirming him would mean “ending freedom for women in this country.” *Washington Post* (Sept. 30, 1990). “I tremble for this country if you confirm David Souter.” *Austin-American Statesman* (Sept. 26, 1990). She further described Souter as “almost Neanderthal,” and warned that “women’s lives are at stake.” *U.S. News & World Report* (Sept. 24, 1990).
  - In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), Justice Souter co-authored the plurality opinion that reaffirmed the central holding of *Roe v. Wade*—that the Constitution protects a woman’s right to procure an abortion.



- In *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), Justice Souter ruled that an employer was subject to vicarious liability under Title VII to an employee who suffered sexual harassment at the hands of her supervisor, since the employer had failed to exercise reasonable care to prevent the harassment.
- In *United States v. Lanier*, 520 U.S. 259 (1997), Justice Souter held that a state judge who sexually assaulted five women in his chambers could be prosecuted under 18 U.S.C. § 242, which makes it a crime for persons acting under color of state law to deprive persons of their constitutional rights.
- ✓ When Justice Stevens was nominated to the Supreme Court in 1975, Nan Aron—then the president of the Women’s Legal Defense Fund—testified in opposition to him on the ground that he had shown “blatant insensitivity to discrimination against women.” She further faulted him for having a “predisposition to rule adversely in cases which women bring under the Equal Protection Clause.” 94th Cong. 227 (1975).
- In *Hill v. Colorado*, 530 U.S. 703 (2000), Justice Stevens held that a state law that prohibited any person from approaching another person near an abortion clinic, for the purposes of distributing literature or engaging in oral protest, was consistent with the First Amendment.
- In *Hodgson v. Minnesota*, 497 U.S. 417 (1990), Justice Stevens ruled that a state law requiring that both parents be notified of their minor daughter’s decision to procure an abortion was unconstitutional.
- In *Gannon v. University of Chicago*, 441 U.S. 667 (1979), Justice Stevens held that the plaintiff had a right under Title IX of the 1972 Education Amendments to pursue a private cause of action against medical schools at two private universities, which allegedly discriminated against her on account of her sex.
- In *City of Los Angeles, Department of Water and Power v. Manhart*, 435 U.S. 702 (1978), Justice Stevens ruled that the department’s requirement that female employees make larger contributions to its pension fund than male employees violated both the language and policy of Title VII.

### Summaries of Editorials and Letters to the Editor

- “Embryo Is a Living Human,” *Arkansas Democrat Gazette*, August 22, 1996, p. 9B. Holmes discussed the testimony of a doctor who performed the abortion that “created the Medicaid crisis,” and noted that the doctor indicated that at that time the abortion is commenced, “the womb contains a member of the human species, a human embryo, with arms and legs, hands and feet.” Holmes concludes from this description that “the unborn is a living human who is killed by abortion.”
- “Generation Faces Major Questions Over Nation’s Soul,” *Arkansas Democrat Gazette*, July 4, 1992, p. 6D. Holmes argues that abortion is the most important issue of our time—as was slavery more than a century ago—and that failing to stop it will poison the spiritual soul of the nation and reduce the commitment to life and liberty. In passing, Holmes says “[b]easts are intended to be governed by us for our purposes, and we violate no principle of right when we take their lives for some legitimate purpose of our own, including to use for food.”
- “Anti-abortion Movement Has Only One Goal: Life,” *Arkansas Democrat*, June 24, 1987, p. 7B. Written while Holmes was President of Arkansas Right to Life, Holmes argues that political views of pro-lifers on other issues are irrelevant and that pro-life liberals can form their own groups. He rejects those who say they agree with pro-lifers but won’t join them because pro-lifers have “bad attitudes.” Such critics don’t really “believe taking innocent life is wrong,” according to Holmes. He discusses the Declaration of Independence as a document that liberals today reject and conservatives endorse. He asks, “if our school children can recite the declaration, which acknowledges God as creator, why can they not lift up a prayer thanking him for the rights we enjoy?”
- Letter to the Editor, *Arkansas Democrat Gazette*, December 13, 1986. Holmes points out that the newspaper recently reported that a local television station had removed ads containing pictures of the aftermath of abortion because they were termed offensive and obscene. He made the point that nobody asserted that the pictures were inaccurate, and that in fact, some people after viewing such pictures are moved to “stop abortion.”
- “Should We Protect the ‘Unborn Child,’” *Arkansas Gazette*, October 18, 1984. Holmes defends the wording of the Unborn Child Amendment to the Arkansas Constitution, and argues that the ACLU wants to force taxpayers to fund abortion. He discusses an incident in Pine Bluff the previous year where “one abortionist sent an infant girl, who had survived the abortion, home with the mother in a garbage bag with the assurance that the bag would quit moving after awhile,” and he advocated passing a law to protect children who survive abortions. Finally, Holmes labels as “silly” the argument that the term “unborn child” is misleading.
- “Lincoln-Douglas Debates: The Jury is Not Yet In,” *Arkansas Gazette*, February 12, 1984, p. 15B. Holmes argues that fetuses have a right to life that must be



recognized, just as slaves had a right to be free. Although, as Lincoln recognized, “freedom of choice in most matters is and must be the rule in the American order,” when it comes to fundamental life and liberty as it does in the cases of slavery and abortion, choice must be restricted. According to Holmes, the right to life of the unborn must be respected and slavery prohibited, because one person may not choose to take the life or liberty of another.

- “The Scary New Argument for Abortion,” *Arkansas Gazette*, September 28, 1982, p. 9A. Holmes laments a trend in recent pro-choice articles toward admitting that abortion is murder, but endorsing it anyway. He says that the trend clears away a pseudo issue, but that it frightens him with its low regard for life. He discusses recent cases of abortion and infanticide of Down’s Syndrome babies as further signs of the low regard for life. He takes particular issue with the argument that abortion prevents child abuse: “It is a strange argument to say that child abuse can be prevented by killing children. By like reasoning, we could prevent rape by killing women.” The article ends with an unflattering comparison to Nazi Germany: “The proabortionists counsel us to respond to [great social] 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. Unlike Nero, who fiddled while Rome burned, the proabortionists rush to throw gasoline on the flames.”
- Letter to Editor, *Daily Dispatch*, Dec. 24, 1980. Holmes writes that the Human Life Amendment would not affect contraception and that pro-life opponents of it should offer an alternative to it rather than merely criticize it, which smacks of dishonestly “perpetuat[ing] the status quo.” He calls the concern for denying abortions to rape victims a red herring, “because conceptions from rape occur with approximately the same frequency as snowfall in Miami.” He concludes by saying that “the abortion issue is the simplest issue this country has faced since slavery was made unconstitutional. And it deserves the same response.”
- Letter to Editor, *Christian Science Monitor*, December 23, 1980, p. 22. Holmes writes in response to a Nina Totenberg piece entitled “Did America vote for this, too?” Totenberg apparently assailed cultural changes in store in the wake of Reagan’s election as not being democratically chosen. Holmes takes issue with Supreme Court rulings for abortion and forced busing, and against prayer in school, and he notes that an unelected Supreme Court brought about each.
- Letter to Editor, *Daily Dispatch*, Dec. 4, 1980, p. 4. Holmes writes as (at that date) a non-Catholic and non-member of the New Right, but as one “committed to terminating the slaughter of unborn children.” He argues that the morality of abortion does not turn on who supports or opposes it, and that those who rail against the Catholic Church and the New Right sidetrack the public discussion of abortion from the merits of the dispute. He terms opposition to abortion coupled with opposition to a Constitutional Amendment against abortion “a dishonest copout,” because the only reason to oppose abortion is if one views the unborn

child as human and an Amendment would simply extend Constitutional protection to such humans. He also argues that the New Right's support for voluntary prayer in schools and capital punishment, and its opposition to abortion and forced busing, "need not be feared as a step towards fascism" because they were the existing public policy in a non-fascist U.S. a very short time ago.

- "Abortion Without Natural Affection," TV Program on local Arkansas station, 1990. Mr. Holmes appears at a couple of places in the program. He notes that the unelected Supreme Court made the *Roe* decision. He predicts that the votes are there to overturn *Roe* in the right case. He also predicts that if the decision were returned to the states Arkansas would permit abortion in cases of rape, incest, and jeopardy to the physical health of the mother. He characterizes those exceptions as not being a consistent pro-life position, because they still deny the sanctity of life. He refers to an Indiana case where a court permitted the parents of a Down's Syndrome child to withhold food and water as a case of infanticide.
- "Challenge," TV program on Newscenter 4, Little Rock, 1986. Mr. Holmes debated a local doctor about the effects of Amendment 65, which proposed to eliminate state funding of abortion and protect the unborn child to the maximum extent permissible under federal law. At one point in the program, after the doctor says fetuses look like fish, Holmes holds up a picture of a several week old fetus to make the point that even young fetuses are fully human.



## **Leon Holmes: Response to Alliance for Justice Letter**

**Allegations:** Leon Holmes's "zealous advocacy for doing away with ... a fundamental right [to abortion], along with extreme statements he has made about the separation of church and state, gay rights, and gender equality, raises serious questions about his fitness for a lifetime appointment to the federal bench." Alliance for Justice letter to Sens. Hatch and Leahy, March 25, 2003.

### **Facts:**

#### **Abortion**

- Holmes's support for a Human Life Amendment to the U.S. Constitution indicates that he respects precedent.
  - ✓ Holmes's support for a constitutional amendment simply demonstrates his understanding that *Roe v. Wade* and *Casey v. Planned Parenthood* are settled law that would have to be overturned by constitutional amendment.
  - ✓ Holmes's view that abortion deserves the same response that slavery got in this country simply means that he believes abortion should be ended by constitutional amendment, just as slavery was.
  - ✓ Holmes has written that if a constitutional amendment were passed under which Arkansas could determine its own abortion policy, abortion would most likely be permitted in certain cases.
- Holmes has been a member of the National Lawyers Association (NLA), but he has also been a member of the American Bar Association (ABA).
  - ✓ The NLA was formed in part to provide lawyers the opportunity to join a professional organization in which all members would have the opportunity to vote on socio-political issues. The ABA, in contrast, allows its 539-member House of Delegates to decide political questions on behalf of its 370,000 members, such as the controversial decision in 1992 to support abortion rights.
  - ✓ Philip Anderson, a recent President of the ABA, was a long-time law partner of Leon Holmes and has written the Senate Judiciary Committee in support of him:

"I believe that [Leon Holmes] is superbly qualified for the position for which he has been nominated. He is a scholar first, and he has had broad experience in federal court. He is a person of rock-solid integrity and sterling character. He is compassionate and even-handed. He has an innate sense of fairness. He is temperamentally suited for the bench. He works with dispatch. In short, he has all of the qualities that one would

hope to find in a federal judge, and seldom are they found in a person so amiable and with his degree of genuine humility.”

-letter from Philip Anderson to Sen. Hatch on March 25, 2003.

- Holmes’s representation of Arkansas Right to Life in 2001 as *amicus curiae* in the *Aka v. Jefferson Hosp. Ass’n* case was entirely appropriate, and the Arkansas Supreme Court agreed with him.
  - ✓ Gross negligence in that case on the part of the hospital and the attending physicians led to the needless death of a pregnant woman and her unborn full-term child. The woman needed a caesarean section, but the doctors who were qualified to perform it did not come to the hospital in time, and the residents in charge of the woman’s care were not qualified to perform the procedure.
  - ✓ The father brought a wrongful death suit on behalf of his deceased wife’s estate and his deceased unborn son’s estate. The hospital and doctors defended in part by challenging the father’s ability to sue on behalf of his unborn son’s estate.
  - ✓ The Arkansas Supreme Court ruled in favor of the position supported by Holmes’s client, holding that a viable fetus was a “person” for the purposes of Arkansas’s wrongful death statute, and that the plaintiff-father could bring suit under that statute on behalf of his unborn son’s estate.
- Holmes’s representation of the defendant in *Pursley v. Arkansas* in 1987 was entirely appropriate.
  - ✓ Dow Richard Pursley was a therapist in Springdale, Arkansas. In his professional counseling practice, he had counseled a number of women who suffered serious psychological harm as a result of having had an abortion. Several of these women had attempted suicide. One patient of his had a daughter who was so traumatized by having had an abortion that she could not live with herself and committed suicide.
  - ✓ Pursley became distraught that women were not being told the possible psychological consequences of getting an abortion, and he went to a clinic in Fayetteville where he thought abortions were being performed with the intention of warning women about the psychological consequences they might suffer if they underwent an abortion.
  - ✓ Pursley stationed himself on a public sidewalk near the clinic. As women went into the clinic, he followed them onto the private sidewalk to warn them of psychological risks of abortion and offer them alternatives. The clinic was a stand-alone facility with a separate parking lot, so it was not possible to approach the women entering the clinic without venturing onto private property. Pursley persisted in entering the private property “despite repeatedly being told not to do so.” He never entered the front porch of the clinic or the clinic building itself.



- ✓ Pursley was arrested and charged on a misdemeanor trespassing count. He retained Leon Holmes to defend him at trial and on appeal.
- ✓ The trial court found Pursley guilty and imposed a \$300 fine and 15-day suspended jail sentence. On appeal, Holmes argued that the trial court erred in excluding evidence that Pursley had observed instances of abortion's harmful psychological results in his professional counseling practice. Holmes also argued that the trial court erred in refusing to give a "choice of evils" instruction to the jury, which is a statutory defense in Arkansas whereby an ordinarily criminal act may be excused in light of extraordinary attendant circumstances.
- ✓ Every criminal defendant is entitled to competent defense counsel, which Holmes provided Pursley. Because Pursley freely admitted that he had entered the private property, the choice of evils defense was the only one available to Pursley that Holmes could make.
- ✓ The court of appeals ruled that the trial court did not err in refusing to give the "choice of evils" defense, because Pursley put himself near the clinic, there was no proof of imminent danger to the women, and there was no evidence that any of the women were pregnant or had come to the clinic for an abortion. The court of appeals did not reach the question of whether the psychological harm evidence was properly excluded.
- ✓ Pursley was only charged with trespassing. He approached the women in a conversational tone, and did not obstruct their entrance to the clinic. He was not charged with threatening behavior of any kind. Pursley was thus a very different defendant than Paul Jennings Hill, the man who was denied the choice of evils defense in his 1994 Florida murder trial for killing an abortion doctor and his two escorts.

### *Separation of Church and State*

- The Alliance for Justice letter falsely claims that Leon Holmes questioned the separation of church and state in a speech to the Society of Catholic Social Scientists. To level this pernicious accusation, the Alliance for Justice letter lifts a quote from that speech entirely out of context. Any fair reading would construe Holmes's remarks to reach the conclusion that Christianity and political authority have separate spheres of jurisdiction, which is the exact opposite of the Alliance for Justice's claim that Holmes questions the separation of church and state.
- ✓ When Holmes states that, "Christianity, in principle, cannot accept subordination to the political authorities," Holmes is explicitly contrasting Christianity with the pagan religions about which Aristotle wrote. Aristotle, according to Holmes, "stated that in a properly constituted polity, appointment of the priests and custodians of the temples, as well as the management of public sacrifices, are political concerns." Holmes makes the obvious point that the appointment of priests and the like is not the business of modern public authorities. In other words, unlike the

control the state exerted over religion in Aristotle's day, Holmes recognizes that there is a separation of church and state in America today.

- ✓ Taken in context, it is patently obvious that the quote used by the Alliance for Justice is simply one of the four theoretical possibilities that Holmes discusses. He does not endorse it. In fact, he argues that when political rulers have tried to subordinate Christianity to their political authority, "the results have been disastrous," regardless of whether the political authorities were seeking to help or hinder it.
- ✓ Holmes notes that there are four possibilities for the proper relationship between Christianity and the political order:
- ✓ The only possibility Holmes sees as realistic is the fourth, "that Christianity and political authority would be assigned separate spheres of jurisdiction." Holmes describes this in shorthand as a "[g]ive to Caesar what is Caesar's and to God what is God's" way of doing things, and he notes that separate spheres of jurisdiction is the approach favored by modern liberalism—including John Locke, Thomas Jefferson, and Alexis de Tocqueville—and the modern Catholic Church.
- ✓ Holmes comes down squarely on the side of supporting this separation of religion and politics. For Tocqueville, "Christianity and the political order are assigned separate spheres, separate jurisdictions: to politics is assigned jurisdiction over the material interests of men; to religion is assigned concern for their spiritual well-being." Holmes raises some questions about Tocqueville's reasoning, but he notes that "[t]he Church has come to a teaching that is akin to that of Tocqueville." Under the Church's version, however, church and state must be separate because Adam's original sin separated human nature and original justice. Holmes espouses this view, thereby offering the Catholic social scientists theological grounds for the separation of church and state, as well as political ones.



## Leon Holmes

- The Arkansas Democrat-Gazette, Holmes' hometown paper that knows his record best, strongly supports his candidacy. The paper, writing while his candidacy was being considered, indicated that Holmes was a well qualified, mainstream nominee:
  - ✓ “What distinguishes Mr. Holmes is the rare blend of qualities he brings to the law—intellect, scholarship, conviction, and detachment. A reverence not just for the law but for ideas, for the life of the mind. All of that would shine through the clutter of argument that awaits any judge . . . . He would not only bring distinction to the bench but promise. . . . In choosing Leon Holmes, [the President] could bequeath a promise of greatness.” Editorial, *Name on a List in a Field of Seven, One Stands Out*, ARKANSAS DEMOCRAT GAZETTE, Dec. 1, 2002, at 86.
- Leon Holmes has practiced commercial litigation at the trial and appellate level in state and federal court for many years, and has acquired significant courtroom experience. He is currently a partner at Quattlebaum, Grooms, Tull & Barrow in Little Rock, Arkansas.
- The American Bar Association gave Holmes a “well-qualified” rating.
- Both Democrat home-state senators, Senator Blanche Lincoln and Senator Mark Pryor, support Leon Holmes's nomination.
- Leon Holmes knows the value of hard work. He came from humble roots and is the only one among his seven siblings to attend college. He worked his way through college, and finished law school at night while working a full-time day job in order to support his family.
- Leon Holmes is an accomplished scholar, and has taken the time out of his law practice to teach a variety of legal classes.
  - ✓ Mr. Holmes finished law school at the top of his class, was inducted into Phi Beta Kappa while a doctoral student at Duke University, and was named Outstanding Political Science Student upon graduation from college.
  - ✓ During the academic years from 1990-1992, Holmes taught a variety of courses at Thomas Aquinas College in California. He also taught law at the University of Arkansas during the year that he clerked for Justice Holt on the Arkansas Supreme Court.
  - ✓ Mr. Holmes has displayed a wide-ranging academic interest. His doctoral dissertation discusses the political philosophies of W.E.B. DuBois and

Booker T. Washington, and it analyzes the effort Dr. Martin Luther King, Jr. made to reconcile their divergent views. He has also written substantial essays dealing with subjects in law, political philosophy, and theology.

- Mr. Holmes has been an active participant in the Arkansas Bar:
  - ✓ Holmes has taught continuing legal education courses to the bar on numerous occasions. He has been awarded the state bar's "Best CLE" award four times.
  - ✓ Holmes sits on the Board of Advisors to the Arkansas Bar Association's magazine.
  - ✓ Holmes chaired the editorial board for the bar's publication of *Handling Appeals in Arkansas*.
  - ✓ Holmes sits on the judicial nominations committee for the Arkansas state courts, which recommends attorneys to the Governor for judicial appointment in supreme court cases where one or more justices must recuse themselves.
- Leon Holmes is one of the top handful of appellate lawyers in Arkansas. In 2001, the Arkansas Bar Association bestowed its "Writing Excellence" award on Holmes.
- On two occasions Leon Holmes has been appointed to serve as a special judge of the Arkansas Supreme Court, a great honor for a practicing attorney. The justices praised his service in those cases, and more than one has encouraged him to run for a seat on the Arkansas Supreme Court.
- Leon Holmes is very well respected by the plaintiffs' bar in Arkansas. Holmes is currently defending on appeal the largest jury verdict ever awarded in Arkansas's history, in the case of a nursing home resident who allegedly died from neglect. On account of his outstanding reputation, Holmes was retained to handle the appeal.
- Mr. Holmes believes in giving back to the community, and has generously provided his services on a pro bono basis.
  - ✓ Holmes was *habeas* counsel for death-row inmate Ricky Ray Rector, the mentally retarded man whose execution then-Governor Clinton refused to commute during the 1992 Presidential election. Holmes helped to prepare the case for the evidentiary hearing in federal district court after the *habeas* petition had already been filed.
  - ✓ Holmes represented a Laotian immigrant woman suffering from terminal liver disease when Medicaid refused to cover treatment for a liver transplant.



- ✓ Holmes represented a woman who lost custody of her children to her ex-husband and could not afford counsel for an appeal.
- ✓ Holmes represented an indigent man with a methamphetamine felony history in connection with some traffic misdemeanors.
- Leon Holmes has given back to his community in areas outside the law as well. He was a houseparent for the Elon Home for Children while a graduate student in North Carolina. He also served as the director of the Florence Crittenton Home of Little Rock in 1986-87, helping young women cope with teen pregnancy.
- Leon Holmes's former law partner Philip Anderson (of Williams & Anderson) is a recent past President of the American Bar Association. He strongly supports Holmes.