

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Ranking Member, Senate Judiciary Committee
Hearing on Judicial Nominations
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Today, the Committee will consider the nominations of three candidates for lifetime appointments to federal courts. Jerome A. Holmes, who has been nominated for a seat on the Court of Appeals for the Tenth Circuit, Daniel P. Jordan, III, who has been nominated to be a judge on the U.S. District Court for the Southern District of Mississippi, and Gustavo A. Gelpi, who has been nominated to be a judge on the U.S. District Court for the District of Puerto Rico. I have already heard plaudits for Mr. Gelpi.

Mr. Holmes was initially nominated to fill a district court seat in Oklahoma. The White House renominated him after Judge James H. Payne asked the President to withdraw his nomination to the Circuit Court. That withdrawal came following public reports that Judge Payne had ruled on a number of cases in which he had a conflict of interest. These types of conflicts are a violation of federal law as well as canons of judicial ethics and have no place on the federal bench. Certainly, they should not be rewarded with a promotion.

While in practice, Mr. Holmes has written letters and columns on such topics as affirmative action, discrimination, juror racial bias and school vouchers. These columns raise concerns about how Mr. Holmes might rule from the bench on civil rights issues. I hope Mr. Holmes will use this opportunity to speak to these concerns.

In one column written after the Supreme Court's landmark affirmative action decision, *Grutter v. Bollinger*, Mr. Holmes criticized the Supreme Court for missing an "important opportunity to drive the final nail in the coffin of affirmative action" and said, "[t]he court did not go far enough: Affirmative action is still alive."

In a letter to one publication, Mr. Holmes criticized claims of race discrimination based on forced assimilation, characterizing a doctor's complaint that his colleagues had "negative reactions to his dreadlocks" as "naïve". Mr. Holmes has also written dismissively about concerns raised by a criminal defense attorney about racial prejudice at criminal trials, describing the concerns as "harmful... because it undermines public confidence in the fairness of the criminal justice system."

The Committee has received a letter expressing "grave concern" from a number of organizations concerned with civil rights, the Leadership Conference on Civil Rights, the NAACP, MALDEF, and many others.

I welcome the nominees today as well as their friends and families.

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