

## WILLIAM H. PRYOR JR.: MODEL OF JUDICIAL VIRTUE

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How does one measure a judge? Scholars and jurists have offered a number of different theories and tools. Some focus on ideology, placing judges in categories ranging from “strongly conservative” to “strongly liberal” based on their judicial decisions.<sup>1</sup> Others look at judges’ productivity, the quality of their opinions, and their independence.<sup>2</sup> Still others examine how judges’ opinions fare when reviewed by the United States Supreme Court.<sup>3</sup>

The Honorable William H. Pryor Jr.—Chief Judge of the United States Court of Appeals for the Eleventh Circuit—would receive high marks under any sound methodology, but his judicial excellence is best captured by a theory that centers on virtue. The chief proponent of this theory is Professor Lawrence Solum. He proposes evaluating judges based not on the specific outcomes they produce but instead on the virtues they possess.<sup>4</sup> A “virtue,” Solum explains, is “a dispositional quality of mind or character that is constitutive of human excellence.”<sup>5</sup> Solum posits that there are certain virtues that are widely understood as indicators of judicial excellence.<sup>6</sup> He includes in this category of “uncontested judicial virtues” incorruptibility and sobriety; courage; temperament and impartiality; diligence and carefulness; intelligence and learnedness; and craft and skill.<sup>7</sup>

If a judge’s excellence is measured by the degree to which he or she possesses these judicial virtues, then Judge Pryor is the gold standard.

Begin with incorruptibility and sobriety. A judge who possesses these virtues has well-ordered desires and is “disposed to resist the temptations that lead to corruption.”<sup>8</sup> Judge Pryor’s career in public service spans nearly three decades.<sup>9</sup> During that time, he has earned an unassailable reputation for honesty

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\* Justice, Tennessee Supreme Court. I am grateful to my law clerks, Patrick Ellis, Zachary June, and Cole Manion, for their assistance with this Essay.

1. LEE EPSTEIN, WILLIAM M. LANDES, & RICHARD A. POSNER, *THE BEHAVIOR OF FEDERAL JUDGES: A THEORETICAL AND EMPIRICAL STUDY OF RATIONAL CHOICE* 177 (2013).

2. Stephen J. Choi & G. Mitu Gulati, *Choosing the Next Supreme Court Justice: An Empirical Ranking of Judge Performance*, 78 S. CAL. L. REV. 23, 42 (2004).

3. Frank B. Cross & Stefanie Lindquist, *Judging the Judges*, 58 DUKE L.J. 1383, 1406–07 (2009).

4. See Lawrence B. Solum, *A Tournament of Virtue*, 32 FLA. ST. U. L. REV. 1365, 1365–66 (2005).

5. *Id.* at 1368.

6. *Id.* at 1369.

7. *Id.* at 1369–76.

8. *Id.* at 1369.

9. See Hon. William H. Pryor Jr., U.S. CT. OF APPEALS FOR THE ELEVENTH CIR., <https://www.ca11.uscourts.gov/judges/hon-william-h-pryor-jr> [https://perma.cc/3HCG-6QNS] (listing professional service, including service as deputy attorney general of Alabama from 1995 to 1997, attorney

and integrity. As attorney general of Alabama, then-General Pryor made the investigation and prosecution of public corruption a centerpiece of his administration. He created a new unit within the Attorney General's Office to target public corruption and white-collar crime and successfully prosecuted both Republicans and Democrats.<sup>10</sup> During his confirmation proceedings in 2003, supporters from both political parties praised Judge Pryor's integrity.<sup>11</sup>

When I clerked for Judge Pryor in 2009, I saw firsthand his deep commitment to public service and his seriousness of purpose. He considers it an immense privilege to serve our country and is ready and willing to endure the personal sacrifices and hardships that necessarily accompany ethical judicial service. Indeed, rather than harbor bitterness about his grueling confirmation process, Judge Pryor has touted the benefits of the confirmation process as a means of screening out individuals who are insufficiently courageous.<sup>12</sup> As he put it, "[t]he process is not always pretty, but . . . a lot is at stake."<sup>13</sup>

Speaking of courage, Judge Pryor has an abundance. While attorney general of Alabama, he personally prosecuted charges of judicial misconduct against the chief justice of the Alabama Supreme Court, Roy Moore, after he refused to obey a federal injunction requiring the removal of a Ten Commandments monument from the Alabama Judicial Building.<sup>14</sup> That prosecution was successful: the Alabama Court of the Judiciary voted unanimously to remove Chief Justice Moore from office.<sup>15</sup> Judge Pryor's judicial nomination received broad bipartisan support in Alabama in part because of his courageous stances on civil rights issues.<sup>16</sup> He helped prosecute two members of the Ku Klux Klan for bombing the Sixteenth Street Baptist Church in Birmingham, Alabama.<sup>17</sup> He led the effort to repeal Alabama's constitutional prohibition of interracial marriages.<sup>18</sup> And he authored legislation to make cross burning a felony in

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general of Alabama from 1997 to 2004, and a judge on the U.S. Court of Appeals for the Eleventh Circuit from 2004 to the present).

10. Saxby Chambliss, *Nominee's Traits Shout "Ideal Judge,"* ATLANTA J.-CONST., Aug. 4, 2003, at A13; William H. Pryor Jr., *A Report from the State's Law Firm*, 62 ALA. LAW. 264, 267 (2001) (statements of Senator Richard Shelby, Senator Orrin Hatch, Senator Jeff Sessions, Senator Jon Kyl, and Representative Jo Bonner).

11. See *Confirmation Hearing on the Nominations of William H. Pryor, Jr. to be Circuit Judge for the Eleventh Circuit and Diane M. Stuart to be Director, Violence Against Women Office, Department of Justice: Hearing Before the S. Comm. On the Judiciary*, 108th Cong. 1, 2, 4, 9–10 (2003) [hereinafter *Confirmation Hearing*].

12. See William H. Pryor, Jr., *Not-So-Serious Threats to Judicial Independence*, 93 VA. L. REV. 1759, 1780–81 (2007) [hereinafter *Not-So-Serious Threats*].

13. *Id.* at 1781.

14. William H. Pryor Jr., *Moral Duty and the Rule of Law*, 31 HARV. J.L. & PUB. POL'Y 153, 156 (2008) [hereinafter *Moral Duty*].

15. *Id.*

16. See Byron York, *The Nominee Who Won't Back Down*, NAT'L REV. (June 12, 2003, 12:45 PM), <https://www.nationalreview.com/2003/06/nominee-who-wont-back-down-byron-york/> [https://perma.cc/YS7V-5KVR].

17. *Confirmation Hearing*, *supra* note 11, at 3 (statement of Representative Jo Bonner).

18. *Id.*

Alabama, despite being the “only white leader in Alabama [who] openly and publicly supported” the bill.<sup>19</sup>

As a judicial nominee, Judge Pryor made waves by refusing to distance himself from certain controversial statements he made while serving as attorney general.<sup>20</sup> Rather than play it safe and backpedal from those positions, Judge Pryor doubled down.<sup>21</sup> As a nominee, Judge Pryor “didn’t duck, he didn’t cover, and he didn’t backtrack in the face of his critics on the Judiciary Committee.”<sup>22</sup> The *National Review* remarked at the time that “even his opponents respected him for that.”<sup>23</sup>

Judge Pryor has been equally courageous on the bench. He authored an en banc opinion upholding a Florida constitutional amendment that required convicted felons to pay any “fines, fees, costs, and restitution” associated with their sentences before having their voting rights restored.<sup>24</sup> The dissent praised the Eleventh Circuit’s predecessor court, the former Fifth Circuit, for “its landmark decisions on voting rights” and predicted that the majority’s decision would not be “viewed as kindly by history.”<sup>25</sup> Judge Pryor wrote separately in response to the dissent “to explain a difficult truth about the nature of the judicial role.”<sup>26</sup> The duty of a judge, he explained, “is not to reach the outcomes we think will please whoever comes to sit on the court of human history.”<sup>27</sup> Rather, “the ‘heroism’ that the Constitution demands of judges . . . is that of ‘devotion to the rule of law and basic morality.’”<sup>28</sup> Judge Pryor understands that true judicial courage means following the law and setting aside one’s personal beliefs, not manipulating the law to achieve a particular outcome.

Next consider temperament and impartiality. Professor Solum explains that “good temper is essential for excellence in appellate judging.”<sup>29</sup> Among other reasons, it reduces “opportunities for friction among” members of the court and improves collegiality.<sup>30</sup> Judicial temperament and impartiality also go hand in hand: a judge who possesses the virtue of “good temper” will be more likely

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19. *Id.* at 70 (statement of Senator Orrin Hatch).

20. *Id.* at 73.

21. *Id.* at 108.

22. York, *supra* note 16.

23. *Id.*

24. *Jones v. Governor of Fla.*, 975 F.3d 1016, 1025 (11th Cir. 2020) (en banc).

25. *Id.* at 1107 (Jordan, J., dissenting).

26. *Id.* at 1049 (Pryor, C.J., concurring).

27. *Id.* at 1050.

28. *Id.* (quoting Patrick E. Higginbotham, *Conceptual Rigor: A Cabin for the Rhetoric of Hemism*, 59 TEX. L. REV. 1329, 1332 (1981) (reviewing JACK BASS, UNLIKELY HEROES: THE DRAMATIC STORY OF THE SOUTHERN JUDGES OF THE FIFTH CIRCUIT WHO TRANSLATED THE SUPREME COURT’S *BROWN* DECISION INTO A REVOLUTION FOR EQUALITY (1981))).

29. Solum, *supra* note 4, at 1372.

30. *Id.*

to apply the law neutrally, without bias toward or against a particular party, cause, or special interest.<sup>31</sup>

Anyone who knows Judge Pryor knows him to be a model of judicial temperament. He is kind, gracious, and good-humored. He treats everyone he encounters—including colleagues, clerks, litigants, attorneys, and court staff—with respect and decency. Time and again, Judge Pryor has exhibited an ability to separate his public actions from his personal beliefs and apply the law impartially. Before prosecuting Roy Moore for disobeying the federal injunction requiring the removal of the Ten Commandments monument, then-General Pryor had defended the constitutionality of displaying the Ten Commandments in a courthouse and even assisted Alabama’s Governor in creating a display for Alabama’s Capitol building.<sup>32</sup> His decision to prosecute Chief Justice Moore faced intense criticism from some but garnered praise from many others because it reflected his “willingness to set aside personal beliefs and political considerations to uphold the duties of [his] office[.]”<sup>33</sup> Judge Pryor has explained that his deeply held religious beliefs “properly inform[] and motivate[] [him] to be faithful to [his] oath of office and to [his] moral duties, to obey the government and its laws, and to work both diligently and honestly.”<sup>34</sup> But he well understands that his personal beliefs—religious or otherwise—should not influence his judicial decisions.<sup>35</sup> Instead, “[a] judge who is motivated by moral duties to fulfill his oath and obey the law must strive to be as objective as possible using traditional methods of construction, reliance on precedent, and legal reasoning.”<sup>36</sup>

That brings us to the virtues of diligence and carefulness. Professor Solum describes the diligent judge as someone who has “the right attitude toward judicial work, finding judicial tasks engaging and rewarding,” and “an appropriate ‘energy level’—a product of both physical and mental health.”<sup>37</sup> Judge Pryor’s diligence is unmatched. If you meet Judge Pryor, it is evident almost immediately how much he relishes the opportunity to be a judge and truly enjoys the day-to-day work that judicial service entails. He approaches each task with seemingly boundless energy and enthusiasm and takes seriously his “obligation to give the [American] taxpayers honest and skilled work for the salary and benefits he receives.”<sup>38</sup> Judge Pryor has often commented that his

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31. *Id.* at 1373–74.

32. Pryor, *Moral Duty*, *supra* note 14, at 163.

33. *Bill Pryor Caught Between a Rock and Moore’s Case*, TUSCALOOSA NEWS (Aug. 28, 2003, 12:01 AM), <https://www.tuscaloosaneews.com/story/news/2003/08/28/bill-pryor-caught-between-a-rock-and-moores-case/27846385007/> [<https://perma.cc/J5E4-ABK8>].

34. William H. Pryor, Jr., *The Religious Faith and Judicial Duty of an American Catholic Judge*, 24 YALE L. & POL’Y REV. 347, 355 (2006) [hereinafter *Religious Faith*].

35. *Id.* at 357–58.

36. *Id.* at 358.

37. Solum, *supra* note 4, at 1374.

38. Pryor, *Religious Faith*, *supra* note 34, at 355.

rigorous exercise regime is designed at least in part to ensure that the taxpayers get their money's worth. I can assure you that the taxpayers need not worry. When I clerked for Judge Pryor, his exercise of choice was running, and I had no hope of keeping up. The same was true when I attended the spin class offered during Judge Pryor's most recent law clerk reunion. Judge Pryor has so much energy, in fact, that even after diligently performing his ordinary judicial duties, he still has enough steam left to teach, write, speak to law students and practicing attorneys, and serve as a member of the American Law Institute and a Commissioner of the United States Sentencing Commission.<sup>39</sup>

A diligent judge usually is a careful one too.<sup>40</sup> Judge Pryor is no exception. As any current or former law clerk can attest, Judge Pryor insists on excellence in his chambers. He expects thorough and careful research, intellectually honest analysis, and polished communication. He welcomes well-reasoned debate and disagreement from his clerks, knowing that it will increase the likelihood of reaching a correct decision. He prepares meticulously for each case that comes before him and leaves no stone unturned in his effort to correctly and impartially interpret and apply the law.

How about intelligence and learnedness? Here again, Judge Pryor excels. He easily grasps complex legal doctrines and distills convoluted legal arguments. He is steeped in American history and theories of constitutional and statutory interpretation. Judge Pryor has an impressive record of legal scholarship. He has published articles about judicial independence, federal sentencing, constitutional and statutory interpretation, federal habeas review, and the role of religion in the performance of judicial duties, among other topics.<sup>41</sup> He co-authored a treatise on the doctrine of legal precedent.<sup>42</sup> Judge Pryor is also exceedingly generous with his knowledge. He has taught courses at the University of Alabama School of Law and the Cumberland School of Law at Samford University.<sup>43</sup> He speaks often at law schools and conferences. And he has trained and mentored dozens of law clerks, a number of whom are now serving as judges or in other public service positions across the country.

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39. Hon. William H. Pryor Jr., *supra* note 9.

40. Solum, *supra* note 4, at 1375 (explaining that “[c]arefulness is closely related to diligence”).

41. See, e.g., Pryor, *Not-So-Serious Threats*, *supra* note 12; William H. Pryor Jr., *Lessons of a Sentencing Reformer from the Deep South*, 105 COLUM. L. REV. 943 (2005); William H. Pryor Jr., *Federalism and Sentencing Reform in the Post-Blakely/Booker Era*, 8 OHIO ST. J. CRIM. L. 515 (2011); William H. Pryor Jr. & Conor Casey, *Originalism Is Dead. Long Live Originalism*, 107 JUDICATURE 60 (2023); William H. Pryor Jr., *Foreign and International Law Sources in Domestic Constitutional Interpretation*, 30 HARV. J.L. & PUB. POL’Y 173 (2006); William H. Pryor Jr., *Textualism After Antonin Scalia: A Tribute to the Late Great Justice*, 8 FAULKNER L. REV. 29 (2016); William H. Pryor Jr., *Against Living Common Goodism*, 23 FEDERALIST SOC’Y REV. 24 (2022); William H. Pryor Jr., *The Separation of Powers and the Federal and State Executive Duty to Review the Law*, 65 CASE W. RESV. L. REV. 279 (2014); William H. Pryor Jr., *The Great Writ and Federal Courts: Judge Wood’s Solution in Search of a Problem*, 95 NOTRE DAME L. REV. 1835 (2020); Pryor, *Moral Duty*, *supra* note 14; Pryor, *Religious Faith*, *supra* note 34.

42. BRYAN A. GARNER ET AL., THE LAW OF JUDICIAL PRECEDENT (2016).

43. Hon. William H. Pryor Jr., *supra* note 9.

Finally, craft and skill. Solum explains that “a good judge must possess a skill set—the particular learned abilities that are to good judging what good bowling technique is to archery or good draftsmanship is to architecture.”<sup>44</sup> One skill that is essential for an appellate judge is written communication.<sup>45</sup> Asked about his approach to opinion writing, Judge Pryor explained that he strives to write opinions that are readable, enjoyable, and persuasive; that clearly identify at the outset of the opinion the issue that is before the court and the court’s holding; and that say only as much as necessary to decide that case.<sup>46</sup> His opinions check all of these boxes. Within seconds of picking up an opinion written by Judge Pryor, the reader will know exactly what issue is before the court, what the court has decided, and the basis for that decision. After that introduction comes a clear and engaging presentation of the facts and procedural history of the case. And after that, rigorous, comprehensive, and easy-to-follow legal analysis.

Judge Pryor’s writing style was strongly influenced by the Fifth Circuit judge for whom he clerked: John Minor Wisdom.<sup>47</sup> Judge Wisdom followed a strict set of style preferences known as Wisdom’s Idiosyncrasies.<sup>48</sup> Some of these preferences are indeed idiosyncratic, at least to the modern writer: “‘In *the* light of’ is a cast-iron idiom; ‘in light of’ is unacceptable.”<sup>49</sup> “Do not use possessive—apostrophe—with things, except personified things, e.g., ship’s, state’s.”<sup>50</sup> Most, however, are foolproof ways to improve one’s writing: “Active voice, not passive voice, as far as possible.”<sup>51</sup> “Prefer the short word to a longer synonym.”<sup>52</sup> “The adjective is the enemy of the noun; the adverb is the enemy of the verb. Think of the right word.”<sup>53</sup> Some are specific to judicial opinions: “Try to state the key question in the first sentence.”<sup>54</sup> “Give the court’s holding in the first paragraph or, at least, in a short introductory section.”<sup>55</sup> “No puns, no witticisms at the expense of a litigant.”<sup>56</sup> Judge Pryor hews closely to Wisdom’s Idiosyncrasies and has added to these his own preferences. Prominent among those is a prohibition of footnotes. In Judge Pryor’s view, if it is not worth saying above the line, it is probably not worth saying at all.

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44. Solum, *supra* note 4, at 1376.

45. *Id.*

46. 2016 Annual Florida Chapters Conference, *A Conversation on Judging*, FEDERALIST SOC’Y (Feb. 22, 2016), <https://fedsoc.org/conferences/2016-annual-florida-chapters-conference?#agenda-item-a-conversation-on-judging> [<https://perma.cc/49GQ-8S56>].

47. Hon. William H. Pryor Jr., *supra* note 9.

48. See John Minor Wisdom, *Wisdom’s Idiosyncrasies*, 109 YALE L.J. 1273 (2000).

49. *Id.* at 1275.

50. *Id.* at 1274.

51. *Id.* at 1273.

52. *Id.*

53. *Id.* at 1275.

54. *Id.* at 1273.

55. *Id.*

56. *Id.* at 1277.

Judge Pryor’s judicial skill set extends beyond opinion writing. During oral arguments, he poses insightful questions that zero in on the key issues in the case. He is an eloquent and engaging speaker. And he is an effective leader and manager—skills that are being put to especially good use in his current role as chief judge.

John Adams once said that “public Virtue is the only Foundation of Republics.”<sup>57</sup> During his twenty years on the federal bench, Judge Pryor has modeled the judicial virtues of integrity, courage, good temper, impartiality, diligence, intelligence, and skill. Our republic is stronger because of his service and example of judicial excellence.

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57. John Adams, *Letter to Mercy Otis Warren, 16 April 1776*, NAT’L ARCHIVES, <https://founders.archives.gov/documents/Adams/06-04-02-0044> [<https://perma.cc/9SJR-FZHC>].