

BARBECUE MONDAYS

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To mark his first decade on the federal bench, nearly all of Judge Bill Pryor's first forty law clerks gathered in a ballroom perched at the top of Red Mountain overlooking Birmingham. Those law clerks would go on to become state solicitors general, law firm partners, White House officials, a U.S. attorney, and state and federal judges themselves. But when the night came to an end, all eyes were on a tribute from the man who held a job that no Pryor clerk will ever attain: head coach of the University of Alabama football team.

Judge Pryor has been a devoted—some would say rabid—Alabama football fan since he was a child. Judge Pryor's chambers are a cross between a shrine to Alabama football, dating back to Coach Bear Bryant, and a who's who in law and politics, dating back to the Founders. The judge doesn't miss games. Law clerks make pilgrimages to Tuscaloosa. They rib him with rivals' apparel, while he remains loyal to all things crimson. Lunch talk in the fall is as often about football as it is about law. And summer interviews can be a trap for the unwary—do you know how Alabama's offense looks for next season? All that to say, there was only one way to cap off the evening to celebrate the judge and his first decade on the bench: with a surprise video message from the Crimson Tide's Nick Saban. Jaws hit the floor as the coach joined a chorus of others—a U.S. Senator, Alabama's attorney general, and dozens of law clerks—to congratulate Judge Pryor and his extraordinary career in public service.

Judge Pryor had a few reactions to the coach's surprise appearance. One of the more memorable ones: "You better not have distracted him from his important job!" (We didn't. Alabama went on to win the 2015 National Championship.) It was a telling reaction, revealing as much about the judge's humility and his own approach to his most important job as the notoriously routine-oriented coach's.

What the judge would never say—so we will—is that it should come as no surprise that he's spent a lifetime admiring the excellence and stick-to-itiveness and resulting achievements of Alabama football. Not because of where the judge grew up—near Mobile, and no closer to Tuscaloosa than to Auburn or Baton Rouge. Not because of where he went to school—a timpanist at University of Louisiana Monroe. And certainly not because of whom he married—an equally devoted Louisiana State University fan. It comes as no

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surprise because that same excellence and stick-to-itiveness and resulting achievements are what have come to define Judge Pryor's life on the bench, what he expects of his law clerks, and the judicial chambers he has run for the last twenty years.

The judge's contributions to the law and the federal courts are chronicled throughout this tribute edition. And they should be. In only two decades, he has authored hundreds of majority opinions, many for the en banc court.¹ He has taught for years at Alabama law schools,² and lectured at many more.³ He has published articles and speeches on topics ranging from untold Alabama history⁴ to Catholicism⁵ to sentencing reform⁶ to judging and the judicial role.⁷ He co-authored a treatise on precedent.⁸ He has enthusiastically engaged with dissenting views both on the bench and off.⁹ All the while, he has served on the U.S. Sentencing Commission, on judicial committees, as part of the American Law Institute, and, most recently, as chief judge for the Eleventh Circuit.¹⁰

1. See, e.g., *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905 (11th Cir. 2023); *Pernell v. Fla. Bd. of Governors of State Univ.*, 84 F.4th 1339 (11th Cir. 2023); *United States v. Garcon*, 54 F.4th 1274 (11th Cir. 2022) (en banc); *Bidi Vapor LLC v. U.S. Food & Drug Admin.*, 47 F.4th 1191 (11th Cir. 2022); *Norwegian Cruise Line Holdings Ltd. v. State Surgeon Gen.*, 50 F.4th 1126 (11th Cir. 2022); *Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020) (en banc); *United States v. Johnson*, 921 F.3d 991 (11th Cir. 2019) (en banc); *Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169 (11th Cir. 2017) (en banc); *McCarthy v. Dir. of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076 (11th Cir. 2017) (en banc); *Evans v. Sec'y, Dep't of Corr.*, 703 F.3d 1316 (11th Cir. 2013) (en banc); *First Vagabonds Church of God v. City of Orlando*, 638 F.3d 756 (11th Cir. 2011) (en banc); *United States v. Svete*, 556 F.3d 1157 (11th Cir. 2009) (en banc); *Tanner Advert. Grp. v. Fayette Cnty.*, 451 F.3d 777 (11th Cir. 2006) (en banc); *Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018).

2. See, e.g., *Judge William Pryor*, ALA. L.: FAC., https://www.law.ua.edu/directory/People/view/Judge_William_Pryor [<https://perma.cc/2UHS-M6D9>].

3. See, e.g., 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); see also William Nunnelley, *Pryor Tells Law Grads Commencement Celebrates America's Commitment to the Rule of Law*, SAMFORD UNIV.: NEWS (May 12, 2017), <https://www.samford.edu/news/2017/05/Judge-William-Pryor-Speaks-to-Law-Commencement> [<https://perma.cc/GYQ5-BP84>].

4. See, e.g., William H. Pryor Jr., *The Murder of Father James Coyle, the Prosecution of Edwin Stephenson, and the True Calling of Lawyers*, 20 NOTRE DAME J.L., ETHICS & PUB. POL'Y 401 (2006).

5. See, e.g., William H. Pryor, Jr., *The Religious Faith and Judicial Duty of an American Catholic Judge*, 24 YALE L. & POL'Y REV. 347 (2006).

6. See, e.g., 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., *Lessons of a Sentencing Reformer from the Deep South*, 105 COLUM. L. REV. 943 (2005).

7. See, e.g., William H. Pryor Jr., *Scalia and Democracy*, 26 GEO. MASON L. REV. 1 (2019); William H. Pryor Jr., *Against Living Common Goodism*, 23 FED. SOC'Y REV. 24 (2022) [hereinafter Pryor, *Against Living Common Goodism*].

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

9. See, e.g., 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, *Against Living Common Goodism*, *supra* note 7; Gogel v. Kia Motors Mfg. of Ga., Inc., 967 F.3d 1121, 1150–51 (11th Cir. 2020) (en banc) (Pryor, C.J., concurring); Hunstein v. Preferred Collection & Mgmt. Servs., Inc., 48 F.4th 1236, 1250–53 (11th Cir. 2022) (en banc) (Pryor, C.J., concurring).

10. See *Judge William Pryor*, *supra* note 2.

But those who know Judge Pryor will undoubtedly begin with a personal story when asked about him. And what cannot be distilled into legal citations or presidential commissions is the mark that Judge Pryor is leaving on the legal profession.

Nearly 100 law clerks have had the privilege of working for Judge Pryor. Each year, four or five new law clerks jump into chambers life at the top of the Hugo L. Black federal courthouse in Birmingham. The relationship between a judge and his clerks is not unlike the relationship between a coach and his players. The law clerks come and go; the judge remains. But in that short time together, a good judge, as with a good coach, can change a young lawyer's trajectory in ways big and small. The year with the judge begins under the threat (and thrill) of the judge's inky pen and his handwritten edits, his in-chambers cross-examinations about cases, his inches-thick clerk manual, his speedy efficiency, his curiosity, his punctuality, and his writing rules (at least ten of which we've broken here). The year ends with a promise: His clerks will leave as better lawyers, better writers, and better Americans than when they began. Twenty years in, the ripple effect that promise will continue to have on the legal profession ought not be understated.

We had the privilege of serving as Judge Pryor's law clerks during that celebrated tenth year on the federal bench—the midpoint in his judicial career so far. At the time, the Eleventh Circuit had the largest caseload per judge in the country.¹¹ The judge was also partway into his term as a Commissioner on the U.S. Sentencing Commission.¹² Things were busy. And still, Judge Pryor did as he did every year. We took countless rounds of edits on opinions. By the end of the year, piles of rejected drafts stood many feet high on windowsills and office floors. We abided by the routines: barbecue on Mondays, fish on Fridays, multiple rounds of editing, suits Monday through Thursday (we tested that one), no footnotes in opinions and no checked bags when traveling for sittings, arrive before the judge and leave after him, always toast to the Constitution. And in time, we learned to do the job the judge's way.

During that year, the judge was also a mentor, a teacher, and a steward of the history that surrounded us. A Pryor clerkship is not always a day spent at the computer. Some days, it is an afternoon spent on foot around Birmingham. It is a long lunch spent eating and debating lesser football teams, religion, or rules of grammar—sometimes all three. And other days, including well after the clerkship is over, it is a quick word of advice, a writing tip, or a lesson in history.

11. See *The Federal Judgeship Act of 2013: Hearing Before the Subcomm. on Bankr. and the Cts. of the Comm. on the Judiciary U.S. S.*, 113th Cong. 15 (2013) (statement of Sen. Jeff Sessions) (“[T]he Eleventh Circuit has the highest caseload per judge in the country.”); see also *In re Jones*, 830 F.3d 1295, 1301 (11th Cir. 2016) (Rosenbaum, J., concurring) (“The Eleventh Circuit regularly is among the federal appellate courts with the highest caseload per judge in the country.”).

12. See *Judge William Pryor*, *supra* note 2.

The courthouse sits just east of the 16th Street Baptist Church, the first black church in Birmingham, and overlooks Kelly Ingram Park. The church was designed in its current form in the 1880s by the state's only black architect.¹³ It served as a headquarters for civil rights meetings and rallies in the 1960s, and, for that reason, was ground zero for police brutality at Kelly Ingram Park and the church bombings that killed four young girls attending Sunday School and injured more than twenty other members of the congregation.¹⁴ That was anything but distant history in the Pryor chambers. When he served as Alabama's attorney general, Judge Pryor himself had worked on the continued prosecutions of the defendants who perpetrated the church bombings. And the park and the church were something every law clerk saw each day walking into work—a daily reminder of the judiciary's role in upholding the Constitution's promise of equal protection under the laws for all. The city unveiled the "Four Spirits" memorial sculpture of the four young girls at the start of our clerkship.¹⁵ Chief Judge Pryor made sure we saw it, reflected on it, and committed to a brighter future with the power of the law degrees we'd been given.

To the south, the courthouse is a short walk to the Lyric Theatre, built for Vaudeville to host stars including the Marx Brothers, Will Rogers, and Milton Merle.¹⁶ The restoration of the 100-year theater was underway during our clerkship year, with regular afternoon walks to track her progress. We attended the Greek Food Festival and toured the historic Holy Trinity-Holy Cross Greek Orthodox Cathedral, chartered in 1906 as the third oldest Greek Orthodox parish in the United States. We saw Montgomery and reflected on the proximity of the Capitol (which housed segregationist George Wallace's office) to the Dexter Avenue Baptist Church (where Martin Luther King, Jr., preached). These and others were many occasions that Judge Pryor allowed us to see through his eyes the state, its history, and its potential.

Year after year, Judge Pryor brings the same rigor, the same judicial humility, the same routines, and the same sense of history to his work. After all, as a good football coach once said after winning four national championships in six years' time, "Just because you won last year, doesn't mean you don't have to go earn it next time. Success is momentary."¹⁷ That wisdom imparted for the football field is the same kind of wisdom that prevails in the Pryor chambers.

13. *Our History*, SIXTEENTH ST. BAPTIST CHURCH, <https://www.16thstreetbaptist.org/our-history> [<https://perma.cc/V372-AUDW>].

14. *Id.*

15. Clare Huddleston, *Four Little Girls Monument Installed at Kelly Ingram Park*, WBRC, <https://www.wbrc.com/story/23416595/four-little-girls-monument-installed-at-kelly-ingram-park/> [<https://perma.cc/VK5V-NS22>] (last updated Sept. 19, 2013, 5:27 PM).

16. *About the Lyric*, LYRIC THEATRE, <https://lyricbham.com/about-the-lyric/> [<https://perma.cc/ZB26-ZEER>].

17. Joe Smith, *Championship Culture: Real or Overhyped? Coaching Titans Kerr, Maddon, Arians and Saban Weigh In*, THE ATHLETIC (June 24, 2021) (quoting Nick Saban), <https://theathletic.com/2647150/2021/06/24/championship-culture-real-or-overhyped-coaching-titans-kerr-maddon-arians-and-saban-weigh-in/> [<https://perma.cc/3H8K-7DLT>].

Twenty years in, and every decision is still earned. There is no looking at a brief and deciding who is right and who is wrong based only on the case caption or the question presented. There are no shortcuts.

What sets Judge Pryor apart is his ability to see and teach, so clearly, that good lawyers (and good judges) don't rest on their laurels. Judge Pryor is a textualist and originalist.¹⁸ The words in contracts, in statutes, and in the Constitution have fixed meaning for the court to discern, not for the court to devise. For the law clerks, that means every decision of his takes work. With every case, there is a new world to discover, research, and then explain in plain terms, be it a defendant's jury trial right,¹⁹ the legislative privilege,²⁰ the Dormant Commerce Clause,²¹ or federal post-conviction remedies.²²

Law clerks leave Judge Pryor's chambers with greater fidelity to our country and our founding documents. It is impossible to come away from Judge Pryor's own stories shared freely during the clerkship—stories as a clerk himself for one of the “Fifth Circuit Four,” Judge John Minor Wisdom, or as the country's youngest state attorney general, or countless others—without understanding that lawyers are best when they see lawyering as a vocation, not simply a job.

Judge Pryor's clerks have all gone on to follow different paths. They have become federal judges and state supreme court justices. They have served in high-ranking posts in state and federal government, at major companies, and as partners in major law firms. And led by the judge's example, they strive to fill these roles as good, decent, and truthful lawyers. They are taught to win or decide cases by the strength of the arguments, not by the strength of the adverbs. There are, of course, small ways, too, that the clerkship year never leaves a former Pryor clerk. Years later, they will all suffer the same residual guilt when using “in light of” (versus the proper “in *the* light of”), “Latinisms,” or “weasel words” such as “very” or “rather” in briefs—and all the other writing “idiosyncrasies” adopted from Judge Pryor's judge, Judge Wisdom,²³ and Judge Pryor's own “Pryor Restraints.” A former law clerk can see the blot of the judge's pen and his handwritten edits before the error is made.

It seems like just yesterday we four were squeezing in ten-year reunion celebration planning between our work on bench memos, opinion revisions, and surveying local lunch establishments. Fast-forward a decade and we have scattered around the country—Molly in Atlanta at a Fortune 100 healthcare company,²⁴ Taylor in Chicago as a partner at a litigation and appellate

18. See, e.g., Pryor, *Against Living Common Goodism*, *supra* note 7; William H. Pryor Jr., *Justice Thomas, Criminal Justice, and Originalism's Legitimacy*, 127 YALE L.J.F. 173 (2017).

19. See *United States v. Brown*, 996 F.3d 1171 (11th Cir. 2021) (en banc).

20. See *Pernell v. Fla. Bd. of Governors of State Univ.*, 84 F.4th 1339 (11th Cir. 2023).

21. See *Norwegian Cruise Line Holdings Ltd. v. State Surgeon Gen.*, 50 F.4th 1126 (11th Cir. 2022).

22. See *McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076 (11th Cir. 2017) (en banc).

23. See John Minor Wisdom, *Tribute, Wisdom's Idiosyncrasies*, 109 YALE L.J. 1273, 1273–75 (2000).

24. Molly Glazner, LINKEDIN, <https://www.linkedin.com/in/molly-glazner-9aa494a/>

boutique,²⁵ Kasdin in Dallas as a partner at a large law firm,²⁶ and Kathryn in Tampa on the federal bench.²⁷ So much has happened for us in those ten years, yet Judge Pryor continues to bring the same rigor, the same judicial humility, the same routines, and the same sense of history to his work. And, of course, the same enthusiasm for Alabama football.

[<https://perma.cc/Q8QR-P9NM>].

25. *Our Team: Taylor Meehan*, CONSOVOY MCCARTHY PLLC, <https://consovoymccarthy.com/team/> [<https://perma.cc/ED7W-YHBQ>].

26. *Professionals: Kasdin Miller Mitchell*, KIRKLAND & ELLIS LLP, <https://www.kirkland.com/lawyers/m/mitchell-kasdin-miller> [<https://perma.cc/H637-UJ4D>].

27. *About the Judges: Kathryn Kimball Mizelle*, U.S. DIST. CT. FOR THE M.D. OF FLA., <https://www.flmd.uscourts.gov/judges/kathryn-kimball-mizelle> [<https://perma.cc/PDD5-9LQ3>].