

ATTORNEY GENERAL WILLIAM H. PRYOR JR.

*Hon. Steven T. Marshall and Edmund G. LaCour Jr.*

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|------|--|------|
| I.   | DEPUTY ATTORNEY GENERAL, 1995 TO 1997.....                           | 1101 |
| II.  | ENFORCING THE LAW AND BUILDING CONFIDENCE IN LAW<br>ENFORCEMENT..... | 1103 |
| III. | EQUAL UNDER LAW.....   | 1106 |
| IV.  | HELPING YOUNG ALABAMIANS.....  | 1108 |
| V.   | GROWING THE AG'S OFFICE.....   | 1110 |

## ATTORNEY GENERAL WILLIAM H. PRYOR JR.

*Hon. Steven T. Marshall and Edmund G. LaCour Jr.\**

Before he began his distinguished career as a federal judge, William Pryor had already made quite a mark in the law. Before serving our country, he served the State of Alabama for nearly a decade, first as a deputy attorney general and then as the state's forty-fifth attorney general.<sup>1</sup> The attorney general is both the state's chief lawyer and the state's chief law enforcement officer. The former defends the law; the latter enforces it. I have said before that "defending Alabama's laws protects her sovereignty," and "enforcing Alabama's laws protects her people."<sup>2</sup>

AG Pryor fulfilled both roles with excellence. As the top cop, he ramped up the fight against fraud and public corruption, helped secure convictions of two of the murderers who bombed the Sixteenth Street Baptist Church, and poured resources into educating law enforcement officers serving at the local level.<sup>3</sup> As the head lawyer, he bolstered the defense of state laws by creating the Constitutional Defense and Solicitor General divisions of the AG's office.<sup>4</sup> He also made strides in the areas of juvenile crime, school violence, religious liberty, criminal sentencing reform, and the death penalty appeals process.<sup>5</sup> During all this, he even found time to present oral argument before the United States Supreme Court.<sup>6</sup>

Twenty years later, the Attorney General's Office and the state continue to benefit from AG Pryor's example and vision for the office. We do better work today because of what he accomplished years before. It is fitting that a tribute to Judge Pryor includes some of the stories of his achievements, battles, and innovations as Alabama's attorney general.

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1. 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/SCB6-BRMK>].

2. Steve Marshall, Ala. Att'y Gen., *Attorney General Steve Marshall's First Inaugural Address*, YOUTUBE (Jan. 15, 2019), <https://www.youtube.com/watch?v=chlH6Y94xAY>.

3. See *infra* Parts II and III.

4. See *infra* Part V.

5. See *infra* Parts II and IV.

6. See Transcript of Oral Argument, *Alabama v. Shelton*, 535 U.S. 654 (2002) (No. 00-1214).

## I. DEPUTY ATTORNEY GENERAL, 1995 TO 1997

Governor Fob James appointed Bill Pryor as attorney general on January 2, 1997.<sup>7</sup> Pryor was thirty-four years old, making him the nation's youngest attorney general at the time.<sup>8</sup> Despite his relatively young age, Pryor was no stranger to high-stakes state litigation. In 1995, Attorney General Jeff Sessions selected Pryor to serve as deputy attorney general in charge of special civil litigation.<sup>9</sup> Pryor's job was to oversee all major civil, constitutional, and voting rights litigation for the state.<sup>10</sup>

Right away, he received his first big case—a heated dispute over the 1994 election of Perry Hooper as Chief Justice of the Alabama Supreme Court.<sup>11</sup> Hooper, a Republican, had narrowly defeated the Democrat incumbent “Sonny” Hornsby, becoming “the first Republican elected to the Alabama Supreme Court after the Civil War.”<sup>12</sup> The week after the election, several plaintiffs sued and demanded that unwitnessed absentee ballots be counted retroactively.<sup>13</sup> Though state law required persons voting by absentee to execute an affidavit in the presence of a notary or two witnesses, and statewide practice had been to not count absentee ballots that did not satisfy this requirement, the Montgomery County Circuit Court ordered that unwitnessed absentee ballots be counted.<sup>14</sup>

Hooper and several of his supporters responded with a challenge in federal court seeking an injunction that would prohibit state and local election officials from counting the unwitnessed ballots, and the case, *Roe v. State of Alabama*, quickly proceeded to the Eleventh Circuit.<sup>15</sup> That court asked the Alabama Supreme Court to answer whether unwitnessed absentee ballots are legal ballots under Alabama law.<sup>16</sup> In an “opinion heavy with political rhetoric, the Supreme Court — sans Chief Justice Hornsby but including four justices who not only were his colleagues and fellow Democrats, but who had all contributed to Hornsby's campaign and he to at least one of theirs,” issued a 6–1 decision

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7. Gita M. Smith, *Alabama Nominee Sets Age Record*, ATLANTA J. CONST., Dec. 24, 1996, at B5.

8. *Hon. William H. Pryor, Jr.*, THE FEDERALIST SOC'Y, <https://fedsoc.org/contributors/william-pryor> (last visited Nov. 21, 2023); Sheryl Gay Stolberg, *A Different Timpanist*, N.Y. TIMES (June 10, 2005), <https://www.nytimes.com/2005/06/10/politics/a-different-timpanist.html>.

9. *One of “Us” Becomes Attorney General*, PRYOR CONNECTIONS (Office of the Att’y Gen., Montgomery, Ala.), Jan. 3, 1997 [hereinafter PRYOR CONNECTIONS]; Stolberg, *supra* note 8.

10. PRYOR CONNECTIONS, *supra* note 9.

11. See JEFF SESSIONS: SIGNIFICANT ACCOMPLISHMENTS AS ATTORNEY GENERAL, 1995 & 1996 1 (1996); see generally Brief of the State of Alabama, Secretary of State, Probate Judges, Sheriffs, and Circuit Clerks at 1–13, *Roe v. State*, 68 F.3d 404 (11th Cir. 1995) (No. 95-6814).

12. *Ala. State Conf. NAACP v. Alabama*, 612 F. Supp. 3d 1232, 1247 (M.D. Ala. 2020).

13. See *Roe v. State ex rel. Evans*, 43 F.3d 574, 578 (11th Cir. 1995).

14. *Id.*

15. *Id.*

16. *Id.* at 583.

holding that the ballots could be counted.<sup>17</sup> With that question answered, the Eleventh Circuit, in April 1995, remanded the case to the district court to make findings of fact on the dispositive question of whether counting unwitnessed absentee ballots had been the practice in Alabama before the November 1994 election.<sup>18</sup>

In that litigation, Deputy AG Pryor represented the state, as well as state and local election officials, and set forth the state's position that "state court judges" were trying "to change retroactively fundamental election laws and practices and thereby rescue the election of the incumbent Chief Justice of the Supreme Court of Alabama."<sup>19</sup> By the time the case went to trial in September, the parties had questioned hundreds of poll workers and election officials in Alabama's sixty-seven counties.<sup>20</sup> They presented live and recorded testimony at trial from over one hundred officials.<sup>21</sup> The side advocating for counting the unwitnessed ballots, in contrast, called only one live witness and two witnesses by deposition.<sup>22</sup> The overwhelming response from election officials was that they had never counted unwitnessed absentee ballots.<sup>23</sup> The district court thus permanently enjoined the counting of those ballots, and the Eleventh Circuit affirmed that October.<sup>24</sup> Pryor's work on this high-stakes, fact-intensive dispute before both state and federal courts helped secure a win for Alabama voters—all in under a year.

The case was significant not just for those who cast ballots in that 1994 race; it "put voter fraud and judicial integrity on voters' minds."<sup>25</sup> Governor Fob James even "called the legislature into a special session in 1996 on the issue of election reform."<sup>26</sup> Pryor would continue to fight for free and fair elections. On his first day as attorney general, he pledged a renewed commitment to fight against public corruption and voter fraud.<sup>27</sup>

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17. *Ala. State Conf. NAACP*, 612 F. Supp. 3d at 1304.

18. *Roe v. State ex rel. Evans*, 52 F.3d 300, 301–03 (11th Cir. 1995).

19. Brief of the State of Alabama, *supra* note 11, at 1.

20. *Id.* at 9–10.

21. *Id.* at 11.

22. *Id.* at 11–12.

23. *Id.* at 8.

24. *See Roe v. Mobile Cnty. Appointing Bd.*, 904 F. Supp. 1315, 1336 (S.D. Ala. 1995); *Roe v. State*, 68 F.3d 404, 409 (11th Cir. 1995).

25. *Ala. State Conf. NAACP v. Alabama*, 612 F. Supp. 3d 1232, 1304 (M.D. Ala. 2020).

26. *Id.* at 1305.

27. *See PRYOR CONNECTIONS*, *supra* note 9.

## II. ENFORCING THE LAW AND BUILDING CONFIDENCE IN LAW ENFORCEMENT

Pryor quickly made good on his pledge, forming a crack team of career prosecutors to man the new Public Corruption and White-Collar Crime Unit.<sup>28</sup> During the division's first year, nineteen individuals were convicted on forty-five different felony counts.<sup>29</sup> Pryor jumped into the fray too, personally prosecuting the former CEO of the Southeast Alabama Medical Center in 1999 for stealing hundreds of thousands of dollars.<sup>30</sup> The trial took two weeks and ended with the CEO's conviction.<sup>31</sup>

As AG Pryor would later emphasize, equal justice under the law means holding accountable corrupt public servants and sophisticated fraudsters, just the same as violent criminals. "There is no greater violation of the public trust," he wrote to the Alabama law enforcement community,

than when those who are sworn to uphold and enforce the law violate that trust and dishonor our profession. . . .

We will continue our work to uphold integrity in public offices across Alabama, because that work is essential in maintaining the confidence of the public in you, the overwhelming number of honest and dedicated peace officers.<sup>32</sup>

Today, the Special Prosecutions Division of the Attorney General's Office continues this work, targeting public corruption and complex economic crimes.<sup>33</sup>

To give officers serving on the front-line the resources and information they need to better carry out their duties, in 2000, AG Pryor hosted the first statewide Law Enforcement Summit.<sup>34</sup> Nine hundred officers participated.<sup>35</sup> He created this annual, day-long event, which we continue to this day, to provide "a forum for educating officers about the latest developments in the law of arrest, search and seizure, and other criminal laws."<sup>36</sup> This year, we

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28. ALA. ATT'Y GEN., 1997: YEAR IN REVIEW 19 (1998); Stan Bailey, *Attorney General Unit Targets Election Fraud*, BIRMINGHAM NEWS, April 3, 1997, at B2.

29. *Pryor Deserves Another Term*, MOBILE REG., Oct. 19, 1998, at A10.

30. ALA. ATT'Y GEN., 1999: YEAR IN REVIEW 10, 31 (2000) [hereinafter 1999: YEAR IN REVIEW]; Mark Taylor, *Ala. Hospital CEO Sentenced to Prison Term*, MODERN HEALTHCARE (Apr. 26, 1999, 12:00 AM), <https://www.modernhealthcare.com/article/19990426/PREMIUM/904260305/ala-hospital-ceo-sentenced-to-prison-term>.

31. *Ex-Hospital CEO Goes to Prison*, MOBILE REG., Nov. 2, 1999, at B11.

32. BILL PRYOR, ALABAMA'S CRIMINAL JUSTICE SYSTEM: A PROGRESS REPORT 3-4 (2001).

33. *Special Prosecutions Division*, ALA. ATT'Y GEN., <https://www.alabamaag.gov/divisions/special-prosecutions-division/> [https://perma.cc/G8M9-LYTA].

34. See Alan Choate, *Pryor Optimistic on Future of Law Enforcement*, MOBILE REG., Dec. 13, 2000, at B2.

35. ALA. ATT'Y GEN., 2000: YEAR IN REVIEW 5 (2001).

36. *Id.*

hosted our twenty-fourth Law Enforcement Summit, continuing to provide critical training to law enforcement officers and attorneys who serve the state.<sup>37</sup>

Some of AG Pryor's victories for the state came in cooperation with federal law enforcement. In 2000, for example, AG Pryor's office teamed up with then-U.S. Attorney Doug Jones to prosecute widespread voter fraud in Greene and Winston counties.<sup>38</sup> The joint investigation and prosecution led to the conviction of over twenty individuals, including a former district judge, a sheriff, and several candidates for county boards and commissions.<sup>39</sup> Jones lauded the "cooperative efforts with Attorney General Bill Pryor's Office," which resulted in "a precedent-setting federal case"—"the first in the nation in which an undercover operation was conducted prior to an election resulting in the exposure of rampant absentee vote buying."<sup>40</sup>

Meanwhile, when the state faced extensive welfare fraud, AG Pryor responded with unrelenting prosecutions that resulted in over 500 convictions (a 99% conviction rate) from January 1997 to January 2002 and over \$2.3 million repaid to the treasury where it could be used, in his words, "for the proper benefit of the poor and truly needy."<sup>41</sup>

While AG Pryor manned the helm as top cop, Alabama enjoyed a steady decrease in crime, particularly violent crime. During 1998, violent crime dropped 8%, including an 18% drop in homicide, and another 7% in 1999 and 10% more in 2001.<sup>42</sup> Total crime was down 8% in 1998, 4% in 1999, increased just 1% in 2000, and dropped another 5% in 2001.<sup>43</sup>

Getting criminals convicted was one thing; getting them justly sentenced was another. Alabama had no truth-in-sentencing laws, so criminals served only about one-third of their prison sentences.<sup>44</sup> In response, the AG's office drafted a bill, which passed the legislature overwhelmingly and was signed into law by Governor Siegelman, to create the Alabama Sentencing Commission.<sup>45</sup> The

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37. Press Release, Steve Marshall, Attorney General Marshall Hosts 24th Annual Law Enforcement Summit (Oct. 24, 2023), <https://www.alabamaag.gov/attorney-general-marshall-hosts-24th-annual-law-enforcement-summit/> [<https://perma.cc/NG9B-DYL6>].

38. Press Release, Dep't of Just., Winston County Federal Voter Fraud Case: Final 4 Defendants Sentenced on Federal Vote Buying (Feb. 1, 2001) (on file with the Alabama Office of the Attorney General) [hereinafter *Winston County*]; Press Release, Dep't of Just., Greene County Voter Fraud Convictions Affirmed on Appeal by 11th Circuit Court of Appeals (Nov. 1, 2000) (on file with the Alabama Office of the Attorney General) [hereinafter *Greene County*]; see also *United States v. Smith*, 231 F.3d 800 (11th Cir. 2000).

39. *Winston County*, *supra* note 38; *Greene County*, *supra* note 38.

40. *Winston County*, *supra* note 38, at 2.

41. Press Release, Bill Pryor, AG Commends Welfare Fraud Unit for 500 Convictions 1 (Jan. 31, 2002) (on file with the Alabama Office of the Attorney General).

42. PRYOR, *supra* note 32, at 1; *Alabama Crime Statistics*, ALA. L. ENFT AGENCY, <https://www.alea.gov/sbi/criminal-justice-services/alabama-crime-statistics> [<https://perma.cc/ZZ8X-HVQP>].

43. PRYOR, *supra* note 32, at 1; *Alabama Crime Statistics*, *supra* note 42.

44. PRYOR, *supra* note 32, at 4.

45. *Id.*

Commission would lead the charge in sentencing reform, which Pryor called “the most important priority for the future of the entire criminal justice system.”<sup>46</sup> “We must have truth-in-sentencing,” AG Pryor implored,

where sentences are realistic and criminals serve their full sentences; we must have fairness in sentencing where similar crimes result in similar punishments; and we must have rational sentencing where violent and repeat offenders are incarcerated while first time and nonviolent offenders are more effectively punished in alternative programs that emphasize victim restitution and community restoration.<sup>47</sup>

AG Pryor likewise focused on death sentences, including the lengthy and complicated appeals process that accompanies them. To illustrate problems in the process, Pryor highlighted the case of Pernel Ford. Ford, a retired elementary school teacher, was arrested for speeding in Illinois.<sup>48</sup> He was wearing blood-stained clothing.<sup>49</sup> It did not take long before Ford gave a complete confession to the double-murder of Willie Griffith and her daughter Linda, whom he had stabbed to death in their home the day before.<sup>50</sup> Despite the open-and-shut nature of this case, it took the state sixteen years before Ford’s sentence was finally executed in 2000.<sup>51</sup>

There is much an attorney general can do to contribute to these delays, but little he can do to speed up this system. Pryor, however, found a way to reform the process. He drafted and recommended to the Alabama Supreme Court new rules for appellate review of death penalty cases.<sup>52</sup> The Court unanimously adopted the rules of procedure, which made death penalty cases subject to discretionary, not mandatory, review by the Alabama Supreme Court.<sup>53</sup> Before this rule change, Alabama was the only state in the Union to require two full and automatic reviews of capital cases.<sup>54</sup> This reform brought Alabama in line with other states and helped reduce undue delays in executing lawful sentences.

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46. *Id.*

47. *Id.*

48. *Ford v. State*, 515 So. 2d 34, 35 (Ala. Crim. App. 1986).

49. *Id.* at 37.

50. BILL PRYOR, ALABAMA EXECUTES ONLY THE GUILTY 2 (2000).

51. *Id.*

52. Press Release, Bill Pryor, AG, Governor Hail Court for Streamlining Death Appeals 1 (May 22, 2000) (on file with the Alabama Office of the Attorney General).

53. *Id.*

54. *Id.*

## III. EQUAL UNDER LAW

“[Let us] declare from the steps of this Capitol, “Equal under law now. Equal under law tomorrow. Equal under law forever.”<sup>55</sup> AG Pryor delivered this call for equal justice under the law during his first inaugural address while paying homage to civil rights leaders who gave so much for that cause.<sup>56</sup> He would repeat the call four years later in his second inaugural address.<sup>57</sup> And during his time in office, he backed up these words with action.

In 1998, Alabama was one of just two states in the Union with a law on the books prohibiting interracial marriage.<sup>58</sup> Though the law had been unenforceable since the Supreme Court had decided *Loving v. Virginia* in 1967,<sup>59</sup> AG Pryor made it a priority to lead efforts to repeal the “unconstitutional,” “unenforceable,” and “immoral” provision.<sup>60</sup> Though the Democratic Governor-elect “refused to say if” the ban “should be repealed,” AG Pryor spoke with unmistakable clarity: “Any provision of the constitution of Alabama, or for that matter the code of Alabama, that classifies our citizens or any persons based on the color of their skin, their race, should be stricken. It should be repealed. It has no place in a modern constitution or in the laws of Alabama.”<sup>61</sup> AG Pryor’s efforts helped secure the repeal of the prohibition from the state’s constitution.<sup>62</sup>

AG Pryor also played a key role in helping bring a measure of justice to the victims of the bombings of the Sixteenth Street Baptist Church in Birmingham. On Sunday morning, September 15, 1963, four young African-American girls—Denise McNair, Addie Mae Collins, Cynthia Wesley, and Carol Robertson—were at church when a bomb obliterated part of the building and cut their lives short.<sup>63</sup> Four members of the Ku Klux Klan—Robert Chambliss, Tommy Blanton, Bobby Frank Cherry, and Herman Cash—were identified early on by federal investigators as the likely bombers.<sup>64</sup> But the statute that would have

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55. Bill Pryor, Ala. Att’y Gen., Inauguration Speech 4 (Jan. 18, 1999) [hereinafter Pryor, 1999 Inauguration Speech]; see also Tom Gordon, *Siegelman Sets a Different Tone: Time for State to Turn the Page*, BIRMINGHAM NEWS, Jan. 10, 1999, at 01-A.

56. Pryor, 1999 Inauguration Speech, *supra* note 55, at 3–4.

57. *Pryor Calls for Reform as He Takes Oath*, MONTGOMERY ADVERTISER, Jan. 20, 2003, at A3.

58. Bill Poovey, *Pryor Wants to Repeal Ban on Interracial Marriages*, BIRMINGHAM NEWS, Nov. 12, 1998, at 02-B.

59. 388 U.S. 1 (1967).

60. *Pryor Blasts Mixed-Marriage Ban*, MONTGOMERY ADVERTISER, Sept. 26, 2000, at C3.

61. Poovey, *supra* note 58.

62. Jeff Amy, *Voters Strike Ban on Interracial Marriage*, MOBILE REG., Nov. 8, 2000, at A24.

63. See Donald Q. Cochran, *Ghosts of Alabama: The Prosecution of Bobby Frank Cherry for the Bombing of the Sixteenth Street Baptist Church*, 12 MICH. J. RACE & L. 1, 5–6 (2006)

64. *Id.* at 6.

given the federal government jurisdiction to prosecute the men had a five-year statute of limitations, which ran before charges could be brought.<sup>65</sup>

In 1971, Attorney General Bill Baxley reopened the case, conducted an extensive investigation, and gathered evidence strong enough to bring charges against Chambliss.<sup>66</sup> In 1977, Chambliss was convicted of murdering Denise McNair. But years would go by before any of the other suspects faced justice.<sup>67</sup>

The FBI publicly reopened the investigation in 1997 and began receiving new tips implicating Blanton and Cherry.<sup>68</sup> The federal government later teamed up with AG Pryor's office to move the prosecutions forward.<sup>69</sup> U.S. Attorney Doug Jones later explained that his team had evidence that Blanton and Cherry were responsible for the bombing but lacked evidence sufficient to establish federal jurisdiction.<sup>70</sup> Thus, in May 2000, U.S. Attorney General Janet Reno and Attorney General Pryor gave the federal prosecutors approval to present the case to a state grand jury, with AG Pryor appointing Jones and two Assistant U.S. Attorneys as Special Assistant Attorneys General for the state.<sup>71</sup> Three days later, the grand jury indicted Blanton and Cherry on four counts of murder.<sup>72</sup>

Blanton's case went to trial first, and "[t]he single most powerful piece of evidence" the prosecution possessed was a tape recording made from a microphone that the FBI had been able to plant under the kitchen sink in Blanton's house by renting the apartment adjacent to Blanton's.<sup>73</sup> In the recording made less than a year after the bombing, Blanton can be heard discussing "the meeting where we planned the bomb," "making the bomb," and even naming the time and place where the conspirators met.<sup>74</sup> Blanton's motion to suppress the evidence was denied, the "jury was able to hear an admission out of Blanton's own mouth," and the jury found him guilty on all four counts of first-degree murder.<sup>75</sup>

When Blanton appealed, AG Pryor handled the argument for the state before the Alabama Court of Criminal Appeals.<sup>76</sup> As Jones would later recount, "on appeal, Attorney General Pryor and his staff developed an even stronger

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65. *Id.* at 6–7 (citing 18 U.S.C. § 3282).

66. *See id.* at 7–8; Doug Jones, *Justice for Four Little Girls*, 22 ALA. ASS'N JUST. J. 13, 14 (2002).

67. Cash died in 1994 without being tried for the bombing. Cochran, *supra* note 63, at 6–7.

68. *Id.* at 9.

69. *Id.* at 21 n.138.

70. Jones, *supra* note 66, at 15.

71. *Id.*; *Trial Briefs*, BIRMINGHAM NEWS, May 2, 2001, at 6-A; *see also* Cochran, *supra* note 63, at 21 n.138.

72. Jones, *supra* note 66, at 15.

73. Cochran, *supra* note 63, at 11, 14.

74. *Id.* at 11–12, 14.

75. Jones, *supra* note 66, at 18, 21.

76. *Secret '60s Recording Questioned*, MONTGOMERY ADVERTISER, May 21, 2003, at B3; *Blanton v. State*, 886 So. 2d 850, 857 (Ala. Crim. App. 2003).

argument” for admitting the tape recording than had been made at trial.<sup>77</sup> Pryor’s team identified additional evidence in the record “that the microphone had been placed ‘without trespass,’” and had instead been placed by “a small hole in Blanton’s wall” without intruding into his apartment.<sup>78</sup> Under the “trespass standard” that governed such Fourth Amendment questions when the recording was made in 1964, that fact made all the difference.<sup>79</sup> Blanton’s conviction was affirmed.<sup>80</sup>

The state and federal team obtained similar results in Cherry’s case. By the time Cherry went to trial, Alice Martin had succeeded Jones as U.S. Attorney, and Jones had returned to private practice. To take advantage of Jones’s expertise, “Pryor added Jones . . . to his office payroll as a consultant,” and tapped Martin and two Assistant U.S. Attorneys as special prosecutors.<sup>81</sup> On May 22, 2002, Cherry was convicted of four counts of murder.<sup>82</sup> Lawyers from the AG’s office handled the appeal, and the Court of Criminal Appeals affirmed.<sup>83</sup>

#### IV. HELPING YOUNG ALABAMIANS

AG Pryor knew that gains made fighting crime in Alabama would be for naught if the state could not reverse the worrying trend of juvenile crime. From 1985 to 1995, juvenile crime exploded in Alabama at the rate of 144%.<sup>84</sup> Pryor responded with several initiatives to prevent juvenile violence and drug abuse and to keep schools safe. In 2000, he introduced *Mentor Alabama*, a program designed to involve upstanding adults in the lives of at-risk children as mentors and role models.<sup>85</sup> The initiative’s goal was to recruit 2,002 mentors by the end of 2002.<sup>86</sup> It blew that out of the water, enrolling 3,230 volunteer mentors before the close of 2002.<sup>87</sup>

Following the Columbine shooting in Colorado, Pryor created the Alabama Safe Schools Initiative—a comprehensive program that provided training and

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77. *Emmett Till Unsolved Civil Rights Crime Act: Joint Hearing Before the Subcomm. on the Const., C.R., and C.L. of the H. Comm. on the Judiciary and the Subcomm. on Crime, Terrorism, and Homeland Sec. of the H. Comm. on the Judiciary*, 110th Cong. 49 (2007).

78. *Id.*

79. *See Blanton*, 886 So. 2d at 861–65.

80. *Id.* at 885.

81. Chanda Temple, *Prosecutors Appointed in Cherry Trial - Former U.S. Attorney Will Be a Consultant*, BIRMINGHAM NEWS, Jan. 5, 2002, at 1-A.

82. *Cherry v. State*, 933 So. 2d 377, 379 (Ala. Crim. App. 2004).

83. *Id.* at 387.

84. PRYOR, *supra* note 32, at 2.

85. *Id.* at 3.

86. *Id.*

87. ALA. ATT’Y GEN., 2002: YEAR IN REVIEW 5 (2003); *see also Pryor Outlines Work to GOP Club*, MONTGOMERY ADVERTISER, July 24, 2003, at C3.

resources to Alabama schools on safety and emergency response.<sup>88</sup> This came on the heels of a highly successful school crisis management conference the AG's office hosted in 1998, which was attended by approximately two thousand school and law enforcement officials.<sup>89</sup> Pryor's office also drafted, and the legislature passed, the Juvenile Information Act, which gave both law enforcement and school officials access to juvenile crime records.<sup>90</sup> This would help police solve juvenile crimes and let school officials know more about their troubled students.

Pryor focused on the crucial role faith leaders play in the lives of the state's youth, hosting a Faith Summit on Mentoring to encourage leaders of faith to become involved as mentors.<sup>91</sup> "I believe persons of faith are a source of great potential in the lives of our state's youth," Pryor said, "and it is important for leaders of the faith community to encourage their members to reach out to young persons inside and outside of their fellowship long before these youths have become involved in crime, drugs or violence. I am asking you to help me reach our at-risk families and children before they choose the wrong path."<sup>92</sup>

In a similar vein, AG Pryor successfully defended the right for young people in Alabama to express their faith in school. In 1993, Alabama enacted a law that permitted "non-sectarian, non-proselytizing student-initiated voluntary prayer" at school-related student events on public school property.<sup>93</sup> Months before Pryor became attorney general, a group of plaintiffs challenged this law as facially unconstitutional.<sup>94</sup> A federal district court decided the law violated the Establishment Clause of the First Amendment.<sup>95</sup> Pryor stated that the district court's ruling, "read literally, prohibits a student from saying a vocal prayer before lunch," "a valedictorian from explaining, at graduation, how Mother Teresa inspired him or her," and "a student from inspiring fellow students in a classroom discussion by arguing that Jesus Christ is a more important historical figure than either Albert Einstein or Thomas Edison."<sup>96</sup> In 1999, the Eleventh Circuit reversed the district court's decision and upheld the

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88. ALA. DEP'T OF PUB. HEALTH, INJURY IN ALABAMA: A FOCUS ON PREVENTION 51 (2004).

89. PRYOR, *supra* note 32, at 3.

90. *Id.* at 2; *see also* Press Release, Bill Pryor, AG Announces Passage of Stronger Juvenile Information Act (May 17, 2001) (on file with the Alabama Office of the Attorney General).

91. Press Release, Bill Pryor, Attorney General Invites Religious Community to Attend January 2001 Faith Summit in Birmingham (Dec. 28, 2000) (on file with the Alabama Office of the Attorney General).

92. *Id.*

93. ALA. CODE § 16-1-20.3(b).

94. *Chandler v. James*, 958 F. Supp. 1550, 1553 (M.D. Ala. 1997), *rev'd*, 180 F.3d 1254 (11th Cir. 1999); *see also* Press Release, Bill Pryor, Pryor Hails Decision of U.S. Supreme Court; School Prayer Case Ends with Victory for State (June 18, 2001) (on file with the Alabama Office of the Attorney General).

95. *Chandler*, 958 F. Supp. at 1568.

96. Bill Pryor, *Judge DeMent's Prayer Ruling is Vague and Overly Broad*, MOBILE REG., Nov. 23, 1997, at D2.

rights of public school students to pray voluntarily and express their religious beliefs.<sup>97</sup>

The United States Supreme Court vacated<sup>98</sup> the Eleventh Circuit's decision in light of *Sante Fe Independent School District v. Doe*,<sup>99</sup> where the Supreme Court held that a school district's policy of permitting student-led, student-initiated prayer before football games violated the Constitution. On remand, Pryor's office showed that *Santa Fe* was distinguishable, arguing that to "the extent that a school does choose to let students speak and voice their own sentiments, a school constitutionally need not, and must not, impose special restrictions on religious content and viewpoint."<sup>100</sup> A unanimous Eleventh Circuit panel agreed,<sup>101</sup> which Pryor hailed as a "victory for religious freedom in Alabama, a victory for free speech in Alabama, a victory for the First Amendment in Alabama, and a victory for the students of Alabama."<sup>102</sup>

AG Pryor went on to reassure schools, parents, and students that school-initiated moments of quiet reflection and student-organized prayer gatherings like "See You at the Pole" would be protected by the state.<sup>103</sup> "[D]emocracy," after all, "is more than a political experiment; it is a spiritual and moral enterprise."<sup>104</sup> With these words from American theologian John Courtney Murray, Pryor ended his first inaugural address. And Pryor's efforts to protect and help the children of this state exemplified his commitment to that belief.

#### V. GROWING THE AG'S OFFICE

With the federal government effectively in control of several state agencies, and with more and more litigation targeting state laws, AG Pryor recognized early on the need for a specialized unit to handle these unique challenges. In September 1998, he established the Constitutional Defense Division.<sup>105</sup> Those five attorneys would handle complex civil suits involving constitutional law, class actions, employment law, civil rights, and voting rights.<sup>106</sup> One of its first missions was to pursue the termination of so-called "structural injunctions" that

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97. *Chandler v. James*, 180 F.3d 1254, 1266 (11th Cir. 1999).

98. *Chandler v. Siegelman*, 530 U.S. 1256 (2000).

99. 530 U.S. 290 (2000).

100. Supplemental Brief of Appellants Attorney General of Alabama Et Al. at 15, *Chandler v. Siegelman*, 230 F.3d 1313 (11th Cir. 2000) (Nos. 97-6898, 97-6953).

101. *Chandler v. Siegelman*, 230 F.3d 1313, 1316-17 (11th Cir. 2000).

102. Press Release, Bill Pryor, Statement of Attorney General Bill Pryor 1 (Apr. 18, 2001) (on file with the Alabama Office of the Attorney General).

103. See Press Release, Bill Pryor, AG Says Flagpole Prayer Gatherings Are Protected by First Amendment (Sept. 18, 2000) (on file with the Alabama Office of the Attorney General).

104. Pryor, 1999 Inauguration Speech, *supra* note 55, at 4 (quoting John Courtney Murray).

105. Stan Bailey, *Pryor Names Heads of Three Divisions*, BIRMINGHAM NEWS, Sept. 18, 1998, at C4.

106. See *Constitutional Defense Division*, ALA. ATT'Y GEN., <https://www.alabamaag.gov/divisions/constitutional-defense-division/> [https://perma.cc/Q54C-4H7A].

unduly interfered with the state's ability to conduct its business in a fair and constitutional manner.<sup>107</sup> The division had immediate success, regaining control of the state's correctional system by vacating federal court injunctions that specified how the state was to run its adult correctional facilities and its juvenile detention centers.<sup>108</sup>

Constitutional Defense has continued to be a magnet for attorneys skilled at tackling high-stakes litigation and novel legal issues. In recent years, the division, for example, has successfully defended the state's voter identification law,<sup>109</sup> the use of bail schedules,<sup>110</sup> the state's longstanding use of statewide elections for appellate judges,<sup>111</sup> and the continued legality of the witness requirement for absentee ballots.<sup>112</sup> In addition, the division has helped bring affirmative litigation, like the state's successful challenge to a 2021 federal law that threatened to punish states for lowering state taxes.<sup>113</sup>

In 2001, AG Pryor sought to raise the standard of appellate advocacy in the office by creating the new position of solicitor general, making Alabama the thirtieth state with such an officer.<sup>114</sup> Pryor found in Nathan Forrester a heavy-hitter to fill the new position.<sup>115</sup> Nathan had served for several years as senior counsel to the Securities and Exchange Commission in charge of federal appellate litigation and had directed appellate litigation for The Becket Fund for Religious Liberty.<sup>116</sup> He had also served as a law clerk to Justice Anthony Kennedy of the United States Supreme Court and Judge J. Harvie Wilkinson III of the United States Court of Appeals for the Fourth Circuit.<sup>117</sup> His duties as solicitor general included handling cases on appeal as lead appellate counsel; evaluating cases to determine their merits and likely success on appeal; formulating litigation strategy for all appellate cases; and consulting with assistant attorneys general in this office and other state departments who were handling directly the state's appeals.<sup>118</sup>

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107. 1999: YEAR IN REVIEW, *supra* note 30, at 17.

108. *Id.*; see also Opinion, *Freeing DYS Is Sign of Progress*, MONTGOMERY ADVERTISER, Dec. 21, 1998, at 10.

109. *Greater Birmingham Ministries v. Sec'y of State for Ala.*, 992 F.3d 1299 (11th Cir. 2021).

110. *Schultz v. Alabama*, 42 F.4th 1298 (11th Cir. 2022).

111. *Ala. State Conf. NAACP v. Alabama*, 612 F. Supp. 3d 1232 (M.D. Ala. 2020).

112. *Merrill v. People First of Ala.*, 141 S. Ct. 25 (2020).

113. *West Virginia v. U.S. Dep't of the Treasury*, 59 F.4th 1124 (11th Cir. 2023).

114. Dana Beyerle, *UA Professor Named Solicitor General*, TUSCALOOSA NEWS (Jan. 11, 2002, 11:01 PM), <https://www.tuscaloosaneews.com/story/news/2002/01/12/ua-professor-named-solicitor-general/27816865007/> [<https://perma.cc/E5U9-HUGM>].

115. *Id.*

116. Press Release, Bill Pryor, Pryor and Law School Dean Appoint Nathan Forrester as New Solicitor General for State and Hugo Black Fellow 1 (Jan. 10, 2002) (on file with the Alabama Office of the Attorney General).

117. *Id.*

118. *Id.* at 1–2.

Forrester was put right to work in what turned out to be an especially busy year. The United States Supreme Court had agreed to hear three cases in which Alabama was a party. Former Ohio Solicitor General and future Sixth Circuit Judge Jeffrey Sutton argued one, Forrester argued another, and Pryor took the last one for himself.<sup>119</sup> In Pryor's case, *Alabama v. Shelton*, the question presented was whether the Sixth Amendment right to counsel applies to a misdemeanor case where a defendant receives a probated sentence.<sup>120</sup> The state's position was that the threat of imprisonment does not invoke the right to appointed counsel.<sup>121</sup> The Supreme Court, in a 5–4 decision authored by Justice Ginsburg, disagreed. Justice Scalia wrote a dissenting opinion, which was joined by Chief Justice Rehnquist, Justice Kennedy, and Justice Thomas.<sup>122</sup>

The SG position has continued to attract experienced appellate advocates to state service. Forrester was followed by Kevin Newsom, who was also a former Supreme Court clerk, and who left his D.C.-based appellate practice to serve his home state.<sup>123</sup> Newsom was followed by Corey Maze, then John Neiman, and then Andrew Brasher. Three of those four are now federal judges,<sup>124</sup> and Neiman chairs the appellate practice at Maynard Nexsen PC.<sup>125</sup>

In the last few years, the SG Division has grown to help better manage the state's busy appellate docket. In addition to the solicitor general, the division now has two deputies and two assistants who bring added expertise to the state's appeals, while also assisting other divisions in certain trial court matters and enabling the state to participate as *amicus curiae* in a greater number of cases across the country.

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In his first inaugural address, AG Pryor promised to promote “the faith of the people in our government with constant honesty and persistent hard

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119. *See* Bd. of Trs. of the Univ. of Ala. v. Garrett, 531 U.S. 356 (2001); *Hope v. Pelzer*, 536 U.S. 730 (2002); *Alabama v. Shelton*, 535 U.S. 654 (2002).

120. 535 U.S. at 657–58.

121. *See id.* at 675 (Scalia, J., dissenting).

122. *Id.* at 674–81 (Scalia, J., dissenting).

123. John Ryan, *Lawyer Limelight: Kevin Newsom*, LAWDRAGON (Jan. 5, 2012), <https://www.lawdragon.com/lawyer-limelights/2012-01-05-kevin-newsom> [<https://perma.cc/E4LX-FWSP>].

124. *Judge Corey L. Maze*, U.S. DISTRICT CT., N. DISTRICT OF ALA., <https://www.alnd.uscourts.gov/content/judge-corey-l-maze> [<https://perma.cc/L4P4-9JQU>]; *Hon. Kevin C. Newsom*, U.S. CT. OF APPEALS FOR THE ELEVENTH CIR., <https://www.ca11.uscourts.gov/judges/hon-kevin-c-newsom> [<https://perma.cc/L3ML-YJR9>]; *Hon. Andrew L. Brasher*, U.S. CT. OF APPEALS FOR THE ELEVENTH CIR., <https://www.ca11.uscourts.gov/hon-andrew-l-brasher> [<https://perma.cc/J8TU-AAUU>].

125. *John Neiman*, MAYNARD NEXSEN, <https://www.maynardnexsen.com/professionals-john-neiman> [<https://perma.cc/V5P5-Q946>].

work.”<sup>126</sup> His record shows that he kept his promise. Even twenty years after leaving state service, AG Pryor’s tireless efforts, unswerving dedication to the rule of law, and vision for this office continue to benefit the people of the state he served so well.

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126. Pryor, 1999 Inauguration Speech, *supra* note 55, at 2; *see also* Tom Gordon, *Siegelman Sets a Different Tone: Time for State to Turn the Page*, BIRMINGHAM NEWS, Jan. 19, 1999, at A1.