

A MAN OF LAW, PRINCIPLE, AND COURAGE

*Hon. Jeff Sessions**

I am honored to share some observations and thoughts on the life, character, and career to date of Chief Judge William H. Pryor Jr. He has played an important role in Alabama history and in defending the historic principles of the American constitutional order. It speaks well of this law review to pause a moment and recognize his work.

In my life in law and politics, I have met a number of persons of high character and ability who have deployed their talents to public service, but Bill Pryor's record is unsurpassed. That is why he has become an inspiration to so many. I have had an opportunity to work with him and to observe him closely at various times over the years. That he has become one of the most respected legal minds in America and one of our most able jurists, few would deny. Such has been his superb service that I know he was on the final short list for nomination to the U.S. Supreme Court and would have made a superb addition to it.

Bill was surely shaped at an early age by his upbringing in Mobile with wonderful Christian parents. There he developed a rich faith and understanding in the great Catholic tradition of heart and mind. Even as a young law student at Tulane, he had already begun to demonstrate a serious interest in the important issues facing our country and the judiciary. As Editor in Chief of the *Tulane Law Review*, he reached out to then U.S. Attorney General, Edwin Meese, asking him to come to Tulane to speak at a law review event. Meese had very recently made an important address opposing judicial activism.¹ In legal circles, this became a breakout moment for originalism, resulting in an intense national debate, as it was a direct challenge to the then-prevailing legal orthodoxy. As he began his legal career, Bill's thinking on such issues was already becoming evident, as was his courage to stand up for his convictions.

I first got to know Bill during my uphill 1994 campaign for Alabama attorney general against the incumbent, Jimmy Evans. On behalf of the state, Evans had entered into a settlement of a federal lawsuit alleging Alabama's method of electing supreme court judges was discriminatory.² In effect, the settlement would have allowed the plaintiffs and their plaintiff lawyer allies to

* Former United States Attorney General, United States Senator, and Alabama Attorney General. I express my gratitude to Richard F. Allen, Chief Deputy Attorney General (1997–2005, 2011–2012), for his contribution in this reminiscence of Bill. Richard's leadership, judgment and integrity were invaluable to me and Attorney General Pryor.

1. Edwin Meese III, Atty Gen. of the U.S., Speech to the American Bar Association (July 9, 1985), <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/07-09-1985.pdf>.

2. *White v. State of Alabama*, 867 F. Supp 1519, 1525 (M.D. Ala. 1994).

add two new judges to the court, above the number set by the Alabama constitution, judges of their choice, without election, a shocking and unprecedented remedy.³

The district court set a hearing to receive public comment,⁴ and I intended to personally appear as a citizen and object. But time was very short. I needed draft remarks from a skilled attorney at the last minute. I heard that Bill Pryor, then a practicing attorney at a prominent Birmingham firm, was the best. It was late to ask a rising attorney to jump into this constitutional litigation, but I promptly called for his help.

Fortunately, he had already concluded that the settlement was legally flawed and dangerous, and he readily agreed. Indeed, he relished the task of striking a blow for the Alabama constitution and the rule of law. I came to know this was the core of Bill Pryor. He loves America, the rule of law, and a good fight. As the line in the popular song declares, his “eyes . . . flash at the sound of lies,”⁵ and he has always felt a high duty to use his great talents to protect and advance the American legal system. The remarks he prepared for me were brilliant. They demolished the legal legitimacy of the Evans settlement at the highest level. They were just what was needed. I was proud to deliver them, word for word, and thrilled to have become acquainted with Bill.

A few months later, the political winds had shifted. From trailing badly, I won by a sizable margin.⁶ It was great news when Bill agreed to leave his firm, take a sizeable pay cut, and become Special Deputy Attorney General for Civil and Constitutional Litigation. Leaving private practice for public service represented a major turn in his life and for his family, and it was one that would hugely benefit the State of Alabama beyond what its citizens could then appreciate.

Ours was a lean team. We had been left an office that was essentially financially bankrupt. Conditions were so dire that after terminating the jobs of nearly one-third of the employees, the budget was still not balanced. Everyone carried a heavy load. Bill’s presence was positively felt immediately in a host of ways. Importantly, it fell to him, at age thirty-three, to be the top litigator in our efforts to restore confidence and integrity in our state’s legal system during a time of confusion and legal conflict.

There were two pressing matters of extreme importance facing the attorney general. The first was the previously mentioned “settlement” of the lawsuit challenging the method of electing Alabama supreme court judges, which was

3. *Id.*

4. Joint Brief of Appellants at 6, *White v. State of Alabama*, 74 F.3d 1058 (11th Cir. 1996) (Nos. 94-7024, 94-7081).

5. THE ASSOCIATION, *WINDY* (Warner Bros. Records 1967).

6. C.J. Schexnayder, *Jeff Sessions*, ENCYC. OF ALA. (Feb. 6, 2018), <https://encyclopediaofalabama.org/article/jeff-sessions/> [https://perma.cc/QB4V-DL7X].

on appeal.⁷ Second, the election for chief justice of the Alabama Supreme Court had resulted in an apparent razor-thin 700-vote victory for Republican Perry Hooper over the Democrat incumbent Sonny Hornsby, out of some one million cast. It had been a well-funded, bitter race, with trial lawyers and business groups at odds. Hornsby contested the certification of the results.⁸

While still in office, lame-duck Attorney General Evans had entered the election litigation on behalf of Hornsby by taking the curious position that the Alabama law requiring that absentee ballots be notarized or witnessed before they could be legally counted should not be followed and that all such ballots should have been counted.

These cases were in the newspapers and media almost every day. The legal credibility of the Office of the Alabama Attorney General was at stake. Our litigator, counsel, and advocate throughout was young Bill Pryor, only days in the office. The briefs, hearings, and arguments were his. It all came from his fertile mind and his legal principles. He went out to battle. His arguments in the Eleventh Circuit Court of Appeals prevailed in both cases. The court firmly found that the Evans “settlement” was not legitimate and struck it down, protecting the authority of the Alabama constitution.⁹ And, in the Hooper–Hornsby contest, the Eleventh Circuit opinion held that our defense of the Alabama absentee ballot requirements (which had reversed the Evans position), was correct.¹⁰ As part of the opinion, the court held that it was impermissible for a state to use different standards for counting ballots in different parts of the state.¹¹ This became a very important issue later when the historic *Bush v. Gore* election contest arose in Florida.¹² As Bill was an expert on this issue, he became well known to the top team of Bush lawyers. President Bush and his legal team saw something special in Bill, as I did, and he became an early Bush nominee for the Eleventh Circuit Court of Appeals.¹³

From the start, our team, Chief Deputy Attorney General Richard Allen, Bill Pryor, now federal Judge Kristi Lee, and all the staff shared high goals for the office. Make no mistake, in this effort, Bill was invaluable. These two cases that Bill handled so ably were historic and impactful ones for Alabama.

Richard became Bill’s direct supervisor. Richard is a great lawyer, had twenty years of top law firm practice and had been managing editor of this *Alabama Law Review* in 1973. He was to review young Bill’s briefs, confident that he could improve the work product in these cases of great importance. As

7. *See* *White v. State of Ala.*, 74 F.3d 1058 (11th Cir. 1996).

8. *See* *Roe v. State of Alabama*, 68 F.3d 404 (11th Cir. 1995).

9. *White*, 74 F.3d at 1068–73.

10. *Roe*, 68 F.3d at 409.

11. *Id.*

12. *See* *Bush v. Gore*, 531 U.S. 98 (2000).

13. *Judicial Nominations*, THE WHITE HOUSE: PRESIDENT GEORGE W. BUSH, <https://georgewbush-whitehouse.archives.gov/infocus/judicialnominees/pryor.html> [<https://perma.cc/GW2G-EUTL>].

Richard likes to say, “[H]ow wrong I was. Try as I might, I could not find a single flaw, and in fact, I could find nothing that even needed improvement.”¹⁴ Richard’s admiration for Bill remained strong as he continued as chief deputy for Bill’s almost seven years as attorney general. No one worked more closely with Bill during these years than Richard. He correctly describes Bill this way: “In . . . two years Bill had established himself as a principled conservative, an intellectual powerhouse, and a lawyer whose integrity and ethics were above reproach.”¹⁵ He notes that Bill’s “dedication to the rule of law was tested many times during his tenure but his core belief always prevailed.”¹⁶

Soon, Senator Howell Heflin announced that he would not seek re-election.¹⁷ After only two years as attorney general, I was elected and departed to the Senate.¹⁸ The Governor would name my replacement. I was confident that Bill was the right person to carry on our reforms and lead the office to higher levels. I was extremely pleased that Governor Fob James, after much care, took my recommendation and appointed Bill as Alabama’s attorney general.¹⁹ He was, at the time, the youngest state attorney general in the country. He had been at the center of and was a contributor to all our major decisions. He knew Alabama and what was needed. He possessed courage and integrity. He was ready for the job. Two years later, he was elected attorney general on his own and re-elected again four years later with the highest vote percentage of any statewide candidate.²⁰

During his service as attorney general, Bill always resisted political pressure in order to remain true to sound principles and the rule of law. While he defended in court the legal right of an Alabama circuit judge to display the Ten Commandments, when that same judge became chief justice of the Alabama Supreme Court and refused to comply with a federal court order to remove a monument in the supreme court foyer, as was his duty, Bill presented the ethics case that resulted in the judge’s removal.²¹ And, when just about every state attorney general joined the unprecedented lawsuit against the tobacco industry,²² Bill steadfastly refused to join their dubious and expansive legal

14. Email from Richard Allen to author (Dec. 29, 2023) (on file with author).

15. *Id.*

16. *Id.*

17. *Senator Heflin Retirement Announcement*, C-SPAN (Mar. 29, 1995), <https://www.c-span.org/video/?64267-1/senator-heflin-retirement-announcement>.

18. *Attorney General: Jeff Sessions*, U.S. DEP’T OF JUST. (Nov. 24, 2022), <https://www.justice.gov/ag/bio/attorney-general-jeff-sessions>, [<https://perma.cc/KYT9-NKNU>].

19. *Judicial Nominations*, *supra* note 13.

20. ALABAMA SECRETARY OF STATE, CERTIFICATION OF RESULTS: NOVEMBER 5, 2002, at 1 (2002).

21. Jeffery Gettleman, *He’d Do It Again, Says the Ten Commandments Judge*, N.Y. TIMES (Nov. 13, 2003), <https://www.nytimes.com/2003/11/13/us/he-d-do-it-again-says-the-ten-commandments-judge.html>.

22. *The Master Settlement Agreement*, NAT’L ASS’N OF ATT’YS GEN., <https://www.naag.org/our-work/naag-center-for-tobacco-and-public-health/the-master-settlement-agreement/> [<https://perma.cc/3WU2-RC66>].

theory despite extreme pressure to do so.²³ He was, however, able to fashion a legal theory that he found to be principled and which allowed Alabama to justifiably share in the proceeds of the suit.

Bill also became a top leader among attorneys general nationwide and was a strong advocate by leading or joining suits of national significance. He created a new office of solicitor general in Alabama to advance issues of high importance.²⁴ And, there was so much more. While strongly pro-life, he correctly and dutifully sent a directive to Alabama district attorneys advising that parts of a new Alabama anti-abortion law were contrary to U.S. Supreme Court rulings and could not be enforced, upsetting many supporters and allies.²⁵

Bill Pryor is certainly a strong conservative, and he has always understood that conservatism and law demands justice for all. This was again made clear when he opened his remarks at his inauguration for a second full term as Alabama's attorney general with the words: "Equal under law today, equal under law tomorrow, equal under law forever."²⁶ Everyone, including civil rights advocates, knew he believed fully in these words. He was the driving force behind the important initiative to remove old language from our constitution that barred interracial marriage.²⁷ The change required a vote of the people, and his bold public leadership resulted in the people of Alabama voting to remove that stain from our constitution.

Bill Pryor's principled commitment to equality and public service was well known by all in Alabama, especially to our minority community. They had faced discrimination and many disappointments over the years, but in Bill Pryor they knew they had a man who would not tolerate injustice. This was demonstrated by leading Alabama African-American Democrats strongly supporting his confirmation to the Eleventh Circuit.²⁸

Congressman Artur Davis encouraged President Bush to nominate Bill for the Eleventh Circuit, saying he believed that Alabama would be proud of the service of his friend.²⁹ Joe Reed, long-time chairman of the Alabama

23. W. Kip Viscusi & Joni Hersch, *Tobacco Regulation Through Litigation: The Master Settlement Agreement* 4–5, 5 n.9 (Nat'l Bureau of Econ. Rsch., Working Paper No. 15422, 2009), https://www.nber.org/system/files/working_papers/w15422/w15422.pdf [<https://perma.cc/FG56-58QH>].

24. Dana Beyerle, *UA Professor Named Solicitor General*, TUSCALOOSA NEWS (Jan. 11, 2002, 10:00 PM), <https://www.tuscaloosaneews.com/story/news/2002/01/12/ua-professor-named-solicitor-general/27816865007/> [<https://perma.cc/K2K2-4F6N>].

25. *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. 6 (2003) (statement of Senator Sessions) [hereinafter *Confirmation Hearing*].

26. *Id.* at 5.

27. Bill Pryor, *Voters Should Repeal Marriage Ban*, MONTGOMERY ADVERTISER, Oct. 13, 2000, at 12A.

28. See, e.g., *Confirmation Hearing*, *supra* note 25, at 3–4 (statement of Representative Alvin Holmes); *id.* at 5 (listing leading African-American Democrats who supported Bill Pryor's nomination).

29. *Id.* at 7.

Democratic Conference, the party's African-American Caucus, and who over decades maintained a strong interest in the courts, wrote:

[Bill Pryor] will uphold the law without fear or favor. I believe all races and colors will get a fair shake when their cases come before him . . . I am a member of the Democratic National Committee and, of course, General Pryor is a Republican, but these are only labels. I am persuaded that in General Pryor's eyes, Justice has only one label—Justice!³⁰

I am confident that during his years of service in the state, no leader has been a clearer or more principled advocate for civil rights for all than Bill Pryor.

After the titanic *Bush v. Gore* legal battle that resulted in George W. Bush being sworn in as President, President Bush promptly submitted over a dozen appellate court nominees for Senate confirmation, including Bill Pryor.³¹

Before a Senate floor vote, a nominee must appear before the Judiciary Committee for a hearing and receive a majority vote.³² Abortion was a hot confirmation issue and Bill's personal and legal pro-life positions were bold and clear. He had expressed them plainly throughout his public service. As a member of the Judiciary Committee, I expected fireworks and came prepared. Most pro-life nominees were coached to deflect attacks by saying that while they are pro-life in their personal views, the Senate could be sure they will faithfully follow the law even were they to disagree with it. This was a correct but somewhat mealy mouthed response that normally got them by, while often resulting in more vigorous attacks, leaving the nominee looking defensive and apologetic for even having such views. Bill's record of faithfully following the law would easily have allowed him to honestly take the same position. But Bill was a different nominee. The hearing powerfully demonstrated his integrity and courage.

He handled the questioning superbly, but never more so than during the last set of questions by Senator Arlen Specter, then Chairman of the Judiciary Committee. Senator Specter, as was his pattern, went directly into the issue that seemed most contentious. My memory on this is vivid.

Senator Specter: . . . first I would ask you if this quote is accurate. I have seen a quote or two not accurate. "In the 1992 case of *Planned Parenthood v. Casey* the Court preserved the worst abomination of constitutional law in our history," close quote. Is that an accurate quotation of yours?

Mr. Pryor: Yes.

30. *Id.* at 7.

31. DENIS STEVEN RUTKUS, CONG. RSCH. SERV., RL31868, U.S. CIRCUIT AND DISTRICT COURT NOMINATIONS BY PRESIDENT GEORGE W. BUSH DURING THE 107TH AND 108TH CONGRESSES 18–23 (2005), https://www.everycrsreport.com/files/20050418_RL31868_acb251172cde8aa92472789fdaf9d321dacbd1fe.pdf [<https://perma.cc/E85E-GSLJ>].

32. *Federal Judicial Nominations: 9 Steps from Vacancy to Confirmation*, CTR. FOR AM. PROGRESS (Jan. 29, 2013), <https://americanprogress.org/article/federal-judicial-nominations-9-steps-from-vacancy-to-confirmation/> [<https://perma.cc/R26F-AXJA>].

Senator Specter: Is that one which would fall into the category that Senator Hatch has commented on, you wish you had not made?

Mr. Pryor: No, I stand by that comment.

Senator Specter: Why do you consider it an abomination, Attorney General Pryor?³³

At that point you could hear a pin drop. Everyone was hanging on the answer. But Bill was ready. And the answer did not come from some nomination sherpa. In fact, he knew well why he had made the statement years before. It was not some pop-off comment or some slip of the tongue. It was the product of careful judgment developed over years of thoughtful consideration, both moral and legal. He was at ease. He knew what he believed and was not afraid to confess it. The answer:

Mr. Pryor: Well, I believe that not only is the case unsupported by the text and structure of the Constitution, but it had led to a morally wrong result. It has led to the slaughter of millions of innocent unborn children. That's my personal belief.³⁴

What was left to say? Would the Senate reject a highly qualified nominee for this reason? Must the nominee publicly abandon his personal beliefs on important moral matters to serve as a judge in America? Senator Specter promptly went to another subject. Pro-abortion senators began to slip away. The great expectation of an abortion spectacle went away. In my twenty years on the Judiciary Committee, I had never seen a hearing like it. A single man of integrity, moral courage, and faith spoke the truth, and powerful senators fled.

Tensions after the amazingly close election and the pivotal *Bush v. Gore* Supreme Court ruling were extremely high. Democrat Senators steadfastly carried out a filibuster of almost all the highly qualified nominees, and Bill Pryor was one who was blocked.³⁵ Such a blanket Senate-floor filibuster was unprecedented, and it continued for months.³⁶

Finally, a bipartisan "Gang of 14" arose to break the log jam.³⁷ They agreed to clear only a certain number of the blocked nominees for votes. It was very important that Bill make the Gang-approved list. Senator Lindsey Graham was a member of the Gang.³⁸ Graham was a fellow member of the Judiciary Committee and an experienced attorney. He carefully studied Bill's record and quickly saw his legal skill and courage. He became a strong supporter. He said

33. *Confirmation Hearing*, *supra* note 25, at 108 (conversation between Senator Specter and Bill Pryor).

34. *Id.*

35. David Stout, *Senate Approves Judicial Nominee as Filibuster Deal Holds*, *NEW YORK TIMES* (June 9, 2005), <https://www.nytimes.com/2005/06/09/politics/senate-approves-judicial-nominee-as-filibuster-deal-holds.html>.

36. *Id.*

37. Michael Gerhardt & Richard Painter, "Extraordinary Circumstances": *The Legacy of the Gang of 14 and a Proposal for Judicial Nominations Reform*, 46 *U. RICH. L. REV.* 969, 970 (2012).

38. *Id.*

to me, “If that guy can’t be a federal judge, nobody can!” More than two years after his nomination, Bill was confirmed to the court he has so ably served.³⁹

Of course, there is much more about Judge Pryor’s record of service which others can relate better than I. Suffice it to say, I could not be prouder of or admire Chief Judge William J. Pryor more. He has been blessed with prodigious talents, and like a heart surgeon who has a life in his hands, he knows it. He feels the importance of his work. No one could say that Bill ever lacked confidence in his abilities and his judgments, and thankfully he was consistently right. Yet, because he believes to the core of his being, his very soul, that there is more to life than mammon, early in his professional career, he took the road less travelled and gave himself up to public service, always demonstrating an extraordinary purity of purpose. While Bill has had many blessings in his life, I know he values his wife Kris and his daughters most. They are a truly wonderful family. Kris is a professional herself and has understood his many demanding duties. She has also played a key role in keeping him grounded during the ups and downs of his service.

Commitment to law and service first has always been Judge Pryor’s approach. Certainly, his high ideals have provided a wonderful example and an inspiration for others. This has been particularly true for young lawyers whose lives he has enriched. For those who believe in Providence, the events of Bill’s career reveal many examples where an unseen hand seems to have been at work. The trajectory of his successful and important path was shaped by the thoughtful, selfless, and courageous choices he made along the way.

The nation and our culture mightily struggle today between following principle or power, between ideology and truth. If America takes the wrong course, it won’t be because William H. Pryor Jr. failed to stand in the breach.

39. PN200—*William H. Pryor Jr.—The Judiciary*, CONGRESS.GOV (June 9, 2005), <https://www.congress.gov/nomination/109th-congress/200>.