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A Scholarly Judge: The Honorable William Holcombe Pryor Jr.

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A SCHOLARLY JUDGE: THE HONORABLE WILLIAM
HOLCOMBE PRYOR JR.

*Kenneth M. Rosen**

The precise tasks assigned to scholars and jurists may differ, but the traits for success in accomplishing their assigned duties remarkably overlap. In celebrating the Honorable William Holcombe Pryor Jr.'s multiple decades as a judge on the United States Court of Appeals for the Eleventh Circuit,¹ one should note at the outset that Chief Judge Pryor is particularly well-characterized as a scholarly judge.

Chief Judge Pryor's professional career is filled with engagement in traditional scholarly pursuits. Notwithstanding the demands of a judgeship on one of the nation's busy circuit courts,² he has carved out time for teaching at the University of Alabama School of Law, as well as publishing work in multiple law reviews.³ He also makes time regularly to give speeches and to moderate panels on a variety of complex legal issues.⁴ However, his efforts deserve recognition with more than a mere participation award; his acts, both on and off the bench, merit recognition as a truly great scholarly judge.

His time as a student at Northeast Louisiana University and Tulane University School of Law showed his love of learning and portended the scholarly approach that he would take throughout his career long before he ascended to the position of chief judge of the Eleventh Circuit. After graduating *magna cum laude* from Northeast Louisiana, he went on to secure similarly high academic honors in earning his Juris Doctor degree from Tulane.⁵ Chief Judge Pryor's time at Tulane evidenced the judicial scholar that he would become. On

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1. See Pryor, *William Holcombe, Jr.*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/pryor-william-holcombe-jr> [<https://perma.cc/REG4-V6TP>].

2. Tens of thousands of cases are filed at the United States Courts of Appeals each year. See *Judicial Caseload Indicators - Federal Judicial Caseload Statistics 2023*, U.S. CTS., <https://www.uscourts.gov/judicial-caseload-indicators-federal-judicial-caseload-statistics-2023> [<https://perma.cc/3UXN-FB82>].

3. See, e.g., William H. Pryor, Jr., *Not-So-Serious Threats to Judicial Independence*, 93 VA. L. REV. 1759 (2007); William H. Pryor Jr., *Lessons of a Sentencing Reformer from the Deep South*, 105 COLUM. L. REV. 943 (2005); William H. Pryor Jr., *Madison's Double Security: In Defense of Federalism, the Separation of Powers, and the Rehnquist Court*, 53 ALA. L. REV. 1167 (2002).

4. See, e.g., William H. Pryor Jr., *Foreign and International Law Sources in Domestic Constitutional Interpretation*, 30 HARV. J.L. & PUB. POL'Y 173 (2006) (moderated panel on the sometimes-controversial use of foreign and international law sources in constitutional interpretation).

5. See *Resume, William H. Pryor, Jr.*, U.S. DEP'T OF JUST. ARCHIVE, <https://www.justice.gov/archive/olp/pryorresume.htm> [<https://perma.cc/DQ6P-LXQJ>] (noting Chief Judge Pryor's graduation *magna cum laude* from Tulane).

his way to finishing first in his class for the common-law curriculum, he became Editor in Chief of the *Tulane Law Review*.⁶

On the *Law Review*, he tried his hand at scholarly publishing in a student note that considered action by the United States Supreme Court in *City of Oklahoma City v. Tuttle*⁷ and the evolving law under § 1983 of the United States Code.⁸ Notably, he went beyond merely restating the Supreme Court's holding that limited municipal liability for "the single act of a non-policymaker municipal employee" under § 1983; instead, he parsed carefully through the merits of various opinions in this case to explain how the case might predict future Court action beyond the specific issue in that case.⁹ Perhaps even more significant than his own note, however, was Chief Judge Pryor's efforts as a student to provide a forum for and to foster thoughtful discussion of important legal ideas by others.

In particular, as a founding member of one of the relatively early student chapters of the Federalist Society for Law and Public Policy,¹⁰ Chief Judge Pryor hosted a landmark speech, "The Law of the Constitution," delivered by former Attorney General Edwin Meese at Tulane.¹¹ Attorney General Meese's speech distinguished between constitutional cases and the document itself.¹² The speech drew immediate national attention and critique, with the *Washington Post*, for example, claiming its contents were "self-evident."¹³ Attorney General Meese quickly retorted in the *Post* itself in commentary reprinted by the *Tulane Law Review* about what his speech meant, seemingly implying that the editorial additionally might illustrate why the focus on the issue he addressed was important to state out loud.¹⁴ Beyond a back and forth between a public official and the news media, significant legal scholars engaged on the ideas raised by the Attorney General.¹⁵ Decades later, Attorney General Meese's speech—one

6. See Hon. William H. Pryor, Jr., THE FEDERALIST SOC'Y, <https://fedsoc.org/contributors/william-pryor> [<https://perma.cc/QF6M-GDYN>].

7. *City of Oklahoma City v. Tuttle*, 471 U.S. 808 (1985).

8. See William H. Pryor, Jr., *The Single Incident Inference of Municipal Liability Under Section 1983: City of Oklahoma City v. Tuttle*, 60 TUL. L. REV. 874, 875 (1986).

9. *Id.*

10. The Federalist Society was founded in 1982. See *About Us*, THE FEDERALIST SOC'Y, <https://fedsoc.org/about-us#Background> [<https://perma.cc/4YNN-ZKYP>].

11. See Edwin Meese III, *The Law of the Constitution*, 61 TUL. L. REV. 979, 979 (1987); Elizabeth H. Slattery, William H. Pryor, Jr., & Edwin Meese III, *The Originalism Revolution Turns 30: Evaluating Its Impact and Future Influence on the Law*, THE HERITAGE FOUND. 1, 4 (2017), <https://www.heritage.org/sites/default/files/2017-01/SR-191.pdf> [<https://perma.cc/DE2J-U67D>] [hereinafter Slattery et al., *Originalism Revolution*] (describing more about Attorney General Meese's visit).

12. See Meese, *supra* note 11.

13. See Edwin Meese III, *The Tulane Speech: What I Meant*, 61 TUL. L. REV. 1003, 1004 (1987); see also Slattery et al., *Originalism Revolution*, *supra* note 11, at 3 (noting additional critiques from Harvard Law School Professor Laurence Tribe and leaders of the American Bar Association and the American Civil Liberties Union).

14. See Meese, *supra* note 13.

15. See, e.g., Mark Tushnet, *The Supreme Court, the Supreme Law of the Land, and Attorney General Meese: A Comment*, 61 TUL. L. REV. 1017 (1987). Chief Judge Pryor himself would later note the acceptance by multiple

facilitated by Chief Judge Pryor—remains relevant to broader debates about originalism, the Constitution, and the role of courts in interpreting it.¹⁶

Off to this remarkable start to a life defined by public service and scholarship, Chief Judge Pryor followed his graduation from Tulane with an incredibly varied legal career before joining the bench. He clerked for the legendary John Minor Wisdom of the United States Court of Appeals for the Fifth Circuit, practiced with the private law firms of Cabaniss, Johnston, Gardner, Dumas & O’Neal and Walston, Stabler, Wells, Anderson & Bains, and served as deputy attorney general and attorney general of the State of Alabama.¹⁷ In these positions as well as on the bench, Chief Judge Pryor would further solidify his scholarly bona fides. Five of the scholarly traits he frequently utilizes particularly stand out: an investigative nature, an open mind, cogent analysis and communication, courage of convictions, and awareness of legacy.

I. AN INVESTIGATIVE NATURE

A starting point for any fine scholar is genuine curiosity and a desire to discover all information relevant to the matter being studied and commented upon. Chief Judge Pryor’s desire to find all the facts predates his time on the bench. The citizenry of the State of Alabama is very familiar with this based upon his service and prosecution of numerous cases in the Office of the Attorney General. The value he places on being fully informed is further illustrated by his expectations for those working with him.

At the University of Alabama School of Law, one of the courses he taught was federal jurisdiction, where he utilized the classic text, Hart and Wechsler’s *The Federal Courts and the Federal System*.¹⁸ This casebook is known not only for its classic exposition on federal courts, but also for its length.¹⁹ Undoubtedly, the book’s comprehensive nature allows professors to pick and choose from it to formulate a narrower list of topics to cover in their courses. However, Chief Judge Pryor was known by his students for gleefully getting through amazingly large portions of the book in a single semester at early morning class meetings before he traveled back to Birmingham for his judicial duties. Rather than bemoan the workload, students cherished the opportunity to explore the materials with him.

top scholars of the significance of Attorney General Meese’s remarks. See Slattery et al., *Originalism Revolution*, *supra* note 11, at 4.

16. See Slattery et al., *Originalism Revolution*, *supra* note 11, at 2.

17. See *Resume*, *supra* note 5.

18. See DANIEL J. MELTZER ET AL., *HART & WECHSLER’S THE FEDERAL COURTS AND THE FEDERAL SYSTEM* (7th ed. 2015).

19. See *The Federal Courts and The Federal System*, WEST ACAD., <https://faculty.westacademic.com/Book/Detail?id=3264> [<https://perma.cc/G4WL-58AM>] (noting over 1600 pages for one edition).

Not surprisingly, he holds his law clerks to equally rigorous standards so that they can assist him in finding all relevant information as he considers cases before him. New clerks receive a “two-inch-thick manual full of idiosyncrasies and expectations.”²⁰ He wants those clerks to be able to advise him “backed by exhaustive research and analysis.”²¹ Like the University of Alabama students, they relish the opportunity to engage with him, rewarded for their efforts with stories drawing from an extraordinary life at many meals with him and on other occasions.²²

Beyond sharing this intellectual work ethic with those he works with, Judge Pryor’s personal commitment to this rigor of study in his own work is consistent with his understanding of the importance of originalism and the lessons he learned from Attorney General Meese many years before. One way to think of the enterprise of originalism is making the necessary effort to discover first principles in a thorough, scholarly way rather than relying on the contemporary commentary of some who wish to advocate preferred new versions of the law.

II. AN OPEN MIND

Complementing Chief Judge Pryor’s desire to investigate all relevant information before rendering a decision is a good scholar’s commitment to process that information with an open mind. Chief Judge Pryor is known for his enthusiasm for hearing all sides of an issue before reaching his own conclusions. On a personal note, as an academic fortunate enough to plan events that discuss important legal issues of the day, in seeking input on how to organize such gatherings, I can think of no one who more consistently emphasizes the need to have a variety of voices present to discuss the issues. Chief Judge Pryor is not afraid to hear from others, including those with different views. It is noteworthy that when given the opportunity to comment on current threats to judicial independence, he explained that in a historical context, critiques were “relatively mild and, on balance, a benefit to the judiciary.”²³

Chief Judge Pryor’s openness to considering a variety of views undoubtedly was influenced by his former employer, Judge Wisdom. Upon his passing, Judge Wisdom’s obituary in the *New York Times* notably described him as “the New Orleans *legal scholar* who wrote opinion after opinion that desegregated courthouses throughout the Deep South and put blacks on juries, in the voting

20. See Taylor Meehan & Kasdin M. Mitchell, *From the Alabama Lawyer: One of the Good Guys – Pryor Becomes Chief Judge of the Eleventh Circuit*, ALA. STATE BAR (Mar. 25, 2021), <https://www.alabar.org/news/one-of-the-good-guys-pryor-becomes-chief-judge-of-the-eleventh-circuit/> [https://perma.cc/9GU3-ZCCY].

21. *Id.*

22. *See id.*

23. See William H. Pryor, Jr., *Judicial Independence and the Lesson of History*, 68 ALA. LAW. 389, 389 (2007).

booth, in state legislatures and in integrated classrooms.”²⁴ Judge Wisdom’s greatness was his ability to see that the law he applied necessitated changes contrary to long-held beliefs of others in the region where he grew up. At the core, Judge Wisdom was open to a new conceptualization of race relations in the South and willing to act on it.

Chief Judge Pryor similarly has spent his career accepting this new way and battling against old ways of thinking. For example, as Alabama’s attorney general, he deputized then-United States Attorney Doug Jones to allow him to pursue a prosecution related to the bombing of Birmingham’s Sixteenth Street Baptist Church years after this sad event in Civil Rights history.²⁵ And, as Alabama’s attorney general, Chief Judge Pryor argued significant evidentiary issues before the Alabama Court of Criminal Appeals to attempt to overturn a conviction against one of the alleged bombers.²⁶ After joining the Eleventh Circuit, Chief Judge Pryor continues to vindicate civil rights in his judicial capacity.²⁷

III. COGENT ANALYSIS AND COMMUNICATION

Beyond investigating the matter considered and accounting for various views on the issue at hand, the best scholars, having reached a conclusion, must present cogent analysis supporting that conclusion and be able to communicate their findings clearly. As a successful lawyer in private practice and public service, Chief Judge Pryor has accomplished this goal exceedingly well in multiple settings. The clarity of his thinking and his intellectual heft have aided him as he travels the worlds of civil and criminal law in a variety of legal subject matters. That wide-ranging experience further assisted him as he joined a court with broad jurisdiction over many types of matters.

Of course, writing talents are especially critical for lawyers to cogently convey analysis. This is why jurists, like academics, are frequently judged on the quality of their writings.²⁸ Chief Judge Pryor has been recognized for the fineness of his written work. For example, Bryan Garner includes Chief Judge Pryor on his list of jurists whose opinions can be useful to study.²⁹ Citation of

24. See Jack Bass, *John Minor Wisdom, Appeals Court Judge Who Helped to End Segregation, Dies at 93*, N.Y. TIMES, May 16, 1999 (¶ 1), at 45 (emphasis added).

25. See Kenneth M. Rosen & Hon. W. Keith Watkins, *Justice Delayed, Justice Delivered: The Birmingham Sixteenth Street Baptist Church Bombing and the Legacy of Judge Frank Minis Johnson Jr.*, 71 ALA. L. REV. 601, 604 n.17 (2020).

26. See Dave Bryan, *Ex-Klansman Appeals Church Bomb Verdict*, MIDLAND DAILY NEWS (May 19, 2003), <https://www.ourmidland.com/news/article/Ex-Klansman-Appeals-Church-Bomb-Verdict-7111408.php> [<https://perma.cc/DBA9-UE4T>].

27. See, e.g., *Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988 (11th Cir. 2018) (reviewing school desegregation matter).

28. See, e.g., Kenneth M. Rosen, *Serving the Public with a Pen*, 69 ALA. L. REV. 641, 641 (2018).

29. See BRYAN A. GARNER ET AL., *THE REDBOOK: A MANUAL ON LEGAL STYLE* 537–58 (4th ed. 2018).

Chief Judge Pryor's work by others further validates the excellence of his efforts.

IV. COURAGE OF CONVICTIONS

While excellence in writing is necessary for great scholars, it hardly is sufficient. The best jurists and scholars clearly convey confidence in their belief in what they are writing, even if others may disagree. In this regard, Thomas More comes to mind. More expertly traversed the worlds of law, politics, and writing. In addition to writing the masterpiece *Utopia*, he also was one of history's most noted statesmen, rising to be Chancellor of England before his execution for standing by his beliefs and rejecting King Henry VIII as the Church of England's leader.³⁰ True scholars, having considered the relevant information and viewpoints, ultimately need the courage of their convictions. Chief Judge Pryor certainly exhibits the wherewithal to stand by his carefully reached conclusions and his fidelity to the law.

For instance, as Alabama's attorney general, he relied on this courage of his convictions and belief in the rule of law while dealing with former Alabama Supreme Court Justice Roy Moore. Chief Justice Moore famously refused to comply with a federal court order to remove a monument to the Ten Commandments from the supreme court building.³¹ As attorney general, Chief Judge Pryor personally prosecuted Chief Justice Moore before a special ethics panel that led to Moore's removal from the bench.³² Even though Chief Judge Pryor was an elected official at the time and Moore had many supporters, after the ouster of his fellow Republican, Chief Judge Pryor declared, "I did my duty."³³ That response should be no surprise to one familiar with Chief Judge Pryor's writings related to the performance of his public duties. While he is a person of deep faith, which provides him and other judges with the personal strength to fulfill their duties as jurists, such faith does not conflict with a judge's ability to maintain fidelity to the law.³⁴

Now that he is on the bench, while notably courteous, Chief Judge Pryor remains loyal to his convictions about what is legally correct and does not shy away from dissenting when he feels it necessary. For example, in an Eleventh Circuit panel decision regarding the prosecution of former Congresswoman Corrine Brown, where the majority affirmed the district court's handling of the

30. See *Thomas More*, BRITANNICA, <https://www.britannica.com/biography/Thomas-More-English-humanist-and-statesman> [<https://perma.cc/5JUV-P4ZT>] (Feb. 3, 2024).

31. Jeffrey Gettleman, *Alabama Panel Ousts Judge Over Ten Commandments*, N.Y. TIMES (Nov. 13, 2003), <https://www.nytimes.com/2003/11/14/us/alabama-panel-ousts-judge-over-ten-commandments.html>.

32. See *id.*

33. *Id.*

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

matter, Chief Judge Pryor wrote a long dissent questioning Brown's conviction based on his perceived flaws with the removal of a juror related to religious beliefs.³⁵ The significance of Chief Judge Pryor's concerns were vindicated when the en banc court, in an opinion written by him, came to a different conclusion than the one reached by the panel majority, vacated Brown's conviction, and remanded for a new trial.³⁶ Moreover, Chief Judge Pryor's concurrences illustrate that he is unwilling always to rest on a majority opinion merely because it yields a result that he favors; he is willing to expand on issues in a separate opinion which ultimately allows them to be more closely examined by all.³⁷

Beyond his opinions, Chief Judge Pryor fearlessly steps into broader legal debates to point out flaws in arguments that might achieve a level of popularity. Noteworthy of late has been his engagement of notions presented by Harvard Law School Professor Adrian Vermuele in *Common Good Constitutionalism*, where Professor Vermuele claims to provide another approach to understanding the Constitution superior to originalism.³⁸ Chief Judge Pryor has boldly defended the originalist approach and skillfully articulated flaws of this common goodism and the arguments of its supporters.³⁹

V. AWARENESS OF LEGACY

A final scholarly trait worth noting is the greatest scholar's desire and ability to leave a positive legacy. Scholarship should not be an aesthetic pursuit meant only to satisfy the scholar's personal curiosity, but rather should make real contributions to other people's lives. In addition to the many ways noted above that Chief Judge Pryor has gone beyond his traditional judicial duties and opinion writing to help others, a couple more are worth noting.

First, Chief Judge Pryor regularly partakes in long-lasting, impactful efforts to foster better understanding of the law. Sometimes these efforts come in his official capacity to provide information and knowledge for fellow jurists. For example, he currently serves on the Judicial Conference of the United States, which sets policy for the federal judiciary.⁴⁰ He previously was nominated by

35. See, e.g., *United States v. Brown*, 947 F.3d 655, 683–711 (11th Cir. 2020) (Pryor, J., dissenting).

36. See *United States v. Brown*, 996 F.3d 1171, 1194 (11th Cir. 2023).

37. See, e.g., *Doe as Next Friend of Doe #6 v. Swearingen*, 51 F.4th 1295, 1310–11 (11th Cir. 2022) (concurring separately “to explain why it is proper for this Court to raise Eleventh Amendment immunity *sua sponte*”).

38. See ADRIAN VERMEULE, *COMMON GOOD CONSTITUTIONALISM* (1st ed. 2022); see also *Common Good Constitutionalism*, AMAZON, <https://www.amazon.com/exec/obidos/ASIN/1509548874/reason-magazine-20/> (proclaiming the book to be “erudite and brilliantly original”).

39. See, e.g., William H. Pryor, *Against Living Common Goodism*, 23 *THE FEDERALIST SOC'Y* 24 (2022); William H. Pryor & Conor Casey, *Originalism is Dead. Long Live Originalism*, 107 *JUDICATURE* 60 (2023).

40. See *About the Judicial Conference*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference#membership> [<https://perma.cc/YQ6B-7QUG>].

the President and confirmed by the Senate to serve for several years as one of the judges on the United States Sentencing Commission, including a stint as the Commission's Acting Chair.⁴¹ But he also goes well beyond his official activities to dedicate his personal time to enlightening others about the law. For instance, he serves as an elected member of the American Law Institute, joining other leading jurists, academics, and members of the bar to clarify the law through the Institute's Restatement projects.⁴² Beyond merely being a member, he is an adviser for the Institute's new Restatement on Conflict of Laws.⁴³ Similarly, as Chief Judge of the Eleventh Circuit, he happily supports efforts like that of the Circuit's Historical Society in preserving the court's history for a broader audience as the Society's Honorary Chair.⁴⁴

Second, with the aplomb of the best PhD dissertation advisers, Chief Judge Pryor actively seeks out talented young lawyers to train to make important contributions to the bar and American legal system in a variety of capacities, whether it be students, his law clerks, or others. It is no surprise that lawyers he personally mentored have gone on to become federal judges, state supreme court justices, solicitor generals, government officials, partners at major law firms, and attorneys in other prominent positions.

Some of those lawyers and other members of the bar join together here to express their gratitude for the scholarly Chief Judge Pryor and his personal impact on the law. These include the Honorable Clarence Thomas from the United States Supreme Court; the Honorable Ed Carnes from the United States Court of Appeals for the Eleventh Circuit; former United States Attorney General, United States Senator, and Alabama Attorney General Jeff Sessions; Alabama Attorney General Steve Marshall and Alabama Solicitor General Edmund LaCour; the Honorable Andrew Brasher from the United States Court of Appeals for the Eleventh Circuit; the Honorable Kevin Newsom from the United States Court of Appeals for the Eleventh Circuit and the Honorable Corey Maze from the United States District Court for the Northern District of Alabama; the Honorable Anna Manasco from the United States District Court for the Northern District of Alabama; the Honorable Sarah Campbell from the Tennessee Supreme Court; Molly Glazner, Taylor Meehan, Kasdin Mitchell, and the Honorable Kathryn Mizelle from the United States District Court for the Middle District of Florida; and Caroline Stephens Milner.

41. See *Circuit Judge William H. Pryor, Jr., Acting Chair of the U.S. Sentencing Commission*, ESP INSIDER EXPRESS (U.S. Sent'g Comm'n, Washington, D.C.), Spring 2017, at 1, 4.

42. See *Member Directory*, AM. L. INST., <https://www.ali.org/members/directory/?term=pryor> [<https://perma.cc/2PKD-KXGN>].

43. See *Hon. William H. Pryor, Jr.*, *supra* note 6.

44. See William G. "Will" Parker Jr., *Chief Judge William H. Pryor Jr., A New Honorary Chair for the Eleventh Circuit Historical Society*, 11TH CIR. HIST. NEWS, Winter 2020, at 2.