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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

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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WEDNESDAY, JUNE 11, 2003

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:38 a.m., in room G50, Dirksen Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Specter, Kyl, Sessions, Chambliss, Cornyn, Leahy, Kennedy, Kohl, Feinstein, Feingold, Schumer, Durbin, and Edwards.

Chairman HATCH. We are happy to begin today. We have two stellar nominees on the agenda today: Bill Pryor, who has been nominated for the Eleventh Circuit, and Diane Stuart, who has been nominated to be Director of the Violence Against Women Office in the Department of Justice.

We also have several gentlemen who are here to introduce Mr. Pryor, and I understand that one of them, Congressman Jo Bonner, has to leave for another appointment. So if Senator Schumer agrees, I would like for us to postpone our opening statements until after the first panel of witnesses testifies.

Senator SCHUMER. Perfectly fine with me, Mr. Chairman.

Chairman HATCH. I knew it would be.

In addition, I will postpone my own introduction of Ms. Stuart, whom I am proud to call a fellow Utahn, just before her testimony.

So we will begin with you, Senator Shelby, and then we will go to Congressman Bonner.

PRESENTATION OF WILLIAM H. PRYOR, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT, BY HON. RICHARD SHELBY, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SHELBY. Thank you. Mr. Chairman, thank you very much for holding this hearing. I appreciate very much the opportunity to appear before the Judiciary Committee today to introduce Bill Pryor, the Attorney General of the State of Alabama and the

President's nominee for the United States Court of Appeals, Mr. Chairman, for the Eleventh Circuit, as you just mentioned.

I have known Bill Pryor for many years, and I have the highest regard for his intellect and, more than that, his integrity. He is an extraordinarily skilled attorney with a prestigious record of trying civil and criminal cases in both the State and Federal courts. He has also argued several cases before the United States Supreme Court and the Supreme Court of our own State of Alabama.

As the Attorney General of the State of Alabama, Bill Pryor has established a reputation as a principled and effective legal advocate for the State of Alabama and has distinguished himself as a leader on many important State and Federal issues.

First and foremost, Mr. Chairman, Bill is a man of the law. Whether as a prosecutor, a defense attorney, or the Attorney General of the State of Alabama, he understands and respects the constitutional role of the judiciary and specifically the role of the Federal courts in our legal system. Indeed, I have no doubt that he will make an exceptional Federal judge on the Eleventh Circuit Court of Appeals because of the humility and the gravity that he would bring to the bench.

I am also confident that he would serve honorably and apply the law with impartiality and fairness, which I believe is required of a judge.

Again, Mr. Chairman and members of the Committee, I thank you for holding today's hearing on Bill Pryor's nomination. I am hopeful that the Judiciary Committee will favorably report this nomination to the full Senate in the near future, and I support this nomination without any reservation.

Chairman HATCH. Well, thank you so much.

Senator SHELBY. And I ask that my complete statement be made part of the record, Mr. Chairman.

Chairman HATCH. Without objection, it will be, and we are grateful you took time out of your busy schedule to be here. Your recommendation means a lot to this Committee.

Senator SHELBY. Thank you.

[The prepared statement of Senator Shelby appears as a submission for the record.]

Chairman HATCH. We are going to turn to Senator Sessions. I didn't see Senator Sessions there, and we will take your statement, Senator.

Senator SESSIONS. Well, Mr. Chairman, I would be pleased if Congressman Bonner, who may have to leave, could go next.

Chairman HATCH. That is very nice of you.

We will turn to you, Congressman Bonner.

PRESENTATION OF WILLIAM H. PRYOR, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT, BY HON. JO BONNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Representative BONNER. Chairman Hatch, Senator Schumer, and distinguished members of the Senate Judiciary Committee, it is indeed a privilege for me to appear before you today for the sole purpose of introducing a man I believe to be one of the finest judicial

nominees in recent history: Alabama's Attorney General William H. Pryor.

It is without reservation that I fully support Attorney General Pryor's nomination and ask that he receive bipartisan support from this Committee and that his nomination be granted a vote by the full Senate.

Mr. Chairman, I could not be more pleased with President Bush's choice for the Eleventh Circuit Court of Appeals. Bill Pryor is not only a good man, he is also an outstanding judicial nominee whose diverse legal experience and extensive qualifications illustrate his ability and his desire to serve from the bench.

Bill and I are both from Mobile, Alabama, and I have the honor of serving as his Congressman from the 1st District, just as he serves as my State Attorney General.

When Bill Pryor took office on January 2, 1997, he was the youngest Attorney General in the United States at the time. During his most recent campaign for re-election, the people of Alabama resoundingly indicated their approval of Bill's work, as he garnered 59 percent of the vote, the highest percentage of any statewide official on the ballot.

Throughout the years, I have followed Bill's career in the Attorney General's office with pride, and I am especially pleased to note his efforts to reform Alabama's Sentencing Guidelines and to step up the prosecution of white-collar crime.

Bill Pryor believes that white-collar criminals should be apprehended and prosecuted to the same extent as all other criminals, and he firmly believes that racial disparity in sentencing is unacceptable. Equal crimes should receive equal punishment.

Bill Pryor has led the fight on civil rights issues in Alabama. As Alabama's Attorney General, Bill worked with the U.S. Attorney's office to prosecute the Ku Klux Klan murderers Thomas Blanton and Bobby Frank Cherry for the 1963 bombing of the 16th Street Baptist Church that tragically killed four little girls. Moreover, Bill personally argued before the Alabama Court of Criminal Appeals to uphold the Blanton conviction.

He authored the Alabama legislation that established cross burning as a felony, and he led the fight to abolish the Alabama Constitution's antiquated ban on interracial marriages.

Bill Pryor has gone above and beyond the duties of his office to improve the State of Alabama. As Attorney General, he started Mentor Alabama, a program to recruit positive adult role models for thousands of at-risk youth, 99 percent of which are African Americans. Throughout that program, Bill Pryor has served every week as a reading tutor for the children in the Montgomery, Alabama, public schools.

I could elaborate for hours on Bill's considerable record, but instead I believe it is more appropriate to defer to some of the people in our State that know Bill Pryor, that have worked with Bill Pryor, and that respect Bill Pryor.

Mr. Chairman, I have with me today a letter written by State Representative Alvin Holmes, one of Alabama's most distinguished civil rights leaders. Mr. Holmes has served in the Alabama House of Representatives for 28 years and has led the civil rights battle

for African Americans, women, homosexuals, and other minorities. Here is what he has to say about Bill Pryor's nomination:

"As one of the key civil rights leaders in Alabama who has participated in basically every major civil rights demonstration in America, who has been arrested for civil rights causes on many occasions, as one who was a field staff member for Dr. Martin Luther King's SCLC, as one who has been brutally beaten by vicious police officers for participating in civil rights marches and demonstrations, as one who has had crosses burned in his front yard by the KKK and other hate groups, as one who has lived under constant threats day in and day out because of his stand fighting for the rights of blacks and other minorities, I request your swift confirmation of Bill Pryor to the Eleventh Circuit because of his constant efforts to help the causes of blacks in Alabama."

Mr. Chairman, it is the people of Alabama, the people that have served with him and have worked with him that know Bill Pryor the best, the same people I am privileged to be representing here today. They know his ability, his integrity, and his commitment to do the right thing, regardless of the pressures that some political groups—even members of his own political party—have tried to use on him.

Bill Pryor is a friend and champion of the rights of all people, a principled man who has used his position as Alabama's Attorney General to provide equality in sentencing, protect the common man, serve justice, and work for fairness and equality in the law. That is why I stand beside the people of my district who are so proud of their native son, and beside men like Representative Alvin Holmes and so many others, in recommending to this Committee that the nomination of William H. Pryor to the Eleventh Circuit Court of Appeals be supported from both sides of the aisle.

I thank the Chairman.

Chairman HATCH. Thank you, Congressman Bonner. That is a very impressive and powerful statement on behalf of General Pryor. We are grateful to have you here and grateful that you took the time to come over.

Mr. BONNER. Thank you, sir.

Chairman HATCH. So we will let you go at this time. I know that you have a very tough schedule. So thank you.

We will turn to you, Senator Sessions.

PRESENTATION OF WILLIAM H. PRYOR, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT, BY HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman. I want to thank Senator Shelby and Congressman Bonner and would note for the record that Representative Alvin Holmes, who is one of the most outspoken advocates for civil rights in the Alabama Legislature, wanted to be here and would have been here today, but the Legislature is in session today, as I understand it.

Let me deal with—

Chairman HATCH. Senator Shelby, if you need to go, too, we—

Senator SHELBY. I am going to wait on the statement out of respect for my colleague.

Chairman HATCH. Okay. That is fine.

Senator SHELBY. And also Bill Pryor. Thank you.

Senator SESSIONS. Mr. Chairman, a lot of things have been said here. We know that some advocacy groups have picked another target. They have picked Bill Pryor to be a nominee that they want to complain about. Some have suggested that he is an activist. I would say he is an active Attorney General, constantly and vigorously working to promote the legitimate and just interests of the State of Alabama and her people. But he is absolutely not an activist in the way that his opponents have defined that term and the way, Mr. Chairman, that this Senate has defined it in evaluating judicial nominees.

As Attorney General, he must be an advocate. He has proven to be a great one. But even as Attorney General and even as an advocate, he has consistently followed the laws courageously, even when doing so brings him personal or political complaints from his friends or others.

If members of this Committee would listen carefully to his testimony and would evaluate his real record—not the trumped-up charges that have been put out by out-of-the-mainstream groups that have taken his positions out of context—I think they would see something different.

Why would the leading African-American Democrats—like Alabam Congressman Artur Davis, himself a Harvard graduate and a lawyer and a former Assistant United States Attorney, like Representative Joe Reed, Chairman of the Alabama Democratic Conference, a member of the National Democratic Committee, one of the most powerful political figures in the State for the last 30 years, an individual who has taken the Federal judiciary extremely seriously, who has always watched judicial nominations and like Representative Alvin Holmes, whom I just mentioned—why would they support Pryor? They support him because he has not been as people have caricatured him. He has been a champion for liberty and civil rights.

Much has changed in Alabama. We have more African-American office holders today than any other State. Today, I understand, marks the 40th anniversary of a sad day in which Governor George Wallace stood in the schoolhouse door. But you must note that Bill Pryor was not a part of that. First, he is just 41. Secondly, his parents were John F. Kennedy Democrats. And when he gave his inaugural speech after winning election as Attorney General with 59 percent of the vote, he opened with these words. This is very telling to me. This is what he led with: "Equal under law today, equal under law tomorrow, equal under law forever."

Those words were a fitting conclusion to a period begun 40 years ago by a promise of segregation today, tomorrow, and forever.

Bill is one of the good guys. He does the right thing. He has frequently refused pleas from his Republican friends when he thought the law did not support their position. For example, they rightly believed that the legislative district lines hurt their chances to have fair representation in the State legislature. They filed a voting rights suit, arguing against the majority-minority legislative districts.

Bill not only would not take their side, he courageously led the case for the African-American position, losing at some steps along the way, even with the U.S. Court of Appeals, but eventually winning in the United States Supreme Court. That is why Alvin Holmes and Joe Reed respect Bill Pryor.

Moreover, he has publicly and in legal briefs rejected the position of the Governor of the State of Alabama—the Governor who appointed him—on church-and-state issues. This is courageous action under difficult political circumstances.

As to Roy Moore, the Chief Justice of the Alabama Supreme Court, the fact is that Bill has defended his action of placing a monument of the Ten Commandments in the Supreme Court, but he would not agree to the way the Chief Justice wanted to argue that case. He had a more restrictive and limited argument he preferred to make, and eventually the Chief Justice had his own lawyers to argue the case and gone forward in that way.

In fact, Bill Pryor did not support Chief Justice Moore in the last election. Instead, he supported Justice Harold See in a bruising Republican primary for the Chief Justice spot in Alabama. It is clearly false to suggest he is some unthinking tool of Chief Justice Moore or the Christian Right.

So far as I can see, the only legal position he has taken as Attorney General on abortion, a practice that he abhors, has been to direct the Alabama district attorneys to give a very restrictive interpretation of Alabama's partial-birth abortion law and to make clear he would vigorously prosecute anyone who committed terrorist acts against abortion clinics.

While the controversy over school prayer was emotional and the people of Alabama became confused as a result of the Governor's stated positions, the Governor felt like coaches ought to be able to lead their ball team in prayer. That was the way he saw it. But Attorney General Pryor, as the State's chief law enforcement officer, objected. He sent all schools carefully drafted guidelines on what they could and could not do based on the holdings of the United States Supreme Court. His positions were far less expansive than the Governor's. These were clear, practical guidelines and were praised by many, including the Atlanta Journal Constitution. Indeed, the Clinton Administration's Department of Education later adopted guidelines almost identical to those written by Attorney General Pryor.

There is no extremism here. He led the fight to win a statewide vote to eliminate an old constitutional amendment that prohibited interracial marriage. Not one single other politician, certainly not a white politician in Alabama, Republican or Democrat, was active in that struggle. He led that fight, and the people of Alabama removed that stain on our legal system.

The caricature that the attack groups have created of Bill Pryor is just not true. It is false. He is a breath of fresh air. He is a leader of the future, not the past. Everyone in Alabama knows it. If my friends on this Committee will just listen and review the evidence carefully, you will come to this conclusion too. And he will be confirmed as he should be.

Mr. Chairman, thank you for your leadership. Senator Schumer, we look forward to the hearing.

Chairman HATCH. Thank you, Senator. We appreciate both of you Senators. That is high praise indeed to have you both here for General Pryor, and I am sure he is very grateful to you, as are we. So we appreciate the time you have taken out of your busy schedules to be here.

Senator SESSIONS. Thank you, Mr. Chairman.

Chairman HATCH. Thanks so much.

Chairman HATCH. General Pryor, if we could have you step forward? Please stand to be sworn. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth?

Mr. PRYOR. I do.

Chairman HATCH. Senator Schumer and I will make our opening statements at this time, and then we will turn to you. Why don't you sit in the middle if you could by the clock there. Thank you.

Senator SCHUMER. Senator Hatch was saying get away from the right side there and move to the middle of the—

[Laughter.]

Mr. PRYOR. I am happy to do so, Senator.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. This side over here takes real offense at things like that, I have to tell you.

I am pleased to welcome to the Judiciary Committee this morning the Attorney General of Alabama, William Pryor, whom President Bush has nominated to fill a judicial emergency on the United States Court of Appeals for the Eleventh Circuit.

Now, in his last election, General Pryor garnered more than 59 percent of the vote, and if the letters of support for his nomination are any indication, the majority of Alabama people supporting him were not all Republicans. Let me share with you some of the letters that prominent Democrats have written about General Pryor.

Joe Reed, Chairman of the Alabama Democratic Conference, which is the State party's African-American caucus, writes that General 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 party labels. I am persuaded that in General Pryor's eyes, Justice has only one label—Justice!"

Judge Sue Bell Cobb, who sits on the Alabama Court of Criminal Appeals, stated, "I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. It is for these reasons and more that I am indeed honored to recommend General Pryor for nomination to the Eleventh Circuit Court of Appeals."

And Congressman Artur Davis encouraged President Bush to nominate General Pryor, declaring his belief that Alabama will be proud of his service.

Now, I will submit copies of these letters for the record, along with copies of the other many letters from Democrats and Republicans, men and women, and members of the African-American, Jewish, and Christian communities who support Bill Pryor's nomination.

Now, it is fundamental that a State Attorney General has the obligation to represent and defend the laws and interests of the State. General Pryor has fulfilled this responsibility I think admirably by repeatedly defending the public fisc and the laws and policies enacted by the Alabama Legislature. But one of the reasons for the broad spectrum of support for General Pryor is his demonstrated ability to set aside his personal views and follow the law. As you will undoubtedly hear during the course of this hearing, General Pryor is no shrinking violet. He has been open and honest about his personal beliefs, which is what voters expect from the people whom they elect to represent them. Yet General Pryor has shown again and again that when the law conflicts with his personal and political beliefs, he follows the law.

For example, in 1997, the Alabama Legislature enacted a ban on partial-birth abortion that could have been interpreted to prohibit abortions before viability. General Pryor is avowedly pro-life and has strongly criticized *Roe* v. *Wade*, so one might very well have expected General Pryor to vigorously enforce the statute. Instead, he instructed law enforcement officials to enforce the law only insofar as it was consistent with the Supreme Court's precedents of *Casey* and *Stenberg* v. *Carhart*, despite pressure from many Republicans to enforce broader language in the act.

Here is another example: I am sure that we will hear today about General Pryor's call for modification or repeal of Section 5 of the Voting Rights Act, which requires Department of Justice preclearance. By the way, General Pryor is not alone in his opinion of Section 5; the Democratic Attorney General of Georgia, Thurbert Baker, has called Section 5 an "extraordinary transgression of the normal prerogatives of the States." Now, despite his opinion that Section 5 is flawed, General Pryor successfully defended before the Supreme Court several majority-minority voting districts approved under Section 5 from a challenge by a group of white Alabama voters. He also issued an opinion that the use of stickers to replace one candidate's name with another on a ballot required preclearance under Section 5 of the Voting Rights Act.

Yet another example involves General Pryor's interpretation of the First Amendment's Establishment Clause. In an effort to defeat challenges to school prayer and the display of the Ten Commandments in the Alabama Supreme Court, both the Governor and the Chief Justice urged General Pryor to argue that the Bill of Rights does not apply to the States. General Pryor refused, despite his own deeply held Catholic faith and personal support for both of these issues.

And here is my final example, and there are many others, but I will limit it to this: General Pryor supported the right of teachers to serve as State legislators, despite intense pressure from his own party, because he believed that the Alabama Constitution allowed them to do so.

Now, these examples aptly illustrate why General Pryor's nomination enjoys broad bipartisan support from persons like former Democratic Alabama Attorney General Bill Baxley. He observed of General Pryor, "In every difficult decision he has made, his actions were supported by his interpretation of the law, without race, gender, age, political power, wealth, community standing, or any other competing interest affecting judgment." Mr. Baxley continued, "I often disagree, politically, with Bill Pryor. this does not prevent me from making this recommendation because we need fair minded, intelligent, industrious men and women, possessed of impeccable integrity on the Eleventh Circuit. Bill Pryor has these qualities in abundance... There is no better choice for this vacancy."

During the course of this hearing, we will hear many things about Bill Pryor. We will hear many one-sided half-truths perpetuated by the usual liberal interest groups who will stop at nothing, it seems to me, to defeat President Bush's judicial nominees. Now, I want to make sure that this hearing is about fairness and about telling the full story of Bill Pryor's record and service.

We will hear that General Pryor is a devout pro-life Catholic who has criticized *Roe* v. *Wade*, but the rest of the story is that many prominent Democrats, such as Justice Ruth Bader Ginsburg and former Stanford Dean John Hart Ely, who are pro-choice, have also criticized Roe without anyone questioning their recognition of it as a binding Supreme Court precedent.

We will hear claims that General Pryor is against the disabled and elderly, but the real story is that General Pryor has done his duty as Attorney General to defend his State's budget from costly lawsuits. Other State Attorneys General, including respected Democrats like Bob Butterworth of Florida and now Senator Mark Pryor of Arkansas, have taken the same positions as General Pryor in defending their States. And while the Supreme Court agreed with the Attorneys General in these cases that the Eleventh Amendment protects States from monetary damages in Federal court, these rulings did not affect—and General Pryor did not seek to weaken—other important methods of redressing discrimination, like actions for monetary damages under State law, injunctive relief, or back pay.

We will hear claims that General Pryor's criticisms of Section 5 of the Voting Rights Act indicate a lack of commitment to civil rights. But the real story is that General Pryor has a solid record of commitment to civil rights, which includes defending majority-minority voting districts, leading the battle to abolish the Alabama Constitution's prohibition on interracial marriage, and working with the Clinton administration's Justice Department to prosecute the former Ku Klux Klansmen who perpetrated the bombing of Birmingham's 16th Street Baptist Church, which resulted in the deaths of four little girls in 1963.

We will no doubt hear other claims during the course of this hearing distorting General Pryor's record or presenting only partial truths. And I want to urge my colleagues, and really everyone here, to listen closely so that the real story is heard. I think those who listen with an open mind may be surprised, and even impressed. And I look forward to hearing General Pryor's testimony.

Having said all that, you had an excellent record in law school. You have had an excellent record since law school. You have a record of honor and integrity. You have a record of speaking your mind, sometimes irritating everybody concerned or a lot of people, but standing up for what you believe the law really says and what the law really is. And I think you have won a lot of cases that some people might tend to criticize who don't realize that you won them in the end.

I just want to say that, knowing you and having spent some time with you, some extensive time with you, I am very impressed with you as a human being, as a person who is trying to do what is right, and as an Attorney General in this country who I think has stood up against a lot of special interest groups to do what is right and do what the law says should be done. And I hope my colleagues will feel the same at the end of this discussion. If they listen, I believe that they will.

So, with that, we will have the statement of Senator Schumer, who is representing the minority here today, and then we will go with your statement and then questions.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman, and first let me thank you for bringing the hearing down to this room, G50, accommodating some of those who are disabled, who very much wanted to be here. I want to thank my colleagues, Senators Shelby and Sessions. They are both very well respected by people on both sides of the aisle, and their endorsement will certainly be weighed and weighed carefully.

And finally, I just want to say something to the family of you, General Pryor. I see your two beautiful girls there, and I have two girls who are a little older now.

There are going to be some tough questions asked here. That is our responsibility. But we want to tell you that our respect for your dad as a public servant and as a father and as a husband, this has no bearing on our view of him as a person. This is how we do it here, because many of us believe the views are more important or just as important or certainly very important, do not even have to say, speaking for all my colleagues, where they stand, and we have to elicit those views. So I just wanted the family to understand, and welcome them here as well.

Now, Mr. Chairman, before I get into some of my concerns about General Pryor's nomination, I want to note that earlier this week the Senate confirmed Michael Chertoff to the Third Circuit Court of Appeals. He is the 128th judge confirmed by the Senate since President Bush took office. That is 128 confirmed of 130 who have come to the floor. That is a 99 percent success rate. Again, to call the minority obstructionist because they have approved only 128 over 130 leads to the almost absurd conclusion that the only way not to be obstructionist is to approve every single one of the President's nominees. And hopefully later today we are going to confirm Richard Wesley from New York, from my State, to the Second Circuit. I know a little bit about Judge Wesley. He is a model nominee. He is conservative, no doubt about it, and based on the votes

he took as a State legislator, it is a fair bet to say he is pro-life, but he is well within the mainstream. His personal views are sufficiently moderate that they do not get in the way of being a fair jurist. I start by nothing Wesley and Michael Chertoff and the remarkable success President Bush has had in getting his nominees confirmed by the Senate. Because of the hue and cry we hear from the White House and from across the aisle, you would think those numbers would be reversed and 99 percent of the nominees were stalled. Again, that is 128 confirmed against 2 we are opposing on the floor.

I note all of this, not only to make sure the record is clear on this point, but again to state the obvious. When the President sends us nominees who are legally excellent, diverse and within the ideological mainstream, even though we may not agree with them on most issues, and those who will respect to the Senate's constitutionally mandated coequal role in the process, the nominees pass through the Senate like a hot knife through butter.

In reviewing the record of the nominee before us here today, I am disappointed to say, at least on reading the record—and I look forward to hearing the questions. I am disappointed to say that the nominee looks more like the 9 nominees I have personally voted against than the 119 that I have voted for, and I want to say to my colleagues, both my good friend from Utah and my good friend from Alabama, as well as the Congressman who was here, these views are not based on any interest groups. We all know that there are groups on the left and groups on the right who pressure. That is the American way. But my view, my worries about General Pryor's record are based on statements he made, not based on that of any group. Looking at the record, it seems that it is almost unfair to say that he is like the 9 that I have opposed, because really in many ways, Attorney General Pryor looks like an amalgam of several of them.

On States' rights and women's rights he looks a lot like Jeffrey Sutton and D. Brook Smith. On choice and privacy he looks a lot like Priscilla Owen and Carolyn Kuhl. On gay rights he looks a lot like Timothy Tymkovich. On separation of church and State, he looks a lot like J. Leon Holmes and Michael McConnell. The list goes on. In a way, unfortunately, General Pryor's views seem to be an unfortunate stitching together of the worst parts of the most troubling judges we have seen thus far. I would say this, the one nominee he does not seem to resemble is Miguel Estrada. That is because while we know very little about Mr. Estrada's views, we know a lot about Mr. Pryor's, and we respect his candor. Candor is necessary, but not sufficient, at least in my view, in terms of approving a nominee. And I know that, and I have an expectation, that you will answer our questions about those views.

But I will say this, and I would caution my colleagues, it is just not enough to say, "I will follow the law." Every nominee says that. And then we find when they get to the bench they have many different ways of following the law. And what I worry about, I do not like nominees too far left or too far right, because idealogues tend to want to make law, not do what the Founding Fathers said judges should do, interpret the law. And in General Pryor's case his beliefs are so well known, so deeply held, that it is very hard to

believe, very hard to believe that they are not going to deeply influence the way he comes about saying, "I will follow the law," and that would be true of anybody who had very, very deeply held views.

We all know that judging is not a rote process. If it were, we would have computers on the bench instead of men and women in black robes. I would refer my colleagues to an article on the op-ed page of today's New York Times, which shows that when those nominated by Democratic Presidents follow the law on cases of women's rights, environmental rights, et. al, they seem to follow the law in completely different ways or many different ways than the way nominees of Republican Presidents follow the law. We all know that. So a person's views matter. There is a degree of subjectivity, especially in close cases and controversies on hot-button issues, and it is hard to believe that the incredibly strong ideology of this nominee will not impact how he rules if confirmed.

We will get into much of this when we have an opportunity to question the nominee, but I do want to take a moment to review some of the remarks that seem more disturbing that Attorney General Pryor has made and some of the more worrisome positions he has taken. As my colleagues know here, I have no litmus test when it comes to these nominees. My guess is that most, certainly many of the President's judicial nominees have been pro-life, but I have voted for almost all of them because I have been persuaded they are committed to upholding the rule of law, and committed to upholding *Roe* v. *Wade* in particular. I for one believe that a judge can be pro-life, yet be fair, balanced, and uphold a woman's right to choose, but for a judge to set aside his or her personal views, the commitment to the rule of law must clearly supersede his or her personal agenda. That is something some can pull off, but not everybody can. Judge Wesley, our Second Circuit nominee, has proven he can do it.

But based on the comments Attorney General Pryor has made on this subject, I have got some real concerns that he cannot, because he feels these views so deeply and so passionately. Mr. Pryor has described the Supreme Court's decision in *Roe* v. *Wade* as, the creation—quote—this is not some liberal interest group quote; this is from General Pryor. He said it. Quote: "*Roe* v. *Wade* is a creation," quote, "out of thin air of a constitutional right to murder an unborn child." He has said that he, quote, "will never forget January 22nd, 1973, the day seven members of our highest court ripped up the Constitution." Mr. Pryor has said he opposes abortion even in the cases of rape or incest, and would limit the right to choose to narrow circumstances where a woman's life is at stake. He has described Roe as, quote, "the worst abomination in the history of constitutional law." Worse than *Plessy* v. *Ferguson*, worse than *Dred Scott*, worse than *Korematsu*. It is a remarkable comment to make, and I have to say, I do respect you, Mr. Attorney General, for speaking your mind.

But I am deeply concerned that any woman who comes before you, seeking to vindicate her rights, her constitutional rights as defined by the Supreme Court, will have a tough time finding objectivity with Bill Pryor.

But my concerns about this nomination hardly begin and end with the choice issue. On gay rights the Attorney General believes it is constitutional to lock up gays and lesbians for having intimate relations in the privacy of their own homes. And he has equated gay sex with prostitution, adultery, necrophilia, bestiality, possession of child pornography, incest and pedophilia.

On criminal justice issues, whereas my colleagues know I tend to agree with the Republican side just about as often as I agree with the Democratic side, Attorney General Pryor defended his State's practice of handcuffing prisoners to hitching posts in the hot Alabama sun for seven hours without giving them even a drop of water to drink. And then when this Supreme Court held the practice violated the Eighth Amendment's ban on cruel and unusual punishment, he accused the Supreme Court Justices of, quote, "applying their own subjective views on appropriate methods of prison discipline."

Now, I am all for being tough on crime. I wrote on the House side the Capital Punishment Law, and the Three Strikes and You're Out Law, but to say that seven hours handcuffed to a hitching post in the Alabama summer sun without a drink of water is cruel and unusual, is not unreasonable at all. To accuse this not so liberal Supreme Court of imposing subjective views in a case that extreme, well, let me just say that goes a bit far, at least as far as I am concerned.

When it comes to separation of church and State, we have to be concerned as well. Again, I agree that some cases, in some cases courts have gone too far. I think the Ninth Circuit went off the deep end in the Pledge of Allegiance case. I personally am a deeply religious man. I believe that if we all behaved more in accord with traditional religious teachings, we would have a better, healthier and safer country. But the comments the Attorney General has made, coming from someone who if confirmed will be sworn to uphold and defend the Constitution and protect the rights of all Americans regardless of their religious beliefs, they are troubling as well.

When it comes to States' rights, the record gets even more disturbing. Attorney General Pryor has been one of the staunchest advocates of the Rehnquist Court's efforts to roll back the clock, not just to the 1930's, but even to the 1880's. He is an ardent supporter of an activist Supreme Court agenda, cutting back Congress's power and the Federal Government's power to protect women, workers, consumers, the environment and civil rights. For instance, on States' rights, as Alabama's Attorney General Mr. Pryor filed the only amicus brief from among the 50 states, urging the court to undo significant portions of the Violence Against Women Act. In commenting on that law, Attorney General Pryor said, quote, "One wonders why VAWA enjoys such political support, especially in Congress." Well, I am one of the supporters of VAWA, and I am perplexed by that comment. One wonders why VAWA enjoys such political support? The millions of American women who have been beaten by their spouses? How can one wonder why we would want to protect women from violence, particularly when this issue had been swept under the rug for generations? It is another shocking statement that I find difficult to understand.

Attorney General Pryor's ardent support of States' rights extends even to the realm of child welfare. At the same time he was conceding that Alabama had failed to fulfill the requirements of a Federal consent decree regarding the operation of the State's child welfare system, he was demanding that the State be let out of the deal. It is not so much the position he took as the comments made afterward. Attorney General Pryor said, quote, "My job is to make sure the State of Alabama isn't run by the Federal Courts. My job isn't to come here and help children," unquote. When a State fails to satisfy the requirements of Federal laws regarding the safety and welfare of children, I would say the Attorney General's job is to first ensure the protection of those children, not to fight the involvement in Federal Court. I do not see that as a controversial proposition, but at least by these statements, General Pryor, not some interest group, apparently believes otherwise.

The environment, same concerns. Bill Pryor was the lone State Attorney General to file an amicus brief arguing that the Constitution does not give the Federal Government the power to regulate intrastate waters that serve as a habitat for migratory birds. The Attorney General took this position despite decades of Supreme Court precedent and the Federal Clean Water Act standing for the contrary proposition.

So you might think that Attorney General Pryor's State right advocacy knows no bounds, but there is a limit. Bill Pryor was the only State Attorney General to file an amicus brief supporting the Supreme Court's intervention in Florida's election dispute during *Bush* v. *Gore*. It appears that when the Attorney General likes the outcome, he is on the States' rights side, but in this important case, where the Supreme Court overruled the States' position, there he was with Federal intervention.

Contrast the approach in *Bush* v. *Gore* to what happened when it came to the push for the Supreme Court to limit the application of the Americans With Disabilities Act to the States. Mr. Pryor was the driving force behind the Garret case in which a nurse contracted breast cancer, took time off to deal with her illness, and when she returned found that in violation of the ADA she had been demoted. Attorney General Pryor believed the State university hospital where she worked had every right to demote Ms. Garret and managed to convince five Justices on the Supreme Court to agree with him.

Mr. Pryor's antipathy for the ADA is obvious from the many extra-judicial comments he has made on the subject. At one point he claimed that, quote, "When Congress passed the ADA in 1990 all 50 States had laws on the books protecting the rights of the disabled. Congress passed the ADA as a "me-too" approach, not as a way of protecting persons." Sorry, the quotes are within his statement. "Congress passed the ADA approach, not as a way of persons who were ignored or left behind," unquote.

I have to say again as a Congressman, I was on the House side, who worked hard to get the ADA passed in the House, I find that comment somewhat offensive. I can only imagine what Senator Harkin, our leader on the ADA, would have to say to the nominee if he were asking questions here today.

Bill Pryor has praised every one of the Court's major States' rights and federalism decisions over the past decade, literally cheering as law after law protecting millions of Americans has been peeled off the books. As he said 2 years ago in an address to the Federalist Society, that federalism is a, quote, "subject that is near and dear to my heart and to the heart of all members of the society," unquote. Just a year earlier in another speech to the Federalist Society Mr. Pryor made these remarks, quote, "We are one vote away from the demise of federalism, and in this term the Rehnquist Court issued two awful rulings that preserved the worst examples of judicial activism, *Miranda* v. *Arizona* and *Roe* v. *Wade*. Perhaps that means that our last real hope for federalism is the election of Governor George W. Bush as the President of the United States, since he has said his favorite Justices are Antonin Scalia and Clarence Thomas. I will end with my prayer for the next administration. Please, God, no more Souters."

I think that tells us a fair amount about where Mr. Pryor is coming from. If Bill Pryor becomes a judge, it seems hard to believe he will be a moderate. He will style himself, it would appear from his previous record and comments, after the most extreme and activist judges on the Federal bench.

Now, a few years ago several of my colleagues on this Committee, including my good friend Orrin Hatch from Utah, opposed the nomination of another nominee to the Eleventh Circuit on the ground that she, quote, "would be an activist who would legislate from the bench," unquote. I do not know how you can look at Bill Pryor's record and not come to the same conclusion. I do not know if that is why he received a partial "not qualified" rating from the ABA or whether the ABA found something else to be concerned about. But for me, Attorney General Pryor's record screams passionate advocate, and doesn't so much whisper judge.

Bill Pryor is a proud and distinguished ideological warrior. I respect that. That is part of America. But I do not believe the ideological warriors, whether from the left or the right, should predominate on the bench. They tend to make law, not interpret law, and that is not what any of us should want from our judges.

Mr. Chairman, I am looking forward to hearing Mr. Pryor address these issues. I mentioned to him I would ask some tough questions and raise some tough concerns. I would close by just saying that this appears to be another nomination that will divide us, not unite us. More than any administration in history, this White House is choosing judges through an ideological prism. I am disappointed we have to continue fighting these nominees who are chosen more for their allegiance to a hard-line ideological agenda than any other factor.

If we have a Supreme Court nomination later this summer, I really hope we see a nominee who looks a lot more like Richard Wesley, a nominee all 100 Senators could support, and a lot less like someone straight out of the right-wing wheel house. As everyone knows, I believe in balance. If Mr. Pryor were nominated to a court with a heavy liberal tilt, maybe I would view this nomination differently. If there were eight Harlans on the court, I would love to see a Scalia on the court to provide some balance, and that maybe was the way it was 30 years ago. But as everyone knows,

the Fifth Circuit is already one of the most conservative courts in the country, and at least given his previous record, Attorney General Pryor may be more conservative than the most conservative judges already serving on this imbalanced court.

So in my view, Mr. Chairman, Mr. Pryor has a tough row to hoe here. He will get a chance to make his case, but to me at least, on first inspection, this is one of the most troubling records we have seen thus far, and Mr. Pryor, at least to this one member, has to go a long way before he will convince me, and I think many of us, that he will be a fair, down-the-middle dispassionate judge for all Americans.

Thank you.

Chairman HATCH. Thank you, Senator.

[Applause.]

Chairman HATCH. We will have no disturbances in here or I will have you removed. It is just that simple. We are going to run a very decent hearing, and we are just not going to have any more of that. So anybody who does that, I am directing the Sergeant of Arms to remove them from this room, on either side of this issue. This is an important hearing. It is for the Eleventh Circuit Court of Appeals.

Just one correction. We hear this, well, we Democrats have voted for 128 and we have only rejected 2. That is not quite the story, and I think people need to know this. Yesterday I was interested because former Senator Bob Griffin corrected me in our caucus meeting when I indicated that there has only been one filibuster in the history of the country of a Federal judge and that was Justice Fortas. He said that was not a filibuster. He said, literally, we had more votes up and down against Fortas that would have defeated it, and that nobody—and he gave me a letter with his comments, making it very clear that there was no desire on anybody's part to filibuster, but to fully debate that at that particular time.

In this particular case, over the last couple of years of this, actually 2–1/2 years of this President's tenure, we have had years of delay for a number of Circuit Court nominees. Yes, we have been able to get through a lot of District Court nominees, but when it comes to circuit nominees, it has been very, very much of an ordeal. Miguel Estrada is just one. Priscilla Owen is another. We have had an indication they are going to filibuster Judge Pickering, going to filibuster Judge Boyle, who has now been sitting here for better than 2 years. By the way, Roberts, who just got through, and Boyle, have been sitting here for 12 years, nominated three times by two different Presidents. They could not even get a hearing in the 2 years when the Democrats controlled the Committee. Judge Carolyn Kuhl, there has been some indication there is going to be a filibuster there. The nominee, J. Leon Holmes, some indication of a filibuster there. There are four nominees from Michigan that are being held up for no reason other than that two Senators are irritated because they did not get their two judges during the Clinton years. I feel badly about that, but the fact of the matter is, they should not be holding up six Circuit Court nominees, four of them who they admit, I think, have admitted that they are qualified people. There have been large negative votes against a significant number of Circuit Court nominees by our friends on the other side,

sending a message, do not send a conservative to the Supreme Court.

You know, when you stop and think about it, it is not quite just 128 versus 2. So I just wanted to correct the record on that so that we all understand that we are in a crisis here in the United States Senate.

I also want people to understand, Mr. Pryor, I guess I might as well say this to you, you are an active person. I hope you will be given an opportunity by our colleagues on both sides to explain some of the statements you have made and why you have upheld the law, because you have. You do not get people like Senator Shelby coming here and praising you like he did, or Senator Sessions praising you like he did, unless you have upheld the law, even against your own viewpoints a number of times. You are a person of deep religious conviction. You believe very strongly in the Catholic faith, and you have said so publicly, and some of these criticisms come from your expressions of your own personal faith, which you have never, to my knowledge, allowed to interfere with what the law is.

Now, we will see. Personally having chatted with you about a great number of these issues, you have not only reasonable explanations, but I think very good explanations for every criticism that could be brought your way.

Now, having said all that, let us give you an opportunity to make your statement. I hope you will introduce your family to us, and then we will turn to questions.

STATEMENT OF WILLIAM H. PRYOR, JR., NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

Mr. PRYOR. Thank you, Mr. Chairman. With me today are my family, my spouse Kris, my daughters Caroline and Victoria, who are seated behind me. Thank you for the warm welcome.

I have only something very brief that I would like to say. First, I want to thank the President of the United States for giving me the honor of being nominated to the U.S. Court of Appeals for the Eleventh Circuit.

I want to thank the people of Alabama for giving me the privilege to serve as their Attorney General for the last 6–1/2 years. I want to thank Senator Sessions for the opportunities he afforded me, particularly while he was Attorney General.

And finally, I want to thank you, Mr. Chairman, and all the members of this Committee for giving me the opportunity to appear before you today and to answer your questions. Thank you.

[The biographical information of Mr. Pryor follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

William Holcombe Pryor Jr. (a/k/a Bill Pryor)

2. Address: List current place of residence and office address(es).

Residence: Montgomery, Alabama
Office: 11 South Union Street, Suite 317, Montgomery, Alabama 36130 (office)

3. Date and place of birth.

April 26, 1962, Mobile, Alabama.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Kristan Wilson Pryor, Certified Public Accountant and Tax Principal, Wilson, Price, Barrranco, Blankenship & Billingsley, PC, CPA, 3815 Interstate Court, Montgomery, Alabama 36109.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Tulane University School of Law, New Orleans, Louisiana
June 1984 to May 1987
Juris Doctorate, magna cum laude, May 17, 1987

Northeast Louisiana University (now University of Louisiana at Monroe)
June 1981 to May 1984
Bachelor of Arts in Legal Studies, magna cum laude, May 11, 1984

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

The Attorney General of Alabama, 1997 to present
State of Alabama
11 South Union Street , Suite 317

Montgomery, Alabama 36130

Deputy Attorney General, State of Alabama, 1995 to 1997
State of Alabama
11 South Union Street, Suite 317
Montgomery, Alabama 36130
Appointed by Attorney General of Alabama to serve at his pleasure.

Walston, Stabler, Wells, Anderson & Bains, 1991 to 1995
Associate Attorney at private law firm
P. O. Box 830642
Birmingham, Alabama 35283-0642

Cabaniss, Johnston, Gardner, Dumas & O'Neal, 1988 to 1991
Associate Attorney at private law firm
P. O. Box 830612
Birmingham, Alabama 36283-0612

Employment - Judicial Clerkship

Honorable John Minor Wisdom,
U.S. Court of Appeals, Fifth Circuit, 1987 to 1988
New Orleans, Louisiana
Law Clerk, 1987 – 1988

Employment – Summer Law Firm Clerkships

Cabaniss, Johnston, Gardner, Dumas & O'Neal
P. O. Box 803612
Birmingham, Alabama 36283-0612
Summer Associate – 5/85 – 8/85, 7/87 – 7/87
Summer Intern – 5/84 – 8/84

Liskow & Lewis
Attorneys at Law
701 Poydras Street
New Orleans, Louisiana 70139
Summer Associate – 7/86 – 8/86, 6/87 – 6//87

Stone, Pigman, Walther, Wittmann & Hutchinson
Attorneys at Law
546 Carondelet Street
New Orleans, Louisiana 70130

Summer Associate - 5/86 – 7/86

Employment - Academic Experience

Adjunct Professor, Cumberland School of Law,
Samford University, 1989 to 1995
Birmingham, Alabama

Firms – Nonprofit, Organizations, Institutions – Officer or Director

1997 to Present
Member, Legal Policy Advisory Board
Washington Legal Foundation
Washington, D.C.

1992 to Present
Member, Board of Advisory Editors,
Tulane Law Review
Tulane School of Law
New Orleans, Louisiana

1997 to Present
Board of Advisors, Alabama Chapters of
the Federalist Society for Law and
Public Policy Studies

2000 to President
Board of Directors, Children's Scholarship Fund Alabama

1997 to Present
Vice Chairman of the Board of Directors, Children First Foundation

2000 to Present
Board of Directors, Policy Consensus Initiative

1997 to 2003
Board of Directors, Alabama Center for Law and Civic Education

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Scholarships

Northeast Louisiana University (now known as University of Louisiana at Monroe)
Band Scholarship (full tuition)
1980 to 1982
Academic Scholarship
1980 to 1984
Debate Scholarship (full tuition)
1983 to 1984
Winton Mizell Pre-Law Scholarship
1983 to 1984
Faculty Honor Scholarship
Tulane University School of Law
1984 to 1987

Academic Honors/Honor Societies

Tulane University School of Law
New Orleans, LA
Editor in Chief, *Tulane Law Review*
Order of Coif
Faculty Honor Scholar
Rufus C. Harris Award in Torts (Best paper in Torts)
George Dewey Nelson Memorial Award (highest grade point average in common law curriculum)
Best Oralist, Freshman Moot Court Competition
Magna Cum Laude - Class Rank 4/220

Northeast Louisiana University
Monroe, Louisiana
Magna Cum Laude, Legal Studies, May 11, 1984
Phi Kappa Phi (junior year)
Omicron Delta Kappa
Mortar Board
President, Phi Eta Sigma (freshman honor society)
Treasurer, Phi Alpha Theta (history honor society)
Who's Who Among Students in American Universities & Colleges, 1983-84
Debate Team, Louisiana State Champion 1984

Professional Awards and Honors

2002 Penelope House Law Enforcement Hall of Fame Inductee
for Advocacy Against Domestic Violence

2001 Harlon B. Carter Award,
National Rifle Association-Institute for Legislative Action

2000 Friend of the Taxpayer Award,
Alabama Citizens for a Sound Economy

1999 Guardian of Religious Freedom Award,
Prison Fellowship Ministries, Justice Fellowship,
and Neighbors Who Care

1999 Civil Justice Achievement Award,
American Tort Reform Association

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Member, Alabama State Bar

Former Member, Alabama State Bar Task Force on Legal Education

Former Member, Birmingham Bar Association

Former Member, American Bar Association

Former Member, Alabama Supreme Court Commission on Dispute Resolution

Sustaining Member, The American Law Institute
Washington, D.C.
May 18, 2000 to Present

Member, Legal Policy Advisory Board
Washington Legal Foundation
Washington, D.C.

Member, Board of Advisory Editors,
Tulane Law Review
Tulane School of Law
New Orleans, Louisiana

Master of the Bench, Hugh Maddox Chapter
The American Inns of Court

Ex officio member, Alabama District Attorneys Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying Organizations:
National Rifle Organization
Alabama Fraternal Order of Police #59 Flying Wheel Lodge

Other Organizations:

Member (2002), State and Local Officials Senior Advisory Committee to
The President's Homeland Security Advisory Council

Immediate Past Chair (2002), Republican Attorneys General Association
Chair (2001), Republican Attorneys General Association
Treasurer (1999-2000), Republican Attorneys General Association
Board of Advisors, Alabama Chapters of
the Federalist Society for Law and
Public Policy Studies
Chairman, Federalism & Separation of Powers Practice
Group, Federalist Society for Law & Public
Policy Studies
Former Chairman-Elect and Vice Chairman, Federalism & Separation of Powers
Practice Group, Federalist Society for Law & Public
Policy Studies
Convener, Federalism Working Group,
National Association of Attorneys General
Member, Executive Working Group on Prosecutorial Relations,
National Association of Attorneys General
Legal Policy Advisory Board of the Washington Legal Foundation
Board of Directors, Children's Scholarship Fund Alabama
Vice Chairman of the Board of Directors, Children First Foundation
Board of Directors, Policy Consensus Initiative
Arrowhead Country Club Montgomery, Alabama, Social Member

Knight, Equestrian Order of the Holy Sepulchre of Jerusalem (limited to Roman Catholics)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Alabama State Bar
Admitted: May 2, 1988 as a regular member with no lapse in membership
From October 1988 purchased license continually
From 1995 to present Special Member of the Alabama State Bar

Supreme Court of the United States – Admitted October 4, 1993

U. S. Court of Appeals for the Eleventh Circuit, Admitted: October 18, 1988

U. S. District Court for the Southern District of Alabama, Admitted: November 28, 1988
U.S. District Court for the Middle District of Alabama, Admitted: December 8, 1988
U. S. District Court for the Northern District of Alabama, Admitted: September 30, 1988

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Speeches

Investiture Speech of Attorney General Bill Pryor, State Capitol, Old House Chambers, Montgomery, Alabama, January 2, 1997
www.ago.state.al.us/speeches.cfm?Item=Single&Case=65

Baccalaureate Speech to the 1997 Graduating Class of Independent Methodist School, Mobile, Alabama, March 25, 1997

Commencement Speech to 1997 Graduating Class of McGill-Toolen School, Mobile, Alabama, May 31, 1997
www.ago.state.al.us/speeches.cfm?Item=Single&Case=31

"The Rule of Law and the Tobacco Settlement," Remarks before Policy Forum of the

Cato Institute, Washington, D.C., August 5, 1997
www.ago.state.al.us/speeches.cfm?Item=Single&Case=19

"Federalism and the Court: Do Not Uncork the Champagne Yet," Annual Conference, National Lawyer's Division, Federalist Society for Law and Public Policy Studies, Federalism and Separation of Powers Practice Group, Washington, D.C., October 16, 1997
www.ago.state.al.us/speeches.cfm?Item=Single&Case=11
www.federalistsociety.org/Publications/practicegroupnewsletters/federalism/fd020103.htm

Remarks at the Truth In Sentencing Press Conference, Montgomery, Alabama, January 23, 1998
www.ago.state.al.us/speeches.cfm?Item=Single&Case=5

Remarks at the FOP Memorial Service for National Law Enforcement Week, State Capitol Lawn, Montgomery, Alabama, May 14, 1998

Remarks at the National Drug Court Week Inaugural Graduation Ceremony, Tuscaloosa, Alabama, June 3, 1998
www.ago.state.al.us/speeches.cfm?Item=Single&Case=6

Remarks at the Annual Banquet of the Alabama Peace Officers Association Annual Banquet, Holiday Inn, Montgomery, Alabama, June 18, 1998

Remarks to the Automobile Dealers Association of Alabama Annual Banquet, Sandestin Resort, Destin, Florida, June 19, 1998

Remarks for National Drug Court Week, Inaugural Graduation Ceremony, Birmingham, Alabama, July 9, 1998

Inauguration Speech of Attorney General Bill Pryor, Alabama State Capitol, Montgomery, Alabama, January 18, 1999
www.ago.state.al.us/speeches.cfm?Item=Single&Case=30

"The Smoking Gun – The Next Case of Lawsuit Abuse," American Shooting Sports Council Annual Convention, Atlanta, Georgia, February 1, 1999

"Big Brother versus Big Business: The Latest Cases of Lawsuit Abuse," American Tort Reform Association Annual Meeting, Four Seasons Hotel, Washington, D.C., March 9, 1999

"Big Brother versus Big Business: The Latest Cases of Lawsuit Abuse," Vanderbilt

Federalist Society, Nashville, Tennessee, April 15, 1999

National Law Enforcement Week Speech, Fraternal Order of Police Memorial Service, Alabama State Capitol Grounds, Montgomery, Alabama, May 10, 1999
www.ago.state.al.us/speeches.cfm?Item=Single&Case=3

"The Dangerous Trend of Novel Government Tort Suits Against Entire Industries," Birmingham Chapter of the Federalist Society for Law and Public Policy Studies, Harbert Center, Birmingham, Alabama, May 12, 1999

Remarks to the D.A.R.E. Drug Abuse Resistance Education Program, Graduating Class, Birmingham, Alabama, May 12, 1999

Commencement Speech for Spring Graduation at Northeast Louisiana University, Monroe, Louisiana, May 15, 1999
www.ago.state.al.us/speeches.cfm?Item=Single&Case=29

Remarks to the Business Council of Alabama Environment and Energy Conference, The Grand Hotel, Point Clear, Alabama, June 14, 1999

"Novel Government Lawsuits Against Industries: An Assault of the Rule of Law," The New Business of Government-Sponsored Litigation: State Attorneys General & Big City Lawsuits, sponsored by The Federalist Society, The Manhattan Institute, and U.S. Chamber of Commerce Institute for Legal Reform, Washington, D.C., June 22, 1999
www.federalistsociety.org/Publications/practicegroupnewsletters/federalism/GovernmentLawsuits-federalv3i1.htm
www.federalistsociety.org/Publications/practicegroupnewsletters/litigation/caesarlitv3i2.htm
www.ago.state.al.us/speeches.cfm?Item=Single&Case=17

"Remarks to the Selma Police Academy Graduating Class, Selma, Alabama, July 23, 1999

"Curbing the Abuses of Government Lawsuits Against Industries," American Legislative Exchange Council, Nashville, Tennessee, August 11, 1999
www.ago.state.al.us/speeches.cfm?Item=Single&Case=16

Remarks at Christian Coalition Road to Victory Rally, Washington Hilton, Washington, D.C., October 1, 1999
www.ago.state.al.us/speeches.cfm?Item=Single&Case=22

"Curbing the Abuses of Government Lawsuits Against Industries," American Tort

Reform Association Annual Legislative Conference for State Coalition Leaders, New York, October 4, 1999, and at American Tort Reform Conference in San Antonio, Texas on October 5, 1999. Also presented to American Trucking Association 1999 Annual Management Conference, Orlando, Florida, on November 3, 1999

"Should Business Support Federalism?," Annual Conference, National Lawyer's Division, Federalist Society for Law and Public Policy Studies, Corporations, Securities, and Antitrust Practice Group, Washington, D.C., November 12, 1999 www.ago.state.al.us/speeches.cfm?Item=Single&Case=10

"Curbing the Abuses of Government Lawsuits Against Industries," Civil Justice Reform Group Steering Committee, Washington, D.C., December 8, 1999 www.ago.state.al.us/speeches.cfm?Item=Single&Case=15

Speech by Alabama Attorney General Bill Pryor for Dadeville Chamber of Commerce at Still Waters Resort, Dadeville, Alabama, January 11, 2000

Speech by Alabama Attorney General Bill Pryor for State Farm Ambassadors of the Alabama-Mississippi Regional Offices, Birmingham, Alabama, February 9, 2000

Speech to the Annual Banquet of the Alabama Chiefs of Police, Embassy Suites Hotel, Montgomery, Alabama, February 17, 2000 www.ago.state.al.us/speeches.cfm?Item=Single&Case=2

"Prosecuting Worker Compensation Fraud", 1999 Safety Seminar and Awards Luncheon, Auburn University Conference Center, Auburn, Alabama, February 23, 2000 www.ago.state.al.us/speeches.cfm?Item=Single&Case=1

Remarks at the Catholic High School Prayer Breakfast, Montgomery, Alabama, March 7, 2000

Remarks to Moody Business Association, Moody, Alabama, March 9, 2000

Speech to Alabama School Safety Leadership Training Conference, Keynote Luncheon, Lake Guntersville Lodge, Guntersville, Alabama, April 18, 2000

"Novel Theories of Corporate Liability". Speech to Southeastern Corporate Law Institute, The Grand Hotel, Point Clear, Alabama, April 29, 2000

"Improving the Image of the Legal Profession by Restoring the Rule of Law," Law Day Luncheon, Montgomery, Alabama, May 3, 2000

www.ago.state.al.us/speeches.cfm?Item=Single&Case=27

Speech to Troy Exchange Club, One Nation Under God Luncheon, Holiday Inn, Troy, Alabama, May 4, 2000

"Restorative Justice: How the Church Can Partner with Government," National Forum on Restorative Justice, Hyatt Regency, Reston, Virginia, May 5, 2000

Commencement Speech for the Troy State University Spring 2000 Graduation, Troy, Alabama, May 12, 2000
www.ago.state.al.us/speeches.cfm?Item=Single&Case=26

"The Supreme Court as Guardian of Federalism," Federalist Society for Law and Public Policy Studies, Federalism and Separation of Powers Practice Group and The Heritage Foundation's Congress and the Constitution Series: "Federalism: The Quiet Revolution," Washington, D.C., July 11, 2000
www.ago.state.al.us/speeches.cfm?Item=Single&Case=8

"Protecting Privacy: Some First Principles," Privacy Symposium, American Council of Life Insurers, Grand Hyatt Hotel, Washington, D.C., July 11, 2000
www.ago.state.al.us/speeches.cfm?Item=Single&Case=25

"Extortion Parading as Law: The War on Guns," CATO Institute Conference on the "Rule of Law in the Wake of Clinton," Washington, D.C., July 12, 2000
www.ago.state.al.us/speeches.cfm?Item=Single&Case=14

"Curbing the Abuses of Government Lawsuits Against Industries," Conference of State Manufacturers Association, Hilton Head, South Carolina, August 9, 2000

Remarks to the Alabama Citizens for Life, Birmingham Area Chapter, Kickoff Meeting, Shelby County Library, September 5, 2000

Greetings from Attorney General Bill Pryor to the Alabama Lawyers Association, Montgomery, Alabama, September 19, 2000

"Practical Reform of the Constitution of Alabama," Symposium of the Alabama Constitution, Jacksonville State University, Jacksonville, Alabama, September 26, 2000
www.ago.state.al.us/speeches.cfm?Item=Single&Case=37

Remarks of Attorney General Bill Pryor to St. Mary's Parish, Mobile, Alabama, October 8, 2000

"Remarks to the Alabama State Bar Board of Bar Commissioners Regarding the Moratorium Issue, Alabama State Bar Meeting, Montgomery, Alabama, October 27, 2000
www.ago.state.al.us/speeches.cfm?Item=Single&Case=38

"Curbing the Abuses of Government Lawsuits Against Industries," Annual Meeting of the Alabama Civil Justice Reform Committee, Embassy Suites, Montgomery, Alabama, October 31, 2000

"Fulfilling the Reagan Revolution By Limiting Government Litigation," An Address at the Reagan Forum, The Ronald Reagan Presidential Library, Simi Valley, California, November 14, 2000
www.ago.state.al.us/speeches.cfm?Item=Single&Case=56

"The Future of Federalism," Federalism After the Election: Opportunities and Challenges, Remarks before the Federalism and Separation of Powers Practice Group, National Lawyers Convention, The Federalist Society for Law & Public Policy, The Mayflower Hotel, Washington, D.C., November 18, 2000
www.ago.state.al.us/speeches.cfm?Item=Single&Case=57

"Curbing the Abuses of Government Lawsuits Against Industries," Annual States and National Policy Summit of the American Legislative Exchange Council, Washington, D.C., December 7, 2000

"The State of the State of Law Enforcement", The Alabama Law Enforcement Summit, Montgomery Civic Center, Montgomery, Alabama, December 12, 2000
www.ago.state.al.us/speeches.cfm?Item=Single&Case=61

Commencement Speech of Attorney General Bill Pryor for the Faulkner University Fall Graduation, Montgomery, Alabama, December 16, 2000

"The One Thing Our Children Need the Most," 2001 Faith Summit on Mentoring, Scrushy Conference Center, Birmingham, Alabama, January 9, 2001
www.ago.state.al.us/speeches.cfm?Item=Single&Case=78

"Tort Liability, the Structural Constitution, and the States," Federalist Society Litigation Practice Group Symposium, The National Press Club, Washington, D.C., January 11, 2001

Remarks at a Ceremony Honoring Dr. Martin Luther King, Jr., Alabama State Capitol, Montgomery, Alabama, January 15, 2001
www.ago.state.al.us/speeches.cfm?Item=Single&Case=62

Statement in Support of Nomination of John Ashcroft for United States Attorney General, Senate Russell Building, Room 189, Washington, D.C., January 18, 2001

"The State of the State of Law Enforcement", The Alabama Sheriff's Association Winter Conference, Embassy Suites, Montgomery, Alabama, January 30, 2001

Alabama Cattlemen's Association Legislative Luncheon, Montgomery Civic Center, Montgomery, Alabama, February 16, 2001

Remarks to Southwest Alabama Better Business Bureau Annual Luncheon, Mobile, Alabama, February 28, 2001

"Fulfilling the Reagan Revolution By Limiting Government Litigation", Joint Conference presented by The Alabama Policy Institute, The American Legislative Exchange Council, The Heritage Foundation, and The State Policy Network, The Wynfrey Hotel, Birmingham, Alabama, March 2, 2001

"Fighting for Federalism", Atlanta Lawyers' Chapter of the Federalist Society, Atlanta, Georgia, March 28, 2001
www.ago.state.al.us/speeches.cfm?Item=Single&Case=63
www.federalistsociety.org/Chapters/Atlanta/pryorspeech-032801.htm

"Fulfilling the Reagan Revolution by Limiting Government Litigation", 24th Annual Resource Bank Meeting of The Heritage Foundation, Sheraton Society Hilton, Philadelphia, Pennsylvania, April 18, 2001

Remarks to the Fraternal Order of Police Memorial Service, State Capitol Lawn, Montgomery, Alabama, May 4, 2001

"Competitive Federalism in Environmental Enforcement," Alabama State Bar Environmental Section, 10th Annual Beach and Bar Symposium, Environmental and Business Law Under the New Bush Administration, Division of Responsibility Between the State and Federal Governments, Marriott's Grand Hotel, Point Clear, Alabama, June 8, 2001

"The Demand for Clarity: Federalism, Statutory Construction, and the 2000 Term – Viva La Revolution?" Federalism and the Supreme Court's October 2000 Term, the Federalism Project of the American Enterprise Institute, Washington, D.C., July 11, 2001

"What Hath the MSA Wrought? The Consequences of the State Tobacco Litigation", Mississippi Bar Litigation and General Practice Section Annual Meeting at the Sandestin Beach Hilton, July 13, 2001

"Federalism vs. Economic Efficiency," 2001 American Legislative Exchange Council Annual Meeting, Marriott Marquis New York, August 1, 2001

"The One Thing Our Children Need the Most", Keynote Remarks to Mentor Birmingham, August 3, 2001

"Should There Be A Moratorium on the Death Penalty in Alabama?" A Debate with Senator Hank Sanders, Spring Hill College, Mobile, Alabama, September 10, 2001

Speech of Alabama Attorney General Bill Pryor to the State Law Enforcement Summit, Montgomery Civic Center, Montgomery, Alabama, October 16, 2001

"Regulation by Litigation: What Next for the State Attorneys General?", Symposium: "Litigation in Mississippi Today", University of Mississippi School of Law, November 9, 2001

Remarks to the 15th Annual Lawyers Convention of the Federalist Society, Panel on Religious Liberties, Moment of Silence Debate, The Mayflower Hotel, Washington, D.C., November 16, 2001

My debate with Walter Dellinger, former Solicitor General of the United States, was broadcast on the NPR program, "Justice Talking," on November 16, 2001 www.justicetalking.org/getshow.asp?showid=211

"The One Thing Our Children Need the Most", Big Brothers/Big Sisters of Greater Birmingham, Faith Summit on Mentoring, Birmingham, Alabama, January 15, 2002
www.ago.state.al.us/speeches.cfm?Item=Single&Case=77

Montgomery County Partners in Education, Tutor Recognition Luncheon, Montgomery, Alabama, January 24, 2002

Remarks of Attorney General Bill Pryor to the U. S. Chamber of Commerce Committee, South Seas Resort, Captiva Island, Florida, January 26, 2002

Big Brothers/Big Sisters Legislative Breakfast, Montgomery, Alabama, January 31, 2002

"Prosecuting Worker Compensation Fraud", Alabama Textile Manufacturers Association Safety Seminar and Achievement Awards Program, Montgomery, Alabama, February 21, 2002

WAKA Protect and Serve Reception, Channel 8 Studio, Montgomery, Alabama, February 28, 2002

"Madison's Double Security: In Defense of Federalism, the Separation of Powers, and the Rehnquist Court", Louisiana Lawyers Chapter of the Federalist Society, Dickie Brennan's Steakhouse, New Orleans, Louisiana, March 1, 2002

Remarks of Attorney General Bill Pryor at the 2002 Annual Membership Meeting of the American Tort Reform Association, Four Seasons, Washington, D.C., March 14, 2002

Montgomery Association of Legal Secretaries Week, Capital City Club, Montgomery, Alabama, March 26, 2002

Montgomery United Way Mentor Alabama Recognition Speech, Montgomery, Alabama, March 28, 2002
www.ago.state.al.us/speeches.cfm?Item=Single&Case=76

Alabama Education Association Professional Rights and Responsibilities Conference, Montgomery Civic Center, April 12, 2002
www.ago.state.al.us/speeches.cfm?Item=Single&Case=72

VOCAL Annual Conference on Victim Rights, Montgomery, Alabama, April 24, 2002

Comments at the FOP Memorial Service, Montgomery, Alabama, May 3, 2002

Speech to Georgia Washington Middle School Honor Roll Banquet, Montgomery, Alabama, May 7, 2002
www.ago.state.al.us/speeches.cfm?Item=Single&Case=75

Comments at the 6th Annual Law Enforcement Officers' Memorial Service for the Alexander City Police Department and the Tallapoosa County Sheriff's Department, Alexander City, Alabama, May 15, 2002

Huntsville Chapter of the Alabama Education Association, Huntsville, Alabama, May 19, 2002

Commencement Speech for 2002 Graduating Class at Marion Military Institute, Marion, Alabama, May 25, 2002
www.ago.state.al.us/speeches.cfm?Item=Single&Case=80

Opening Remarks by Attorney General Bill Pryor, "Is the Death Penalty in Alabama Fair?," A Debate with Brian Stevenson before The Downtown Rotary Club, Birmingham, Alabama, August 28, 2002

Speech to Odenville Middle School, Student Government Day, St. Clair County, October 29, 2002

Comments of Attorney General Bill Pryor for Catholic Education Week", January 28, 2003, St. Mary's School, McGill-Toolen High School, Heart of Mary School, and Holy Family Catholic school, Mobile, Alabama.

Remarks of Attorney General Bill Pryor at the Investiture Ceremony of Judge Mark Fuller, U. S. District Court for the Middle District of Alabama, February 20, 2003, Montgomery, Alabama.

Speech of Attorney General Bill Pryor, "How We Can Improve the Lives of Children in Alabama", February 27, 2003, Alabama Children's Policy Council Conference, Birmingham, Alabama.

Miscellaneous Remarks and Statements

Comments of Alabama Attorney General Bill Pryor on the Project for All Deliberate Speed

Statement of Attorney General Pryor on the Moment of Silence

Statement of Attorney General Pryor Regarding Prison Rape Legislation, Prison Rape Reduction Act of 2002

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in good health, and I have no medical conditions that could interfere with my duties. My last physical was on January 16, 2003.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Attorney General of Alabama
State of Alabama
Montgomery, Alabama

Appointed: January 2, 1997, by Governor Fob James to complete the remaining two-year term of Jeff Sessions who was elected to the U. S. Senate.

Elected: November 3, 1998, to first four-year term.

Reelected: November 5, 2002, to final four-year term

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Judicial Clerkship

Honorable John Minor Wisdom,
U.S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana
Law Clerk, 1987 – 1988

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Cabaniss, Johnston, Gardner, Dumas & O'Neal, 1988 to 1991
P. O. Box 830612
Birmingham, Alabama 36283-0612
Associate Attorney at private law firm

Walston, Stabler, Wells, Anderson & Bains, 1991 to 1995
P. O. Box 830642
Birmingham, Alabama 35283-0642
Associate Attorney at private law firm

Deputy Attorney General, State of Alabama, 1995 to 1997
State of Alabama
11 South Union Street, Suite 317
Montgomery, Alabama 36130
Appointed by Attorney General of Alabama to serve at his pleasure.
(lead counsel for the State of Alabama in all major civil and constitutional litigation)

The Attorney General of Alabama, 1997 to present
State of Alabama
11 South Union Street , Suite 317
Montgomery, Alabama 36130
Elected by the majority of the voters of the State of Alabama to be the chief law enforcement officer of the State of Alabama.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Cabaniss, Johnston, et al. (1988-1991) commercial litigation practice, including complex litigation involving secured transactions, securities fraud, and construction/engineering malpractice; appellate practice; railroad and employment disputes; antitrust counseling; solo trial experience; appellate practice; member of firm recruiting committee

Walston, Stabler, et al. (1991-1995) commercial litigation practice, including complex litigation involving antitrust, bankruptcy, banking, elections, trade secrets, insurance, municipal tax, and international commercial disputes. Trial experience and appellate experience. Member of firm library and space committees

Deputy Attorney General, State of Alabama (1995-1997) lead counsel for the State of Alabama in all major civil litigation with emphasis on voting rights, civil rights and election law

Attorney General, State of Alabama (1997 to present) chief law enforcement officer of Alabama, general government practice including civil, criminal, and administrative law; trial and appellate practice

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Cabaniss, Johnston, et al – private businesses, banks and financial institutions, political party, and local governmental entities

Walston, Stabler, et al. – private businesses, local governments

Attorney General – Government officials, state departments, taxpayers of the State of Alabama

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Prior to becoming Attorney General, I appeared in court frequently on pretrial and motion proceedings and occasionally in trial and before appellate courts. Since becoming Attorney General most of my court appearances have involved appellate proceedings.

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;
   (c) other courts.

   Evenly divided.

3. What percentage of your litigation was:
   (a) civil;
   (b) criminal.

Before becoming Attorney General, 100% civil. Since becoming Attorney General, equally divided.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried seven cases, and five of the cases were to a jury. All but one (a mistrial) resulted in a judgment or verdict. I was sole counsel three times (including the two nonjury cases); chief counsel three times (all jury), and associate counsel once (a jury trial). One of the nonjury cases was in federal court and the other was in state court. All of the jury trials were in state courts.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

Five out of seven or 71% were jury trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The ten most significant cases are:

1. *Roe v. State of Alabama* (1995)
2. *White v. State of Alabama* (1996)
3. *Hornsby v. Sessions* (1997)
4. *State of Alabama v. James R. Blackmon and William J. Lupinacci* (1999)
5. *State of Alabama v. American Tobacco Company* (2000)
6. *Siegelman v. Alabama Ass'n of School Boards, et al.* (2001)
7. *Ex parte James* (2002)
8. *State of Alabama v. Shelton* (2002)

9. *Ex parte Bobby Wayne Waldrop* (2002)
10. *Ex parte Roy Edward Perkins* (2002)

In all ten of the cases described below, I represented the State of Alabama and/or individual officers of the State acting in their official capacity.

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

The November 1994 general election resulted in lawsuits in both state and federal courts in Alabama, addressing the question of whether a group of contested absentee ballots should be counted. Alabama's election statutes require that absentee ballots contain the voter's signature, either notarized or witnessed by two persons at least 18 years of age. Code of Ala., tit. 17, chap. 10 (1975). Between 1000 and 2000 voters in the 1994 election did not satisfy either the notarization or witness requirements. Pursuant to the statutory language, and the statewide practice prior to the election, these ballots were not counted in the initial tally; they were removed from their affidavit envelopes and not placed in the ballot box.

The elections for Chief Justice and Treasurer were so close that the contested absentee ballots might decide the victors. Two individuals who voted absentee filed suit in the Circuit Court for Montgomery County, seeking an order that contested absentee ballots – i.e., those neither notarized nor witnessed – be counted. *Odom v. Bennett*, No. 94-2434-R. On November 17, 1994, the circuit court entered such an order. The court further ordered the Secretary of State not to certify election totals until the vote totals containing the contested absentee ballots were forwarded to him, and that he then certify election results containing the contested absentee ballots.

Three voters – Larry Roe, Perry Hooper (the Republican candidate for Chief Justice) and James Martin (the Republican candidate for Secretary of State) – filed an action under 42 U.S.C. § 1983, in the U.S. District Court for the Southern District of Alabama, seeking to block the counting of the contested absentee ballots. On December 5, 1994, U.S. District Judge Alex Howard entered a preliminary injunction against the Secretary of State and county election officials, precluding them from complying with the state court's order. Judge Howard found that "past practice of Alabama election officials . . . has been to refrain from counting any absentee ballot that did not include notarization or the signatures of two qualified witnesses," and that "the past practice of the Secretary of [the] State of Alabama has been to certify election results on the basis of vote counts that included absentee votes cast only by those voters who included affidavits with either notarization or the signature of two qualified witnesses." See 43 F.3d at 579 (quoting an unpublished district court order). Judge Howard also concluded that the state Circuit Judge's order would change this past practice, and that if state election officials obeyed the Circuit Judge's order, they would violate the Fourteenth Amendment.

The State of Alabama and various county election officials, represented by then-Attorney General Jimmy Evans, appealed Judge Howard's order. In a per curiam opinion announced on January 4, 1995, the U.S. Court of Appeals for the Eleventh Circuit held that the district court

had subject matter jurisdiction over the case and that the plaintiffs had demonstrated a violation of right secured by the Constitution as required for a § 1983 claim. The court certified the question whether the contested ballots met the requirements of state law to the Supreme Court of Alabama. 43 F.3d 574 (11th Cir. 1995) (Circuit Judges Tjoflat, Edmondson, Birch).

I began my work on this matter shortly after Jeff Sessions was sworn in as Attorney General of Alabama on January 20, 1995. I represented the State and James Bennett, in his official capacity as Secretary of State for the State of Alabama, before the Circuit Court of Montgomery County, the U.S. District Court for the Southern District of Alabama, and the U.S. Court of Appeals for the Eleventh Circuit.

On March 14, 1995, the Supreme Court of Alabama answered the certified question in the affirmative, holding that the contested ballots were in "substantial compliance" with the election laws, and thus were to be opened and counted. 676 So.2d 1206 (Ala. 1995). On receipt of this answer, the Eleventh Circuit on April 26, 1995, remanded the case to the Southern District of Alabama for a trial on the merits, with instructions. 52 F.3d 300 (11th Cir. 1995) (Circuit Judges Tjoflat, Edmondson, Birch), *cert. denied*, 516 U.S. 908 (1995).

Following a bench trial, on September 29, 1995, the district court held that the State's past practice was clearly not to count absentee ballots that had been neither notarized nor witnessed, that to change this practice would deprive plaintiffs of their rights to due process and equal protection, and that voters whose ballots did not meet the statutory requirements had failed to show that their constitutional rights had been violated. The district court permanently enjoined the counting of any contested absentee ballots and directed the Secretary of State to certify election results and swear in successful candidates. 904 F. Supp. 1315 (S.D. Ala. 1995). The class consisting of voters who had cast defective absentee ballots appealed the order of the district court.

I wrote the brief and argued the case before the Court of Appeals. The Eleventh Circuit affirmed and directed the State officials to comply with the injunction. 68 F.3d 404 (11th Cir. 1995) (Circuit Judges Tjoflat, Anderson, and Barkett).

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* * *

White v. State of Alabama
74 F.3d 1058 (11th Cir. 1996)

In this case I represented the State of Alabama and its then-Secretary of State, Jim Bennett, after Jeff Sessions was sworn in as Attorney General of Alabama (in January 1995), and I began working as a deputy attorney general.

Before the 1994 elections, Hoover White, on behalf of himself and African-American voters in Alabama, filed suit under the Voting Rights Act, challenging Alabama's at-large system of electing judges to its appellate courts. White made claims under Sections 2 and 5 of the Act, triggering the appointment of a three-judge court. The three-judge court's jurisdiction did not, however, include all of the proceedings. See 74 F.3d at 1065 n.25, citing *White v. State of Alabama*, 851 F.Supp. 427, 428-29 (M.D. Ala. 1994) (three-judge court). In particular, the three-judge court concluded that it "did not have the jurisdiction to consider the validity of [a] settlement agreement." Id. Such a settlement was reached between White and the State of Alabama in February 1994. Jimmy Evans was then the Attorney General of Alabama. Ralph Bradford and others sought to intervene to seek different relief.

The settlement that was reached in February 1994 was modified more than once before it was approved by the district court on October 6, 1994. As approved, the effect of the agreement would have been to retain the State's system of electing appellate judges on an at-large basis, but create two additional judgeships on each court. The increase to seven members would be permanent on the Alabama Court of Civil Appeals and the Court of Criminal Appeals, and the Alabama Supreme Court would ultimately be settled at nine members. A judicial nominating commission, the composition of which was specified, would present a slate of three candidates to the Governor. Those candidates were to be drawn from the Hoover White plaintiff class of African-American voters. Moreover, the settlement provided a mechanism that would insure that the two new seats were continually occupied by African-Americans. See generally *White v. State Alabama*, 867 F.Supp. 1519 (M.D. Ala. 1994). Through these changes, African-Americans, who were then some 23% of the voting age population, would be proportionately represented on the Alabama appellate bench.

Before the 1994 election, the district court approved the proposed settlement and rejected the objections to it. The intervenors who had objected appealed from the judgment.

In a decision published on January 6, 1996, the Eleventh Circuit vacated the judgment and remanded the case. The court adopted the arguments that other attorneys and I made, holding that the remedy of the District Court, which removed judicial selection from the ballot box and placed it in an appointive system, was inconsistent with Section 2 of the Voting Rights Act, which is designed to protect the opportunity to elect candidates of the voters' choice. The court also observed that proportional representation is inconsistent with the Voting Rights Act, which states, in pertinent part, "[N]othing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 74 F.3d at 1071,

quoting 42 U.S.C. § 1973(b). Finally, the court held that the district court exceeded its powers when it increased the size of Alabama's elected appellate courts. Accordingly, the court vacated the District Court's judgment and remanded the case to the three-judge court which had stayed its hand.

In the proceedings on remand, the three-judge court, which had jurisdiction of the Section 5 claims, concluded that, while those claims were not moot, no relief was appropriate. White v. State of Alabama, 922 F. Supp. 552 (M.D. Ala. 1996)(three-judge court). With the resolution of the Section 5 claims, the single-judge court adjudicated the remaining claims.

After I became a Deputy Attorney General, I was the only attorney representing the State of Alabama and Secretary of State Bennett. In these proceedings, I briefed and argued the case in the Eleventh Circuit, making three principal arguments against the settlement approved by the district court: 1) that the settlement was contrary to the constitution of Alabama and, therefore, it was beyond the authority of the Attorney General of Alabama; 2) that it was beyond the power of the district court under the Voting Rights Act, because it involved a remedy (appointment of judges and a change in the size of a government body) neither contemplated by nor consistent with the Act; and 3) that it involved racial set-asides that violated the equal protection guarantees of the fifth and fourteenth Amendments.

I also participated in the later proceedings in the district court. Those further proceedings are reported or can be found at 922 F. Supp. 552 (M.D. Ala); 1996 WL 378235 (M.D. Ala., June 20, 1996); and 1998 WL 117896 (M.D. Ala.).

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* * *

Hornsby v. Sessions
703 So.2d 932 (Ala. 1997)

This litigation also arose out of the disputed 1994 chief justice election, described in detail in the entry for *Roe v. Alabama*, above. The then-incumbent Chief Justice of Alabama, E.C. "Sonny" Hornsby, was a candidate for re-election. The outcome of that election was disputed, with the result that no winner was certified for several months. In the interim, Chief

Justice Hornsby sought to continue in his office, and requested that his salary be continued. In January 1995, the State Finance Director Jimmy Baker requested a legal opinion from the attorney general as to whether the state comptroller could legally issue state warrants to pay Hornsby's salary (as well as the salary of another state official whose race had not been certified). On February 1, 1995, Attorney General Sessions issued an opinion, stating that Hornsby's term of office had expired and that the state comptroller could not legally issue warrants to pay his salary. Hornsby then filed suit, seeking a declaratory judgment that his term of office continued until the results of the election were certified.

During the pendency of this litigation, on October 20, 1995, Perry O. Hooper, Sr., was certified the winner of the race for chief justice and sworn into office. (This development came about as a result of the *Roe* litigation, described herein.) The circuit court then dismissed Hornsby's action as moot. Hornsby appealed.

During the period February 1995-September 1997, I represented Jeff Sessions, as attorney general of the State of Alabama, and Jimmy H. Baker, as acting director of the Department of Finance of the State of Alabama. I represented the State in proceedings before the circuit court, supervised the briefing of the appeal, and argued the case to a special court composed of retired circuit judges. [Because the Chief Justice and all the Associate Justices recused themselves, the court appointed a special panel, composed of Circuit Judges Karrh, Younger, Burney, Baird, Folsom, Pearson, Baldwin, Key, and Byrd.]

The court ruled 7-2 in favor of Hornsby, finding that he had served in a de jure capacity as Chief Justice from the time his elective term ended until Chief Justice Hooper was sworn into office, and was entitled to all the powers, rights, duties, and benefits of the office during that period.

Co-counsel and principal counsel for the other party included –

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* * *

State of Alabama v. James R. Blackmon and William J. Lupinacci
Case No. CC-98-629, Circuit Court of Houston County, Alabama (20th Judicial Circuit)

This case was a criminal prosecution for theft from the Southeast Alabama Medical Center, a public hospital in Dothan, Alabama. Blackmon was the former CEO of the hospital and Lupinacci was the Director of the Industrial Medicine Clinic at the hospital. They were indicted on June 4, 1998. Blackmon was indicted for five counts of theft of property in the first degree. Each count represented a separate scheme to embezzle from the public hospital where he was employed as the CEO. Dr. Lupinacci was indicted as an accomplice in one of the schemes.

I was lead counsel for the State of Alabama. I examined witnesses and made arguments to both the judge and jury.

Blackmon was convicted on four of five counts on March 18, 1999. On April 19, 1999, he was sentenced on each count to 15 years, which was split to a sentence of 3 years imprisonment followed by 5 years probation. These sentences were to run concurrently. Blackmon was ordered to make restitution in the total amount of $376,345.83. Lupinacci was acquitted, but later pleaded guilty to another felony theft charge. [Judge Charles W. Woodham, 101 W. Court Square, Suite H, Abbeville AL 36310. (Judge Woodham is a district court judge from Henry County, the other county in the 20th Judicial Circuit, and was appointed to hear this case after the circuit judges recused themselves.)]

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* * *

State of Alabama v. American Tobacco Co., et al.
772 So. 2d 417 (Ala. 2000)

The decision arose out of the national tobacco litigation of the late 1990s. My participation in this matter spanned the period 1998-2000. My Office filed *State v. Philip Morris Inc.* on November 12, 1998, as a vehicle for the State of Alabama to participate in the national tobacco settlement. The State's case was consolidated with *State v. American Tobacco Co.*, a case filed the same day by private attorneys for then-Governor Fob James, Jr., and an earlier action filed in 1996. When the national tobacco settlement was announced, the Governor acquiesced in my decision to participate in the settlement. The plaintiffs in the 1996 case also agreed to dismiss their case as part of the national tobacco settlement.

The Circuit Court of Montgomery County [Judge Charles Price] held a fairness hearing on February 26, 1999, and later approved the State's participation in the national tobacco settlement. At the hearing, however, the judge sua sponte ordered the Governor's attorneys to submit their fee petitions to the court. The State objected, but the circuit court awarded the Governor's attorneys $2,011,160.36 in attorneys' fees and expenses.

I directed my staff to appeal the circuit court's award of attorneys' fees to the Governor's private attorneys, and participated in preparing the State's briefs to the Supreme Court of Alabama. I presented the State's oral argument to the Supreme Court of Alabama. [Chief Justice Hooper and Associate Justices Houston, Maddox, Brown, See, Cook, Johnstone, England. Associate Justice Lyons was recused.]

On appeal, the Supreme Court reversed the circuit court. The Supreme Court agreed with the State that the Governor's private attorneys' contracts were invalid and void because they were never submitted to the Contract Review Permanent Legislative Oversight Committee. The Court also agreed that the Governor's attorneys did not "substantially participate" in the national tobacco settlement. The Court nonetheless awarded the Governor's attorneys $125,942.36 on a theory of *quantum meruit*.

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* * *

Siegelman v. Alabama Ass'n of School Boards, et al.
819 So.2d 568 (Ala. 2001)

Several parties sought injunctive relief to prevent the State of Alabama from prorating the budgets of primary and secondary educational systems. I served as lead counsel for the Executive Defendants, Governor Don Siegelman, Finance Director Henry Mabry, and State Comptroller Robert Childree, during the period February 7-June 29, 2001. I wrote the master outline for and some sections of our briefs and served as final editor for all briefs submitted on behalf of the Executive Defendants. I presented oral argument on behalf of the Executive Defendants before the Alabama Supreme Court.

Alabama Code § 41-4-90 (1075) sets forth the process to be used by the Governor when it appears that estimated resources will be insufficient to meet the appropriations made for a particular year. Under that section, the Governor is directed to restrict allotments to prevent an overdraft of funds by reducing the appropriations to the various departments of the state pro rata. The Alabama Supreme Court has held that certain constitutionally mandated expenditures are not subject to proration under this power.

In February 2001, based upon the State Finance Director's projection of a short-fall in revenues from the Alabama Education Trust Fund, Governor Don Siegelman announced that appropriations from the Education Trust Fund would be prorated. A number of parties filed suit in Montgomery County Circuit Court, seeking an injunction and an order declaring that certain

state expenditures for K-12 education could not be prorated under Alabama law. State-funded universities moved to intervene. The circuit court entered an injunction directing the Governor's implementation of proration in the manner requested by the plaintiffs, and various parties appealed.

On appeal, we asked the Alabama Supreme Court to dissolve the preliminary injunction of the circuit court directing the Governor to implement proration in a particular manner. We argued in favor of a strict interpretation of certain statutes that exempted certain salaries from the proration process.

The Alabama Supreme Court dissolved the preliminary injunction entered by the circuit court, but held that the language of the statute exempting salaries from proration served as a directive to local school boards, not the Governor. [Chief Justice Moore and Associate Justices Houston, See, Lyons, Brown, Johnstone, Harwood, Woodall, and Stuart]

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* * *

Ex parte James
2002 WL 1150823 (Ala. 2002)

This case, which raised constitutional challenges to the State of Alabama's funding of public education, was litigated for approximately 12 years. My own involvement in this matter includes representing state officials in various courts since my employment with the Office of Attorney General in January 1995. In this summary, I will focus on my most recent representation of state officials in appellate litigation pending before the Alabama Supreme Court from June 29, 2001, through May 31, 2002.

The story begins in 1990 and 1991, with the filing of two lawsuits challenging the funding and adequacy of Alabama's public schools in the Circuit Court of Montgomery County. In a sweeping "Liability Order" entered in the two consolidated cases, the circuit court found that the public schools of Alabama were constitutionally inadequate. The parties jointly moved the trial court for certification of the Liability Order as a final judgment. *Ex parte James*, 713 So. 2d at 875 (citing *Pinto v. Alabama Coalition for Equity*, 662 So. 2d 894 (Ala. 1995)) (*James I*). On June 9, 1993, two months after entering the Liability Order, the circuit court certified the judgment as final, under Rule 54(b), ALA. R. CIV. P. *James v. Alabama Coalition for Equity, Inc.*, 713 So. 2d 937, 940 (Ala. 1997). None of the parties contested or appealed the issuance of the Rule 54(b) order that made the Liability Phase judgment final. *Id.* at 941. On four occasions since the Rule 54(b) order was issued, the Alabama Supreme Court held that the Liability Order became final and appealable as of June 9, 1993. *See id.* at 943.

In *James I*, the Supreme Court of Alabama stayed any "remedy" proceedings for a period of one year so that the deficiencies identified in the Liability Order could be addressed by the legislative and executive branches of government. 713 So. 2d at 882. Later, the Supreme Court of Alabama modified its ruling to provide the coordinate branches of government a "reasonable time" to "formulate[] an educational system that complies with the judgment in the Liability

Phase." 713 So. 2d at 935. Since that ruling, a considerable amount of new legislation was enacted for the betterment of the public education system in Alabama. Also, the State Board of Education worked tirelessly to implement new policies and initiatives to improve the quality of education afforded Alabama schoolchildren.

On March 16, 2001, despite the efforts of the Legislature and State Board of Education, the plaintiffs filed a petition with the circuit court to reopen this litigation for "remedy" proceedings. The circuit court scheduled a single status conference, which was held on May 9, 2001. On June 29, 2001, the Supreme Court of Alabama entered an order *ex mero motu* vacating its previous order remanding proceedings to the circuit court, and required the parties to brief issues concerning the appealability of the Liability Order.

In our briefs, we reminded the Court of its previous holdings that the Liability Order was final and binding on the defendants. We urged the court not to disturb the finality of its previous holdings and, instead, to hold that the implementation of a remedy for funding elementary and secondary education systems presented a non-justiciable political question better left to the executive and legislative branches of government. We argued that subsequent legislation and efforts of the State Department of Education had brought about changes in education funding and adequacy that had rendered the litigation moot. We asked the court to exercise judicial restraint and refrain from usurping the powers of the other branches of government.

I served as lead counsel for the State Defendants, including the Governor, State Director of Finance, Lieutenant Governor, Speaker of the House of Representatives, State Superintendent of Education, and the members of the Alabama State Board of Education. I wrote the master outline for and some sections of our briefs and served as final editor for all briefs submitted on behalf of the State Defendants. The court agreed with our arguments regarding justiciability and separation of powers and dismissed the remedy phase of the litigation. [Chief Justice Moore; Justices See, Brown, Harwood, Stuart, Houston, Woodall, Johnstone, and Lyons]

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* * *

State of Alabama v. Shelton
535 U.S. 654, 122 S. Ct. 1764 (2002)

This case raised the question of a misdemeanant's right to counsel for the imposition of a suspended sentence of imprisonment. After LaReed Shelton was adjudged guilty of third degree assault, a misdemeanor offense, while representing himself in the Etowah County District Court of Alabama, Shelton appealed the conviction for a trial de novo in circuit court. Shelton proceeded, pro se, to trial in the Etowah County Circuit Court, where a jury convicted him of the same crime. The trial judge sentenced Shelton to serve thirty days in the Etowah County Detention Center, then suspended the term and imposed two years' unsupervised probation. As a condition of probation, Shelton was required to pay various financial levies to the County Clerk within thirty days.

Shelton retained counsel and appealed his conviction. Shelton argued in the Alabama

Court of Criminal Appeals that his misdemeanor conviction was void because he did not waive his right to counsel. The Alabama Court of Criminal Appeals disagreed and held, based on the rulings in *Argersinger v. Hamlin*, 407 U.S. 25 (1972), and *Scott v. Illinois*, 440 U.S. 367 (1979), that a defendant is not entitled to counsel for a misdemeanor offense in which a suspended or conditional sentence is imposed. In a 6-to-1 decision, the Alabama Supreme Court affirmed Shelton's conviction and "[t]he remaining aspects of the sentence[,]" but "revers[ed] that aspect of his sentence imposing thirty days of suspended jail time." Finding that "[n]either *Argersinger* nor *Scott* addressed the issue . . . whether a suspended or probated sentence to imprisonment constitutes a 'term of imprisonment[,]'" the Alabama Supreme Court considered conflicting federal and state decisions on the issue. Relying on the reasoning employed in *United States v. Reilley*, 948 F.2d 648 (10th Cir. 1991), the Alabama Supreme Court concluded that a conditional threat of imprisonment imposed in an uncounseled case "could never be carried out" and thus, was "invalid" as a matter of federal constitutional law.

The Supreme Court of the United States granted the writ of certiorari to consider the State's argument that, under the Sixth Amendment and the decisions in *Argersinger* and *Scott*, the right to state-appointed counsel extended only to cases involving actual incarceration.

I represented the State of Alabama by overseeing and participating in the brief writing and presenting the oral argument before the United States Supreme Court on February 19, 2002. The Supreme Court affirmed the ruling of the Alabama Supreme Court by a 5 to 4 vote.

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* * *

Ex parte Bobby Wayne Waldrop
2002 WL 31630710 (Ala. Nov. 22, 2002)

Bobby Wayne Waldrop was convicted of three counts of capital murder in the stabbing deaths of his grandparents, Sherrell and Irene Prestridge. Two counts of murder were made capital because the murders were committed during a robbery; one count of murder was made capital because two or more persons were murdered by one act or pursuant to one scheme or course of conduct.

The Supreme Court originally granted certiorari review on one issue – whether the trial court stated sufficient reasons in its sentencing order for overriding the jury's life recommendation and sentencing Waldrop to death. After the decision in *Ring v. Arizona*, ___ U.S. ___, 122 S. Ct. 2428 (2002), the Supreme Court of Alabama ordered supplemental briefing on five issues concerning the possible effects of *Ring* on Alabama's capital sentencing regime.

I monitored closely the brief writing, which was supervised by the Solicitor General and Division Chief, on the *Ring* issues, and I orally argued the case before the Alabama Supreme Court on September 10, 2002. The case was affirmed – unanimously as to the *Ring* issue, and 5-4 as to the *Ex parte Taylor* issue. [Chief Justice Moore and Associate Justices Houston, See, Lyons, Brown, Woodall, Harwood, Stuart, and Johnstone]

Although the court did not adopt my first argument that finding a defendant guilty of any of the 18 enumerated capital offenses satisfies *Ring* and renders the defendant death-eligible, the

court agreed with my alternative argument that finding Waldrop guilty of a category of capital murder that corresponds to an aggravating circumstance (in this case robbery) rendered him death-eligible under *Ring* and entitled the trial court to sentence him to death or to life without parole. One Justice, Lyn Stuart, wrote a concurring opinion that agreed with my first argument as well. The court held that, in this case, "the jury, and not the trial judge, determined the existence of the 'aggravating circumstance necessary for the imposition of the death penalty'.... Therefore, the findings reflected in the jury's verdict alone exposed Waldrop to a range of punishment that had as its maximum the death penalty. This is all *Ring* and *Apprendi* require." *Ex parte Waldrop*, 2002 WL 31630710 at * 5. The court further accepted my argument that the weighing of aggravating and mitigating circumstances is not a factual determination or an element of the offense that must be made or found by the jury. The court also accepted my argument that *Ring* and *Apprendi* do not require that the jury make every factual determination; thus, the later determination by the trial court that the murders were especially heinous, atrocious, or cruel is a factor that had "application only in weighing the mitigating circumstances and the aggravating circumstances, a process that we held earlier is not an 'element' of the offense." *Ex parte Waldrop*, 2002 WL 31630710 at * 7.

As to the issue on which certiorari review was initially granted, the court accepted my argument and, instead of remanding the cause to the trial court for it to state specific reasons for overriding the jury's life recommendation, conducted its own statutorily required review of the propriety of the death penalty. The court concluded, as I had argued, that a death sentence was proper in this case. Although the trial court's sentencing order did not comply with *Ex parte Taylor*, a case I suggested was wrongly decided, the trial judge presiding over Waldrop's trial was no longer a sitting judge. Four justices dissented from the majority's holding on this issue, and argued that the case should nonetheless be remanded to the trial court.

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* * *

Ex parte Roy Edward Perkins
2002 WL 31630711 (Ala. November 22, 2002)

The United States Supreme Court, on June 28, 2002, granted certiorari and remanded this capital murder case, involving kidnapping and murder, to the Supreme Court of Alabama "for further consideration in light of *Atkins v. Virginia*." *Perkins v. Alabama*, 122 S. Ct. 2653 (2002). The Supreme Court of Alabama then ordered supplemental briefing to address the possible implications of *Atkins v. Virginia* on this case. The ultimate question was whether Perkins was mentally retarded within the meaning of the Eighth Amendment and, therefore, not subject to the death penalty.

I argued the case before the Alabama Supreme Court on November 6, 2002. My principal argument was that Perkins was not entitled to relief or, in the alternative, remand for an "*Atkins*" hearing. I encouraged the Court not to establish a mental retardation standard and argued that, regardless of which of the accepted standards are used to evaluate Perkins's mental functioning, the overwhelming evidence from the trial conclusively demonstrated that Perkins is not mentally retarded for purposes of the Eighth Amendment. This argument was successful. The Court did

not set a specific standard and found that Perkins was not mentally retarded within the meaning of the Eighth Amendment. [Chief Justice Moore and Associate Justices Woodall, Johnstone, Lyons, Houston, See, Brown, Harwood, Stuart]

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19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Aside from the litigation matters mentioned above in answer to question 18, I have been involved in two kinds of significant legal activities: (1) the development of constitutional amendments, legislation, and changes in court rules; and (2) the provision of legal opinions to various public officials.

Constitutional amendments, legislation, and changes in court rules. In 1998, I helped draft and campaign for the passage of the Religious Freedom Amendment to the Constitution of Alabama. *See* ALA. CONST. amend. 622. This amendment was precipitated by two decisions of the Supreme Court of the United States: *Employment Division v. Smith*, 494 U.S. 872 (1990), which relaxed the scrutiny of government burdens of religious freedom under the first amendment; and (2) *City of Boerne v. Flores*, 521 U.S. 507 (1997), which declared the Religious Freedom Restoration Act, 42 U.S.C. §2000bb, unconstitutional as applied to the states. I opposed efforts of Alabama prison officials to create an exemption under the Religious Freedom Amendment. Under this amendment, government officials in Alabama cannot burden the religious freedom of individuals unless the burden is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

In 1999 and 2000, I helped draft and campaigned for an amendment to the Constitution of Alabama that repealed a ban of interracial marriages. *See* ALA. CONST. amend. No. 667 (repealing former article IV, section 102).

Beginning in 1998, I have led an effort to reform the system of criminal sentencing in Alabama courts. In 1998, I worked with then-Chief Justice Perry Hooper, Sr., to appoint a committee of the Alabama Judicial System Study Commission to review sentencing policies and practices. After that committee recommended the creation of a permanent sentencing commission to develop and recommend new sentencing policies,

my office drafted and successfully lobbied for the passage of legislation that created that commission. *Ala. Code* §12-25-1 et seq. (Supp. 2002). I remain active in the work of that commission to reform our system of criminal sentencing in the following ways: (1) to ensure that sentencing practices promote public safety and recognize the impact of crime on victims by concentrating on the incarceration of violent, sex, and repeat offenders; (2) to maintain meaningful judicial discretion allowing judges the flexibility to individualize sentences based on the unique circumstances of each case; (3) to establish a system where the time served in prison will bear a close resemblance to the court imposed sentence; (4) to provide for sentencing alternatives, other than incarceration in prison, for offenders who can best be supervised and rehabilitated through more cost-effective means while still protecting the public; (5) to assist the executive branch in avoiding prison overcrowding and premature release of inmates; and (6) to ensure that there exists no unwarranted disparity with respect to sentencing of felony offenders.

In 2001, I successfully proposed legislation to create a crime of identity theft and certain remedies for victims of that crime. *Ala. Code* §§ 13A-8-190 et seq.

In 2000, I proposed and the Supreme Court of Alabama unanimously adopted an amendment to Alabama Rule of Appellate Procedure 39. The amendment removed the provision of former Rule 39 that provided that a petition for a writ of certiorari to the Supreme Court of Alabama in a case involving a sentence of death would be granted as of right. Under the new rule, the review of cases involving sentences of death is at the discretion of the Supreme Court of Alabama, like every other criminal case.

In 1998, I successfully proposed that the State Board of Health classify the drug gamma hydroxybutyrate (GHB) as a schedule I controlled substance. GHB is a dangerous drug often used in date rapes. The classification of GHB as a schedule I drug made its manufacture, possession, and use illegal in Alabama.

Opinions for public officials. I have provided hundreds of opinions and guidance on legal issues to scores of public officials in Alabama. These opinions are public record and may be viewed through the website at www.ago.state.al.us. At least three of those opinions and one set of guidelines are noteworthy.

(1) On three separate occasions, I have distributed to all city and county superintendents of education extensive guidelines for the free exercise of religion in public schools. These guidelines are similar to the guidelines distributed by the U. S. Department of Education. The guidelines explain that school officials are prohibited from sponsoring or organizing prayer or religious activities. The guidelines also explain how school officials must remain genuinely neutral toward student-initiated religious expression.

(2) After the 2002 general election, a dispute erupted between the

gubernatorial candidates concerning the circumstances that would warrant a recount under Alabama's archaic and confusing election laws, many of which were written long before the use of modern voting machines became common. At the request of the Secretary of State, I opined that a recount was unavailable except in limited circumstances.

(3) In early 2000, a state legislator sought my opinion whether the Vermont "civil union" statute then pending (and later passed) that gave homosexual couples the benefit of marriage would be afforded "full faith and credit" by the State of Alabama, its political subdivisions, and business enterprises. After an exhaustive review of the relevant controlling constitutional authorities and Alabama law, I concluded that neither the State, its subdivisions, businesses doing business in the state, nor our citizens would be required to recognize civil unions of homosexual couples under the federal Defense of Marriage Act and the Alabama Marriage Protection Act.

(4) In June 2002, the director of the State Personnel Department sought my opinion concerning special rights and privileges allegedly granted to state employees who are members of the National Guard and Reserves forces of the United States when called to active duty during the war on terrorism that commenced in September 2001. Among these benefits, the State undertook to pay the difference between a service member's military pay and his/her civilian pay, if any. Some department heads had suggested to the Personnel Director that giving effect to the statute would allow service members to "double dip" and be paid benefits to which they were not entitled and state agencies could not afford to pay. In my opinion, I harmonized the new state law, admittedly not a model of clarity, with the complex federal laws and regulations dealing with military pay and entitlements. In so doing, I gave great weight to the obvious intent of the Legislature to recognize the sacrifices and hardships voluntarily undertaken by members of our reserve armed forces and their families. Accordingly, I opined that the Legislature intended to ensure that service members and their families did not suffer additional financial sacrifices for defending our Nation.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   The most likely sources of conflicts of interest for me would involve appeals in criminal or civil cases in which the State of Alabama or an official, agency, department, or instrumentality of the State of Alabama is a party. For any appeal involving a criminal or civil matter handled during my services as Attorney General, I would recuse myself. For any civil appeal involving both the State of Alabama and events that occurred before my investiture, I also would recuse myself. In any case in which the constitutionality of an Alabama law is challenged and I participated in the drafting, lobbying, or enactment of that law, I would recuse myself. In all other cases, I would adhere to both the letter and spirit of federal law regarding the disqualification of judges. 28 U.S.C. §455. I would closely monitor my household financial transactions to conform to the code of conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See financial disclosure report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Net Worth Statement attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Yes, I was the Republican candidate for Attorney General of Alabama in the elections held on November 3, 1998 and November 5, 2002.
I have also served as:

Alabama Co-Chairman of the Bush-Cheney Presidential campaign
Bush Delegate, Republican National Convention 2000
Homewood Coordinator, Fob James for Governor 1994
Volunteer Attorney-Advisor, Jeff Sessions for Attorney General 1994
Volunteer, Spencer Bachus for Attorney General 1990
Volunteer, Dave Treen for Governor (Louisiana) 1983
Chairman, Alabama Republican Party State Judicial Candidate Recruitment Committee 1994
Louisiana Young Republican National Committeeman 1984-1986
President, College Republicans at Northeast Louisiana University 1982-1984.

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Chairman, Alabama Republican Party State Judicial Candidate Recruitment Committee 1994
Louisiana Young Republican National Committeeman 1984-1986
President, College Republicans at Northeast Louisiana University 1982-1984

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As Attorney General and Deputy Attorney General of Alabama, my duties are and were to represent the State, its agencies, boards, commissions, and departments, and its officials. See Ala. Code §§36-15-1, et seq. (2001). These official duties, which I have performed since January 1995, legally preclude my representation of private clients on a pro bono basis. My office, however, performs a variety of services that redound to the benefit of disadvantaged persons. Those services include assistance of the victims of crime and representation of the interests of consumers before the Public Service Commission and in other courts. In addition, I sponsored a mentoring initiative, Mentor Alabama, which has recruited thousands of citizens from throughout the State to serve as mentors to disadvantaged youth. For the last two and a half years, I have volunteered as a reading tutor at an inner-city public school.

I serve as vice-chair of the Board of the Children First Foundation, a non-profit and bipartisan organization that strives to influence the policies of state government to improve the lives of children, especially disadvantaged children. I have served on this Board for the last three years. I have also served as a director of the Children's Scholarship Fun-Alabama, which has awarded scholarships for disadvantaged students to attend private or parochial schools.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end

(including the circumstances which led to your nomination and interviews in which you participated).

No.

On December 11, 2002, I was asked by a member of the staff of the White House Counsel whether I would interview with Judge Gonzales for a possible nomination to the Eleventh Circuit. Soon afterward, I was asked in a telephone conversation from Senator Jeff Sessions about my interest in the possible nomination. On December 16, 2002, I was interviewed for 30 minutes by Judge Gonzales and several other attorneys. In late December, I was asked to complete paperwork for a background check by the Federal Bureau of Investigation. I was also asked to compile information that would be requested by the Judiciary Committee of the U. S. Senate, if I were to be nominated. I completed and submitted the FBI paperwork on January 3, 2003. I was nominated by the President on April 9, 2003.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Judicial activism violates the Constitution itself, which judges are sworn to uphold and defend. It is a betrayal of their oath of office for judges to exceed their authority, under Article III of the Constitution, by ruling based on a personal or political agenda rather than the texts of the Constitution and laws, decisions of the Supreme Court, and relevant appellate precedents. Article III limits the jurisdiction of federal courts to actual cases and controversies between certain parties. Respecting that limitation of jurisdiction demand adherence to the doctrines of standing and ripeness and avoidance of the temptation toward problem-solution rather than grievance-resolution.

Judges are neither legislators nor executives. The Constitution, in Article I, reserved the power of lawmaking to Congress and, in Article II, the power of the executive to the President. Judges are without authority to create and impose broad duties upon the government or society or perform continuous administrative oversight of nonjudicial institutions. Indeed, the Constitution requires judges to protect and defend the proper exercise of those authorities by the political branches. The profound, but limited, role of a judge is to apply the law, with integrity, to resolve cases and fulfill the guarantee of equal justice for all parties.

Chairman HATCH. Thank you so much.

We have had a number of issues raised. Let us just hit a few of them, and I am sure we will have an opportunity on both sides, because I want this to be a lively debate. I want Senators on both sides to be able to ask any questions they want to, and I believe you can answer all of them between you and me, and we have spent hours together discussing some of these things.

So let me just say you have openly criticized *Roe* v. *Wade*. Some will find that just awful. And you did use language, called it "the worst abomination in constitutional law in history," and Senator Schumer brought up your statement, "I will never forget January 22nd, 1973, the day seven members of our highest court ripped the Constitution." But you also—well, let me just ask you, tell us about that. Tell us about why we should have you as a judge when you have criticized one of the hallmark opinions in the eyes of some, certainly not me, that has come forth in the last 40 years.

Mr. PRYOR. Thank you, Senator. I appreciate the opportunity to answer that question. I have a record as Attorney General that is separate from my personal beliefs, and I have demonstrated as Attorney General that I am able to set aside my personal beliefs and follow the law, evenly when I strongly disagree with the law.

In the context of the issue that you raised, abortion, a couple of years ago, actually several years ago in my first year as Attorney General, our legislature had passed a partial birth abortion law, and you mentioned earlier, there were at least a couple of different ways that that law could have been interpreted; it could have been broadly interpreted. I knew that when a lawsuit was filed in a Federal Court challenging the application of that law, that it was going to be a formidable challenge to defend the law in the light of the precedents of the Supreme Court in *Roe* and in *Casey*. I had an obligation as Attorney General, though before *Stenberg*, to make whatever reasonable argument I could in defense of that law, so long as it was consistent with those precedents. So looking at that law and looking at those precedents, I required, I ordered the district attorneys of Alabama to apply that law in the narrowest construction available, that is, only to post-viability fetuses, because that was my reading of the case law. It was an interpretation that disagreed with the position of the Governor, who appointed me, who was a party to the lawsuit. It was criticized by some pro-life activists in Alabama, but it was my best judgment of what the law required.

Chairman HATCH. Even though you believe otherwise?

Mr. PRYOR. Even though I believe strongly otherwise. I believe that abortion is the taking of innocent human life. I believe that abortion is morally wrong. I've never wavered from that, and in representing the people of Alabama, I have been a candid, engaged Attorney General, who has been involved in the type of—

Chairman HATCH. What does that mean with regard to the Eleventh Circuit Court of Appeals? If you get on that court, how are you going to treat *Roe* v. *Wade*?

Mr. PRYOR. Well, my record as Attorney General shows that I am able to put aside my personal beliefs and follow the law, even when I strongly disagree with it, to look carefully at precedents and to do my duty. That is the same duty that I would have as a judge.

Now, as an advocate for the State of Alabama of course I have an obligation to make a reasonable argument in defense of the law, but as a judge I would have to do my best to determine from the precedents what the law actually at the end of the day requires. My record demonstrates that I can do that.

Chairman HATCH. So even though you disagree with *Roe* v. *Wade* you would act in accordance with *Roe* v. *Wade* on the Eleventh Circuit Court of Appeals?

Mr. PRYOR. Even though I strongly disagree with *Roe* v. *Wade* I have acted in accordance with it as Attorney General and would continue to do so as a Court of Appeals Judge.

Chairman HATCH. Can we rely on that?

Mr. PRYOR. You can take it to the bank, Mr. Chairman.

Chairman HATCH. Let me just—you have had some criticism. Let me just bring up just a couple of them, because my time is going, and I am going to hold everybody to 10 minutes, and we will do various rounds so everybody will have a chance to ask whatever questions they want.

I am one of the—it was Biden-Hatch Violence Against Women Act in the Senate. I took a very strong position on that bill, took a lot of criticism for it, because there were two different points of view with regard to that bill and how it was written. Now, you have been criticized because of litigation regarding the Violence Against Women's Act, as though your position on that bill was improper. Now, tell me about that.

Mr. PRYOR. Well, my position, Mr. Chairman, was the position adopted by the Supreme Court of the United States in the Morrison case.

Chairman HATCH. In other words you followed not only the law, but you won in the Supreme Court of the United States of America.

Mr. PRYOR. The argument I presented was the position adopted by the Court, that's right.

Chairman HATCH. So if anybody is out of the mainstream here, it has to be the Supreme Court I guess.

Mr. PRYOR. Well, I would suggest that the Court is within the mainstream.

Chairman HATCH. I think so too. That is the point I am trying to make. The fact is, is that, yes, you can be criticized because you criticized a portion of the Violence Against Women's Act, believing that you were right and you were proven right in the Supreme Court, which is the law of the land, just as much as *Roe* v. *Wade*, right?

Mr. PRYOR. Absolutely.

Chairman HATCH. So anybody that suggests that you were not following the law and that you went outside the mainstream happens to be wrong.

Mr. PRYOR. I believe so.

Chairman HATCH. I think the Supreme Court believes so too. Now, I disagreed with the Supreme Court on that issue, but it is the law, and I accept it. So we have tried to go back to the legislative table and rework it, and we will try and do that.

Let me just give you a couple of others that are important. Your record on race is commendable, and I quoted Alvin Holmes, and so did others here today including the two Senators from Alabama

and the Congressman, the black representative for Alabama House of Representatives for 20 years. He said, "During my time of service I have led most of the fights for civil rights of blacks, women, lesbians and gays and other minorities," unquote. Representative Holmes, in his letter to us, lists a number of your accomplishments on race that I would just like to ask you about in my remaining three minutes, three-and-a-half minutes. In addition to your defense of majority/minority districts, which we have already discussed, or at least I have discussed it, you worked with Doug Jones who was President Clinton's U.S. Attorney for the Northern District of Alabama to convict two former Klansmen for the bombing of Birmingham's 16th Street Baptist Church in 1963; is that correct?

Mr. PRYOR. That's correct. I actually appointed him as a deputy Attorney General to do that prosecution.

Chairman HATCH. Four little girls were killed in that particular despicable act of terror, am I right?

Mr. PRYOR. That's right.

Chairman HATCH. You personally argued to uphold the conviction of one of the murderers on May 20th of this year, just a few weeks ago before the Alabama Court of Criminal Appeals; am I right on that?

Mr. PRYOR. Yes.

Chairman HATCH. Now, you were instrumental in creating the Alabama Sentencing Commission, which Representative Holmes applauded for its purpose of ending racial disparities and criminal punishments. Am I right on that?

Mr. PRYOR. That's right.

Chairman HATCH. In the year 2000 Representative Holmes, this great black leader in Alabama, introduced a bill in the Alabama legislature to amend the State Constitution to repeal Alabama's prohibition of interracial marriages. He writes, quote, "Every prominent white political leader in Alabama, both Republican and Democrat, opposed my bill or remained silent except Bill Pryor, who openly and publicly asked the white and black citizens of Alabama to vote and repeal such racist law. It was passed with a slim majority among the voters, and Bill Pryor later successfully defended that repeal when the leader of a racist group called the Confederate Heritage sued the State to challenge it," unquote. Is he right on that?

Mr. PRYOR. Absolutely.

Chairman HATCH. Now, General Pryor, you were committed to ending Alabama's ban on interracial marriage from the moment you took office, were you not?

Mr. PRYOR. I was.

Chairman HATCH. In fact, I understand that you discussed in your first inaugural address, I think you stated—let me get an actual quote. "Any provision of the Constitution of Alabama or for that matter the Code of Alabama, that classifies our citizens or any persons on the color of their skin, their race, should be stricken," unquote. Is that correct?

Mr. PRYOR. That's what I said.

Chairman HATCH. In addition you started Mentor Alabama. Could you please explain that for a minute?

Mr. PRYOR. Absolutely. Mentor Alabama is a program designed to recruit positive adult role models for thousands of at-risk children in our State. We've recruited more than 3,700 mentors for at-risk children in every county of Alabama. And I work as a reading tutor in the Montgomery County Public Schools. I have for the last 3 years as part of that initiative, as I encourage others to do the same.

Chairman HATCH. Let me just say finally, Representative Holmes notes that a bill he sponsored to establish cross burning as a felony passed the State House in May 15th of this year; is that right?

Mr. PRYOR. Yes.

Chairman HATCH. Now, he observes, quote, "That bill was written by Bill Pryor, and he was the only white leader in Alabama that openly and publicly supported it." Did you write that bill, General Pryor?

Mr. PRYOR. I did.

Chairman HATCH. Well, General Pryor, I think you can take some of your statements out of context and make a big fuss about them, and I think we have to look at the record and what you have stood for and what you have done. I think if people will do that and do that fairly, they will realize that you are a person who can set aside your personal, your very heartfelt personal views and go from there.

Now, my time is up.

I am going to interrupt everybody at 10 minutes, but we will have enough rounds so everybody will have an opportunity to ask the questions they want.

Senator Schumer.

Senator SCHUMER. Thank you, Mr. Chairman. I want to thank you for having this hearing, where we can fully question witnesses, and we are having just one witness here, and this is how it ought to be done, and we very much appreciate that.

Chairman HATCH. I appreciate you.

Senator SCHUMER. My first question is, I want to go back to that speech you gave, Attorney General, to the Federalist Society in 2000, where you said, "We are one vote away from the demise federalism, and in this term the Rehnquist Court issued two awful rulings that preserved the worst examples of judicial activism, *Miranda* and *Roe*. Perhaps that means that our real last hope for federalism is the election of Governor George W. Bush as President of the United States, since he has said his favorite Justices are Antonin Scalia and Clarence Thomas. I will end with my prayer for the next administration. Please, God, no more Souters," unquote.

And one other comment you made to a journalist in 2000. Just after *Bush* v. *Gore* was decided, you said, "I'm probably the only one who wanted it 5 to 4. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection, so we can have no more appointments like Justice Souter," unquote.

I take it from these comments and others that you have made in the past few years, you believe that a judge's ideology does at least in some circumstances drive how he rules on cases. I appreciate your candor in this regard, and the evidence supporting that position is more or less irrefutable now. The new case study by Pro-

fessor Sunstein, excerpted in today's New York Times, provides empirical evidence for what I think you and I and pretty much everyone else in the room knows to be true, that ideology all too often drives how judges rule in particular cases. To my eye Justice Souter is a paragon of moderation. He was appointed by of course a Republican President. He appears to be a judge who does not have a strong personal ideology that drives his decision making. You disagree. Why? What's wrong with Justice Souter? Are you hostile to Justice Souter because he has not hewed the party line? Do you believe Justice Souter is trying to implement a personal ideological agenda from the bench?

Mr. PRYOR. Thank you, Senator. In the context of the first remark that you quoted, which was an accurate quotation and in which I said, "Please, God, no more Souters," that was my perhaps feeble attempt at humor at the very last comment in a speech in which I had earlier criticized a dissenting opinion of Justice Souter in a case in which I had been involved.

I have on several occasions disagreed with Justice Souter's interpretations of the law, particularly in cases in which I have been involved. And my comments are meant only in that light. It's certainly not meant as any personal animus toward Justice Souter who's had a—

Senator SCHUMER. Do you think he is too liberal? Do you think ideology motivates him in how he rules, or is he just following the law?

Mr. PRYOR. The only thing I can say is that on several different occasions I have disagreed with his interpretations of the law.

Senator SCHUMER. So you think that—I mean you are saying you will follow the law. I am sure he says he is following the law. Is not ideology a motivating factor here?

Mr. PRYOR. I don't know what is motivating Justice Souter.

Senator SCHUMER. Do you think he is out of the mainstream?

Mr. PRYOR. I wouldn't use those terms. I would say that his interpretations in several cases in which I have personally been involved are different from mine, and I have disagreed with them. And the—I am an active, engaged Attorney General. I criticize rulings of the Supreme Court. I praise rulings. I share those views and my values with the people of Alabama who elect me. And I think that's part of our role as lawyers and advocates in the legal system, and in making it better. And in that context there have been several occasions where I have disagreed with Justice Souter's opinions.

Senator SCHUMER. Why Souter more than—I don't think Souter is regarded as any more liberal than the other three Justices who are regarded as sort of on the more liberal side, Ginsburg, Breyer and Stevens. Why have you always sort of singled out Souter in your comments?

Mr. PRYOR. Well, in the context of the speech that you mentioned, where I said, "Please, God, no more Souters," I had specifically criticized his dissenting opinion in Morrison, which has already been discussed today, was the case involving one part of the Violence Against Women Act.

Senator SCHUMER. But the comments seem to go beyond just one case.

Mr. PRYOR. It's only—

Senator SCHUMER. Especially the one on the other one, "We should have no more appointments like Souter so everyone can appreciate"—you are sort of saying how bad he is.

Mr. PRYOR. Well, there have been two—those were two cases that I was in specific reference to, one in which he had written an opinion and the other in which he had written an opinion, and I disagreed with those opinions.

Senator SCHUMER. But why did you pick Souter? On all those cases he had—

Mr. PRYOR. Not everyone wrote an opinion in those cases.

Senator SCHUMER. Okay. But Justice Breyer did write one in the Violence Against Women Act.

Mr. PRYOR. Okay.

Senator SCHUMER. Okay. But again, you think Souter is within the mainstream?

Mr. PRYOR. I don't know if I'm the evaluator of who is in the mainstream or not.

Senator SCHUMER. I know, but what is your opinion? We are just asking you your opinion.

Mr. PRYOR. I think he's had a distinguished career as a jurist, and, and you know, I think there's a pretty broad definition of what constitutes the mainstream, and he would certainly be included in it.

Senator SCHUMER. Okay. Let me ask you this one. Again, you have fervent personal beliefs on *Roe* v. *Wade*.

Mr. PRYOR. I do.

Senator SCHUMER. And I respect those. I mean I am friends with the Bishop in our community who says the rosary outside an abortion clinic, and I respect his right to do it. But please, what can you say? I mean you feel this so passionately and you have said repeatedly abortion is murder. What can you say today that will give comfort to a woman who might come before you trying to control the destiny of her body, trying to exercise her fundamental rights? Would it not be logical that she would be concerned that you would be looking for a way, quote, "within the confines of the law"—because everyone looks that way, no judge will admit they are going outside the law—to deny her that right to choose? I mean how do you square feeling so vehemently. Many people believe abortion is wrong, but when you believe it is murder, how can you square that with—or how can you give comfort to women throughout America, the majority of whom believe in the right to choose, that you can be fair and dispassionate? I do not think it is enough, as I mentioned earlier, for us to simply hear you say, "I will follow the law." What can you say directly to that woman, not in a legal way, but in a personal way, that might reassure her?

Mr. PRYOR. I would say that that woman should be comforted by looking at my record as Attorney General, by looking at the fact that though I have vehemently disagreed with *Roe* v. *Wade* on the one hand, as Attorney General, where I've had a constitutional duty to uphold and enforce the law on the other hand, I have done my duty. And in the context specifically of when the Alabama partial birth abortion law was challenged, that law could have been interpreted in at least a couple of different ways, I looked at the

precedents of the Supreme Court in *Roe* and in *Casey*, and gave the narrowest construction available to that law, and ordered the district attorneys of Alabama to enforce it only in that narrowest construction.

Senator SCHUMER. Now, you have said on occasion, on several occasions, that *Roe* v. *Wade* is quote, "the worst abomination in the history of constitutional law." A) Do you believe that as of right now?

Mr. PRYOR. I do.

Senator SCHUMER. I appreciate your candor, I really do. And second, would you endorse the Court's reversing *Roe* v. *Wade* at the first opportunity, just as you argued for the Court to constrict the Violence Against Women Act and you got five Justices to agree with you?

Mr. PRYOR. Well, obviously, if I had the opportunity to be a Court of Appeals Judge, I wouldn't be in the position to do that, Senator Schumer.

Senator SCHUMER. But right now as a person would you endorse the Court's reversing *Roe* v. *Wade* at the first opportunity?

Mr. PRYOR. Senator, I don't know what that opportunity would be, and that is a hard thing to speculate about unless I know more about what the case involves. I would say—

Senator SCHUMER. Let's say this case is pretty much a rehearing of *Roe*. It comes up to the Court. They accept it. Would you endorse the Court reversing *Roe*?

Mr. PRYOR. Well, I'll tell you this, in the context of the Stenberg case, when it was presented to the Supreme Court of the United States, the Attorney General of Nebraska at the time was a very dear friend of mine named Don Stenberg, and he presented two questions before the Supreme Court, and one of the questions he presented was an invitation for the Court to overrule Roe. I called him up and urged him not to include that question in his petition. So I would say that in that instance, I did not do that.

Senator SCHUMER. Just one quick. "If you believe—this is what we have a hard time squaring, myself, I think some others—if you believe that Roe is the worst abomination in the history of constitutional law, it would seem to me to directly follow that you would want the Court to reverse *Roe*. It is a contradiction. You just said a minute ago that you believe that is still the case, and now you are saying you would not endorse the Court reversing it. It does not add up.

Mr. PRYOR. Well, Senator, all I can tell you is that the last time the Court had that opportunity, I urged my colleague not to present that question to the Court.

Senator SCHUMER. Thank you, Mr. Chairman.

Chairman HATCH. Thank you.

Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman.

Chairman HATCH. You had better get closer to the mike.

Senator CORNYN. Well, General Pryor, I want to welcome you here for this hearing. I guess you know you are in for a rough ride. But one of the things that I admire about you is that I believe you are a man of courage and a person of character, and someone who is not afraid to run away, or who is not willing to run away from

strongly-held beliefs. I also believe that you are a person who cannot be pressured or intimidated, and I believe your record as Attorney General has demonstrated that.

I also believe or happen to believe, in contrast to some of the suggestions made by Senator Schumer, that your record is inconsistent with someone who is able to show that same courage and demonstrate that same character, and refuse to be pressured or intimidated in your new role as a member of the Eleventh Circuit Court of Appeals. Can you describe briefly how you see yourself making that transition, and perhaps answer for those who have never had to change a constitutional role because of their service in a different branch of government, how you can reconcile that?

Mr. PRYOR. Well, it's a transition that I would relish and welcome. I can think of no higher calling for an American than to serve as a Federal Judge in the American system of government and to have the responsibility of protecting and defending the Constitution of the United States. I would leave behind an active public service of a different kind, where I have been a politician, I have been an elected official and run for office and had to share my values with the people of Alabama and to defend their laws and institutions in our State Government, to do it without fear of favor, and to do it to the best of my ability.

Now, sometimes that means, as I'm sure you recall from your service as a State Attorney General, Senator, that you have to make arguments that you think are reasonable in the defense of your State, but not necessarily the one that ought to prevail in the end in resolving a controversy, and that it is probably not going to be the prevailing argument, but that you owe it to your client, the State Government, to make that argument and to let the Court decided. I wouldn't have that role any more.

I would have the role of making that tough final decision of resolving the controversy in accordance with the law to the best of my ability, honestly and diligently, quietly, and listening to all sides, reading the briefs, becoming familiar with the facts of any case, reading all the applicable case law, and hearing from my colleagues in arriving at a decision.

Senator CORNYN. I know Senator Schumer, when he was asking questions, said that it is almost irrefutable that judges will demonstrate an ideology on the bench, and so we ought to just face that and try to achieve some sort of ideological balance on any given court. He also said it is not enough to say, "I will follow the law," which I fundamentally disagree with, having been in a position of being an Attorney General and having been a judge before, knowing that you change when you put your hand on the Bible and you take an oath to uphold and defend the Constitution of the United States and our respective States in that capacity. But I do believe that more than just your statement that you would follow the law, that your record of enforcing the law, even though you might not agree with it, demonstrates the seriousness with which you approach your oath and recognize your duty. I think one of the things that you and I probably see eye-to-eye on is that judges who substitute their view, their personal view, whether it be a personal or political or any other agenda for what the law is, become law-

makers and thereby become law breakers. Could you perhaps state your own view in that regard?

Mr. PRYOR. I couldn't agree more with that statement, Senator. That goes to the absolute core of my beliefs about the legal system and the role of the judiciary. The judiciary has a profound and humble, but vitally important role in interpreting the law and following the law, and putting aside personal beliefs and ensuring that the law has been faithfully executed, according to the real lawmaker, which is the legislature, or in the event of an interpretation of our highest law, the Constitution, by virtue of the people themselves.

Senator CORNYN. I appreciate that statement. I believe that the character and courage really you have shown and the willingness to resist intimidation, and perhaps those who have expressed displeasure at your enforcement activities as Attorney General can derive some confidence that you will show the same character and commitment to the law, and refuse to be intimidated or pressured in discharging your responsibilities as a member of the Eleventh Circuit Court of Appeals.

I know the—we have had some comment throughout my short service on the Judiciary Committee, and the debate we are currently engaged in about the use of a filibuster to prevent a up or down vote by a bipartisan majority of the Senate on at least two judicial nominees, and I just—I need to say that while some tout the fact that 128 of President Bush's judicial nominees have been confirmed, the fact remains that 2 are the targets of, in my opinion, an unconstitutional use of the filibuster. I do not see how anybody can be particularly proud of that because the Constitution being violated two times is, in my opinion, two times too many. And of course we are engaged within the Senate, as I think we should be, to try to resolve those differences now, and I am hopeful that the rule change that Senator Frist has offered and which I have cosponsored along with a bipartisan group of Senators, gets a favorable decision in the Rules Committee and then on the floor, but frankly, it is going to be a little bit uphill.

But it strikes me as very odd, when you look at the charts that are sometimes displayed about how many of President Bush's judicial nominees have been confirmed, to hear out of the same mouth somebody who claims that President Bush is intent on appointing hard liners—those who have a hard-line ideological agenda, and so to me those are inconsistent, and I believe it is our obligation as Senators and under the Constitution to give an up or down vote to any nominee who comes before the Committee or before the Senate, and I hope that is the case in your instance. Obviously, each Senator is entitled under their oath, and according to the dictates of their conscience to vote as they see fit, but I am hopeful that you will have the opportunity to have the merits of your nomination debated not only in this Committee but on the floor of the Senate and that you receive the confirmation you deserve.

I believe your testimony here today and that you view the role as an advocate, your current job as Attorney General, far differently from that of a Federal Judge, and when you do put your hand on the Bible and take that oath, that you will hang up your

boxing gloves, your instruments as an advocate, and you will accept and embrace your new responsibility as a judge and follow the law.

Thank you very much.

Mr. PRYOR. Thank you.

Chairman HATCH. Senator Feinstein?

Senator FEINSTEIN. Thank you very much, Mr. Chairman. Welcome, Attorney General.

I am one that believes that an individual can be an advocate, can be counsel, and can relinquish those views and be a good, fair, impartial judge. However, I must say this, in this case my theory is really put to a test, and I want to let you know why and ask a couple of questions.

Virtually in every area you have extraordinarily strong views which continue and come out in a number of different ways. Your comments about *Roe* make one believe, could he really, suddenly, move away from those comments and be a judge? Your comments on voting rights, on church/State, Miranda, your comment about Justice Souter, your comments about Federal involvement, that the Federal Government should not be involved in education or street crime are just some example. So let me begin with a couple of questions. Let me do the first one on church and State.

One of the greatest ideals of our country is religious freedom and the religious pluralism that it fosters, and in a graduation speech to McGill-Toolen Catholic High School in 1997, I want to quote something you said. And I quote: "The American experiment is not a theocracy and does not establish an official religion, but the Declaration of Independence and the Constitution of the United States are rooted in a Christian perspective of the nature of government and the nature of man. The challenge of the next millennium will be to preserve the American experiment by restoring its christian perspective."

What are others to think of that statement, as to how you would maintain something that is important to this plural society, and that is an absolute separation of church and State?

Mr. PRYOR. I would invite anyone to look at my record as Attorney General, Senator, and see how I have faithfully applied the law in the area of the First Amendment.

I do believe that we derive our rights from God as stated in the Declaration, and that's what I was referring to in that speech. But in my first 2 years as Attorney General, we had a long-running battle about religious expression in the public schools of Alabama. The Governor who appointed me took the position that the First Amendment didn't apply to the States, that the Federal courts had no jurisdiction in this matter. On the other hand, a Federal district court ruled that not only could we not have teacher-led or school-sponsored religious expression or religious activity, but the school officials actually had a responsibility of censoring student-initiated religious expression at school-sponsored events.

I chartered an appeal from that ruling that rejected the arguments of both sides and adopted the argument—the position, the precedents of the Supreme Court of the United States. And that was that school-sponsored religious expression and religious activity was improper, was a violation of the First Amendment, as inter-

preted by the Supreme Court, but that the First Amendment also protected genuinely student-initiated religious expression.

That's the argument that I made in the Eleventh Circuit Court of Appeals, and the Eleventh Circuit Court of Appeals agreed with it. It was then taken to the Supreme Court of the United States by the plaintiffs who were represented by the ACLU, and after the *Doe* case, the high school football game prayer case by the Supreme Court, they asked the Eleventh Circuit to take another look at that decision, which they did. And I advocated the position that I did before, which was there could be no school-sponsored, government-sponsored religious activity, but that private religious expression, genuinely student-initiated religious expression, was fully protected by the First Amendment.

The Eleventh Circuit Court of Appeals agreed again for the second time with that argument and reinstated its opinion. The plaintiffs then brought the case back to the Supreme Court of the United States, which then denied certiorari.

That's my record as Attorney General, Senator, and that's what I would invite people to look at. I understand my obligation to follow the law, and I have a record of doing it. You don't just have to take my word that I will follow the law. You can look at my record as Attorney General and see where I have done it.

Senator FEINSTEIN. Then why would you make a comment like that in a speech?

Mr. PRYOR. Well, in part, one of my concerns at the time was that in the very case that I mentioned, where the Federal district court injunction required school officials to censor the religious expression of the students, but then—at many school-sponsored events, but then would allow religious expression in other more limited circumstances, it was my perspective that it was as if the government was picking and choosing when we had, as individual citizens, as private citizens, the right of religious freedom. And I thought that was topsy-turvy. I thought that was exactly the opposite of the view of the Constitution.

So it's that kind of perspective that I disagreed with.

Senator FEINSTEIN. I appreciate that. That is just not what you said. Let's go on to voting rights.

In 1997, you testified before this Committee on the subject of judicial activism, and in your opening statement at that time, you specifically mentioned Section 5 of the Voting Rights Act, the centerpiece of the legislation, as a source for the abuse of Federal power. And you encouraged its repeal or amendment because you said it is "an affront to federalism and an expensive burden that has far outlived its usefulness."

However, since the enactment of the statute in 1965, every Supreme Court case to address the question has disagreed with your view of Section 5. Time and again the Court has recognized that guaranteeing all citizens the right to cast an equal vote is essential to our democracy. Even as recently as in 1999, in the case of *Lopez* v. *Monterey County*, the Court squarely held that any intrusion on State sovereignty under Section 5 is fully justified by the imperative to enforce the 15th Amendment's prohibition of race discrimination in voting.

Can you please explain why you believe that Section 5 of the Voting Rights Act is unnecessary and a burden that has outlived its usefulness?

Mr. PRYOR. My comments, of course, were not directed to any court but to Congress itself, which has to make the final decisions on reauthorization of Section 5 of the Voting Rights Act. As Attorney General, my record has been consistently to enforce Section 5 of the Voting Rights Act. The Voting Rights Act is, in my judgment, one of the most important and necessary laws in the history of the United States, and I support it. And I support the absolute fact that Section 5 was a necessary provision nearly 40 years ago when Congress was faced with the massive racial discrimination in election systems, particularly in my State and other parts of the Deep South.

Having said that, we have come a long way nearly 40 years from then, and now if we want to move a polling place from a school on one side of a street to a firehouse on another side of the street, we have to get permission from the Department of Justice to do so. It's routinely granted, but I have watched in my own capacity as Attorney General as members of my own political party and white voters, who I don't think were designed by Congress to be protected by this law, have used Section 5 as a sword in litigation for their own political opportunity.

Senator FEINSTEIN. Do you believe it is an affront to federalism and an expensive burden that has far outlived its usefulness?

Mr. PRYOR. Yes, I believe that it has outlived its usefulness. I have, nevertheless, as Attorney General actively enforced that law and would continue to do so if I had the privilege of serving as a judge. I have done that. I have a record of doing that. And I think Congress should look at Section 5. But that does not lessen in any way my commitment to the core of the Voting Rights Act, which is Section 2, which, of course, prohibits dilution of minority voting strength, and I fully support Section 2 and believe it remains a necessary law in our country. But this law that requires us to get permission for even minor changes in our election system I think could use some careful inspection by Congress. But my record is in enforcing that provision as Attorney General, and it would be my record if I had the opportunity to be a judge.

Senator FEINSTEIN. All right. Now, one last question quickly. You made a statement about the New Deal, the Great Society, and the growing Federal bureaucracy, saying that we have strayed too far in expansion of Federal Government at the expense of both individual liberty and free enterprise. And then you say, "Congress, for example, should not be in the business of public education, nor the control of street crime."

What do you mean by that?

Mr. PRYOR. I believe that the primary and overwhelming responsibility for public education and the curtailment of ordinary criminal activity ought to be at the State and local level, and it is—

Senator FEINSTEIN. And it is. And it is.

Mr. PRYOR. And it is at the State and local level.

Senator FEINSTEIN. Then why would you feel that Congress, for example, shouldn't pass a title of the Elementary and Secondary Education Act that provides money for poor children in the schools

of America or why we shouldn't pass a crime bill that would put cops on the streets of our cities?

Mr. PRYOR. Well, I didn't oppose those specific pieces of legislation, Senator—

Senator FEINSTEIN. No—

Mr. PRYOR. —and I do think that one of the things that Congress must do in being very careful about respecting the good work that can be done at the State and local level is that it not become overcentralized in the work in those areas, that it be supportive of the States but it not take over the work of the States. There has been more and more legislation in that area, and in my judgment, Congress needs to be careful about balancing that.

Chairman HATCH. Senator, your time is up.

Senator FEINSTEIN. My time is up. Thank you.

Chairman HATCH. Senator Chambliss?

STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CHAMBLISS. Thank you, Mr. Chairman.

Mr. Chairman, normally I don't make statements when we have nominees under consideration, but Attorney General Pryor happens to be a neighbor to my State and is very well thought of, very well respected by my Attorney General, who I have great respect for; and this nomination also is to the circuit that serves my State of Georgia. So there are certain things that I would like to put in the record.

Mr. Chairman, this is a very impressive nominee, so I do appreciate the opportunity to voice my strong support for the nomination of Alabama's distinguished Attorney General, Bill Pryor, to the Eleventh Circuit Court of Appeals. His legal intellect is unmatched, and he has a zeal for the law that is unquestioned, as we have already seen by the questions that have been asked of him today.

After graduating at the top of his class at Tulane Law School where he served as editor-in-chief of the Law Review, he practiced a number of years at two of Alabama's most prestigious law firms, specializing in commercial and employment litigation. He then served under our distinguished colleague, Senator Jeff Sessions, in the Alabama Attorney General's office as Deputy Attorney General in charge of civil and constitutional matters. Without question, Attorney General Pryor has the legal capacity to serve on the Eleventh Circuit.

Yet, Mr. Chairman, to my surprise, there are some detractors here today. I am surprised not only because of Attorney General Pryor's excellent qualifications but especially given the ringing pledge of support from Thurbert Baker, the Democratic Attorney General from my State of Georgia. Attorney General Baker was first appointed in 1997 to his position by then Governor of Georgia and now our esteemed colleague, Senator Zell Miller. Attorney General Baker has since been re-elected twice by the people of my State. He has a perspective unique from any of those who oppose Attorney General Pryor here today because he has worked right beside Attorney General Pryor on issues of great concern to both our respective States and to this Nation.

Attorney General Baker's support for Bill Pryor represents the belief of the chief law enforcement officer of the State of Georgia that this nominee possesses the qualities and experiences needed to serve the people of Georgia on the Eleventh Circuit.

In a letter written to Senators Sessions and Shelby, Attorney General Baker had high praise for Mr. Pryor. I would now like to share a few of those comments with the Committee. Mr. Chairman, I also ask that Attorney General Baker's letter be added to the record at this point.

Chairman HATCH. Without objection, it will be.

Senator CHAMBLISS. In his letter, Attorney General Baker states, "Bill has distinguished himself time and again with legal acumen that he brings to issues of national or regional concern as well as with his commitment to furthering the prospects of good and responsive government."

Thurbert Baker also lauded Attorney General Pryor's positions on crime, saying, "Bill has made combating white-collar crime and public corruption one of the centerpieces of his service to the people of Alabama...Bill has fought to keep law enforcement in Alabama armed with appropriate laws to protect Alabama's citizens, pushing for tough money laundering provisions and stiff penalties for trafficking in date rape drugs."

"Time and again as Attorney General, Bill has taken on public corruption cases in Alabama, regardless of how well connected the defendant may be, to ensure that the public trust is upheld and the public's confidence in government is well founded."

Again I quote Attorney General Baker: "He has always done what he thought was best for the people of Alabama. Recognizing a wrong that had gone on far too long, he took the opportunity of his inaugural address to call on an end to the ban on interracial marriages in Alabama law. Concerned about at-risk kids in Alabama's schools, he formed Mentor Alabama, a program designed to pair volunteer mentors with students who needed a role model and an attentive ear to the problems facing them on a daily basis."

Again, Thurbert Baker concludes in his letter, "These are just a few of the qualities that I believe will make Bill Pryor an excellent candidate for a slot on the Eleventh Circuit Court of Appeals. My only regret is that I will no longer have Bill as a fellow Attorney General fighting for what is right. But I know that his work on the bench will continue to serve as an example of how the public trust should be upheld."

Mr. Chairman, those are not positions that people in the Deep South necessarily have adhered to over the years, and I think it is remarkable that a man of Attorney General Pryor's stature would take on those tough subjects. And I could not agree more with my State's Attorney General. A close review of Attorney General Pryor's record demonstrates that he has been a champion for justice.

In the area of crime prevention and administration of justice in Alabama, Bill Pryor has been a fair and impartial leader for all citizens of his State, making his decisions based on the law and not politics. He has fought corruption by cracking down on dishonest government employees of all political ideologies. He established a new division in the Attorney General's office designed to specifically investigate, prosecute, and defend Alabamians from public

corruption and white-collar crime, problems that plague every single State. He even secured the conviction and imprisonment of a Republican former director of the Alabama Department of Transportation and two lobbyists on bribery charges.

His crackdown on corruption in statewide politics was saluted by the Montgomery Advertiser as having an "absence of partisanship" as he had successfully targeted Democrats and Republicans, blacks and whites, for ballot fraud.

In addition to working to eliminate corruption in Alabama, Attorney General Pryor has been a staunch supporter of reforming Alabama's criminal justice system to make it fairer with heightened standards of honesty and compassion. He has fought to modernize the State's criminal sentencing system by instituting a State Sentencing Commission to ensure that similar crimes result in similar punishments. He has advocated and created alternative programs, such as drug courts and substance abuse treatment, which emphasize victim resolution and community restoration for first-time nonviolent offenders. He has endorsed the Prison Rape Reduction Act, sponsored by fellow Judiciary Committee members Senators Kennedy and Sessions.

Most importantly, Attorney General Pryor has made a difference in the lives of countless young children in Alabama by creating Mentor Alabama. This program is designed to reduce juvenile crime by introducing adults into the lives of children who need them most. Under Mentor Alabama, adult volunteers serve as mentors, tutors, and role models. Mentor Alabama has been so successful that it has been designated as the official Alabama affiliate of the National Mentoring Partnership, a partner of the America's Promise program founded by Secretary of State Colin Powell.

Attorney General Pryor not only implements these society-changing programs, he believes in them enough to get involved at the ground level. To this end, he has personally served as a mentor to a public school student in Montgomery for over 3 years.

As Attorney General, he has also been a champion for women in the State of Alabama by dedicating himself to furthering the case of women's rights and improving the lives of women. He has sought to protect women from the scourge of domestic violence while fighting to bring to justice those who would commit such atrocities. He was a key proponent in the year 2000 when the crime of domestic violence was enacted in Alabama.

General Pryor has advocated increasing the penalties for repeat offenders who violate protection orders. Now in Alabama, second-time offenders face a mandatory sentence of 30 days in prison, and further violations will result in mandatory 3-month prison terms. Attorney General Pryor supported passage of a law that now requires that those arrested for domestic violence in Alabama stay behind bars until the safety of the victim and society can be assured.

In other efforts to improve the legal protections available to women, Attorney General Pryor pushed to add the date rape drug GHB to Alabama's drug-trafficking statute so that the punishment would meet the crime. Attorney General Pryor has also helped create innovative programs designed to improve the lives of Alabama women. Using money awarded from the State from a class-action

settlement, he funded "Cut It Out," a program that helps encourage victims of domestic violence to seek help. This program seeks to educate the very people who are often confidantes for battered women, such as their hair stylists, on how to spot abuse and help victims.

He has also been a dedicated supporter of Penelope House, the first shelter designated for battered women and their children in the State of Alabama. Last year, Attorney General Pryor had the honor of being inducted into the Penelope House Law Enforcement Hall of Fame in recognition of his fight against domestic violence.

I have heard it argued that Attorney General Pryor is against the voting rights of some people simply because he disagrees with certain procedural provisions of the Voting Rights Act. The truth about Bill Pryor and the voting rights record is that he has done nothing but dutifully enforce all of the Voting Rights Act. He has simply stated that there are some procedural provisions in the Act that need fixing.

Well, I agree with that. The Attorney General of my State agrees with that. And minority legislators in Alabama and Georgia agree with that. Section 5 of the Voting Rights Act has some serious problems that inhibit the very goal the Act was designed to accomplish: the empowerment of minority voters. As the head attorney for the State of Alabama, though, he is constrained to enforce the law as it is written and interpreted by the courts, and that is exactly what Attorney General Pryor has done.

In conclusion, Mr. Chairman, Bill Pryor is a superb candidate, graduating at the top of his class from Tulane Law School, where he served as editor-in-chief of the Law Review, the highest honor one can receive in law school. A fair review of his record shows that he has used his gifted abilities to serve the people of Alabama and this country. He will make an excellent judge, and I am proud to support his nomination to the Eleventh Circuit Court of Appeals.

Chairman HATCH. Well, thank you, Senator.

We have a vote on, so I am going to recess for about 10 minutes so I can get over and get back. And then we will turn next to Senator Feingold, if he is available. But we will do that when we get back, Senator. We are going to recess for about 10 minutes.

[Recess 11:27 a.m. to 11:47 a.m.]

Chairman HATCH. Let's have order. We are going to turn to Senator Feingold at this time.

Senator FEINGOLD. Mr. Pryor, welcome, and thank you for your testimony and your willingness to answer the questions.

In 1999, you helped found an organization called the Republican Attorneys General Association, or RAGA, to promote the election of Republican candidates for Attorney General, and I understand you served as its first treasurer. After its formation you gave a speech to the Steering Committee of the Civil Justice Reform Group. You said, "Two years ago, I warned that the lawsuits filed by my fellow State Attorneys General against the tobacco industry threatened the entire business community."

You went on to describe "a growing number of novel government suits against entire industries, no industry is safe," you said.

You offered five ideas for those who want to curb this new form of lawsuit abuse. Number five was the business community must

be heavily engaged in the election process as it affects legal and judicial offices. You said, "Frankly, this need is the most important of all."

You then hailed the newly formed RAGA and then said, "Hopefully it will help elect more conservative and free market-oriented Attorneys General."

As I understand it, RAGA raised money from large corporate donors and then sent those contributions to the Republican National State Elections Committee, the RNSEC, which is a soft-money fund run by the RNC for use in State Attorney General's elections. I am concerned about involvement of the top law enforcement officer of a State in this kind of an operation, and I am not alone in that concern. A number of Democratic and Republican State Attorneys General criticized your organization as unnecessarily partisan, and some have characterized its fundraising practices as fraught with "ethical land mines."

For example, Mike Fisher, the Republican Attorney General of Pennsylvania, now a nominee to the U.S. Court of Appeals for the Third Circuit, refused to join RAGA, saying he wanted to keep politics out of his office. Despite these concerns, you said, "I am proud to support RAGA and it does not create a conflict of interest."

RAGA solicits financial contributions from large corporations that may be subject to State investigations. According to several news accounts, RAGA's contributors may include Aetna, SBC, GTE, Microsoft, and many tobacco companies. Yet RAGA has refused to disclose its contributors.

As Alabama Attorney General, you have asserted that your office has sole authority to determine which lawsuits will be filed on behalf of the State of Alabama. Consequently, one of RAGA's contributors—the identity, of course, is concealed from the public—could be under State investigation. You still have the last word on whether a lawsuit will be filed against that company.

Don't you agree that this scenario would present at least the appearance of conflict of interest given your role in RAGA?

Mr. PRYOR. No, Senator. I helped form a Republican Attorneys General Association, as you mentioned, several years ago. I no longer serve as an officer, but I did for several years. There's now a Democratic Attorneys General Association. We modeled our organization after the Republican Governors Association and the Democratic Governors Association, both of which work with each of the National Committees. And as a political official, as an elected official who runs on a party label, I have been active in helping my party elect other candidates to office. I don't think that that creates a conflict of interest. I can assure you that in no instance would it in any way impair my judgment as Attorney General in enforcing the law against any lawbreaker and ensuring that the law is enforced. And it never has.

Senator FEINGOLD. Well, let me reiterate my question. My question was not whether it would simply create a conflict of interest. It was whether it would create a conflict of interest or an appearance of a conflict of interest. Is it your testimony that undisclosed, large soft-money contributions to this organization could not possibly create an appearance of a conflict of interest?

Mr. PRYOR. Well, first of all, the contributions that are made are made to the Republican National Committee, not—they were not made to a separate organization called RAGA. And every one of those contributions, every penny, was disclosed by the Republican National Committee every month.

I don't think that that creates any appearance of impropriety, and I think that that's the obligation of the political party, to comply with the campaign finance laws, to make sure that the donations are properly disclosed. But it does not in my judgment create an appearance of a conflict of interest. After all, all of these State Attorneys General are already raising campaign funds in races in their own States, working with their own State political parties.

Senator FEINGOLD. Our information is that there is a different trail to the money and there is a direct connection to RAGA, but we will pursue that with a written question. Let me also assure you the mere fact that the Democrats also do it, based on my 7 years of experience with soft money, is no defense.

Despite RAGA's refusal to disclose its contributors, we do know that soft money raised by RAGA and funneled to the Republican National State Elections Committee was then used in State campaigns in Alabama. In fact, the RNSEC made a contribution of $100,000 to your own re-election campaign for State Attorney General.

How do you reconcile RAGA's relationship with the RNSEC and the RNSEC's contribution to your own campaign with your duty as State Attorney General? Do you think it is appropriate for Attorneys General to solicit funds or receive funds from corporations who they may later have to investigate?

Mr. PRYOR. Well, I wasn't receiving in that instance a direct contribution, of course, from a corporation. I was receiving it from the Republican National State Elections Committee, just as I received contributions from the Alabama Republican Party and from political action committees in my own State. And it has never created a conflict of interest. If that was—

Senator FEINGOLD. This doesn't concern you at all in terms of your role as Attorney General?

Mr. PRYOR. The system that we have in America of elections requires candidates to raise funds to wage campaigns. I have done that, and I've disclosed every donation that my campaign has ever received.

Senator FEINGOLD. All right. Then will you provide to the Committee a comprehensive list of RAGA's contributors and the amounts and dates of their contribution?

Mr. PRYOR. I don't have such a list, Senator.

Senator FEINGOLD. Who does?

Mr. PRYOR. The Republican National Committee.

Senator FEINGOLD. Will you urge them to provide that list?

Mr. PRYOR. I would ask you if you need that kind of list that you really need to seek it from them.

Senator FEINGOLD. I am asking whether you will help us as a former treasurer of RAGA, an officer of RAGA, to receive this information since you just stated that you were in favor of full disclosure.

Mr. PRYOR. I'm in favor of the full disclosure according to the letter of the law.

Senator FEINGOLD. You oppose the disclosure of this information?

Mr. PRYOR. I'm not saying that I oppose it or I favor it. I support the Republican National Committee making its decisions of what it has to do to follow the law.

Senator FEINGOLD. I am taking this as a refusal to urge the release of this information. And are you saying that you never solicited a contribution for RAGA or the RNC to use in your own campaign?

Mr. PRYOR. To use in my own campaign?

Senator FEINGOLD. Did you—

Mr. PRYOR. No, Senator.

Senator FEINGOLD. Are you saying that you never solicited a contribution for RAGA or the RNC to use in your own campaign?

Mr. PRYOR. I did ask the Republican National State Elections Committee to contribute to my campaign. And they did.

Senator FEINGOLD. In a recent brief to the Supreme Court, you equated private consensual sexual activity between homosexuals to prostitution, adultery, necrophilia, bestiality, incest, and pedophilia. In addition, your office defended a statute that denied funding to the Gay-Lesbian-Bisexual Alliance, a student organization. The Eleventh Circuit unanimously declared the statute unconstitutional.

Furthermore, as Deputy Attorney General you joined an amicus brief in *Romer* v. *Evana*, arguing that local governments in Colorado were prohibited from enacting laws to protect gays and lesbians from discrimination. The Supreme Court later rejected your view, but you called the decision "undemocratic." News accounts also report that you even went so far as to reschedule a family vacation at Disney World in order to avoid Gay Day.

In light of this record, can you understand why a gay plaintiff or defendant would feel uncomfortable coming before you as a judge? And I would like to give you this opportunity to explain why these concerns may or may not be justified.

Mr. PRYOR. I think my record as Attorney General shows that I will uphold and enforce the law. In the *Lawrence* case, the first that you mentioned, I was upholding and urging the Supreme Court to reaffirm its decision of 1986 in *Bowers* v. *Hardwick*, which is the law of the land, and the argument to which you referred, the slippery slope argument, was taken from Justice White's majority opinion for the Supreme Court of the United States.

In the second instance that you mentioned, the Eleventh Circuit case involving university facilities and funds for homosexual groups in Alabama, that argument was presented by then Attorney General Jeff Sessions, not by me. And, in fact, after the decision came down—by the time the decision came down, I was Attorney General, but I did not file any papers to quarrel with the decision because, in fact, I agreed with it. When we worked together in the Attorney General's office, I declined to participate in that case for General Sessions because I had agreed with the district court ruling, and I agreed then with the Eleventh Circuit ruling.

In the case of *Romer* v. *Evana*, General Sessions again was the Attorney General at the time. I was his Deputy Attorney General,

but he was the one who made the final decision. I have criticized the *Romer* decision.

As far as my family vacation is concerned, my wife and I had two daughters who at the time of that vacation were 6 and 4, and we made a value judgment, and that was our personal decision. But my record as Attorney General is that I will uphold and enforce the law, particularly, as I mentioned in my first example, in the *Lawrence* case, the brief that we filed defending Alabama law which prohibits sodomy between unmarried persons follows the Supreme Court's precedent.

Senator FEINGOLD. Well, I certainly respect going to Disney World with two daughters. I have done the same thing. But are you saying that you actually made that decision on purpose to be away at the time of that—

Mr. PRYOR. We made a value judgment and changed our plan and went another weekend.

Senator FEINGOLD. Well, I appreciate your candor on that.

Mr. Pryor, you have criticized those—

Chairman HATCH. Senator, your time is up.

Senator FEINGOLD. Thank you, Mr. Chairman.

Chairman HATCH. Then let's turn to Senator Sessions and then Senator Kennedy.

Senator SESSIONS. To my colleagues, the comment that General Pryor just made about the case involving the university and homosexuality is a good example of his integrity and his commitment to the rule of law. I do recall that we had a statute that seemed to have validity that the district judge had found unconstitutional. We discussed what to do about it. Most Attorneys General use a test, Mr. Chairman, informally called the throw-up test. You probably have heard of it. If you can defend your State's law in court without throwing up, you should do so. Somebody has to defend it. You are the chief lawyer for the State. Nobody else has primary responsibility to defend the law. So I decided we would at least take it up one further step. Bill declined to participate because he didn't agree with it. Of course, he was proven correct by the ruling of the Eleventh Circuit.

Mr. Chairman, I would offer into the record a letter from Mr. Chris McNair. He is an African-American leader in the State of Alabama, a lifelong Democrat. He served in the Alabama House of Representatives from 1973 to 1986 and served as a member of the Jefferson County Commission—that represents Birmingham, and is our largest county commission—until his retirement in 2001. His daughter, Denise, was one of the four young girls that was murdered in the bombing of the 16th Street Baptist Church. This important African-American Democratic official writes in strong support for Bill Pryor for this position.

It has been suggested that your views are extreme, that they are outside the mainstream. You have been connected to positions of Governor James, which in fact you have resisted. You have been connected to positions of Chief Justice Roy Moore, many of which you have not endorsed and, in fact, have opposed.

I would like to talk to you about a very contentious issue that arose in the State involving the districting of the State legislature. Republicans have elected the Governor, two Senators, five out of

seven Congressmen, but only about a third of the State legislature are Republicans. The Republicans are convinced that part of that is the way the district lines are drawn. So a group of Republicans came up with an argument to get those lines redrawn, and they sought your support, conteding that they had some basis for their legal position.

We saw recently in Texas what happens when you start dealing with district lines and how important that can be in a political environment.

I would like for you, Attorney General Pryor, to say what you told to some of your friends and some of my friends about your views on that lawsuit they wanted to bring and, in fact, did bring.

Mr. PRYOR. Well, the process of redistricting, Senator, as you know, is an inherently political one. But the politics of redistricting are irrelevant to me in my capacity as Attorney General in representing the State's election officials. And when our State legislature redistricts itself and draws Congressional district lines and draws lines for the State Board of Education, it's my responsibility to meet what you described as the throw-up test, and that is, to defend those districts if an argument can be made in their defense.

I felt strongly, though, that in this instance—really, two separate occasions, both district lines that were derived in the 1990's following the 1990 census, and then again a series of litigation following the 2000 census, there was redistricting litigation. In each instance, I felt very strongly that there were meritorious defenses to be presented by the State that would defeat the claims of the Republican plaintiffs.

In the 1990's era, there was a case called *Sinkfield* v. *Kelly*. I had argued that—there were white plaintiffs complaining about alleged racial gerrymandering of black districts in which they did not reside. The district court, a three-judge district court, ruled in favor of the Republican plaintiffs and white plaintiffs on a couple of—several of the districts. But I believed that under *Hayes* v. *United States* that they lacked standing to bring that lawsuit, that there was a fundamental jurisdictional defense to be presented. And I took that argument to the Supreme Court of the United States, and they unanimously agreed with our argument and reversed the district court.

Following the 2000 census, lawsuits were filed challenging the new district lines. We obtained the preclearance of all of those district lines. My office was responsible for the preclearance process, and we obtained preclearance from the Justice Department of all the districting plans. And then we defended Congressional school board and legislative district lines in court, and all of those district lines have been upheld by the Federal courts.

Senator SESSIONS. As a practical matter, as Attorney General you felt it was your duty to defend the law. But, in fact, the way it turned out, the African-American community, they were supporting your position, which was contrary to the position of the Republicans.

Mr. PRYOR. Oh, absolutely. In the *Sinkfield* case, the NAACP was alongside in our position filing their own brief, making the same arguments that we were making. And, yes, the legislature, as it has to do under the Voting Rights Act, had drawn majority-mi-

nority districts. That is how we obtained preclearance of those districts under the Voting Rights Act, and I, of course, defended those as the law required.

Senator SESSIONS. Mr. Chairman, just to follow up on that comment, people were really intense about that matter. I was called by State legislators, Republicans, who said, "Bill used to work for you. You go tell Bill he ought to do thus and so." And I remember telling them then what I will now tell this Committee, and these were almost my exact words: "If you have got a case that convinces Bill that he is wrong on the law, present it to him. If you don't, no need to talk about it because if he is convinced the law is contrary to your position, he is not going to change, and I am not going to ask him to." So that is the way he does business.

That was an example where you utilized a defense of standing. Is that correct?

Mr. PRYOR. That's right.

Senator SESSIONS. To block the lawsuit, to favor the Democratic African-American position against the Republicans, that is what Attorneys General do. They just have to defend the law of the State in a number of different ways.

I would yield back my time.

Chairman HATCH. Well, thank you, Senator.

We will turn to Senator Durbin now.

Senator DURBIN. Thank you very much, Mr. Chairman.

General Pryor, thank you for being here. A number of people have characterized your political philosophy. How would you characterize it?

Mr. PRYOR. I'm a conservative.

Senator DURBIN. Do you consider yourself a moderate conservative or one who is more conservative than most? Put yourself on the spectrum.

Mr. PRYOR. Well, Senator, that's a difficult thing to do. In Alabama, I think sometimes I'm called a moderate.

[Laughter.]

Senator DURBIN. That comes as no surprise.

Let me ask you on the issue of States' rights. Throughout your career you have argued very strongly for the issue of States' rights. I think of the employment discrimination case that you were involved in, the *Garret* case, as well as the decision relative to the Violence Against Women Act. Where would you put yourself in terms of believing in the concept of States' rights as opposed to Federal authority?

Mr. PRYOR. I believe in the Constitution of the United States, Senator. I don't particularly like the term "States' rights." I can't say I've totally avoided it in my political career. But much more often than not, I refer to federalism. I believe in a balance of Federal and State power. I've expressed that perspective on a number of my writings and speeches. In the cases that you mentioned, the federalism perspective that I offered in *Garret* and in the Violence Against Women Act was the position that the Supreme Court of the United States sustained, and it's their responsibility to uphold the Constitution.

Senator DURBIN. When I recently visited your State for the first time with Congressman Lewis of Georgia to look at Birmingham

and Mobile and Selma, some of the civil rights shrines, I was told by Congressman John Lewis about Judge Frank Johnson, a Federal judge from Alabama, a Republican, appointed by President Eisenhower, who, according to John Lewis, has not received the credit he deserved because he had the courage to stand up against States' rights and even against some members of his own Federal judiciary, believing that there were more important issues at stake in terms of civil rights.

Tell me how you view Frank Johnson, civil rights, and the fact that traditionally States' rights have been used to justify discrimination, particularly during the civil rights era and when it comes to questions like disabled Americans and their rights. Do you view States' rights as often being the shelter that people who want to practice discrimination rush to?

Mr. PRYOR. There's no doubt in the history of the United States, from John C. Calhoun to George C. Wallace, the mantra of States' rights has been used as an illegitimate defense of evil, frankly, of racial discrimination in more modern times and slavery in earlier times.

I think Judge Johnson is a hero. The Federal courthouse in Montgomery a few blocks from where I work is now named after him, thanks to the Congress of the United States. I had the privilege of working, of clerking for another hero of the Deep South, a Republican who was appointed also by President Eisenhower to the Fifth Circuit Court of Appeals. I clerked for John Minor Wisdom. I'm proud that I clerked for him, especially because of his record on race and especially because he recognized the difference between what the Constitution requires in a balance of Federal and State power and the flawed and totally discredited and rightly discredited views of nullification and interposition that were advocated by Southern populists back in the 1950's and 1960's.

Senator DURBIN. Well, General, let me just ask you then: Let's fast forward from an easy chapter in history, which many of us either just read about or witnessed, to the more contemporary challenges. Can you understand the anxiety and fear that many people have when they hear you argue about the fact that this is a Christian Nation and the many positions you have taken relative to the assertion of the Ten Commandments in a public setting and statements that are made. I am Christian myself, but I can understand how people who are not would feel that this is a form of discrimination against them. And I would ask you, how do you reconcile then your admiration for Frank Johnson's courage to stand up against discrimination against people of color and the fact that you seem to have an ambivalence when it comes to the whole question of asserting the rights of those who don't happen to be Christian to practice their religion in this diverse Nation.

Mr. PRYOR. I have never used the term "Christian Nation." I have said that this Nation as founded on a Christian perspective of the nature of man, that we derive our rights from God and not from government. And part of that perspective is that every individual enjoys human rights without regard to what the majority wants. Every individual enjoys human rights, like religious freedom and freedom of conscience, including the freedom not to worship.

That is what I have said. That's what I believe in. That goes to the core of what I believe in. It is, I believe, the perspective of the American form of government, and I have been faithful in my record as Attorney General in defending the Constitution when it comes to issues like religious freedom.

In the area of school prayer, when the Governor who appointed me was arguing that teachers should be able to lead prayer, I was the one taking the legal position in the State of Alabama that school-sponsored religious expression is incompatible with the First Amendment and that instead the Federal courts had overstepped their bounds in one regard in censoring genuinely student-initiated religious expression, because those children derive their right to pray genuinely on their own from God.

Senator DURBIN. But let me just ask you, you seem to state that—you just noted the historical connection between the Founding Fathers and Christian faith. But you went further than that. You have said, "The challenge of the next millennium will be to preserve the American experiment by restoring its Christian perspective."

What I am asking you is: Do you not understand that that type of statement in a diverse society like America raises concerns of those who don't happen to be Christian, that you are asserting an agenda of your own, a religious belief of your own, inconsistent with separation of church and state, which we have honored since the beginning of this Republic?

Mr. PRYOR. No, Senator, I think that would be a misunderstanding if someone came away with that impression. It goes to the core of my being that I have a moral obligation that is informed by my religious faith to uphold my oath of office, to uphold the Constitution of the United States, which protects freedom of religion and freedom of religious expression. My record as Attorney General has been just that.

When the Supreme Court of the United States struck down the Religious Freedom Restoration Act in the *Bourne* decision, I worked with a broad cross-section, liberals and conservatives, in Alabama to adopt our own religious freedom amendment to the Constitution of Alabama modeled after RFRA.

When the City of Huntsville tried to use its zoning ordinances to curtail what I thought was legitimate activity of a synagogue in Huntsville, I intervened as a friend of the court on their side because I thought their argument was supported by the religious freedom amendment to the Constitution of Alabama for which I had campaigned.

I think it would just be a misunderstanding to come away with that impression. My perspective is one that a Christian perspective of the nature of man is that every person enjoys freedom of conscience and freedom of religion, which, of course, is protected by the First Amendment to the Constitution.

Senator DURBIN. General, unfortunately, we have a limited amount of time, and I can't follow up because you clearly have opened up a long series of questions related to the Establishment Clause. It is one thing to say that we have the freedom to practice. It is another thing to say that we condone by government action certain religious belief or, in fact, propose or promulgate that belief.

And I am going to save those for written questions, but let me go to a more specific area in the limited time that I have remaining.

Are you a member of the National Rifle Association or its board of directors?

Mr. PRYOR. The National Rifle Association? I'm a member of the National Rifle Association. I am not a member of its board of directors.

Senator DURBIN. Are you familiar with the case of *United States* v. *Emerson*?

Mr. PRYOR. Yes.

Senator DURBIN. Which was filed in Texas, the case involving Timothy Joe Emerson, the subject of a domestic violence restraining order prohibiting him from threatening his wife or daughter or causing them bodily injury, and under Federal law he was prohibited from possessing a firearm because he was under this restraining order against domestic violence; and that although this was a Texas case being decided by the Fifth Circuit, you decided to file an amicus brief on behalf of the people of the State of Alabama in support of Timothy Joe Emerson being allowed to carry a gun. Can you explain why you went out of your way to say that a man that is under a restraining order for domestic violence who would threaten the life of his wife or former wife's boyfriend should be allowed to carry a gun?

Mr. PRYOR. I was arguing a position to get the Fifth Circuit in that case to look at the Federal statute itself and avoid the question that the district court had ruled upon. The district court dismissed the indictment of that individual on the basis of the Second Amendment, claiming that the Federal law in question was unconstitutional under the Second Amendment.

There were some confusing aspects to the Federal statute in question that I thought the court ought to look at. The court ended up looking at that and rejected my argument. But I had urged the court to—if my argument had prevailed, to avoid the question of a Second Amendment defense.

Senator DURBIN. Should he have been allowed to carry a firearm if there was a domestic violence restraining order against him for threats to his wife and daughter and the boyfriend?

Mr. PRYOR. The law should be enforced against him if he has violated it. It was not clear to me from the text of the law that he had. If it had been and this Congress had made that clear, then absolutely, it should have been enforced and he should be punished.

Senator DURBIN. Is it customary for the Attorney General—

Chairman HATCH. Senator, your time is up.

Senator DURBIN. If I could ask one last question? Is it customary for the Attorney General of the State of Alabama to file this kind of brief in a case involving Texas?

Mr. PRYOR. We file as State Attorneys General amicus briefs in courts of appeals and the Supreme Court of the United States routinely. The Federal Rules of Appellate procedure give us a right to do so without permission.

Senator DURBIN. Thank you very much.

Thanks, The CHAIRMAN.

Chairman HATCH. We will go to Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

In your brief, General Pryor, you included the words "a sweeping and arbitrary infringement on the Second Amendment right to keep and bear arms and a provision that is massively overbroad in its prohibition of firearms ownership." You weren't interested in the technicalities of sending this back. You were stating what your position is with regards to bearing arms. Isn't that true?

Mr. PRYOR. No, Senator, that's not—

Senator KENNEDY. Well, you had that in your brief, nonetheless, and in response to the question of Senator Durbin, "a sweeping and arbitrary infringement on the Second Amendment right to bear arms and a provision that is massively overbroad in its prohibition of firearms ownership." That is what you were really concerned about.

Mr. PRYOR. I'd be happy to look at the brief itself, Senator, to see what you're reading from. I know for a fact, though, that the argument that I presented to the Fifth Circuit was that they should avoid the question of the Second Amendment defense that had been relied upon by the district court.

Senator KENNEDY. Well, I think a fair reading of the brief would include that as only a partial rather than the central thrust of the position.

Let me say, General Pryor, all of us are impressed about your background and about the success that you have had in the private sector and also in the political sector, and obviously you bring a great deal of energy and talent to this particular position that you have at the present time, and we congratulate you on the nomination.

Now, having said that, I think we have a very important responsibility to make sure that anyone that is going to serve on the courts is committed to the core values of the Constitution. And the way we do that, as you understand, is through this process and also reviewing the statements and comments that you have made. And over the period of time we have had a number of nominees who have been very effective advocates for positions that we differ with but have been approved by the Senate and who we have voted for.

I think the very legitimate issue in question with your nomination is whether you have an agenda; that many of the positions which you have taken reflect not just an advocacy but a very deeply held view and a philosophy, which you are entitled to have. But you are also not entitled to get everyone's vote. If we conclude—in any particular vote we have a responsibility not to just be a rubber stamp for the Executive, but to make an independent judgment whether you have the temperament and also the commitment to interpret the law and also to enforce the law.

And I am troubled by these series—with the time that we have, the series of statements and all that they mean in terms of their significance on the public policy issues that are central to constitutional values. Your statements talk about the need to limit the power of Congress to remedy civil rights violations, restrict a woman's right to choose, uphold gay rights, restrict the rights of religious minorities, and reduce the separation of church and state.

And many of your statements make clear that you want to roll back constitutional doctrine in a range of areas to fit your agenda.

So I don't understand looking at your record how one can conclude that you don't have an agenda. What concerns me is not simply that you have been an advocate, but that you are an advocate so extreme about so many core Federal and constitutional rights, that you are hostile, to so much that are existing law and that your statements at times are so intemperate that I don't know how you would be able to put that aside and be fair as a judge.

Earlier in the hearing, you were asked about why you said, "Please, God, no more Souters." And I don't know that you adequately explained, but it seems to me that you made these statements about Justice Souter not simply because you disagreed with him on the two opinions. I know in earlier responses to Senator Schumer you indicated that you disagreed with him on two opinions, on the Violence Against Women and *Bush* v. *Gore*.

But isn't the real reason behind that statement because he was a Republican appointee whose ideological views as a Justice have not been to your liking? Isn't your concern that he has not voted to limit Congress' power to provide remedies for violations of civil rights the way you expected, the way that you had expected a Republican nominee to rule?

Mr. PRYOR. I said earlier, Senator, that I have disagreed with Justice Souter's opinions in several cases, not just the two. The question was asked why did I pick Souter in those two instances. Well, he had written opinions in each of those instances. But there's no question that in several cases in which my office has either been a party or an amicus, Justice Souter has almost always been on the other side. And that's the reason I made this statement.

Senator KENNEDY. Because of your differences with Justice Souter, your ideological differences.

Mr. PRYOR. I've criticized his rulings. I've been open about it. I've had disagreements with his rulings.

Senator KENNEDY. Now, in the same speech, you also said we are one vote away from the demise of federalism. This term the Rehnquist Court issued two, you characterized, "awful rulings" that preserve the worst examples of judicial activism, *Miranda* v. *Arizona* and *Roe* v. *Wade*. So your characterizations of the Miranda case and also the *Roe* case, in this term, are two awful rulings that preserve the worst examples of *Roe* v. *Wade*.

Later on in the issue about the stay of execution in the electric chair case, which we will come back to, you actually ridiculed the Supreme Court of the United States by saying, "This issue should not be decided by nine octogenarian lawyers who happen to sit on the Supreme Court." That is on the question about the use of the electric chair in Alabama.

And then on a case involving children's rights, you said, "My job was to make sure the State of Alabama isn't run by a Federal court. My job isn't to come here and help children."

Let's get to the issue on the electric chair. As I understand, by 2000 Alabama was one of the only States in the Nation that used the electric chair as the sole method of execution. After the Supreme Court had granted review in a case to determine the con-

stitutionality of Florida's electric chair, Florida changed its law to provide for lethal injection. The Georgia Supreme Court ruled in 2001 that its use of the electric chair constituted cruel and unusual punishment. In February, the U.S. Supreme Court issued a stay of an execution for an inmate, Robert Tarber. Tarber had appealed his death sentence on the ground that Alabama's use of the electric chair violated the Eighth Amendment, and by a vote of five to four, the Supreme Court ultimately allowed Tarber's execution to proceed.

Before that happened, however, you made the following statement: "This issue should not be decided by nine octogenarian lawyers."

Do you think that is an appropriate way to refer to the Supreme Court of the United States?

Mr. PRYOR. It was probably over-heated political rhetoric on my part, Senator.

Senator KENNEDY. What was over-heated? What were the circumstances that would get you over-heated where you would make that kind of a comment?

Mr. PRYOR. I don't remember the exact context. I'm a political figure, and I know it was not a statement that I made in any court of law and would not have made in any court of law.

Senator KENNEDY. Well, it is entirely improper, is it not?

Mr. PRYOR. I think that was over-heated.

Senator KENNEDY. Well, it is improper. Either over-heated or not over-heated, it is improper, is it not?

Mr. PRYOR. I think it was an inappropriate remark, Senator.

Senator KENNEDY. You are familiar with the case—in 2002 you authored an amicus brief to the Supreme Court arguing that the Court should not hold that the execution of mentally retarded persons does not violate the Eighth Amendment. In its decision in *Atkins* v. *Virginia*, the Court rejected your argument by six to three. Just last month, a panel of the Eleventh Circuit unanimously stayed the execution of Alabama prisoner Glen Haliday over the strong objections of your office. Finding it a reasonable likelihood that Haliday is mentally retarded, the Eleventh Circuit concluded that pursuant to the Supreme Court ruling in *Atkins*, he should be allowed to file a second habeas corpus petition, raising this claim. The Eleventh Circuit specifically rejected your argument that Alabama's interest in executing Haliday outweighs his interest in further proceedings.

Mr. PRYOR. That's true, Senator, and we—

Senator KENNEDY. You believe the Eleventh Circuit was wrong to stay Haliday's?

Mr. PRYOR. I haven't really formed a judgment about that because I haven't read in detail that—it was a very recent ruling. I would say, however—

Senator KENNEDY. Well, that should make it easier for you to remember. You don't remember the issue on the execution of a mentally retarded person and your intervention and your characterization?

Mr. PRYOR. No, Senator, the question, as I understood it, was whether I agreed with the ruling or not. I have not read that recent

Eleventh Circuit ruling in detail. I know that we're now going forward—

Senator KENNEDY. You agree with its outcome, its conclusion.

Mr. PRYOR. I don't know. We're going forward with an evidentiary hearing where we're going to determine whether Mr. Haliday is mentally retarded or not and subject to capital punishment or not.

Senator KENNEDY. This is amazing that you are effectively ducking that. I don't mind people that duck, but, you found enough that you wanted to intervene in this case. You filed an amicus brief. You didn't have to. You were interested enough in the case to have filed an amicus brief about the execution of a retarded individual. And now the Eleventh Circuit found that Haliday scored 65 on his IQ test. The trial court had instructed the jury to consider mental retardation as mitigating evidence during the penalty phase. The prosecution noted Haliday's mental retardation during its closing argument.

Given these remarkable facts and the Supreme Court's decision in *Atkins*, how in the world would you be out there to prevent Haliday from litigating his rights and his claim?

Mr. PRYOR. Haliday is litigating his rights, Senator, and he is going to be given an evidentiary hearing to determine whether he's mentally retarded or not.

Senator KENNEDY. Well, what do you think about 65 on an IQ test?

Mr. PRYOR. I don't know that that is a proper measurement of his IQ. The lawyers on my staff—

Senator KENNEDY. Well, if it is—

Mr. PRYOR. —have said it's not.

Chairman HATCH. Let him answer the question.

Senator KENNEDY. Well, I—

Chairman HATCH. Let him answer.

Mr. PRYOR. The lawyers on my staff have informed me that they don't believe it is based on the record.

I'm an active, engaged Attorney General, Senator, but I will admit to you that I don't read every page of every brief that's filed by my office. Now, the *Atkins* brief is one with which I'm very familiar with and am prepared to defend what we argued in that case. But in *Haliday*, the ruling that came down from the Eleventh Circuit, I have not had the time to study in detail.

Chairman HATCH. Senator, your time is up.

Senator KENNEDY. Well, my time is up. I will file additional questions.

Chairman HATCH. Senator Kyl?

Senator KYL. Thank you, Mr. Chairman, and I would like consent to file a statement for the record as part of my presentation.

Chairman HATCH. Without objection, we will put it in the record.

[The prepared statement of Senator Kyl appears as a submission for the record.]

Senator KYL. Mr. Attorney General, there have been some very serious charges made against you, some by people not on the dais but by interest groups who oppose your nomination. One is a well-known group, People for the American Way, some of whom are in the audience. They have a press release they have put out: "News,

news, news. William Pryor unfit to judge." I don't know, maybe you have seen it. But it contains some very serious allegations.

Let me just read one paragraph and then ask you about four specific allegations that they make here. I would like to know whether they are true or not.

Among the other things, to kind of set the stage, they say, "'What can President Bush be thinking?' asked Neas." That is Ralph Neas, the head of the organization. "Maybe President Bush thinks Bill Pryor will make other far-right judicial nominees look tame. Maybe he thinks any Supreme Court nominee will look good in comparison. Or maybe Pryor is this month's political protection payment to satisfy the demands of the religious right political leaders and their allies who are constantly on guard for any signs of moderation."

That kind of sets the stage for their point of view. But they make these very serious charges. The first has to do with amicus curiae briefs, and Senator Kennedy referred to one. For those who aren't familiar with it, the amicus brief is a brief that you file not if you are a party but if you are not a party to the case, and the courts frequently accept them, sometimes do, sometimes don't.

But here is the charge that they make about you, and I want to know whether this is really true: that you promote your position "not only through litigation in which Alabama is a party"—and I am quoting now—"but also by filing amicus curiae briefs in cases in which Alabama was not involved and Pryor had no obligation to participate."

Is that really true?

Mr. PRYOR. Yes, Senator, that is true. I have on a number of occasions filed friend of the court briefs. The Supreme Court of the United States, of course, gives every State Attorney General an automatic right to do so on the presumption that the perspectives we can offer in those cases that come before them would be helpful to the Court in resolving the controversies.

Senator KYL. Do you know of any cases in which the Court has, at least in part, accepted views that you have presented in those briefs?

Mr. PRYOR. Yes. in fact, Senator, there have been several occasions when I have filed an amicus brief and the Court agreed with me. Of course, there have been some where they disagreed with me. If you're an active litigator, you get both kinds of notches on your belt.

But in the case, for example, of *Morrison* where I argued that one part of the Violence Against Women Act was beyond the power of Congress, the Supreme Court agreed.

In the migratory bird rule case where I argued that the Clean Water Act was properly interpreted only to apply to interstate waters, the Supreme Court of the United States agreed.

Most recently, in *California* v. *Ewing*, the three-strikes case, I filed an amicus brief on behalf of many States, and the Supreme Court agreed and reversed the Ninth Circuit. In fact, the National Association of Attorneys General tomorrow will award my office the Best Brief Award, one of their Best Brief Awards, for that amicus brief.

Senator KYL. Well, congratulations. Incidentally, there has been some question about the legal position taken in the Violence Against Women Act litigation, which, I remind people, upheld your point of view against the political desires of a lot of people, but at least from a legal position obviously you are correct.

But did the legal position that you took in that case affect your personal views with respect to the need to protect women from violence?

Mr. PRYOR. Oh, absolutely not. My personal views, if anything, run contrary to what I thought the proper legal argument was. I have on many occasions worked hard with advocates in Alabama to strengthen our laws, to add GHB, a dangerous date rape drug, to the list of controlled substances in Alabama, to enact a State domestic abuse law. I've worked with Penelope House out of Mobile, Alabama, which is a shelter for battered women and children, and promoted their work and helped them with their work.

I think the Violence Against Women Act is an important law. As an Attorney General, as a member of the National Association of Attorneys General, I have voted for resolutions urging Congress to reauthorize the law. I think it's important that you've provided resources to help Federal and State prosecutors do their job. But I did think that one provision of that law was unconstitutional. I so argued in an amicus brief, and the Supreme Court agreed.

Senator KYL. Well, thank you. I guess on the first charge that you filed amicus briefs on, you do stand guilty as charged. I would like to see whether you are guilty of this second charge.

I am quoting exactly: "Pryor is also a frequent public speaker whose speeches make clear that the ideological positions he has taken in these cases are his own." Meaning, I guess, you are not a hypocrite, anyway. Is that true that you are a frequent public speaker?

Mr. PRYOR. I am a frequent public speaker, Senator.

Senator KYL. And that the speeches you make are consistent with your ideological positions?

Mr. PRYOR. I try to be honest in my speeches, Senator.

Senator KYL. Guilty as charged.

There is another one here. You actually believe in federalism. Is that true?

Mr. PRYOR. That is true.

Senator KYL. Can you defend that?

Mr. PRYOR. I believe I can. On many occasions when I have made federalism-based arguments in the Supreme Court of the United States, the Supreme Court has agreed with our argument because I think it's a central feature of our Constitution to balance the power of the Federal and State governments.

Senator KYL. Maybe some folks need to go back and look at the Constitution and see whether that defense is an appropriate defense.

Let me ask one more, and I am quoting again: "He personally has been involved in key Supreme Court cases that, by narrow five-to-four majorities, have restricted the ability of Congress to protect Americans' rights against discrimination and injury based upon disability, race, and age." Meaning, in other words, that you were involved in cases where your position was accepted by the Court

as correct by five-to-four majorities that had the effect in their opinion of doing these things. Is it true that you have been involved in Supreme Court cases that you have won?

Mr. PRYOR. Yes, it is true. On several occasions.

Senator KYL. Well, I guess you stand guilty as charged. We will have to take that into consideration.

Let me close with one other thing. There have been a lot of letters filed on your behalf, one that struck my interest from Hon. Sue Bell Cobb, Judge of Alabama Court of Criminal Appeals. Here is part of what she wrote in January of this year: "I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. Bill Pryor is an outstanding Attorney General and is one of the most righteous elected officials in this State. He possesses two of the most important attributes of a judge: unquestionable integrity and a strong internal moral compass. Bill Pryor is exceedingly bright, a lawyer's lawyer. He is as dedicated to the rule of law as anyone I know. I have never known another Attorney General who loved being the people's lawyer more than Bill Pryor. Though we may disagree on an issue, I am always confident that the position is a product of complete intellectual honesty. He loves the mental challenge presented by a complex case, yet he never fails to remember that each case impacts people's lives."

What I was curious about, what I found arresting by that, was her reference to your work on behalf of children. And I would like to ask you to expand on that, if you could a bit.

Mr. PRYOR. Thank you, Senator. Judge Cobb and I have been partners in a project known as Children First. She is the Chair of the Children First Foundation in Alabama, and I have the privilege of serving as the Vice Chair of that foundation.

And what we have worked to do in a nutshell over the last several years is to devote more of our State's resources to programs to help at-risk children, whether it's juvenile justice programs that are proved to work, whether it's alternative schools to remove troubled youths from the regular school environment to help promote a safer learning environment in the regular schools, but also to give more intensive help to kids who are having difficulty in regular schools, children's health insurance, just a number of issues. And we have been partners in that enterprise.

We do not always agree. We sometimes have our political differences. But we have worked in a bipartisan effort. It has been a very successful one in Alabama. There are times when I have had members of my own party disagree with the work that we were doing, but I'm proud of the success that we have enjoyed with Children First.

Senator KYL. Well, thank you, General Pryor. And just let me say that not only, I think, have you demonstrated the intellectual ability, the experience, and the temperament to be a fine judge, but your candor, your willingness to confront a somewhat hostile dais here, I think, is another indication of the fact that you will be a

fine judge and that my colleagues ought to confirm the nomination that President Bush has made.

Thank you.

Chairman HATCH. Thank you, Senator.

We will turn to the distinguished Democratic leader on the Committee, Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Chairman HATCH. Senator, as I understand it, unless there is someone else who wants to question. Okay. All right. Senator, go ahead. I will tell you when we will reconvene as soon as you finish.

Senator LEAHY. Thank you, Mr. Chairman. To answer one of the questions whether you speak out on a lot of things, I would assume as the Attorney General in elective office that that would be only natural. I can't think of an Attorney General in the country who wouldn't. And there is no criticism of you for doing that.

We did, however—and Senator Kennedy raised your quote in the Montgomery Advertiser, speaking about the electric chair and whether it is an unconstitutional method of execution, you said, "This issue should not be decided by nine octogenarian lawyers who happen to sit on the U.S. Supreme Court." And I understand these questions—I mean, you seem to find it amusing. Did I misinterpret the smile on your face during that time? I mean, do you think this is an amusing description of the Supreme Court?

Mr. PRYOR. No, Senator. I said I thought it was inappropriate, and the reason I thought it was inappropriate was the use of the term "octogenarian." I stand by my statement, however, that I don't think the Supreme Court of the United States should have been the arbiter of the method of capital punishment in Alabama. I don't believe that that method of capital punishment violated the Eighth Amendment. That's the position we took in Federal courts. But we have since changed that method of execution, and I helped change it.

Senator LEAHY. Do you have any question, though, whether the Supreme Court has the authority to decide that issue?

Mr. PRYOR. Of course not, Senator.

Senator LEAHY. Okay. You testified in July 2001 before this Committee on the subject of appointed counsel in capital cases. In your testimony, you quoted then professor, now Federal Judge Paul Cassell for the proposition that, "The death penalty system in America is the most accurate criminal sanction in the world."

There have been about a dozen death row inmates that have been exonerated and released. They found they had the wrong person, some within days of their execution time. In Arizona, for example, Ray Krone was released from prison after DNA testing showed he did not commit the murder, the murder he had been convicted for 10 years before. And the local prosecutor said that Mr. Krone "deserves an apology from us, that's for sure. A mistake was made here. An injustice was done, and we're sorry."

Had he not been successful in getting hold of the DNA results, he would have been executed. Interestingly enough, the DNA, when they did get it, found that it pointed the finger at the person who did commit the murder.

I look at well over a hundred in the past few years who outside of the criminal justice system, either because of journalism stu-

dents or others, were found not to be guilty of the crime they were charged with. Do you still think that the death penalty system in America is the most accurate criminal sanction in the world?

Mr. PRYOR. I agree with Professor Cassell's judgment that the system of capital—

Senator LEAHY. What is your judgment? I mean, we have confirmed Professor Cassell. I actually voted for him. I disagree with him on this particular point, but what is your judgment?

Mr. PRYOR. My judgment is that the system of capital punishment has extraordinary safeguards, many safeguards to ensure that we review every death sentence to ensure that, number one, we're executing only the guilty; number two, that it's free from discrimination; and, number three, that it's in cases of extreme and heinous crimes.

There's no question that that system catches errors. That's what the system is supposed to do.

Senator LEAHY. Do you think that there have been—do you think there have never been people executed who were innocent?

Mr. PRYOR. I'm not aware of any case, since the death penalty was reinstated after the *Furman* decision by the Supreme Court of the United States in the late 1970's, where an innocent person has been executed. If someone has a case that they would like to present to me, I would certainly review it objectively. But I'm not aware of one.

My own experience tells me, though, with the—I think it's now 14 executions that we have had in Alabama in my administration, that all of those were cases of extreme crimes and evidence of overwhelming guilt.

Senator LEAHY. I am not questioning the heinousness of some of the crimes. I am questioning the fact that we have well, over 100 people, some of whom were found not by the criminal justice system, not by the kind of checks and balances you are referring to, either by somebody—I mean, in one case a group of college students who had taken an elective course on journalism, and then got heavily involved and found they had people on death row, some within days of being executed, and they found them and found gross mistakes, errors by the police, coverups within the criminal justice system. Most of Alabama's death row inmates were convicted and sentenced before 1999 when compensation of the appointed lawyers was capped at $1,000 per year. Do you really think that you can get adequate representation in a capital case where compensation is capped at $1,000?

Mr. PRYOR. I am proud that our State increased the compensation—

Senator LEAHY. I am talking about before 1999.

Mr. PRYOR. Because I don't think that compensation was adequate, Senator. Does that mean, though, that the criminal defense lawyers who took on the responsibility by court appointment to zealously represent a capital defendant did an ineffective job? No, not at all.

Senator LEAHY. So you are convinced that all those cases, many awaiting execution now, where it was capped at $1,000, that in every single one of those cases there was effective representation?

Mr. PRYOR. No, Senator. There were certainly cases, and we have procedures available in the courts to determine those cases, where there was ineffective assistance of counsel, and there have been findings by courts that there were, in fact, instances of ineffective assistance of counsel.

My point was only that it would be wrong to paint with a broad brush and assume that because our compensation was inadequate—and I concede it was inadequate. I'm proud the State increased it. But it would be wrong to paint with a broad brush and say that all those criminal defense lawyers who were doing their duty to the bar and to the court and to the community in providing zealous representation—

Senator LEAHY. General Pryor, that—

Mr. PRYOR. —were ineffective.

Senator LEAHY. —is not my statement. That is yours. That is not mine. I will accept your answers as you give them, and I won't characterize them differently than you do, and don't mischaracterize my questions. The fact is that you—I believe you have—you raise a real red flag when you have any State that caps defense lawyers at that amount. And the idea that always the bar will come through, and in another State near you the State Supreme Court said that when they had a lawyer who slept through much of the capital case, they said, well, the Constitution requires you to have counsel, it doesn't say it requires them to be awake.

I think the fact of the matter is that at the very least a warning sign should go up. At the very least, contrary to some of the feelings that you expressed back in 2001, at the very least we ought to be having strongly competent counsel for the defense, just as I feel we should have very competent prosecutors. I was a prosecutor for 8 years. I feel very strongly that way. I prosecuted a lot of murder cases. But I also know what can happen if you don't have good people on both sides.

I am looking at some of the amicus briefs. We have discussed some of them that you have filed as an example perhaps of your judgment. You were the only Attorney General out of all the States to file an amicus brief opposing the Federal Government in the case involving the Violence Against Women Act that allowed victims of gender-motivated violent to sue their attackers in Federal court. You have spoken many times with pride about your involvement and your lone opposition in this case. Incidentally, 36 other States took the other position.

Under your leadership, Alabama was the only State to submit an amicus brief in the case of *Solid Waste Authority of Northern Cook County* v. *U.S*. You argued the Federal Government did not have authority under the Constitution's Commerce Clause to prevent destruction of waters and wetlands that serve as critical habitat for migratory birds. I heard from a lot of hunters in my State on that.

And while you were Attorney General, Alabama was the only State to file an amicus brief in the famous case *Bush* v. *Gore*. Even conservative Republican Attorneys General were not willing to do that.

I only raise this because we expect circuit court judges to be able to reach consensus with their colleagues as much as possible. Obviously in these cases you were unique among your fellow Attorneys

General, and I will concede, of course, that you represent only the State of Alabama, and you only have to answer to the State of Alabama, not the other 49 Attorneys General. But do you feel that you may be giving a signal that you might not be collegial enough to be on the court?

Mr. PRYOR. No, not at all, Senator. You've raised several points. I'd like to address as many of them as I can, as I can recall.

Senator LEAHY. Sure.

Mr. PRYOR. First of all, in both the *Swank* case, the migratory bird rule or Clean Water Act case, and in the Violence Against Women Act case, it's true I was the only State Attorney General who offered that perspective, but it was the perspective that the Supreme Court ultimately sustained.

There have been many other instances, though, where, as a State Attorney General, I have filed amicus briefs that many States have joined. In fact, my office has previously received the Best Brief Award from the National Association of Attorneys General because of our Supreme Court work, the first time that our office has ever received that, and tomorrow we'll receive another one of those awards for an amicus brief that we wrote.

Now, I think it's a misunderstanding, though, to say that I was the only State Attorney General to file an amicus brief in *Bush* v. *Gore*. There were at least a dozen Democratic Attorneys General who filed an amicus brief in *Bush I*. There were three Republican Attorneys General who filed an amicus brief in *Bush I*. And I filed one separately. I filed one because Alabama had a case that I personally handled called *Roe* v. *Alabama* that was a part of the legal argument that was being made by the two sides, and I wanted to offer my perspective about that case, and that's where our argument was principally focused. It was an equal protection and due process argument, and we offered it again in *Bush II*, which had a less than 24-hour deadline for filing an amicus brief. I don't know how many of my colleagues tried to meet that deadline. But it is untrue that other Attorneys General did not file amicus briefs in that case. There were several of them who did.

Senator LEAHY. Unfortunately, my time is up. I will follow up on that particular point, as you can imagine, with follow-up questions. I would ask you just one last question, if I might, Mr. Chairman, and my others will be in writing.

You have been criticized because of your personal views and your political philosophy, which are always open to question for any one of us, except that no matter what your personal views, no matter what your political philosophy is, you are expected to be a fair and impartial Federal judge if you are confirmed.

What assurances can you give us that you would be that fair and impartial judge that people coming into your courtroom wouldn't look at you and say, well, I am the wrong political party or I am the wrong political philosophy so I am not going to be treated fairly? What assurances would you give?

Mr. PRYOR. I would urge them first to look at my record as a State Attorney General. Of course, eventually I would hope that they could look at my record as a judge and see my decisionmaking and see my fairness and impartiality, but look before that at my record as a State Attorney General. When you raise issues of poli-

tics, I have prosecuted Republicans. I have prosecuted the former director of the department—

Senator LEAHY. So have I.

[Laughter.]

Senator LEAHY. I have also prosecuted Democrats, I must say.

Mr. PRYOR. Me, too, and that's my responsibility as Attorney General. I have sided with Democratic interests several time in legislative redistricting cases because I thought their argument was the right legal argument. I prosecuted the former director of the State Department of Transportation in the Governor—in the administration of the Governor who appointed me and convicted him. I have prosecuted Republicans for voter fraud, for trying to rig elections.

I would urge people to look at my record. My record is one that, whatever my political philosophy might be on the one hand, when it comes to my record as Attorney General and making tough decisions I strive to follow the law. And I would urge people to show otherwise. I believe that my record shows that I strive to follow the law.

Senator LEAHY. Thank you, Mr. Pryor.

Thank you, Mr. Chairman.

Chairman HATCH. Thank you, Senator Leahy.

We are just about through for this morning, now afternoon hearing, but let me just clarify a few things, if I can, before we finally wind up.

Isn't it true that although you are clearly pro-life—and you have made that clear—you directed prosecutors to enforce—

Senator LEAHY. Mr. Chairman, I just want to correct one thing. I moved Paul Cassell through while I was chairman, but I did vote against him on the floor. I had that error. I didn't want to—I had forgotten. I knew that—I resisted the urging of many to hold him bottled up in committee. I brought him out on the floor so he could have a vote.

Chairman HATCH. You did, and we appreciated that.

Let me go back again to this question because I think we need to clarify a few things before we break for lunch. It is true that you are strongly pro-life. That is apparent. So am I. You directed prosecutors to enforce the State partial-birth abortion ban only to the extent permitted by the Supreme Court. Is that right?

Mr. PRYOR. That was what I strived to do.

Chairman HATCH. Even though you had people pushing you to go farther.

Mr. PRYOR. Absolutely.

Chairman HATCH. To try and expand that law beyond what the Supreme Court had said.

Mr. PRYOR. Absolutely.

Chairman HATCH. So you went along with the Supreme Court, which is the law of the land.

Mr. PRYOR. Yes.

Chairman HATCH. Even though you might have believed otherwise.

Mr. PRYOR. Absolutely.

Chairman HATCH. Even though you did believe otherwise.

Isn't it true that even though you have been critical of Section 5 of the Voting Rights Act, you defended majority-minority voting districts created under the Act all the way to the Supreme Court, which sided with you? Isn't that right?

Mr. PRYOR. Absolutely, Senator.

Chairman HATCH. In other words, even though you disagreed with it, you defended them, and you defended the rulings that you disagreed with all the way to the Supreme Court, and the Supreme Court found you were right.

Mr. PRYOR. Yes.

Chairman HATCH. Isn't it true that although you filed a brief in *Lawrence* v. *Texas*, you relied on the language of Justice White of the United States Supreme Court in *Bowers* v. *Hardwick*, right?

Mr. PRYOR. Absolutely.

Chairman HATCH. So you were following the law of the land.

Mr. PRYOR. Absolutely.

Chairman HATCH. The law as determined by the Supreme Court of the United States of America.

Isn't it also true that although you defended the display of the Ten Commandments in the Alabama Supreme Court and student-led prayer, you did so only to the extent permitted by precedent and on much narrower grounds than that suggested by the Governor who appointed you?

Mr. PRYOR. Absolutely.

Chairman HATCH. And you were right.

Mr. PRYOR. Yes.

Chairman HATCH. You were found to be correct by the courts.

Mr. PRYOR. Yes.

Chairman HATCH. Well, isn't it true also that although you filed briefs in the *Garret* and *Kimmel* cases as well as the *Morrison* case, the cases involving the Americans With Disabilities Act, et cetera, those briefs challenged only small portions of the Americans With Disabilities Act, the ADEA, and VAWA, or the Violence Against Women Act? You filed briefs in those cases, but who did the Supreme Court agree with?

Mr. PRYOR. They agreed with our arguments every time.

Chairman HATCH. They agreed with you. So all these criticisms that seem to be criticisms and arguments against you are arguments against decisions by the Supreme Court. I wonder who is outside the mainstream. It certainly isn't you. That is a shibboleth that is used around here far too often.

Now, let me just go a little bit further here. On the death penalty, is it not true that you strongly support increasing payments for appointed counsel up to $15,000 in capital cases?

Mr. PRYOR. I do.

Chairman HATCH. Per case.

Mr. PRYOR. In the first stage of appeals, and I've been unsuccessful in that urging, but it is something I still urge.

Chairman HATCH. And it is something you think would be a step in the right direction?

Mr. PRYOR. Yes.

Chairman HATCH. Now, just for the record, what is your religious affiliation?

Mr. PRYOR. I'm a Roman Catholic.

Chairman HATCH. Are you active in your church?
Mr. PRYOR. I am.
Chairman HATCH. You are a practicing Roman Catholic.
Mr. PRYOR. I am.
Chairman HATCH. You believe in your religion.
Mr. PRYOR. I do.
Chairman HATCH. I commend you for that. But I would like to ask you just a few questions to follow up on Senator Durbin's concerns that your strong statements about Christianity indicate some sort of insensitivity towards religious minorities. I would like to say something very important that debunks that allegation. As Attorney General you have been a tireless defender of religious liberties and freedoms for people of all faiths, have you not?
Mr. PRYOR. Yes.
Chairman HATCH. Now, as you mentioned in response to Senator Durbin, you worked tirelessly to promote the passage of the Alabama Religious Freedom Amendment to the Alabama Constitution, which requires the government to show, quote, "a compelling interest," unquote, in other words, a higher standard, before it imposes religious restrictions, and the restriction has to be, quote, "the least burdensome," unquote, possible. And that applies to people of all faiths, does it not?
Mr. PRYOR. It does, Senator.
Chairman HATCH. And you were advocating for that?
Mr. PRYOR. Yes.
Chairman HATCH. As a committed Catholic.
Mr. PRYOR. Yes.
Chairman HATCH. For everybody, regardless of religious belief.
Mr. PRYOR. Absolutely.
Chairman HATCH. Now, I would like to submit for the record a letter written by an active member of the Birmingham Jewish community, Herc Levine, who writes that Attorney General Pryor—quote, "That Attorney General Pryor has"—I've got the quote right, who writes that you have his support, quote, and here is what he says, "and the support of many in the Alabama Jewish community because of his personal integrity and commitment to ensure that all of our citizens are treated fairly and receive equal justice under the law. He has been a true friend to the Alabama Jewish community on many important issues," unquote. Are you aware of that letter?
Mr. PRYOR. I am.
Chairman HATCH. I want to say something else that is equally important. You have been honored for protecting the religious liberties of incarcerated prisoners, have you not?
Mr. PRYOR. I have.
Chairman HATCH. Many states have considered exempting prisoners from religious freedom protection, but not you.
Mr. PRYOR. No. I demanded otherwise.
Chairman HATCH. You successfully prevented the Alabama Religious Freedom Act from including a prison exemption; is that correct?
Mr. PRYOR. Absolutely.
Chairman HATCH. You fought for that?
Mr. PRYOR. I did.

Chairman HATCH. Now, in recognition of your efforts, if I have it correctly, you were honored with the 1999 Guardian of Religious Freedom Award by the Prison Fellowship Ministries, the Justice Fellowship and the Neighbors Who Care, right?

Mr. PRYOR. That's correct, Mr. Chairman.

Chairman HATCH. I think, you know, it is easy to take somebody who has been in politics as long as you have, and pick statements out of literally thousands of paragraphs and writings and records and briefs that maybe you have not even written, as has been indicated here, and pick out isolated paragraphs with which you think you can disagree or you could make a fuss over, and then try to undermine a person's credibility. Here we have a religious person who is very up front about his religious beliefs and his personal views, but who in every case that I can see—and I have really gone through this with pretty much of a fine-tooth comb—has followed the law regardless of his personal, deeply felt, strongly felt religious beliefs. And in virtually every case except a few that you lost, you won. The Court sustained your positions. And yet almost every point that has been made, or at least attempted to be made against you here today, has been a point made in areas where you have won, where your point of view was agreed to. I think that is a fair statement, and I have seen what they tried to do to you when your nomination came up here. I am not talking about people on this Committee. I am talking about the outside groups who do not seem to care how outrageous their smears are. I thought Senator Kyl did a very good job of showing how really ridiculous it gets around here.

I think it is also ridiculous to make such a fuss against people just because you disagree with them, and try to paint them as outside of the mainstream of American jurisprudence, especially somebody like you who wins all these cases, and whose point of view has been sustained by the Supreme Court time after time after time. We may not like that from time to time, but who are we? It seems to me we are outside the mainstream if we start trying to make a fuss about some of the things that Supreme Court has done. Now, we can differ with them just like you have. You have differed with Justice Souter in a number of ways. That does not mean that you hate the guy or that you do not think he has a redeeming quality or that you do not think he should be sitting on the Supreme Court, and maybe you have used some language that you wish in retrospect, sitting there, you had not used. You have said that in that one quote that it was a, quote, "feeble attempt," if I recall it correctly, to be humorous. Did the people laugh who were there?

Mr. PRYOR. In that mixed audience, mostly conservative, yes, there were a fair number of laughs.

Chairman HATCH. Well, I just would suggest from hereon in, as we make you judge, you should probably be very careful about criticizing Justice Souter, how is that?

[Laughter.]

Chairman HATCH. Or any other Supreme Court Justice for that matter, although it is very legitimate for lawyers, and especially Attorneys General, and especially lawyers on this Committee, to

find fault with Supreme Court decisions, and to wish that they were otherwise.

Now, you have wished that *Roe* v. *Wade* were otherwise. But you have sustained *Roe* v. *Wade* in your job as an Attorney General which is a much more political job than being a Circuit Court of Appeals Judge. You have done what is right, regardless of your personal views that are deeply held. Look, I wish we could find more people like you to be on the Federal bench. We would be a lot better off in this country, and I have to say, I think we are finding a lot of good people, just like you or similar to you or similar to great Democrats and Republicans of the past who have distinguished themselves once they became judges. And I can name great Democrat judges and I can name great Republican judges, and I can name lousy Democrat judges and lousy Republican judges, who really have not distinguished themselves.

One thing we do as lawyers, we do criticize each other, and that is not unhealthy. That is a good thing. But I wanted to get some of those things across, that some of the things that some have criticized you for were the mainstream.

Senator LEAHY. Mr. Chairman, before we go to the next person, I just want to make, if I could, a couple quick points.

Senator SPECTER. Mr. Chairman, I would very much like to go to the next person.

Senator LEAHY. I would like, Mr. Chairman—

Chairman HATCH. I will go to the Senator.

Senator LEAHY. Thank you. Mr. Chairman, I—

Senator SPECTER. Mr. Chairman, are we rotating here?

Chairman HATCH. Yes, but we are going to go to Senator Leahy for whatever comment he wants to make.

Senator LEAHY. Just went from a Republican to a Democrat now you see, that is rotation.

I am not going to ask questions, but just to note two things. One, you were asked about your religion. In 29 years in the Senate and thousands of nominations hearing in all the different committees I sit on, I never asked a nominee what his or her religion was because I think that that is irrelevant to our consideration. And I would hope, I would hope that that is not going to become a question that nominees are going to be asked because we should be, just so as we are supposed to be color blind, we should be religious blind, as far as that is somebody's personal choice, and has nothing to do with their qualifications. And I would hope that that would not become a question.

Also in looking over the transcripts, so there could be no question in your mind, when I spoke about *Bush* v. *Gore*, obviously I was speaking about the final decision, the decisive one.

Thank you, Mr. Chairman.

Chairman HATCH. Well, let me just make it clear, I do not usually ask that question either, but lately we have been finding situations where some of the questions that come up clearly go to that issue. And I just wanted to make it very clear that he is a very strong Catholic who believes in what he is doing, but yet has abided by the law, and that is a very important point because some of the criticisms have been hitting below the belt, frankly.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman. I withdraw my objection to Senator Leahy's latest intervention because I want to associate myself with his remarks. I do not believe that religion ought to be a question either. If you have been attacked for being a Catholic, that is one thing. Have you been attacked for being a Catholic?

Mr. PRYOR. In my life, Senator?

Senator SPECTER. No, in connection with this judicial proceeding? I would hate to go back over my life to answer that question with my religious background.

Mr. PRYOR. I wouldn't want to characterize anyone as having—

Chairman HATCH. Well, I interpreted it that way.

Senator SPECTER. If I may proceed, Mr. Chairman?

Chairman HATCH. Sure.

Senator SPECTER. In the absence of an attack, if there is an attack, it is a different matter. Then you have to defend yourself and it becomes a relevant issue if it is an attack, but I would hope that this Committee would not inquire into anybody's religion. There are enough questions to inquire into and enough substantive matters that that ought to be out of bounds. So I want to associate myself with what Senator Leahy said.

The Chairman has asked about whether you have made some comments which you now consider intemperate, and I regret that I could not be here earlier today, but as you know, we have many conflicting schedules. But I note the comment you made after *Planned Parenthood* v. *Casey*, where you were quoted as saying—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.

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?

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.

Senator SPECTER. With that personal belief, Attorney General Pryor, what assurances can you give to the many who are raising a question as to whether when you characterized it an abomination and slaughter, that you can follow a decision of the United States Supreme Court, which you consider an abomination and having led to slaughter?

Mr. PRYOR. I would invite anyone to look at my record as Attorney General, where I've done just that. We had a partial birth abortion law in our State that was challenged by abortion clinics in Alabama in 1997. It could have been interpreted broadly or it could have been interpreted narrowly. I ordered the district attorneys of Alabama to give it its narrowest construction because that

was based on my reading of *Roe* and *Casey*. I ordered the district attorneys to apply that law only to post-viable fetuses. I could have read it easily more broadly. The Governor who appointed me was Governor at the time and a party to the lawsuit, disagreed with me and openly criticized me. A pro-life activist in Alabama criticized me. But I did it because I thought that was the right legal decision. I still had an obligation to defend Alabama law. This was a recently-passed Alabama law. When the Supreme Court of the United States later of course struck down this kind of partial birth abortion law, we conceded immediately in district court that the decision was binding, but until then I was making the narrowest argument I could make, trying to be faithful to the Supreme Court's precedent, while also being faithful to my role as Attorney General and my oath of office to defend a law recently passed by the legislature.

Senator SPECTER. When you talk about post-viability and you have the categorization of partial birth or late-term abortion, is not that statute necessarily directed toward post-viability?

Mr. PRYOR. That was one of the main arguments I made in construing it, but if you look at the actual language—

Senator SPECTER. Well, I asked you that question as to whether there was a basis for construing it to the contrary. When you talk about partial birth abortion, we are talking about an event in the birth canal which is definitely post-viability. When you talk about late-term abortion, we are also talking about post-viability. So aside from having some people who will raise a question about anything, whether there is a question to be raised or not, was it not reasonably plain on the face of the statute that they were talking about post-viability?

Mr. PRYOR. No, I don't think anyone would contend that. In fact, the abortion clinics argued that that was not how you could interpret the law, and that my instructions to the district attorneys, while helpful in narrowing the construction of the law, gave them no real benefit because I could withdraw it at any time. That was the argument they made. They made the argument that you could easily broadly construe the law to apply pre-viability, so, no. There was a legitimate issue there.

There was also a law passed by the legislature in the same session that was a post-viability law itself. So you had a partial birth law and a post-viability law, and when you read the text of the partial birth law, that was not so clear, Senator.

Senator SPECTER. In *Casey* v. *Planned Parenthood* that was an opinion, plurality, written by Justice O'Connor, a strong pro-life Justice, Justice Anthony Kennedy, a strong pro-life Justice, and also Justice Souter. Now, some might raise a question as to Justice O'Connor's instincts being a little more concerned with the woman's point of view, but in Justice Anthony Kennedy, you have a Justice of impeccable pro-life credentials, a man whom I voted to confirm, as I did Justice O'Connor, and Justice Souter, and for that matter, Justice Rehnquist, and Scalia, and Justice Clarence Thomas.

What do you find in the writings of that plurality opinion, noting the presence of Justice O'Connor and especially the presence of Justice Anthony Kennedy, to be an abomination?

Mr. PRYOR. Well, they preserved *Roe* and they were following *Roe* and I considered *Roe* to be the abomination because it involves abortion, involves, from my perspective, the killing of innocent, unborn children.

Senator SPECTER. Well, let's move on then. On the Civil Rights Act, you have objected to Section 5 of the Act and have urged its repeal. Why have you taken that position, Attorney General Pryor?

Mr. PRYOR. I believe the Voting Rights Act is an important and necessary law in American history, and Section 5 was vitally needed in 1965 and for many years thereafter. It has now been almost 40 years afterwards. And what we routinely see in Alabama and in other states, is that when we want to change a polling place from say a firehouse on one side of the street to a schoolhouse on the other side of the street, we have to submit that to either the Department of Justice or Federal District Court in D.C. to obtain permission. They are routinely now granted, but if we miss any identification of what change in law was precisely made in the preclearance process, there's a "gotcha" game that is played by lawyers representing white voters, Republican voters, and others for their own political opportunity that has nothing to do with protecting the voting rights of minorities. That's what I've seen in my own capacity as Attorney General.

Senator SPECTER. Are there any other provisions of the Voting Rights Act which you would like to see repealed?

Mr. PRYOR. No. I think that Congress—

Senator SPECTER. The rest of it has been in existence for 40 years too. Is any of it outmoded beyond Section 5 which you have already testified about?

Mr. PRYOR. No. In fact, Section 2, the core provision, which applies to every jurisdiction in the United States, and prohibits dilution of minority voting strength, I have actively enforced, as I have Section 5. As Attorney General my record has been one of enforcing the Voting Rights Act, and I very sincerely believe in those protections and the importance of the Act, including the importance of Section 5 of the Act for the time of its enactment and for many years afterwards. And there may be, if Congress reviews it very carefully, even consistent with my perspective, a need for continued vitality of aspects of Section 5.

Senator SPECTER. I see I have 12 seconds left on the clock, so I will start another line here if I may. That relates to the decision on the Age Discrimination Act and the move by the United States Supreme Court on States' rights, overruling the *Lopez* case, which stood for 60 years under the commerce clause, and now an interpretation of the 14th Amendment and legislation under Article 5 of the 14th Amendment, very difficult to find a line of discernment.

In the most recent case there was a shift in position with Chief Justice Rehnquist voting to uphold the Family Leave Act. Do you agree with that most recent Supreme Court decision?

Mr. PRYOR. I filed an amicus brief on the other side, on the side that was the losing side in that case, Senator. It was obviously a very close case, and if you look at whether the Act was designed to prohibit gender discrimination, as the Court found, then Congress's authority was much more likely to be sustained. If on the other hand you argued, as I and several State Attorneys Gen-

eral did, that it was more of an employee benefit offered to all without regard to gender discrimination, then it was much less likely to prevail. Our argument did not prevail, and I respect the decision of the Supreme Court.

Senator SPECTER. Do you agree with it?

Mr. PRYOR. We made the argument on the opposite side. I did not have the opportunity to go through what the Supreme Court Justices did and read everything in the record and all the briefs. I think it was a very—that was a very close case.

Senator SPECTER. Do you agree with it?

Mr. PRYOR. I don't know whether I do or not without going through that process, Senator.

Senator SPECTER. "I don't know" is an answer.

Mr. PRYOR. Okay. I'm sorry.

Senator SPECTER. In looking at your involvement with the Age Discrimination in Employment Act matter and the Americans With Disabilities where you were very active on both those cases, and you now have the family leave case, and if you try to discern a rational line on what the Supreme Court is going to do, I think it is virtually incomprehensible, I think it is incomprehensible as to whether there is a sufficient record by the Supreme Court to satisfy the Supreme Court. The Court has come to the position on so many Congressional enactments that they haven't been thought through. And it is a matter of grave concern to me, and you talk about judicial activism, which we frequently do, as to the lack of deference that the Supreme Court gives to Congress.

The whole point is that we are supposed to make the laws, and they are supposed to interpret them. But they have some line of delineation as to whether there is a sufficient record, and really it boils down to whether it has been thought through by the Congress.

And then I always raise the question as to whether it has been thought through by the Court. These decisions are five-to-four; the most recent one was six-to-three. Could you articulate a standard for trying to decide this complex area? And I ask you that because so many people are concerned about—Attorney General Pryor, you are obviously a man with a very distinguished record, magna cum laude undergrad and magna cum laude in law school, and you are a very articulate witness. You have had a very distinguished career, and what arises as a point of concern is that when these questions come up and they are so very, very close, whether your own philosophical orientation will steer you one way as opposed to another.

So could you give us a statement as to the prevailing principles on these decisions which go both ways and have a very hard time to see if somebody could find a clear path as to what the standard is?

Mr. PRYOR. I will do my best, Senator. I will do so noting that in some of the cases I have made the arguments that were prevailing arguments, but in some, like Hibbs, the Family Medical Leave Act case, I was on the losing side. So I may not be the best—

Senator SPECTER. Well, you might be wrong. You haven't told us if you disagree with the Court yet.

Mr. PRYOR. Well, it may be that I might not be the best judge of how do you delineate it. It was our prediction—

Senator SPECTER. You are the only one we have—

Mr. PRYOR. Fair enough. From my understanding, though, of the case law, when the Supreme Court looks at the Congressional exercise of its power under Section 5, its remedial power, its power to enforce the guarantees of the 14th Amendment and ensure that when violated, that those violations are corrected, that when they look at the pattern of State conduct, they want to see whether Congress has compiled a record of unconstitutional activity by the States. Congress is owed more deference when the form of discrimination involved is, for example, racial discrimination, which is subject to the highest level of scrutiny, strict scrutiny, and Congress is given less deference in an area that is subject to rational basis scrutiny, as in the case of age discrimination or disability discrimination.

Senator SPECTER. Where is Congress given no deference?

Mr. PRYOR. Pardon me?

Senator SPECTER. And where is Congress given no deference?

Mr. PRYOR. I don't know that it's ever anywhere given no deference.

Senator SPECTER. I read a great many of the decisions that way.

Mr. PRYOR. Well, that's my best perspective of where the Court is coming from, Senator.

Senator SPECTER. Okay. Thank you very much, Attorney General Pryor.

Thank you, Mr. Chairman.

Chairman HATCH. Thank you, Senator Specter.

Here is what we are going to do. We are going to recess until 3 o'clock. The reason is some of the Senators have some additional questions of you. And at 3 o'clock we are going to—let me just see here.

At 3 o'clock we are going to give you a little extra time here. We are going to proceed with Diane Stuart, which shouldn't take a long time. Diane has sat here all day, and she is, of course, to be the Director of the Violence Against Women Office, and that is at the Department of Justice. So what we will do is we will proceed with her, and I think you should be back here somewhere shortly after 3 o'clock. And then we will resume with you, hopefully for not too long a time after that, and go through these questions.

Now, I want to make this clear because I am really upset with some of the things that have gone on in this Committee over the ensuing months. It is not the Committee's usual proceeding to ask a nominee about his or her religious beliefs. And I agree with that position and with both Senator Leahy and Senator Specter. But perhaps Senators Leahy and Specter were not here when you were asked whether, in light of your statements about Christianity, you could be fair to religious minorities. You have also been asked extensively about your personal beliefs with regard to *Roe* v. *Wade*, which almost everybody for a circuit court judgeship is asked—in fact, everybody is because that seems to be the be-all, end-all issue to some people in this Committee.

But, of course, being asked those questions, as I understand it, that stems from your pro-life beliefs, which in turn are rooted in your religious beliefs.

Senator LEAHY. Well, Mr. Chairman, one more time—

Chairman HATCH. Let me just—

Senator LEAHY. —I must object if we are going to go into people's religious beliefs.

Chairman HATCH. Let me just finish with my remarks and you can say whatever you want to. So though it is unusual to ask about a nominee's religion, I think it is in this case because—it perhaps should have been raised in some prior cases as well with what has gone on in this Committee.

In this case, General Pryor's religious beliefs have been put squarely at issue, and if not directly, indirectly. But I think directly. So that is the reason why I raise it. I don't intend to raise it again, but the fact of the matter is that I just wanted to make sure that that is clear why I did that. And I don't intend to do it in the future, but I sure hope we can get off some of the approaches that the outside groups are encouraging us to do up here. And we can be more fair to people who do have deeply held religious beliefs regardless of religion.

And the point I am making with you is that your whole career has been spent making sure that there is religious freedom and respect for religious beliefs throughout your career, and I just wanted to make that point. Would you disagree with that?

Mr. PRYOR. I appreciate the Senator's perspective very much.

Chairman HATCH. Thank you.

With that, we will recess—

Senator LEAHY. Mr. Chairman, you said I could respond.

Chairman HATCH. Sure, go ahead.

Senator LEAHY. Mr. Chairman, I have to disagree with you, and you are my friend. I think it is inappropriate if we start raising what a candidate's religion is. Going into their philosophy beliefs, that is fine. But to somehow jump from there to what their religion is and, thus, what their philosophy is I think is very, very dangerous.

Chairman HATCH. I agree.

Senator LEAHY. I think if we start down that track, we are going to all regret it.

Now, sometimes in the political arena a person's religion has been attacked in an elective office. I know when the Chairman, my good friend's religion was attacked, I took to the Senate floor to defend him. In the political context I have had my religion attacked by some members on the other side of the aisle, and I assume someday one of them will defend me. But I do not think it is an appropriate question to ask a nominee.

I admire people who hold deeply religious views, whatever they might be, but I really strongly believe in the First Amendment and feel that that should be their belief or their family's belief. I admire them for it, but I don't think it should be part of the questions that we ask. I really don't. I think that we could run into a very difficult thing if we started doing that. I think it would be a terrible, terrible precedent to start.

Chairman HATCH. Then let's get the outside groups to stop doing that.

We will recess until 3 o'clock.

[Whereupon, at 1:32 p.m., the Committee was adjourned, to reconvene at 3:00 p.m., this same day.]

AFTERNOON SESSION [3:03 p.m.]

Chairman HATCH. Let me call the Committee to order, and I would like to start by welcoming Ms. Stuart before the Committee. Diane is an old friend of mine, and I want to congratulate her for being nominated by President Bush.

It is a true pleasure to have Ms. Stuart before the Committee. Her impressive background, dedication to the issue of domestic violence and violence against women as well as her past Government service make me very confident that she will be a great asset to the Department of Justice, to this Committee, and to the American people, above all to women.

On a personal note, I want to express on behalf of myself and the Committee my sympathy to you, Diane, for the tragic loss of your grandson. I want you to know that my thoughts and prayers are with you and have been with you and your family as you cope with this terrible loss.

Let me turn to your nomination. Since it was created in 1994, the Office on Violence Against Women has played a vital role in protecting our children and women from the tragedy of violence and abuse. I have been and will continue to be a strong supporter of the office, along with my colleagues Senator Biden, Senator Leahy, Senator Specter, Senator Schumer, and others on this Committee.

Since 2001, Diane Stuart has demonstrated her ability to lead this important office to bring new energy and focus to its many missions and to continue to help our Nation's women and children who fall victim to abuse and violence.

Ms. Stuart is a dedicated public servant who has a longstanding record of accomplishment in promoting programs and policies to protect women from violence. Anyone who knows Diane Stuart also knows that her public service and commitment to this area began long before 2001, when she assumed the position of Director of the Violence Against Women Act Office.

From 1989 to 1994, Ms. Stuart served as the executive director of the Citizens Against Physical and Sexual Abuse from Logan, Utah, where she was responsible for a 20-bed shelter for victims of domestic violence and in addition was responsible for a rape crisis center.

From 1994 to 1996, Ms. Stuart was a victim advocate specialist for the State of Utah in Salt Lake City. From 1996 to 2001, she served as the State of Utah's coordinator for the Governor's Cabinet Council on Domestic Violence.

Finally, from 1995 to 2001, she served as a member and later became spokesperson for the National Advisory Council on Violence Against Women.

That was such an impressive background at both the State and Federal level, I am confident that Diane Stuart is the right person for this critical post at the Justice Department, and I am really

hopeful that the Committee and the Senate as a whole will move quickly to confirm her, and I expect them to do so.

So, Diane, maybe you can stand and we will swear you in. Would you raise your right hand? Do you affirm that the testimony you are about to give before the Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. STUART. Yes.

Chairman HATCH. Thank you. Now, if you have a statement you would care to make, we will be glad to take it at this time.

STATEMENT OF DIANE M. STUART, NOMINEE TO BE DIRECTOR, VIOLENCE AGAINST WOMEN OFFICE, U.S. DEPARTMENT OF JUSTICE

Ms. STUART. Thank you, Senator. I do.

First, Chairman Hatch, I would like to thank you for holding this hearing today and for your sensitivity in the death of our grandson and the postponement and rescheduling of this hearing. I am honored to be here, and I am very thankful to the President of the United States for the honor of nominating me to the Office of Director on the Office on Violence Against Women.

I am also extremely grateful to the President and the Attorney General for their unwavering support and leadership in our National efforts to end violence against women, from the President's Domestic Violence Month proclamation to the White House Roundtable on Violence Against Women, from the Attorney General's Symposium on Domestic Violence to the President's DNA Initiative. This administration's commitment to this issue has been and continues to be extremely strong.

As the former director of the domestic violence shelter that you mentioned and rape crisis center, I know very deeply of the importance of Federal leadership on these issues, and, of course, Congress recognized that when they passed the Violence Against Women Act in 1994 and when the office was created in 1995. At its very core, the Violence Against Women Act is about coordinated community response to these crimes. We have learned over and over again that collaboration among law enforcement, prosecutors, judges, advocates, health care workers, businesses, the faith community, and many others in the community that this is the key to ending violence against women. It's this coordinating and working together effort. And through the grants that the Office of Violence Against Women administers, we know that it works. Policies and procedures are being impacted by this coordinated community response.

But, Senator, when the Justice Department statistics reveal that in a single year there are almost 700,000 incidents of domestic violence, 248,000 rapes and sexual assaults, and over 1 million incidents of stalking, there is, as we all recognize, still much to do.

Should I have the honor of being confirmed as the Director of the Office on Violence Against Women, I want to commit to you now to serve with integrity, compassion, and dedication. And then I welcome any questions.

Chairman HATCH. Well, thank you so much. I have no doubt that you will do exactly that, knowing you as well as I do. And I am very proud to see you in this position and, of course, I am proud

of your willingness to come here to Washington and serve here, giving up staying in the beautiful State of Utah, our home State. That is a big sacrifice in my book, and I understand it myself.

But since 2001, you have done, in my opinion, a remarkable job as the Director of the VAWA office. Could you take a few moments and, in addition to your opening statement, give us some of what you consider to be the most significant accomplishments since you assumed the position of Director?

Ms. STUART. Mr. Chairman, when I came to the office, the first thing that I recognized after interviewing with each one of the staff was that the office needed to be reorganized, if you will, to better meet the needs of staff and, more importantly, better meet the needs of the individual grantees. And so that was one of the first things that we did, was to organize the office in such a way so it would be more responsive to grantees, and ultimately more responsive to victims.

At the same time, we started working on the application process for grants, mostly for discretionary grants. There are 11 grant programs and 9 discretionary grant programs. And we began working with that process of what was needed from the discretionary grant programs, what applicants needed to know in order to successfully gain an award from that very, very highly competitive process that we had.

And so we rewrote the solicitation so that it would be very easy for an applicant to look at it and see clearly what we are looking for, the kind of elements. We put it on a scoring form, which elements would be important. So refining the grant application process we think is an accomplishment.

Also, refining and improving our technical assistance program. I believe that technical assistance is a key to communities, to States implementing what is intended with the Violence Against Women Act in a way that really works. Congress asked grantees to measure their effectiveness, and that's another accomplishment. We've moved very, very far down the road in a very complicated process in order to help grantees with the tools that they need in order to measure how effective they are and where they need to go in the future. So combining the technical assistance program that we have, that initiative that we have, and making it better than it was with their effectiveness project is certainly an accomplishment.

I think we've accomplished a better communications with the State administrators, with national organizations, with individual grantees even, a lot through the technical assistance projects but just on the day-to-day communications with grantees in our office.

I think that a lot of policy is being directed through many of the initiatives that are coming out through our office. For instance, we have had a—we have begun with a focus group on specific elements that are in the African-American community. What is the same? What is different? And how can we be more responsive to that particular community?

Re-entry, the same thing. Very often members that are—individuals that have been in jail go back into the homes that they were abusing. And so working on that initiative and helping States and communities learn more about how to deal with those that are reentering their community and keeping victims safe as they do so.

We have organized a Federal coordinating board which—I discovered that local communities were organized. They had understood the Violence Against Women Act and the coordinated community response. States were coordinated. But we in the Federal Government weren't very coordinated. What was happening at Labor was not available to the Department of Justice, not available to the Department of Human Services. And so bringing key people from those Federal agencies together and talk about what they are doing and what needs to be done in a coordinated fashion I think is as major accomplishment.

And, finally, you are aware that the National Advisory Council has been reorganized. It is very, very effective. It is very—what a marvelous group of people, and many of the Senators on this Committee suggested people for that National Advisory Council on Violence Against Women. Energetic group. They're going to accomplish quite a bit in the future, and we're looking forward to their accomplishments.

Chairman HATCH. Thanks so much. That is very helpful.

Now, looking forward and hopefully after a quick confirmation of your nomination here in the Senate, can you outline—I think you have pretty well outlined the issues that you have been concerned with up to now. Can you outline any significant issues and challenges you think you are going to face as Director of the Violence Against Women Office?

Ms. STUART. Excellent question, Senator. Always looking to improve what is happening is a challenge. But most specifically, as I said, the grant—discretionary grant programs are highly competitive. I think one of our largest challenges is how to figure out how individual communities, individual States can sustain the programs that they initiate and how to keep that going far beyond Federal funding. There's no guarantee that they will be a continued recipient of any grant funds, so how do we help them be effective in what they're doing and really change the way they do business in that community, even change the fabric of that society so that they can continue what they've started with Federal funding, if it's 2, 3, 4 years, or maybe an organization or a State that doesn't get a particular—an arrest grant or a rural grant. There are many rural areas in our State that are seeking out how do we do this. How are we effective? How do we reduce violence against women? How do we keep victims safe?

So our challenge is how to get information and resources to those areas that are not receiving them now, and those areas that are receiving them, how they can continue it on in the future.

Chairman HATCH. Thank you.

I think what we are going to do, we have one questioner who would like to question you, and that is Senator Biden. We are supposed to have a vote that is supposed to start right now, but the Senate is not the most efficient organization in the world, as you know. I think what I am going to do is recess until Senator Biden gets here, because those are the questions I had, and I knew you would answer them pretty much like you did.

But let me put into the record several significant letters that the Committee has received, letters of support for your nomination. Specifically, we have received letters from the National District At-

torneys Association, the Utah Domestic Violence Advisory Council, the National Council of Juvenile and Family Court Judges, and the Minnesota Program Development, and we will put those in the record without objection.

I think that I will head over to the floor. We will recess until Senator Biden gets here. Is Senator Biden's staff here? Just have him begin his questions if he gets here before I do. And our staff, you make sure that happens. Okay? And then I will get back as soon as I can, and hopefully after 10 minutes or so we can move on to our judgeship.

Well, thank you, and Senator Biden is the prime author of the Violence Against Women Act. It was the Biden-Hatch bill, and I remember when we decided to do this together. We hadn't been too successful up until then, but we were able to get it through. And we both take a tremendous interest in it, and Senator Biden in particular deserves a great deal of credit for the Violence Against Women Act. So we are showing this complete deference because of his efforts in this area. And I would do it, anyway, but I would certainly do it because of his efforts.

So, with that, hopefully we will get this vote over and Senator Biden could get here and ask you whatever questions he wants, and then we are going to go back to our judgeship nominee, General Pryor, and hopefully finish that up within a short period of time.

So, with that, we will recess until after we get back from the vote.

Ms. STUART. Thank you, Senator.

[Recess 3:17 p.m. to 3:30 p.m.]

Chairman HATCH. We will call the Committee back to order.

Diane, Senator Biden isn't here. I hate to have to ask you to wait. I know it has been inconvenient all day, and we could have gotten this done. But I think what we will do is just start with the other hearing again and call you back as soon as I can.

Chairman HATCH. General, you will have to understand why I might have to interrupt you again, if it is all right with you. But I just don't see wasting this time. So if you will be kind enough and forgive me for this, we will go ahead and do that. General, if you will take the seat again.

While we are waiting, I might as well ask some questions myself. General Pryor, you have been criticized for a number of positions you have taken in your role as Attorney General of Alabama, I think very unjustly criticized. I think that my good friend Senator Biden said it best during the confirmation of Justice Souter, about whom we have heard a good deal today. Senator Biden said, "I am mindful, of course, that a State Attorney General has an obligation to defend the actions and politics of the State even when his own views are at variance with them and even when he would not, if he were a judge, adopt the arguments he is making as an advocate." And that is what you have demonstrated here today, and you agree with that.

Mr. PRYOR. I do.

Chairman HATCH. You agree with Senator Biden.

Mr. PRYOR. I do.

Chairman HATCH. What strikes me as ironic is that you are being criticized for your position in a number of cases that you won before the United States Supreme Court. Sure, you lost some, too, but every good lawyer does. Nobody wins them all if you have had any kind of a practice. But I think that the fact that the Supreme Court agreed with you in a number of these cases indicates that your arguments were hardly out of the mainstream, you know, as some would try and indicate or as some would believe.

For example, you have been criticized for your comments relating to Section 5 of the Voting Rights Act, but in *Sinkfield* v. *Kelly*, you defended several majority-minority voting districts approved under Section 5 from a challenge by a group of white Alabama voters. And the Supreme Court agreed with you, didn't it?

Mr. PRYOR. Unanimously.

Chairman HATCH. In other words, you didn't agree with the present-day application of Section 5 because you think it needs to be changed. But you did uphold that, and the Supreme Court agreed with you.

Mr. PRYOR. I did uphold—

Chairman HATCH. So here they are criticizing you for your honesty in saying that Section 5 needs to be changed because it is no longer applicable in a more modern time, 40 years later, as it was in the past and it needs to be modified. I think most Attorneys General in the South would certainly agree with you. And yet when push came to shove and you had to defend the statute itself, you did so, even though you disagreed with it.

I mean, I don't see how you get criticized for that, but we do everything wrong here on the Judiciary Committee from time to time.

In the *Garret* case, you argued that the Americans With Disabilities Act could not constitutionally authorize money for damage suits against States in Federal court. Isn't that right?

Mr. PRYOR. That's correct.

Chairman HATCH. And the Supreme Court agreed with you, didn't it?

Mr. PRYOR. They did.

Chairman HATCH. So now it is kind of ironic for you to be criticized here before this august body for having won a case sustaining the Americans With Disabilities Act, an Act that I had a major role in, even though you—you know, well, let me just leave it at that. It seems just ironic that they would criticize you for that.

Now, in the *Kimmel* case, you and a bipartisan group of 23 other State Attorneys General argued that the Age Discrimination in Employment Act could not constitutionally authorize money damage suits against States in Federal court. You were making a federalism argument. Is that right?

Mr. PRYOR. That's correct. General Butterworth from Florida and I presented that argument together.

Chairman HATCH. That is right. And what did the Supreme Court do?

Mr. PRYOR. And the Supreme Court ruled in our favor.

Chairman HATCH. It agreed with you.

Mr. PRYOR. Right.

Chairman HATCH. Now, it is interesting to me how some might try to say, as they did against Jeffrey Sutton, that you must be

against the Americans With Disabilities Act, and yet you took a case up and sustained that Act.

Mr. PRYOR. That's right, Senator.

Chairman HATCH. At least you took a case up where you won on that issue.

Mr. PRYOR. That's right.

Chairman HATCH. In *U.S.* v. *Morrison*, where you, I guess, criticized Justice Souter for his dissent in that case, you argued that the civil remedies provision of the Violence Against Women Act could not withstand constitutional scrutiny. And, again, the Supreme Court agreed with you, didn't it?

Mr. PRYOR. They did.

Chairman HATCH. Sure did. Well, now, Senator Biden and I might not like that decision, but they agreed with you.

Mr. PRYOR. They did.

Chairman HATCH. Now, that doesn't mean you are against the Violence Against Women Act, does it?

Mr. PRYOR. Oh, absolutely not. I support the Violence Against Women Act, and as a State Attorney General and as a member of the National Association of Attorneys General, I have joined resolutions of our organization urging Congress to reauthorize that law.

Chairman HATCH. Okay, but some of the criticisms from these outside groups have been in all of these cases, haven't they?

Mr. PRYOR. They have. I abhor domestic violence. I abhor rape and sexual assault of women. I've dedicated a large part of my administration to fighting that criminal activity in the State of Alabama. I think we've been very successful with our efforts. We've promoted the work of shelters for battered women and children. We've strengthened our laws dealing with the possession of dangerous substances like GHB, which is a dangerous date rape drug. We've passed important laws, like the domestic violence law, in a bipartisan package with my former Governor.

That's the core of who I am, but when it came time to uphold the Constitution and to present the argument that I did, I felt that it was important that the Court consider that argument and was pleased the Court agreed with it.

Chairman HATCH. And in many cases, you set aside your own personal beliefs in order to do your job and duty to sustain the statutory language.

Mr. PRYOR. I would like nothing more than to have more remedies to go against those who would perpetrate violence against women, but it has to be done consistent with the Constitution.

Chairman HATCH. Now, in *Solid Waste Agency of Northern Cook County*, you argued that the Army Corps of Engineers did not have the authority under the Federal Clean Water Act to exercise Federal jurisdiction over entirely intrastate bodies of water—in this case, an abandoned gravel pit, if I recall it correctly.

Mr. PRYOR. That's correct.

Chairman HATCH. And the Supreme Court again agreed with you, right?

Mr. PRYOR. They did.

Chairman HATCH. So you are being criticized as being anti-environment because of the case that you won in the Supreme Court.

Mr. PRYOR. Well, I don't perceive it as—

Chairman HATCH. By some of these outside groups, that is.

Mr. PRYOR. And I don't perceive it as anti-environment at all. Making sure that there's the proper balance of Federal and State power allows State authorities and Federal authorities to know where the lines are so that State environmental protectors can do their jobs as well.

Chairman HATCH. But, again, there are some of these inside-the–Beltway groups that have criticized you even though you won the case in front of the Supreme Court.

Mr. PRYOR. Well, I was pleased that they ruled in our favor. I thought it was the correct decision. I thought, again, that as a State Attorney General I had a perspective that would be helpful for the Court in resolving a very difficult controversy.

Chairman HATCH. You can see why I am upset and why I am not going to sit here and allow a well-qualified, fair-minded nominee like yourself to be categorized as "an extremist," which some of these outside groups that have tried to make you out to be. You know, you won these cases. These are cases—this is the law of the land.

Mr. PRYOR. It is.

Chairman HATCH. The ones who are outside the mainstream are these people who are the critics, especially when the positions you have taken have been consistently supported by the Supreme Court majorities.

Now, these are some of the things that have bothered me a great deal about some of the unjustified criticisms that you have received, and that is one reason why I have taken the time to go through these.

Senator Sessions, I think you had a couple things you would like to say.

Senator SESSIONS. I do. Thank you, Mr. Chairman. Thank you for your leadership. And it amazes me how you are able to master all the details of so many of these cases in so many of these hearings that we go through. And I know you are involved in a lot of other issues at this time, such as an asbestos bill and also the prescription drug legislation that is moving forward today. And I thank you for your leadership.

Chairman HATCH. Well, thank you, Senator. And so everybody understands, I am going to have to leave in a little while because of some of the other duties I have, and I am going to ask Senator Sessions to continue to chair this hearing until we finish it.

Senator SESSIONS. Attorney General Pryor, I think the thing to me that is distressing is that the groups that are making the complaints about you and some of our Members of the Senate don't understand the reality of life in Alabama today. They have a rather unfair 1960's image of the state. But we have a vigorous two-party system. We have a substantial number of very able and outspoken African-American leaders in the State. We talked earlier about the very strong support you have gotten from Dr. Joe Reed, who is a State representative and Chairman of the Alabama Democratic Conference for probably 30 years, the most powerful African-American political force in the State, also a member of the Democratic National Committee. I have talked with him over the years, and

I know he knows about Federal courts and has always taken that as a real interest.

So we have some people from outside the State that might complain, but the people who really have been carrying the water for civil rights in Alabama are supporting you. Alvin Holmes is one of the most outspoken members of the legislature. I have gotten to know and admire him and watched him over the years. He would be here today were not the State legislature in session. His letter on your behalf says, "From 1998 to 2000, Bill Pryor sided with the NAACP against a white Republican lawsuit that challenged the districts of the legislature. Pryor fought the case all the way to the United States Supreme Court and won a unanimous ruling in *Sinkfield* v. *Kelly* in 2000."

The lawsuit was filed by Attorney Mark Montiel, who both you and I know, and a three-judge federal court ruled in favor of Judge Montiel. But despite that, you carried it forward.

Why were you willing to take the political heat, oppose a position of your friends, and take the position that Mr. Alvin Holmes did? What motivated you to do that?

Mr. PRYOR. I took an oath of office when I became Attorney General. I swore to uphold the Constitution and laws of not only the United States but the State of Alabama, and I firmly believed in that lawsuit that the laws required the dismissal of the case, that Mr. Montiel's—Judge Montiel's, as you referred to him—his clients lacked standing to sue and to complain about those districts when they did not even reside in those districts. I thought the precedents of the Supreme Court were clear, and we took the case up on that basis, and that's how the Court ruled on that basis and agreed with our argument unanimously.

Senator SESSIONS. Now, there is a good government group in Alabama, and they concluded that one of the legal problems with reform in education was that teachers or junior college administrators were able to serve in the legislature. A large number of them in fact had key positions in the legislature, and there was a dispute about whether this was legal or not. And you were the Attorney General for the State of Alabama, and the group wanted you to join in that lawsuit, which had wide support within the State.

How did you analyze that tough call? And what decision did you make?

Mr. PRYOR. I looked at the complaint that they filed in the circuit court and concluded that, in fact, the complaint was contrary to the law, that the teachers and junior college employees had a right to serve in the Alabama Legislature. And I took that position. I did my duty as Attorney General and defended the case and defended the practice that was complained about. And the Supreme Court of Alabama agreed with our argument.

Chairman HATCH. Senator Sessions, could I interrupt you?

Senator SESSIONS. Please.

Chairman HATCH. Diane, we are going to let you go because Senator Biden is unable to come, and he has agreed to end the hearing at this point for you. And what we are going to do is keep the record open for questions by close of business next Tuesday, so you will need to get your questions back because we will put you on, not tomorrow's markup but we will put you on next Thursday's

markup. And I don't want you put over for a week at that time, and hopefully we can report you out next Thursday—not tomorrow but next Thursday.

So, with that, we will let you go, and your family, and we appreciate having you here and we are proud of you.

Now, General Pryor, I have been informed that there are no further requests for time for questions. I think that is probably because you have handled yourself very well. I am hopeful that that is so because I believe you have. I believe you not only answered every question in a fresh, honest, straightforward way, but you have done it in a very intelligent way in each situation. And I am hopeful that some of the threats that have been issued in the past, without having met you on the part of some of our Senators, will dissipate because they should. You have clearly been a very intelligent, very gifted witness here today. You are clearly a person of great conscience and clearly a person of great ability. You clearly have our support. And, frankly, I am hopeful that we will be able to get you through within a relatively short period of time so that you can go on the Eleventh Circuit Court of Appeals and do what you have been doing as an Attorney General in the sense that you are following the law. And you are intelligent enough to know how to decide cases where there is no law, which is all we can ask of judges, and to decently and honestly do so.

We have to set our personal preferences aside and do what is best for the law. And I have no doubt that you are going to do exactly that. And I believe with that, Senator, if you have no objection, I think we will formally close the hearing and wish you well. We are going to keep the record open for you to answer questions until—any member of this Committee can submit questions as of the close of business at 5 o'clock on next Tuesday. So that gives staff and members of the Committee until next Tuesday to submit written questions. We would suggest that you get your answers back immediately, as soon as you can, so that we can move your nomination.

We will put you on the next Thursday—not tomorrow but the next Thursday markup, like Diane as well. And under our Committee rules you may very well put over for another week. I hope not but you may be. That has kind of become the rule lately, and I would like to see us not always have to use that rule, and we can vote and support good people and get them out to the floor and get them voted on. But that would be about as early as I think you are going to be able to have a vote on your nomination. But that will be good if we could get that all done.

So, with that—

Senator SESSIONS. Mr. Chairman, I would just offer for the record a strong editorial in support of Attorney General Pryor from the State's largest newspaper, the Birmingham News.

Chairman HATCH. Well, without objection, that will go in the record, and I want to compliment the State of Alabama for having such high-quality people working for them as you and those who associate with you and work with you. I think it is a real tribute to you that you have been able to handle some very, very difficult questions today with aplomb, with ability, with a keen sense of the law, and with a straightforward approach towards always sus-

taining the law of this land that you will be obligated to sustain. And that is all we can ask of you.

And, with that, we are grateful to have had you and your family here. I thought your two little daughters were terrific to last as long as they did without making any noise or difficulty. You tell them we are real proud of them, and your wife as well.

So, with that, we will recess the Committee until further notice.

[Whereupon, at 3:49 p.m., the Committee was adjourned.]

[The biographical information of Ms. Stuart, questions and answers, and submissions for the record follow.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)
   Diane M. Stuart, nee McMahon
   Diane M. Payne

2. Address: List current place of residence and office address(es.)

   Rockville, MD
   Wellsville, UT

   810 7th Street, NW
   Washington, D.C.

3. Date and place of birth.
   8/18/44
   Pittsfield, MA

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
   Married to Daniel Dean Stuart, retired

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
   University of Portland, OR - attended 1962-63
   Xavier University, Cincinnati, OH - attended 1964-65
   University of Pittsburgh, PA - attended 1984-1987; BS degree 08/1987
   Utah State University, Logan, UT - attended 1987-1990;
   MS degree 06/1990

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   Citizens Against Physical and Sexual Abuse (CAPSA), (Domestic Violence Shelter and Rape Crisis Center) Logan, UT.
   Executive Director 1989-1994

   State of Utah, Department of Human Services, Division of Child and Family Services (Child Welfare Agency), Salt Lake City, UT.
   Victim Advocate Specialist 1994-1996;

State of Utah, Department of Human Services, Salt Lake City, UT.
State Coordinator for the Governor's Cabinet Council on Domestic Violence 1996-2001

U.S. Department of Justice, Washington, D.C.
Director / Acting Director, Office on Violence Against Women 2001-present

Six year member and primary spokesperson for the National Advisory Council on Violence Against Women - U.S. Department of Justice / U.S. Department of Human Services, Washington, D.C, 1995-2001.

Non-profit Board member:
Utah Domestic Violence Advisory Council (UDVAC), Salt Lake City, UT. 1989-2001
Utah Coalition Against Sexual Assault (UCASA- formally CAUSE), Salt Lake City, UT. 1998-2000

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No Military Service

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Don C. Carter Fellowship, Utah State University
Executive Lifetime Achievement Award, Utah Domestic Violence Advisory Council
Utah Council on Family Relations—Distinguished Service to Utah Families Award

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Not Applicable.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The Gables on Tuckerman Condominium Association (see attachment A for bylaws)
The Smithsonian Institution, National Associate member
American Automobile Association (AAA)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Not Applicable.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"Domestic Violence Victims and Welfare Services: A Practitioner's View," Battered Women, Children, and Welfare Reform, *Sage Publications, 1998.*

Statement before the Subcommittee on Crime and Drugs, Committee on the Judiciary, United States Senate, "Oversight of the Violence Against Women Office," April 16, 2002. (see attachment B)

Statement before the Committee on Health, Education, Labor, and Pensions, United States Senate, "Violence Against Women in the Workforce," July 25, 2002. (see attachment B)

Compilation of speeches and talking points as Director and Acting Director of the Office on Violence Against Women, October 2001 - present. (see attachment B)

"Domestic Violence and Sexual Assault," A Messasge from Diane M. Stuart, Director, Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice, Washington, D.C., The Police Chief, March 2003.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. June 2002.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Acting Director, Office on Violence Against Women; appointed by President George W. Bush, 2003- Present
Director, Office on Violence Against Women; appointed by President George W. Bush, 2001- 2003
State Coordinator, Governor's Cabinet Council on Domestic Violence, Utah; appointed by Lt. Governor Olene Walker, 1996 - 2001

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Not Applicable.

2. whether you practiced alone, and if so, the addresses and dates;

Not Applicable.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Citizens Against Physical and Sexual Abuse (CAPSA), (Domestic violence shelter and Rape Crisis Center)
P.O. Box 3617
Logan, UT 84321
Executive Director 1989-1994

State of Utah, Department of Human Services
120 North 200 West
Salt Lake City, UT 84103
Victim Advocate Specialist 1994-1996;
State Coordinator/Domestic Violence 1996-2001

U.S. Department of Justice, Office of Justice Programs
810 7th Street, N.W.
Washington, D.C. 20531
Director / Acting Director, Office on Violence Against Women
2001-present

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Not Applicable.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I did not practice law, but in my capacity of Director of a domestic violence shelter and rape crisis center, I, on occasion, would advocate for a domestic violence client as she obtained a protection order. Advocacy would include accompanying her to the court where she - not I - would fill out the application for the protection order. I then may have accompanied her to court for her hearing.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Only occasionally in the capacity of an advocate with a victim.

2. What percentage of these appearances was in:

(a) federal court;
(b) state courts of record; *100%*
(c) other courts.

3. What percentage of your litigation was:

(a) civil: *Not litigation, but 100% in civil court. I have never testified in criminal court.*

(b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Not Applicable.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

Not Applicable.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

Not Applicable.

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

Not Applicable.

(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

List of professionals I have worked with:

Olene Walker
Lieutenant Governor
State of Utah
State Capitol
Salt Lake City, UT 84114
801-538-1520

Donna Irwin
Arizona Governor's Division of Family Violence
1700 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-1761

Casey Gwinn
City Attorney
City of San Diego
1200 Third Avenue, #1620
San Diego, CA 92101
(619) 236-7215

Newman Flanagan
Executive Director
National District Attorneys Association
99 Canal Center Plaza, Suite 510
Alexandria, VA 22314
(703) 549-9222

Delilah Rumberg
Executive Director
Pennsylvania Coalition Against Rape
125 North Enola Drive
Enola, PA 17025
(717) 728-9740, ext. 10

Anne Crews
Vice President of Corporate Affairs
Mary Kay, Inc.
P.O. Box 799045
Dallas, TX 75379
(972) 687-5729

The Honorable Michael Brennan
Judge, Milwaukee County
901 North 9th Street, Room 514
Milwaukee, WI 53233
(414) 278-4772

Cristina Beato, M.D.
Deputy Assistant Secretary for Health
Office of Public Health and Science
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
(202) 690-7694

Reverend (Dr.) Marie Fortune
Center for the Prevention of Sexual and Domestic Violence
2400 N 45th Street, #10
Seattle, WA 98103
(206) 633-0572

Oliver Williams, Ph.D.
1333 Highland Parkway
St. Paul, MI 55108
(612) 624-9217

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

My professional experience includes:

Building on my Masters degree in Family and Human Development, I directed a dual program organization for five years which included a 20-bed shelter for victims of domestic violence and a rape crisis center. During that time, I served in several leadership positions for the Utah State Coalition on Domestic Violence, including the top positions of Chair and Vice-Chair. After serving as a Victim Advocate Specialist on domestic violence issues for the Child Welfare Agency in Utah, I was appointed as the first coordinator for the Utah Governor's Cabinet Council on Domestic Violence, working with senior-level officials in the state offices of the Attorney General, Human Services, Health, Corrections, Public Safety, Education, Workforce Services, and the Courts.

During that time, I served in various membership and leadership positions with numerous councils, task forces, and committees related to domestic violence, sexual assault, and victimization, including the Utah Council on Victims of Crime

and the Women's Advisory Council for Senator Orrin G. Hatch. As a board member for the Utah State Sexual Assault Coalition, I assisted in a major reorganization and the appointment of a new Executive Director.

In 1995 I was appointed by the U.S. Attorney General to the National Advisory Council on Violence Against Women, chaired by the Attorney General and the Secretary of Health and Human Services. In 2000, I became part of the Leadership Team, becoming the Council's primary spokesperson in 2001.

Additionally I have had extensive experience as an instructor, guest lecturer, and presenter on domestic violence and sexual assault and have been a grant reviewer for the National Institute of Justice.

As Acting Director of the Office on Violence Against Women, I manage a staff of 34 individuals and am responsible for the administration of an annual program budget of almost $400 million. I oversee all policy development as it pertains to domestic violence, sexual assault, and stalking. I have primary authority over the administration of all Department of Justice grants, cooperative agreements, and contracts awarded on violence against women. I serve as the advisor to the Attorney General on all matters concerning violence against women. As the Department's "ambassador" on violence against women, I serve as the primary liaison with Federal and State governments, as well as with international governments. In 2002, I founded the Federal Interagency Coordinating Board on Violence Against Women, with membership including the White House and the U.S. Departments of Justice, Labor, Health and Human Services, Defense, and Education. The purpose of the Coordinating Board is to promote and enhance collaboration on violence against women issues throughout the Federal government. I routinely meet with leaders of national, state, and local organizations and travel frequently to provide keynote addresses and various remarks to their constituencies.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have two small retirement funds, one with IRA - Scudder Growth and Income - Class AARP, and one with the Utah Retirement System in a 401K Plan. I also have a Certificate of Deposit for three years with the OBA Bank, Washington, DC and am a member of the Federal Thrift Savings Plan.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Since my arrival in 2001, I have recused myself from all grant awards involving the State of Utah. In the event of any potential conflict of interest, I will consult with the Ethics Official for the Department of Justice.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see attached SF-278.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   For several years I served as the Merit Badge Counselor for Citizenship in the World, for Cache Valley, Wellsville Chapter of the Boy Scouts of America. While at the University of Pittsburgh, I volunteered at the University psychiatric hospital, reading to the blind and working with geriatric patients. I have served as a volunteer service worker for my church social services, working with adoptive and foster children, and was a volunteer foster mother for two years. Additional service includes many years as President for a young women's organization (ages 12-18), three years as a Vice-President for an organization for children under 12 (ages 3-11), and two years as a Family Life Commissioner with the Utah PTA. For the past twelve years I have served as a Sunday School Teacher for the adults in my church.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

   No.

NET WORTH FINANCIAL STATEMENT

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	$16,537	-		Notes payable to banks-secured			
U.S. Government securities-add schedule	-			Notes payable to banks-unsecured	$9,579		
Listed securities-add schedule	-			Notes payable to relatives			
Unlisted securities--add schedule	-			Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	$6,000 est.		
Due from relatives and friends	$ 9,579	-		Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable-add schedule -Property, Wellsville, UT - Wellsfargo, and Country Wide Home Loans -Property, Boise, ID - Country Wide Home Loans -Property, Payson, UT - Republic Mortgage -Property, Rockville, MD - Homecomings Financial and Country Wide Home Loans	 $73,174 $66,826 $71,953 $216,273	 - - - -	
Real estate owned-add schedule -Property, Wellsville, UT -Property, Boise, ID -Property, Payson, UT -Property, Rockville, MD	 $146,000 $150,000 $118,000 $223,000	 - - - -		Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	$20,000	-					
Cash value-life insurance							
Other assets itemize:							
				Total liabilities	$443,805	-	
				Net Worth	$239,311	-	
Total Assets	$683,116	-		Total liabilities and net worth	$683,116	-	
CONTINGENT LIABILITIES				GENERAL INFORMATION			

As endorser, comaker or guarantor	$16,000	-		Are any assets pledged? (Add schedule)	No.		
On leases or contracts	None			Are you a defendant in any suits or legal actions?	No.		
Legal Claims	None			Have you ever taken bankruptcy?	No.		
Provision for Federal Income Tax	None						
Other special debt	None						

U.S. Department of Justice

Washington, D.C. 20530

MAR 1 7 2003

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, forwarding the financial disclosure report of Diane M. Stuart, who has been nominated by the Pre to serve as Director, Office on Violence Against Women, Department of Justice.

We have conducted a thorough review of the enclosed report. The conflict of interest statute, 18 U.S.C. 208, requires that Ms. Stuart recuse herself from participating personally and substa a particular matter in which she, her spouse, minor children or anyone whose interests are imp her under the statute, has a financial interest. We have counseled her to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could aff financial interests.

We have advised Ms. Stuart that because of the standard of conduct on impartiality at 5 CF 2635.502 she should seek advice before participating in a particular matter involving specif which a member of her household has a financial interest or in which someone with whom covered relationship is or represents a party.

Based on the above agreements and counseling, I am satisfied that the report presents nc interest under applicable laws and regulations and that you can so certify to the Senate J Committee.

Sincerely,

Paul R. Corts
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 5 C.F.R. Part ...
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved: OMB No. 3209-0001

Date of Appointment, Candidacy, Election or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☑	Termination Filer ☐	Termination Date (If Applicable) (Month, Day, Year)

	Last Name	First Name and Middle Initial
Reporting Individual's Name	STUART	DIANE M.
Position for Which Filing	Title of Position: DIRECTOR	Department or Agency (If Applicable): Office on Violence Against Women OJP, Department of Justice
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code): 810 7th Street N.W., Washington, DC 20531	Telephone No. (Include Area Code): 202-307-0728
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: JUDICIARY	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Diane M. Stuart	03.06.03
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
	[signature]	3/14/03
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
	[signature]	3-14-03
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

SF 278 (Rev 1.
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A	Page Number
DIANE M. STUART		2

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

	Assets and Income	Valuation of Assets: None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Rent and Royalties	Interest	Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common															*																
	Doe Jones & Smith, Hometown, State			X																												Law Partnership Income $3,000.00
	Kempstone Equity Fund					X								X									X									
	IRA: Heartland 500 Index Fund							X						X											X							
1	IRA - Scudder Growth and Income - Class AARP		X											X							X											
2	Utah Retirement System 401K Plan - Income Fund		X											X								X										
3	Utah Retirement System 401K Plan - Balanced Fund		X											X							X											
4	Utah Retirement System 401K Plan - Large Cap Stock Indexed		X											X							X											
5	Scripps Howard Media Pension Defined Benefit + Pension Plan																														$540.69 PSE month	
6	OBA Bank, Washington, D.C. (CD)		X																X			X										

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Diane M. STUART		3

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)													Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																		
															Type				Amount													
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only If Honoraria
1 Property, Wellsville, UT					X														X												
2 Property, Boise, ID					X														X												
3 Property, Payson, UT					X														X												
4																															
5																															
6																															
7																															
8																															
9																															

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset is

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name: DIANE M. STUART

SCHEDULE B

Page Number: 4

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss.

Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)													
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000**	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
Example	Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260, and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/13/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$100
1			
2			
3			
4			
5			

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Reporting Individual's Name: Diane M. STUART

SCHEDULE C

Page Number: 5

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)										
						$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 St., Washington, DC	Promissory note	1999	10%	on demand					x						
1	Wellstaryo Des Moines, IOWA	Mortgage on property, Wellsville UT	1994	6.8	15		X									
2	Country-wide Home Loans DALLAS, TX	Mortgage on property, Wellsville UT	2002	9.125	30		X									
3	Country-wide Home Loans DALLAS, TX	Mortgage on property, Boise ID	2002	6.875	30			X								
4	Republic Mortgage HOGAN, UT	Mortgage on property, Payson UT	2002	6.625	30			X								
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Continued participation with 401K pension plan through the	STATE OF UTAH	5/94
2	State of Utah-will be eligible to draw pension at age 62.		
3	No further contributions being made by State of Utah.		
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Diane M. Stuart		6

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, Ny, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/01
1	Department of Human Services, State of Utah	State Government	Coordinator Domestic Violence Council	5/96	9/01
2					
3					
4					
5					
6					

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Dept. of Human Services, State of Utah	Management-Coordinator for Domestic Violence Cabinet Council
2		
3		
4		
5		
6		

AFFIDAVIT

I, DIANE M. STUART, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/25/03
(DATE)

Diane M Stuart
(NAME)

(NOTARY)

My Commission Expires April 30, 2003

QUESTIONS AND ANSWERS

WRITTEN QUESTIONS FOR WILLIAM H. PRYOR, Jr.

Senator Joseph R. Biden, Jr.

June 16, 2003

VAWA

Mr. Pryor, I would like to ask you about the Violence Against Women Act and the backdrop to that law. You filed a brief in the Supreme Court on behalf of the State of Alabama, the only state to take this position, arguing against the constitutionality of the federal civil remedy for victims of sexual assault and violence.

Violence Against Women– Interstate Commerce Nexus

Among other things, your brief in the Morrison case stated that gender-based violence does not substantially affect interstate commerce.

Prior to the passage of the Violence Against Women Act, Congress held nine hearings and received testimony from over a hundred witnesses. At the end of that long and thorough exploration, Congress concluded that gender-based crimes and fear of these crimes reduced employment, increased health costs and reduced consumer spending in profound ways all over the country. For example, we found that:

- one million women a year sought medical attention for injuries sustained as a result of domestic violence, with one-third of all hospital emergency room visits by women attributable to domestic violence;
- medical costs associated with domestic violence topped $100 million a year; and
- domestic violence cost employers $3-$5 billion annually as a result of victim absenteeism and reduced productivity in the workplace.

Q. In light of those statistics, why did you argue that domestic violence has insubstantial effects on our nation's economy?

Response: With all due respect, I did not argue that domestic violence has insubstantial effects on our nation's economy. I argued that, as a noneconomic activity, an intrastate violent crime alone is outside the scope of the power to regulate interstate commerce. The Supreme Court agreed with my argument.

Q. What hearings and evidence would have been sufficient to authorize the Violence Against Women Act under the Commerce Clause? What Congressional findings would have been enough?

Response: Under the argument I presented successfully to the Supreme Court, no hearings or findings would have been sufficient to authorize the civil remedy provision in the Violence Against Women Act. I have not argued that any other provision of that law is unconstitutional, however. Indeed, as a member of the National Association of Attorneys General, I joined my colleagues in a resolution urging Congress to reauthorize VAWA.

States' Willingness/Ability to Address
Violence Against Women

As you know, Congress made specific findings justifying the Violence Against Women Act to compensate, cure and counteract the documented gender bias and self-described systemic failures by the states to treat violence against women with the same seriousness afforded to other major crimes. For example, we found that:

- prior to the Violence Against Women Act, many state laws allowed marital rape prosecution only under limited circumstances, and often not at all for cohabitants or dating companions;
- ten states formally barred women from bringing tort cases against their abusive husbands; and
- states reported pervasive practices such as police refusing to take reports of domestic violence and juries who repeatedly blamed the rape victim.

Prior to passing the Violence Against Women Act, 21 state task force reports scrupulously documented systemic state barriers to women when trying to bring criminal and civil cases against their assailants.

Q. What weight should Congress have given to these state reports?

Response: Congress should have given great weight to the state reports.

Q. What weight should a court reviewing the constitutionality of the Act have given to these reports?

Response: It does not appear to me that the state reports could have affected the evaluation by the Supreme Court of the one provision of the VAWA (the civil remedy provision) that was held unconstitutional. The Court ruled that the crimes of private persons against victims are not attributable to state governments under the fourteenth amendment.

Q. Do you attach any significance to the fact that 41 state attorneys general (from 38 states, the District of Columbia, and two United States territories) urged Congress to enact the Violence Against Women Act?

Response: The vast majority of state attorneys general historically have supported the VAWA. As a member of the National Association of Attorneys General, I joined my colleagues in a resolution urging Congress to reauthorize VAWA.

Federalism

Q. Do you believe that Congress, through its Commerce Clause powers, may criminalize the killing of endangered species, even if the animals in question never cross state lines?

Response: The United States Court of Appeals for the Fourth Circuit has held that Congress has the power to prohibit the killing of an endangered species. *Gibbs v. Babbitt*, 214 F.3d 483 (4th Cir.2000). The court held that the conservation of valuable wildlife resources involved a regulable economic activity.

Q. May Congress, through its Commerce Clause powers, criminalize wholly intrastate activity, such as drug use? Let's say that Bob grows marijuana in his backyard, somewhere in Delaware, and then walks over to the house of his neighbor Jim and sells some marijuana to him so Jim can get high while sitting around watching TV. No direct interstate commerce connection at all. Can the drug laws permissibly reach such activity?

Response: The Supreme Court has held that the growing of a crop or agricultural product, even if only for personal consumption, is a regulable economic activity. See *Wickard v. Filburn*, 317 U.S. 111 (1942).

Q. As you might be aware, Congress has debated whether to criminalize human cloning. Would such a ban be constitutional? Would it depend on how we worded the legislation? If so, how?

Response: So long as the activity is economic in nature, the Supreme Court has held that Congress has the power to regulate the activity under the commerce clause. I do not have any other judgment on this issue.

In a March 28, 2001, speech before the Atlanta Lawyers' Chapter of the Federalist Society, you stated that federalism was "near and dear to your heart . . . ." In the speech, you argued that in the next several years, "money damages claims will not be allowed against states under the Equal Pay Act . . . ." In essence, you were saying that the Equal Pay Act as applied by the states was not a valid exercise of Congress's 14th Amendment power. The Equal Pay Act is a seminal piece of anti-sex discrimination regulation. It says that employers can't pay women less for doing the same job that men do. If a state does pay a woman less than a man for doing the exact same job, it seems to be that this is a basic violation of the Equal Protection guarantee of the 14th Amendment.

Q. Why isn't paying women less than men to do the same job a violation of the 14th Amendment?

Response: Several federal courts of appeal have ruled that Congress has the power under Section 5 of the Fourteenth Amendment to abrogate the states' sovereign immunity under the Equal Pay Act, including the Eleventh Circuit in *Hundertmark v. State of Florida*

***Dept. of Transp.*, 205 F.3d 1272 (11th Cir. 2000). To my knowledge, no federal court of appeals has ruled to the contrary.**

Q. What if a state was paying African Americans less money than Whites to do the same job?

Response: Congress clearly can forbid state-sponsored racial discrimination, which violates the fourteenth amendment.

Q. When something is a clear violation of the Fourteenth Amendment, like paying men and women differently for the same job, does Congress have to make findings that states have been acting unconstitutionally in the past before abrogating state sovereign immunity?

Response: No.

Q. In the same speech, you discussed testing the limits of "congressional power to prohibit state actions that do not have a discriminatory purpose but do have a discriminatory impact"?

Response: I made the above statement in the speech you have cited.

Q. Is it unconstitutional for Congress to allow state employees to sue their state if the state's employment actions had a discriminatory impact on African Americans or other persons of color?

Response: No, in *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976), the Supreme Court upheld the disparate impact remedies of Title VII of the Civil Rights Act of 1964.

Q. You have argued that something needs to be done to end school desegregation orders. What do you believe courts can require of states to correct racial disparities in schools?

Response: *Missouri v. Jenkins*, 515 U.S. 70 (1995), discusses the federal courts' remedial powers in school desegregation cases. I believe, consistent with that decision, that state officials have an obligation to remove expeditiously all vestiges of segregation in compliance with desegregation orders of federal courts.

<u>Alabama Acting on its Own</u>

I note that no states joined your brief or filed their own *amicus* brief on your side in *SWANCC v. United States Army Corps of Engineers* in which you asked the Supreme Court to hold the Clean Water Act unconstitutional in part. In your view, why did no other state join your brief or take your side in a separate brief?

Response: I cannot speak for the inaction of other state attorneys general. I do not know this information. I know, however, that the Supreme Court agreed with the argument of statutory interpretation advanced in the Alabama brief.

An Alabama agency was a party in *Alexander v. Sandoval*, a case in which you argued for a narrow view of Title VI of the Civil Rights Act of 1964, so no other states could have joined your brief. But no states filed *amicus* briefs in support of your position either. Was Alabama unique in its desire to administer programs that had a disparate impact on persons of color? If the right of action against the state was so burdensome that it was unconstitutional, why did no other states support you?

Response:

The plaintiffs in *Sandoval* did not argue that the policy of Alabama to administer tests for drivers' licenses only in the English language had a disparate impact on persons of color. They argued that the disparate impact was on persons of national origin other than the United States. I cannot speak for the inaction of other state attorneys general. I do not know this information. The *Code of Alabama* obliged me, as attorney general, to represent the defendants, and I prevailed in obtaining the dismissal of this lawsuit.

Challenging Federal Statutes

You have filed briefs challenging the constitutionality of an extraordinary number of federal statutes. These include the Family and Medical Leave Act, the Americans with Disabilities Act, the Clean Water Act, the Driver's Privacy Protection Act, the Violence Against Women Act, the Americans with Disabilities Act, patent laws, the Lanham Act, and the Fair Labor Standards Act. You have also challenged procedural rules such as the right of federal agencies to adjudicate cases involving state agencies in court-like forums and the ability of the federal government to toll statutes of limitations against municipalities.

Q. What other federal statutes have you challenged as unconstitutional?

Response: I successfully challenged the constitutionality of the abrogation of state sovereign immunity in the Age Discrimination in Employment Act. To my knowledge, my office did not write any briefs challenging the patent laws, the Lanham Act, or the Fair Labor Standards Act. In *Crum v. Alabama* my office argued that the money damages remedy for violation of Title VII involving disparate impact was beyond the power of Congress. The Eleventh Circuit disagreed. I was persuaded by the Eleventh Circuit and did not present this argument again. I am unaware of any other federal statutes that I have challenged as unconstitutional.

Q. In the Clean Water Act case, *SWANCC v. United States Army Corps of Engineers*, you co-wrote a brief that said "One simply cannot give Congress the presumption of interpreting the Constitution correctly without slighting the State's capacity to do the same." You basically

argued that the Supreme Court should not presume a statute to be constitutional when it is challenged on states' rights grounds. Has your position changed since you wrote this brief?

Response: Although I believe that Courts should presume that Acts of Congress are constitutional, I continue to believe that each State has a capacity to interpret the Constitution equal to the capacity of Congress.

Views on Precedent

Q. Could you tell me the approach you would take, as an appellate court judge, to Supreme Court decisions that are on point?

Response: As an appellate judge, I would follow faithfully and apply any decisions of the Supreme Court that apply to any controversy before me. I would search for any decisions of the Supreme Court by reading the briefs of the parties and all cases cited by them and by conducting independent legal research on the questions before me.

Q. If the Supreme Court has called into question a portion of an earlier Court decision, do you believe that lower courts should disregard – or minimize – other, unrelated portions of that earlier decision?

Response: If the Supreme Court has called into question a portion of an earlier decision, lower courts should not disregard other unrelated portions of that earlier decision.

Church-State

Mr. Pryor, as you know there's a federal lawsuit pending right now against Alabama Chief Justice Roy Moore over the constitutionality of his installation of a nearly three-ton granite monument of the Ten Commandments in the rotunda of your state's Judicial Building. Now of course there's no blanket rule prohibiting a governmental display of the Ten Commandments; the constitutionality depends on the particular facts, whether the display is historical and secular. A federal court has ruled that this particular display by Justice Moore was intended to and does promote religion, and is therefore unconstitutional; Justice Moore appealed, as you know, and the appeal was argued just last week in the Eleventh Circuit.

Mr. Pryor, it's my understanding that when this lawsuit was filed, you appointed three private lawyers as Deputy Attorneys General of Alabama to represent Moore. One of those is a lawyer named Herbert Titus.

In his brief, Deputy Attorney General Titus takes the position that if something is not literally a "law," it is not covered by the Establishment Clause. The Supreme Court's precedents have applied the Establishment Clause to the practices and conduct of government officials, and not only to "laws."

Q: Do you agree with the argument that Alabama Deputy Attorney General Titus made in his brief, that the Establishment Clause doesn't apply to Moore's Ten Commandments monument because the monument isn't a law?

Response: Although I believe there is a strong argument that it is not a violation of the first amendment to display the Ten Commandments in a courthouse, I have some differences with Chief Justice Moore regarding the proper interpretation of the first amendment. Out of respect for the chief justice, who serves as the highest judicial officer of Alabama, I agreed to appoint Mr. Titus, as Chief Justice Moore requested, to serve as counsel for Chief Justice Moore. I do not believe that it is appropriate for me to state with specifity the nature of my differences with any argument of the Chief Justice while this matter is under submission before the U. S. Court of Appeals for the Eleventh Circuit.

A press account of the oral argument said that Judge Ed Carnes, who by the way is no liberal as you know, called the implications of Mr. Titus's arguments about the Establishment Clause "staggering." According to the news article, Judge Carnes asked Mr. Titus whether it would be constitutional for Justice Moore to "decorate the Supreme Court with a mural depicting the crucifixion and resurrection of Christ," or whether he could "spell out 'What Would Jesus Do?'" in "big block letters behind his bench, for all the lawyers and everyone else to see." Mr. Titus apparently had no problem with a judge doing these things, because they did not "amount to a law concerning religion."

Q: Do you agree with this position?

Response: See above answer.

Questions for William Pryor
From Sen. Richard J. Durbin
June 17, 2003

Church-State Separation

1. At your hearing, you discussed your support of the Free Exercise Clause in the First Amendment, but I was questioning you about your views on the Establishment Clause. When Alabama Supreme Court Chief Justice Roy Moore was a trial court judge, he routinely invited Christian clergy—and only Christian clergy—to offer prayers at the opening of jury sessions. A lawsuit was filed against Judge Moore in federal court by several local taxpayers and residents, challenging the sponsorship of these sectarian prayers as violations of the Establishment Clause.

While this suit was pending, you, as Deputy Attorney General, filed a lawsuit in state court in the name of Alabama, asking the court to declare that Judge Moore's prayers were constitutional. The state court ruled that the prayers did, in fact, constitute state-sponsored prayer and that such prayers that demonstrate a denominational preference are proscribed by the Establishment Clause.

You appealed this ruling. However, the Alabama Supreme Court determined that you and Judge Moore agreed that his practices were constitutional; under Alabama case law, if there is not an adversarial conflict between the plaintiff and the defendant, the case is not justiciable. Therefore, the Alabama Supreme Court vacated the lower court ruling and dismissed the case. In doing so, the Court said, "We are convinced...that 'the Office of the Attorney General [has] ... sought to 'use' this Court in order to get an advisory ruling.' We will not, however, allow the judiciary of this state to become a political foil, or a sounding board for topics of contemporary interest."

A. The state was under no obligation to file suit. Why did you do so?

Response: I filed suit on behalf of then-Governor James and then-Attorney General Jeff Sessions to resolve the controversies about Judge Moore's activities under both federal and state law.

B. As a result of the Alabama Supreme Court's action in vacating the ruling and dismissing the case, Judge Moore was allowed to continue his prayers. Why, then, did you insist on continuing to pursue this case by asking the Supreme Court to rehear the case and uphold Judge Moore's practices?

Response: I agreed with the dissenting opinion of Associate Justice Maddox that there was a justiciable controversy and sought to persuade the court to reconsider that issue.

C. On April 14, 1997, the Associated Press reported the following: "Pryor said the state has no position on whether Moore's right to pray and have a religious display in his courtroom extends to people of other faiths. Pryor said he did not know whether the rights of non-Christians would be violated if they were barred from praying in Moore's court." Supreme Court rulings are clear in barring government from preferring one religious tradition over others. Do you believe public officials must treat all religions equally when they become involved in promoting religious activities?

Response: Yes. I believe the Constitution demands equality of treatment with respect to persons of every religion.

D. At a 1997 rally in support of Justice Moore, you said: "God has chosen, through his son Jesus Christ, this time and this place for all Christians to save our country and save our courts." What did you mean by this statement?

Response: I believe that God calls all Christians to enter the public square to resolve the moral problems of our society. I believe Christians, for example, heeded the call of God to help end slavery and racial segregation. I was referring, in the speech you mentioned, to the present moral problem of abortion, which I also believe Christians are called to help resolve.

2. In the summer of 2001, Chief Justice Moore—during the night and without telling his fellow Supreme Court justices—installed a nearly three-ton granite monument of the Ten Commandments in the rotunda of the Alabama State Judicial Building, which houses the state Supreme Court, the courts of appeal, and other state offices. Moore placed the monument directly across from the main entrance to the Judicial Building.

Last November, the federal district court ruled that this monument violated the Establishment Clause because Moore's "fundamental, if not sole, purpose in displaying the monument was non-secular." The court also found that "No other Ten Commandments display presents such an extreme case of religious acknowledgement, endorsement, and even proselytization." A three-judge panel of the 11th Circuit heard oral arguments on this case a few weeks ago last week, and I would like to ask you several questions regarding the legal theories offered by the lawyers you deputized as Assistant Attorneys General for this case.

A. These lawyers argued that the Establishment Clause only forbids coercive governmental behavior that commands or prohibits religious action under threat of penalty or punishment. The Supreme Court ruled 40 years ago in *School District of Abington Township v. Schempp* that "a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended." Do you agree with your Assistant Attorneys General or with the Supreme Court ruling in *Abington Township*?

Response: Although I believe there is a strong argument that it is not a violation of the first amendment to display the Ten Commandments in a courthouse, I have

some differences with Chief Justice Moore regarding the proper interpretation of the first amendment. Out of respect for the chief justice, who serves as the highest judicial officer of Alabama, I agreed to appoint Mr. Titus, as Chief Justice Moore requested, to serve as counsel for Chief Justice Moore. Mr. Titus has made these arguments on behalf of Chief Justice Moore. I do not believe that it is appropriate for me to state with specifity the nature of my differences with any argument of the Chief Justice while this matter is under submission before the U. S. Court of Appeals for the Eleventh Circuit.

B. Judge Ed Carnes asked Assistant Attorney General Herbert Titus whether it would be constitutionally permissible for a judge such as Moore to spell out "What Would Jesus Do?" in big block letters behind his bench, for all lawyers and everyone else to see. Titus responded that this would be constitutional because it "would not amount to a law establishing religion." Do you agree with your Assistant Attorney General?

Response: See answer above.

C. The brief filed by your Assistant Attorneys General argues that because the "police power" is one of the powers reserved to the states by the Tenth Amendment, Moore had the right to install the Ten Commandments monument "to restore the moral foundation of law to the State of Alabama." Could you please explain this reasoning and its basis in the Constitution or Supreme Court precedent?

Response: See answer above.

D. The brief filed by your Assistant Attorneys General argues that the Establishment Clause does not apply to the states in the same way that it applies to the federal government. It argues that states should be permitted to regulate the "relation between religion and the state" free from "any federal intrusion." Do you believe the Establishment Clause applies to the federal government and to states in the same way?

Response: See answer above.

3. In 1997, you defended then-Governor Fob James's interpretation of the Constitution with regard to the display of the Ten Commandments. In an interview published in the March 13, 1997, issue of *The Alabama Baptist*, you said, "The governor feels strongly that there are matters of serious constitutional significance where the executive branch has the duty to uphold the Constitution as the executive branch interprets." Although you did not go so far as to say the executive branch could ignore judicial decrees, you did say there are ways the executive branch "does not have to implement rulings with which it disagrees."

D. Do you believe the executive branch must abide by and implement court rulings? If not, what are some of the ways you believe it could not implement the rulings with which it disagrees?

Response: In his veto message to Congress on July 10, 1832, regarding the rechartering of the Bank of the United States, President Andrew Jackson contended that the legislation was unconstitutional. The Supreme Court had ruled that the Bank's charter was constitutional, but Jackson acted within his authority to disagree with the decision of the Supreme Court in exercising his veto power granted to him by the Constitution. This was the example I had in mind when the interview occurred.

E. In the interview with *The Alabama Baptist*, you also said, "There are those who believe that when the Supreme Court of the United States announces a ruling, it is on par with the Constitution itself, and I am sorry, it is not." Why do you believe Supreme Court rulings are not "on par with the Constitution?"

Response: The Supreme Court can err as it did in *Plessy v. Ferguson*. Because Supreme Court rulings are not as authoritative as the Constitution itself, the Supreme Court fortunately can overrule its erroneous decisions. That is why the Court had the authority to overrule *Plessy* in *Brown v. Board of Education*.

4. You gave a 1997 speech in defense of Alabama Chief Justice Roy Moore and his Ten Commandments display in which you stated: "I became a lawyer because I wanted to fight the ACLU – the American 'Anti-Civil' Liberties Union."

D. What did you mean by this description of the ACLU?

Response: I have disagreed with positions of the ACLU in some controversial areas, including abortion and student-initiated religious expression. I intended to convey that one of my chief goals as an advocate has been to promote a perspective of the Constitution that is at odds with the perspective of the ACLU in those areas.

E. Would you be willing to recuse yourself in all cases involving the ACLU?

Response: As a judge, I could fairly evaluate any case brought before me in which the ACLU was involved. Should a party seek my recusal in any case brought before me, I will consult 28 U.S.C. §§455 and 144, as well as the Code of Conduct for U.S. judges, and recuse myself in any case where the law provided I should do so.

Guns and the Second Amendment

5. The following questions are about the case of *United States v. Emerson*. Although this was a Texas case, being decided by the 5th Circuit, you went out of your way to inject yourself into the

debate by filing an amicus brief for the State of Alabama in support of Timothy Joe Emerson. In fact, the State of Alabama was the only state to file an amicus brief in this case.

A. In your testimony, you noted that the Federal Rules of Appellate Procedure give you, as state attorney general, the right to file amicus briefs in courts of appeals without permission. However, this does not answer the question of why you chose to file an amicus brief in this case. What was the state of Alabama's interest in this case? How is that interest different from the other 49 states, which chose not to file amicus briefs?

Response: I filed an amicus brief in the *Emerson* case because I believed that an additional perspective might assist the court in interpreting a federal law. I cannot speak for the interests of the other states.

B. In the amicus brief you filed, you stated that the government's interpretation of this federal statute—which is designed to keep firearms out of the hands of those who are restrained from harassing, stalking, or threatening an intimate partner or child—would be a "sweeping and arbitrary infringement on the Second Amendment right to keep and bear arms."

Response: My brief contained that rhetoric in support of the argument of constitutional avoidance and statutory interpretation that I made.

C. Do you believe this statute is Constitutional? What is your opinion of the Fifth Circuit ruling in this case?

Response: I am persuaded by the decision of the Fifth Circuit that the statute is constitutional.

6. On July 12, 2000, you gave a speech at the Cato Institute entitled "Extortion Parading as Law: The War on Guns." In that speech, you characterized those who exercise their legal rights against gun dealers or manufacturers as "leftist bounty hunters."

I would like to share with you a story from my home state of Illinois, and I would like to know if you would characterize the victims in this story as part of the so-called "fourth branch of government" or a group of "leftist bounty hunters." In 1999, on the Fourth of July weekend, Benjamin Smith, follower of the white supremacist, so-called World Church of the Creator, attempted to purchase guns from a licensed gun dealer. However, he was denied because a background check turned up a prohibiting factor. So he turned to someone he knew would not perform a background check: gun trafficker Donald Fiessinger.

Over a two-year period, Mr. Fiessinger purchased 72 guns from the Old Prairie Trading Post in Pekin, Illinois. The gun store never even asked whether the weapons—mostly Saturday Night Specials—were for his personal use. The manufacturer did not place any reasonable conditions on its dealers to prevent large-volume sales to gun traffickers. As a result, Mr. Smith was able to

obtain two guns, which he used on his hate-filled shooting rampage across Illinois and Indiana, where he targeted racial and religious minorities. By the end, he had killed two people and wounded nine more. Five of the victims have joined in a lawsuit against the manufacturer and distributor of these weapons. On April 10, 2002, the court ruled that their case should not be dismissed, allowing a claim for creating a public nuisance against all defendants and a claim for negligence against the dealer. How would you characterize these victims?

Response: I would characterize these individuals as innocent victims of a senseless and brutal murderer.

7. In this same speech at the Cato Institute, you praised the ruling of a trial court in Cincinnati, which had dismissed the gun lawsuit filed by the city. However, this ruling has since been overturned by the Ohio Supreme Court. The Court of Appeal in my home state of Illinois, as well as those in New Jersey and New Mexico, also have upheld lawsuits against the gun industry. Many state trial courts have reached the same conclusion: that these types of cases have merit.

Given your strong position regarding lawsuits against the firearms industry—you went so far as to draft and lobby for the passage of a law providing the industry with immunity from municipal lawsuits in Alabama—would you be willing to recuse yourself from such lawsuits?

Response: As a judge, I could fairly evaluate any case brought before me. Should a party seek my recusal in any case brought before me, I will consult 28 U.S.C. §§455 and 144, as well as the Code of Conduct for U.S. judges, and recuse myself in any case where the law provided I should do so.

8. In 2001, the NRA awarded you the Harlon B. Carter Legislative Achievement Award. In presenting this award, the NRA's Institute for Legislative Action Executive Director Jay Baker praised you for launching "a comprehensive program of Second Amendment advocacy...the reach of which has extended far beyond the borders of [your] own state." Could you please describe that program?

Response: In his statement, Mr. Baker gave two examples of my record as "a strong defender of the Second Amendment" – the "leading role" I played in opposing municipal government lawsuits against the firearms industry and the amicus brief I filed in *U.S. v. Emerson*. My efforts in this area since 2001 include authoring a letter to Attorney General Ashcroft in July 2002, applauding his statement that the Second Amendment protects "the right of individuals to keep and bear firearms." The letter was co-signed by a bi-partisan group of Attorneys General of 17 states, including Delaware, Georgia, Idaho, Kentucky, Montana, Nebraska, North Dakota, Oklahoma, Pennsylvania, South Caroline, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming.

9. According to the Press Release issued by your office when you received this award, you helped draft and lobby for the passage of laws that preempted local gun control ordinances.

Could you please describe those ordinances and why you believe local jurisdictions should not be allowed to craft gun control policies specifically tailored to address their needs?

Response: Alabama law now requires a statewide uniform policy as to gun control and forbids local variations. The policy of our law, which I favored, allows every citizen of the State to enjoy the same rights of possession and use of firearms throughout the State. Our citizens are not left guessing about local variations.

Tobacco

10. I am concerned about your views on tobacco-related litigation. For decades, tobacco companies have misled Congress and the American people. While plying a highly addictive drug to our children, they have misled us about tobacco's harmful effects.

Litigation against the tobacco industry has been and continues to be an important tool for protecting the American people. Without this litigation, we might not have discovered the industry's deception. Without litigation, the tobacco industry would not have been compelled to compensate the American people for the public health problems that they have created.

That's why I am troubled by your vociferous public opposition to litigation against the tobacco industry and the role you played in opposing litigation by states against the industry. Some of your views lead me to question whether you could fairly judge any lawsuit against a tobacco company, or for that matter, any lawsuit against a powerful corporate interest.

In the late 1990's, you argued publicly and repeatedly that state lawsuits against the tobacco industry were legally unfounded and politically motivated. For example, in a *Wall Street Journal* editorial, you wrote:

> "This wave of lawsuits is about politics, not law, and money, not public health. The overwhelming majority of the lawsuits have been filed by Democratic attorneys general and politically-connected, liberal trial lawyers. Their agenda is in line with the Clinton administration's and threatens the entire business community, not just the tobacco industry. If they succeed, whom will they sue next?"

As you know, numerous Republicans have supported litigation against the tobacco industry, including Attorney General John Ashcroft, who is pursuing a lawsuit against the industry. Do you believe that the Justice Department's litigation is legally unfounded? Do you believe it is politically motivated?

Response: The Department of Justice's suit against the tobacco industry was originally based on three federal statutes, and is now proceeding under a RICO theory alone. *U.S. v. Philip Morris Inc.*, 116 F.Supp.2d 131 (D.D.C. 2000) (dismissing claims under the Medical Care Recovery Act and the Medicare Secondary Payer statute). This dismissal was similar to the reasoning of our Task Force Report. Because Alabama does not have a "little RICO" statute, I did not consider the strengths or weaknesses of that theory against

the tobacco industry. It is the responsibility of the federal judiciary to determine whether the lawsuit is legally unfounded. I have no views regarding whether the current litigation is politically motivated.

11. While serving as Deputy Attorney General of Alabama, you co-authored a report on behalf of Alabama's Task Force on Tobacco Litigation that recommended that Alabama not file suit against the tobacco industry. The study reads like a legal brief on behalf of the tobacco industry and rests on some conclusions that I find troubling.

You characterize the legal arguments supporting the states' lawsuits as "at best weak and at worst bizarre ... Our research into the various legal theories advanced by the states that have filed suit against the tobacco companies has lead us to the conclusions that all of the theories are either weak or would require a major departure from established law." You reject a number of different legal claims advanced by states, arguing that:

> "Virtually every smoker in Alabama has known (or at least should have known) for many years that cigarettes are dangerous. This knowledge makes it difficult for individual smokers to establish a cause of action against the tobacco companies and raises a number of affirmative defenses against the smokers and thus against the State. . . . This is a case in which the injured parties - the smokers - must have literally closed their eyes to avoid seeing a statement warning them of the dangers of smoking every time they reached for a cigarette in the last thirty years. Moreover, these written warnings aside, it has been common knowledge for many decades that cigarettes are unhealthy."

I find your conclusion disturbing. The existence of warning labels does not excuse decades of deceptive practices by the tobacco industry. For example, tobacco companies have committed consumer fraud by falsely representing that their light cigarettes deliver less tar and nicotine than regular cigarettes when in fact they intentionally designed light cigarettes to deliver similar levels of tar and nicotine when they are smoked. Based on the legal analysis in your report, do you believe that the tobacco industry's deceptive practices could establish a cause of action, despite the existence of warning labels?

> **Response: As the Task Force Report makes clear, the key difficulty for a smoker who seeks to maintain a claim for deception against the tobacco industry is the preemption analysis of the U.S. Supreme Court decision in *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992). Because such a claim might come before me as a judge should I be confirmed, I should not speculate further as to the scope of *Cipollone*. I stand by our analysis, in the Task Force Report, regarding the impropriety of a state lawsuit against the tobacco industry under Alabama law.**

12. The Justice Department points out in its proposed findings of fact that the tobacco industry's own internal documents demonstrate that the industry deliberately misled the American people about the harmfulness of cigarettes for decades and that the misconduct is ongoing. Here is a quote from the filing:

> "In short, defendants' scheme to defraud permeated all facets of defendants' conduct – research, product development, advertising, marketing, legal, public relations and communications – in a manner that has resulted in extraordinary profits for the past half-century, but has had devastating consequences for the public's health."

Based on the research you conducted in completing your report, do you agree with this conclusion? If so, would this make it easier to establish a cause of action against the industry?

Response: See my answer to Question 10.

13. In the task force report, you also wrote that:

> "We strongly suspect that a lawsuit against tobacco companies would provide aid and comfort to those who want to sue other firms that sell products that have been linked to health risks ... In short, the logic of the tobacco cases, once adopted, can be carried to new heights that are limited only by the imagination of the plaintiffs' bar. We cannot predict exactly what form a newer, broader doctrine of, for example, unjust enrichment or public nuisance would take following a successful tobacco suit in Alabama, but we are convinced that the newer doctrine would be more likely to generate lawsuits. We do not believe these doctrines should be expanded in such a fashion."

Conservatives often criticize judges who they allege construe the law in pursuit of their social agenda. Isn't your rationale for rejecting tobacco litigation the kind of "results-oriented" legal analysis that conservatives criticize?

Response: No. I saw no basis in Alabama law to support this kind of litigation. The factors that an executive officer of a state government may properly take into account in his or her decision-making can differ from those that are properly taken into account by a judge, although a judge might well consider the secondary and indirect consequences of any "novel" ruling he or she might make.

14. In opposing the states' lawsuits, you said, "This form of litigation is madness. It is a threat to human liberty, and it needs to stop." Please explain how the lawsuits against the tobacco industry constitute "a threat to human liberty."

Response: The states' tobacco lawsuits and their settlement dealt with public policy questions regarding the taxation and regulation of tobacco products that are squarely within the responsibility of Congress and state legislatures. The lawsuits thus took these questions out of the arena of robust public debate and political accountability, and put them into the less understood and less accountable forum of litigation. Over time, if the electorate comes to believe that litigation is the proper vehicle for resolving questions of taxation and regulation, it seems to me that the public's interest, participation, and faith in the political process will decline.

15. You also argued that "The tobacco issue, like so many other issues of public health, politics, and economics, does not belong in court." Why do lawsuits against the tobacco industry "not belong in court"?

Response: I strongly believe that issues of tobacco taxation and regulation are properly issues for resolution through the legislative process, rather than through litigation. I stand by our analysis, in the Tobacco Force Report, regarding the impropriety of a state lawsuit against the tobacco industry under Alabama law. If I am confirmed, and am presented with a lawsuit against the tobacco industry, I will resolve the case based on a careful examination of the record, the arguments of the parties, and the relevant law.

16. According to media reports, you have received campaign contributions from tobacco lobbyists. In light of these contributions, and your strongly-held views on litigation against the tobacco industry, would you be willing to recuse yourself in any lawsuit against the tobacco industry? If not, why not?

Response: Despite my strong personal belief that smoking is harmful, and that cigarette companies have engaged in unethical behavior, I was able to evaluate the legal case against the industry fairly, and I concluded that it would be improper to file such a suit. I am confident that I can evaluate other disputes regarding the industry in the same disinterested fashion. Should a party seek my recusal in any case brought before me, I will consult 28 U.S.C. §§455 and 144, as well as the Code of Conduct for U.S. judges, and recuse myself in any case where the law provided I should do so.

17. Your fellow state attorneys general were highly critical of your vociferous opposition to their lawsuits. For example, Arizona Attorney General Grant Woods, a Republican, said, "He's been attorney general for about five minutes, and already he's acted more poorly than any other attorney general." Mississippi Attorney General Michael Moore said, "Bill Pryor was probably the biggest defender of tobacco companies of anyone I know. He did a better job of defending the tobacco companies than their own defense attorneys." What is your response to these comments?

Response: I respectfully disagree with them.

Ideology

18. During the 2000 presidential campaign, President Bush pledged that he would appoint "strict constructionists" to the federal judiciary, in the mold of Supreme Court Justices Clarence Thomas and Antonin Scalia. You publicly praised that pledge, prior to the 2000 election.

A. How would you describe the judicial philosophy of Justices Scalia and Thomas?

Response: I would hesitate to describe their judicial philosophy, but understand that each has described his approach as originalism or textualism.

B. How would you describe your own judicial philosophy, and how do you believe it is different from or similar to Justices Scalia and Thomas?

Response: I believe that the role of a judge in our system of government is to interpret laws based on the principles of those laws when they were enacted. I cannot fairly compare or contrast my philosophy with that of Justices Scalia and Thomas.

C. As a judge, would you interpret the Constitution strictly according to its original understanding in 1789?

Response: As a court of appeals judge, I would interpret the Constitution in conformity with the decisions of the Supreme Courts and the precedents of my court. Otherwise, I would strive to interpret the text and structure of the Constitution reasonably.

D. Do you think that the Supreme Court's most important decisions in the last century – *Brown v. Board of Education*, *Miranda v. Arizona*, *Roe v. Wade* – are consistent with strict constructionism? Why or why not?

Response: I believe that the holding of *Brown* is consistent with the text and structure of the Constitution. I believe that *Roe* and *Miranda* were unsupported by the text and structure of the Constitution. As a judge, I would be duty-bound to follow the precedent of the Supreme Court.

E. Do you still believe – as you stated in 2000 – that *Roe* and *Miranda* represent "the worst examples of judicial activism"?

Response: I believe *Roe* is the worst example of judicial activism. I believe *Miranda* is an example of judicial activism. As a judge I would be obligated, however, to follow and would follow these and all other precedents of the Supreme Court.

Federalism

19. In one of your many federalism cases before the Supreme Court, *United States v. Morrison*, you asked the Court to strike down an important provision of the Violence Against Women Act.

D. You said about this case: "The continuing existence of violence in our society is hardly proof of bias against its victims. In fact, statistics show that any bias that does exist runs in favor of – not against – women. . . . The safety of women – and

men – is best protected by encouraging and strengthening state efforts, not by allowing the states to pass the buck to federal bureaucrats and judges." Do you believe that men are discriminated against in our society more often than women? Why or why not?

Response: No. My argument was that states, as they should be, are responsive to the interests of women who are victims of crime.

E. You also stated that: "The logical stretch needed to make the constitutionally required connection between gender-motivated violence and interstate commerce would, if accepted by the Court, leaves no activity that Congress is without power to regulate. Congress could regulate sleep, for example, by 'finding' that insomnia substantially affects interstate commerce by way of decreased productivity." Do you believe that Congress has power under the Commerce Clause to pass any parts of VAWA? If so, which ones?

Response: I am unaware of other provisions of VAWA that were enacted based on the commerce clause. If confirmed as a federal judge, I would resolve this kind of issue based on a close examination of the arguments of the parties, the record, and all relevant laws and precedents.

20. Although you testified at your hearing that you don't like the term "states' rights," you admitted that you have used the term in your political career. Indeed, your career has been spent in the shadow of states' rights. Most people who have taken such positions maintain that they were not opposed to civil rights but only to the power of the federal government to protect them. History has not been kind to those who concealed their sentiments in this legal distinction.

Mr. Pryor, you have said over and over again – to your Federalist Society colleagues, to the *Wall Street Journal*, and to others – how much you value federalism. You have become a predictable, reliable legal voice for entities seeking to limit the rights of Americans in the name of states' rights.

A few months ago, we had a confirmation hearing for Jeffrey Sutton, who now sits on the 6th Circuit. You hired him to represent Alabama in the case *Board of Trustees of the University of Alabama v. Garrett*. Patricia Garrett was a breast cancer survivor who suffered employment discrimination because she needed treatment for her cancer, yet you filed a brief saying that Ms. Garrett had no recourse under the Americans with Disabilities Act because on the grounds that Congress did not have authority to pass it. The Supreme Court's decision denied basic rights to disabled peopled in America.

I asked Jeffrey Sutton about the position advocated in the Garrett case. He testified that he should not be held accountable for the arguments he made because "I was not involved in the underlying decisions of the University of Alabama in terms of what to do with Ms. Garrett. I wasn't involved in the development of their constitutional arguments in the District Court and in the Court of Appeals." You, Mr. Pryor, were involved in the development of such arguments.

A. Mr. Pryor, you argued in this case for a vast restriction of the rights of disabled Americans. Did you ever give any thought as to whether or not that was the just thing to do?

Response: I fulfilled my duty as Attorney General of Alabama to make arguments consistent with the law as I understand it. The U.S. Supreme Court agreed with the arguments I made.

B. Do you believe that states' rights always trump victims' rights in cases like this when the two are in conflict?

Response: No. I am unaware of any case law or other principle of law that requires states' rights always to trump victims' rights.

C. In your view, when would a victim's rights trump a state's rights?

Response: In my view, a victims' rights would trump a state's rights when the Constitution so provides, as in the case of violations of the fourteenth amendment.

D. Has there ever been a case in which you decided not to make a particular argument because it would restrict the rights of discrimination victims?

Response: I decide which arguments to make based upon my oath to uphold the law.

21. You gave a speech in 2001 before the American Legislative Exchange Council in which you said: "With the New Deal, the Great Society, and the growing federal bureaucracy, we have strayed too far in the expansion of the federal government, at the expense of both individual liberty and free enterprise. By restoring the balance of

federalism, we can focus the federal government on our economic prosperity." Mr. Pryor, please tell me how you think society has "strayed too far" in expanding our government?

Response: My general political beliefs are a matter of public record. I am a conservative. It is far from unusual for conservative politicians to make remarks like those of mine that you quote in this question. Indeed, the idea that the federal government is too large and too costly can fairly be said to be a core belief of conservative politicians and officeholders, and the millions of Americans who agree with and vote for them.

If confirmed, my general political beliefs will not interfere in any way with my judicial oath to uphold the Constitution and laws of the United States. The central importance of the distinction between the judicial function on the one hand, and the legislative and executive functions, on the other, is also a core conservative belief – and one that I emphatically claim for myself.

Abortion Rights

22. You have stated that "[i]n the 1992 case of *Planned Parenthood v. Casey*, the Court preserved the worst abomination of constitutional law in our history: *Roe v. Wade*." You have also said of the day *Roe* was decided: "I will never forget Jan. 22, 1973, the day seven members of our highest court ripped the Constitution and ripped out the life of millions of unborn children."

A. Given your hostility to *Roe v. Wade*, how can you be expected to be open-minded in cases dealing with the gray area of abortion rights?

Response: My record as attorney general demonstrates my ability to follow faithfully decisions of the Supreme Court with which I disagree, as my oath of office requires.

B. Do you believe in and support a constitutional right to privacy?

Response: I would have no reluctance whatsoever in applying the longstanding precedents of the Court in this area.

23. In your 2001 speech before the American Legislative Exchange Council, you stated: "First, the federal government has no business micromanaging the daily internal operations of state governments. Second, Congress has no authority to regulate areas that are not mentioned in the Constitution. Third, Congress should be deadly serious about the exercise of its enumerated powers." Abortion is not mentioned in the Constitution. Does that mean you believe that Congress should not have passed a law banning late-term abortions?

Response: Congress has the authority to pass laws under various provisions of the Constitution, and its acts are presumed constitutional.

Gay Rights

24. You acknowledged at your confirmation hearing that you rescheduled a family vacation to Disney World because it coincided with an annual day-long event at Disney World that caters to gay and lesbian families. If you are confirmed for the 11th Circuit, do you believe that gay and lesbian litigants that came before you would feel that you are open-minded and fair?

Response: My record as attorney general demonstrates that I can be open-minded and fair. If confirmed as a federal judge, I will strive to follow the law faithfully in all cases before me.

25. Mr. Pryor, in your brief in *Lawrence v. Texas*, you essentially argue that sodomy is a chosen behavior unworthy of constitutional protection. You do not recognize gays and lesbians as people worthy of the same rights and protections as other Americans. Your position on homosexuality comes down to this – gay people have two choices: celibacy or lawbreaking. Isn't that correct?

Response: No. I argued that the decision of the Supreme Court in *Bowers v. Hardwick* was still good law. I also argued that state legislatures are the proper place to resolve this debate, and I noted that several of those legislatures have repealed sodomy laws in recent years. Of course, gays and lesbians are entitled to the same protections as any other Americans under the Constitution, and as a judge I will apply faithfully the Constitution and laws of the United States.

26. You wrote in your *Lawrence* brief that a constitutional right to gay sexual activity "must logically extend to activities like prostitution, adultery, necrophilia, bestiality, possession of child pornography, and even incest and pedophilia." Do you believe that there is no difference in permitting gay sexual activity and permitting incest and pedophilia?

Response: I believe there are differences in the sexual activities you mentioned. My argument in *Lawrence* was that a broad right to consensual sex, as Justice White stated in *Bowers*, could lead to the protection of other sexual activities.

27. Do you agree with the recent comments of Senator Rick Santorum that "if the Supreme Court says that you have the right to consensual [gay] sex within your home, then you have the right to bigamy, you have the right to incest, you have the right to adultery?"

Response: Please see my answer to question 26.

Federalist Society

28. You are a member and officer of the Federalist Society. Over half of the circuit court nominees we have seen this year are members of the Federalist Society. Yet fewer than 1% of the lawyers in America belong to this group. Why do you think that so many of President Bush's circuit court nominees are members of the Federalist Society?

Response: I do not know.

29. Do you agree with the following assertion from the Federalist Society's statement of purpose?

> "*Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society. While some members of the academic community have dissented from these views, by and large they are taught simultaneously with (and indeed as if they were) the law.*"

Response: Yes.

30. According to its mission statement, one of the goals of the Federalist Society is "*reordering priorities within the legal system to place a premium on individual liberty, traditional values, and the rule of law.*" Do you believe that certain priorities need to be reordered? If so, which ones? What is your belief about the role of federal judges and the courts in reordering such priorities? On which traditional values should there be a premium, and why?

Response: I believe that individual liberty, traditional values, and the rule of law are principles embedded in the Constitution, which federal judges are sworn to uphold. I support these principles, and I support the Constitution. The traditional values of equal justice, fair play, protection of political debate and dissent, and religious freedom are values on which there should be a premium, because these values are protected by the Constitution.

Written Questions for William Pryor
Nominee to the U.S. Court of Appeals for the Eleventh Circuit
Submitted by Senator John Edwards

Question #1

During your testimony, you stated: "I clerked for John Minor Wisdom. I'm proud that I clerked for him, especially because of his record on race, and especially because he recognized the difference between what the Constitution requires in a balance of federal and state power and the flawed and totally discredited and rightly discredited views of nullification and interposition that were advocated by southern populace back in the 1950s and '60s."

However, Judge Wisdom expressed a view toward federalism considerably different than the one you have advocated. For example, in a 1982 speech, Judge Wisdom said:

> "My friends and I grossly underestimated the resistance that desegregation would encounter.
>
> "That resistance is reappearing even today in anti-busing bills in Congress, a Congressional debate over extension of the Voting Rights Act of 1965 and in a Justice Department less enthusiastic in supporting civil rights than the Justice Department of the 60's and 70's . . . Our court had strong opposition from six state legislatures and state governors, year in, year out. One year the state of Louisiana had five extra sessions of the Legislature, each one designed to overcome decisions of our court.
>
> "Senators, Congressmen, governors and local politicians eventually changed their attitude toward minorities. This is not attributable to a change of heart but to the Voting Rights Act of 1965, now before Congress for extension, enfranchising blacks previously disenfranchised by many ingenious devices.
>
> "My experience confirms a longstanding belief: It is a fortunate thing for this country that we live under a Hamiltonian theory of Federalism rather than a Jeffersonian theory. The civil rights and civil liberties we now enjoy would never have evolved as far as they have if our Federal courts had deferred to the states to the extent that Jefferson wanted deference to the states, and to the extent that some persons and courts would have us now defer to states' rights and to state courts.
>
> "This country lives and thrives and enjoys Jeffersonian freedoms and rights under what is primarily a Hamiltonian view of Federalism: A strong national government adequate to deal with the exigencies of the time and the complexities of a growing nation.

"I do not know what is meant by those who talk today about the "new federalism." It has some semblance of meaning if it refers to a return of some social and economic responsibility for local interests to the states and to the cities. But that was the old federalism.

"The crowning glory of American federalism is not states' rights. It is the protection the United States Constitution gives to the private citizens against all wrongful government invasion of fundamental rights and freedoms. When the wrongful invasion comes from the state, and especially when the unlawful state is locally popular or when there is local disapproval of the requirements of Federal law, Federal courts must expect to bear the primary responsibility for protecting the individual.

"This responsibility is not new. It did not start with the school segregation cases. It is close to the heart of the American Federal union. It is implicit in the replacement of the Articles of Confederation by the Constitution. It makes federalism workable - when Federal judges perform firmly and fully their historic, destined, decision-making role in American federalism."

A. How does your view of federalism differ from that expressed by Judge Wisdom?

Response: Aside from the criticisms of Congress and the Justice Department, which I cannot evaluate without personal knowledge, I agree with the perspective of Judge Wisdom about federalism in the question above.

B. Do you agree with Judge Wisdom that "[t]he civil rights and civil liberties we now enjoy would never have evolved as far as they have if our Federal courts had deferred to the states to the extent that Jefferson wanted deference to the states, and to the extent that some persons and courts would have us now defer to states' rights and to state courts?" If not, please explain why you disagree.

Response: Yes, I agree with Judge Wisdom's statement.

Question #2

In a 2000 article, "The Demand for Clarity: Federalism, Statutory Construction and the 2000 Term," you wrote that you hope to "participate in this next phase of the operation of James Madison's 'double security.'" You claimed that "the federalism decisions of the Rehnquist Court are Madison's 'double security" in operation: the States and the people, through litigation, control the unauthorized use of federal power, and the Court performs its role in the control of the federal government itself."

However, your praise of the Rehnquist Court's federalism decisions fails to recognize an important aspect of Madison's "double security," i.e., the crucial role the federal government plays in curtailing abuses by the state – "the different governments will control each other." And your record is consistent with your favoritism toward

controlling federal power while showing an outright hostility toward the federal government's efforts to check state power, particularly when it comes to preventing states' violations of civil rights. You occasionally pay lip service to this prong of Madison's double security, but your actions speak otherwise.

For example, in a speech to the Atlanta Lawyers' Chapter of the Federalist Society, you mentioned that "the Constitution fosters the right climate for growth when it simply forbids state governments from depriving citizens of basic civil and economic rights." However, you have repeatedly attacked efforts by the federal government to enforce basic civil and economic rights, encouraged federal courts to restrict civil rights legislation and heartily praised courts when they did so.

Can you cite any speech, article or other public pronouncement in which you praised a court for upholding a law that protected the civil rights of individuals, including minorities, women, gays or the disabled?

Response: Following the unanimous decision of the Supreme Court, in *Sinkfield v. Kelley*, 531 U.S. 28 (2000), in which my office successfully argued in defense of majority black voter districts for the Alabama Legislature, I praised the Supreme Court. My November 27, 2000, press statement "Pryor Hails U. S. Supreme Court Order Dismissing Legislative Redistricting Suit," can be found at www.ago.state.al.us/news_archives.cfm.

I have also praised decisions of federal district courts in Alabama that upheld majority black legislative, congressional, and State Board of Education districts that I defended under the Voting Rights Act. My press statements concerning these developments can be found at the web address noted above: "Federal Court Rejects Challenge of Legislative Districts" (July 11, 2002; "Attorney General Bill Pryor said today he is delighted" with the decision in *Montiel v. Davis*, 215 F.Supp.2d 1279 (S.D. Ala. 2002)); "Pryor Wins Dismissal of Congressional Redistricting Lawsuit" (April 30, 2002; "Attorney General Bill Pryor said today he is pleased that the U.S. District Court for the Middle District has granted his request to dismiss federal litigation regarding the redistricting of Alabama's Congressional seats."); "Federal Court Grants Pryor's Request to Dismiss Challenge to B.O.E. Districts" (April 18, 2002; "Attorney General Bill Pryor said today he is pleased that the U.S. District Court for the Southern District of Alabama has granted his request to dismiss federal court litigation that challenged State Board of Education redistricting."); "Federal Appeals Court Grants Pryor's Request To Uphold Dismissal of Challenge To B.O.E. Districts" (February 24, 2003; "Attorney General Bill Pryor said today he is pleased" with the Eleventh Circuit's action in *Montiel v. Davis*, 62 Fed. Appx. 318 (11th Cir. 2003)).

I have also praised the decision of the Supreme Court in *Good News Club v. Milford Central School District*, in which my office filed an amicus brief that argued in support of the first amendment rights of a group of elementary school students to meet for religious expression on the property of a public school after regular school

hours. (September 2, 2002, Press Statement, "Pryor Says Flagpole Prayer Meetings are Protected by First Amendment")

Question #3

During your testimony, you repeatedly stated that you would not inject your personal views into decision-making nor would you refrain from upholding the law, even when it conflicts with your personal views. You admitted that, as Attorney General, you were a vigorous advocate, but that, "as a judge, I would have to do my best to determine from the precedents what the law actually, at the end of the day, requires." However, you have praised and encouraged this kind of behavior in federal judges.

In your previously noted article, you effusively praised the decision in *Westside Mothers v. Haveman*, 133 F. Supp. 2d 549 (E.D. Mich., 2001) - a blatant example of judicial overreaching designed to reach a particular political goal.

Ignoring Supreme Court precedent, Judge Cleland held in *Westside Mothers* that the Medicaid Program is merely a contract between the state and federal government and that laws passed by Congress pursuant to its power under the Spending Clause are not the supreme law of the land. The Sixth Circuit Court of Appeals unanimously reversed Judge Cleland, finding his decision to be poorly reasoned, contrary to well-settled precedent and binding precedent. In other words, he got it plain wrong.

Not only was Judge Cleland's decision just flat out wrong, it was extraordinarily mean-spirited. Had this ruling stood, about 40 million people would have become uninsured overnight. It would have effective turned Medicaid into a block grant program because it removes the ability of poor and disabled people to sue for benefits.

Nevertheless, you called this decision "brilliant," and "scholarly" and urged that every serious Federalist read it. You said it represented the "next frontier of federalism cases." You even went so far as to call it "sublime." I can't help but wonder what this says about your ability to apply the law fairly and accurately without letting your personal views get in the way.

A. Do you believe that Judge Cleland's personal views in any way affected his decision-making or do you believe that he reached his decision based solely on the applicable law and precedents? Please explain.

Response: I was impressed by the lengthy opinion of Judge Cleland and have no reason to believe that his opinion was based on any personal views. I would expect from his extensive discussion of case law decided over the past century that Judge Cleland reached his decision in good faith based solely on his reading of the applicable law and precedents. I have no personal knowledge, however, of Judge Cleland's process in deciding this case.

B. Merriam Webster Dictionary defines "sublime as "lofty, grand, or exalted in thought, expression, or manner; of outstanding spiritual, intellectual, or moral worth; tending to inspire awe usually because of elevated or transcendent excellence." What about Judge Cleland's decision in *Westside Mothers* made it worthy of such praise?

Response: I was impressed by Judge Cleland's extensive research and discussion of sovereign immunity and the application of *Ex parte Young*.

C. Can you name any other cases that you view as "sublime?" Explain.

Response: Yes. I believe that the majority opinion of the Supreme Court written by Justice Kennedy in *Alden v. Maine* was a sublime exposition of the sovereign immunity of state governments under the Constitution.

D. Do you believe that the Sixth Circuit was wrong to reverse Judge Cleland? Explain.

Response: I do not have a judgment whether the Sixth Circuit was wrong to reverse Judge Cleland, because I have not read all of the briefs, the record, and the applicable case law in the *Westside Mothers* case.

Question #4

You obviously have a real commitment to advancing your view of statutory and constitutional interpretation. You expressed hope that you could participate in the "next frontier" of federalism cases that the lower court's *Westside Mothers* decision represented. Please explain why, given your obvious eagerness to participate in this "next frontier," you would so readily give it up to go on the federal bench, where you would be expected to set aside these views and apply the law, so much of which conflicts with your deeply held personal views?

Response: As much as I enjoy being an advocate, I cannot imagine a greater or more enjoyable privilege than serving as a circuit judge of the United States. Although I sometimes disagree with decisions of federal courts, it is with respect, incorrect to say that much of the law conflicts with my personal views. I revere the Constitution of the United States, and I would be honored to defend the Constitution as a federal judge. I know this from my earliest experience as a lawyer, because I thoroughly enjoyed working as a law clerk to the late Judge John Minor Wisdom of the U. S. Court of Appeals for the Fifth Circuit.

Question #5

You, along with nine state attorneys general, filed a brief urging the Supreme Court to review the Sixth Circuit's decision in *Grutter v. Bollinger*. In that case, the Sixth Circuit upheld as constitutional the admissions policy of the University of Michigan's law school, which included affirmative action. However, in your brief, you, and the other

state attorneys general, did not urge the Court to reach a particular outcome, reserving that issue for an *amicus* brief on the merits.

A. Given your obvious willingness to represent the views of the state of Alabama in numerous briefs you have filed with the Supreme Court, why did you choose not to file a brief on the merits when the Supreme Court granted certiorari in this case?

Response: Because my state is still in the last stages of litigation involving the desegregation of higher education, my state did not have an interest in the particular outcome of *Grutter v. Bollinger*. I hoped that the Supreme Court would resolve the conflict in the decisions of the circuit courts of appeals before my State resolved its desegregation litigation. In that event, my state universities and colleges would have clear guidance on the issues of affirmative action raised by *Grutter v. Bollinger* when the desegregation litigation in Alabama ends.

B. If you had filed a brief in this case, what result would you have urged the Supreme Court to reach?

Response: I do not know. I know that I will strive to follow the decision of the Supreme Court rendered on June 23, 2003.

Question #6

In speeches, writings, and briefs, you have expressed the view that the federal government has remarkably little power to protect the environment under the Constitution's Commerce Clause. In particular, you have advocated "in favor of limiting the reach of the federal government through the Commerce Clause into traditional areas of state environmental primacy."

A. What do you consider "areas of state environmental primacy"?

Response: I believe that land use regulation and conservation of wild animals are areas of state primacy.

B. Do you believe that the federal government has the power under the Commerce Clause to regulate in these areas?

Response: The Supreme Court has ruled that Congress has broad authority to regulate any activity that is economic in nature. See *Wickard v. Filburn*, 317 U.S. 111(1942).

Question #7

In Gibbs v. Babbitt, you filed a brief asking the Supreme Court to review and reverse an opinion upholding the federal government's authority under the Endangered Species Act to prevent the killing of red wolves on private land. Gibbs was a Fourth Circuit case involving the introduction of red wolves in North Carolina. Alabama is in the Eleventh Circuit, so the Gibbs ruling had little if any impact on the law in Alabama.

A. Why did you choose to use your office's scarce, taxpayer-funded resources to seek Supreme Court review of this case?

Response: One of my assistants, Jack Park, asked me if he could write an amicus brief in *Gibbs v. Babbitt* in additions to his regular duties at the office. I gave him permission to do so.

B. In Gibbs v. Babbitt, you urged the Supreme Court "to address the constitutional issue raised in this case," and you asked the Court to rule that "[a]pplication of the red wolf rule to private lands cannot be sustained as an exercise of Congress's powers under the Commerce Clause." Supreme Court review was necessary, you wrote, because otherwise, "it is inevitable that some other endangered species will find its way onto private property and cause a criminal prosecution, the derailing of a hospital project, or other injury to State and local interest." Is it your view that the Endangered Species Act is unconstitutional as applied to private lands?

Response: I have not studied or formed an opinion on this issue. If confirmed as a federal judge, and this issue came before me, I would closely examine the arguments of the parties, the record, and all relevant laws and precedents to resolve the dispute before me.

C. Are habitat protection and species reintroduction efforts across the country impermissible?

Response: I have not studied or formed an opinion on this issue. If confirmed as a federal judge, and this issue came before me, I would closely examine the arguments of the parties, the record, and all relevant laws and precedents to resolve the dispute before me.

D. Do you believe that federal environmental protection efforts cause "injury to state and local interest[s]"?

Response: I do not have a judgment on this issue. If confirmed as a federal judge, and this issue came before me, I would closely examine the arguments of the parties, the record, and all relevant laws and precedents to resolve the dispute before me.

Written Questions for Attorney General William Pryor
from Sen. Russ Feingold

1. When was Republican Attorney Generals Association formed? Who was involved in its founding? What role did you play in its founding?

Response: The Republican Attorneys General Association (RAGA) was formed in 1999. The Chairman of the Republican National Committee, (RNC), Jim Nicholson, and his staff decided to create RAGA after consulting several state attorneys general, including myself, Mark Earley of Virginia, Charles Condon of South Carolina, Jane Brady of Delaware, John Cornyn of Texas, and Don Stenberg of Nebraska.

2. News reports describe different relationships between RAGA and the Republican National Committee. Some reports claim that RAGA seeks donations from corporate sponsors and that some of that money is later donated to the Republican National State Elections Committee (RNSEC), while other reports claim that RAGA has a membership fee that is later donated, in part, to the RNC. On the other hand, a Washington Post article stated, "Contributions solicited by [RAGA] go into the 'soft money' account of the RNC and are reported in the RNC's monthly filings with the Federal Election Committee." Please clarify the relationship between RAGA and the RNC. Did this relationship change after enactment of the Bipartisan Campaign Reform Act of 2002 (BCRA)? If so, how?

Response: Before the enactment of the Bipartisan Campaign Reform Act of 2002, RAGA was created by the RNC, but I do not know its exact past relationship with the RNC or the RNSEC. When the Bipartisan Campaign Reform Act of 2002 became effective, RAGA ceased its relationship with the RNC.

3. Please specify your role in RAGA from its founding to the present, including the dates during which you served as Treasurer or in any other capacity.

Response: In 1999 and 2000, I served as Treasurer of RAGA. In 2001, I served as Chairman of RAGA. In 2002, I served as Immediate Past Chairman of RAGA. Since 2002, I have not served in any official capacity with RAGA.

4. Who administered RAGA and how did it operate? Were there different committees of RAGA, such as a membership committee, policy committee, or fundraising committee? Please identify any such committee and the individuals who served on them.

Response: RAGA was administered by staff employed by the RNC. The only committee of RAGA of which I am aware was the executive committee. The members of this committee during my service on it were the officers of RAGA. To the best of my knowledge, the persons who served on the executive committee in

1999 to 2002 were Charles Condon of South Carolina, Mark Earley of Virginia, Jane Brady of Delaware, John Cornyn of Texas, Mark Shurtleff of Utah, Wayne Stenjhem of North Dakota, Jerry Kilgore of Virginia, and Steve Carter of Indiana.

5. Did RAGA keep membership or donor records of any kind during the time that you were active in the organization? Who kept those records and where are they at this time? If the records are or were kept by the Republican National Committee, please identify the custodian of those records and provide current contact information.

Response: During my service with RAGA, all membership or donor records of RAGA were maintained by the RNC. I do not know the location or custodian of these records.

6. How were potential members of RAGA identified? Who participated in determining what potential members would be contacted and how they would be contacted?

Response: The staff of RAGA (employees of the RNC) identified potential members of RAGA and determined how to contact prospective members.

7. Describe the methods by which potential members to RAGA were asked to be members and to contribute to the RNC, the RNSEC, or any other fund or account.

Response: Potential members of RAGA were, to my knowledge, contacted by phone, in person, and by mail.

a. Did you personally speak to, or contact by mail or by phone, any potential member of RAGA about joining the organization? How often did you make such contacts? Where did your contacts with potential members of RAGA take place? If they were made by phone, from where did you make such calls? Approximately how many personal solicitations for membership in RAGA did you make?

Response: When requested by staff of RAGA on private properties and at times suggested by that staff, I spoke to potential members of RAGA about contributing to the RNSEC. Some of these solicitations were made by phone at offices of RAGA. Others were made in visits to the offices of the prospective donors. Because I did not keep records of these solicitations, I do not know how many solicitations occurred nor do I recall the locations and times of these solicitations.

b. Did you make solicitations at RAGA events? If so, please list and describe all such solicitations.

Response: I attended several RAGA events and spoke in support of the fundraising efforts of RAGA. Because I have not kept records of these solicitations, I am unable to list and describe them.

c. Did you ever indicate to a potential member of RAGA or donor to the RNC or RNSEC that some portion of a contribution would or might benefit your own campaign for Attorney General?

Response: No. I did not identify how contributions to the RNSEC would be expended other than to support the general goal of electing Republicans to office.

d. Did any member of RAGA also contribute directly to your campaign? If so, which corporation and in what amount?

Response: Because I have never maintained records of RAGA membership, I do not know whether a RAGA member contributed directly to my campaign.

e. Approximately how many companies were contacted to solicit membership in RAGA. Approximately how many members did RAGA have? How much did a membership cost?

Response: Because I have never maintained records of RAGA membership, I do not know how many companies were contacted nor the number of members of RAGA. The membership amounts during my tenure with RAGA were $5,000, $10,000, $15,000, and $25,000.

f. Did anyone in your employ or under your direction speak to, or contact by mail or by phone, any potential member of RAGA about joining the organization? Please describe how you as Treasurer of RAGA were involved in these contacts. Did you participate in any meetings with individuals who made solicitations on behalf of RAGA? Please describe how often such meetings occurred and what was discussed in these meetings?

Response: To my knowledge, the only persons, other than myself or fellow state attorneys general, who solicited a contribution on behalf of RAGA were the staff of RAGA who were employees of the RNC. See answer to question 7(a) above regarding my involvement in those contacts. Please see my answer to question 7(b) regarding meetings at RAGA.

8. Please list all speeches or addresses in which you described or discussed RAGA to or with the audience and provide copies of prepared text or transcripts of each such speech or address.

Response: I have provided to the Committee copies of all written speeches in which I ever mentioned RAGA. I have no knowledge of any other speeches in which I ever mentioned RAGA.

9. What were the benefits of membership in RAGA? If there were different levels of membership, indicate the benefits of each level. Were members invited to special

meetings with you or any other Republican Attorney General? Please describe each such meeting that you attended or of which you are aware.

Response: Members of RAGA were invited to meetings of RAGA. The different levels of membership were $5,000, $10,000, $15,000, and $25,000. Depending on their level of membership, members received invitations to various RAGA events attended by any number of attorneys general, including myself. I do not recall the specific numbers of invitations. I recall attending meetings in New Orleans, LA; Kiawah Island, SC; Williamsburg, VA; Chicago, IL; New York, NY; Washington, D.C.; Austin, TX; and Fort Lauderdale, FL.

10. During the period you served as Treasurer of RAGA, did you receive reports on the fundraising for and membership of RAGA? If so, how often were you apprised of the progress of RAGA fundraising and membership and in what form was that information conveyed to you? Did you continue to receive any such information after you stepped down from your position as Treasurer?

Response: During the period that I served as an officer of RAGA (including Treasurer), I received oral and home e-mail reports from RAGA staff on the fundraising totals of RAGA. These reports did not list or otherwise identify contributors to RAGA. This information was provided on a monthly basis. I stopped receiving this information after I ended my service as an officer.

11. Are you aware of any companies in the State of Alabama that are or were members of RAGA? Were you involved in the solicitation of any of these companies? If so, which companies?

Response: I am unaware of any Alabama companies being members of RAGA.

12. Please describe how you balanced your role as Treasurer and member of RAGA, a political organization, with your duties as Attorney General.

Response: My duties as Attorney General have always taken priority over any political activity of my party.

a. What steps did you take, if any, to make sure that companies that were the subject of pending investigations or legal action were not solicited for membership in RAGA?

Response; I am apprised every week of any investigations or legal actions of my office. To my knowledge, I never solicited for RAGA a contribution from any person who was the subject of an investigation or legal action of my office.

b. Did you or any RAGA official make a solicitation of a corporation that was the subject of an ongoing or pending investigation, settlement negotiation, or lawsuit involving the Alabama State Attorney General's office? If so, please describe in detail.

Response: No, not to my knowledge.

c. Did your office file any cases against or conduct any investigations of an individual or corporation who has ever contributed to RAGA? Please identify any such case or investigation.

Response: Because I never maintained records of RAGA contributors I am not aware of such an investigation or lawsuit.

d. Did your office ever investigate but not file a case against a RAGA member? Please identify any such investigation and indicate the reasons that further action was not taken. (If any such investigations are not public knowledge, you may respond separately in a document that will be kept confidential by the committee.)

Response: I am not aware of any instance where my office investigated a member of RAGA.

13. Did you participate in any discussions with any other state Attorney General or with staff at the RNC about how the money raised by RAGA would be used?

Response: I understood from my discussions with the staff of the RNC that funds raised by RAGA would be deposited in accounts of the RNSEC. I also understood from the staff of the RNC that the RNC intended to assist candidates in races for state attorneys general in a manner determined by the RNC.

14. How did RAGA cover its administrative costs?

Response: I understood that the administrative costs of RAGA were to be borne by the RNC.

15. At your hearing, you testified that you have an obligation to make a reasonable argument in defense of challenged state statute, even when you strongly disagree with it. Does this obligation include appealing an adverse ruling from a lower court?

Response: This obligation includes an appeal from an adverse ruling when a reasonable argument can be made on appeal.

16. As noted in your hearing, prior to your becoming Attorney General, the Attorney General's office defended § 16-1-28 of the Alabama Code 1975 against a constitutional challenge in *Gay Lesbian Bisexual Alliance v. Pryor*. The district court found the statute unconstitutional. In your opinion, did § 16-1-28 of the Alabama Code 1975, the statute challenged in *Gay Lesbian Bisexual Alliance v. Pryor* meet, what Sen. Sessions described in his questioning as the "throw up test"?

Response: I did not believe that I could make a reasonable argument in defense of section 16-1-28 of the Code of Alabama in the light of the ruling of the district court.

17. You indicated at the hearing that the appeal in *Gay Lesbian Bisexual Alliance v. Pryor* was filed by Attorney General Sessions. You stated, "[b]y the time the decisions came down, I was Attorney General, but I did not file any papers to quarrel with the decision because, in fact, I agreed with it. When we worked together in the Attorney General's office, I declined to participate in that case for General Sessions because I had agreed with the district court ruling, and I agreed with the Eleventh Circuit ruling." If you disagreed with the position that the state was taking in the case, why didn't you withdraw the appeal when you had to power to do so upon taking office as Attorney General?

Response: Out of respect for the legal arguments made by my predecessor in office in an appeal already under submission to the Eleventh Circuit, I did not withdraw the appeal. The State did not attempt to enforce this statute during the pendency of this appeal.

18. After taking office as Attorney General, did you discontinue any lawsuit or withdraw any appeal that had been pursued by the previous Attorney General?

Response: I do not recall discontinuing a lawsuit or appeal pursued by my predecessor upon my taking the Office of Attorney General of Alabama.

19. Please list and describe all actions you took as Attorney General that in your view demonstrate that you can be fair and impartial in cases involving gays and lesbians despite your personal feelings about their lifestyle.

Response: My entire tenure as Attorney General of Alabama demonstrates my fidelity both to the rule of law and my oath to uphold the Constitution. My decision not to seek rehearing or review of any issue decided by the Eleventh Circuit in *Gay Lesbian Bisexual v. Pryor* demonstrates my specific impartiality regarding legal controversies involving homosexuals.

20. You have criticized those who have tried to address significant racial disparities in the implementation of the death penalty. Calling their arguments "ridiculous," you said, "I would hate for us to judge the criminal justice system in a way where we excuse people from committing crimes because well we've imposed enough punishment on that group this year." Yet, many studies have shown that there are racial disparities, and perhaps even racial bias, in the death penalty system. In 1990, a Government Accounting Office study concluded that 28 separate death penalty studies show a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty. Moreover, the report concluded that "race of victim influence was found at all stages of the criminal justice system process...." The former Governor of Maryland proclaimed a moratorium on the death penalty in his state because of concerns it was being applied in a racially discriminatory fashion. Earlier this year, the study he ordered

was completed and found troubling racial and geographic disparities in the Maryland death penalty system. The study found that black offenders who kill whites are four times as likely to be sentenced to death as blacks who kill blacks, and twice as likely to get a death sentence as whites who kill whites. Are you not troubled at all by racial disparities in the application of the death penalty? On what studies or evidence do you base your assertion that these concerns are "ridiculous"?

Response: As the quote you have ascribed to me suggests, I remain fundamentally opposed to racial bias in the implementation of the criminal justice system and continue to believe that it would be both illegal, and immoral, to impose punishment on those accused of committing crimes based upon some sort of racial quota. I am not, however, familiar with the 1990 GAO study that apparently reviewed the impact of race on the criminal justice system as a whole. Nor am I familiar with the recent study you stated that found "troubling racial and geographic disparities in the Maryland death penalty system." I know of no such abuses in the State of Alabama.

In fact, our system has numerous safeguards to ensure that all citizens are treated equally before the law. Although my office ordinarily does not determine what crimes are charged, individual prosecutors from the offices of the district attorneys do not have the discretion to charge a suspect with anything other than the most serious crime supported by the evidence. The defendant is then tried by a jury of his/her peers and, if convicted of capital murder, again pleads his/her case during the penalty phase where the jury makes a sentence recommendation. Once the jury recommends a sentence, the trial judge may reject that sentence in favor of a lighter or harsher sentence. My office is solely responsible for the capital appeals process and my prosecutors have standing orders to strictly adhere to the law and ensure that justice is done in each case. As to studies that I respect, I would refer you to the works of Joseph L. Katz, Ph.D., at Georgia State University, in defense of the State of Georgia in *McKlesky v. Kemp*.

21. Have you reviewed the findings and recommendations of the Ryan Commission? In your view is Alabama's death penalty system fairly subject to some of the same criticisms as the State of Illinois' system?

Response: I have not reviewed the findings and recommendations of the Ryan Commission, nor am I personally familiar with the cases upon which that study is based. If, however, contemporary articles regarding the subject in the Chicago Tribune are accurate, I would not dispute the existence of problems within that system. Many of the problems in Illinois are a direct result of the corruption and malfeasance of certain law enforcement officers in Chicago. "Charges of police misconduct - from manufacturing evidence to concealing information that could help clear suspects - are central to at least half of the 12 Illinois cases where a man sentenced to death was exonerated." (Steve Mills and Ken Armstrong, "A tortured path to Death Row," The Chicago Tribune, November 17, 1999); see also *Maxwell v.*

***Gilmore*, 37 F.Supp.2d 1078, 1094 (N.D. Ill. 1999) ("It is now common knowledge that in the early to mid- 1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions"). Governor Ryan later suspended executions in Illinois, and it is my understanding that steps have been taken within the state government to remedy these problems.**

Although I acknowledge that grave injustices may have been done in several cases in Illinois, I strongly disagree with the suggestion that the existence of corruption, incompetence, and malfeasance in Illinois - and, in fact, primarily within a single county of that state - constitutes a legitimate basis upon which to question the integrity of the system in Alabama.

22. In light of your advocacy in favor of the death penalty, and your criticism of many who are concerned about unfairness in the system or the proven fact that innocent people have been condemned to death in this country, please list and describe all actions you took as Attorney General that demonstrate that you can be fair and impartial in any case involving the death penalty despite your strong personal feelings in favor of that punishment.

Response: My entire tenure as Attorney General of Alabama demonstrates my fidelity to the rule of law and my oath to uphold the Constitution. I am duty bound to ensure that all citizens of Alabama are fairly treated by my office, and I have performed that duty. In that capacity, I have supported increases in compensation for attorneys in capital direct appeals and drafted legislation to change the method of execution from electrocution to lethal injection.

23. I understand that you hired Jeffrey Sutton as counsel to prepare an amicus brief on behalf of the State of Alabama in *Solid Waste Agency of Northern Cook County (SWANCC)* v. *United States Army Corp of Engineers*. The State of Alabama was the only state to file an amicus brief arguing against Congress's authority in the case. In the brief, you argued that in passing the Clean Water Act, if Congress delegated authority to the Corps allowing the promulgation of the migratory bird rule, such a delegation represented, "every measure of constitutional excess."

a. You stated in your testimony that the Supreme Court in the *SWANCC* case adopted the position taken in your brief. Isn't it true that the Court decided the case on statutory not constitutional grounds?

Response: Yes. My brief argued both grounds.

b. Is it your view that Congress' constitutional authority for passing the Clean Water Act stems solely from the Commerce Clause? Do you believe that one might, in fact, find reason for congressional authority over protection of wetlands in, not just the Commerce Clause, but the Property Clause, the Treaty Clause, or the Necessary and Proper Clause?

Response: I do not doubt that Congress may have the authority to enact policies of environmental protection based on powers granted in the Constitution that are separate from the Commerce Clause.

c. Is it your view, therefore, that Congress exceeded its constitutional authority in passing the Clean Water Act?

Response: I do not have a view that the Clean Water Act is unconstitutional.

24. In one of your speeches (Competitive Federalism and Environmental Enforcement) you call "ridiculous" a ruling that vindicated a claim of environmental injustice. You argue that EPA's disparate impact regulations passed under Title VI of the Civil Rights Act – regulations that form the legal basis for most claims of environmental injustice – are themselves invalid. You conclude that: "Environmental racism cases should fail generally." The first Bush administration released a report in 1992 called Environmental Equity, which fully documented that minorities and the poor face greater risk of exposure to hazardous waste and sustain more environmental costs than other populations. Please elaborate on the views expressed in your speech. Do you believe there should be no federal forum at all for claims of environmental injustice based on race?

Response: I believe, consistent with the decision of the Supreme Court in *Alexander v. Sandoval* that there is no private right of action to enforce the disparate impact regulations of Title VI of the Civil Rights Act of 1964.

25. At your hearing, you testified that you urged the Attorney General of Nebraska not to present the question of overturning *Roe* to the Court in the *Carhart v. Stenberg* case, even though he had the opportunity to do so. Given your strong disagreement with the holding of *Roe*, which you repeatedly reaffirmed at your hearing, why did you urge him not to present that question? Was this a strategic recommendation, or based on your view of your role as Attorney General?

Response: I did not believe that the Nebraska law banning partial birth abortions, which was under review in *Carhart v. Stenberg*, necessarily was in conflict with *Roe*. I also thought that the best hope of successfully defending state laws banning partial-birth abortions was to argue that those laws conformed with *Roe*. My recommendation was strategic in my role as Attorney General. I also thought that an assault of *Roe* in the Supreme Court would make the task of defending laws banning partial-birth abortions more difficult.

Written Questions from Senator Patrick Leahy
to Attorney General William Pryor

Question 1
Please describe in detail who contacted you about this nomination and when, what communication you have had and with whom, before you agreed to be nominated.

Response: In December 2002, I received a telephone call from the White House Counsel's office. I was asked whether I would be interested in being considered for an appointment to the Eleventh Circuit. I gave a favorable response. Soon afterwards, I received a call from Senator Jeff Sessions on the same subject. I then met with the White House Counsel and several other attorneys, within a week, whereupon I agreed to be considered for the nomination.

Question 2
You are currently a politician and you have demonstrated your strong interest in political matters. (A) Why do you want to be appointed to be a federal Court of Appeals judge? (B) Do you intend to serve the rest of your career as a Court of Appeals judge if confirmed and not seek other political office?

Response: A. I believe that serving as a federal judge is one of the highest callings of an American to preserve the rule of law, upon which our freedom depends.

B. If I am fortunate enough to become a federal judge, I have no present intention to seek other public office.

Question 3
(A) What qualities do believe a justice must possess to faithfully uphold his constitutional duty to interpret the law? (B) Do you feel you have demonstrated those characteristics? Why or why not?

Response: A. A judge must possess an understanding of law and legal process, intelligence, diligence, honesty, and fairness.

B. I believe that my legal education, experience in private practice, teaching of law, published scholarship, and record as attorney general demonstrates that I have these qualities.

Question 4
Three years ago, you gave a speech to the Board of Bar Commissioners of the Alabama State Bar regarding a proposed death moratorium in the State. In that speech, you stated as follows: Make no mistake about it, the death penalty moratorium movement is headed by an activist majority with little concern for what is really going on in our criminal justice system. Is that still your view?

Response: With respect, my actual statement in reference to the movement for a death penalty moratorium in Alabama was as follows: "Make no mistake about it, the death penalty moratorium movement is headed by an activist minority with little concern for what is really going on in our criminal justice system" This is still my view.

Question 5
In your speech to the Board of Bar Commissioners, you stated that your office Awill not deny DNA testing to any inmate who presents a valid claim of innocence, if they present the claim in a timely manner, not on the eve of execution. Subsequently, in *Bradley v. Pryor*, your office vigorously opposed a death row inmate's efforts to compel production of certain physical and biological evidence gathered in the course of the capital prosecution. The Eleventh Circuit Court of Appeals ultimately ruled against you and permitted Bradley to pursue his lawsuit to obtain the DNA evidence for testing. And even then, your office petitioned for rehearing en banc, and then for certiorari. Please explain why you have fought DNA testing in the *Bradley* case.

Response: In the referenced remarks, I stated that "My office will not deny DNA testing to any inmate who presents a valid claim of innocence, if they present the claim in a timely manner, not on the eve of execution." I have not deviated from this position in any capital case, including *Bradley v. Haley*.

My office consented to have DNA tests performed in *Bradley*. Specifically, we agreed to have the blanket and sheet tested where the evidence showed Danny Bradley raped and sodomized Rhonda Hardin, his 12-year-old stepdaughter. The test results, which were not timely disclosed by lawyers with the Innocence Project, conclusively demonstrated that Danny Bradley's DNA was on the bedding items where the rape and sodomy occurred. My office opposed Bradley's request to DNA test the rape test kit and the victim's pants because these items cannot be located and were not presented as evidence at trial.

Moreover, the requests to test each of these items were made long after Bradley's appeals were exhausted. When the *Bradley* case was going through the appeals process and was pending in courts that had the authority to order DNA testing, Bradley's counsel made no request to have DNA testing performed. Even though Bradley's request to perform DNA testing was untimely, my office would have agreed to test the additional items if they could have been located.

Question 6
In your speech to the Board of Bar Commissioners, you argued that the death penalty system in Alabama was working. As evidence of this, you pointed to the fact that several death row inmates in Alabama were represented in post-conviction proceedings by top Wall Street law firms. You also noted that other death row inmates were represented by *pro bono* defender organizations like the Equal Justice Initiative and the Southern Center for Human Rights. You did not mention that dozens of death row inmates in Alabama have no representation at all in post-conviction proceedings, and so are defaulting on

their constitutional claims. (A) Is it still your view that Alabama's death row inmates are well represented in post-conviction proceedings? (B) In your view, does the State (as opposed to private and non-profit organizations) bear any responsibility for assisting death row inmates in obtaining post-conviction review of their convictions and if so, is the State of Alabama fully meeting that responsibility?

Response: A search of my office's computer docketing system reveals there are 130 death row inmates who have cases pending in state and federal collateral proceedings. Ninety-two of these inmates are represented by out-of-state law firms and/or public interest groups. Eighteen of the inmates are represented by lawyers from the Equal Justice Initiative of Alabama, a death penalty resource center. Seventeen of the inmates are represented by attorneys who are licensed in Alabama. Three of these inmates have filed a Rule 32 petition but do not yet have counsel. They have each filed a motion for appointment of counsel that has not been opposed by my office.

With respect, your statement that "dozens of death row inmates in Alabama have no representation" in their state post-conviction proceedings appears to me to be mistaken.

If an inmate has concluded direct appeal review and has not yet secured counsel, the inmate can request counsel by filing an appropriate motion or by filing a pro se state post-conviction petition accompanied by a motion for appointment of counsel. Under Rule 32.7(c) of the Alabama Rules of Criminal Procedure, that inmate will then be appointed counsel.

Question 7
In your speech to the Board of Bar Commissioners, you stated that death row inmates are given at least 10 opportunities to present their claims to Alabama and federal courts after a death sentence is imposed.

(A) Three of the opportunities to which you referred are the direct appeal to the Alabama Court of Criminal Appeals, and the possible appeals (by certiorari) to the Supreme Court of Alabama and the U.S. Supreme Court. By law, Alabama caps attorney compensation at the direct appeal stage at $2,000, plus overhead. If an inmate's lawyers are not being compensated enough to cover the long hours necessary to litigate a capital appeal, do you believe that his opportunity to present his appellate claims is a meaningful one?

Response: As your question correctly states, there are at least 10 opportunities for death row inmates to present their claims to the state and federal courts. On direct appeal, a death row inmate can present his claims to the Alabama Court of Criminal Appeals, the Alabama Supreme Court, and the United States Supreme Court. Alabama allows for up to $2000 in attorney compensation in each state appellate court. These attorneys can also be paid unlimited overhead expenses up to $35 an hour.

With respect to your assertion that the direct appeals to the Alabama Supreme Court and the United States Supreme Court are only "possible appeals" because those courts have certiorari jurisdiction, my experience with these courts is that they extensively review appeals by death row inmates and grant certiorari when appropriate. My experience is that this process is meaningful, although I, as attorney general have supported increases in compensation of appellate counsel.

I believe that any appeal filed by a death row inmate receives "meaningful" review. As your question correctly notes, Alabama has three stages of review that involves 10 courts reviewing the case. I have full faith that the judges that comprise these courts fulfill their obligations and give "meaningful" review to capital and non-capital cases.

(B) Four of the opportunities to which you referred are the State post-conviction proceeding under Rule 32 of the Alabama Rules of Criminal Procedure, the appeal to the Court of Criminal Appeals, and the possible appeals (by certiorari) to the Alabama Supreme Court and U.S. Supreme Court. If an inmate is not represented in these proceedings, do you believe that his opportunity to present his State post-conviction claims is a meaningful one?

Response: I believe inmates are best served by legal representation. I believe that federal and state courts strive to give meaningful review to all filings in cases of capital punishment.

(C) The last three opportunities to which you referred are the Federal habeas process in Federal district court, the appeal to the Federal Court of Appeals, and the possible appeal (by certiorari) to the U.S. Supreme Court. If an inmate who is not represented in his State post-conviction proceedings fails adequately to preserve his constitutional claims and so is barred by the procedural default rule from pursuing Federal habeas relief do you believe that his opportunity to present his Federal claims is a meaningful one?

Response: See answer to (B) above.

Question 8

At this Committee's hearing in June 2001, you suggested that a death row inmate who was not represented by counsel was capable of filing a Rule 32 petition *pro se*. In particular, in describing the case of Thomas Arthur, you stated, He was represented, of course, until the Rule 32 stage. He did not file a Rule 32 petition, despite his great experience with the death penalty system. He had been tried three times. (A) What did you mean by this statement? (B) Is it your view that Mr. Arthur's experience of having been tried three times by the State of Alabama somehow qualified him to identify and argue any legal claims that may have arisen out of his trial?

Response: The reality of the collateral review system in Alabama is that death row inmates are afforded counsel even though this is not a requirement of law. *See Ross v. Moffit*, 417 U.S. 600 (1974) (the constitutional right to counsel extends only to trial and the first appeal of right). Under Rule 32.7(c) of the Alabama Rules of Criminal Procedure, an inmate can request that counsel be appointed, and my office does not oppose such requests as a matter of office policy. In my experience, each inmate who wants representation has counsel from a pro-bono anti-death penalty organization, an out-of-state law firm, or a member of the local legal community.

***Arthur* was an unusual case because Thomas Arthur chose to represent himself at trial. He was, therefore, intimately acquainted with the facts of his trial and had a significant working knowledge of the law. His failure to pursue collateral relief until just before his execution was apparently by deliberate choice. On the eve of his execution, however, Arthur requested the assistance of counsel and the following attorneys filed on his behalf: Russell Neufeld, Arnold J. Levine, and E. Niki Warin through the Legal Aid Society of New York; Theresa Trzaskoma, Heiner Braun, Suhana S. Han, and Katherine Richardson of Sullivan & Cromwell, LLP. Arthur continues to be represented by Suhana S. Han of Sullivan & Cromwell.**

Question 9

At the Committee hearing, you rejected as not true another witness' assertion that Walter McMillian would have been executed had he not had post-conviction proceedings, adding His conviction was overturned in the direct appeal stage, in the first level of review. In fact, McMillian's conviction was overturned as a result of facts developed at his Rule 32 hearing, which showed that the conviction was obtained on perjured testimony. At McMillian's request, the trial court's disposition of the perjury issue raised in the Rule 32 petition was considered as part of the direct appeal. See McMillian v. State, 616 So.2d 933 (1993). (A) Given this procedural history, do you still disagree with the assertion that McMillian would have been executed had he not had post-conviction proceedings? (B) In light of the McMillian case and the many other cases nationwide where serious constitutional error has first been detected at the state post-conviction or Federal habeas stage do you still hold the view that the obsessions with Federal and State post-conviction proceedings is a bad one and that such proceedings are crucial only for Monday-morning quarterbacks who try to second-guess things and create issues that were probably not real in the first place?

Response: I continue to hold that opinion. The information in question may have been developed in a specially held collateral proceeding, but it was discovered on direct appeal and it was through that process that this injustice was uncovered and rectified by the State. *See McMillan v. State*, 616 So. 2d 933, 935 (Ala. Crim. App. 1993) ("While McMillian's direct appeal was pending in the Alabama Supreme Court on certiorari review, the state, with the agreement of the appellant, moved that this cause be remanded to the trial court for an evidentiary hearing on the Rule 32 petition's allegation that Myers's testimony was perjured and that the trial court's disposition of this issue be considered as part of the direct appeal").

McMillan was later denied post-conviction relief by the Rule 32 court and his conviction was ultimately reversed by the Alabama Court of Criminal Appeals on return to remand. *See McMillan v. State*, 616 So. 2d at 949 (holding that "the state suppressed exculpatory and impeachment evidence that had been requested by the defense, thus denying the appellant due process of law, requiring the reversal of his conviction and death sentence, and the remand of the case for a new trial").

Although I cannot speak with authority on the post-conviction proceedings in other states, I continue to hold the view that the vast majority of issues raised in post-conviction proceedings in Alabama are frivolous. That the Eleventh Circuit has recognized that, "the cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far between," supports this view. *Van Poyck v. Florida Dept. of Corrections*, 290 F.3d 1318, 1322 (11th Cir. 2002), quoting *Waters v. Thomas*, 46 F.3d 1506, 1511 (11th Cir.1995) (en banc), quoting in turn *Rogers v. Zant*, 13 F.3d 384, 386 (11th Cir.1994)

Question 10
In your written responses to my questions following the Committee's hearing in June 2001, you stated that Most Rule 32 petitions in capital cases are frivolous and should not be filed. Under Federal law, however, an inmate must exhaust his state remedies, including his state post-conviction remedies, in order to preserve his right to Federal habeas review. (A) Is it your view that Federal habeas petitions, like Rule 32 petitions, are generally frivolous and unnecessary? (B) Given your stated views on this issue including those quoted in the preceding question what assurances can you provide that you would give Federal habeas petitioners a full and fair hearing on their claims?

Response: As recognized by the Eleventh Circuit Court of Appeals, the majority of claims raised in post-conviction proceedings are frivolous. *See Van Poyck v. Florida Dept. of Corrections*, 290 F.3d 1318, 1322 (11th Cir. 2002), quoting *Waters v. Thomas*, 46 F.3d 1506, 1511 (11th Cir.1995) (en banc), quoting in turn *Rogers v. Zant*, 13 F.3d 384, 386 (11th Cir.1994) ("the cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far between"). Those few petitioners with meritorious claims are, however, entitled to relief under the Constitution, and I would be duty bound to give full weight to the dictates of the Constitution in reviewing their claims.

Question 11
Also in response to my questions, you expressed broad skepticism regarding ineffective assistance of counsel claims, noting that few Alabama death penalty convictions have actually been reversed on this ground. Given your stated view on this specific constitutional claim, what assurances can you provide that you would consider such claims impartially and with due care?

Response: My opinion is based upon personal knowledge and the express recognition of the Eleventh Circuit that "the cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far

between." *See Van Poyck v. Florida Dept of Corrections*, 290 F.3d 1318, 1322 (11th Cir. 2002), quoting *Waters v. Thomas*, 46 F.3d 1506, 1511 (11th Cir.1995) (en banc), quoting in turn *Rogers v. Zant*, 13 F.3d 384, 386 (11th Cir.1994). Those few petitioners with meritorious claims are, of course, entitled to relief under the Constitution and I would be duty bound to give full weight to the dictates of the Constitution. My entire tenure as Attorney General of Alabama demonstrates my fidelity to the rule of law and my oath to uphold the Constitution.

Question 12
The Sixth Amendment of the U.S. Constitution states that the accused shall have Athe assistance of counsel for his defense.@ In your view, what does this language actually guarantee? For example, there is a whole category of cases in Texas known as the Asleeping lawyer@ cases. (A) Do you believe that the Constitution requires counsel to remain conscious? (B) What more does the Constitution require?

Response: I am not personally familiar with a line of Texas cases known as "sleeping lawyer" cases. I do, however, endorse the Sixth Amendment requirement that guarantees all defendants the effective assistance of counsel in capital cases and believe that this would require counsel to be "conscious" throughout the proceedings.

The standard set by the United States Supreme Court to determine whether counsel rendered the constitutionally mandated level of assistance is two fold. The burden is on the petitioner to establish that an act or omission by trial counsel was objectively unreasonable and that this deficient performance prejudiced the outcome of the case. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). Whether a specific act or omission will constitute ineffective assistance of counsel will necessarily depend upon the individual facts of each case. *See Strickland*, 466 U.S. at 690 ("A court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct").

Question 13
(A) In your view, what significance, if any, should a Federal habeas court attach to a petitioner's persuasive, post-trial showing of actual innocence? (B) Should such a showing warrant federal habeas relief, or must the petitioner also show an independent constitutional violation occurring in the course of the underlying state criminal proceedings?

Response: According to the Supreme Court, "Claims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding." *Herrera v. Collins*, 506 U.S. 390, 400 (1993). The Supreme Court has clearly held that there is simply no such thing as a substantive claim of actual innocence. *See Herrera v. Collins*, 506 U.S. at 404-405 ("The fundamental miscarriage of justice exception is available 'only where the prisoner

***supplements* his constitutional claim with a colorable showing of factual innocence.' . . . We have never held that it extends to freestanding claims of actual innocence") (citation omitted).**

Question 14
You clearly have devoted a great deal of time and energy to developing your theories of limited federal power and expanded state power. In many of your speeches, you discuss what you call the "phases" of the federalist revolution (in fact, one of your speeches was titled "Viva La Revolution") and the next frontiers and "opportunities for promoting federalism." In fact, you have articulated your own three-part strategy to further promote federalism, which is: (1) to challenge Congress' power under the Spending Clause; (2) to encourage Congress to promote federalism; and (3) to limit disparate impact remedies against the states. Given these strong views and grand strategies for promoting federalism in the future, why do you want to abandon the role of advocate – in which you have been so successful for more than 15 years – and be a judge on the Eleventh Circuit Court of Appeals?

Response: As much as I enjoy being an advocate, I can think of no better professional challenge than to serve as a federal appellate judge. I am honored that President Bush nominated me to the Eleventh Circuit.

Question 15
Your arguments for "competitive federalism" are really nothing new. While you distinguish this theory from States' rights theories, the battle against the power of the federal government has been demonstrated fairly recently by those who opposed desegregation and Jim Crow laws. (A) Wouldn't your competitive federalism agenda also lead to a patchwork of rights – where Americans' civil rights would vary from state to state? (B) You are obviously concerned about offending principles of federalism with the establishment of national standards. But what about offending principles of justice for all by obliterating national standards in the name of state power?

Response: (A) No. Fundamental civil rights guaranteed by the Constitution are protected in all states.

Response: (B) I support principles of justice for all based on the text and structure of the Constitution of the United States.

Question 16
In a speech last year to the Federalist Society, you discussed a few of the Supreme Court's recent federalism decisions, saying that they were, "fundamentally the result of Congress abdicating its responsibility to concentrate on truly national concerns and instead gauging its priorities based on the politics of the moment." Is that your view of what Congress does?

Response: I believe that the matters mentioned in my speech, in which the Supreme Court held that Congress exceeded its authority under the Constitution, were more properly left to the states.

Question 17
Over the last decade, the Supreme Court has issued a series of 5-to-4 decisions limiting Congressional power to enact legislation under the Commerce Clause. In United States v. Lopez, it held that we could not enact a law to prohibit guns in or near schools, and in United States v. Morrison, it struck down a provision of federal law that let women sue their attackers in federal court. These decisions held that Congress may not regulate what the Court calls "non-economic" activity (for example, gender-motivated crimes of violence) even if the aggregate effect of such activity on the national economy is substantial. In your speeches, you seem to agree that Congress' power to regulate an intra-state activity should turn on whether the activity can be classified as "economic" or "non-economic", in fact, you might even argue for a more narrow standard of commerce. Is that correct?

Response: I believe the decisions of the Supreme Court in *Lopez* and *Morrison* turned, in part, on the distinction between economic and noneconomic activity.

(A) Last Congress, the House of Representatives passed a bill to prohibit human cloning. Do you see any tension between such legislation and the Court's new restrictions on our powers under the Commerce Clause? In your view, is human cloning more or less "economic" in nature than gun trafficking near schools or gender-motivated crimes of violence?

Response: I do not have a judgment on this issue.

(B) Do you agree with the President, who in his first State of the Union said that education is a top *federal* priority because education is the first, essential part of job creation, or do you agree with the Supreme Court majority in United States v. Lopez, which said that education is a "non-economic" activity and is therefore outside the *federal* regulatory power?

Response: I agree with the President and the decision of the Supreme Court in *Lopez*.

Question 18
The New York Times has said that the present Supreme Court has "struck down more Federal laws per year than any Supreme Court in the last half of the century." Are there any federal statutes or sections thereof that have not yet been ruled upon by the Supreme Court that go beyond Congress' enumerated powers under the Constitution?

Response: I do not know.

Question 19
You have questioned the availability of money damages against states under the Family and Medical Leave Act and the Equal Pay Act (*see* Bill Pryor, *Fighting for Federalism*, Mar. 28, 2001). Indeed, you filed a brief in *Nevada Department of Human Resources v. Hibbs*, arguing that state employees should not be allowed to sue their employer for violations of the Family and Medical Leave Act. The Supreme Court recently rejected that argument in a 6-3 decision written by Justice Rehnquist.

(A) In its recent decision, the Court ruled in part that the FMLA was enacted to remedy gender discrimination. Congress developed an extensive record – a record that the Supreme Court recently found persuasive and definitive – recounting the long history of discrimination in how leave policies were developed and administered. Why did you find this history unpersuasive and why did you reject this argument?

Response: I argued, along with several other state attorneys general who joined my brief, that the FMLA created employee benefits without regard to gender discrimination. The Supreme Court disagreed in a 6 to 3 decision, which I respect and will follow.

(B) Is it your view that the FMLA was not intended to remedy gender discrimination?

Response: Please see answer to Question 19(A).

(C) On what basis did you conclude that state employees should not be able to hold states accountable for violating the FMLA?

Response: Because I and several other state attorneys general argued that the FMLA was not enacted to remedy gender discrimination by the States, our brief argued that the FMLA did not validly abrogate the sovereign immunity of the states. The Supreme Court disagreed in a 6 to 3 decision, which I respect and will follow.

(D) Why have you argued that the states should not be liable for money damages under the Equal Pay Act? Is it your view that the Equal Pay Act was not intended to remedy gender discrimination?

Response: As a state attorney general, I have a duty to make reasonable arguments on behalf of my clients. I and several other state attorneys general have argued that the Equal Pay Act did not validly abrogate the sovereign immunity of the states. The federal court of appeals uniformly have rejected this argument, and I consider their decisions to be settled law.

Question 20
Also in that speech, you argued that the next frontier of the states' rights fight would be the Spending Clause. I am very worried about this because the Spending Clause is one of the few areas that the federal government has left to regulate state activities. We have already seen the first salvos in this fight. For instance, in *Westside Mothers v. Haveman*, a Michigan district court judge, who happened to be a member of the Federalist Society, decided that laws passed under the Spending Clause were not the supreme law of the land under the Supremacy Clause. He decided that mothers of children covered by Medicaid could not sue their state to force them to provide all the coverage under Medicaid required by federal law

(A) Do you believe that laws passed under the Spending Clause are the supreme law of the land under the Supremacy Clause?

Response: Yes.

(B) Are violations of requirements of laws passed under the Spending Clause actionable in federal court for damages?

Response: I cannot answer this question without knowing whether Congress intended the violations to be actionable.

(C) If Congress has not authorized citizens to sue for damages in Spending Clause legislation, can a citizen still sue to force his or her state to abide by these laws in the future under *Ex parte Young*?

Response: I cannot say that an action would necessarily lie without fully considering the relevant statutes and caselaw.

Question 21
At your hearing, you defended your position in *Board of Trustees of Alabama v. Garrett*, as narrow, challenging only the constitutionality of Title I of the Americans with Disabilities Act as applied to the states. The part of your argument five justices of the Supreme Court adopted in *Garrett* was that Congress had no power under the Fourteenth Amendment to apply to state employers Title I of the ADA, which prohibits employment discrimination against the disabled.

(A)However, you have challenged, in briefs to the Supreme Court, the constitutionality of other sections of the ADA and the Rehabilitation Act. How do you reconcile your defense of your actions in *Garrett* with the *amicus* briefs in *Pennsylvania Dep't. of Corrections v. Yeskey* and *Medical Board of California v. Hason*, where you argued that Congress had exceeded its power in applying Title

II to the states, which requires state entities to provide accommodations for persons with disabilities in public services, programs, and activities?

Response: The arguments that I presented were based on my best judgment of the law.

(B)How do you reconcile your defense of your actions in *Garrett* with your actual arguments in the case? For example, after Patricia Garrett's ADA claim was thrown out by the Supreme Court, you argued that the trial court should throw out her remaining claims under Section 504 of the Rehabilitation Act because Congress could not require states to waive their immunity under Section 504 in exchange for accepting federal funds.

Response: The district court dismissed the plaintiffs' claim under the Rehabilitation Act, but that order is now under review by the Eleventh Circuit.

(C) In your view, is there any way that Congress could constitutionally create a cause of action for money damages against state governments for discrimination against persons with disabilities?

Response: Yes. In *Garrett*, the Supreme Court was clear that Congress can remedy unconstitutional discrimination by the states.

Question 22
In *Reno v. Condon*, you argued that Congress could not require states to keep driver's license information private and that states should have a free hand to sell such information to whomever they wanted. I believe the federal government has an important responsibility to ensure that U.S. citizens' privacy is protected. It troubles me that you believed that Congress did not have the power to pass this statute. It troubled the Supreme Court too, since the Court reversed you unanimously in an opinion by Chief Justice Rehnquist. You argued that this law "commandeered" the states and was therefore unconstitutional. Please explain how a law saying that states could not sell driver's license information commandeered anything.

Response: The argument of the several states, including Alabama, was that, because states are the primary sources of drivers' licenses, Congress commandeered the states by requiring them to implement federal policies of privacy. I am now persuaded that the Supreme Court correctly decided this issue, however.

Question 23
In December of 2000, you reportedly said, "I'm probably the only one who wanted it 5-4. I wanted Governor Bush to have a full appreciation of the judiciary and judicial selection so we can have no more appointments like Justice Souter." (A) What would a full appreciation of judicial selection entail? (B) What did you mean by that comment?

Response: I would hope that any judge would be faithful to the text and structure of the Constitution.

Question 24
In Florida Prepaid v. College Savings Bank and its companion case, College *Savings Bank v. Florida Prepaid*, the Supreme Court ruled that States and their institutions cannot be held liable for damages for patent infringement and other violations of the Federal intellectual property laws, even though they can and do enjoy the full protection of those laws for themselves. In so doing, the Court invalidated three Federal statutes that Congress passed, unanimously, in the early 1990s, to clarify its intention that the Federal patent, copyright, and trademark laws apply to everyone, including the States. I have introduced a bill, S.1191, that responds to the *Florida Prepaid* decisions. In short, S.1191 would create reasonable incentives for States to waive their immunity in intellectual property cases, but it would not oblige them to do so. States that chose not to waive their immunity within two years after enactment of the bill would continue to enjoy many of the benefits of the Federal intellectual property system; however, like private parties that sue States for infringement, States that sue private parties for infringement could not recover any money damages unless they had waived their immunity from liability in intellectual property cases. If S.1191 were enacted into law, how would you analyze its constitutionality?

Response: Last year, as chairman of the Federalism Working Group of the National Association of Attorneys General, I signed a letter, dated May 14, 2002, addressed to you and Senator Hatch regarding your substitute for Senate Bill 2031, the "Intellectual Property Restoration Act of 2002." The letter, which was signed by all of the other members of the Working Group, including the Attorneys General of Delaware, Nebraska, Virginia, and Washington, "recognize[d] the good intentions underlying the legislation," but also noted several problems with it. I stand by the analysis contained in the letter.

Among other drawbacks, the letter noted that the legislation might "threaten [the States'] financial integrity" and result in "substantial costs to the autonomy, decisionmaking ability, and the sovereign capacity of the States," in the words of *Alden v. Maine*, 527 U.S. 706, 709 (1999). Significantly, there had been no showing that the States had engaged in "a pattern of patent infringement . . . let alone a pattern of constitutional violation," (*College Savings Bank v. Florida Prepaid Postsecondary Education Expense Bd.*, 527 U.S. 627, 640 (1999). The letter identified a more narrowly-tailored and effective approach that Congress might consider -- authorizing the United States to pursue damages against States for infringement of intellectual property. If confirmed as a federal judge, I would defer to the policy choices of Congress, and if an issue of this kind came before me, I would closely examine the arguments of the parties, the record, and all relevant laws and precedents to resolve the dispute before me.

Question 25

Mr. Pryor, you gave a speech at the Reagan Library in which you made a number of extreme statements about government litigation and, in particular, antitrust suits. You criticized the Clinton Administration in particular, and described its "government-sponsored litigation" as "the greatest threat to the rule of law today." I am accustomed to thinking of federal judges as the group charged with protecting and promoting the rule of law. Please explain why you believe that the government's use of its Congressionally-authorized power to sue on behalf of, and for the benefit of, this nation's populace is "the greatest threat to the rule of law today." Please explain why the judiciary is not an adequate safeguard against threats to the rule of law. And please explain how, if you become a federal judge and are charged with protecting the rule of law, you will address the cases of "government-sponsored litigation" which you describe as threats to the rule of law, apparently entirely independent of any evaluation of the actual substantive claims in the suits.

Response: In my Reagan Library speech, I criticized the monopolization suits filed against Microsoft Corp. in 1998 by the Department of Justice and 20 state attorneys general. The primary focus in that speech, however, was on the so-called "recoupment" lawsuits filed by state governments against the tobacco industry, and similar lawsuits filed by municipal governments against the firearms industry. These are the two categories of government-sponsored litigation that I consider a grave threat to the rule of law. I have written extensively about substantive claims in those cases. Many courts appropriately dismissed these claims, but the risk of an erroneous ruling made this litigation dangerous. As a judge, my responsibility will be to decide controversies based on the law.

Question 26

Mr. Pryor, you singled out antitrust suits in your attack on "government-sponsored litigation," and your call to action included severely limiting the reach of antitrust enforcement. You accept, apparently, the propriety of government suit in per se criminal cases, but declare that "the antitrust laws should focus only on protecting the free market, in clear cases, to benefit consumers." Your speech is not clear: Do you acknowledge only per se cases as acceptable objects of government suit? How do you define a "clear case"? And if you are asserting that a "free market" is entirely adequate protection for consumer interests, how do you believe the system should address market failures?

Response: The position I took in the speech on the advisability of what Judge Richard Posner called the "simplification of antitrust doctrine" was grounded in his well-respected treatise, *Antitrust Law*, first published in 1976. In it, Judge Posner stated, at page 212, that he "would like to see the antitrust laws other than section 1 of the Sherman Act repealed." Judge Posner explained, at page 212, that "Section 1 of the Sherman Act, . . . is sufficiently broad to encompass any anticompetitive practice worth worrying about that involves the cooperation of two or more firms,

and virtually all of the practices discussed in this book, . . . involve such cooperation." Since the time of my Reagan library speech, a second edition of Judge Posner's book has been published. In it, at page 260, he repeats his call for "the repeal of everything but section 1 of the Sherman Act" in order to "reduce the social costs imposed by redundant, ambiguous, unsound, and contradictory statements of legal duty." I remain persuaded by the analysis offered by Judge Posner, who was recently described by FTC general counsel William Kovacic as "one of the most important antitrust scholars of the past half-century."

Question 27
You also assert that the administration should appoint "only free market conservatives" to the federal bench in order, apparently, to ensure that your view of proper antitrust enforcement is adopted. If the antitrust enforcers shared your views, however, there would be few (if any) antitrust cases for the federal bench to hear, so your concern that the judges be adamant free-market conservatives might be over-kill. Are there other types of cases in which your antipathy towards civil antitrust principles would find expression?

Response: My answer to Question 26 should make clear that, in my current capacity as an executive officer of the State of Alabama, I harbor no "antipathy toward civil antitrust principles" that are properly informed by consumer welfare-oriented economic analysis. Further evidence of my support for pro-consumer antitrust policy is provided by my recommendation that the Alabama Legislature adopt a new Alabama antitrust act; the current statute has been construed by the Supreme Court of Alabama not to apply to goods in interstate commerce. *Abbott Laboratories v. Durrett*, 746 So.2d 316 (Ala. 1999). If confirmed to the appellate bench, I will faithfully apply the relevant statutory and case law to all cases that come before me.

Question 28
You also seek to align yourself with Judge Richard Posner, echoing his academic work questioning the utility of monopolization offenses. In fact, you urge repeal of Section 2 of the Sherman Act. You provide no analysis of that call for repeal, however, and I would appreciate it if you would explain, in as much detail as you are able, why you believe that Section 2 should be repealed, and how the enforcement of consumer interests against monopolization would be effected, as well as affected, by such a dramatic change. In addition, please explain which other laws, or uses of laws, that are currently part of the arsenal of antitrust enforcers, you believe should be altered or repealed.

Response: Please see my answer to Question 26.

Senator Edward M. Kennedy's Questions to
William Pryor, Nominee to the Eleventh Circuit Court of Appeals

1. In Westside Mothers v. Haveman, poor children and their mothers challenged Michigan's failure to provide them adequate dental services as required under Medicaid. They were not after money damages in this case; they just wanted the State of Michigan to provide them the benefits required by federal law. They brought suit under section 1983, which the Supreme Court has held allows individuals to bring claims to address violation of federal statues. The district court held that they could not enforce the Medicaid Act or any spending clause statute using section 1983, and the court greatly limited the doctrine of Ex Parte Young which allows private suits against state officials who fail to enforce federal law. Seventy-five constitutional law scholars submitted a brief to the Sixth Circuit arguing that the district court's opinion would radically change long-standing Supreme Court precedent, and should be reversed. The district court's opinion was reversed by a unanimous panel of the Sixth Circuit.

   In a speech you gave prior to the reversal of the district court's far-reaching decision, you called the decision "brilliant" and "sublime." You stated that the next frontier of federalism will involve cases like Westside Mothers limiting Congress's spending power.

A. Please explain whether you think the district court's decision in Westside Mothers is consistent with Supreme Court precedent and current law.

   Response: I do not believe the Supreme Curt has yet squarely addressed the propriety of private litigants using section 1983 to enforce federal spending legislation.

B. Please explain whether you believe the use of Section 1983 to enforce spending clause legislation is an open legal question.

   Response: The concurring opinion of Justices Scalia and Kennedy in *Blessing v. Freestone*, 520 U.S. 329, 345-50 (1997), suggested that this question is open.

C. Please explain whether you believe, as the district court held, that laws passed by Congress pursuant to its spending power are simply contracts, now law, and thus are unenforceable by "third parties" using section 1983.

   Response: I have not reached a judgment on that issue. In formulating such a judgment, I would have to consider seriously the holding of the Sixth Circuit to the contrary, and any subsequent Supreme Court decisions on the matter.

D. Please explain why you stated that the decision in Westside Mothers was "sublime" and "brilliant."

Response: I found Judge Cleland's lengthy exposition of the history of sovereign immunity and *Ex Parte Young* to be impressive.

2. In Alexander v. Sandoval, 532 U.S. 275 (2001), a sharply-divided Supreme Court accepted your argument that there is no private right of action to enforce disparate impact regulations promulgated under Title VI of the Civil Rights Act of 1964. In your brief, you made a significantly broader argument that the Court did not accept. You argued that there should be no implied right of action under any spending power statutes.

A. Please explain why you made this argument, given that a much narrower issue was before the Court. Please also explain how you came to the decision to make this argument.

Response: This argument would have provided an alternative basis for a ruling in favor of Alabama, and I was ethically obligated to advance all reasonable arguments on behalf of Alabama.

B. Do you believe your argument contradicts the Supreme Court's decision in Cannon v. University of Chicago, 441 U.S. 677 (1979), which found that individuals have an implied private right of action to enforce Title IX, which is spending power legislation? Why or why not? Please explain whether you believe that Cannon is limited to private institutions.

Response: I do not believe our argument contradicted *Cannon v. University of Chicago*, 441 U.S. 677 (1979). We argued that *Cannon* did not involve a state government. We conceded that *Cannon* was correctly decided as to private and other public entities.

C. Do you believe that the private enforcement of spending power statutes through implied rights of action is an open question?

Response: Please see my answer to question 1.B.

D. In a speech that you gave to the Atlanta Chapter of the Federalism Society in 2001, you state that "spending clause litigation" was one of "next opportunities for promoting federalism." Please explain whether you believe the arguments that you made in Sandoval regarding whether implied rights of action are permissible under the spending power represented an "opportunity for promoting federalism."

Response: Yes, the arguments I successfully presented in *Sandoval* on behalf of my state promoted federalism.

3. In your Sandoval brief, you also challenged the validity of the Title VI disparate impact regulations. Section 601, you wrote, "does not authorize federal agencies to create rules barring disparate effects arising from generally-applicable state programs that occur 'merely in spite of,' rather than 'because of' an individual's national origin." You further wrote, "An effort to bar disparate effects arising from such generally-applicable regulations would not 'effectuate' the objections of Title VI, but would rewrite them." The Supreme Court decided not to reach this argument, as it was not properly before the Court.

A. Please explain whether you think the validity of Title VI's disparate impact regulations is an open question.

Response: The Supreme Court has not squarely addressed this issue. In *Sandoval*, the Court noted that this question is open. *Sandoval*, 532 U.S. at 283 n.6. If presented this issue as a judge, I would carefully consider the record, the arguments of the parties, and the applicable caselaw in resolving this issue.

B. In your brief, you argued that "every law has a disparate impact on someone" and that "an across-the board efforts to regulate disproportionate impacts where federal dollars appear would be far-reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service and licensing statutes. Washington v. Davis, 426 U.S. 229 (1976)." The applicable rule, however, does not make any disparate impact actionable, but rather only a discriminatory impact that is substantial and not justified by business or agency necessity. See Griggs v. Duke Power Co., 401 U.S. 424 (1971); Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 1407 (11th Cir. 1993). In light of this rule, please explain your argument that a "disparate impact" standard under Title VI would be too far-reaching.

Response: My argument was one of statutory interpretation. I argued successfully that there were potentially far-reaching consequences if the plaintiffs in *Sandoval* were correct that a private right of action existed. I argued that there was not enough evidence that Congress intended this result. The Supreme Court agreed with my argument.

C. Do you believe that the Title VI disparate impact regulations are consistent with the agencies' power to promulgate regulations to enforce the anti-discrimination provisions of the Title VI statute?

Response: See my answer to question 3.A. above.

D. Do you believe that Congress can use its spending power to reach State practices with an unjustified disparate impact? Please explain.

Response: Congress has broad authority to create specific conditions for the expenditure of federal funds. In *United States v. Butler*, 297 U. S. 1, 66 (1936), the Court held that the spending power of Congress "is not limited by the direct grants of legislative power" enumerated in Article I of the Constitution.

4. In litigation involving widespread racial discrimination against black Alabamians in the state's civil service system, you argued – more than 30 years after the case was originally brought – that Congress lacked power under Section 5 of the Fourteenth Amendment to make the "disparate impact" standard of Title VII of the 1964 Civil Rights Act enforceable against states. The Eleventh Circuit, in a opinion written by Judge Tjoflat, had little difficulty in finding the disparate impact provisions of Title VII a valid exercise of Section 5 of the Fourteenth Amendment and in finding an unequivocal Congressional intent to abrogate the state's Eleventh Amendment sovereign immunity. Indeed, the Court stated that, "we need not dredge up this nation's sad history of racial domination and subordination to take notice of the fact that the 'injury' targeted by Title VII, intentional discrimination against racial minorities, has since our inception constituted one of the most tormenting and vexing issues facing this country." Crum v. Alabama, 198 F.3d 1305, 1323 (1999).

A. Do you believe that it is an open question whether Title VII is applicable to state employees, or do you believe that the question was decided by the Supreme Court in Fitzpatrick v. Bitzer, 427 U.S. 445 (1976)?

Response: I fully accept the decision of the Eleventh Circuit in *Crum v. Alabama* that *Fitzpatrick* remains good law.

B. Do you believe that it is an open question whether prohibiting actions with an unjustified racial disparate impact under Title VII is within Congress's power to enforce the guarantees of the Fourteenth Amendment?

Response: No.

C. Please explain why your office chose to make "federalism" arguments regarding the applicability of Title VII to States in order to dismiss claims of employment discrimination against the State of Alabama by Alabama state residents.

Response: Following the rulings of the Supreme Court in *Seminole Tribe v. Florida*, *City of Boerne v. Flores*, and *Kimel v. Florida Board of Regents*, attorneys of my office, including me, were unsure whether *Fitzpatrick*

remained good law. As Attorney General, I was ethically obligated to advance all reasonable arguments on behalf of Alabama. After unsuccessfully raising that issue in the Eleventh Circuit, we abandoned that argument.

5. In a speech that you gave to the Atlanta Chapter of the Federalist Society in March 2001, you stated that "curtailing the abuse of disparate impact remedies against the States" was one of the "next opportunities for promoting federalism."

A. Please explain whether the arguments you made in Crum v. Alabama provided an "opportunity for promoting federalism."

Response: The arguments I made in *Crum v. Alabama* were a good faith attempt to obtain a dismissal of a lawsuit against my clients, state agencies of Alabama. I believed then that certain recent federalism decisions of the Supreme Court warranted those arguments.

Please also see my response to question 4.C. above.

B. Please explain what you meant by "abuse of disparate impact remedies against the States" in your speech.

Response: In *City of Boerne v. Flores*, *Alexander v. Sandoval*, and *University of Alabama at Birmingham v. Garrett*, the Supreme Court rejected various remedies that I would describe as directed at disparate impact. In representing my state, I have strived to follow these decisions and raise reasonable arguments that benefited my clients.

6. Do you believe that Title VII's provisions regarding race or gender discrimination can be constitutionally applied to state employees? Why or why not? Do you believe that the question is an open one?

Response: Under the fourteenth amendment, Congress can enact remedies for state-sponsored racial and gender discrimination. This question is not open.

7. Please list any cases in which you or your office has participated in which you have argued that Congress has the power to enact legislation pursuant to its power to enforce Section 5 of the Fourteenth Amendment.

Response: As a state attorney general, I have not had the occasion to defend the use of federal power against my clients . There are many cases where my office has not questioned that authority because we believed the authority was clear.

8. You testified before this Committee in 1997 that you believed that Section 5 had outlived its usefulness. You reiterated this point at your hearing.

A. Please explain exactly when you came to believe that Section 5 had ceased to be useful, and at what point Section 5 stopped being useful. Please also explain the basis for your belief.

Response: I do not have a judgment on precisely when the need for the preclearance process of section 5 outlived its usefulness. As of 1997, when I made the remarks to which you referred, the obtaining of preclearance had become routine as to changes in the election laws of the States. I believe that, nearly forty years after the passage of the Voting Rights Act, there should not be a presumption of discrimination regarding changes in the election laws of Alabama and other states.

B. As you know, many of the states in the Eleventh Circuit have jurisdictions covered by Section 5 of the Voting Rights Act. Do you believe that Section 5 has outlived its usefulness as to all these jurisdictions? Please explain the basis for your belief.

Response: My experience is only with the State of Alabama, but I have no reason to presume that changes in the election laws in other states should now be presumed to be racially discriminatory.

C. Please explain when you came to believe that Section 5 was an "affront to federalism" and the basis for your belief. Do you believe that it was an "affront to federalism" when it was enacted? When did it become an "affront to federalism?"

Response: I have testified that I believe that the Voting Rights Act is one of the most important and necessary laws in our history. I believe section 5 was necessary in 1965 and for many years afterwards. Please see my answer to question 8.A. above.

D. In your testimony, you referred not just to Section 5 of the Voting Rights Act, but to other provisions of the Act. Specifically, you asked the Committee to "consider modifying other provisions of the Act that have led to extraordinary abuses of judicial power." To what other provisions of the Act were you referring?

Response: The Senate testimony I provided in 1997 referred to lawsuit, *White v. Alabama*, in which a federal court used gubernatorial appointments to the Alabama judiciary and the expansion of the judiciary as a remedy under the Voting Rights Act. I thought then that Congress might consider express language against these practices, which

were invalidated by the U. S. Court of Appeals for the Eleventh Circuit. I have seen since 1997, however, no likely recurrence of this problem.

9. Why do you believe that the Supreme Court's decision in United States v. Virginia, holding that denial of admission to women by the Virginia Military Institute violated the Equal Protection Clause, is "antidemocratic and insensitive to federalism"?

Response: In the light of the maintenance of all male military academies by the federal government for more than a century after the adoption of the fourteenth amendment, I thought the better argument in the *United States v. Virginia* was that the Commonwealth of Virginia, and its people, could maintain the same policy without violating the Constitution.

10. In the transcript of your hearing, there appears on pages 80-86 a series of questions about RAGA, the Republican Attorneys General Association. Please review those questions and your answers, and to the extent you now realize that any of your answers may have been non-responsive, evasive, "non-denial denials," misleading hyper-technical, reliant on qualifications in the question asked, or otherwise failing to provide relevant information which you now see was sought by the questioner, please elaborate on your answers to make them responsive, to provide all information relevant to the substance of [t]he questions, and to eliminate any reliance on qualifications in the questions or your answers.

Response: I have reviewed my answers on pages 80-86 of the hearing transcript, and stand by them.

11. Please answer the following additional questions fully, and in accordance with #1 above, explaining in detail any "yes" or "no" answers. If there are or were any documents or their records which form the basis of your answer, or which contain information relating to the subject matter of a question, please provide complete copies of each such document. If you are unable to provide a complete answer to any question from your own knowledge or from documents or other records (hereinafter, collectively, "records) within your possession or control or within the possession or control of RAGA or its members, officers or agents or contractors, or to which you or RAGA would have access on request, please identify in detail the nature, type, title, description, form or other identifying information on each such record, specify the efforts made to obtain such records, and identify all persons you believe to have possession of or control over them.

A. What exactly was your role in the founding and operation of RAGA? Your answer should include, but not be limited to, the dates you held any office or served on any committee, your precise role in planning and executing fund-raising activities, the names and addresses of any person who assisted you in

your RAGA responsibilities, the names, affiliations and business addresses of any persons or companies you solicited for contributions or memberships, the locations where you conducted any fund-raising or membership solicitation activities, and the manner in which your RAGA-related expenses including but not limited to travel expenses were paid. Please be precise about the manner and period of time in which you personally solicited funds or memberships for RAGA?

Response: The Republican Attorneys General Association (RAGA) was formed in 1999. The Chairman of the Republican National Committee (RNC), Jim Nicholson, and his staff decided to create RAGA after consulting several state attorneys general, including Mark Earley (Virginia), Charles Condon (South Carolina), Jane Brady (Delaware), John Cornyn (Texas), and Don Stenberg (Nebraska). I served as Treasurer of RAGA during 1999-2000, as Chairman in 2001, and as Immediate Past Chairman in 2002. Since 2002, I have not served in any official capacity with RAGA.

The staff of RAGA (employees of the RNC) identified potential members of RAGA and determined how to contact prospective members. When requested by RAGA staff on private properties I spoke to potential members of RAGA about contributing to the RNSEC. (I recall attending meetings in New Orleans, Louisiana; Kiawah Island, South Carolina; Williamsburg, Virginia; Chicago, Illinois; New York, New York; Washington, D.C.; Austin, Texas, and Fort Lauderdale, Florida.) I made some solicitations by phone at offices of RAGA; I made some in visits to the offices of the prospective donors. Because I did not keep records of these solicitations, I do not have any further information as to the details of these solicitations. I do not know who, if anyone, would have records relevant to your question.

All but a small amount of my travel and other RAGA-related expenses were paid by the RNC; early on, my campaign covered a small amount of these political expenses.

B. When you made contacts on behalf of RAGA did you know or expect that the funds you were raising would be utilized, inter alia, for contributions to your own primary, runoff, general election campaigns or your own expenses in connection with RAGA? Did you suggest in any way that the funds solicited would not inure to the benefit of you or your campaign? What method, if any, did you have for avoiding the solicitation of persons or companies, or agents, attorneys or consultants of persons or companies, that your office (or other RAGA members) had investigated, were investigating, had actions pending against, were in settlement negotiations with, or had resolved cases against? If you did not avoid such solicitations, were such solicitations in fact made and did contributions or memberships from such solicitations occur? Please

provide details including the sources and amounts of any such contributions or memberships. Did your RAGA activities allow you to know who was being solicited by other RAGA representatives? Did you suggest that they avoid soliciting those with past, present, or potential matters before your office?

Response: I did not know or expect that contributions would be utilized for my own campaign expenses or my own expenses in connection with RAGA.

I did not identify how contributions to the RNSEC would be expended other than to support the general goal of electing Republicans to office.

I am unaware of any Alabama companies being members of RAGA. Furthermore, I am apprised every week of any investigations or legal actions of my office. To my knowledge, I never solicited for RAGA a contribution from any person who has been the subject of an investigation or legal action of my office.

I do not know about the solicitation activities of other RAGA representatives. I have not suggested that they avoid soliciting any lawful contributions to the RNSEC.

C. Where did you tell the people you solicited to send funds, and precisely how were the checks to be made out? Did you and other RAGA agents tell those writing checks in response to RAGA solicitations to place identifying information or codes on the checks which identified them as derived from or intended for RAGA? Did you or RAGA ever solicit or accept cash donations? Did you ever personally receive or forward any RAGA-raised funds? To the extent RAGA-designated funds were transmitted to or through another entity, did that entity disclose publicly that the funds had been raised by or for RAGA?

Response: I asked that contributions be made to the RNSEC. I did not instruct contributors to place identifying information on their checks. I did not solicit cash contributions and, to my knowledge, no RAGA representative made such a solicitation, nor did RAGA accept any cash donations. I do not recall whether I personally received or forwarded any RAGA-raised funds. To my knowledge, RAGA complied with all applicable campaign laws in its operations.

D. Did you ever meet contributors or members in person? Who? Where? When? Under what circumstances? What did you do with them? Did you write letters thanking contributors or members? Which of the companies listed on page 82 of the transcript were members of RAGA? Which tobacco companies?

Response: I attended several RAGA events and spoke in support of the fundraising efforts of RAGA. I also made solicitations during visits to the offices of prospective donors. Other than the locations indicated in my answer to Question 11.A., because I have not kept records of these solicitations, I cannot provide any further information as to their time, place, and so on. When requested by RAGA staff, I wrote thank you notes to contributors. I do not know which, if any, of the companies listed on page 82 of the transcript were members of RAGA; nor do I know if any tobacco companies were members.

E. Were there different tiers of memberships or contribution levels which entitled givers to different privileges or events? What were those tiers and what was each entitled to? Did you know which members or contributors were in which tiers? Did you go to RAGA events where outside contributors were present? What kind of events? Did the people attending wear nametags showing their affiliations? Did you eve see people or companies represented at those events whom you knew to be the subjects of past, present, or potential investigations or enforcement actions by your offices or by other RAGA offices?

Response: The different levels of membership were $5,000; $10,000; $15,000; and $25,000. The higher the level of membership, the more invitations to RAGA events were extended to the members. I do not know the membership level of any particular member. I attended RAGA events where outside contributors were present. Attendees wore name tags indicating their affiliation. I did not see anyone who represented subjects of past, present, or potential investigations or enforcement actions by my office or, to my knowledge, other RAGA offices.

F. Can you understand why some of your fellow Republican Attorneys General thought this entire operation was extremely inappropriate for a law enforcement official to participate in? At your hearing, you were asked whether you think it is appropriate for Attorneys General "to solicit funds or receive funds from corporations who they may later have to investigate." You did not answer that question. Please answer it now, rephrased as follows: Do you think it is appropriate for Attorneys General to solicit funds from, or directly or indirectly receive funds originating from, any person or entity with past, present, or potential matters which have been or can be decided in the sole discretion of an attorney general soliciting the funds, receiving the funds or acting in concert with those soliciting or receiving the funds?

Response: I am proud of my activity on behalf of Republican candidates for the office of state attorneys general. I do not condone fundraising from entities with matters before any office of attorney general. I otherwise support lawful fundraising activities to support political candidates.

12. Out of an abundance of fairness, and to allow you to clear up the matter because no one at the hearing asked you about it, and the public, committee, and FBI questions may not have covered it, I want to give you a chance to respond to the public allegations that you may have inappropriately shared confidential information about the tobacco negotiations with members of the tobacco industry. Therefore, please state in detail:

--whether you ever had access to confidential or privileged or otherwise private information of any kind regarding the positions, cases, theories or strategies of the states or their attorneys in the tobacco cases, and if so, when, in what form, and under what circumstances.

--whether during the entire period when you had access to any such information you or anyone on your behalf had any meetings or conversations or communications of any type, other than at meetings convened and attended by the states' negotiating team, with the tobacco companies, their attorneys or other representatives and if so, when, and the nature and circumstances of those meetings.

--whether at any time you disclosed in any way any information, documents, strategies, opinions, or anything else you learned or received from the state side to the companies' side in any way, shape, or form, and if so, when, and the nature and circumstances of such sharing.

Response: Because Alabama did not join the tobacco litigation, I was never in possession of the types of confidential or privileged information you reference.

13. You have espoused the view that "the premature deaths of smokers actually save the government costs of social security, pension, and nursing home payments." Please describe in detail how you think that this view would affect your ability to rule objectively on suits by smokers, and in other cases where the harm from tobacco use is at issue. Please elaborate on the use to which you think you could legitimately put this view as a judge.

Response: The statement of mine that you quote addresses the costs traceable to smoking that are borne by taxpayer-funded programs; it does not address the question of the private costs of smoking-related illness and death. This statement has no bearing whatsoever on my ability to rule objectively on suits by smokers.

14. You have spoken in public and in private about your dislike of the Sherman Act, Particularly Section 2. Is this a matter you feel strongly about? Please elaborate. Are there other antitrust statutes, or any other federal statutes, which you dislike? Please elaborate. Do you think your strong preexisting opinions on particular federal enactments will require you, if you are

confirmed, to recuse yourself when cases involving those statutes come before you?

Response: I have criticized the monopolization suits filed against Microsoft Corp. in 1998 by the Department of Justice and 20 state attorneys general. It is wrong to conclude from this that I "dislike" the Sherman Act. For example, in my speech at the Reagan Library in 2000, I recommended what Judge Richard Posner has called the "simplification of antitrust doctrine." My remarks were grounded in his well-respected treatise, *Antitrust Law*, first published in 1976. In it, Judge Posner stated, at page 212, that he "would like to see the antitrust laws other than section 1 of the Sherman Act repealed." Judge Posner explained, at page 212, that "Section 1 of the Sherman Act, . . . is sufficiently broad to encompass any anticompetitive practice worth worrying about that involves the cooperation of two or more firms, and virtually all of the practices discussed in this book, . . . involve such cooperation." Since the time of my Reagan Library speech, a second edition of Judge Posner's book has been published. In it, at page 260, he repeats his call for "the repeal of everything but section 1 of the Sherman Act" in order to "reduce the social costs imposed by redundant, ambiguous, unsound, and contradictory statements of legal duty." I remain persuaded by the analysis offered by Judge Posner, who was recently described by FTC general counsel William Kovacic as "one of the most important antitrust scholars of the past half-century." Further evidence of my support for pro-consumer antitrust policy is provided by my recommendation that the Alabama Legislature adopt a new Alabama antitrust act; the current statute has been construed by the Supreme Court of Alabama not to apply to goods in interstate commerce. *Abbott Laboratories v. Durrett*, 746 So.2d 316 (Ala. 1999). If confirmed to the appellate bench, I will faithfully apply the relevant statutory and case law to all cases that come before me.

15. One of the most important decisions ever issued by the Supreme Court is Gideon v. Wainwright, which held that poor people accused of crime are entitled to the assistance of counsel. Since Gideon, the Court has made clear that no indigent defendant may be punished with jail time unless he was afforded the right to counsel at trail. Nearly 40 years after Gideon was decided, you argued before the Supreme Court in Alabama v. Shelton that the Sixth Amendment does not require counsel to be provided to defendants who receive probated or suspended sentences of imprisonment. You also argued that judges can enforce such a suspended sentence through contempt proceedings – and that a defendant can be punished with jail time if he violates the terms of his original sentence. The Supreme Court rejected your argument and held that a suspended sentence may not be imposed under any circumstances unless the defendant was afforded the right to counsel. Of all the issues that you, as Attorney General of Alabama, could decide to pursue in

the U.S. Supreme Court, why did you seek review of the Alabama Supreme Court's ruling in this case? Why did you believe it was important to fight for the principle that poor people can be given suspended jail sentences without being provided counsel at trial?

Response: I presented this issue to the Supreme Court, because the Court had not squarely decided the issue and there was a conflict in the decisions of the lower courts. I thought it was important that a criminal defendant convicted of assault not escape punishment unless the Constitution demanded that result.

16. During your oral argument in Shelton, you made a cost-based argument against the provision of counsel to indigent defendants. You argued that since a "more affluent defendant" might decide that it wasn't worth paying for an attorney in some misdemeanor cases, it is "reasonable for the State to preserve its own resources" by denying counsel to poor defendants in similar cases. Do you stand by that argument today?

Response: The cost-based argument to which you referred was taken from the opinion of the Supreme Court in *Scott v. Illinois*, 440 U.S. 367 (1979). An argument of cost-benefit was also raised in the concurring opinions of Justices Powell and Rehnquist in *Argersinger v. Hamlin*, 407 U.S. 25 (1972). My concern was that the appointment of counsel in misdemeanor cases of suspended sentences would divert scarce resources away from more serious criminal cases and higher priorities of the criminal justice system. I still believe my argument was reasonable.

17. In June 2000, the Supreme Court struck down a 1998 law which purported to overrule the Court's ruling in Miranda v. Arizona and made "voluntariness" the sole test for the admissibility of confessions in federal criminal cases. In an opinion written by Chief Justice Rehnquist, the Court held that Miranda was a "constitutional rule" that may not be overruled by statute. In a 2000 speech before the Federalist Society, you described the Court's recent decision as "awful," and you described Miranda as one (along with Roe v. Wade) of the Court's two "worst examples of judicial activism." Do you continue to believe that Miranda was one of the two "worst examples of judicial activism" in U.S. history? Why should we believe that, as a judge, you would be able to faithfully apply a ruling with which you so clearly and vigorously disagree?

Response: I still believe that *Miranda* was a case of judicial activism unsupported by the text and structure of the Constitution. I joined the amicus brief of Delaware and several other states in *Dickerson* on the side that did not prevail. I nevertheless have a record, as Attorney General, of following the law faithfully. My office handles thousands of criminal appeals a year, and when the application of *Miranda* is an issue, we strive

to give the courts a correct reading of the law. As a judge, I would follow all precedents of the Supreme Court faithfully, even those with which I strongly disagree.

18. An unusually high number of death penalty cases are litigated in Alabama, Georgia, and Florida. One of the most important duties of judges on the Eleventh Circuit is to review the post-conviction and habeas corpus petitions of death-row prisoners. I am therefore very concerned about statements you have made about these proceedings. Following a hearing in this Committee in June 2001, you stated in response to written questions by Senator Leahy that "most" post-conviction petitions filed by prisoners on Alabama's death row are frivolous." You stated that ineffective assistance of counsel had been found in only two Alabama death penalty cases since 1990, when in fact it had been found in at least five cases. You also reaffirmed the following statement, which you had previously made to the New York Times: "These appeals are crucial only for Monday-morning quarterbacks who try to second-guess things and create issues that were probably not real in the first place. It's an abuse of the habeas corpus process to retry the case after it's already been tried and appealed."

The Supreme Court has described the writ of habeas corpus as "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action" – "one of the centerpieces of our liberties." Do you continue to believe that most habeas corpus petitions in capital cases are "frivolous" and "crucial only for Monday-morning quarterbacks?" Given your strongly held and vigorously expressed views about the merits of post-conviction and habeas corpus petitions, what reason do we have to believe that you would fairly and impartially review such petitions as a judge on the Eleventh Circuit?

Response: The narrow scope of habeas review does not allow for the retrial of a case. To attempt to retry a case, as so many petitioners do, is an abuse of the writ and I continue to hold the view that the vast majority issues raised in post-conviction proceedings in Alabama are frivolous. The fact that the Eleventh Circuit has held that, "the cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far between," supports this view. *Van Poyck v. Florida Dept. of Corrections*, 290 F.3d 1318, 1322 (11th Cir. 2002), quoting *Waters v. Thomas*, 46 F.3d 1506, 1511 (11th Cir.1995) (en banc), quoting in turn *Rogers v. Zant*, 13 F.3d 384, 386 (11th Cir.1994). The mere fact that two to five inmates have been granted relief on post-conviction review over the past thirteen years in no way suggests to the contrary. Those petitioners with meritorious claims are, of course, entitled to relief under the Constitution. As a judge, I would be duty bound to give full weight to the dictates of the Constitution. My entire

tenure as Attorney General of Alabama demonstrates my fidelity to the rule of law and my oath to uphold the Constitution.

19. At your hearing, I asked you about the amicus brief in which you urged the Supreme Court to hold that the execution of mentally retarded persons does not violate the Eighth Amendment. In its decision, Atkins v. Virginia, the Court rejected your argument by a 6-3 vote. In your brief, you urged the Court to allow the states "to continue exploring the issue of when mental retardation should be a factor negating a capital defendant's actual responsibility and culpability as opposed to when it is, as it is in Atkins's case, merely an attempt to avoid execution" (emphasis added). What did you mean when you wrote that mental retardation should not be considered as a factor in deciding whom a state may execute? Do you continue to disagree with the Court's conclusion that "pursuant to our narrowing jurisprudence, which seeks to ensure that only the most deserving of execution are put to death, an exclusion for the mentally retarded is appropriate?"

Response: In *Penry v. Lynaugh*, the United States Supreme Court preserved the application of the death penalty to all capital defendants who have "the cognitive, volitional, and moral capacity to act with a degree of culpability associated with the death penalty." *Penry*, 492 U.S. 302, 338 (1989). The *Penry* Court declined to prohibit categorically the execution of the mentally retarded because there was not sufficient evidence of an emerging "national consensus" to satisfy the requirements of the Eighth Amendment. *Penry*, 492 U.S. at 333-335. The State of Alabama was one of a majority of death penalty states that followed *Penry*, not by the enactment of a categorical *per se* rule, but by the enactment of various statutes allowing capital defendants to present evidence of limited mental capacity in the course of trial and sentencing. Capital defendants in Alabama could assert the issue of mental retardation as an affirmative defense, through two separate statutory mitigating circumstances and as a non-statutory mitigating circumstance. See Ala. Code §§ 13A-3-1, 13A-5-51(2) and (6), 13A-5-52.

At no time has my office argued that "mental retardation should not be considered as a factor in deciding whom a state may execute." Rather, the argument in *Atkins* was that there was no clear national consensus among the States that would justify the creation of a *per se* categorical rule within the authority of the Eighth Amendment. All of the death penalty states had enacted statutes or rules that provided for the consideration of a defendant's mental functioning within the meaning of the Court's earlier decision in *Penry*.

Although the Court did not agree with my argument, I respect its decision and will follow its dictates.

20. I also asked at your hearing about the recent decision by the Eleventh Circuit to stay the execution of Alabama prisoner Glenn Holladay, over the strong objections of your office. Finding a reasonable likelihood that Holladay is mentally retarded, the Eleventh Circuit concluded that pursuant to the Supreme Court's ruling in Atkins, he should be allowed to file a second habeas corpus petition raising this claim. The Eleventh Circuit specifically rejected your argument that Alabama's "interest in executing Holladay outweighs his interest in further proceedings.

A. Prior to the Eleventh Circuit's decision in Holladay, over the strong objections of your office. Finding a reasonable likelihood that Holladay is mentally retarded, the Eleventh Circuit concluded that pursuant to the Supreme Court's ruling in Atkins, he should be allowed to file a second habeas corpus petition raising this claim. The Eleventh Circuit specifically rejected your argument that Alabama's "interest in executing Holladay outweighs his interest in further proceedings.

B. The question before the Eleventh Circuit was whether Holladay had already ruled that he is mentally retarded. Your office argued that there was no such reasonable likelihood. But, as the Eleventh Circuit explained in its opinion.

- Holladay scored a 65 on his most recent I.Q. test. Of the ten I.Q. tests he took between 1958 and 1991, the mean of Holladay's scores was 64. The term "mental retardation" is generally used to describe people with an I.Q. level lower than 70 or 75.

- At the sentencing of Holladay's trial, the judge instructed the jury to consider his mental retardation as mitigating evidence. The judge also found in its judgment of conviction that Holladay is mentally retarded.

- The prosecutor, in his closing argument, acknowledged that Holladay is mentally retarded.

Given this facts, and given the Supreme Court's recent decision in Atkins, how could you argue that Holladay should not even have the chance to file a second habeas petition to address for the first time whether his execution would be violate the Eighth Amendment?

Response: My office argued that Holladay should not have been allowed to file a second habeas petition based on the Supreme Court's recent decision in *Atkins v. Virginia* for several reasons. First, this claim is procedurally defaulted from the district court's review because it was not raised at trial, on direct appeal, or in state post-conviction proceedings. Although the United States Supreme Court did not release its opinion in

Atkins until June 2002, the legal and factual basis for this claim was clearly available to Holladay's counsel at trial, on direct appeal, and in his state post-conviction proceedings. In fact, Holladay's trial attorneys introduced Holladay's school records during the penalty phase of his trial. These records suggested that Holladay might be mentally retarded. Further, other attorneys were recognizing and raising this claim during the time of Holladay's trial and direct appeal. *See Williams v. Francis*, 474 U.S. 925 (1985); *Woods v. Florida*, 479 U.S. 954 (1986). Holladay's failure to raise this claim in state court was a procedural default under state law, which bars consideration of this claim on federal habeas corpus review. *See Teague v. Lane*, 489 U.S. 288, 297-98 (1989).

The second reason for opposing Holladay's request to file a second habeas petition is that Holladay's claim that he is mentally retarded is without merit. The holding in *Atkins*, that execution of the mentally retarded is unconstitutional, does not affect Holladay, because Holladay is not mentally retarded. Holladay does not meet the criteria for mental retardation under any of the state statutes that are currently in effect and were approved by the Supreme Court in *Atkins*. Holladay cannot meet the first prong of *Atkins*, because he cannot prove that he has a "significantly subaverage general intellectual functioning." Under the most widely used standard, Holladay must prove that he has an IQ of 70 or below. The majority of experts who evaluated Holladay as an adult have found that he functions in the borderline range of intelligence and is not mentally retarded. Holladay was tested by the Alabama Department of Corrections in 1969 and received a full-scale IQ score of 73. Holladay was tested again by the Alabama Department of Corrections in 1979 and had a full-scale IQ score of 72. In 1987, the doctors on the Lunacy Commission at Taylor Hardin Secure Medical Facility evaluated Holladay after his arrest for the murders of Larry Thomas, Jr., Rebecca Ledbetter Holladay, and David Robinson. This evaluation showed that Holladay had a full-scale IQ score of 71. This evaluation suggested to the doctors on the Lunacy Commission that Holladay functions in the borderline range of intelligence. Dr. Joe Dixon, a psychologist and certified forensic examiner, evaluated Holladay prior to his state post-conviction proceedings and found that he functioned in the subaverage range of intelligence. Although Holladay has various IQ scores that estimate his IQ from 49 to 68, most of those test scores were administered when Holladay was a child. The record, however, reveals that Holladay's true intellectual functioning as an adult has consistently been found to be above 70.

In addition, Holladay cannot prove that he exhibited "significant" or "substantial" deficits in adaptive functioning. There is no evidence in the record to establish that Holladay is impaired, must less significantly impaired, in his adaptive functioning skills. Dr. Dixon found that

Holladay had appropriate adaptive functioning to adapt to the rules of society and to "get along" should he choose to do so. Dr. Dixon disagreed with a mental retardation diagnosis for Holladay because his adaptive functioning was too high.

The record also reveals that Holladay has not exhibited any limitations in any area of adaptive functioning. Holladay escaped from the Cherokee County Jail on March 18, 1986, and committed this offense on August 24-25, 1986. Although Holladay was immediately identified as the person who committed this offense, he was not captured until October 9, 1986, when he was arrested in Gainesville, Florida. The record clearly shows that the murders committed by Holladay were not murders done impulsively, but murders that Holladay had contemplated and planned. Although his wife was one of the victims of this crime, Holladay's marriage suggests that he was able to create social relationships. In addition, he was able to drive a car and travel from state to state (Holladay was in Nashville, Tennessee, before the murders and was captured after the murders in Gainesville, Florida). Holladay has also demonstrated his ability to live on his own and to care for himself when not in jail. Just before the murders in this case, Holladay was living and working in Nashville, Tennessee.

In my judgment, Holladay is not mentally retarded. He is a cold, calculating murderer who is attempting to avoid his death sentence by claiming that he is mentally retarded.

21. At your hearing, senator Durbin asked you about the amicus brief you filed in United States v. Emerson, a case before the Fifth Circuit Court of Appeals. You stated that you had "urged the court to – if my argument had prevailed, to avoid the question of a Second Amendment defense." Then, in response to my question, you stated that "the argument that I presented to the Fifth Circuit was that they should avoid the question of the Second Amendment defense that had been relied upon by the district court." In your *amicus* brief, however, you summarized your argument as follows"

As the court below correctly recognized the statute as construed by the government requires an examination of first principles –the origins and meaning of the Second Amendment, the scope of the individual right it creates, and the justifications necessary before the right may be infringed. That court correctly concluded that if the Second Amendment is to have any meaning at all, this statute, as interpreted by the government, cannot pass constitutional muster.

Response: This statement is contained in my brief, which went on to argue that the decision of the district court could be affirmed based on a statutory interpretation that avoided the constitutional question.

22. In your *amicus* brief in Emerson , you argued that unless 18 U.S.C. §922(g)(8) is limited to restring orders that contain an express finding of dangerousness, the statute is "a sweeping and arbitrary infringement on the Second Amendment right to keep and bear arms." This federal law prohibits the possession of firearms by persons who are restrained from "harassing, stalking, or threatening an intimate partner ...or child...or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury." Mr. Emerson was subject to a domestic violence restraining order that required him not to come near his estranged wife or her young daughter. He was indicted, and later convicted, for violating the federal law after an indictment in which he allegedly threatened his wife with a Beretta pistol and pointed it at her child. Do you really believe that a person who has been restrained from "harassing, stalking, or threatening an intimate partner ... or child... or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury" nevertheless retains a Second Amendment right to possess a gun?

Response: My argument of statutory interpretation was intended to have the court avoid the issue under the Second Amendment. The Fifth Circuit held that the statute in question was constitutional, and I believe that the decision of the Fifth Circuit was correct. Nonetheless, if confirmed, I will follow the precedents of the Eleventh Circuit and the Supreme Court.

23. In your Emerson brief, you stated that "the government urges the radical proposition that the Second Amendment creates no individual right, or that if it does create such a right, it may be infringed whenever a 'rational basis' exists for the restriction" (emphasis added). Since the ruling in Emerson, the Fourth, Sixth, Seventh, Ninth, and Tenth Circuits have all rejected the Fifth Circuit's view of the Second Amendment. Do you believe that each of these circuits has engaged in a "radical" interpretation of the Second Amendment?

Response: I am persuaded that the Fifth Circuit was correct in concluding that the Second Amendment protects an individual right to bear arms. I respectfully disagree with the "collective rights" view of the Second Amendment. Nonetheless, if confirmed, I will follow the precedents of the Eleventh Circuit and the Supreme Court.

24. There is clear precedent in the Eleventh circuit regarding the meaning of the Second Amendment. United States v. Wright, 117 F.3d 1265 (11th Cir. 1997); United States v. Chavez, 204 F.3d 1305 (11th Cir. 2000). Both cases follow the admonition of the Supreme Court in United States v. Miller, 307

U.S. 174 (1939), that the "obvious purpose" of the Second Amendment was to "render possible the effectiveness of" the governmental militia described in the Military Clauses of the Constitution, and that the Second Amendment "must be interpreted and applied with that end in view." Do you believe that the Eleventh Circuit's precedent on the scope of the Second Amendment is "radical"? How will you apply this precedent and the Supreme Court's ruling in Miller if you are confirmed?

Response: As a judge I would follow the binding precedents of the Eleventh Circuit and the Supreme Court.

25. In Hope v. Pelzer, you defended the use of the "hitching post" in the Alabama prison system. Under this practice, prisoners who refused to work or acted disruptively were handcuffed to a horizontal bar in the bossum, where they had to remain standing the entire time. In the case that went to the Supreme Court in 2002, the plaintiff Larry Hope was handcuffed to the hitching post for seven hours without a shirt; he was given water only once or twice and given no bathroom breaks. In your brief to the Supreme Court, you argued that Alabama's use of the hitching post was constitutional. The six-justice majority of the Supreme Court disagreed, stating that prison officials "knowingly subjected Hope to a substantial risk of physical harm, to unnecessary pain caused by the handcuffs and the restrictive position of confinement for a 7-hour period, to unnecessary exposure to the heat of the sun, to prolonged thirst and taunting, and to a deprivation of bathroom breaks that created a risk of particular discomfort and humiliation." You also argued that under the doctrine of "qualified immunity," the prison officials should not be held accountable because they did not violate a "clearly established" right. The Supreme Court rejected this argument also stating that "the obvious cruelty inherent in this practice should have provided the officials with some notice that their alleged conduct violated Hope's constitutional protection against cruel and unusual punishment. Hope was treated in a way antithetical to human dignity."

After the Supreme Court decided the case, you issued a press release attaching the Court for basing its ruling on "its own subjective views on appropriate methods of prison discipline." Do you continue to believe that the Supreme Court decided this case wrongly? Do you think it is a generally improper for courts to review methods of discipline under the Cruel and Unusual Punishment Clause of the Eighth Amendment? How exactly do you believe the Court erred in applying this constitutional provision?

Response: I continue to agree with the dissenting opinion of Justice Thomas, joined by Chief Justice Rehnquist and Justice Scalia, in *Hope v. Pelzer*. I do not believe that the three correctional officers sued by Hope, who is now serving a life sentence for the rape of an elderly woman, should be subject to personal liability. These officers were following

Alabama law in restraining Hope after he disrupted a prison work crew by fighting. Our argument for dismissal, based on qualified immunity, prevailed in both the district court and the Eleventh Circuit. I will, nevertheless, abide by the decision of the Supreme Court.

Questions for Attorney General William Pryor, Nominee to the Eleventh Circuit Court of Appeals, from Senator Charles E. Schumer

1. Do you agree that, other than Roe v. Wade, Plessy v. Ferguson is one of the worst abominations in the history constitutional law?

   Response: Yes.

2. Was the Supreme Court correct in overturning Plessy v. Ferguson's "separate but equal" doctrine when it handed down Brown v. Board of Education?

   Response: Yes.

In your testimony before the Judiciary Committee, you stated that you directed the Alabama district attorneys to give an Alabama law banning certain abortion procedures the "narrowest possible construction." The law provides an explicit exception for the life of the mother, but not for the health of the mother.

3. Did your directive to the state district attorneys instruct them to interpret the statute as containing an exception for the health of the mother?

   Response: No.

4. Under the Supreme Court's decision in Stenberg v. Carhart, for Alabama's law to be constitutional, did it need to have an exception for the health of the mother?

   Response: Yes, after the *Stenberg* decision, I conceded in the federal district court for the Middle District of Alabama that the State of Alabama could no longer defend its ban of partial birth abortions, because the ban lacked an exception for the health of the mother.

5. If you did not direct the district attorneys to construe the law as containing an exception for the health of the mother, how could your directive have ordered them to apply the "narrowest construction possible"?

   Response: The narrowest construction of the Alabama ban of partial-birth abortions was to apply the ban only in cases of viable fetuses. After *Stenberg*, even that narrow construction could not save the statute.

You have made several comments in which you are strongly critical of Justice Souter's jurisprudence, including ending one speech regarding the need to appoint conservative judges with the prayer, "Please, God, no more Souters." You made another remark expressing your pleasure that Bush v. Gore was decided by a 5-4 margin, and expressing your hope that the narrowly decided case would give President Bush an appreciation of the importance of judicial selection, "so we can have no more appointments like Justice Souter."

While Justice Souter has dissented from most of the Rehnquist Court's states' rights jurisprudence that you have repeatedly heartily endorsed, he has been joined in almost every instance by Justices Stevens, Ginsburg, and Breyer. In several of those cases, Justice Souter has not written a dissenting opinion but has instead joined a dissent written by another justice. In the case of Board of Trustees of University of Alabama v. Garrett, the lone states' rights case in which you were representing Alabama as a party and not as an amicus, Justice Breyer wrote the dissent, not Justice Souter. In the Violence Against Women Act case, Morrison, you said you singled out Justice Souter because he wrote the dissenting opinion, but Justice Breyer also wrote a dissent and you did not level the same comments at him.

In certain circles, Justice Souter's nomination by the first President Bush is routinely criticized as a mistake because Justice Souter has not supported the Court's states' rights revolution. Recent reports have suggested that should a justice retire, White House Counsel Alberto Gonzales would be an unacceptable choice to some conservatives who want an activist Court because, "Gonzales is Spanish for Souter."

It seems clear from both the content and context of your remarks that you singled out Justice Souter because he was nominated by a Republican President but has not voted in line with the conservative bloc on the Court, but perhaps there is another reason.

6. Why have you singled out Justice Souter for criticism when three other justices have dissented in almost all of the cases you care most passionately about?

   Response: I have disagreed with several dissenting opinions of Justice Souter in cases involving federalism. One dissenting opinion with which I took particular exception was his opinion in *Morrison*. In the speech you mentioned, I did not address Justice Breyer's opinion, but I addressed Justice Souter's opinion. My comment about Justice Souter was a perhaps feeble attempt to be humorous.

In 2000, you wrote an op-ed in the Birmingham News in which you wrote: "When Congress passed the ADA in 1990, all 50 states had laws on the books protecting the rights of the disabled. Congress passed the ADA as a 'me-too' approach, not as a way of protecting persons who were ignored or left behind."

That law, which passed the Senate and the House by huge bipartisan majorities and was signed into law by the first President Bush, was one of the greatest civil rights victories of the 1990s. When he signed the bill into law, President Bush described the ADA as:

"[T]he world's first comprehensive declaration of the equality of people with disabilities, and evidence of America's leadership in the cause of human rights. With today's signing of the landmark Americans with Disabilities Act, every man, woman, and child with a disability can now pass through once closed doors, into a bright new era of equality, independence, and freedom."

You say the ADA is meaningless to millions of disabled Americans. President Bush could not have disagreed with you more when he signed the bill into law and, as we come up on the thirteenth anniversary of the law's enactment, the millions of Americans who have benefited from the law are living testimony to how wrong you are.

Had you made these remarks in 1990, I suppose it would have been understandable. You would have been ignoring years of hearings and voluminous Congressional findings, but I suppose I might have understood it. What I don't understand is how you could have made these comments ten years later.

7. Was President Bush wrong when, upon signing the bill, he declared it a tremendous step forward for the rights of the disabled?

Response: No. The ADA is an important law, as I stated in the *Birmingham News*. My argument, in the context of the *Garrett* case, was that the ADA was not enacted to remedy any pattern of unconstitutional conduct by the States.

8. How do you reconcile the beliefs you articulated in your 2000 op-ed with the historical record of the ADA's impact?

Response: I agree that the ADA is an important law that has assisted thousands of disabled Americans. Again, my statement in the op-ed to which you referred was that Congress exceeded its authority in subjecting state governments to liability for money damages, and the Supreme Court agreed.

9. What components, if any, of the ADA, were not superfluous to the laws in all fifty states at the time the ADA was passed, in 2000 when you wrote your op-ed, and now?

Response: Without undertaking anew a thorough review of the laws for all 50 states during those time frames, I do not have a judgment on this issue.

10. For those same three time frames, what states did not/do not provide for an enforceable right of action by a private actor against the state discriminating on the basis of disability?

Response: I do not know. My brief to the Supreme Court, which was written by Judge Jeff Sutton, has an appendix that describes the various laws of the States that protected the rights of disabled persons.

11. For those same three time frames, what states did not/do not require reasonable accommodations for the disabled?

Response: See answer to question 10.

12. For those same three time frames, what states did not/do not provide protection for the full range of disabled people (including the mentally ill and the mentally retarded) that the federal ADA protects?

Response: See answer to question 10.

In an amicus brief you filed in support of Texas' defense of its anti-homosexual-sodomy law, you wrote, "Texas is hardly alone in concluding that homosexual sodomy may have severe physical, emotional, psychological, and ***spiritual*** consequences, which do not necessarily attend heterosexual sodomy, and from which Texas's citizens need to be protected." [*emphasis added*]

In response to questions at your hearing and in other settings, you have said that your argument is merely a reiteration and defense of Justice White's opinion in Bowers v. Hardwick.

13. Does Justice White's opinion discuss the "spiritual" consequences of homosexual sodomy? If so, where in the opinion does that discussion occur?

Response: I stated at my hearing that the slippery slope argument in the brief I filed in *Lawrence* was derived from Justice White's opinion. With respect, I did not refer to the "spiritual consequences" phrase as being derived from Justice White's opinion.

14. Does Justice White's opinion distinguish between homosexual sodomy and heterosexual sodomy? If so, where in the opinion do you find that distinction?

Response: *Bowers* involved homosexual sodomy, and the Court did not address heterosexual sodomy.

15. Does Alabama's anti-sodomy statute distinguish between homosexual and heterosexual sodomy?

Response: No.

16. If your answer to the previous question is no, and if your responsibility as attorney general in filing amicus briefs (if you are going to file them at all) is to protect and defend the laws of Alabama, why did you distinguish in your brief between homosexual and heterosexual sodomy?

Response: I distinguished, in my brief, between heterosexual and homosexual sodomy because the Texas law distinguished between these activities.

17. From what case, statute, or legal doctrine did you derive the argument that a state has the power to proscribe private conduct because it may have "spiritual consequences"?

Response: Each state possesses the inherent power to protect the health, safety, and morals of its citizens. The Tenth Amendment confirms this essential division of authority.

18. In making this argument, what standard did you apply in determining that the state's interest in protecting people from the "spiritual consequences" of their actions outweighed those individuals' right to engage in private consensual conduct?

Response: I argued in support of the traditional police power of each state government. My argument was that the Constitution does not generally protect "individuals' right to engage in private consensual conduct."

I was struck by the comments you have made regarding the child welfare consent decree case in Alabama.

That case was initiated in 1988, when a lawsuit was filed on behalf of a child in foster care, identified only by the initials R.C. This child was receiving substandard care and, after the suit was filed, it was shown that much of the state's foster care system was in disarray.

In 1991, the state entered into the consent decree – a voluntary settlement designed to help the state right its child welfare ship and to help kids get the services they need and, under federal law, are entitled to.

After the consent decree was entered, the Alabama Department of Human Resources totally revamped the state's handling children's cases, setting strict new standards on worker case load limits, the monitoring of home environments, and the evaluation of problems within the system.

From what I am told, pretty much every child welfare advocate in the state – and pretty much every expert who has examined the system from around the country – credited the R.C. consent decree with going a long way toward fixing a system that was broken.

Unlike some of the lawsuits we hear about, this one didn't make any lawyers rich and was not an effort to bleed a defendant dry. And this was not a case in which a federal judge swooped in and tried to take control of a state system. Alabama voluntarily entered into a consent decree and the children of Alabama were undeniably better for it.

That was, at least, until the state dramatically cut back funding for care and services and eliminated training programs, rolling back progress. When the case was back in court in 1997, you conceded that Alabama was in violation of its duties under the consent decree but instead of vowing to work with the court to fix the problems and help the underprivileged children of your state, you said:

""My job is to make sure that the state of Alabama isn't run by federal courts. . . . My job isn't to come here and help children."

19. Why did you prioritize keeping the federal courts from enforcing federal laws guaranteeing child welfare over helping Alabama's children?

Response: My objective in representing the state in this matter was to protect the flexibility of the Department of Human Resources, and its employees, in responding to the needs of children under its care, and to ensure that the state was not unduly constrained by the terms of a consent decree. The remark of mine that you quote, standing alone, does indeed sound harsh. I admitted this almost immediately and apologized for its tone, as reported in a story in the Wall Street Journal on May 21, 1997. The remark also failed to convey my reasons for acting as I did, as explained above. Since 1997, my client, the Department of Human Resources, has achieved substantial compliance with the consent decree, and that litigation is in its final stages.

My entire record as attorney general demonstrates my commitment to children. I serve as vice-chair of the Children First Foundation , a bipartisan group of leaders who have sought reforms and increased funding for the delivery of children services. I also founded Mentor Alabama, an initiative that has recruited thousands of positive adult role models for at-risk children. For the last three years, I have served as a reading tutor for at-risk children in the public schools of Montgomery, Alabama.

Senate Judiciary Committee Hearing
Nomination of Diane Stuart to be Director of the Office on Violence Against Women
June 11, 2003

Written Responses to Questions of Senator Joseph R. Biden, Jr.

1. Attorney General Ashcroft has made clear that the Department of Justice must comply entirely with the Violence Against Women Office Act as passed in the "21st Century Department of Justice Appropriations Authorization Act " (P.L. 107-273). What steps has your Office on Violence Against Women (the "Office") taken to comply with the new law? What future steps do you intend to take to ensure the Office's compliance? Please detail, if applicable, measures your Office has taken, or intend to take, to amend its own materials and the Department of Justice's materials to reflect the Office's new status as an independent office. To the extent that the Department of Justice's Organizational Chart illustrates the Office's new configuration as an independent and separate office, please include a copy with your answer.

Response:

Since the Attorney General's decision to elevate the Office on Violence Against Women (OVW) as a separate component of DOJ, I have met extensively with the transition team within the Attorney General's office to address all the elements of our transition. Some of the issues we discussed include the development of a new organizational chart; analysis of personnel needs; grant administration and management; and activities regarding legal counsel, public affairs, legislative affairs, and overall administration. Additionally, I have met with various department principals within DOJ. For example, I have met with the Director of DOJ's Office of Public Affairs and the Assistant Attorney General and the General Counsel for the Justice Management Division.

New letterhead and business cards have been ordered and we are awaiting delivery. We anticipate that changes on our web site, brochures, and other similar materials will be made over the next several months. The organizational chart is in draft form and is currently awaiting approval.

2. Do you expect that the Office's new status as a separate and independent office will be reflected in the Administration's future budgets? When reviewing the Administrations proposed budget for fiscal year 2004, programs and expenditures associated with the Violence Against Women Act and the Office on Violence Against Women were sprinkled throughout the budget for the Office of Justice Programs. Do you expect that in the future the Office and its attendant programs will have their own, clear line items in the budget?

Response:

We anticipate that the Office's new status will be reflected in the Administration's future budgets, beginning with the Fiscal Year 2005 budget.

3. A key component of the new law on the Office is the direct reporting lines between the

Director and the Attorney General. How do you intend to comply with this new reporting mandate? Do you expect to report to the Attorney General on a regular basis, and if so, how frequently? Other than personal meetings, are there other reporting mechanisms you will utilize, such as submitting written reports or updates?

Response:

As a component head of the Department of Justice, I anticipate multiple forms of reporting to the Attorney General, including, but not limited to, regular monthly meetings with all the component heads and weekly written reports.

4. As a separate and independent entity, will the Office remain subject to the competitive sourcing efforts initiated by the Office of Justice Programs? If so, please detail the status of the competitive sourcing initiative in the Office, and what changes have occurred, or will occur, due to this process.

Response:

As a component of the Department of Justice, OVW will remain a participant in the competitive sourcing effort of the Department.

5. Kindly describe the current Office structure, including but not limited to, the specific units, each unit's responsibilities, the number of staff within each unit (including detailees) and their job titles. Please include an updated Office Organization Chart, if available. Also, please indicate if you have any plans to reorganize or change the Office structure in any substantive manner.

Response:

OVW is organized into seven grant making units and two units that address policy, evaluation, and communication issues. The Special Assistant to the Director, the Chief of Staff, and the Administrative Officer reside within the Director's office.

Currently, the seven grant making units include (FTEs in parentheses): Legal Assistance (4); STOP Formula, State and Tribal Coalitions (3); Arrest (4); Tribal (4); Campus and Supervised Visitation (2); Rural (3); and Elder and Disabilities (2). Each grant making unit is responsible for the entire grants administration process. The last two units (3.5) are responsible for legislative and policy analysis, web site development and maintenance, written and email correspondence, measuring effectiveness, Government Performance Reporting Act requirements, and Congressional reports. The OVW management team consists of a Deputy Director, a Chief of Staff, a Special Assistant, an Administrative Officer, and two Assistant Directors. There are four full-time administrative staff members and five contractors. In addition, we expect to add a Principal Deputy Director within the next month. Changes in the office structure will be considered again in April of 2004, or sooner, if necessary.

6. As a former member and primary spokesperson of the National Advisory Committee on

Violence Against Women (the "Committee"), you are well positioned to know the value and impact the Committee can have on national policy regarding domestic violence, sexual assault and stalking. The Committee has been charged with seven action items for 2003, one of which deals with marriage promotion initiatives. How do you view the connections between marriage promotion initiatives and efforts to end domestic violence? What role do you believe domestic violence advocates should play in marriage promotion efforts? For instance, should domestic violence advocates and service providers include marriage counseling in their work? Do you see any dangers in mixing marriage promotion initiatives with domestic violence services? How will your Office work to protect battered women from policies that prioritize the continuation of the marriage?

Response:

Many studies have cited the benefits of marriage, and statistics have shown that instances of domestic violence are less among married couples. However, OVW, through it's programs and policies always advise and inform applicants and grantees of practices that may compromise victim safety. For example, research cites that mediation and couples counseling is not advisable in domestic violence situations.

7. Several members of the National Advisory Committee on Violence Against Women (the "Committee") have a strong backgrounds in and histories of advocating faith-based social programs. What is your position on the use of such programs to combat domestic violence, sexual assault and stalking?

Response:

If confirmed, I will be committed to pursuing all avenues available to combat domestic violence, sexual assault and stalking, including community and faith-based service providers.

Often a victim of domestic violence will visit her religious leader seeking assistance, and in certain instances such leaders may not have the knowledge or skills to appropriately respond to the needs of the victim. If confirmed, I will encourage all service providers in the field of domestic violence, sexual assault, and stalking to reach out to faith-based organizations within their communities to train and educate about the dynamics of violence against women and about the resources available. I also commit to encourage faith-based organizations to reach out to the service providers.

8. What is the status of the Office's cooperative agreement with the University of Southern Maine, Muskie School of Public Service (the "Muskie School")? In written responses to questions submitted by the Subcommittee on Crime and Drugs last April, you wrote that the Muskie School had completed a draft report that was undergoing review by the Department of Justice. Is that review completed, and if so, has the report been released?

Response:

We are continuing to work closely with the Muskie School on the VAWA Measuring

Effectiveness Initiative. The Muskie School is developing data collection instruments for all eleven OVW grant programs. To date, forms for seven grant programs have been piloted with grantees and are in nearly final form. The Muskie School also has begun trainings to prepare our grantees to complete these new progress reports. As of January 2004, we are scheduled to begin receiving data on these new forms from grantees of six OVW programs. In addition, the Muskie School continues to conduct site visits with our grantees, which will supplement the information collected with the new forms.

The March 2002 report on our STOP Violence Against Women formula grants has been returned to the Muskie School for a final round of corrections. We anticipate that the report will be finalized and submitted to Congress in the near future.

9. Kindly describe the Federal Interagency Coordinating Board on Violence Against Women, and please include in your answer the board's members, its mandate and current agenda items and its meeting schedule.

Response:

Members include the Departments of Justice, Health and Human Services, Education, Labor, Defense, State, and the White House. The mandate is to replicate the coordinated community response that is so effective on the local and state levels, exemplifying the principle of the coordinated response to violence against women. Although the Board has not formally convened since January, members currently are meeting biweekly to work on a special initiative to improve the coordinated community response to domestic violence.

10. The Violence Against Women Act of 2000 required the Attorney General to review the existing standards of training and practice for licensed health care professionals performing sexual assault forensic examinations and develop a national protocol to be released in a report to Congress. Please describe what efforts the Office has taken to create and promulgate recommended sexual assault forensic examiner practices and procedures. Kindly include in your answer any and all consultation and collaboration the Office has done with respect to this project. What future steps will the Office take in the area of sexual assault forensics?

Response:

To ensure adequate staff support for this project, in February, 2002, OVW convened a Sexual Assault Forensic Exam (SAFE) Working Group. The Working Group decided that the first task was to produce the national protocol, then turn attention to the development of a national recommended standard for training and the recommendation of SAFE training for all health care students. This way, the training will be based on the contents of the protocol and will address any competencies needed to implement the protocol.

OVW has gathered information from every state on their forensic examination activities. Many states have state-wide protocols while others handle this on a local basis. We have

also reviewed protocols developed by professional medical organizations such as the American College of Emergency Physicians. Our comprehensive review has revealed many promising practices that are attentive to both victims' needs and the importance of proper evidence collection. The national protocol will incorporate these practices to ensure a consistent response for all victims that promotes their recovery and supports the prosecution of their assailants.

In order to obtain feedback on existing protocols and receive advice on the best practices to incorporate into a national protocol, the Working Group held two focus groups with known experts in the field from all over the country. The first focus group, convened in August, 2002, brought together medical personnel, forensic scientists, and victim advocates. The second focus group, held in November, 2002, was directed toward representatives of the criminal justice system, including police, prosecutors, and judges. A tremendous amount of material was gathered from the focus group breakout sessions, which were organized around specific issues related to sexual assault forensic exams, e.g., evidence integrity, equipment and supplies, and informed consent. This material was carefully reviewed, analyzed, and organized into a working draft of the protocol. The participants in the focus groups have received a copy of the draft protocol and provided written comments.

This month, OVW is convening two sets of conference calls with specialized groups to obtain verbal feedback and discussion. The first set of calls was with survivors of sexual assault, with an emphasis on representatives of underserved populations, e.g., victims with disabilities and elderly victims. We received excellent feedback from this group that will enable the protocol to be truly victim-centered. The next set of calls will engage representatives from Indian country, including tribal law enforcement, prosecutors, advocates, and judges, to advise us on how to ensure effectiveness of the protocol in Indian country.

The next step in the process is to consult with organizations that have a stake in the protocol's development and eventual dissemination. The Working Group compiled a "buy-in" list of over 100 organizations and prioritized them into "tiers," with the first tier representing groups whose input and support we felt was essential for increasing credibility and promoting utility of the protocol.

Expected completion date for the protocol is in December of 2003. The Office will be working with a national organization that has expertise on forensic exam training to develop the training standards for the protocol. The SAFE update report to Congress is completed and under review by the Department.

11. You've stated in public remarks that "[s]tatutes regarding the possession of firearms, full faith and credit protections and the new federal crime of cyberstalking are laws that need to be enforced." What activities are being undertaken by the Office to support vigorous federal and state prosecutions of illegal firearm possession by batters? Similarly, what steps has the Office

taken to support and encourage federal prosecution under the new federal cyberstalking law?

Response:

OVW supports several technical assistance initiatives that address firearms seizure as one of their primary tasks, and we have provided education, training, and assistance across the nation on firearms legislation and assisted jurisdictions with developing or modifying their owns firearms legislation to be consistent with Federal law. We have started a series of discussions to help us further identify existing obstacles in the judiciary and among law enforcement agencies regarding weapons seizure. We are also working with national law enforcement organizations to disseminate promising practices and model protocols for handling firearms in domestic violence cases.

In addition, OVW works in close coordination with the Executive Office of U.S. Attorneys (EOUSA) to train Federal prosecutors and victim witness specialists on violence against women issues. EOUSA provides OVW with regular updates on Federal prosecutions under VAWA and subsequent legislation. OVW also participates in monthly meetings of an intra-agency group regarding domestic violence and Federal gun control laws.

12. As you are well aware, the Office manages at least 11 separate grant programs, and since its inception, the Office has awarded over $1 billion in grant funds. As you survey the various grant programs your Office oversees, are there grant programs which are particularly successful and those that are particularly problematic? Are there changes you would like the Office to make to any grant program?

Response:

VAWA 2000 entrusted the Attorney General with the administration of six new (or newly institutionalized) grant programs: grants to state domestic violence and sexual assault coalitions; grants to develop and operate tribal domestic violence and sexual assault coalitions; grants to provide civil legal assistance for victims of domestic violence, stalking, and sexual assault; grants to train law enforcement officers, prosecutors, and court personnel to address cases of elder abuse, neglect, exploitation and violence against individuals with disabilities; education and training grants to improve services to individuals with disabilities who are victims of domestic violence, sexual assault and stalking; and grants to fund safe places for visitation with and exchange of children in cases of domestic violence, child abuse, sexual assault, or stalking. I am proud to report that, over the course of FY2001 and FY2002, OVW was able to develop and make awards in all six of these new programs, thereby enhancing our national ability to provide a comprehensive response to domestic violence, sexual assault, and stalking. To cite one example of both the reach of and need for these programs, our Legal Assistance for Victims (LAV) Grant Program has regularly received more than two times the number of applications we can fund. In this fiscal year, where the LAV program received an appropriation of $40 million, OVW received 221 applications, requesting a total of nearly $99 million. I am also pleased with the groundbreaking work that our Office has begun

in our Safe Havens for Children Pilot Program. Through our efforts, I believe that we have helped raise awareness within the supervised visitation field regarding the very different needs of families who have suffered from domestic violence, and, if confirmed, I can commit to continue with tenacity.

Of course, there is still so much more that needs to be done. As we look forward to the reauthorization of the Violence Against Women Act, we recognize that this will present us with an opportunity to strengthen and enhance the Act. For example, I am particularly conscious of the need to authorize Tribal Domestic Violence and Sexual Assault Coalitions to receive funding. Additionally, there is a continuing challenge for the Office to ensure that our ability to respond to sexual assault is as strong as our ability to respond to domestic violence .

13. Since you've been the Acting Director of the Office, please detail the average time lapse between issuance of the grant award announcement and the obligation of grant funds for each of the grant programs administered by the Office.

Response:

The average time lapse between issuance of a grant award announcement and obligation of grant funds for all discretionary OVW programs is approximately five to six months. OVW solicitations are open for six to eight weeks to give applicants adequate time to develop and prepare their applications. All OVW discretionary program applications are peer-reviewed by experts in the field of violence against women. This is a rigorous four week process. After the peer review is complete, an internal review is conducted to ensure statutory compliance and to score continuation applications. Next, staff prepare award recommendations for my review and approval. This internal process takes approximately 4 weeks depending on the size of the grant program.

Finally, awards are processed. This can take approximately six to eight weeks. The most time-consuming part of this process is the budget clearance. Often, applicants are required to submit a revised budget due to miscalculations or the inclusion of unallowable costs. In some instances applicants may need to get approval from their project partners or tribal councils before revised budgets can be submitted. This can add time to the budget clearance process.

14. The Violence Against Women Act of 2000 (the "Act") continued and strengthened the federal government's commitment to helping change the way law enforcement, the courts, the medical establishment and others respond to domestic violence, sexual assault and stalking. In those efforts, the Act targeted typically underserved populations such as the elderly, the disabled and battered immigrants. With that purpose area in mind, what steps is the Office taking to ensure that programs are servicing battered immigrant women?

Response:

OVW addresses the needs of battered immigrants through its technical assistance

initiative and discretionary grant programs. For example, the Legal Assistance for Victims Grant Program supports projects throughout the country that provide direct representation in all legal cases (including immigration) related to the client's experience of abuse or violence. In addition, the technical assistance initiative funds projects that train OVW grantees on the full spectrum of issues related to serving battered immigrants effectively. These issues include ensuring cultural competency, overcoming language barriers, providing legal services, promoting inter-disciplinary collaboration, and training regarding immigration law that directly affects battered immigrants (e.g., the VAWA self-petitioning process).

15. You've indicated in your public remarks that one of the Office's highest priorities is to 'bring the level of awareness about sexual assault to the same level of awareness we have for domestic violence.' What efforts are underway currently to raise the awareness of sexual assault, and what are your future plans to improve our community responses to sexual assault?

Response:

Raising awareness about sexual assault is indeed one of my top priorities. I am accomplishing this through a number of initiatives:

- The Sexual Assault Forensic Exam Working Group (SAFE Group) - The SAFE group is not only responsible for developing the national protocol required by the Violence Against Women Act of 2000, but also for promoting it. Members have attended various meetings and conferences to present and discuss the contents of the draft protocol. This dissemination will continue even after the protocol is completed.

- OVW's Grant Programs - This year, we amended the application kit for the STOP Violence Against Women Formula Grant Program to provide more information about the requirement regarding payment for forensic exams and to discourage states from such practices as billing victim insurance. We have provided further information on this topic on our web site. Next year, we plan to amend all our application kits to include additional information about sexual assault.

- Sexual Assault Focus Groups - Working with the STOP Technical Assistance Project, we held two focus groups for state STOP administrators on sexual assault issues and how they can improve sexual assault services in their states. The second focus group included national resources such as the National Sexual Violence Resource Center and the National Center for Victims of Crime to discuss the services that such resources can provide. We will continue to work with the state administrators on addressing sexual assault.

- National Coordination Meeting - Next winter, we are planning to convene a national meeting on sexual assault coordination to identify gaps in responses to sexual assault victims/survivors; identify issues and challenges which detract from the availability, accessibility, and quality of services for sexual assault victims/survivors; and develop strategies to respond to the identified issues, challenges, and gaps in order to expand victim services and

improve the ability of the criminal justice system to respond effectively to sexual assault.

- National Sexual Violence Prevention Conference - Every two years, the Centers for Disease Control sponsors a national conference on sexual violence prevention. We have been co-sponsors of the previous conferences and are actively involved in planning the 2004 conference, which we will co-sponsor. I gave a plenary address at the 2002 conference.

- Sexual Assault Response Team (SART) Conference - Last month, we co-sponsored the second national SART conference in New Orleans. I gave a plenary address and my staff provided a break-out session on the development of the national protocol.

- DNA Initiative - OVW is providing $5 million for the President's DNA Initiative for training of Sexual Assault Response Teams.

16. The Violence Against Women Act of 2000 requires the Department of Justice to report to Congress on violence against women in the workplace. What is the status of this report, and when do you anticipate its public release?

Response:

OVW is working in conjunction with a national organization with expertise on this issue to prepare this report. Currently, edits to the final draft of the report are being incorporated and a final report is expected by early Fall, 2003.

17. What efforts is the Office taking to edify, consult with and assist the newly formed Bureau of Citizenship and Immigration Services in the U.S. Department of Homeland Security with respect to the timely issuance of visas, i.e., the T and U-Visas, for battered and trafficked immigrant women and their immediate families? Please include in your answer the Office's consultations with the U.S. Department of Homeland Security regarding the issuance of relevant regulations.

Response:

OVW has a longstanding relationship with staff members at the Bureau of Citizenship and Immigration Services (CIS) and has worked with them to support both the VAWA self-petitioning process and the implementation of the T and U visas. For example, this past January, we helped support a training for then-INS adjudication officers and attorneys regarding immigration relief for victims of crime. The Office funded a trainer to educate participants on the dynamics of domestic violence so that they could better understand and adjudicate cases involving battered immigrants. Moreover, OVW staff worked closely with the INS on its development of the T visa regulation and in reviewing early drafts of the U visa regulation. Since the creation of the CIS, OVW has maintained regular contact with CIS staff and continued to offer our assistance regarding the U visa and final VAWA self-petition regulations.

18. What efforts, if any, is the Office taking to consult and collaborate with the U.S.

Department of Homeland Security regarding the issuance of regulations regarding gender-based asylum claims for women and girls seeking refugee from horrific persecutions such as gang rapes, "honor" killings, sexual slavery and trafficking and domestic violence.

Response:

The development of regulations regarding asylum and withholding definitions will be a shared task between the Department of Justice and the Department of Homeland Security. The Office on Violence Against Women has been in contact with the Department of Justice offices that will be working with DHS to develop this interagency regulation, and we are prepared to provide our expertise and assistance in this matter. In addition, OVW did participate in discussions on this matter prior to the transfer of certain immigration-related functions to the Secretary for Homeland Security.

19. In remarks to the National Advisory Committee on Violence Against Women, you noted that Attorney General sends you legislation "all of the time." What role does your Office play in drafting, reviewing, and editing federal legislation that impacts domestic violence, sexual assault and stalking? Please detail your Office's procedures with respect to legislation, and note the particular Office employees who are engaged in the legislative process.

Response:

At present, draft legislation generally comes to our office through the Office of Legislative Affairs and OJP's Office of General Counsel (OGC). We have three attorneys on staff who review the legislation and provide comments. With my approval, the comments are forwarded to OGC. These comments are then included in a "views letter" submitted by the Department to Congress. In addition, OVW participated in drafting VAWA 2000 and providing recommendations for improvements to VAWA and subsequent legislation.

20. In recent speeches you've outlined the following four priority areas for the Office: (1) capacity building and program sustainability; (2) increased awareness of sexual assault issues; (3) improved grant processing; and (4) improved measurement of effectiveness. Please explain how your Office is addressing each of these priorities area. Do you have any additional top priorities for the Office, and if so, please describe them in detail. In light of these priorities, what is your vision for the Office?

Response:

First, the sustainability of programs beyond Federal funding is an issue that will continue to receive my attention. Crafting solutions will require much deliberation and discussion with those practitioners in the field who are providing the services, developing the policies and protocols, and guiding the actual practice. Second, as described in response to question 15 above, we have numerous sexual assault initiatives. Third, the reorganization of the office has substantially improved the grants administration process.

Fourth, as described in response to question 8 above, our Measuring Effectiveness Initiative is progressing. This initiative should provide the Office with the data that will guide future initiatives. For example, the data will provide information about areas of unmet needs, which will inform our future efforts to improve the nation's response to violence against women.

Senate Judiciary Committee
Hearing on "Judicial and Executive Nominations"
Wednesday, June 11, 2003

Responses to Written Questions Submitted by Senator Russell D. Feingold from Diane Stuart

1. What are your top priorities for the Violence Against Women Office?

Response:

There are four priority areas for the Office on Violence Against Women (OVW): increased awareness of sexual assault issues; improved grant processing; capacity building and program sustainability; and improved measurement of effectiveness.

2. Teens age 16-19 years are at least three times more likely than the general population to be victims of rape, attempted rape, and sexual assault. How do you propose educating children about the dangers of sexual assault and how they can protect themselves? With a current push toward abstinence-only curriculums in schools, how should educators make children and young adults aware of these dangers and aware of victims' services and the importance of reporting these crimes?

Response:

Through technical assistance awards, OVW has worked to provide direct assistance and develop model curricula to address sexual assault of young women and other forms of dating violence among teenagers and young adults. These projects are intended to provide the knowledge and skills necessary for establishing safe and mutually supportive relationships. They encourage teenagers and young adults to reach out to friends and family members who may be experiencing dating, sexual, or domestic violence; they encourage them participate in preventing dating violence in their own communities by confronting attitudes and behaviors that contribute to abusive relationships; and they connect teens and young adults to community-based programs that respond to dating violence. In addition, OVW looks forward to continuing to work with OJJDP which has jurisdiction and expertise on this issue.

3. What steps will the Violence Against Women Office take to ensure protections and services for children exposed to domestic violence?

Response:

One of the ways OVW addresses the needs of children who are exposed to domestic violence is through the Rural Domestic Violence and Child Victimization Enforcement Grant Program (Rural Program). The primary purpose of the Rural Program is to enhance

the safety of victims of domestic violence, dating violence, and child abuse by supporting projects uniquely designed to address and prevent these crimes in rural areas. The Office has also developed an extensive technical assistance program for grantees in rural areas who are seek solutions in working with children who witness domestic violence.

In addition to the Rural Program, the Office is one of several federal agencies participating in an inter-Departmental demonstration initiative in six separate jurisdictions entitled "Collaborations to Address Domestic Violence and Child Maltreatment." The demonstration initiative requires communities to implement published guidelines. These guidelines, commonly referred to as the "Green Book," are directed to child welfare agencies, community-based domestic violence providers, and dependency courts. These organizations agree to establish collaborative structures and commit to developing policies and procedures in each system that enhance the safety and well-being of battered women and their children. Many other organizations contribute in important ways to addressing these problems and are also included: law enforcement, faith institutions, schools, health care systems, extended families, and community-based agencies.

4. The administration has proposed a marriage requirement, which could limit access to federal welfare benefits for women who are not married. Do you recognize the danger this provision poses to battered women who may have to choose between an abusive - and potentially deadly - marriage, and welfare benefits to provide for their children?

Response:

Many studies have cited the benefits of marriage, and statistics have shown that instances of domestic violence are less among married couples. However, OVW, through it's programs and policies always advise and inform applicants and grantees of practices that may compromise victim safety. For example, research sites that mediation and couples counseling is not advisable in domestic violence situations.

5. Sexual assault is the most under-reported crime in the United States. The Department of Justice released a document last August entitled *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000,*which included startling statistics regarding the reporting of sexual assault. The report found that from 1992-2000, only 36% of rapes, 34% of attempted rapes, and 26% of sexual assaults were reported to the police. Not only is this an indicator that victims are not getting needed services, but these terrible crimes go largely unpunished. What initiatives would you implement to encourage victim reporting of rape and sexual assault?

Response:

Many victims do not report sexual assault because they do not believe the criminal justice system can help them. By improving the criminal justice response to sexual assault through education and direct funding to local jurisdictions, victims may be more willing

to report these crimes. Through its grant programs, OVW supports education and training for law enforcement, prosecutors, and judges to enhance their understanding of the dynamics of sexual assault.

While many of OVW's resources are dedicated to improving the criminal justice system's response to sexual assault victims and increase offender accountability for these crimes, the Office is raising awareness of sexual assault at every opportunity including speaking engagements, collaborating with public awareness initiatives of other federal agencies and non-governmental organizations, and funding the development and delivery of community education.

6. I understand that the Office of Justice Programs plans to out-source many of the administrative duties involved in carrying out federal justice programs. While the Violence Against Women Office operates as an independent, grant-making office, will it also be required to out-source administrative duties, such as grant administration and processing? Does the Office plan to rely on third party personnel to carry out administrative duties, rather than internal employees who may have a higher level of expertise on domestic violence issues?

Response:

As a component of the Department of Justice, OVW will remain a participant in the competitive sourcing effort of the Department.

7. I have heard that some of the recipients of VAWA funds in Wisconsin have experienced wide gaps in funding between the time their grants expire, and the date they are re-funded. Do you have any plans to expedite the grant-making process to ensure that nonprofit service providers do not lose critical funds which, in turn, threatens to disrupt needed services for domestic violence victims?

Response:

Over the last two years, the Office has become increasingly aware of the problem faced by its grantees because of the lag time between the end of one grant period and the award of a new grant. While continuation awards cannot be guaranteed, the Office has implemented a number of changes during the last fiscal year in an effort to help alleviate this problem. First, the Office increased in the length of the grant period from 18 months to 24 months, where possible, to eliminate the lag time between grants. By having two-year grants as well as two-year renewal cycles, approved applicant programs will receive enough funding to last until the next potential renewal. The Office has also identified processing strategies that reduce the time between application receipt, review, and award. Thirdly, the Office is pursuing a series of sustainability strategies to help ensure that services to victims are not disrupted.

8. I understand that there are some in the administration who seek to gender-neutralize domestic violence by taking focus away from domestic violence and sexual assault against

women. There is a concern in the domestic violence and sexual assault community, however, that this de-emphasis could result in diminished resources and attention to combating and preventing domestic violence and sexual assault against women. How do you respond to these concerns and what will you do to ensure that combating domestic violence and sexual assault against women remains a priority of the Justice Department?

Response:

If confirmed, I can commit that OVW will continue to follow the language of the Violence Against Women Act and subsequent legislation that specifies who shall receive services under each grant program. As a separate component within the Department of Justice, OVW has a unique opportunity to elevate the issue of violence against women and work with individuals at the highest levels of government to ensure that ending violence against women remains a priority.

**Written Responses to Questions From Senator Tom Daschle,
From Diane Stuart, Nominee To Be Director,
Office on Violence Against Women, Department of Justice**

1. In a March 2002 statement to the Senate Indian Affairs Committee, Principal Deputy Assistant Attorney General for the Office of Justice Programs Tracy Henke said, "[I]t is a sad fact that American Indian and Alaskan Native women still suffer disproportionately from domestic violence and sexual assault." As Director of the Office on Violence Against Women (OVW), how do you intend to address the specific issues facing American Indian/Alaska Native women?

Response:

Addressing the specific issues facing American Indian/Alaska Native women requires a multi-pronged, holistic approach, as well as strong knowledge of the unique barriers that tribal communities face in the area of violence against women. We have two grant programs that focus specifically on violence against Native women, and 5 percent set-asides in four of our discretionary grant programs ensure that tribes will receive a portion of these grant funds.

In order to enhance our focus on tribal issues, we have implemented a number of initiatives. First, in the reorganization of our office, we created a Tribal Unit dedicated to working specifically with grantees of the STOP Violence Against Indian Women Grant Program. We also have a dedicated staff member for the Tribal Coalitions Grant Program. Second, the goal of OVW's technical assistance initiative for STOP Violence Against Indian Women Grant Program is to build the capacity of tribal communities to address violent crimes against women in culturally appropriate ways.

We are continually looking for ways to enhance our response. I will soon be participating in a seminar sponsored by the Executive Office of U.S. Attorneys to address domestic violence issues in Native American communities.

2. Would better coordination with tribal and federal law enforcement agencies (Bureau of Indian Affairs, FBI, U.S. Attorneys) enhance the prevention of, and response to, domestic violence and sexual assault? If so, how might you propose to accomplish this objective?

Response:

I agree that better coordination with tribal and Federal law enforcement agencies is essential. If confirmed, I intend to enhance coordination by working with the Attorney General's Advisory Committee's Native American Issues Subcommittee. Our new status as a separate component of the Department of Justice should improve our ability to bring U.S. Attorneys, FBI, OTJ, and our tribal partners to the same table.

3. In March, during Lifetime Television's "Stop Violence Against Women Week," the White House held a roundtable discussion on the issue. The Attorney General and HHS Secretary Thompson attended the discussion, as did advocates, policymakers, practitioners, business leaders and celebrity activists. Your office is the lead federal agency in terms of advocating for victims of violence. What role did your office play in coordination of the event? Were any American Indian women invited to attend? If not, why not?

Response:

The Office was the lead agency in the planning of the White House Roundtable on Violence Against Women in collaboration with Lifetime Television and the Department of Health and Human Services. Roundtable participants represented national advocacy groups or nationally recognized model programs that work to address violence against women. If confirmed, I will do all I can to ensure that American Indian women are represented as appropriate.

4. How do you intend to honor and support the unique government-to-government relationship that exists between the United States and tribal governments?

Response:

The Office on Violence Against Women has and will continue to honor and support the unique government-to-government relationship as outlined by Executive Order 13175. We will be supported in these efforts by the Department's Office of Tribal Justice and OJP's American Indian and Alaska Native Affairs Desk.

5. Do you plan to conduct official consultations with tribal governments? If so, how do you plan to carry out such consultations?

Response:

The Office is convening a tribal consultation to coincide with the development of national sexual assault forensic examination protocols. This planned consultation will help ensure that perspectives of Native women and tribal governments are considered in the development of these protocols.

6. How are you addressing the goal of providing culturally-appropriate technical assistance to tribal entities? Do you plan to hire experts in tribal issues to work at the OVW?

Response:

The Office on Violence Against Women has engaged, and if confirmed, I will continue to engage expert Native American technical assistance providers to address the needs of tribal communities as it relates to grant programs administered by this office. To fill this role, the Office engages in cooperative agreements with technical assistance providers

that have expertise in working with Tribal governments and Alaska Native villages. OVW is currently advertising program specialist positions and have reached out to tribal communities to solicit applications for these positions.

7. How can the Office of Tribal Justice (OTJ) be used more effectively as a liaison to the American Indian community? When concerns were raised last year about financial issues relating to the operation of a tribal grantee in South Dakota, OVW reportedly did not invite the OTJ to participate in review and discussion of the situation. In addition, do you support fully staffing the OTJ, so that it is better able to provide timely assistance to your office, as well as to tribal entities?

Response:

The Office of Tribal Justice was involved at the onset of OVW discussions with the South Dakota congressional delegation concerning two South Dakota tribal grantees. If confirmed, I can commit that OVW will continue to confer with and employ the assistance of the Office of Tribal Justice as appropriate.

8. During your confirmation hearing on June 11, you indicated that OVW discretionary grant programs are highly competitive. This indicates a great need among victim services programs. However, the administration has proposed cutting funding this year for Native American programs. Do you consider this effective advocacy on behalf of Indian women who are victims of violence?

Response:

OVW will continue to administer VAWA grant programs to end violence against Native women, as appropriated. We will continue to support the development of these programs through technical assistance initiatives.

9. During your confirmation hearing, you also discussed the need to find ways to help grantees achieve sustainability. However, it is unrealistic to expect that programs in some especially poor areas will become self-sustaining anytime in the near future. Much of Indian Country experiences extraordinarily high rates of poverty and unemployment. According to 2000 Census data, South Dakota has four of the five poorest counties in the nation, and they all contain Indian reservations. A fifth county is in the top 10, and there are a total of nine among the poorest 50 counties. That kind of poverty is foreign to many Americans, even those familiar with other Indian reservations. Few local businesses exists to provide jobs or support community organizations. Therefore, the requirement that tribal governments and victim services agencies provide a match to federal funds is a significant burden. Furthermore, many tribes have treaties that guarantee law enforcement, health, and other services will be provided by the federal government.

A. Under 42 USC Sec. 3796gg-1(g), provision is made to allow Congressionally appropriated funds to be counted toward a match:

(g) Indian tribes

Funds appropriated by the Congress for the activities of any agency of an Indian tribal government or of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of the cost of programs or projects funded under this subchapter.

In addition, 42 USC Sec. 3796gg-2 defines law enforcement as follows:

(4) the term "law enforcement" means a public agency charged with policing functions, including any of its component bureaus (such as governmental victim services programs);

Further, 28 CFR 90.55(c) reads as follows:

(c) The match expenditures must be committed for each funded project and may be derived from funds appropriated by the Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands.

Why, then, has OVW obstructed the use of Congressionally-appropriated funds for law enforcement purposes as qualified matching funds for tribal governments and victim services agencies? At the least, don't BIA law enforcement and Tribal COPS funds automatically qualify as matching funds?

B. 28 CFR 90.55(c) further reads:

Nonprofit, nongovernmental victim services programs funded through subgrants are exempt from the matching requirement; all other subgrantees must provide a 25% match and reflect how the match will be used.

Why, then, has OVW insisted that victims services programs funded through subgrants meet the federal match requirement?

Response to 9A and 9B:

The Office on Violence Against Women does not have the statutory authority to require recipients of the Grants to Combat Violence Against Women, known as the STOP Program – whether States or Indian Tribal governments -- to exempt non-profit, non-governmental victim services programs from the match requirement. Thus, it is up to the STOP grantee to determine how to meet the match requirement, and the regulations are being revised accordingly.

Under the STOP Formula program, "the Federal share of a grant made under this chapter [title] may not exceed 75 percent of the total costs of the projects described in the

application submitted." 42 U.S.C. § 3796gg-1(f). This statutory provision states the general requirement that a grantee under this program must contribute 25 percent of total project costs as a condition of receiving grant funds. For Indian Tribes receiving STOP funds, through the STOP Violence Against Indian Women Program, the statute provides that: "Funds appropriated by the Congress for the activities of any agency of an Indian Tribal government or of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of the cost of programs or projects funded under this subchapter [part]." 42 U.S.C. § 3796gg-1(g). STOP Violence Against Indian Women grantees may therefore use certain Federal funds toward their required match. The Office has not obstructed the use of permissible inputs towards match. The use of BIA law enforcement funds may be used towards a grantee's match requirements while Tribal COPS funds, which are not provided for by statute, may not be used for match.

Based on the statutory provision requiring a grantee to provide a 25 percent match, there is no authority for the Office on Violence Against Women, through regulations, to require Indian Tribal government (or State formula) grantees to exempt non-profit, non-governmental victim services programs funded through sub-grants from the match requirement. As currently drafted, the regulations have the result that Indian Tribal government grantees are still required to meet the match requirement themselves and are prohibited from requiring one category of sub-grantees-- non-profit, non-governmental victim services programs--to contribute their portion of the match requirement.

The Office on Violence Against Women is presently revising the regulations in 28 CFR Part 90 to reflect that the statutory "match" provision does not limit or restrict the ability of a State formula grantee or an Indian Tribal government grantee to meet the match requirement itself or to pass the match requirement on in part or in total to its sub-grantees. In fact, a particular STOP grantee may decide for itself to "exempt" nonprofit, non-governmental victim services programs from making a 25 percent contribution, as long as the grantee makes that part of the match contribution itself so that the Federal share does not exceed 75 percent of the total costs of the projects funded under the grant.

C. Private foundations have severely restricted new awards in recent years because of their own financial constraints. Under these conditions, how do you propose to help tribal grantees become self-sustaining?

Response:

Sustainability is a policy imperative for the Office on Violence Against Women and we are committed to helping tribal grantees become self-sustaining. Institutionalizing law enforcement, prosecutorial, and judicial practices and procedures that protect victims and hold offenders accountable, instilling community ownership of efforts to end violence against women, institutionalizing a coordinated community response, and information

sharing are examples of ways that grantees can enhance efforts to become self-sustaining. While funds from private foundations are extremely valuable, their financial support is not the only means to achieve sustainability of programs previously funded by the Federal government.

10. Will you commit to visiting Cangleska, Inc., a domestic violence intervention and prevention program on the Pine Ridge Indian Reservation in South Dakota, in the next year, to gain a greater appreciation of the overwhelming problems of domestic violence, sexual assault, child sexual abuse, alcoholism, and poverty in many parts of Indian Country?

Response:

I welcome the opportunity to visit Cangleska, Inc., and commit to scheduling a visit within the next six months.

11. You have been the Director of OVW since October 2001, serving as our government's leading advocate on legal and policy issues regarding violence against women. In that time, what policy initiatives have you developed to address the problem? In what ways have you advised the Attorney General and the Administration with regard to preventing violence against women?

Response:

Grant making inherently involves decisions that affect and reflect established policy. In addition, policy issues are consistently being reviewed, analyzed, and interpreted, in harmony with the mission of the office, which is to provide federal leadership to improve the nation's capacity to end violence against women. For example, some of the policy issues that we have worked on and will continue to pursue include battered immigrants and the T visa; the coordination of the investigation, prosecution, and protection of victims of trafficking and other exploitive work practices; measuring the effectiveness of VAWA programs; the development of standard forensic exam protocols; the enforcement of grant compliance certifications; the sustainability of program initiatives, with a sensitivity to those areas of the nation that have few resources; the nexus between child welfare and domestic violence, including confidentiality issues and failure to protect; the advantage of judicial oversight to the criminal justice response within a community; victim safety in relation to prisoners re-entering the community; the response to violence against women within the African American and Asian communities; and the response to violence against women on military bases and within the military community.

I am also committed to engaging in policy making that is both informed and collaborative. To this end, the Office on Violence Against Women has built institutionalized relationships with experts in the field of domestic violence, sexual assault, and stalking, and with components in the Department of Justice and agencies throughout the federal government whose work involves violence against women issues. We work closely with our technical assistance providers to ensure that we know about

best practices in the field as well as emerging issues and needs. OVW staff members and I are involved in numerous inter- and intra-agency initiatives. To address the need for regular, high-level coordination of federal activities regarding violence against women, I created the Interdepartmental Federal Coordinating Board. Likewise, I chair a Violence Against Women Coordinating Council within the Department of Justice. The Office has partnered with the Department of Health and Human Services in staffing the National Advisory Committee on Violence Against Women and in funding the Greenbook Initiative to implement guidelines regarding the co-occurrence of domestic violence and child maltreatment. Our three years of involvement with the Department of Defense's Defense Task Force on Domestic Violence has strengthened our relationship with the four branches of the United States military. We participate in the monthly meetings of the Department of Justice's internal working group regarding domestic violence and federal gun laws. We participate in the regular meetings of the interagency Trafficking in Persons and Worker Exploitation Task Force. We also have long cooperated with the Department's Office for Victims of Crime and the National Institute of Justice to develop complementary responses to violence against women and with the INS (now the CIS) to implement the battered immigrant protections of VAWA and VAWA 2000.

12. Now that you report directly to the Attorney General, there can be no doubt that OVW is more than a grant-making agency. What policy initiatives do you plan to develop during the remainder of your term?

Response:

Of the issues outlined in the above response, several are priorities for the Office. Certainly the sustainability of programs beyond Federal funding is an issue that will continue to receive my attention. Crafting solutions will require much deliberation and discussion with those practitioners in the field who are providing the services, developing the policies and protocols, and guiding the actual practice. In addition, we are committed to identifying best practices that communities can adapt to their circumstances, and to providing the resources to empower communities to reduce domestic violence, sexual assault, and stalking.

Finally, the "measuring effectiveness" initiative that is currently in process should provide this office with the data that will guide future initiatives. For example, the data will provide information about areas of unmet needs, which will inform our future efforts to improve the nation's response to violence against women.

13. Do you have specific plans to develop a long-term initiative in jurisdictions that consistently report high rates of domestic violence and sexual assault?

Response:

OVW is intimately involved with demonstration projects which test theories, implement strategies and evaluate successes in the field of violence against women. All of our

demonstration projects, at their heart, aim to reveal the specific elements which a community can adapt in order to become effective to reduce the violence. We have learned that one size does not fit all. What may work in one area of need, even where there are high rates of domestic violence and sexual assault, may not work in another area with similar high rates. The challenge for OVW is to provide communities with the knowledge learned from other programs and demonstration projects and to assist with adapting that knowledge to their specific needs. For example, based on our experience addressing sexual assault on college campuses, we were able to provide assistance to the Air Force in their efforts to address sexual assault within the Academy.

14. Do you have specific plans to provide intensive technical assistance and training for rural entities (especially those in high-poverty areas) that do not have the resources and personnel to administer grants?

Response:

The Office has an extensive technical assistance initiative which serves grantees in rural communities. It addresses the unique problems confronted by victims in those communities, especially those who are isolated geographically and those who are typically underserved, including women living in tribal communities, Alaska Native villages, migrant workers, and battered immigrants.

15. Last year, you eliminated the "Policy Development" team, made up of experienced attorneys who had expertise in violence against women issues. Why did you take this action? Isn't it contrary to the intent of the Violence Against Women Act, that OVW be more than a grant-making entity? Would you take steps to reconstitute a policy team?

Response:

Shortly after my appointment as the Director of the Office on Violence Against Women, I undertook an exhaustive and comprehensive review of the structure of the office.

As part of our overall office restructuring, I renamed the Policy Development Team the Communications and Analysis Unit, a more descriptive title for the work of this unit. The Unit continues to support the work of the office through daily collaboration, legislative and regulatory analysis, and programmatic development. The Unit is responsible for liaison and coordination activities with other DOJ components, other Federal agencies, national associations, and state and local governments.

16. Did you support the nomination of Nancy Pfotenhauer, President of the Independent Women's Forum, to the National Advisory Committee on Violence Against Women? Do you believe it is appropriate to have on that advisory committee someone who opposes the very law you are directly tasked with implementing?

Response:

I support the Attorney General's appointment of Nancy Pfotenhauer to the National Advisory Committee on Violence Against Women. In developing the Committee's membership, we sought an advisory body that incorporates diverse points of view. Diversity on the Committee will ensure that it is effective and innovative.

Ms. Pfotenhauer has publicly stated her support for the Violence Against Women Act. Ms. Pfotenhauer recognizes that domestic violence and sexual assault are a terrible reality and has committed herself to providing services to victims and holding offenders accountable for their crimes.

17. During your confirmation hearing, you mentioned that OVW has refined the grant application process during your tenure. Please explain what has changed, and how those changes have improved the process.

Response:

The grant application process has been refined in three ways. First, we have redesigned the program solicitation from the perspective of the grant proposal writer. Second, the Office's reorganization has created efficiencies in the grant application process. The creation of program units, staffed by grant specialists with expertise in a particular program area, and a streamlined application review process have contributed greatly to improvements in the applications process. Third, solicitations are released earlier in the year and do not overlap with other solicitations in most instances.

18. Please describe the relationship between OVW and the Office of Justice Programs (OJP) Office of the Comptroller. What is the line of authority between them?

Response:

The Office maintains an excellent relationship with OJP's Office of the Comptroller. The Office of the Comptroller is a support office to the Office on Violence Against Women. I currently have regular meetings with the Comptroller to discuss ways to improve our effectiveness and the OVW Deputy Director works closely with the Comptroller's Deputy Director to coordinate and improve efforts.

19. During your confirmation hearing, you indicated that the first initiative to result from interviews with OVW staff was a reorganization of the office to improve effectiveness and service to grantees. Under your direction, OVW has been focused heavily on the strict management of federal funding. However, your office and that of the Comptroller are not held to the same standard.

A. For example, grant applications are due in December and January, but awards are not made until August or September, and applicants commonly wait several additional months before funding is released. How will you improve the timeliness of grant awards and release of funds?

Response:

The average time lapse between issuance of a grant award announcement and obligation of grant funds for formula grants is approximately six weeks. However, during this fiscal year OVW issued both formula and discretionary solicitations starting in November, but made clear that awards were contingent on congressional appropriations. OVW did not have its budget from the Congress till March of this year which also delayed the issuance of formula grants.

The average time lapse between issuance of a grant award announcement and obligation of grant funds for all discretionary OVW programs is approximately five to six months. OVW solicitations are open for six to eight weeks to give applicants adequate time to develop their necessary partnerships and prepare their applications. All OVW discretionary program applications are peer reviewed by experts in the field of violence against women, which is a rigorous four week process - two weeks to prepare for the peer review (checking for missing components and assigning to reviewers, etc.), one week of external peer review, and one week to complete final peer review scores and reports. After the peer review is complete, an internal review is conducted to ensure statutory compliance and to score continuation applications. Next, a recommendation memo is prepared for my review and approval. This process takes approximately 4 weeks depending on the size of the grant program.

Finally, awards are processed for those recommended applications. This process can take approximately six to eight weeks. The most time-consuming part of this process is the budget clearance. It can take up to four weeks to clear a budget if we have to ask the applicant to submit a revised budget due to miscalculations or the inclusion of unallowable costs. In some instances applicants may need to get approval from their project partners or tribal councils before revised budgets can be submitted to us. This can add time to the budget clearance process.

B. In addition, numerous grantees have had their funds temporarily frozen because the Office of the Comptroller indicated that required fiscal reports were not received. Yet, it was later learned that the reports had been transmitted by facsimile at the proper time, only to languish during OJP processing. What are your plans to address this issue?

Response:

We are committed to holding ourselves to the same standards that are expected of our grantees. I have met on numerous occasions with the Office of the Comptroller and we are collaborating on ways to facilitate the receipt and handling of required progress reports.

20. If the Justice Department has acknowledged that OVW is a separate entity from OJP, why is OVW still listed on the department's website as a program of the OJP?

Response:

The Office is in a process of completing its transition out of the Office if Justice Programs. At this point, we have not yet moved OVW's website out from under the OJP website. As we continue to address the administrative aspects of the transition, the OVW website will be appropriately placed.

Responses to Questions from Senator Daschle

1. **Technical Assistance**

Tribal and rural grantees in South Dakota have indicated that technical assistance from OVW has been inadequate, both in terms of financial guidance and understanding of the unique problems they face. Can you assure me that OVW will provide additional technical assistance to these grantees to avoid situations where OVW might have to freeze funding to grantees?

I am very pleased you have accepted my invitation to visit Cangleska, on the Pine Ridge Reservation in South Dakota. I believe your visit will help illuminate the unique challenges Native American women face as they try to make lives for themselves and their families. Will you bring technical assistance staff when you visit Pine Ridge, so that outstanding issues pertaining to existing grant awards may be resolved?

I am looking forward to my visit to Cangleska, Inc. Prior to the visit, we will inquire with Cangleska, Inc. as to their current technical assistance needs and, if necessary, will bring the appropriate staff to lend assistance.

OVW is committed to providing technical assistance and support to our tribal grantees to ensure the success of their programs. Our tribal technical assistance providers are nationally known and respected as experts in violence against Indian women, and many of them have experience in providing direct services to Indian victims. Most recently, OVW has focused on improving the coordination of the delivery of technical assistance services to our tribal grantees. For example, all of the tribal technical assistance providers will be meeting this fall to discuss the technical assistance needs of our tribal grantees and how to meet them. This improved coordination and communication among our tribal technical assistance providers will assist OVW with more effectively identifying and responding to the training and support needs of tribal communities.

OVW's tribal technical assistance program will be expanded in the coming year to include intensive training for tribal court prosecutors, and training and support for tribal communities that are developing a response to the specific needs of rape and sexual assault victims.

2. **Coordination of Tribal Components in the Justice Department**

You indicated that, as part of your OVW reorganization, a tribal unit was created to work with STOP Violence Against Indian Women grantees. In addition, you stated that OVW has a dedicated staff member for the Tribal Coalitions Grant Program. The Justice

Department's Office of Tribal Justice (OTJ) serves a vital liaison function between tribes and the Department. Since OVW is no longer within the Office of Justice Programs, the role of the American Indian and Alaska Native Affairs Desk is unclear.

I remain concerned that these independent entities have not been effectively utilized and coordinated. Your commitment to "continue to confer with and employ the assistance of the Office of Tribal Justice as appropriate" is encouraging. However, over the last 18 months, I have received reports regarding OVW's consultation and have been informed that OTJ was neither adequately consulted nor utilized on sensitive issues relating to tribal grantees in South Dakota. Setting aside any previous misunderstanding, in the future it would seem appropriate to consult the OTJ *whenever* there is a significant question or concern relating to a tribal grantee or issue. By including OTJ in these situations, OVW will demonstrate its recognition of tribes' unique status and enhance the understanding and working relationship of all parties involved. Can you assure me that OVW will more effectively employ the OTJ as a liaison to Indian Country, and that you will require coordination by OVW tribal programs staff? Please explain how this will be implemented.

We appreciate your concern about coordination and consultation within the Department of Justice on tribal issues. OVW has the primary legislative authority and subject matter expertise concerning violence against women issues and Violence Against Women Act grant programs. I will, if confirmed, look forward to more opportunities to effectively employ OTJ as a liaison to Indian Country.

3. **Match Requirement—Tribal COPS**

As you know, the language of 42 USC Sec. 3796gg-1(g) reads as follows:

Indian tribes – Funds appropriated by the Congress for the activities of any agency of an Indian tribal government or of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of the cost of programs or projects funded under this subchapter.

In addition, 42 USC Sec. 3796gg-2 states:

(4) the term "law enforcement" means a public agency charged with policing functions, including any of its component bureaus (such as governmental victim services programs);

You acknowledge that BIA law enforcement funds may be used toward a grantee's match requirement, but assert that Tribal COPS funds may not be used. The plain language of the U.S. Code does not limit the federal funds that may be used for match purposes to only BIA law enforcement funds. Instead, the Code provides for the use of "funds appropriated by the Congress for the activities of any agency of an Indian tribal government or of the Bureau of Indian Affairs." This would seem to clearly include the Tribal COPS program. Please explain the rationale for disallowing the use of Tribal COPS funds, and provide the

legal justification for that interpretation of the statute.

I apologize for the misstatement. To clarify, Tribal COPS funds may used as match for the STOP Violence Against Indian Women Discretionary Grant Program.

4. **Self-sustenance of Programs**

I was pleased to note your "sensitivity to those areas of the nation that have few resources" with regard to the sustainability of program initiatives. According to 2000 Census data, the Crow Creek Indian Reservation, in South Dakota, is home to the poorest county in the nation. The Pine Ridge Reservation includes the second-poorest, the Cheyenne River Reservation includes the fourth-poorest, the Rosebud Reservation includes the fifth-poorest, and the South Dakota portion of the Standing Rock reservation includes the ninth-poorest (the North Dakota side resides in the 15th-poorest county). Four other reservation or adjacent counties are among the 50 poorest. Simply put, the economies on these reservations are struggling to simply provide for the basic needs of their residents, let alone support non-profit organizations.

Clearly, in many situations institutionalizing systemic practices and procedures can improve the response to, and reduce incidences of, domestic violence and sexual assault. However, in the poorest counties in the country, where there is no local financial capacity to support shelters and victims, and where law enforcement, prosecutors, and the courts are woefully underfunded, requiring self-sustenance is a goal that, in the near term, is simply unrealistic. Thus, draining these communities of federal resources would only serve to harm those women and girls who are the most vulnerable. In an effort to put the needs of these women ahead of strict "sustainability" objectives, I would propose that we waive the match requirement in the poorest of these areas. Could this be done administratively? If so, would you support such a proposal? If legislation were required to achieve this goal, would you support such a proposal?

We are aware of the financial challenges facing tribes and share your concern for their ability to meet the match requirement under the statute. OVW does not have the statutory authority to administratively waive the match requirement for Indian tribes.

5. **Revised Grant Application Process**

Please describe the first two refinements to the grant application process in greater detail. According to South Dakota applicants, the primary noticeable change is the re-prioritization of the various parts of the grant application – primarily to assign greater weight to financial management issues. How have the program solicitations been redesigned? What efficiencies have been created? How do those efficiencies directly benefit applicants and those they serve?

All of our program solicitations have been standardized so that an applicant applying to multiple programs can find the same application contents in roughly the same language

and same order. This is particularly useful to tribal applicants who are eligible and apply for almost all of our discretionary programs. Additionally, we now include point values for each application component that will be scored. This allows applicants to pay greater attention to those sections that are of greater value.

The Office reorganized in the spring of 2002. Under this reorganization, rather than dividing duties by program management and program development, "Program Specialists" are now responsible for the entire "cradle to grave" grant process – solicitation development, peer review, award recommendation, award processing, program policy, technical assistance, monitoring, grant administration, and grant close outs. This new structure has created efficiencies in the grant application process by limiting the number of grant programs for which a staff person is responsible. Grant managers now specialize in one or two grant programs which allows them to review applications with greater expertise about the program for which an applicant is applying.

I understand how applicants might misinterpret our assignment of weight in the application review process. We are not assigning greater weight to any particular section than we have in the past. We are, however, allowing the applicant to have a greater understanding of what weight we give to the particular sections by including point values for each application component that will be scored. In the past, compliance with grant guidelines was a funding consideration; however, its location in the solicitation might have led applicants to believe that it was of little value.

OVW does believe that the new solicitation format benefits applicants in a number of ways: Solicitations are easier to respond to; applicants and their project partners know which solicitation sections on which to focus their time and energy; peer reviewers are more likely to score applications more consistently due to their shared understanding of the component values: and our staff's ability to focus on fewer programs ensures that each application gets a thorough review.

6. **Demonstration Projects**

I was encouraged to learn of your involvement with demonstration projects to identify successful elements of domestic violence prevention and response programs. Do any OVW demonstration projects specifically address jurisdictions with predominantly tribal – or other non-white and rural – populations, where high rates of domestic violence have endured over a prolonged period of time? Do any projects contemplate "a multi-pronged, holistic approach, as well as strong knowledge of the unique barriers that tribal communities face in the area of violence against women"? If not, would you consider initiating such a project?

OVW played a very active role in the development of DOJ's Comprehensive Indian Resources for Community and Law Enforcement (CIRCLE) demonstration project. The goal of the CIRCLE project was to enhance an Indian tribe's ability to respond to crime and justice in its community and ensure safer communities throughout Indian country.

OVW was extensively involved in the concept development for CIRCLE, helped develop the technical assistance associated with it, coordinated with the six DOJ offices involved, and conducted meetings with the three CIRCLE tribes. OVW's experience with the CIRCLE project greatly enhanced our understanding of violence against women issues facing tribes, as well as other challenging social issues.

Pending approval of funding by Congress, OVW would certainly consider initiating another demonstration project in Indian Country.

7. **Measuring Effectiveness**

I read with interest your comments regarding the ongoing effort to measure the effectiveness of various elements of the OVW programs.

"Finally, the measuring effectiveness initiative that is currently in process should provide this office with the data that will guide future initiatives. For example, the data will provide information about areas of unmet needs, which will inform our future efforts to improve the nation's response to violence against women."

Is this a review of all programs, or simply an analysis of newly created programs under the Violence Against Women reauthorization that is to be expected? Is it an active data collection effort, with the participation of grantees, or is it an internal review of programs?

The VAWA Measuring Effectiveness Initiative is developing data collection tools for and will analyze data regarding all eleven grant programs administered by OVW. The genesis of this project is a mandate in VAWA 2000 that directs the Attorney General to report biennially to Congress on the effectiveness of grant-funded activities.[1] To respond

[1]Section 1003 of VAWA 2000 (codified at 42 U.S.C. § 3789p) states that:

> (a) REPORT BY GRANT RECIPIENTS.- The Attorney General or Secretary of Health and Human Services, as applicable, shall require grantees under any program authorized or reauthorized by this division or an amendment made by this division to report on the effectiveness of the activities carried out with amounts made available to carry out that program, including number of persons served, if applicable, numbers of persons seeking services who could not be served and such other information as the Attorney General or Secretary may prescribe.
>
> (b) REPORT TO CONGRESS.- The Attorney General or Secretary of Health and Human Services, as applicable, shall report biennially to the Committees on the Judiciary of the House of Representatives and the Senate on the grant programs described in subsection (a), including the information contained in any report under that subsection.

to this challenge, OVW entered into a cooperative agreement with the University of Southern Maine, Muskie School of Public Service, Institute for Child and Family Policy ("the Muskie School") to develop and implement tools for grantee reporting, to conduct site visits, and to draft the reports to Congress.

From its inception, the VAWA Measuring Effectiveness Initiative has conducted extensive outreach to practitioners (including many OVW grantees), evaluation experts, technical assistance providers and others. Moreover, each program's data collection tool has been developed with input from focus groups made up of program grantees. For example, earlier this week, OVW and Muskie staff held a day-long meeting with twelve grantees of the STOP Violence Against Indian Women Grant Program to discuss that program's draft reporting form. In addition, each draft form has been or will be piloted with a group of OVW grantees before being finalized.

What are the measures of effectiveness being used? Is the prevalence of domestic violence and sexual assault within a jurisdiction a measure? What weight is given to the rate of domestic violence, as opposed to something like the financial compliance of a grantee?

Different data collection instruments have been (or are being) developed for each OVW program, and each includes a large number and variety of output and outcome measures tailored to a given program. Thus, for example, grantees funded by our Grants to Encourage Arrest Policies and Enforcement of Protection Orders will be asked to report on their arrest rate in domestic violence cases. In contrast, grantees receiving Grants to Reduce Violent Crimes Against Women on Campus will be asked to report about outcomes in disciplinary proceedings before campus judicial boards. Some questions, however, cut across many of our programs, like those that seek to measure the extent and quality of our grantees' efforts to develop a coordinated community response to violence against women or the number of victims served. Finally, these progress reports will measure how grantees use VAWA funds; other mechanisms are used to monitor grantee compliance with financial rules.

For a number of reasons, we have not chosen to use the prevalence of domestic violence and sexual assault within a jurisdiction as a measure of the effectiveness of the activities carried out with VAWA funds. Many complex social and economic factors affect crime rates and careful, scientific research is needed to measure prevalence rates and/or assess which factors might have caused changes in domestic violence and sexual assault rates in a particular jurisdiction. In addition, a prevalence-based measure might penalize jurisdictions that most need our funds. Finally, because domestic violence incidents and sexual assaults are seriously underreported by victims, effective grantee efforts may actually result in a rise in reported rates of these crimes.

What constitutes an unmet need?

We have not defined an unmet need, and the reporting forms will give grantees an opportunity to tell OVW what they see as unmet needs in their communities. In addition, this is a topic that is already being explored with grantees during Muskie School site visits. That being said, we can anticipate how future grantee responses might guide our activities. For example, if Legal Assistance for Victims Grant Program grantees overwhelming report having to turn potential clients away because they lack funds to hire enough attorneys, this information could inform future budget requests. Or, if grantees report that judges are a major barrier in seeking protection orders for victims, we might focus technical assistance funds on educating the judiciary about the dynamics of domestic violence.

Will the measures of effectiveness be utilized in demonstration projects to prove their efficacy, or simply implemented throughout OVW programs and initiatives?

OVW does not have current plans to test our performance measures through demonstration projects. We have great hopes, however, that the Initiative will generate consistent, useful baseline data for jurisdictions that will make future scientific impact evaluations possible.

Will grantees have input into the assessment?

As noted above, grantees have had extensive input into the development and piloting of these forms. In developing the forms, the Initiative has been particularly careful to balance grantees' concerns that time needed for data collection might detract from efforts to serve victims, as well as grantees' desire that the new reports capture the rich variety of work they do to hold offenders accountable and keep victims safe.

**Written Responses to Questions From Senator Patrick Leahy,
Ranking Member of The Senate Judiciary Committee,
From Diane Stuart, Nominee To Be Director,
Office on Violence Against Women, Department of Justice**

1. Ms. Stuart, included in the PROTECT Act that the President signed into law on April 30 was legislation I authored to authorize a Transitional Housing Assistance for Victims of Domestic Violence Program at the Justice Department, specifically within the jurisdiction of the Office on Violence Against Women.

Having served as the State Coordinator of the Utah Domestic Violence Advisory Council, you should know well the need for more transitional housing to be made available so that survivors of domestic violence are not forced to choose between returning to their abusers and becoming homeless.

Do you agree with me that funds for the new transitional housing program should be fully appropriated for the coming fiscal year, and then included in Justice budget proposals each year the program is authorized?

Response:

As the author of this much needed legislation, you are aware that many victims of domestic violence often find themselves in positions of need not only for a place to live, but for the security and structure that domestic violence transitional housing programs have to offer. There is a tremendous need among these victims for short-term housing assistance and support services that will enable them to secure safe, permanent housing. Victims will not be able to escape violence if leaving their abusers means that they and their children will be homeless. If I am confirmed, it is my hope that, if appropriated, the Department of Housing and Urban Development, the Department of Health and Human Services, and the Department of Justice will work in unprecedented collaboration to benefit those who are eligible to receive assistance under this section.

2. I have heard from numerous Vermont domestic violence victims advocacy groups that their phone calls to the Office on Violence Against Women on such matters as navigating the VAWA grants website at OJP and inquiring as to the status of their grant applications often go unanswered. Agencies have also complained that if their grant application is denied, no explanation is given as to why they will not receive funding. When that happens, they call me and my staff, hoping that they, at least, can get the answers they seek. We, of course, do not mind calling your Office to find out the status of Vermonters' grant applications or notifying them of VAWA grant solicitations – that is part of the job of serving the people of Vermont. But I also cannot help but feel that the Office on Violence Against Women must also become more organized, accessible and attentive to groups seeking information on funding opportunities and

grant feedback.

In what ways do you feel that grant-making can be improved at the Office on Violence Against Women and how do you plan to make your Office more accessible to those agencies depending on the grants it distributes?

Response:

In 2002, 1,054 applications for discretionary grant programs were received, requesting $394,404,546. With $195,041,056 appropriated, we were only able to award 416 new and continuing grants. We are constantly working to improve the new automated online Grant Management System (GMS) and our staff works closely with those at the GMS Helpline to ensure that GMS is available to all applicants and to respond to all requests for assistance. Another practice we have implemented is to provide identified strengths and weaknesses of the applications to the applicants. It is our hope that this information will guide applicants as they craft future grant proposals. In order to keep in communication with grantees, we are providing technical assistance across the country through conferences, education and training events, and peer-to-peer consultations, and we are exploring the possibility of providing additional assistance that will meet the needs of different regions of the country.

Having worked on the State and local level where I had the opportunity to apply for Federal grants, I am acutely aware of how difficult the process may be. We have revised our solicitation to be consistent and straight forward and improved our rigorous peer review process by imposing a numerical scoring system that ensures consistency in application review; and, as stated before, are providing all non award applicants with identified strengths and weaknesses of their proposal. Finally, the Office was reorganized in the spring of 2002 and our new office structure is intended to enable grant managers to be more responsive to applicants and grantees. For example, now more than one grant manager is available to assist applicants or grantees within a grant program.

3. Ms. Stuart, a main reason we decided to make the Office on Violence Against Women a separate and independent office through the Justice Department Re-authorization Act was to ensure that the Office of Violence Against Women find a balance between grant-making and policy-making. For too long, as part of the Office of Justice Programs, the Office on Violence Against Women focused on the technical aspects of grant-making and less on developing ample policies regarding the implementation of the Violence Against Women Act.

Efficient grant-making is very important – states, communities and agencies nationwide depend on the funds provided by VAWA programs – but the Office on Violence Against Women was also created to establish standards and to provide consistent interpretations on how to meet the mandates of VAWA. I have noticed that the Office on Violence Against Women remains listed on the Justice Department website as "Office on Violence Against Women (OJP)," with its

hyperlink going directly to OJP. The site is almost completely geared toward funding opportunities at the Office and hardly any policy. The only policy remarks made by you on that website are those from the October 2002 First Annual Symposium on Violence Against Women.

Ms. Stuart, what plans do you have to guarantee that the Office on Violence Against Women find a balance between policy-making and grant-making that we sought when we made it a separate entity within the Justice Department?

Response:

Grant making inherently involves decisions that affect and reflect established policy. In addition, policy issues are consistently being reviewed, analyzed, and interpreted, in harmony with the mission of the office, which is to provide federal leadership to improve the nation's capacity to end violence against women. For example, some of the policy issues that we have worked on and will continue to pursue include battered immigrants and the T visa; the coordination of the investigation, prosecution, and protection of victims of trafficking and other exploitive work practices; measuring the effectiveness of VAWA programs; the development of standard forensic exam protocols; the enforcement of grant compliance certifications; the sustainability of program initiatives, with a sensitivity to those areas of the nation that have few resources; the nexus between child welfare and domestic violence, including confidentiality issues and failure to protect; the advantage of judicial oversight to the criminal justice response within a community; victim safety in relation to prisoners re-entering the community; the response to violence against women within the African American and Asian communities; and the response to violence against women on military bases and within the military community.

I am also committed to engaging in policy making that is both informed and collaborative. To this end, the Office on Violence Against Women has built and institutionalized relationships with experts in the field of domestic violence, sexual assault, and stalking, and with components in the Department of Justice and agencies throughout the federal government whose work involves violence against women issues. We work closely with our technical assistance providers to ensure that we know about best practices in the field as well as emerging issues and needs. OVW staff members and I are involved in numerous inter- and intra-agency initiatives. To address the need for regular, high-level coordination of federal activities regarding violence against women, I created the Interdepartmental Federal Coordinating Board. Likewise, I chair a Violence Against Women Coordinating Council within the Department of Justice. The Office has partnered with the Department of Health and Human Services in staffing the National Advisory Committee on Violence Against Women and in funding the Greenbook Initiative to implement guidelines regarding the co-occurrence of domestic violence and child maltreatment. Our three years of involvement with the Department of Defense's Defense Task Force on Domestic Violence has strengthened our relationship with the four branches of the United States military. We participate in the monthly meetings of

the Department of Justice's internal working group regarding domestic violence and federal gun laws. We participate in the regular meetings of the interagency Trafficking in Persons and Worker Exploitation Task Force. We also have long cooperated with the Department's Office for Victims of Crime and the National Institute of Justice to develop complementary responses to violence against women and with the INS (now the CIS) to implement the battered immigrant protections of VAWA and VAWA 2000.

4. Ms. Stuart, you and I both know how important funding programs authorized through the Violence Against Women Act are to states, communities and agencies that seek to end violence against women, domestic violence and sexual assault. Last week, I met with representatives from the Vermont Network Against Domestic Violence and Sexual Assault, who thanked me for the VAWA funding they have received over the years because those grants are crucial in the fight to end domestic violence – Vermont alone has received over $20 million in total VAWA funds since 1995.

While VAWA authorizes a total of $627.30 million in spending on enforcement, services and training, I was disappointed to see that the Administration chose to spend for FY 2004 approximately $385 million dollars for programs operated by the Department of Justice and $127 million dollars for services provided by the Department of Health and Human Services – $115 million less than the total requested by VAWA 2000. In addition, the budget request neglects to fund any transitional housing program and severely underfunds grants for battered women's shelters. Both of these services for battered women and their families are desperately needed nationwide.

Ms. Stuart, will you promise me that as Director of the Office on Violence Against Women, you will do all within your power to bring budget requests for VAWA funding programs into compliance with the funding levels that have been authorized by Congress? What VAWA grant programs do you believe merit further attention?

Response:

As the Director of the Office on Violence Against Women, appointed by the Attorney General, and if confirmed by the Senate, I can earnestly commit to actively participating in the budget process concerning programs administered by the Office on Violence Against Women and to identify improvements and innovations to advance the state-of-the-art in violent crimes against women and victim services funding and programs. The Safe Havens Program (which helps create safe places for visitation with and exchange of children in cases of domestic violence , child abuse, sexual assault, or stalking) requested $24,028,420 over the 2002 appropriation of $15,000,000. This program was only authorized until 2002, but was included in the President's FY2003 and FY 2004 budget requests, and $15,000,000 was appropriated in FY 2003. Preliminary

evaluations are showing the success of this program.

5. Ms. Stuart, in 2005 we will reauthorize the Violence Against Women Act. I am interested to hear from you which parts of VAWA 2000 you feel have been successful, as well as which parts you feel can be improved. Is there anything you believe should be added to enhance and strengthen the Violence Against Women Act?

Response:

VAWA 2000 entrusted the Attorney General with the administration of six new (or newly institutionalized) grant programs: grants to state domestic violence and sexual assault coalitions; grants to develop and operate tribal domestic violence and sexual assault coalitions; grants to provide civil legal assistance for victims of domestic violence, stalking, and sexual assault; grants to train law enforcement officers, prosecutors, and court personnel to address cases of elder abuse, neglect, exploitation and violence against individuals with disabilities; education and training grants to improve services to individuals with disabilities who are victims of domestic violence, sexual assault and stalking; and grants to fund safe places for visitation with and exchange of children in cases of domestic violence, child abuse, sexual assault, or stalking. I am proud to report that, over the course of FY2001 and FY2002, OVW was able to develop and make awards in all six of these new programs, thereby enhancing our national ability to provide a comprehensive response to domestic violence, sexual assault, and stalking. To cite one example of both the reach of and need for these programs, our Legal Assistance for Victims (LAV) Grant Program has regularly received more than two times the number of applications we can fund. In this fiscal year, where the LAV program received an appropriation of $40 million, OVW received 221 applications, requesting a total of nearly $99 million. I am also pleased with the groundbreaking work that our Office has begun in our Safe Havens for Children Pilot Program. Through our efforts, I believe that we have helped raise awareness within the supervised visitation field regarding the very different needs of families who have suffered from domestic violence.

Of course, there is still so much more that needs to be done. As we look forward to the reauthorization of the Violence Against Women Act, we recognize that this will present us with an opportunity to strengthen and enhance the Act. For example, I am particularly conscious of the need to authorize Tribal Domestic Violence and Sexual Assault Coalitions to receive funding. Additionally, there is a continuing challenge for the Office to ensure that our ability to respond to sexual assault is as strong as our ability to respond to domestic violence.

SUBMISSIONS FOR THE RECORD

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Gulf Shores Police Department

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Vice President
Saraland Police Department

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April 25, 2003

BY FAX (202) 224-9102
The Honorable Orrin Hatch, Chairman
Committee on the Judiciary
Room 224 Dirksen Building
United States Senate
Washington, DC 20510

Dear Chairman Hatch:

On behalf of the Alabama Association of Chiefs of Police, I am pleased to endorse President George W. Bush's nomination of Alabama Attorney General Bill Pryor to the United States Court of Appeals for the Eleventh Circuit.

Since General Pryor took office in 1997, the police chiefs of the State have seen him operate first-hand in dealing with law enforcement issues. He has always applied the law fairly, regardless of the politics involved. Whether the parties are black or white, men or women, Republicans or Democrats, General Pryor has followed the law even if he personally wished the law would produce a different result. Attorney General Pryor has demonstrated that he firmly believes that the even-handed rule of law is more important than the preferences of individual officials.

Moreover, Attorney General Pryor cares about people. As the State's chief law enforcement officer, he has to deal with victims, the general public, judges, and state, local and federal law enforcement agencies. By his deeds, Attorney General Pryor has shown that he truly cares about victims, police chiefs, and our line officers who risk their lives every day to protect businesses, schools, and families. Attorney General Pryor is a model public servant.

The Alabama Association of Chiefs of Police know that Attorney General Bill Pryor will make an outstanding federal judge. We fully support his nomination and urge his swift confirmation.

Sincerely,

Arthur K. Bourne

Arthur K. Bourne
President/ AACOP

Cc: Senator Richard Shelby
Senator Jeff Sessions

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[The Atlanta Journal-Constitution: 5/6/03]

EQUAL TIME

Alabamans give Pryor rave reviews

By QUIN HILLYER

Quin Hillyer is an editorial writer for the Mobile Register.

Alabama Attorney General Bill Pryor, President Bush's nominee for a judgeship on the 11th U.S. Circuit Court of Appeals, is one of the most universally respected public figures in his home state. National interest groups of the left, ever in search of judicial nominees to victimize, have painted Pryor as an extremist bent on politicizing the courts -- but that portrait of Pryor would be unrecognizable here in Alabama.

Our view:
• Right-wing zealot is unfit to judge

Pryor has been attacked for supporting Alabama Chief Justice Roy Moore's action in placing a Ten Commandments monument in the state Supreme Court building. But Pryor actually has argued on much narrower (and firmer) legal grounds than the sweeping, theocratic claims Moore has advanced. Pryor cut a TV commercial backing Moore's Republican primary opponent in the last election.

Pryor is under fire for filing a brief against one tiny part of the federal Violence Against Women Act. That one provision would explicitly cite the Constitution's "Commerce Clause" to allow a rape victim to sue her attacker in federal court. Pryor argued, quite reasonably, that rape isn't commerce.

In the case, U.S. v. Morrison in 2000, the U.S. Supreme Court agreed with Pryor. How does one become disqualified for a judgeship for taking a legal position the Supreme Court ruled correct?

In Alabama, Pryor has been one of the nation's ablest and most active prosecutors of rapists and violent sex offenders. He also is the creator of a novel program to encourage victims of domestic violence to seek help, and has been honored by the Penelope House (a battered women's shelter) in its Hall of Fame.

On abortion, meanwhile, Pryor -- unlike his critics -- has shown he understands how to separate personal views from legal duties.

Pryor is indeed a strict Catholic who believes life begins at conception. Last anybody checked, that's his right. But when Alabama's Legislature passed a law that forbade "partial-birth" abortions even before the baby was "viable" outside the womb, Pryor ignored his personal preference and told state law officials not to enforce that provision because it contradicted Supreme Court precedent.

Finally, some of Pryor's opponents have accused him, in effect, of the sin of being Southern. One criticism inferred that Pryor opposes the federal Voting Rights Act.

The truth is that Pryor opposes only one provision, which requires certain Southern states to solicit "pre-clearance" from slow-moving bureaucrats at the U.S. Justice Department for virtually any change in election procedures, even ones as innocuous as moving a polling place from one street corner to the next.

Right now, Georgia Attorney General Thurbert Baker is arguing in favor of Pryor's basic position in a case before the U.S. Supreme Court.

Those of us in Alabama know our brilliant, 41-year-old attorney general to be utterly fair, highly principled and demonstrably nonpartisan. Bill Pryor will make a superb federal judge.

Quin Hillyer is an editorial writer for the Mobile Register.

12/11/97 ATLNTAJC A;22
12/11/97 Atlanta J. & Atlanta Const. A;22
1997 WL 4007286

The Atlanta Constitution

Thursday, December 11, 1997

EDITORIAL

Editorials
A way for church, state to coexist

STAFF

Alabama has generated a lot of heat lately over the issue of separation of church and state. At last there's a little light, thanks to guidelines issued this week by the state's attorney general and school superintendent. They gave the advice to show how religion can be included in schools' holiday season activities and to "help teachers caught between the courts and political rhetoric."

Much of the political rhetoric has come in the form of hot air from Gov. Fob James. After a state judge defied a court order that he stop opening sessions in his court with a prayer and stop displaying the Ten Commandments in the courtroom, James threatened to back the judge by calling out the Alabama National Guard to use "force of arms."

The governor also has argued that the U.S. Constitution's Bill of Rights does not apply in Alabama and has urged defiance of a federal judge's ruling that the state's school prayer law violates the separation of church and state.

James uses a line that is pushed vigorously by some on the religious right. It holds that the federal government and the courts have become so antagonistic toward religion that people's basic religious rights are being denied, especially in public schools. They circulate stories of children being told they can't say a blessing over their lunches and of school officials confiscating items that even hint at religious belief.

The guidelines issued by Alabama Attorney General Bill Pryor and State Superintendent Ed Richardson ---based on the most recent rulings from the U.S. Supreme Court and federal district courts ---show that there is no such government effort to stamp out all forms of religious repression.

For example, the guidelines say that students are free to pray in school if they do so voluntarily, alone or in groups, during non-instructional time. Holiday songs with religious themes can be included in school programs as long as secular songs also are included.

The guidelines cite other ways that the courts have said religion can be brought into the schools without breaching the wall between church and state. James and others jeopardize the rule of law and do a disservice to religious people when they falsely claim the only way to show faith in God is to break the law.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

Illustration: A Christian cross behind a bell tower.

Word Count: 381

12/11/97 ATLNTAJC A;22

END OF DOCUMENT

Department of Law
State of Georgia

THURBERT E. BAKER
ATTORNEY GENERAL

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

March 31, 2003

The Honorable Richard Shelby
United States Senate
110 Hart Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

Dear Senators:

I have had the great pleasure of knowing and working with Bill Pryor over the past five years. Through the National Association of Attorneys General, Bill and I have worked together on matters of mutual concern to Georgia and Alabama. During that time, Bill has distinguished himself time and again with the legal acumen that he brings to issues of national or regional concern as well as with his commitment to furthering the prospects of good and responsive government.

During his tenure as Attorney General, Bill has made combating white-collar crime and public corruption one of the centerpieces of his service to the people of Alabama. He joined the efforts of Attorneys General around the country in fighting the rising tide of identity theft, pushing through legislation in the Alabama legislature making identity theft a felony in Alabama. Bill has fought to keep law enforcement in Alabama armed with appropriate laws to protect Alabama's citizens, pushing for tough money laundering provisions and stiff penalties for trafficking in date rape drugs.

Time and again as Attorney General, Bill has taken on public corruption cases in Alabama, regardless of how well-connected the defendant may be, to ensure that the public trust is upheld and the public's confidence in government is well-founded. He has worked with industry groups and the Better Business Bureau to crack down on unscrupulous contractors who victimized many of Alabama's more vulnerable citizens.

From the time that he clerked with the late Judge Wisdom of the 5th Circuit to the present, though, the most critical asset that Bill Pryor has brought to the practice of law is his zeal to do what he thinks is right. He has always done what he thought was best for the people of Alabama. Recognizing a wrong that had gone on far too long, he took the opportunity of his inaugural address to call on an end to the ban on inter-racial marriages in Alabama law. Concerned about

at-risk kids in Alabama schools, he formed Mentor Alabama, a program designed to pair volunteer mentors with students who needed a role model and an attentive ear to the problems facing them on a daily basis.

These are just a few of the qualities that I believe will make Bill Pryor an excellent candidate for a slot on the 11th Circuit Court of Appeals. My only regret is that I will no longer have Bill as a fellow Attorney General fighting for what is right, but I know that his work on the bench will continue to serve as an example of how the public trust should be upheld.

Sincerely,

Thurbert E. Baker

Thurbert E. Baker

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April 8, 2003

VIA FAX TO 202-224-3149 AND FIRST CLASS MAIL
The Honorable Jeff Sessions
493 Russell Senate Office Building
Washington, D. C. 20510

Re: Recommendation of Bill Pryor/Eleventh Circuit Court of Appeals

Dear Senator Sessions:

Media reports confirm that Alabama's Attorney General, Bill Pryor, has been nominated to fill the vacancy which now exists on the Eleventh Circuit.

As you well know, I too am a former Attorney General of our great state. I therefore feel comfortable assessing Bill Pryor's service in that elected office, as well as his fitness to serve the United States as a Circuit Judge. As a Democrat, I am certain I have a more unbiased frame of reference than many. As a lawyer with a diverse practice in Alabama – one which has seen me aligned with him on some occasions and against him on others – I have a better basis than most for gauging his character, fitness and ability.

Bill Pryor is a completely independent man of unwavering convictions. He courageously takes positions dictated by his conscience and does so based upon a truly intellectual sense of right and wrong. In this regard, his willingness to be guided by pure interpretations of the law superbly qualifies him for the federal bench. He has never, to my knowledge, bowed to any pressure from constituents or special interest groups. In every difficult decision he has made, his actions were supported by his interpretation of the law, without race, gender, age, political power, wealth, community standing, or any other competing interest affecting his judgment. This is a rare accomplishment, and the core reason for this, my highest and best recommendation.

I often disagree, politically, with Bill Pryor. This does not prevent me from making this recommendation because we need fair minded, intelligent, industrious men and women, possessed of impeccable integrity, on the Eleventh Circuit. Bill Pryor has these qualities in abundance. I am certain he will be guided completely by his conscience and afford a balanced analysis to every case before him, without unfair advantage to any litigant. There is no better choice for this vacancy.

Respectfully yours,

William J. Baxley

Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.

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* ALSO ADMITTED IN OHIO
* ALSO ADMITTED IN OKLAHOMA
* ALSO ADMITTED IN SOUTH CAROLINA
* ALSO ADMITTED IN TENNESSEE
* ALSO ADMITTED IN TEXAS
* ALSO ADMITTED IN WASHINGTON, D.C.

March 25, 2003

Senator Jeff Sessions
493 Russell Office Building
Washington, D.C. 20510

Dear Jeff:

I understand that Bill Pryor will be nominated for a vacancy on the Eleventh Circuit Court of Appeals. In my opinion, that will be a very good appointment for the President. I have known Bill since he worked for you in the Attorney General's office and I believe that he has all of the necessary qualifications to do an outstanding job on the federal bench. I am writing to support his nomination.

The Attorney General and I come from different political parties and have disagreed on a number of issues. However, I have tremendous respect for him and sincerely believe that he has served the state well as Attorney General. I would have done some things differently, but that alone does not keep me from supporting him now. Bill Pryor is extremely bright and is a recognized student of the law. His character is beyond reproach and, in my opinion, he will be fair and judicious if he is nominated and confirmed by the Senate.

Hopefully, the Senate confirmation will not be a problem. I recommend Bill Pryor to you and other members of the Senate without reservation.

Sincerely,

JERE L. BEASLEY

JLB/lr

Stephanie C. Billingslea
Office of the Attorney General
11 South Union Street
Montgomery, AL 36130

April 24, 2003

Senator Jeff Sessions
493 Russell Senate Office Building
Washington, DC 20510

Dear Senator Sessions:

I write this letter in support of Attorney General Bill Pryor's nomination to the Eleventh Circuit Court of Appeals. General Pryor has been my boss for over six years. I have truly enjoyed working for him. He has impeccable character and the judicial temperament necessary for such a high calling. He is a very competent and astute advocate for the state. He accepts nothing but outstanding representation of the state. As Attorney General, he has exuded a high standard of ethics and has always taken his oath of office and duty owed to the people of Alabama seriously.

I have tremendous respect for General Pryor because he has been one whose integrity for enforcing the law is above reproach. He has always taken legal positions that were necessary to preserve our state's rights even when the positions were contrary to popular opinion. As the state's top law enforcer, he has always rendered opinions on controversial issues based on the law rather than be influenced by his own personal views or politics. His notable record of applying the law is what makes him an excellent choice for the Eleventh Circuit Court of Appeals.

Shortly after his appointment in 1997, General Pryor created the Public Corruption and White-Collar Crime Division of the Attorney General's Office. This division was created to prosecute public corruption, complex economic crimes, election fraud, bid-rigging, and ethics code violations. The Public Corruption and White-Collar Crime Division quickly became the most visible division in the Attorney General's office and gained a reputation of respect. The Public Corruption and White-Collar Crime Division has been one of the most successful divisions in the Attorney General's Office. I applaud General Pryor not only for his foresight in determining that such a division was necessary but for his ability to bring integrity to public corruption and white-collar crime prosecutions. The public's perception that the Public Corruption and White-Collar Crime Division is not an instrument used to target political opponents is attributable to General Pryor's code of ethics and his ability to be evenhanded in the pursuit of justice.

As an African-American, I believe that General Pryor has been fair and sensitive to racial issues. Shortly after the creation of the Public Corruption and White-Collar Crime Division, I was appointed by General Pryor to prosecute cases in the division. General Pryor promoted me just after five months in office and presented me with a special merit raise for

outstanding work three years later. He awarded two African-American special agents the Attorney General's Award of Excellence in the area of investigations for 2001 and 2002. General Pryor created a state-wide mentoring program that has benefited African-American children as well as other minorities. He also supported the removal of the ban on interracial marriage from the Alabama State Constitution.

The State of Alabama has been very fortunate to have General Pryor as its top law enforcer. The citizens of Alabama, Georgia and Florida will also be fortunate to have General Pryor as one of its jurist on the Eleventh Circuit Court of Appeals.

I wholeheartedly support General Pryor's nomination to the Eleventh Circuit Court of Appeals and believe that he will interpret and apply the law with integrity and character.

Thank you for considering this letter of support. If additional information is needed, you may contact me at (334) 242-7470.

Sincerely,

Stephanie C. Billingslea
Assistant Attorney General

The Birmingham News
June 11, 2003

EDITORIAL: Pryor restraint

Hard to recognize attorney general amid attacks

Bill Pryor has been a good attorney general for Alabama.

He has handled most of the state's legal business well. He has led initiatives that will make Alabama a better place to live, such as his own Mentor Alabama that finds volunteers to work with children. He has supported worthy programs such as Children First to upgrade the state's juvenile justice system. He has pushed the Legislature to establish a commission to study the state's out-of-whack sentencing laws. He has been a voice for open government.

It's easy to forget Pryor's solid record amid the torrent of liberal interest-group attacks on him leading up to today's hearing of the U.S. Senate Judiciary Committee. The committee will consider whether to recommend Pryor, nominated by President Bush for the 11th U.S. Circuit Court of Appeals, to the full Senate for confirmation.

According to his attackers, Pryor is unfit to be a federal judge. A sample:

"William Pryor's words and abysmal record in protecting civil, constitutional and human rights demonstrate that he is an avowed extremist and legal activist," said Nancy Zirkin, deputy director of the Leadership Conference on Civil Rights. "His ideological agenda of limiting Congress' ability to pass laws aimed at protecting against discrimination and inequalities should certainly disqualify him from a lifetime appointment to the federal judiciary."

Amid the caricature, it's hard to recognize the thoughtful, earnest attorney general of Alabama for the past six years. Yes, Pryor is conservative, but so is the president who nominated him. That said, Pryor is not blindly conservative, one who would rule the way Republicans want instead of based on what the law says. In fact, he has been criticized by some in his own party for not being Republican enough, even as he is now earning strong support for a seat on the federal bench from black Democrats such as U.S. Rep. Artur Davis and state Rep. Alvin Holmes.

Today's committee hearing could be long and bruising. With 10 Republicans and nine Democrats, the biggest threat to Pryor isn't the committee vote but on the floor on the Senate. If Democrats filibuster Pryor as they have two other Bush nominees, it prevents a vote.

Alabama's attorney general is a fit nominee for the appeals court. The Senate Judiciary Committee should send his nomination to the full Senate, and the full Senate should confirm him.

OUR VIEWS

Passing on the Patriot Act

As a precautionary measure to ensure that legislation works as planned, Congress often adds a "sunset" date, meaning that the targeted provisions of the law will expire after a certain period unless Congress reauthorizes them. The idea is to ensure Congress returns to the law for a thorough re-examination.

Congress wisely added sunset provisions to the USA Patriot Act, the anti-terrorism bill it hastily threw together and passed one month after 9/11. That 342-page act gave federal law enforcement sweeping new search-surveillance powers, including covert access to computers and financial records — even the right to take a secret peek at what's being checked out of the local library.

Congress has still not thoroughly examined how the act is being used — or abused. The notably closed-mouthed Bush administration has hardly been forthcoming. One lawmaker called the current Justice Department the least cooperative in memory.

But the sunset provisions don't kick in until Dec. 31, 2005, so there's still plenty of time — except that congressional Republicans want to lift those provisions now, making those broad new powers permanent.

Senate Judiciary Committee Chairman Orrin Hatch has introduced legislation to make the Patriot Act permanent in the form of an amendment to a bill expanding the government's powers under yet another antiterrorism law, the Foreign Intelligence Surveillance Act. The Bush administration, which resents any oversight of its action, supports the Hatch amendment.

■ SUNSET PROVISION: The jury is still very much out on whether the Patriot Act and its administration are consistent with constitutional safeguards and basic civil liberties.

Why there's a sudden rush to make the Patriot Act permanent is something of a puzzle. The old axiom "act in haste, repent at leisure" comes to mind.

The jury is still very much out on whether the Patriot Act and its administration are consistent with constitutional safeguards and basic civil liberties. Federal law enforcement agencies have abused their powers in the past and without vigilant oversight will do so again.

Sen. Patrick Leahy, D-Vt., is the senior Democrat on the Judiciary Committee but he was its chairman when the Patriot Act was passed and an architect of the sunset provisions. He argues:

"History shows that a government that doesn't want oversight often is a government that has something to hide. This amendment would give up the ghost of any meaningful oversight about how the government is using these sweeping powers."

Exactly. The sunset provisions should stay and the law should be subjected to a strong dose of sunshine.

Judge Bill Pryor?

It was no surprise this week when President Bush nominated Alabama Attorney General Bill Pryor for a seat on the 11th U.S. Circuit Court of Appeals. His political mentor, Sen. Jeff Sessions, has been pushing for the nomination for some time, and Pryor has many attributes that make him an attractive candidate for the federal judiciary.

There is no question of Pryor's integrity. When he believes he is right, he will stick by his decisions regardless of whether they help his political friends or foes. For the most part, he knows the law and follows it regardless of his personal beliefs. We say for the most part because there was one situation in recent years — the fight over control of the Birmingham Water Works — in which he argued for a position that appears to us contrary to the clear letter and intent of state law.

Perhaps more important in terms of being confirmed, Pryor lacks some of the flaws or perceived flaws seen in some high-profile Bush nominees.

Unlike U.S. District Judge Charles Pickering of Mississippi, nominated for the 5th U.S. Court of Appeals, Pryor has not been involved in a case that could be twisted into falsely making him look like he is a closet racist.

Unlike Texas Supreme Court Justice Priscilla Owen, nominated for the same court as Pickering, Pryor does not have a record of often ignoring the clear intent of a law to advance personal beliefs. To the contrary, he has been known to seek changes in laws to conform to legal precedents even though he might personally disagree with a particular precedent and even though it might be politically profitable to let the courts make the changes over his objections.

And unlike Miguel Estrada, nominated for the U.S. Court of Appeals for the District of Columbia, Pryor's legal views are spread across public records. Pryor cannot be considered a stealth candidate whose views are being deliberately kept from the senators who must vote on his confirmation.

The Pryor nomination already has opposition. His views on federalism are controversial. They should receive careful consideration and debate by the Senate.

However, a fight over Pryor's nomination can and should be on a higher plane than most such judicial nomination fights. It can be on his legal philosophy rather than real or trumped-up questions about him as a person.

Birmingham Post-Herald, April 12, 2003

PRICHARD, ALABAMA

Charles E. Harden
Mayor

Sammie Brown, Jr.
Chief of Police

Captain Yvonne M. Baldwin
Administrative Services

Captain Frank Dees
Criminal Investigations
Community Policing Division

POLICE DEPARTMENT

March 26, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Sessions,

I understand that President Bush is considering Alabama Attorney General Bill Pryor for nomination to the Eleventh Circuit Court of Appeals. I write in support of that nomination.

I have known Mr. Pryor for a number of years, both in his capacity as Attorney General and as a citizen of Alabama. I have worked with him in his efforts to help law enforcement, and have seen first hand, his commitment to ensure that the people of Alabama are safe, and are well represented in the Courts. When officers of the Prichard police Department were ambushed and a young child killed by drug dealers, Mr. Pryor contacted my office to lend assistance from his office as Attorney General. It is my experience that Mr. Pryor is fair and judicious in carrying out the duties of his office.

I am excited that a person of such integrity is being considered for such an important position, and I support Mr. Pryor nomination without reservation.

Sincerely,

Sammie Brown, Jr.
Chief of Police

SB/mk

CERVERA, RALPH & BUTTS
ATTORNEYS AT LAW

N.J. CERVERA
FRANK P. RALPH
JUSTICE TERRY L. BUTTS
(Alabama Supreme Court, ret.)

MALCOLM W. MCSWEAN
GRADY A. REEVES
RUTH L. PAWLIK

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June 9, 2003

VIA FACSIMILE and US MAIL
Senator Richard C. Shelby
110 Hart Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
493 Russell Building
Washington, DC 20510

RE: William H. Pryor, Jr.

Dear Sirs:

Please accept my whole-hearted endorsement of Alabama Attorney General William H. "Bill" Pryor, Jr. for confirmation on the United States 11th Circuit Court of Appeals. As much as anyone, perhaps I may be uniquely qualified to assess his qualifications and abilities as outlined hereinafter.

In 1998, I retired from the Alabama Supreme Court and was the democratic nominee for attorney general. My opponent was incumbent Attorney General Bill Pryor. As in all politics, the campaign did "opposition research" on Bill. Frankly, there were neither "skeletons," nor anything else of any merit to use against him. Bill Pryor won that election and I came to know him well.

While serving on the Alabama Supreme Court, I had ample opportunity not only to observe Bill Pryor both personally and professionally, but also to read the outstanding legal briefs he filed with the Court. I do not recall a single instance in any criminal case brief that he filed before the Court in which I did not vote for and agree with his legal position.

Since 1998, I have had the pleasure of working with Attorney General Bill Pryor in several cases. We have even traveled together from Montgomery, Alabama to Birmingham, Alabama while representing our respective clients. This gave me an even greater opportunity to observe and come to really know him. I have also visited with him many times in his office. Additionally, my wife and I have socialized with Bill and his

lovely wife, Chris, and their two adorable children, Victoria and Caroline.

If called upon to do so, I could speak or write voluminously about my respect for Attorney General Pryor. However, suffice it to say the following:

1. Attorney General Bill Pryor is extremely intelligent and articulate. He enjoys a quick grasp of legal issues, coupled with an excellent ability to state them , be it in legal briefs or oral arguments. There is simply no question about his ability to serve as a federal circuit judge.

2. While some single issue oriented individuals may oppose Bill's confirmation for whatever reason, I find that he has the courage of his convictions. As attorney general, he has steadfastly applied the law even-handedly and without favor to any individual, often to his political detriment. He has never let politics or self-advancement stand in the way of enforcing the law. So if you will forgive a little inelegant colloquialism, as I have said to Bill many times: "Bill, you've got more guts than a hog." (One of the ultimate compliments you could pay a man in rural Crenshaw County, Alabama where I grew up).

3. Aside from Bill's legal qualifications, he is a practicing Christian and a morally upright man. As mentioned above, he has a wonderful family with a gifted wife who works as a CPA. I also have had the opportunity of knowing Bill's parents. They too are fine people enjoying great reputations.

4. Attorney General Pryor enjoys widespread, across-the-board support in Alabama for a seat on the 11th Circuit. This support includes minority groups and their respective leaders, all aspects of the law enforcement community, judges, attorneys and a host of others. This in and of itself should reveal the respect Alabama citizens hold for Bill Pryor.

5. You may also be interested in the fact that when Attorney General Pryor ran for reelection in 2002, I broke ranks with the democrats and publicly endorsed and campaigned for his reelection. I also "put my money where my mouth was" by contributing to his campaign. This should show the appreciation I have for the job he has done as attorney general, as well as the friendship I bear him.

Finally, suffice it to say, I believe Bill Pryor possesses the temperament, the

ability, and the moral compass to serve our country as a judge on the 11th Circuit Court of Appeals. He is a very principled person. I urge his confirmation.

Thank you.

Yours very truly,

Terry L. Butts

PS: Because I believe so strongly that Bill should be confirmed, I would be more than willing to testify publicly on his behalf if that will help.

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
300 DEXTER AVENUE, P. O. BOX 301555
MONTGOMERY, ALABAMA 36130-1555

LL COBB
dgs

(334) 242-4615
(334) 242-4689 FA

January 21, 2003

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Re: Nomination of Attorney General Bill Pryor

Dear Mr. President:

I have had the good fortune to recommend a variety of people for a variety of positions. Never have I been more honored or confident about a recommendation than I am as I write on behalf of my dear friend and Alabama Attorney General, Bill Pryor.

In November of 2000, both you and I were on the ballot. As I stood for reelection for my second term on the Alabama Court of Criminal Appeals, I became the only statewide Democrat to survive the 2000 election. Hence, I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. It is for these reasons and more that I am indeed honored to recommend General Pryor for nomination to the 11th Circuit Court of Appeals.

Bill Pryor is an outstanding attorney general and is one of the most righteous elected officials in this state. He possesses two of the most important attributes of a judge: unquestionable integrity and a strong internal moral

compass. Whether he is reviewing hundreds of appellate briefs to ensure the quality of the work his assistants submit to this court, whether he is preparing to argue one of my cases to the United States Supreme Court,[1] whether he is using his considerable influence to encourage Alabama legislators to make children a top priority, or whether he is in his weekly tutoring session with an "at-risk" child, Bill Pryor is proving that he is a true public servant.

Bill Pryor is exceedingly bright, and a lawyer's lawyer. He is as dedicated to the "Rule of Law" as anyone I know. I have never known another attorney general who loved being the "people's lawyer" more than Bill Pryor. Though we may disagree on an issue, I am always confident that his position is the product of complete intellectual honesty. He loves the mental challenge presented by a complex case, yet he never fails to remember that each case impacts people's lives.

A sportscaster once said about a former Atlanta Braves player, Terry Pendleton, "[H]e does the right thing, because it is the right thing to do." That, Mr. President, perfectly describes Bill Pryor. Hence, it is my profound honor to urge you to nominate a great Alabamian, General Bill Pryor, to the 11th Circuit Court of Appeals.

I would be honored to assist you in any way in making General Pryor's nomination and confirmation a reality. With best regards, I remain,

Most Sincerely,

Sue Bell Cobb
Judge

CC: Justice Alberta "Al" Gonzales
The Honorable John Ashcroft

---

[1] See, e.g., Alabama v. Shelton, 535 U.S. 654 (2002).

MOBILE POLICE DEPARTMENT

SAMUEL M. COCHRAN
CHIEF OF POLICE

2460 GOVERNMENT BLVD.
MOBILE, AL 36606-1618
(251) 208-1701
(251) 208-1705 FAX

March 27, 2003

MPD file: CP13/032703/P
Re: Bill Pryor

Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, DC 20510

SUBJECT: 11TH CIRCUIT COURT OF APPEALS APPOINTMENT

Dear Senator Sessions:

I am writing in support of your nomination of Attorney General Bill Pryor for appointment to the 11th Circuit Court of Appeals. I have known Mr. Pryor for several years. I think Mr. Pryor is an excellent choice for this position. I know him to be a very honest and ethical person whom all should be proud to serve on the federal bench. I believe he would be most fair and not swayed by any biases or prejudices which I've never known him to exhibit.

If there is anything I could do in further support of Mr. Pryor for this position, I will gladly do so.

With kindest regards, I am

Yours in service,

Samuel M Cochran

SAMUEL M. COCHRAN
Chief of Police
Mobile Police Department

SMC/fpb

c. file P

BA

PRISON FELLOWSHIP Ministries

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Washington, DC 20041-7500
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April 1, 2003

The Honorable Jeff Sessions
United States Senate
439 Russell Senate Office Building
Washington, D.C. 20510

Dear ~~Senator Sessions,~~ JEFF

I have been informed that President Bush is considering Bill Pryor for nomination to the Eleventh Circuit Court of Appeals. I have great admiration for Bill and support his nomination with enthusiasm.

I observed Bill during his years as Attorney General of Alabama and was quite impressed. He has a firm grasp of the law, and is an articulate and forceful advocate. He used his office to speak out for reform in prison sentencing and was an ardent supporter of the Kennedy-Sessions Prison Rape Reduction Act. He also was instrumental in the passage of Alabama's Religious Freedom Restoration Act, which guarantees religious freedom for all, including prisoners. In fact, our ministry was so impressed with Bill's energetic support of Alabama's RFRA that we awarded Bill our Guardian of Religious Liberty award.

While Bill is a forceful advocate, he also believes in the rule of law. When the debate ceases, Bill defends the law as it is written by the legislature or a higher court. Bill has a brilliant mind and the proper temperament for service on the Court of Appeals. I strongly urge you to support his nomination for that position.

Sincerely,

Chuck

Charles W. Colson

CWC:nn

Bill, as I know you agree, a great lawyer + human being —
Bless You Jeff

"A bruised reed he will not break . . .
In faithfulness he will bring forth justice."
Isaiah 42:3

MAYNARD, COOPER & GALE, P.C.
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Patrick C. Cooper

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April 10, 2003

BY U.S. MAIL AND FACSIMILE

Richard C. Shelby
United States Senator
110 Hart Senate Office Bldg.
Washington, D.C. 20510

Jeff Sessions
United States Senator
493 Russell Bldg.
Washington, D.C. 20510

Dear Senators Shelby and Sessions:

My name is Patrick Cooper. I am an African-American who is a partner at the law firm of Maynard, Cooper & Gale in Birmingham, Alabama. I write this letter in support of the nomination of Alabama Attorney General Bill Pryor to the United States Court of Appeals for the Eleventh Circuit.

I first met Mr. Pryor when he was in private practice before he became Attorney General. I have followed his career closely. I greatly respect his intelligence, hard work and integrity. I also admire Mr. Pryor's willingness to lead when others are unwilling to do so -- particularly on the issue of race.

For example, several years ago Mr. Pryor was instrumental in the passage of a constitutional amendment striking a provision in the Alabama Constitution that barred miscegenation. (Specifically, the provision barred interracial marriages between whites and blacks, but no other racial or ethnic group.) Mr. Pryor was the only white statewide elected official -- including both Democrats and Republicans -- who from the outset publicly and actively supported the proposed amendment. He appeared on radio talk shows, wrote editorial pieces and made

numerous speeches urging voters to rid the Alabama Constitution of this immoral relic of Alabama's Jim Crow days.

Mr. Pryor's support of the proposal was gutsy. As a Republican in Alabama, he had nothing politically to gain and much to lose. Indeed, on election day, several rural counties voted against the proposed amendment, which passed by a somewhat narrow margin.

Mr. Pryor's active support of the proposal was consistent with his effort throughout his tenure as Attorney General to reach out to the minority community in Alabama. On repeated occasions, Mr. Pryor accompanied me to political functions in the black community in an effort to demonstrate that the Alabama Attorney General serves *all* citizens in our state. Often, he was the only white elected official at these events. This speaks volumes in terms of his willingness to address the thorny issue of race in Alabama.

For the reasons expressed above (and others), I strongly support the nomination of Mr. Pryor to the United States Court of Appeals for the Eleventh Circuit.

Sincerely,

Patrick C. Cooper

PCC/dm

00876186.4

Bush nomination of Pryor not surprising

Our View
April 18, 2003

President Bush's nomination of Alabama Attorney General Bill Pryor to the 11th Circuit Court of Appeals is neither surprising nor undeserved.

Though some critics describe Pryor as "divisive" and "far-right," these portrayals are not entirely fair.

It is true that Pryor has taken conservative stands in his time as Alabama's attorney general, from opposing the lawsuit against tobacco companies to helping reduce the access of death-row inmates to the appeals process.

On the other hand, Pryor does not toe the party line. For example, Pryor defended Alabama Chief Justice Roy Moore's decision to display the Ten Commandments, but was opposed to establishing prayer in schools.

Pryor has stood apart from Republicans on many other occasions as well, displaying the fact that he is a reasonable and principled man who does not always toe the conservative line.

It is to be expected that Bush would choose a Republican for the position, and Pryor has shown he is more than a party label.

History has also shown that once judges are on the bench, there is no telling where they will fall on every issue, and Pryor is likely to render some surprising decisions if the U.S. Senate confirms him.

Pryor has demonstrated that he can work with Democrats, so the suggestion that he is a divisive nomination is inaccurate.

Pryor still has to face the Senate during the advice and consent process, which will scrutinize his extensive record. So there is a way to go before he is actually on the bench, but unless something unexpected comes out in the Senate proceedings, he stands a good chance of being confirmed.

All in all, Pryor is a good choice, and it is not surprising that he was tapped for the job, considering his legal and political career so far has marked him as something of a rising star.

STATE OF FLORIDA

CHARLIE CRIST
ATTORNEY GENERAL
April 15, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Office Building
Washington, DC 20510

Re: Nomination of Attorney General Bill Pryor to the 11th Circuit, U.S. Court of Appeals Judgeship

Dear Senator Sessions:

I would like to recommend to you the appointment of Alabama Attorney General Bill Pryor to the 11th Circuit, U.S. Court of Appeals.

General Pryor is well qualified for such a position as he has had a distinguished career as a public servant, practicing attorney, and law professor. He attended Tulane University School of Law, where he graduated *magna cum laude* in 1987 and was editor-in-chief of the *Tulane Law Review*. General Pryor began his legal career as a law clerk for the late Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit, who is renown for his landmark decisions ordering and implementing desegregation.

General Pryor practiced law from 1988 to 1995 at two well-established Birmingham law firms before being hired in 1995 by then Attorney General Sessions as Deputy Attorney General in charge of special civil and constitutional litigation. He was appointed in 1997 by Governor Fob James as Attorney General of Alabama. In 1998 he was elected by the citizens of Alabama to a four-year term and re-elected to a second four-year term in 2002.

Attorney General Pryor's professional experience gives him the necessary qualifications to meet the demands of the bench with honesty and uprightness, often resisting pressure from his own party in the process. He would be a valuable asset to the 11th Circuit, and I am pleased to strongly recommend him for your consideration.

Sincerely,

Charlie Crist

CC/jm

LAW OFFICES

Cunningham, Bounds, Yance, Crowder and Brown, L.L.C.

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JOSEPH M. BROWN, JR.*
TOBY D. BROWN*
JOHN T. CROWDER, JR.*
ROBERT T. CUNNINGHAM, JR.*
RICHARD T. DORMAN***
DAVID G. WIRTES, JR.
MICHAEL A. WOREL**
JAMES A. YANCE*

GEORGE M. DENT

* (Certified as a Civil Trial Specialist by the National Board of Trial Advocacy)
** (also admitted in Georgia)
*** (also admitted in New York and District of Columbia)

OF COUNSEL
RICHARD BOUNDS

ROBERT T. CUNNINGHAM, SR. (1918-2001)

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April 1, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510-0104

RE: Attorney General Bill Pryor/Eleventh Circuit Nomination

Dear Senator Sessions:

It is with great pleasure that I write on behalf of our entire firm to express our complete and enthusiastic support for the nomination of Attorney General Bill Pryor for a seat on the United States Court of Appeals for the Eleventh Circuit.

Over the past few years it has been our honor to represent the State of Alabama in a number of major civil lawsuits in conjunction with the Attorney General, his office and staff. His staunch and unwavering support of our efforts on behalf of the State during the course of that civil litigation, as well as his direct and personal involvement on behalf of the State, have demonstrated his complete devotion to the interests of his client. The defendants in these cases have consisted of almost all the major oil companies in America. Attorney General Pryor carefully evaluated the basis for each lawsuit and once convinced of the propriety of the legal theories in each, encouraged and assisted in vigorously pursuing the State's interest. He has represented the State's interest undaunted by the fact that Alabama was taking on some of the most powerful corporations in the world.

While there are certainly political issues about which we, as plaintiff's trial lawyers, and Attorney General Pryor disagree, his commitment to principle, his high ethical standards and his simple decency as a human being are characteristics which far outweigh any consideration of political differences. His moral substance and

Cunningham, Bounds, Yance, Crowder and Brown, L. L. C.

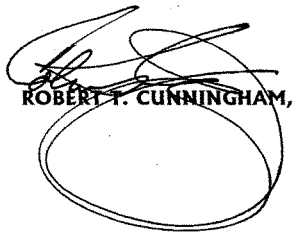
The Honorable Jeff Sessions
April 1, 2003
Page Two

keen intelligence, coupled with his many other outstanding personal characteristics unquestionably qualify him for this appointment.

Each of the members of this firm join in urging your full support of Attorney General Pryor's nomination.

If it would be of any benefit, we would be happy to appear and testify on his behalf at any future hearing.

Very truly yours,



ROBERT T. CUNNINGHAM, JR.

RTCjr:kvn

ARTUR DAVIS
7TH DISTRICT, ALABAMA

208 CANNON
HOUSE OFFICE BUILDING
202-225-2665

Congress of the United States
House of Representatives
Washington, DC 20515-0107

January 10, 2003

Via Hand Delivery

Honorable Jeff Sessions
United States Senator
493 Russell Senate Office Building
Washington, DC 20510

Dear Senator Sessions:

Thank you for all of your kindness during the transition period. You and the rest of the Alabama Delegation have made me feel very welcome.

As you know, several pending vacancies on the Alabama federal bench are attracting attention back home. I understand that the President may be considering Attorney General Bill Pryor for a seat on the Eleventh Circuit. I have the utmost respect for my friend Attorney General Pryor and I believe if he is selected, Alabama will be proud of his service.

In the near future, as openings occur on the District Court, I encourage you to view this as an opportunity to diversify the federal bench. Unfortunately only two African Americans have ever served as federal district judges in Alabama. I believe that a review of the most qualified judicial candidates will inevitably lead to the inclusion of black attorneys. I strongly encourage you to consider recommending for nomination several outstanding black attorneys who have distinguished themselves. I know you would agree that Alabama deserves a federal bench that looks like Alabama.

Thank you very much for your attention to this matter. I look forward to working together over the coming months and years.

Best wishes,

Artur Davis
Member of Congress

WHATLEYDRAKE LLC
complex litigation.

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Birmingham, Alabama 35203
P.O. Box 10647
Birmingham, Alabama 35202-0647
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www.whatleydrake.com

Russell Jackson Drake
Direct Line: 205.488.1263
E-mail address: jdrake@whatleydrake.com

March 24, 2003

VIA FACSIMILE (202) 228-0545

Senator Jeff Sessions
United States Senate
Washington, DC

Dear Senator Sessions:

I am writing in support of the expected nomination of Attorney General Bill Pryor for a position on the United States Court of Appeals for the Eleventh Circuit. I have known Bill for more than ten years, as a lawyer in private practice, as Chief Assistant Attorney General while you were the Attorney General of Alabama, and as Attorney General. In the past four years, I have worked very closely with Bill over issues affecting the Alabama Ethics Commission of which I have been a member and of which I currently serve as Chairman.

I know Bill Pryor to be a fair, impartial and even handed public servant. Bill is also an extremely bright, capable lawyer. I expect that he will be a great appellate court judge. If I can be of any further assistance in the confirmation process, please let me know.

Sincerely,

Russell Jackson Drake

RJD/da

PRISON FELLOWSHIP
Ministries

Post Office Box 17500
Washington, DC 20041-7500
(703) 478-0100
www.prisonfellowship.org

April 1, 2003

The Honorable Jeff Sessions
United States Senate
SR-493
Washington, DC 20510

Dear Senator Sessions:

I understand that President Bush is considering nominating Alabama Attorney General Bill Pryor to the Eleventh Circuit Court of Appeals. I am delighted that the President is considering General Pryor for that important bench, and I enthusiastically support his nomination.

I have known General Pryor for five years. We served as attorneys general for our states, Alabama and Virginia, and we worked together on many issues. Now, I am delighted that in my new capacity as President of Prison Fellowship, we have been able to continue to work together. During the years I have known General Pryor, I have had the opportunity to observe him closely, and found him to be energetic, thoughtful and possessed of a keen, analytical mind. His character and integrity are above reproach.

General Pryor is forthright and articulate in his advocacy. He is very sharp in his analytical and legal intellect and has a great respect for the rule of law. He has done an outstanding job as Attorney General.

General Pryor has also shown that he is a fierce proponent for many who are marginalized by society. As you are personally well aware, he was instrumental in support for the Kennedy-Sessions Prison Rape Reduction Act, and he spoke eloquently in support of the bill when it was introduced. He has also led the effort for sentencing reform in Alabama and was a leading voice in support of Alabama's Religious Freedom Restoration Act, which guarantees the right to religious practice for all, including prisoners.

I am very impressed with General Pryor's abilities and his temperament. He seems ideally suited for a seat on the Court of Appeals, and I enthusiastically endorse him without reservation.

Sincerely,

Mark Earley

Mark L. Earley
President

"A bruised reed he will not break . . .
In faithfulness he will bring forth justice."
Isaiah 42:3

TENTH JUDICIAL CIRCUIT OF ALABAMA

Eric M. Fancher
District Judge

505 Bessemer Courthouse Annex
Bessemer, Alabama 35020

Telephone
(205) 481-4190

April 9, 2003

Senator Jeff Sessions
493 Russell Office Building
Washington, D.C. 20510

Re: Attorney General Bill Pryor

Dear Senator:

I met Bill Pryor nearly six years ago. At the time of this meeting and subsequent conversations, he impressed me as a man of character and integrity. Over the years, I have read various legal opinions and legal positions taken by Bill Pryor. The opinions and positions taken have been consistent. The judicial system should have consistency, as well as the proper temperament and integrity in interpreting the law. It is my opinion that Bill Pryor possesses the character and integrity to be fair in making judicial decisions. His legal experience speaks for itself. Bill Pryor has demonstrated his ability to not only interpret, but apply laws and legal principles in his role as Attorney General. I do believe he has an excellent appreciation and understanding of the law.

I support Bill Pryor's nomination to the 11th Circuit Court of Appeals.

Sincerely,

Eric M. Fancher

EMF/sg

NDAA

Office of the Executive Director

National District Attorneys Association
99 Canal Center Plaza, Suite 510, Alexandria, Virginia 22314
703.549.9222 / 703.836.3195 Fax
www.ndaa-apri.org

March 24, 2003

Honorable Orin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Hatch and Senator Leahy:

As the Executive Director for the National District Attorneys Association (NDAA) and President of the American Prosecutors Research Institute (APRI), I wish to communicate my strong personal endorsement of Ms. Diane Stuart for the position of the Director of the Office on Violence Against Women (OVW), now located within the Office of Justice Programs, U.S. Department of Justice.

As the current Director of that office and as a former state coordinator of domestic violence programs, Diane Stuart is very experienced and exceedingly knowledgeable of domestic violence, sexual assault, and stalking issues. As you may be aware, Ms. Stuart chairs the Federal Interagency Coordinating Board on Violence Against Women.

In addition to understanding victim issues and prosecutorial roles and responsibilities within our nation's justice system, Ms. Stuart appreciates the important work of our dedicated professional organizations. She knows first-hand the tragedies of violent victimizations, having directed the Battered Women's Shelter and Crisis Center in Logan, Utah. She has served as spokesperson for the leadership group of the National Advisory Council on Violence Against Women. Ms. Stuart's valuable insights into violence against women and her dedication to victim needs will serve her well in providing continued leadership in assistance programs nationally.

Ms. Stuart has gained valuable experience within the U.S. Department of Justice while serving as liaison with Federal, State and local governments and organizations. Through her leadership and experience, she has made and continues to make substantial and lasting contributions to America's justice system on behalf of victimized women. As the Director of the Office on Violence Against Women, she will continue to make even greater contributions in the future. Accordingly, on behalf of prosecutors and the criminal justice community, I urge you to consider favorably her nomination for appointment to this important position of public trust.

Sincerely,

NEWMAN FLANAGAN
Executive Director,
National District Attorneys Association
President, American Prosecutors Research Institute

To Be the Voice of America's Prosecutors and to Support Their Efforts to Protect the Rights and Safety of the People

Elmore County Sheriff's Dept.

8955 U.S. HIGHWAY 231
WETUMPKA, ALABAMA 36092

BILL FRANKLIN
Sheriff

Sheriff's Office
(334) 567-5546
County Jail
(334) 567-5441

March 25, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Shelby
Untied States Senate
110 Hart Senate Office Building
Washington, D. C. 20510

Dear Senators Sessions and Shelby,

It is my understanding that nominations are being considered for the Eleventh Circuit Court of Appeals. I am very pleased that President Bush is considering Bill Pryor for this nomination.

During my tenure as Sheriff of Elmore County I have worked indirectly with different Attorney General's for Alabama. Bill Pryor has surrounded himself with extremely capable and professional people in his office to assist Law Enforcement whenever needed. Mr. Pryor has always gone that extra mile to ensure that things are handled properly.

It is good to know that a person such as Mr. Pryor is being considered for such an important position. Hopefully he will come out on top.

Respectfully,

Sheriff, Bill Franklin

JUN 06 2003 17:10 FR TO 2280545 P.02/02

GRAND LODGE
FRATERNAL ORDER OF POLICE®
309 Massachusetts Ave., N. E.
Washington, DC 20002
Phone 202-547-8189 • FAX 202-547-8190

CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

6 June 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member,
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Sirs:

I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our strong support for the nomination of William H. Pryor to the United States Court of Appeals for the Eleventh Circuit.

Mr. Pryor currently serves as the Attorney General for the State of Alabama, and has had a distinguished career as a public servant, practicing attorney, and law professor. Before becoming Attorney General in 1997, Bill Pryor served as Deputy Attorney General in charge of special civil and constitutional litigation. In addition to his superb service in his current office, General Pryor graduated *magna cum laude* from the Tulane University School of Law, and began his law career as a clerk for the late Judge John Minor Wisdom of the U.S. Court of Appeals for the Fifth Circuit.

Two necessary qualifications for any nominee for a position within the Federal Judiciary should be a proven record of success as a practicing attorney, and to have the respect of the law enforcement community of which they will be an important part. General Pryor meets both of these important criteria. He has argued cases before the U.S. Supreme Court, the Supreme Court of Alabama, as well as the Eleventh Circuit Court of Appeals, and has earned the support of the Alabama Fraternal Order of Police.

General Pryor has demonstrated that he will be an outstanding addition to the Federal bench, and on behalf of the more than 306,000 members of the Fraternal Order of Police, I again offer our strong support for his nomination. Please do not hesitate to contact me, or Executive Director Jim Pasco, through our Washington office if we may be of any assistance.

Sincerely,

Chuck Canterbury
National President

MINNESOTA PROGRAM DEVELOPMENT, INC.

DOMESTIC ABUSE INTERVENTION PROJECT
NATIONAL TRAINING PROJECT
MENDING THE SACRED HOOP
VISITATION CENTER

March 18, 2003

The Honorable Orrin Hatch
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Fax: (202) 224-9102

Dear Mr. Chairman,

I am writing to express our enthusiastic support for the confirmation of Diane Stuart as Director of the Office on Violence Against Women. Our organization is known nationally for our work on the development of coordinated community responses to domestic violence and we manage a national resource center that provides technical assistance to justice professionals and advocates on best practices in the field. We have worked with Ms. Stuart over the past year since she assumed the directorship of the office within OJP and have been impressed with her leadership. She brings to the role extensive experience in domestic violence efforts on the local, state and national levels, a unique background that has prepared her to address the range of policy and grant-making issues that arise in this position. Throughout her career, Diane has demonstrated her commitment to address violence against women as a serious social problem and her ability to promote effective, multi-disciplinary responses to victims and their families. Her confirmation will affirm the contributions that she has already made to the Office and promote the stability and continuity of the Office's efforts.

I would also like to take this opportunity to express my concerns about the Department of Justice's recent decision not to elevate the Office on Violence Against Women to the status of a separate and distinct office within the department. In the Department of Justice Reauthorization bill of 2002, Congress made the Office on Violence Against Women a permanent, separate and independent office within the Department, and required that the Director be appointed by the president, confirmed by the Senate, and report to the Attorney General. These provisions were clear in the law signed by President Bush. The separate designation for this office gives it the prominence it deserves and ensures its ability to fulfill its mission, which includes consulting with U.S. Attorneys about their responsibilities as directed by policy and assisting them in working with all law enforcement efforts to end domestic violence and sexual assault. Since OJP was created as a grant-making program and specifically prohibited from making or commenting on policy, to maintain the Office on Violence Against Women at its current status runs contrary to that requirement, as well as Congress's intent and the wishes of

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advocates in the field who overwhelmingly supported the creation of a separate office.

I hope that you can influence the Department to reconsider its decision, and confirm Diane Stuart as the Director of a distinct Office that will have greater ability to advocate effectively to end violence against women.

Yours truly,

Denise Gamache

Denise Gamache
Associate Director-Battered Women's Justice Project
Minnesota Program Development, Inc.

cc the Honorable Patrick Leahy

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

BILL PRYOR
ATTORNEY GENERAL

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

April 9, 2003

Senator Jeff Sessions
United States Senate
493 Russell Office Building
Washington, D. C. 20510

RE: Nomination of Attorney General Bill Pryor to U.S. Court of Appeals for the 11th Circuit

Dear Senator Sessions:

I write this letter in support of Attorney General Bill Pryor's nomination to the 11th Circuit Court of Appeals. As the senior staff attorney in the Violent Crimes Division and a 20 year veteran of the Alabama Attorney General's Office, I have had many occasions to work closely with General Pryor on many issues. I have also had the opportunity to spend time with General Pryor outside of the office environment and I consider him a friend. I have found General Pryor to be extremely bright and intelligent with an amazing knowledge and understanding of the legal issues facing our state and our country today. While I do not always agree with him of every issue, I respect Bill Pryor's opinions because I know that his positions on the issues are not based on what is popular or politically expedient. Bill does what he sincerely believes is right according to the law and the facts in every case.

In my opinion, Bill Pryor has been a great Attorney General and I have enjoyed working for him. While I hate to see him leave this office, I know that being a federal judge has been a life long dream of Bills and I know that he has the qualifications and temperament to be a great federal judge. I hope to see his dream become a reality.

Sincerely,

Gerrilyn V. Grant
Assistant Attorney General

Statement of Sen. Chuck Grassley, Hearing on William Pryor, Nominee to the 11th Circuit Court of Appeals, June 11, 2003

Mr. Chairman, I'd like to make a few comments on Alabama Attorney General Bill Pryor who has been nominated to the 11th Circuit Court of Appeals. Some have described Mr. Pryor as a "protege" of my good friend, the Senator from Alabama, Senator Sessions. This characterization, while earning him high marks with me personally, doesn't fairly reflect the entirety of this nominee's record.

Attorney General Pryor's resume is impressive. He graduated *magna cum laude* from Tulane Law School, where he served as the editor-in-chief of the Tulane Law Review. Following his time at Tulane, he clerked for Judge John Minor Wisdom, a 5th Circuit Judge with a record as a champion of civil rights. Mr. Pryor has been a successful private litigator at some of the most prestigious law firms in Alabama and he has also been a teacher of law, as an adjunct professor at Cumberland Law School.

This resume, on its own, is compelling. But in Mr. Pryor's case there is an added plus - he has also shown a dedication to public service that no one can question. In 1997, after two years of service in the Attorney General's office, Mr. Pryor was appointed to replace the newly elected Senator Sessions as Attorney General. His leadership in this position has struck a chord with Alabamians across the political and ideological spectrum. In fact, many of his supporters are in this room today, having made a special trip up here to show their support. In 1998, Mr. Pryor was elected to serve a four year term and in 2002, he was overwhelmingly re-elected.

I think that the people who are in the best position to judge the merits of a nominee are the people who have known him the longest, as they are able to form the strongest opinion based on their first hand observations of the nominee's actions. In fact, Mr. Pryor's support among Alabama's Republicans is near unanimous. Moreover, some of most important members of Alabama's

Democratic leadership are equally supportive of Mr. Pryor's nomination. For example:

- Dr. Joe Reed, chairman of the Alabama Democratic Conference (which is the State Democratic party's African-American caucus), has stated that Mr. Pryor is a "first class public official" who "will be a credit to the judiciary and will be a guardian for justice."
- Former Democratic Governor Don Siegelman has described Mr. Pryor as "an incredibly talented, intellectually honest Attorney General [who] calls them like he sees them."
- Representative Artur Davis, a Democrat and the only African-American in the Alabamian congressional delegation has stated: "I understand that the President may be considering Attorney General Bill Pryor for a seat on the Eleventh Circuit. I have the utmost respect for my friend Attorney General Pryor and I believe if he is selected, Alabama will be proud of his service."

It seems that the people who know him best, despite their partisan disagreements, all agree on one thing - Bill Pryor deserves to be and should be confirmed.

Now I understand that there has been opposition to this nominee kicked up by some of the usual, inside the Beltway, Washington, DC, special interests groups. Groups with activist left-wing agendas have decided that Mr. Pryor is someone who should be opposed. The charges they have brought against this nominee are off base. In my opinion, they are, once again, a blatant example of these radical left-wing organizations attempting to smear a distinguished candidate's record. I hope that my colleagues on the Committee will see through these guerilla tactics.

The fact is, even under these left-wing groups' alleged criteria for evaluating nominees to the federal bench, Mr. Prior is fit to be confirmed to the 11th Circuit. According to one test developed by

an offshoot of the Alliance for Justice and People for the American Way, certain factors need to be considered as follows:

- **A nominee should have "demonstrated a commitment to protecting the rights of ordinary Americans, rather than placing the interests of the powerful over those of individual citizens."**

Mr. Pryor's record indicates that he has done just this in his years of public service. For example, he has led the fight to bring corporate wrongdoers to justice. In one instance, he successfully sued a major corporation and forced them to pay over $51 million in nationwide damages as a result of marketing practices that were ruled to be deceptive.

- **A nominee should have "fulfilled his or her professional obligation to work on behalf of the disadvantaged**."

Mr. Pryor has created a nationally recognized mentoring program for at-risk youth. This program, called Mentoring Alabama, has to date recruited over 2000 adults to serve as mentors, tutors and role models for children who are judged to be at-risk of running afoul of the criminal justice system. Mr. Pryor himself serves as a mentor in this program, teaching reading classes at a local public school.

- **A nominee should have "shown a commitment to the progress made on civil rights, reproductive freedom, and individual liberties;"**

Mr. Pryor successfully defended several majority-minority voting districts from a challenge brought by a group of white voters, and led by a Republican attorney. He also led the effort to repeal language in Alabama's state constitution that prohibited interracial marriage, and he has a history of successfully prosecuting members of the Ku Klux Klan.

Moreover, Mr. Pryor has shown his willingness to put aside his personal and firm religious beliefs to enforce the law. Although a staunch Catholic and an opponent of abortion, as Attorney General, this nominee opposed a state-passed ban on partial birth abortions because he did not feel it reflected what was legal under the precedents issued by the Supreme Court.

- **A nominee should have "manifested a respect for the constitutional role Congress plays in promoting civil rights and health and safety protections and ensuring recourse when these rights are breached."**

Mr. Pryor has been a key and vocal supporter of the Victim's Right's amendment introduced by Senators Kyl and Feinstein. This amendment, of which I'm a cosponsor, would provide crime victims in federal and state courts with certain rights, such as the right to be heard at public proceedings regarding the criminal sentence or potential release, to decisions that duly consider the

victim's safety, and to just and timely restitution from the offender.

I think that any objective viewer using this four-pronged test would conclude that Mr. Pryor should be supported. Again, where did this four-part test come from? The website of the Project for an Independent Judiciary, an offshoot of the Alliance for Justice and People for the American Way. So even under his opponents rules, Mr. Pryor passes with flying colors. Yet, these liberal organizations oppose his nomination. Why? Because they maintain that Mr. Pryor's personal opposition to abortion because of his strong Catholic beliefs invalidate his ability to be a good judge.

Yet Mr. Pryor has proven time and again that he can separate his personal beliefs from his public duties. Mr. Pryor has demonstrated that he can apply the law regardless of his personal beliefs, no matter how strongly he feels them. The reality is that

when the rubber hits the road, Mr. Pryor is a man of the law. He will follow the law and he will uphold the law. That is the kind of man we want on the federal bench, not someone beholden to the activist agendas proposed by radical outside interest groups.

Mr. Pryor has a strong record and history of public service. He is a solid candidate for the federal bench. Let's make sure our Committee reflects Mr. Pryor's true record, rather than the distorted and biased representations thrown out by the inside the Beltway left-wing radicals.

STATE OF ALABAMA
BOARD OF PARDONS AND PAROLES
Lurleen B. Wallace Building
500 Monroe Street
P O Box 302405
Montgomery, Alabama 36130-2405
Central Office (334) 242-8700
Web Page: www.agencies.state.al.us/pardons

SIDNEY T. WILLIAMS
Chairman of the Board
GLADYS RIDDLE
Associate Member
NANCY CONN MCCREARY
Associate Member

WILLIAM C. SEGREST
Executive Director

April 18, 2003

Senator Jeff Sessions
493 Russell Office Bldg.
Washington, D.C 20510

Dear Senator Sessions:

I am honored to write this letter in support of my friend, Attorney General Bill Pryor's confirmation to a judgeship on the U.S Court of Appeals for the Eleventh Circuit. My friendship with Bill Pryor over the years has afforded me the opportunity to view his conduct in the courtroom, behavior as a citizen, as a husband, and as a member of the community. In having the privilege to observe all facets of Bill's behavior, I have yet to find fault with any part of his character or humanity. He is as good as they come.

Bill Pryor sets a high standard by carrying himself with class, behaving with good taste, respect and doing all things in moderation. He will serve the judiciary well. He will not have his decisions corrupted by passion, partisanship, or partiality. He is truly endowed with the divine power of wisdom. I strongly urge the Senate to confirm Bill Pryor.

Sincerely,

Gregory O. Griffin, Sr.
Chief Counsel

The Montgomery Advertiser
May 16, 2003

LETTERS TO THE EDITOR: Pryor's civil rights record outstanding

Bill Pryor is an outstanding judicial nominee because he has a proven record of following the law and standing up for the civil rights of African Americans even when it costs him politically.
Recently, several civil rights leaders charged that Pryor opposed the Voting Rights Act. In reality, Pryor only questioned the usefulness of section 5 of the act that requires the Justice Department to "preclear" -- approve -- even minor changes in voting practices that have nothing to do with discrimination, like using stickers to attach the name of a replacement for a deceased candidate on a ballot after the ballot forms were printed.

When it comes to section 2 of the act and other provisions that do impact minority voting rights, Pryor has taken the side of the NAACP to stop white Alabama Republicans from challenging old voting districts and has taken the side of African American legislators to oppose a redistricting plan that white Republicans supported.

Unlike some who have not worked with Pryor, African American leaders who have worked with him, like Artur Davis, Joe Reed and Alvin Holmes, support Pryor for the judgeship. So do I.

Greg Griffin
Montgomery

News Release

JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

June 11, 2003 Contact: Margarita Tapia, 202/224-5225

Statement of Chairman Orrin G. Hatch
Before the United States Senate Committee on the Judiciary

Hearing on the Nomination of

WILLIAM H. PRYOR, JR.,
TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

I am pleased to welcome to the Judiciary Committee this morning the Attorney General of Alabama, William Pryor, whom President Bush has nominated to fill a judicial emergency on the United States Court of Appeals for the Eleventh Circuit.

Both Senator Sessions and Senator Shelby are here to introduce General Pryor, and so is Congressman Joe Bonner. I know that they, like many Alabamans, are strong supporters of General Pryor: In his last election, General Pryor garnered more than 59% of the vote, and if the letters of support for his nomination are any indication, the majority of Alabama people supporting him were not all Republicans. Let me share with you some of the letters that prominent Democrats have written about General Pryor.

Joe Reed, chairman of the Alabama Democratic Conference, which is the state party's African-American caucus, writes that General 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 party labels. I am persuaded that in General Pryor's eyes, Justice has only one label – Justice!"

Judge Sue Bell Cobb, who sits on the Alabama Court of Criminal Appeals, stated, "I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. It is for these reasons and more that I am indeed honored to recommend General Pryor for nomination to the 11th Circuit Court of Appeals."

And Congressman Artur Davis encouraged President Bush to nominate General Pryor, declaring his belief that "Alabama will be proud of his service."

I will submit copies of these letters for the record, along with copies of the other many letters from Democrats and Republicans, men and women, and members of African-American, Jewish, and Christian communities who support Bill Pryor's nomination.

It is fundamental that a state attorney general has the obligation to represent and defend the laws and interests of his state. General Pryor has fulfilled this responsibility admirably by repeatedly defending the public fisc and the laws and policies enacted by the Alabama legislature. But one of the reasons for the broad spectrum of support for General Pryor is his demonstrated ability to set aside his personal views and follow the law. As you will undoubtedly hear during the course of this hearing, General Pryor is no shrinking violet. He has been open and honest about his personal beliefs, which is what voters expect from the persons whom they elect to represent them. Yet General Pryor has shown again and again that when the law conflicts with his personal and political beliefs, he follows the law.

For example, in 1997, the Alabama legislature enacted a ban on partial birth abortion that could have been interpreted to prohibit abortions before viability. General Pryor is avowedly pro-life, and has strongly criticized *Roe v. Wade*, so one might very well have expected General Pryor to vigorously enforce the statute. Instead, he instructed law enforcement officials to enforce the law only insofar as it was consistent with the Supreme Court's precedents of *Casey* and *Stenberg v. Carhart* – despite pressure from many Republicans to enforce broader language in the act.

Here's another example: I am sure that we will hear today about General Pryor's call for modification or repeal of section 5 of the Voting Rights Act, which requires Department of Justice preclearance. By the way, General Pryor is not alone in his opinion of section 5; the Democratic Attorney General of Georgia, Thurbert Baker, has called section 5 an "extraordinary transgression of the normal prerogatives of the states." Despite his opinion that section 5 is flawed, General Pryor successfully defended before the Supreme Court several majority-minority voting districts approved under section 5 from a challenge by a group of white Alabama voters. He also issued an opinion that the use of stickers to replace one candidate's name with another on a ballot required preclearance under section 5.

Yet another example involves General Pryor's interpretation of the First Amendment's Establishment Clause. In an effort to defeat challenges to school prayer and the display of the Ten Commandments in the Alabama Supreme Court, both the Governor and the Chief Justice urged General Pryor to argue that the Bill of Rights does not apply to the states. General Pryor refused, despite his own deeply held Catholic faith and personal support for both of these issues.

And here's my final example: General Pryor supported the right of teachers to serve as state legislators, despite intense pressure from his own party, because he believed that the Alabama Constitution allowed them to do so.

These examples aptly illustrate why General Pryor's nomination enjoys broad bipartisan support from persons like former Democratic Alabama Attorney General Bill Baxley. He observed of General Pryor, "In every difficult decision he has made, his actions were supported by his interpretation of the law, without race, gender, age, political power, wealth, community

standing, or any other competing interest affecting judgment." Mr. Baxley continued, "I often disagree, politically, with Bill Pryor. This does not prevent me from making this recommendation because we need fair minded, intelligent, industrious men and women, possessed of impeccable integrity on the Eleventh Circuit. Bill Pryor has these qualities in abundance. . . . There is no better choice for this vacancy."

During the course of this hearing, we will hear many things about Bill Pryor. We will hear many one-sided half-truths perpetuated by the usual liberal interest groups who will stop at nothing to defeat President Bush's judicial nominees. I want to make sure that this hearing is about fairness, and about telling the full story of Bill Pryor's record.

We will hear that General Pryor is devout pro life Catholic who has criticized *Roe v. Wade*, but the rest of the story is that many prominent Democrats, such as Justice Ruth Bader Ginsburg and former Stanford Dean John Hart Ely have also criticized *Roe* without anyone questioning their recognition of it as binding Supreme Court precedent.

We will hear claims that General Pryor is against the disabled and elderly, but the real story is that General Pryor has done his duty as Attorney General to defend his state's budget from costly lawsuits. Other state attorneys general, including respected Democrats like Bob Butterworth of Florida and now Senator Mark Pryor of Arkansas, have taken the same positions as General Pryor in defending their states. And while the Supreme Court agreed with the attorneys general in these cases that the Eleventh Amendment protects states from monetary damages in federal court, these rulings did not affect – and General Pryor did not seek to weaken – other important methods of redressing discrimination, like actions for monetary damages under state law, injunctive relief, or back pay.

We will hear claims that General Pryor's criticisms of Section 5 of the Voting Rights Act indicate a lack of commitment to civil rights. But the real story is that General Pryor has a solid record of commitment to civil rights, which includes defending majority-minority voting districts, leading the battle to abolish the Alabama Constitution's prohibition on interracial marriage, and working with the Clinton Administration's Justice Department to prosecute the former Ku Klux Klansmen who perpetrated the bombing of Birmingham's 16th Street Baptist Church, which resulted in the deaths of four little girls in 1963.

We will no doubt hear other claims during the course of this hearing distorting General Pryor's record or presenting only partial truths. I want to urge my colleagues, and everyone here, to listen closely so that the real story is heard. I think those who listen with an open mind may be surprised, and even impressed. I look forward to hearing General Pryor's testimony.

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News Release
JUDICIARY COMMITTEE
United States Senate • Senator Orrin Hatch, Chairman

July 25, 2003 Contact: Margarita Tapia, 202/224-5225

Statement of Senator Orrin G. Hatch
Before the United States Senate
On the nomination of

WILLIAM PRYOR TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Mr. President, I rise today in support of the nomination of William Pryor to the Eleventh Circuit Court of Appeals.

General Pryor is a *magna cum laude* graduate of Tulane University School of Law, where he was editor-in-chief of the Tulane Law Review. He then clerked for Judge John Minor Wisdom on the U.S. Court of Appeals for the Fifth Circuit, a civil rights legend who helped implement desegregation in the South. While working at two of Alabama's top private law firms, General Pryor was also an adjunct professor of law at Samford University's Cumberland School of Law. In 1995, then-Attorney General Jeff Sessions hired him as deputy attorney general, and in 1997, he was appointed to serve out Senator Sessions's term. In 1998, Alabamians elected General Pryor to this position, and he was re-elected in 2002 with a remarkable 59% of the vote.

In Alabama, he is enormously popular. Among the many letters of support that the Committee has received are letters from Democrats, African-Americans, women's organizations, and members of Alabama's Jewish community. Let me share with you some of the letters that prominent Democrats have written about General Pryor.

Joe Reed, chairman of the Alabama Democratic Conference, which is the state party's African-American caucus, writes that General 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 party labels. I am persuaded that in General Pryor's eyes, Justice has only one label – Justice!"

Judge Sue Bell Cobb, who sits on the Alabama Court of Criminal Appeals, stated, "I write, not only as the only statewide Democrat to be elected in 2000, not only as a member of the Court which reviews the greatest portion of General Pryor's work, but also as a child advocate who has labored shoulder to shoulder with General Pryor in the political arena on behalf of Alabama's children. It is for these reasons and more that I am indeed honored to recommend General Pryor for nomination to the 11th Circuit Court of Appeals."

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It is fundamental that a state attorney general has the obligation to represent and defend the laws and interests of his state. General Pryor has fulfilled this responsibility admirably by repeatedly defending the public fisc and the laws and policies enacted by the Alabama legislature. But one of the reasons for the broad spectrum of support for General Pryor is his demonstrated ability to set aside his personal views and follow the law. As you will undoubtedly hear during the course of this debate, General Pryor is no shrinking violet. He has been open and honest about his personal beliefs, which is what voters expect from the persons whom they elect to represent them. Yet General Pryor has shown again and again that when the law conflicts with his personal and political beliefs, he follows the law.

For example, in 1997, the Alabama legislature enacted a ban on partial birth abortion that could have been interpreted to prohibit abortions before viability. General Pryor is avowedly pro-life, and has strongly criticized *Roe v. Wade*, so one might very well have expected General Pryor to vigorously enforce the statute. Instead, he instructed law enforcement officials to enforce the law only insofar as it was consistent with the Supreme Court's precedents of *Casey* and *Stenberg v. Carhart* – despite pressure from many Republicans to enforce broader language in the act.

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And here's my final example: General Pryor supported the right of teachers to serve as state legislators, despite intense pressure from his own party, because he believed that the Alabama Constitution allowed them to do so.

These examples aptly illustrate why General Pryor's nomination enjoys broad bipartisan support from persons like former Democratic Alabama Attorney General Bill Baxley. He observed of General Pryor, "In every difficult decision he has made, his actions were supported by his interpretation of the law, without race, gender, age, political power, wealth, community standing, or any other competing interest affecting judgment." Mr. Baxley continued, "I often disagree, politically, with Bill Pryor. This does not prevent me from making this recommendation because we need fair minded, intelligent, industrious men and women, possessed of impeccable integrity on the Eleventh Circuit. Bill Pryor has these qualities in abundance. . . . There is no better choice for this vacancy."

During the course of this debate, we will hear many things about Bill Pryor. We will hear many one-sided half-truths perpetuated by the usual liberal interest groups who will stop at nothing to defeat President Bush's judicial nominees. I want to make sure that this debate is about fairness, and about telling the full story of Bill Pryor's record.

We will hear that General Pryor is a devout pro life Catholic who has criticized *Roe v. Wade*, but the rest of the story is that many prominent Democrats, such as Justice Ruth Bader Ginsburg and former Stanford Dean John Hart Ely have also criticized *Roe* without anyone questioning their recognition of it as binding Supreme Court precedent.

We will hear claims that General Pryor is against the disabled and elderly, but the real story is that General Pryor has done his duty as Attorney General to defend his state's budget from costly lawsuits. Other state attorneys general, including respected Democrats like Bob Butterworth of Florida and now Senator Mark Pryor of Arkansas, have taken the same positions as General Pryor in defending their states. And while the Supreme Court agreed with the attorneys general in these cases that the Eleventh Amendment protects states from monetary damages in federal court, these rulings did not affect – and General Pryor did not seek to weaken – other important methods of redressing discrimination, like actions for monetary damages under state law, injunctive relief, or back pay.

We will hear claims that General Pryor's criticisms of Section 5 of the Voting Rights Act indicate a lack of commitment to civil rights. But the real story is that General Pryor has a solid record of commitment to civil rights, which includes defending majority-minority voting districts, leading the battle to abolish the Alabama Constitution's prohibition on interracial marriage, and working with the Clinton Administration's Justice Department to prosecute the former Ku Klux Klansmen who perpetrated the bombing of Birmingham's 16th Street Baptist Church, which resulted in the deaths of four little girls in 1963.

We will no doubt hear other claims during the course of this debate distorting General Pryor's record or presenting only partial truths. But I urge my colleagues to consider General Pryor's nomination on the basis of his record of following the law even where it has conflicted with his personal beliefs. I am confident that he will continue to do so as a federal appellate judge.

On Wednesday the Judiciary Committee favorably reported General Pryor's nomination to the full Senate. It has been more than six weeks since his confirmation hearing, and I am

pleased that the full Senate will now have the opportunity to consider his nomination.

Nevertheless, we will no doubt hear over the course of this debate many allegations from some of our Democratic colleagues as to why they believe that Bill Pryor's nomination does not deserve an up or down vote by the full Senate. I want to make perfectly clear right now that there is no valid reason to delay this body's consideration of the Pryor nomination.

On Wednesday there was an effort by Committee Democrats to erect a procedural roadblock to voting on the Pryor nomination, in the form of a revival of the debate over the interpretation of Committee Rule IV. This rule, entitled "Bringing a Matter to a Vote," was clearly intended to serve as a tool by which a determined majority of the Committee could force a recalcitrant chairman to bring a matter to vote. In fact, the rule provides, "The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote." On Wednesday, there was no motion to bring a matter before the Committee to a vote. In fact, there was an **objection** to voting, which I overruled. Thus, on its face, Rule IV was inapplicable to the Pryor nomination.

Despite claims to the contrary, there has been no inconsistency in the interpretation of this rule. During the Clinton Administration, in an effort to prevent the defeat in Committee of a controversial Justice Department nominee, I chose not to exercise the inherent power that I and all Committee Chairmen have to bring a matter to a vote. President Clinton ultimately made a recess appointment of the nominee. In retrospect, my reliance on Rule IV to accomplish this was admittedly not the best course of action. I nevertheless believe that I had the power to bring that matter to a vote, and that I used the discretion of the Chairman to decide not to do so.

Moreover, I want to make clear that at NO TIME did I agree to modify my interpretation of Rule IV in connection with the Cook, Roberts, or Sutton nominations, which is the last context in which this debate arose. To have adopted the interpretation that my Democratic colleagues advanced both then and now would have constituted an unprecedented curtailment of the Chairman's inherent authority to bring a matter to a vote.

In short, there was no violation of Committee rules or process in bringing the Pryor nomination to a vote on Wednesday, and any argument to the contrary is merely a last-ditch effort to prevent the full Senate from considering it.

Another complaint we will hear is that there was an open investigation into General Pryor's activities on behalf of the Republican Attorneys General Association at the time of the vote. Here are the facts:

When our Democratic colleagues brought to our attention documents they obtained pertaining to RAGA, we joined with them to conduct a bipartisan investigation to determine the authenticity of the documents, whether they reflected any wrongdoing on the part of General Pryor. Committee staff interviewed several witnesses in connection with this investigation, with two notable exceptions. First, the Democrats' source of these documents has not answered key questions about when the documents were drafted, who drafted them, and who has had access to them. Second, Democratic staff asked General Pryor no questions about the documents, despite

his willingness to answer whatever questions they have.

Nevertheless, our Democratic colleagues have insisted on pressing forward with an investigation based on unauthenticated and unreliable documents provided to them by a source who refuses to talk to Republican staff, whose former employer stated under oath that she stole the documents, and who has yet to disclose the details of when and how she first provided the documents to Democratic staff. They have interviewed approximately 20 persons but have found no smoking gun indicating that General Pryor was anything less than truthful about the material facts of his participation in RAGA. This classic game of Beltway Gotcha is no valid reason to delay consideration of General Pryor's nomination.

Thank you, Mr. President. I yield the floor.

# # #

News Release
JUDICIARY COMMITTEE
United States Senate • Senator Orrin Hatch, Chairman

June 11, 2003 Contact: Margarita Tapia, 202/224-5225

Statement of Chairman Orrin G. Hatch
Before the United States Senate Judiciary Committee
Hearing on the Nomination of

DIANE STUART FOR DIRECTOR, OFFICE ON VIOLENCE AGAINST WOMEN, DEPARTMENT OF JUSTICE

I would like to start by welcoming Ms. Stuart before the Committee and congratulating her for being nominated by President Bush. It is a true pleasure to have Ms. Stuart here today. Her impressive background and dedication to the issues of domestic violence and violence against women, as well as her past government service, make me confident that she will continue to be a great asset to the Department of Justice, this Committee and the American people.

Since it was created in 1994, The Office on Violence Against Women has played a vital role in protecting our children and women from the tragedy of violence and abuse. I have been – and will continue to be – a strong supporter of the Office, along with my colleagues, Senator Biden, Senator Leahy, Senator Specter, Senator Schumer, and others on this Committee.

Since 2001, Diane Stuart has demonstrated her ability to lead this important office, to bring new energy and focus to its many missions, and to continue to help our Nation's women and children who fall victim to abuse and violence. Ms. Stuart is a dedicated public servant who has a long-standing record of accomplishment in promoting programs and policies to protect women from violence.

Anyone who knows Diane Stuart also knows that her public service and commitment to this area began long before 2001 when she assumed the position of Director of the VAWA Office. From 1989 to 1994, Ms. Stuart served as the Executive Director of the Citizens Against Physical and Sexual Abuse from Logan, Utah, where she was responsible for a 20-bed shelter for victims of domestic violence and a rape crisis center. From 1994 to 1996, Ms. Stuart was a Victim Advocate Specialist for the State of Utah in Salt Lake City. From 1996 to 2001, she served as the State of Utah's Coordinator for the Governor's Cabinet Council on Domestic Violence. Finally, from 1995 to 2001, she served as a member, and later became spokesperson for, the National Advisory Council on Violence Against Women.

With such an impressive background, at both the State and Federal level, I am confident that Diane Stuart is the right person for this critical post at the Justice Department. I am hopeful that this Committee and the Senate as a whole will move quickly to confirm her.

###

James Hayes
SHERIFF
Etowah County

827 FORREST AVENUE
GADSDEN, AL 35901

Enforce The Law - Protect & Promote Our Youth

(256) 546-2825
FAX: (256) 549-8137

March 27, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Sessions:

I understand that President Bush is considering Alabama Attorney General Bill Pryor for nomination to the Eleventh Circuit Court of Appeals. I write in support of that nomination.

I have known Bill for many years, both in his capacity as Attorney General and even before that when he worked in your office when you were the Attorney General. I have worked with him in his efforts to help law enforcement serving on both boards and committees associated with law enforcement and corrections needs. It is my experience that Bill is fair and judicious in carrying out the duties of his office.

Although General Pryor and I have different political views, we both have the well being and safety of the people of Alabama in mind in all that we do in our official capacity.

I am excited that a person of such integrity is being considered for such an important position, and I support Bill's nomination without reservation.

Sincerely,

James Hayes

James Hayes
Etowah County Sheriff

Alabama District Attorneys Association

April 1, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Shelby
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Sessions and Shelby:

It is my understanding that President Bush is considering Alabama Attorney General Bill Pryor for nomination to the Eleventh Circuit Court of Appeals. I am pleased and honored to write you today in support of that nomination.

As you both are aware, the duty of a prosecutor is to seek justice, not just secure a conviction. Unlike many others in the criminal justice system, he is duty-bound to find the truth. He must routinely make difficult choices to ensure that the rule of law is applied evenly and with compassion. Former United States Attorney General Robert H. Jackson once stated his thoughts on what it took to be a prosecutor. He said,

> *"The qualities of a good prosecutor are as elusive and as impossible to define as those which mark a gentleman. And those who need to be told would not understand it anyway. A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizens' safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his job with humility."*

515 South Perry Street • Montgomery, Alabama 36104 • Post Office Box 4780 • Montgomery, Alabama 36103-4780
Telephone (334) 242-4191 or 1-800-423-7658 • Facsimile (334) 240-3186

Bill Pryor is such a man. He is absolute in his commitment to the pursuit of justice, not the popular way out of a situation. In my judgment, these are the very reasons he would make a great judge.

I have spent almost 14 years as a prosecutor and was named as Director of the Alabama District Attorneys Association in 2001. Since Bill became Attorney General, the relationship between himself, this Association, and all of the District Attorneys of this state has grown immensely. We have worked hand in hand in an effort to fight crime and prosecute those offenders who would threaten the welfare and safety of our citizens.

All of these qualities, taken together, are what make Bill an outstanding prosecutor, a good friend, and most importantly, an individual whom I am proud to recommend being a judge on the Eleventh Circuit Court of Appeals.

Sincerely,

Randall I. Hillman
Executive Director

GIDIERE, HINTON & HERNDON
ATTORNEYS AT LAW
904 REGIONS TOWER
60 COMMERCE STREET
MONTGOMERY, ALABAMA 36104

JACK B. HINTON, JR.*
STEVEN K. HERNDON
ANDREW W. CHRISTMAN

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PHILIP S. GIDIERE, JR.

TELEPHONE
(334) 834-9950
FACSIMILE
(334) 834-1054
*ALSO ADMITTED IN WASHINGTON, D.C.

June 2, 2003

Sent via facsimile transmission

Senator Orrin Hatch, Chairman
Committee on the Judiciary
224 Dirksen Building
Washington, D.C. 20510

Re: Bill Pryor: Nominee to the United States Court of Appeals for the Eleventh Circuit

Dear Chairman Hatch:

I am pleased to write you in support of Bill Pryor's nomination to the Eleventh Circuit Court of Appeals and to relate one particular episode regarding Bill's faith. I have known Mr. Pryor for over ten years. I respect the disciplined mind and methodology with which Mr. Pryor approaches legal issues. I have also been pleased to see him practice his sincere religious beliefs of his Catholic faith. While one might presume that a person's legal reasoning might be victimized by their deep-seeded and sincere religious beliefs, such is just the opposite in Mr. Pryor's case. In my observation of his personal and professional life, I have found that his religious beliefs reinforce his sense of duty not to substitute personal feelings for strict and disciplined application of the law. Bill Pryor loves the law and respects the separate and independent branches of our government. As an extension of that belief, Mr. Pryor holds fast to the ideal that the rules by which men govern themselves should be applied uniformly and in a fair, careful, and impartial fashion. Specifically on the issue of the judiciary, Mr. Pryor's belief and practice is that the bench is the place where laws are interpreted, not made.

I have had the experience and privilege to associate with Mr. Pryor in a number of various settings. Years ago, I attended a function of the Christian Coalition in Montgomery, Alabama with hundreds of other persons. As I recall the event, it was organized as a forum to discuss the pending legal dispute surrounding then Circuit Judge (now Chief Justice) Roy Moore's display of the Ten Commandments in his courtroom. I remember Mr. Pryor being given the opportunity to speak at that gathering. After his speech and in the presence of a room full of people, a woman identifying herself as a conservative Christian in the audience spoke out in a loud enough voice so as to silence the crowd. She ridiculed Mr. Pryor's Catholic faith and blamed him and other Catholics for all of the problems that had beset our country. She went so far as to credit anything wrong with the United States to "you bunch of papists." I know that this attack on Mr.

Pryor's Catholic faith was an offense to him especially when one considers the South as predominately evangelical and protestant.

Nonetheless, I have been pleased to observe Mr. Pryor's unwillingness to allow public opinion to dissuade him in the practice of faith or in the application of good judgment to decisions in the Attorney General's office. I have also been pleased to discuss with him and observe his willingness to go against Republican party leaders--even the governor who appointed him--when following the law was paramount to acceptance by those who might lay claim that Bill owed them something.

Bill and I have not always agreed on every issue. I admire that in him and am glad to call him my friend. I have heard him criticized as too liberal by members of his own party and too conservative by members of the other. But, agree or disagree with his position on a particular issue, the thinking mind cannot accuse Bill of reaching his conclusions other than through sound and disciplined legal reasoning. Bill has never let his faith trump his duty as Attorney General. My confidence is that the same would continue to hold true when the Senate confirms Mr. Pryor to the United States Court of Appeals for the Eleventh Circuit.

I heartily support President Bush's nomination of Bill Pryor to the Eleventh Circuit bench and urge the Senate to confirm him for that position.

Yours very truly,

Jack B. Hinton, Jr.

JBH/awd
cc: Senator Richard C. Shelby (via facsimile)
Senator Jeff Sessions (via facsimile)

STATE OF ALABAMA
HOUSE OF REPRESENTATIVES
MONTGOMERY, ALABAMA 36130

ALVIN HOLMES
POST OFFICE BOX 6064
MONTGOMERY, ALABAMA 36106

DISTRICT NO. 78
CAPITOL OFFICE 334/242-7706
MONTGOMERY OFFICE 334/264-7807

June 5, 2003

Senator Orrin G. Hatch, Chairman
Committee on the Judiciary
United States Senate
104 Hart Office Building
Washington, D.C. 20510

Senator Patrick J. Leahy, Ranking Member
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510

Dear Sirs:

Please accept this as my full support and endorsement of Alabama's Attorney General Bill Pryor to the United States Court of Appeals for the 11th Circuit.

I am a black member of the Alabama House of Representatives having served for 28 years. During my time of service in the Alabama House of Representatives I have led most of the fights for civil rights of blacks, women, lesbians and gays and other minorities. (See attachments)

I consider Bill Pryor as a moderate on the race issue:

1. From 1998 to 2000, Bill Pryor sided with the NAACP against a white Republican lawsuit that challenged the districts for the Legislature. Pryor fought the case all the way to the U. S. Supreme Court and won a unanimous ruling in *Sinkfield v. Kelley*, 531 U.S. 28 (2000). The lawsuit was filed by Attorney Mark Montiel, a white Republican, and the 3-judge district court ruled 2 to 1 in favor of Montiel. Two Republicans (Cox and Albritton) ruled in favor of Montiel while Judge Myron Thompson, (a black

Democrat) agreed with Pryor that Montiel's white clients had no standing to challenge black districts in which the whites did not live.

2. In 2001 and 2002, Bill Pryor sided with the Legislature when it redrew districts for Congress, the Legislature, and State Board of Education. Mark Montiel filed lawsuits in federal court (*Montiel v. Davis*) challenging the black districts as racial gerrymanders. Pryor won every lawsuit. Pryor came under heavy pressure from other white Republicans in Alabama for fighting to protect black Legislative seats.

3. Bill Pryor worked with U.S. Attorney Doug Jones to prosecute KKK murderers Blanton and Cherry for the September 15, 1963, bombing of the Sixteenth Street Baptist Church that Killed four little girls. Bill Pryor personally argued to uphold Blanton's conviction before the Alabama Court of Criminal Appeals on May 20, 2003.

4. Bill Pryor drafted the law (Ala. Code §12-25-2(a)(2)) that created the Alabama Sentencing Commission with the stated purpose of ending racial disparities in criminal punishments.

5. In 2000, Bill Pryor started Mentor Alabama – a program to recruit positive adult role models for thousands of at-risk youth which 99% were black. For the last three years, Bill Pryor has worked every week as a reading tutor for black children in a Montgomery public school.

6. In 2000, I introduced a bill in the Alabama Legislature to amend the Alabama Constitution repealing Alabama's racist ban on interracial marriage. Every prominent white political leader in Alabama (both Republican and Democrat) opposed my bill or remained silent except Bill Pryor who openly and publicly asked the white and black citizens of Alabama to vote and repeal such racist law. It was passed with a slim majority among the voters and Bill Pryor later successfully defended that repeal when the leader of a racist group called the "Confederate Heritage" sued the State to challenge it.

7. I sponsored HB534 this Legislative Session establishing cross burning as a felony. Said bill passed the Alabama House of Representatives on May 15th 2003. That bill was written by Bill Pryor and he was the only white leader in Alabama that openly and publicly supported it.

Finally, as one of the key civil rights leaders in Alabama who has participated in basically every major civil rights demonstration in America,

who has been arrested for civil rights causes on many occasions, as one who was a field staff member of Dr. Martin Luther King's SCLC, as one who has been brutally beaten by vicious police officers for participating in civil rights marches and demonstrations, as one who has had crosses burned in his front yard by the KKK and other hate groups, as one who has lived under constant threats day in and day out because of his stand fighting for the rights of blacks and other minorities, I request your swift confirmation of Bill Pryor to the 11th Circuit because of his constant efforts to help the causes of blacks in Alabama.

Thanks for your consideration.

Sincerely,

Alvin Holmes
State Representative

cc: Members of the Committee on the Judiciary
United States Senate

HOUSE OF REPRESENTATIVES
ALABAMA STATE HOUSE
MONTGOMERY, ALABAMA 36130

FOR YOUR INFORMATION

STATE REP. ALVIN HOLMES' CIVIL RIGHTS RECORD (PARTIAL)

Rep. Holmes sponsored the legislation making Martin Luther King Jr.'s birthday a state holiday in Alabama.

Rep. Holmes filed law suits to remove the confederate flag from the Alabama State Capitol dome.

Rep. Holmes led the fight to place the first black on the Alabama Supreme Court.

Rep. Holmes sponsored the legislation to name Interstate 85 the Martin Luther King, Jr., Expressway in Montgomery, Alabama.

Rep. Holmes led the fight for the first black on the Alabama State Pardon and Parole Board.

Rep. Holmes led the fight to integrate the Alabama National Guard.

Rep. Holmes led the fight for the first black Associate Prison Commissioner of Alabama.

Rep. Holmes secured employment for the first black legislative clerk in the Alabama State Legislature.

Rep. Holmes secured employment for the first black secretary in the Alabama State Legislature.

Rep. Holmes secured employment for the first black state police officer.

Rep. Holmes secured employment for the first black capitol hostess.

Rep. Holmes led the fight for the appointment of the first black to the Auburn University Board of Trustees.

Rep. Holmes led the fight for the appointment of the first black to the University of Alabama Board of Trustees.

Rep. Holmes led the fight for the employment of blacks in professional positions at the following departments in the State of Alabama: Transportation Department, Banking Department, Insurance Department, Corrections Department, Administrative Office of Courts, Alabama Beverage Control Board, Agriculture and Industries Department, The Forest Commission, Conservation Department, State Finance Department, Industrial Relations Department, Mental Health Department, Public Health Department, Personnel Department, State Trooper Department, Public Service Commission, Revenue Department, Attorney General's Office, Secretary of State's Office, State Treasurer's Office, and many other minor departments.

FOR FURTHER INFORMATION:

334-264-7807 or 334-242-7600

CAPELL & HOWARD PC.
ATTORNEYS AT LAW

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wai@chlaw.com

April 15, 2003

Via Facsimile & U.S. Mail
Senator Richard Shelby
110 Hart Office Building
Washington, DC 20510

Senator Jeff Sessions
493 Russell Office Building
Washington, DC 20510

Re: Nomination of William H. Pryor, Jr. to the Eleventh Circuit Court of Appeals

Dear Senator Shelby and Senator Sessions:

I am writing to express my support of the nomination of Bill Pryor to the Eleventh Circuit Court of Appeals. I first met Bill Pryor while working as a summer law clerk at Capell & Howard, P.C. Since that time, I have had an opportunity to become further acquainted with him through his work as Alabama's Attorney General and his involvement in the Justice Hugh Maddox American Inns of Court.

Attorney General Pryor understands the law and is one of its brightest students. I was most impressed with Attorney General Pryor's mastery of the law during an Inns of Court presentation. During an impromptu rebuttal, Attorney General Pryor spoke intelligently and with a command of the law, while giving the various views of appellate courts. Aside from his knowledge and willingness to learn more, I believe that his experience with presenting cases before the U.S. Supreme Court will further prepare him for his responsibilities as an Eleventh Circuit Court of Appeals Judge.

Bill Pryor has been fair in carrying out his duties as Attorney General for the State of Alabama and I believe he will continue to do so as a Judge on the Eleventh Circuit Court of Appeals.

With kind regards, I remain

Very truly yours,

Wyndall A. Ivey

WAI/jar
cc: William H. Pryor, Jr., Esq.

HERBIE JOHNSON, Sheriff
SHERIFF
AUTAUGA COUNTY

162 WEST 4TH STREET
PRATTVILLE, ALABAMA 36067
PHONE: 334-365-3211
FAX: 334-361-3723

March 28,2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Sessions:

I understand that President Bush is considering Alabama Attorney General Bill Pryor for nomination to the Eleventh Circuit Court of Appeals. I write in support of that nomination.

I have known Bill for a number of years , both in his capacity as Attorney General and as a citizen of Alabama. I have worked with him in his efforts to help law enforcement, and have seen first hand, his commitment to ensure that the people of Alabama are safe, and are well represented in the Courts. It is my experience that Bill is fair and judicious in carrying out the duties of his office.

I have worked for and supported Bill in each of his elections, and have served on several law enforcement committes with him.

I am excited that a person of such integrity is being considered for such an important position, and I support Bill's nomination without reservation.

Sincerely,
Sheriff Herbie Johnson
James W. "Herbie" Johnson

Sisters of Mercy
101 Wimbledon Drive, W.
Mobile, AL 36608

(251) 344-1377

June 9, 2003

TO: Senate Judiciary Committee
FROM: Sister Dominica Hyde, RSM
Sister Alice Lovett, RSM
Sister Suzanne Gwynn
Ms. Cecilia Street
Sister Magdala Thompson RSM

As you prepare for your consideration of Alabama's Attorney General Bill Pryor's fitness for a seat on a federal appeals court, we would like to present a view from those in Alabama who have formed opinions on his readiness for this position.

We have had many opportunities here in Mobile to observe Mr. Pryor's credentials. We know that his knowledge of the law and his experience are impressive. However we have heard and read his opinions in favor of capital punishment, against the need for oversight by the Justice Department of the Voting Rights Acts provisions, and his likening homosexual acts to prostitution, necrophilia and incest.

We have heard him debate against a three year moratorium on executions with such arrogance that it is hard to imagine his being dispassionate in making judgments on an appellate court bench.

In the middle of the summer we knew of his insistence that handcuffing state prisoners to hitching posts in the blazing sun was permissible, requiring the U.S. Supreme Court to rule it as cruel and unusual punishment.

We believe that Richard Cohen, general counsel of the Southern Poverty Law Center in Montgomery expressed our feelings when he said "Being a judge is an issue of wisdom and, when you've made a career out of pursuing a particular agenda and you're so young, one might wonder if it's time for you to sit in judgment of your fellow citizen."

We ask that you select a wiser candidate. Thank you for your consideration.

Sr. Suzanne Gwynn
Sr. M. Dominica Hyde RSM
Sr. Mary Alice Lovett, R. S. M.
Sister Magdala Thompson, RSM
Cecilia R. Street

WHATLEYDRAKE LLC
complex litigation.

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309563
(cc)

January 31, 2003

RECEIVED
DEPT OF JUSTICE
2003 FEB -6 PM 12:30
EXECUTIVE
SECRETARIAT

Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: Alabama Attorney General Bill Pryor

Dear General Ashcroft:

I hope you will recall a brief telephone conversation we had in early May, 2001, when you called to congratulate me on the successful prosecution of a former member of the Ku Klux Klan for the murder of four young girls who died in September, 1963, when a bomb exploded at the 16 th Street Baptist Church in Birmingham. As the Democratic U. S. Attorney for the Northern District of Alabama, I was grateful for your administration's willingness to allow me to remain in office to complete that important case and truly appreciated your personal telephone call. I am writing now, as a loyal Democrat, to support the nomination of Alabama Attorney General Bill Pryor to the 11th Circuit Court of Appeals.

Bill Pryor became Alabama's Attorney General less than a year before I was sworn in as U. S. Attorney. In short order we not only formed a strong friendship, but a federal-state working partnership that I believe was second to none. As I am sure you are aware, the working relationships between federal and state law enforcement are often very fragile, especially when the law enforcement leadership is of different political parties. Our partnership, however, was built on mutual respect, trust and a shared desire to serve the citizens we represented. His personal involvement in our joint efforts was critical to the success that was realized, including the success in the church bombing cases.

Interestingly, while Bill and I found ourselves in agreement on so many criminal justice issues, including the manner in which law enforcement and prosecutorial functions should be carried out, we have many fundamental differences on civil and domestic issues. Despite our differences, however, there is no question that Bill Pryor is imminently qualified for the federal

bench. He is a brilliant lawyer whose career has been marked by fundamental fairness and an appreciation for the rule of law. He has a solid reputation for honesty and integrity that greatly contributed to his overwhelming re-election by the people Alabama.

I believe you will find that Bill Pryor is held in high regard by people on both sides of the political aisle and by people of all races and gender. He has provided outstanding public service to the people of Alabama and there is no doubt he will serve with even greater distinction as a federal jurist. I sincerely hope that he will receive a favorable recommendation from the Department of Justice and that his name will be forwarded by the President for confirmation by the Senate.

I have pledged to assist in Bill's nomination and confirmation process in any way I can. Please do not hesitate to call on me.

Cordially,

/G. Douglas Jones

GDJ:kwk
cc: Honorable Larry Thompson, Deputy Attorney General
Honorable Bill Pryor

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Anthony A. Joseph
Direct Dial: (205) 458-9447
E-Mail Address: aajoseph@jbpp.com

April 16, 2003

The Honorable Jeff B. Sessions
United States Senator
495 Russell Senate Office Building
Washington, D.C. 20510

Re: Nomination of Bill Pryor to the Eleventh Circuit

Dear Senator Sessions:

It is with great honor and pleasure that I write in support of the nomination of Bill Pryor for a seat on the Eleventh Circuit Court of Appeals. Bill possesses all of the skills and attributes to be an outstanding jurist: solid credentials, sound intellect, practical experience, unblemished character and integrity, and a calm and balanced temperament. Accordingly, I would strongly urge his expeditious confirmation to the Court.

I have known Bill for over 12 years. I have worked for him as a specially appointed Attorney General, and against him in my representation of clients under investigation by the State of Alabama. In working for him, I have always been impressed with his ability to quickly grasp the operable facts, his willingness to listen to the opinions of others, and his sound judgment. In the cases where I have represented clients against the State of Alabama, I have always found Bill to be a strong advocate, but also a fair-minded prosecutor willing to engage in good faith discussions. I am convinced that Bill will bring these same essential qualities to the bench.

Throughout my experience with Bill, he has earned both my respect and my admiration for his commitment to public service, his equal and fair treatment of everyone associated with a particular matter, and his dedication to upholding the honor and integrity of the Attorney General's Office. I am convinced that his consistency and commitment to do the right thing will be continuing traits that he will possess as a judge.

I cannot think of a more worthy candidate for this position and, therefore, submit my strong support of him for a seat on the Eleventh Circuit Court of Appeals. Again, I would encourage your expeditious confirmation of him for this position.

If I can be of any further assistance in this regard, please let me know. Thank you for your consideration.

Best regards.

Sincerely,

Anthony A. Joseph

AAJ/lc

Haskell | Slaughter
attorneys at law

Thomas L. Krebs, Esq.
Direct Dial: 205.254.1416
tlk@hsy.com

Haskell Slaughter Young & Rediker, LLC
1400 Park Place Tower
2001 Park Place North
Birmingham, Alabama 35203
t. 205.251.1000 | f. 205.324.1133

March 28, 2003

Senator Jeff Sessions
493 Russell Office Building
Washington, DC 20510

Senator Richard C. Shelby
110 Hart Senate Office Bldg.
Washington, DC 20510

Re: Bill Pryor – Eleventh Circuit Court of Appeals

Dear Senators Sessions and Shelby:

I have heard that the Honorable William H. Pryor, Jr. may be considered for nominations to the Eleventh Circuit Court of Appeals, and I am both honored and pleased to share my thoughts about Bill Pryor and his suitability for consideration for such an appointment. At the outset I have to admit that while I endorse and support his nomination to serve on the Eleventh Circuit I do not wish Alabama to lose one of its best attorneys and most effective public servants. If the Eleventh Circuit is to be enhanced it will be at Alabama's loss.

I have been in and around state government for many years and have come to believe that General Pryor is one of the best, if not the best, Attorney General in recent times. Other attorneys whose opinions I have come to respect over the years share this view of Bill Pryor. Included in this list would be Bill Stephens, general counsel to the Retirement Systems of Alabama, Joe Borg, the Director of the Alabama Securities Commission and many others.

To be sure, other Attorneys General have been more bombastic and charismatic and that is what, in my mind at least, sets Bill Pryor apart from the pack. He is reserved and quiet, but he is also extraordinarily bright and thoughtful. More importantly, I think, Bill Pryor is one of the few persons I have known who possesses absolute integrity. I can think of no finer appointment to the Eleventh Circuit.

I believe General Pryor will prove to be one of our country's finest jurists. In my personal dealings with him he has manifested an easy mastery of complex and difficult legal

issues. In truth, in my most recent meeting with him, I was awed by his complete knowledge of the unique constitutional issue then in discussion. I have visited with several Attorneys General during my years of practice before the Bar, but I have to tell you, I was never so impressed as I was on that day. I have attached the letter I sent to Richard Allen after that meeting.

At the time I wrote to Richard I had not a clue that Senator Sessions would desire to know my position regarding Bill Pryor's nominations to the Eleventh Circuit. If what the President seeks is a bright, fair-minded, deliberate judge, he has found such a person in Bill Pryor. I wholeheartedly support his nomination to the Eleventh Circuit and indeed cannot think of a better nominee.

Sincerely,

Tom Krebs

Thomas L. Krebs

TLK/alb

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement Of Senator Patrick Leahy
Senate Judiciary Committee
Nominations Hearing
June 11, 2003

Today we meet to consider an unusual and also an ironic pairing of nominations. They are William Pryor to the U.S. Court of Appeals for the 11th Circuit and Diane Stuart to head the Office on Violence Against Women at the Department of Justice. This could well be the first hearing we have had where one nominee has challenged the constitutionality of the statute on which the work of the other nominee is based.

But before I speak about the many positions that Mr. Pryor has taken that raise concerns about his nomination to a federal court, I should make a few observations about procedure. When the possibility was first raised of scheduling Mr. Pryor before his peer-review rating from the American Bar Association was received, we raised concerns about this timing, and the reason for that is certainly obvious. While we have all had our disagreements with the ABA's rating of individual judicial nominees during the five decades they have performed this service, beginning in the Administration of President Eisenhower, I have long maintained that their evaluations are an important piece of information that should be available early in the process of considering a lifetime appointment to the federal bench.

When Senator Hatch indicated several years ago that he would no longer consider the evaluations of President Clinton's nominees, I differed and continued considering such ratings for what they were worth. When George W. Bush announced that he was removing the ABA Standing Committee from its traditional place in the judicial nominations process, a place it had held for the last 50 years, I objected. I explained then that I thought it was a major mistake because it would chill the candor with which people speak to the ABA about nominees' qualifications and temperament, and because it would give a President little room to back down after finding out one of the nominees it had already announced received a negative rating. Instead of working with the ABA before announcing a nomination publicly, this White House has forced them to do their work in a truncated period of time in a way under restrictive circumstances.

Among the changes made to our process, this year the Committee has scheduled hearings for nominees before any of us knows how the ABA has evaluated them. Today's circuit court nomination is just one example of that sort of mixed-up process which puts the cart before the horse. Mr. Pryor's ABA evaluation was not complete at the time the hearing was noticed last week. It only arrived yesterday afternoon, and he has been determined

by some on the ABA's Standing Committee to be "not qualified" to sit on the U.S. Court of Appeals for the 11th Circuit. Now that we have that piece of information, it is not time to rush into a hearing for this nominee. It is time to stop and conduct further investigations, further evaluations, to determine the reason or reasons for the negative rating. I regret that the Committee does not have all the necessary information it needs before proceeding to a hearing. This should be a meaningful review of the qualifications and fitness of a nominee to a lifetime appointment.

As to the nomination itself, I am concerned about Mr. Pryor's record of ideological rigidity and extremism in a number of areas crucial to the fair administration of justice. I want to know more about his views on the application of the death penalty. I would like to find out more about his views on the so-called "federalist revolution" in which he has been a driving force. I would like to understand how he views discrimination against Americans on the basis of their sexual orientation. I want to know why he disagreed with the Supreme Court of the United States that cuffing a prisoner up to a hitching post in the broiling sun for hours on end was not cruel and unusual punishment. I look forward to learning how he came to believe that the Americans With Disabilities Act, the Violence Against Women Act, the Age Discrimination in Employment Act, and even Title VII of the 1964 Civil Rights Act are unconstitutional. Among many other things, I would like to know why someone who has committed his life, both personal and professional to overturning settled Supreme Court precedent is interested in a job that requires him to uphold it.

I look forward to hearing from Mr. Pryor and to reviewing carefully his answers to the questions of the other Senators.

This is another highly controversial nominee of this Administration to our circuit courts. Even before today's hearing a number of editorial boards and others have weighed in with significant opposition. Last April, even the Washington Post, which has been exceedingly generous to the Administration's efforts to pack the courts, termed Mr. Pryor "unfit". Earlier this week, the Washington Times published Nat Hentoff's opposition to this nomination. The Atlanta Journal-Constitution editorialized against this nomination on May 6, and again today. Editorial boards across the country, including the San Jose Mercury News, the Tuscaloosa News, and the Pittsburgh Post-Gazette, have likewise spoken out against this particular nomination and the Administration's ideological court-packing scheme.

The Committee has also heard from a number of organizations and individuals concerned about justice before the federal courts. The Log Cabin Republicans, the Leadership Conference on Civil Rights, the Sierra Club, the Alliance for Justice, NARAL and many others have provided the Committee with their concerns and the basis for their opposition.

Of course this is not the first "not qualified" rating or partial "not qualified" rating that this Administration's judicial nominees have received. It is at least the 16th such rating and the fourth for a circuit court nominee of this President -- so far. We have bent over

backwards trying to be accommodating to this Administration for almost two years. The Senate has already confirmed 128 of this President's judicial nominees, including 25 circuit court nominees. That stands in sharp contrast to the treatment of President Clinton's nominees by a Republican-controlled Senate from 1995 through 2001 when judicial vacancies on the federal courts were so much higher.

This is already the 11th hearing the Republican majority has held for this President's judicial nominees this year, including 12 circuit court nominees. This, too, stands in sharp contrast to the way President Clinton's nominees were treated by the Republican majority. I recall that, during the entire year of 1996, when vacancies were higher and growing, this Committee held only six hearings all year and those hearings included only five circuit court nominees. That 1996 session not a single judge was confirmed to the circuit courts — not one. In all of 1997, the Committee only had nine hearings all year and included only nine circuit court nominees. During the entire year of 1999, only seven hearings were held on judicial nominees and this Committee did not hold the first judicial nominations hearing that year until June 16. This year, by contrast, this Committee will have already held 11 hearings by that time of year. During the entire year of 2000, only eight judicial nominations hearings were held. This year, with a Republican in the White House, the Senate Republican majority has gone from second gear -- the restrained pace it had said was required for Clinton nominees -- to overdrive for the most controversial of President Bush's nominees.

A good way to see how much faster Republicans are processing judicial nominations for a Republican president is to compare where we are in June of this year to June of any year during the last Democratic administration when the Republicans controlled the Senate. Over the last six and one-half years of Republican control under President Clinton, the Republicans held fewer than four judicial nominations hearings, on average, by June 11, and had considered fewer than four circuit court nominees, on average, by this time. On this day, in 1995, only five hearings had been held for judicial nominations; in 1996, only three hearings; in 1997, only two hearings; in 1998, only about half as many as this year -- six hearings; in 1999, zero hearings; and in 2000, only five judicial nominations hearings were held by June 11. Today, we participate in our 11th hearing this year. Republicans have moved two to four times more quickly for President Bush's circuit court nominees than for President Clinton's, yet vacancies in the courts stand at half of what they were during many of those years.

The number of judicial vacancies has gone down from the 110 we inherited when Democrats assumed the Senate majority in the summer of 2001 to the lowest level it has been in 13 years. While I was Chairman I was able to cut it from 110 to 60, despite dozens of new vacancies that occurred during that time. I recall that Senator Hatch said in September of 1997 that 103 vacancies (during the Clinton Administration) did not constitute a "vacancy crisis." He also repeatedly stated that 67 vacancies meant "full employment" on the federal courts. We now stand at fewer than 50 vacancies for the entire federal judicial system.

As I have noted throughout the last three years, the Senate is able to move expeditiously when we have consensus nominees. Unfortunately, far too many of this President's nominees have records that raise serious concerns about whether they will be fair judges to all parties on all issues. This is such a nomination. The question raised by this nomination is how someone so committed to a particular viewpoint on so many issues can be expected to serve as an impartial judicial arbiter.

I look forward to Mr. Pryor's testimony.

The Senate Judiciary Committee today also considers the nomination of Diane M. Stuart to be the Director of the Office on Violence Against Women at the Department of Justice. Based on her extensive background and expertise in issues related to violence against women, including sexual assault and domestic violence, Ms. Stuart was appointed by the President in October 2001 to serve as the Office's Director at the Senior Executive Service level. Since February 2003, she has served as the Office's Acting Director, since the 21st Century Department of Justice Appropriations Authorization Act elevated the Director a presidentially-appointed position, subject to Senate confirmation.

Ms. Stuart, I thank you for joining us here today, and I look forward to hearing your thoughts on the current status and policies of the Office on Violence Against Women and, more importantly, where you expect that Office will go in the future under your leadership. I also understand that you suffered a recent loss in your family and I offer both you and your family my condolences.

Both the original Violence Against Women Act and its reauthorization – VAWA 2000 – have been important steps forward in our nation's efforts to end violence against women, as will be the third VAWA reauthorization that will come in 2005. I take very seriously my commitment to combating those crimes, and I believe that the Office on Violence Against Women and especially its Director have a duty to play an active and high-profile leadership role in those efforts.

Therefore, I hope you can understand how I have been troubled by recent reports that the Office remains within the Office of Justice Programs and reports to an assistant attorney general. Even the 2004 Justice Department budget proposal states that the Office does not report directly to Attorney General Ashcroft, although Congress has made it clear by law that the Office should. Members of this Committee wrote the Justice Department Re-authorization bill, which Congress passed and the President signed into law last year. That law makes the Office of Violence Against Women a permanent, separate and independent office within the Justice Department. In testimony earlier this year at the House Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary hearing on the 2004 budget, the Attorney General took a different stance, arguing that the provision's language leaves the decision on where to place the office up to him.

The statute is unequivocal – the Director shall report directly to the Attorney General and the Office on Violence Against Women is to be a permanent and independent entity in Justice – do not pass go, do not get out of jail free. I hope you will explain to us why the

very agency charged with upholding the law has apparently decided to circumvent the law by substituting its own policy judgment for that of the Congress. I also hope you will share with us your plans to ensure a balance between the technical aspects of grant-making for which the Office has been known and the equally important role in shaping our nation's policies in issues relating to violence against women, domestic violence and sexual assault. To manage eleven Federal grant programs that have distributed over $1 billion in total VAWA funds since 1995 is no small feat, and I commend your office on that work. I also hope you will take seriously suggestions from this Committee on authorization and funding for such programs as desperately-needed transitional housing grants.

I look forward to hearing your testimony and answers to our questions.

# # # # #

HERC LEVINE
2732 SHADES CREST ROAD
BIRMINGHAM, ALABAMA 35216-1037

June 5, 2003

VIA FACSIMILE (202-224-9102)

Senator Orrin Hatch, Chairman
Committee on the Judiciary
224 Dirksen Building
Washington, D.C. 20510

Re: Bill Pryor, Nominee to 11th Circuit of Alabama

Dear Chairman Hatch:

As an active and proud member of the Birmingham Jewish Community, I was disappointed by the decision of the National Council of Jewish Women and the Religious Action Center of Reform Judaism to oppose the nomination of Attorney General Bill Pryor to the 11th Circuit Court of Appeals bench. While I doubt that these groups have taken the time to sit down and talk with Attorney General Pryor, I am proud to say that he has my support and the support of many in the Alabama Jewish Community because of his personal integrity and commitment to insure that all of our citizens are treated fairly and receive equal justice under the law. He has been a true friend to the Alabama Jewish Community on many important issues.

Attorney General Pryor has a distinguished career as a public servant, practicing attorney and law professor, and is highly qualified to serve on the Federal bench. He has a well deserved reputation for fairness and competency that cuts across party lines and which has resulted in overwhelming support from Alabamians of all political parties and segments of our society. His distinguished record as Attorney General affirms my belief that he will serve with great distinction as a Federal judge.

Very truly yours,

Herc Levine

Herc Levine

/vk

cc: Senator Patrick J. Leahy, Ranking Member (FAX: 202-224-9516)
Senator Richard C. Shelby (FAX: 202-224-3416)
Senator Jeff Sessions (FAX: 202-228-0545)

** TOTAL PAGE.02 **

The Montgomery Advertiser
June 10, 2003

Letters to the Editor: Pryor deserves confirmation

As an active and proud member of the Birmingham Jewish community, I was disappointed by the decision of the National Council of Jewish Women and the Religious Action Center of Reform Judaism to oppose the nomination of Attorney General Bill Pryor to the 11th Circuit Court of Appeals bench.

While I doubt that these groups have taken the time to sit down and talk with Pryor, I am proud to say that he has my support and the support of many in the Alabama Jewish community because of his personal integrity and commitment to ensure that all of our citizens are treated fairly and receive equal justice under the law. He has been a true friend to the Alabama Jewish community on many important issues.

Pryor has a distinguished career as a public servant, practicing attorney and law professor, and is highly qualified to serve on the federal bench. He has a well-deserved reputation for fairness and competency that cuts across party lines and which has resulted in overwhelming support from Alabamians of all political parties and segments of our society. His distinguished record as attorney general affirms my belief that he will serve with great distinction as a federal judge.

Herc Levine
Birmingham

Montgomery Advertiser
May 23, 2003

Letters to the editor

Pryor's record rebuts claim of racism

I am disturbed by recent inferences by various groups that have sought to label Attorney General Bill Pryor as a racist.

The attorney general is a powerful position. In the wrong hands, such power can result in everything from political mischief to the ruining of lives and reputations.

Pryor, to the contrary, has demonstrated himself to be thoughtful and pragmatic. His strict interpretation and enforcement of the law has often raised the ire of members of his own political party. He makes no secret of being a strict constitutional constructionist. He is, however, not a racist.

I base that statement on personal observations of Pryor's handling of situations where others have been racially insensitive. Racism in any form, no matter how small, is abhorrent to him.

Unlike so many of our elected officials, Pryor is clear and unambiguous when it comes time to take a position on an issue. You may or may not agree with his position, but please do not call him a racist.

Bruce M. Lieberman
Montgomery

City of Demopolis
Department of Police
600 North Walnut Avenue
Demopolis, Alabama 36732
Phone (334) 289-3071

JEFF MANUEL
PUBLIC SAFETY DIRECTOR

CHARLES AVERY
CHIEF OF POLICE

March 25, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Shelby
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Sessions and Shelby:

It is my understanding that President Bush may nominate Alabama Attorney General Bill Pryor for a seat on the Eleventh Circuit Court of Appeals. It is my pleasure and honor to write this letter in support of my Attorney General.

I first met Bill Pryor after he was appointed Attorney General. Since then, he has worked hard and devoted his energy to ensure the protection of Alabama citizens. His work has made an impact and improved conditions by helping law enforcement receive the tools necessary to effectively enforce the laws of the state.

I have personally worked with General Pryor, serving on his law enforcement advisory committee and other projects. I am from a small department and General Pryor has as much concern for my agency as he has for the largest agency in the state.

Again, it is my pleasure to support a man that I personally know to have the highest ethics and integrity, which is a necessary trait for this position. I fully support Alabama Attorney General Bill Pryor for this nomination.

Sincerely,

Jeff Manuel

B

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June 9, 2003

Senator Orrin Hatch
Chairman
Judiciary Committee
U. S. Senate
104 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hatch:

I am writing to voice my support of Alabama Attorney General Bill Pryor's nomination to the United States Court of Appeals for the Eleventh Circuit. In my opinion he will make an outstanding federal jurist.

By way of background, I should advise you that I am a life long Democrat. I was one of the first African-Americans elected to the Alabama House of Representatives where I served from 1973 to 1986. In 1986 I was elected as one of the two African-American members of the Jefferson County Commission, where I remained until my retirement from public service in 2001. In addition, I have been active in numerous civil rights activities over the years. My daughter Denise was one of the four young girls killed in the 1963 bombing of the 16th Street Baptist Church and the fulfillment of Dr. King's dream of equal rights and justice for all has been my personal crusade.

Unfortunately, Bill Pryor's record on civil rights is being distorted. As Attorney General, he has enforced the Voting Rights Acts, which he has described as one of the greatest and most necessary laws in American history. Although he has expressed some concern with certain procedural aspects of the law, his support for the Voting Rights Act and what it stands for has not wavered. In fact, he has successfully defended redistricting plans that were challenged by white voters and members of his own political party.

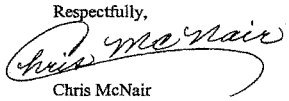
While Bill Pryor's tenure as Attorney General of Alabama has been marked by a number of cases in which he took stands that I do not personally agree with, I have always found him to be a man of honesty and integrity who attempts to follow all laws faithfully and fully. I firmly believe he will do the same as a court of appeals judge.

On a more personal note, Bill Pryor's personal support for the recent trials of the men convicted of bombing the 16th Street Baptist Church and the murder of my daughter has meant a lot to my family and this community. By designating the prosecutors as Special Assistant Attorney Generals and by providing financial assistance through his office, he demonstrated a commitment to justice that had been long overdue. I had numerous conversations with him about these cases and his desire to see that justice was done. His commitment to the cases was sincere and has been very much appreciated.

45 Sixth Avenue South ● Birmingham, Alabama 35205 ● Office 205.322.2685 ● Fax 205.322.2684
E-mail: mcnairstudios@bellsouth.net

In sum, I believe Bill Pryor to be a man who is committed to following the rule of law regardless of the outcome and that he is personally committed to insuring that all people receive equal justice. I hope that the Judiciary Committee will vote favorably on his nomination.

Respectfully,



Chris McNair

cc: Senator Jeff Sessions
Senator Richard Shelby

SHERIFF

BRYANT MIXON

P.O. BOX 279
DALE COUNTY • OZARK, ALABAMA 36361

TELEPHONES: 334-774-2335
FAX: 334-774-2909
E-mail: info@dalecountysheriff.com

March 25, 2003

Senator Jeff Sessions
453 Russell Senate Building
Washington, D.C. 20510

This letter is written in support of Bill Pryor for a Judgeship with the Eleventh Circuit Court of Appeals.

General Pryor is a leader in Alabama Law Enforcement. His tenacity and diligence has resulted in significant arrests and convictions of both blue and white-collar criminals.

General Pryor's keen intellect and clear understanding of legal issues has been of great benefit to the Alabama Criminal Justice System. He will perform admirably in the Federal Judiciary.

A personal note: Bill Pryor is a quality human being and one of the nicest guys I have met in this business. He serves as a great example of civility and decency.

Thank you for any consideration you give this most excellent candidate.

Sincerely,

Bryant Mixon
Sheriff, Dale County

The Mobile Register
May 21, 2003

EDITORIAL: Constitution isn't a wish list

A New York Times editorial this week against the nomination of Alabama Attorney General Bill Pryor for a federal appeals judgeship provides a textbook example of what's wrong with the way the political left sees the courts.

The editorial contends that a brief Mr. Pryor filed in defense of Texas' anti-sodomy statute makes him unfit for the judgeship because it shows the AG is against gay rights.

Nowhere in the editorial, however, is there any reference to the Constitution or to Supreme Court precedent. Instead, there is a clear assumption that laws against homosexual acts are unfair -- and that, therefore, they ought to be struck down by the courts.

The problem is that judges are not supposed to decide on their own whether a law is fair -- that's a job for legislators -- but only whether it is forbidden by the Constitution or by a superseding statute. As famed Justice Oliver Wendell Holmes once said: I don't do justice; I do the law.

In the case of the law barring homosexual sodomy, Mr. Pryor is on firm legal ground. He argued that if the courts invent, out of thin air, a right to all consensual sexual acts, then legislatures also could be forbidden from outlawing other sexual acts such as prostitution, bestiality or adult incest.

Not even the Times can argue that Mr. Pryor's argument is out of the mainstream. As noted in this space previously, the AG was citing the existing law of the land, as explained by the Supreme Court in Bowers vs. Hardwick. One of the liberal justices appointed since that case was decided, Ruth Bader Ginsburg, also has argued that the Constitution's assumed right to privacy extends to prostitution.

But the Times seems less concerned with what's in the Constitution or in court precedent than it is intent on determining its own sense of what is or isn't fair, and then turning its opinion into a constitutional right -- by judicial fiat, without any democratic processes intervening. Down that road lie not more rights, but tyranny.

The Montgomery Advertiser
June 11, 2003

EDITORIAL: Critics could do worse than Pryor

Listen to the rhetoric coming from the opponents of the nomination of Bill Pryor to a federal judgeship and it's hard to imagine they are talking about the same man who has been Alabama's attorney general for the past several years.

Pryor's nomination is drawing fire from all sorts of liberal groups, which is not surprising because Pryor is clearly a staunch conservative.

What is surprising is the degree to which those groups are trying to demonize Pryor, because his performance as the state's attorney general has been fair to virtually all of the constituencies that these groups claim to represent.

Perhaps the unkindest cut is criticism of Pryor's stands on racial issues. Here is a politician who led the fight to eliminate from the state constitution embarrassing language barring interracial marriages. He has been one of the state's more outspoken public officials on issues of racial fairness.

But national opponents have focused on Pryor's criticism of Section 5 of the Voting Rights Act. He has called Section 5 an "affront to federalism and an expensive burden that has far outlived its usefulness."

Pryor has made it clear that he supports the Voting Rights Act and its protection of the interests of minority voters. But he is far from alone in questioning Section 5 for singling out just a few states and requiring them to preclear minute details of election law changes.

Others critics of Section 5 include such legal authorities as Supreme Court justices Hugo Black, John M. Harlan II, Lewis Powell and John Paul Stevens.

The late Chief Justice Black once wrote of Section 5: "I doubt that any of the 13 colonies would have agreed to our Constitution if they had dreamed that the time might come when they would have to go to a United States Attorney General or District of Columbia court with hat in hand begging for permission to change their laws."

Does this mean that the time has come for Section 5 to be eliminated. Probably not. But does it mean that Pryor is some sort of racist for suggesting it. Certainly not.

For the most part as attorney general, Pryor has simply followed the law regardless of his conservative leanings. He more than likely would do the same as a federal judge, which is more than could be said of many other Republican nominees for the federal judiciary.

Frankly, those who are opposing Pryor should consider that no nominee of President Bush will ever mirror their ideology. But if they defeat Pryor, they could very well get a replacement nominee who is not only conservative, but a judicial activist who would place his or her ideology above the law.

NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES
FOUNDED MAY 22, 1937
UNIVERSITY OF NEVADA P.O. BOX 8970 RENO, NV 89507 775/784-6012 FAX 775/784-6628
Honorable Leonard P. Edwards, President

April 9, 2003

The Honorable Orrin Hatch
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Diane Stuart

Dear Mr. Chairman:

The National Council of Juvenile and Family Court Judges is delighted to endorse wholeheartedly the nomination of Ms. Diane Stuart as Director of the Office on Violence Against Women (OVW). Ms. Stuart is a proven leader, an accomplished executive, and represents a wide variety of constituencies. Her leadership is invaluable to courts, judges, advocates, and battered women.

We are pleased to learn of the Attorney General's recent decision to implement the DOJ Reauthorization Act and place the OVW directly underneath the Attorney General in the Department of Justice. At this new level, the opportunities are exciting and the National Council looks forward to working together with Ms. Stuart, the OVW, and the Congress to provide better justice and safety for battered women and their children.

Sincerely,

Leonard Edwards/dw

Hon. Leonard P. Edwards
President
National Council of Juvenile and Family Court Judges

Cc: Honorable Patrick Leahy
Nancy Scott-Finan

LPE/dw

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Pat Nolan
President

April 1, 2003

The Honorable Jeff Sessions
United States Senate
439 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Richard Shelby
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Sessions and Shelby:

I am told that Alabama's Attorney General, Bill Pryor, will likely be nominated by President Bush for the Eleventh Circuit Court of Appeals. I wholeheartedly support that nomination.

I have worked with General Pryor on many issues, and have found him to be one of the most capable and energetic leaders in the nation. Bill has shown knowledge of the law, brilliance, courage and compassion. In particular, he has forcefully spoken of the need to protect prisoners from rape, and has been effective in rallying support for the Kennedy-Sessions Prison Rape Reduction Act. He also was the leading proponent of Alabama's Religious Freedom Restoration Act. He criss-crossed the state speaking of the importance of religious freedom, and it is clear that the amendment would not have passed without Bill's leadership.

Bill speaks forcefully and with clarity on the important issues of the day. That is one of the things that make him such an exceptional leader. However, he reveres the rule of law, and has always subordinated his own opinions when the legislative or judicial authorities have ruled on the law.

I am delighted that a man of Bill's integrity and ability may be nominated to the Court of Appeals, and I urge you to support his nomination.

Sincerely,

Pat Nolan
President, Justice Fellowship

POST OFFICE BOX 9127
MOBILE, ALABAMA 36691

Penelope House
Family Violence Center

ADMINISTRATIVE OFFICE
(251) 342-2809
FAX: (251) 414-3581
SHELTER
(251) 342-3144
24-HOUR CRISIS LINE
(251) 342-8994
FAX: (251) 342-4174

March 17, 2003

Dear Senators Session and Shelby,

I understand that Attorney General Bill Pryor is being considered for an appointment to the Eleventh Circuit Court of Appeals. I would welcome such a nomination. I mentioned, to my Board at our regular meeting last Thursday, that I would be sending this letter. The entire Board of Directors of Penelope House Family Violence Center here in Mobile, AL, unanimously asked that I include them in support of this nomination.

Attorney General Bill Pryor has been a long time supporter and advocate of Penelope House, and has worked tirelessly to protect women and children from the dangers of domestic violence. To show his love and support for our efforts to assist victims of domestic violence, he has attended our Kiss A Cop celebration every October for the past five years. October is Domestic Violence Awareness month, and for the past 18 years Penelope House has held a luncheon, which we call Kiss A Cop, to honor and recognize the efforts of our local and state law enforcement officials with whom we partner in our efforts to protect and serve victims of domestic violence. When Bill Pryor raises his voice in support of our mission, it enables us to reach every member of our community. Attorney General Pryor not only joins us every October in celebration of domestic violence awareness month, but enables us to reach a State wide audience at every opportunity. Three years ago he reached and touched the hearts of thousands of Alabamians when he placed a drawing by one of our shelter children on the cover of his Christmas card.

Attorney General Pryor is ever vigilant regarding any funding which may become available to our programs and keeps us informed about these sources. He always supports our efforts to obtain grants, and follows and supports legislation which may be of concern to the domestic violence programs throughout our state.

Bill Pryor will bring to the Federal Bench the qualities that all Americans cherish. He is loyal to his State and his Country, is a man of principal and integrity, is highly intelligent, and most of all is a man who has immense compassion and respect for his fellow human beings.

Sincerely,

Kathryn Coumanis, MSW, EdD
Executive Director

Alabama Democratic Conference
P.O. Box 6233
MONTGOMERY, ALABAMA 36106

JOE L. REED
CHAIRMAN

January 27, 2003

The President
The White House
Washington, D. C. 20500

RE: Alabama Attorney General Bill Pryor

Dear Mr. President:

Through the news media, it has come to my attention that you now have under consideration Attorney General Bill Pryor for appointment as Circuit Judge to the United States 11th Circuit Court of Appeals, of which Alabama is a part. I take this unusual opportunity to urge you to appoint him.

Attorney General Pryor will make a first-class Judge because he is a first-class lawyer and is a first-class public official. He is a person, in my opinion, who 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. As Attorney General for Alabama during the past six (6) years, he has been fair to all people.

For your information, I am a member of the Democratic National Committee and, of course, Mr. Pryor is Republican, but these are only party labels. I am persuaded that in Mr. Pryor's eyes, Justice has only one label – Justice!

I am satisfied that if you appoint Mr. Pryor to the Bench, and he is confirmed by the Senate, he will be a credit to the Judiciary and will be a guardian for justice. I urge you to appoint Mr. Pryor to this important court.

Sincerely,

Joe L. Reed
Chairman

cc: Attorney General John Ashcroft
Senator Richard Shelby
Senator Jeff Sessions
Senator Patrick J. Leahy

Haskell | Slaughter
attorneys at law

Haskell Slaughter Young & Rediker, LLC
1400 Park Place Tower
2001 Park Place North
Birmingham, Alabama 35203
t. 205.251.1000 | f. 205.324.1133

J. Michael Rediker
Direct Line: (205) 254-1428
JMR@HSY.COM

Please Reply To: BIRMINGHAM

March 24, 2003

Senator Jeff Sessions
493 Russell Office Building
Washington D.C. 20510

Re: Bill Pryor – Eleventh Circuit Court of Appeals

Dear Senator Sessions:

I write to endorse and support wholeheartedly a nomination of Attorney General Bill Pryor to serve on the United States Court of Appeals for the Eleventh Circuit. My only "regret" would be that William Holcombe Pryor, Jr. could not serve in two positions at the same time, because he has been an outstanding Attorney General for this State, and we hate to "lose" him from that role. But Bill will make an outstanding jurist, as I'm about to explain.

My relationship to Bill Pryor is that he has been my legal "boss" in some securities enforcement litigation I have conducted for the State of Alabama's Securities Commission since 1999. In addition to that, he has over time responded promptly and very effectively whenever a member of our firm has needed guidance or assistance from him or his office.

All who know Bill Pryor will agree that for sheer brain power, and the capacity to absorb, evaluate and act prudently and very competently upon large amounts of information, he has few rivals in this State. The phrase, "quick study," would not do justice to him. He can and regularly does exhibit the ability to master difficult and complex issues, including constitutional, public interest, criminal law and procedural issues. He has an outstanding "mix" of experiences since finishing right at the top of his class at Tulane Law School, which will contribute making him a great judge: private law practice with two leading firms (including Cabaniss Johnston, where I started practice in 1967); public service as the State's litigation counsel in constitutional, voting rights, civil and criminal cases before becoming Attorney General, and then his outstanding service in succession to Senator Sessions in that post; scholar and writer in areas of state/federal relations and comity, constitutional law and public policy; teacher; and adviser to state and federal agencies and departments. Bill Pryor is a leader, and has exhibited throughout his career all the qualities of a "self-starter" who understands the value of hard work.

I recently had the pleasure of sitting with Bill to discuss issues of constitutional law, federalism and public policy on two different matters, and his easy mastery of difficult issues is daunting. He has demonstrated throughout his public life that he approaches legal and public policy matters in a judicious fashion, grasping each side of the issue and weighing competing considerations fairly. Bill Pryor is a conservative and a believer in our free enterprise system, but his career shows he did not just "adopt" that stance but arrived at it based on long study and due deliberation. He is regarded as ethical, compassionate and not "hide bound" in his views (for example, I was struck by his concept of flexible "cooperative Federalism" in last year's Senate consideration of Clean Air Act issues). There is no doubt that he is, and will be, scrupulously honest, fair and impartial as a judge, and will follow the law and the Constitution.

I ask that you take Bill Pryor to the President, and the Senate, as soon as practicable, to make it possible for him to serve in a position where, before very long, he will be one of the nation's most influential and respected jurists.

Sincerely,

J. Michael Rediker

JMR/lmr

The Montgomery Advertiser
June 2, 2003

Letters to the editor

Pryor positions grounded in morality

In a recent edition of the Advertiser there was a quote as follows regarding Bill Pryor's nomination to serve on the Atlanta-based 11th U.S. Circuit Court of Appeals:

"We think his nomination endangers the rights of women and all Americans," said Sammie Moshenberg, director of Washington operation for the Women's Council of the National Council of Jewish Women.

Who is protecting the rights of the endangered lives of the unborn who have no voice but those of God-fearing individuals such as Pryor to speak for them? Why do women's rights to abortion overshadow any rights of the precious children who are not given the right to be born? What kind of ungodly candidate do you want in place of a man of honor, integrity and fear of the Lord?

If Pryor is an endangerment, please give us more of these endangered species to shape our nation into the ethical and moral one it is meant to be.

Edna Sadie
Montgomery

March 26, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Sessions:

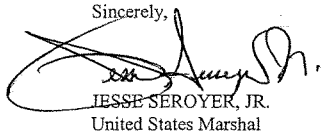
I understand that President Bush is considering Alabama Attorney General Bill Pryor for nomination to the Eleventh Circuit Court of Appeals. I write in support of that nomination.

I have known Bill for a number of years and have had the privilege to work for him as Attorney General. I have worked with him in his efforts to help law enforcement, and have seen, first hand, his commitment to ensure that the people of Alabama are safe and are well represented in the courts. It is my experience that Bill is fair and judicious in carrying out the duties of his office.

Bill's dedication and the conscientious manner in which he has performed his job as Attorney General has gained him the respect of all law enforcement agencies throughout the state of Alabama.

I am excited that a person of such integrity is being considered for such and important position, and I support Bill's nomination without reservation.

Sincerely,



JESSE SEROYER, JR.
United States Marshal
Middle District of Alabama

U.S. Department of Justice

United States Marshals Service
Middle District of Alabama

One Church ST, Suite A-100
Montgomery, AL 36104

Victims of Crime and Leniency
P.O. Box 4449
Montgomery, Alabama 36103

State Office

WATTS LINE: 1-800-239-3219

March 13, 2003

Senator Jeff Sessions
Senator Richard Shelby

Re: Attorney General Bill Pryor

Dear Senator Sessions and Shelby:

It is my understanding that Attorney General Bill Pryor is being considered for an appointment to the 11th Circuit Court of Criminal Appeals. Mr. Pryor is an excellent choice for this appointment.

I have worked in the victim's movement for over 20 years and have worked with Attorney General Pryor on numerous victims' issues the 6 years he has served as Attorney General. He has been most aggressive in victims' legislation and worked tirelessly to rectify the imbalance and disparity in the judicial process.

Attorney General Pryor is known as a man of integrity and one who will follow the law to the letter. Crime Victims only ask to be treated fairly and I am confident that will continue if Mr. Pryor gets this appointment.

Mr. Pryor has served Alabama well as Attorney General and will do likewise as Judge of the 11th Circuit. I highly recommend him for this appointment.

Sincerely,

Miriam Shehane
Executive Director

Non-Profit Organization

Statement of Senator Richard Shelby
Before the Senate Committee on the Judiciary
On the Nomination of Bill Pryor
to the
11th Circuit Federal Court of Appeals

Mr. Chairman, I appreciate the opportunity to appear before the Committee today to introduce Bill Pryor, Attorney General of the State of Alabama and the President's nominee for the United States Court of Appeals for the 11th Circuit.

I have known Bill for many years and have the highest regard for his intellect and integrity. He is an extraordinarily skilled attorney with a prestigious record of trying civil and criminal cases in both the federal and state courts. He has also argued several cases before both the Supreme Court of the United States and the Supreme Court of the State of Alabama.

As the Attorney General of the State of Alabama, Bill has established a reputation as a principled and effective legal advocate for the State of Alabama and has distinguished himself as a leader on many important State issues.

First and foremost, however, Bill is a man of the law. Whether as a prosecutor, a defense attorney, or the Attorney General of the State of Alabama, he understands and respects the constitutional role of the judiciary and specifically, the role of the federal courts in our legal system. Indeed, I have no doubt that he will make an exceptional federal judge because of the humility and gravity he would bring to the bench. I am also confident that he would serve honorably and apply the law with impartiality and fairness.

Again, Mr. Chairman, I thank you for holding today's hearing on Bill's nomination. I am hopeful that the Committee will favorably report his nomination to the full Senate in the near future.

Richard Shelby

Rick L. Singleton
Chief of Police
(256) 760-6551

Tony Logan
Deputy Chief
Field Operations
(256) 760-6576

Pete Williford
Deputy Chief
Support Services
(256) 760-6575

Florence Police Department

"Serving With Pride"

March 25, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, DC 20510

Dear Senator Sessions:

I am excited at the news that President Bush is considering Alabama Attorney General Bill Pryor for nomination to the Eleventh Circuit Court of Appeals. I write this letter in support of his nomination without hesitation.

I have known General Pryor for approximately seven years, having made his acquaintance through his office as attorney general. During that time, I have also come to know him on a very personal basis, and feel strongly that he is the type person we need sitting on our federal courts. He has proven time and time again that he is fair, impartial, and unbiased in his application of the law. His character and ethics are beyond reproach. He is respected by members of both parties in Alabama. The best example of this respect is the fact that his Democratic opponent for the office of attorney general in 1998 endorsed and supported General Pryor's candidacy in 2002.

It is my opinion that Bill Pryor would be an outstanding member of the court, and apply the law in the same fair, impartial, and unbiased manner as he has done as attorney general.

Again, I am excited at the prospect of his nomination, and support that nomination without reservation.

Respectfully,

Rick L. Singleton
Chief of Police

RLS/dmj

GROVER W. SMITH,
SHERIFF
Escambia County, Alabama
316 Court Street - Brewton, Alabama 36426

Sheriff's Secretary
251-867-0229
Fax 251-809-2155

March 26, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Sessions:

I understand that President Bush is considering Alabama Attorney General Bill Pryor for nomination to the Eleventh Circuit Court of Appeals. I write in support of that nomination.

I have known Bill for a number of years, both in his capacity as Attorney General and as a citizen of Alabama. I have worked with him in his efforts to help law enforcement, and have seen first hand, his commitment to ensure that the people of Alabama are safe, and are well represented in the Courts. It is my experience that Bill is fair and judicious in carrying out the duties of his office

General Pryor began an annual training program that provides cost free training for law enforcement statewide. He had also obtained funding for every officer in the state to have a personal copy of the criminal code..

I am excited that a person of such integrity is being considered for such an important position, and I support Bill's nomination without reservation.

Sincerely,

Grover W. Smith

Grover W. Smith
Sheriff

GWS:sep

JEFFERSON COUNTY COMMISSION

SHELIA SMOOT
COMMISSIONER OF ROADS AND
TRANSPORTATION/COMMUNITY DEVELOPMENT
Suite 250
716 Richard Arrington, Jr. Blvd. N.
Birmingham, Alabama 35203
Telephone (205) 325-5074
FAX (205) 325-4878

June 9, 2003

The Honorable Jeff Sessions
United States Senate
Washington D. C. 20501-0104

Dear Senator Sessions:

As an investigative journalist at a local television station in Birmingham, Alabama, I had a major clash with Attorney General Bill Pryor. However, what began as a conflict turned out to be a real commitment to help a population of people who could not help themselves.

Mr. Pryor was the catalyst that enabled me to help more than eight hundred people who had purchased burial plots in the Shadow Lawn cemetery located in Birmingham Alabama. Mr. Pryor was the "only" person with authority who would listen to this group of elderly African-American citizens who only wanted the right to have a dignified burial in a cemetery where they had purchased plots over thirty years ago. I appealed to Mr. Pryor and he did not turn his back on this community as others had. He responded personally and got legally involved with a conviction that was heartfelt. He knew these people where being treated wrong primarily because the owner did not believe that someone in Mr. Pryor's position would care about a group of "old poor black folks". I am proud to declare that Mr. Pryor did the right thing. He had his department come to Birmingham and take hundred's of complaints from people who had been fighting for years to get their grievances heard. Because of his action, the Shadow Lawn group was able to shut the cemetery down, forced the owner into bankruptcy, and now thanks to Mr. Pryor the people who possess the lots are working on obtaining ownership so that the cemetery will remain a memorial to those buried there. Because of Mr. Pryor's intervention, cemetery regulations were passed in the state...again Mr. Pryor was there for the people. As a journalist, I have seen many people make promises to those less fortunate. I can honestly say that Mr. Pryor not only assured me that he would take action on live television, a message played statewide...he made a commitment. As a newly elected County Commissioner from the largest county in Alabama...and as the county's first African American woman, and it' youngest ever elected, and as a Democrat...I am proud and honored to offer my support for Attorney General Bill Pryor. He is stellar in his service to all people and he would make an outstanding judge, for he is *truly* a public servant.

Sincerely,

Commissioner Shelia Smoot
Jefferson County Commission, District 2

COURTNEY W. TARVER
100 N. Union Street
P.O. Box 301410
Montgomery, AL 36130-1410

June 10, 2003

Hon. Richard Shelby
United States Senate
110 Hart Senate Office Building
Washington, DC 20510

Hon. Jeff Sessions
United States Senate
335 Russell Senate Office Building
Washington, DC 20510-0104

RE: Letter of Support for the Confirmation of Bill Pryor for Judge on the United States Court of Appeals for the Eleventh Circuit

Dear Senators Shelby and Sessions:

I write this letter in support of the Senate confirmation of Bill Pryor to serve as a judge for the United States Court of Appeals for the Eleventh Circuit. As an attorney, a citizen, and as someone who knows Bill Pryor personally and professionally, I know and you and the rest of the Senate should know, that confirming him is the right thing to do for the right reasons. I feel that I may have a fairly unique perspective on his confirmation since I am probably one of the few people who has litigated matters with Mr. Pryor as my opponent, as my colleague, and most recently, as my direct supervisor--all during my tenure as an assistant and now deputy attorney general and general counsel of one of the largest state agencies in Alabama.

I first learned of Bill through a mutual friend and colleague of ours with whom he had worked in private practice in Birmingham. The two were not in the same law firm but both had represented clients with similar interests in litigation. Despite the fact that this attorney was a staunch Democrat who had worked on several national and statewide campaigns for Democratic candidates and who even sought the highest Alabama Democratic Party statewide staff position, he and Pryor had immense mutual respect. That is because this nominee is exceptionally bright, a great litigator, an astute politician, and he consistently does the right thing for what he believes are the right reasons.

I recall that I actually met Bill later, in the courtroom, when I was defending the positions of largely Democratic officeholders in redistricting litigation and he was representing the Republican Party. Though we vigorously represented our clients and argued on opposite sides, he was, as is typical, well-prepared, articulate and always professional and courteous.

We met again in trial and appellate courtrooms on opposite sides of some of the most contentious voting rights litigation in our state's history. There he was initially not an attorney of record but was more of a spectator and legal strategist with opposing counsel. It followed statewide elections, when most of the key officeholders changed or changed political parties (in a Republican sweep of historic

proportions). Again, even in heated opposition and in the midst of a rising, favorable political tide, Bill maintained an air of professionalism and courtesy which the bar is so often deemed to have lost today.

As a result of the election, when now Sen. Sessions became Alabama's Attorney General, he brought with him Bill Pryor to lead the major civil litigation for the State. There, we had the opportunity to work together in conducting civil litigation. Given his close proximity to the new boss, there wasn't any need for this rising star to have to consult with his previous opponents on their views of litigation which were sure to change given the change in parties (legally and politically). However, characteristic of Bill Pryor, he sought out the opposing views to his positions in litigation when he was not obliged to do so. Despite differences on this and other cases, he continued to solicit the positions of other attorneys when their views were not calculated to be in agreement with his own to make sure that he considered all sides of an issue and that his position was best for the his client(s) and sound under the law.

Later, after first being appointed, then elected Alabama's Attorney General, he continued to listen to other attorneys and welcome debate on issues from positions not calculated to coincide with his own. General Pryor has consistently taken legal positions which are sound, in the interest of the state, even when the results are not advantageous in the views of political and ideological allies. Early after his initial appointment, when he would not take legal positions which he felt were unsound, he was criticized by some political allies, including the former governor who appointed him, for not taking a stand that was politically "right" enough. This even resulted in a lower recommended budget for the Attorney General's Office which was ultimately restored by a majority Democratic Legislature.

Since his election and now, reelection as attorney general, Bill Pryor has stuck to his philosophy of zealously defending the prerogative of the political branches' officials and their appointees to do the people's work, even under a Democratic administration. Pryor has been consistent in principled legal representation: defending state legislation and agency policies which may not be his personal or political choices, but those he views as decisions for those officials' to make, so long as they do not violate existing state or federal law. In every discussion about a case I have ever had with Bill Pryor, the bottom line question from him has been what does the applicable law require, and among various options, what is the right thing to do.

At the end of the day, this nominee and all others deserve to be voted up or down. The vote will inevitably have some ideological influence. For judges, the focus should be their independence, scholarship, respect for the rule of law and ability to be fair towards everyone, his personal views notwithstanding. Bill Pryor has demonstrated all of these qualities. My only hesitation in writing this letter is not fear of what we will gain in a federal judge, but what we will lose in a state attorney general who understands and makes litigation decisions based on the law, even when that decision is inapposite to his personal and political views.

Sincerely,

Courtney W. Tarver

Courtney W. Tarver

U.S. Department of Justice

United States Marshals Service

Southern District of Alabama

Mobile, AL 36602

April 28, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, DC 20510

Dear Senator Sessions:

It has been brought to my attention that Alabama Attorney General Bill Pryor is being considered for appointment as a Federal Circuit Court of Appeals Judge in the Eleventh Circuit.

I have worked with and for Bill Pryor for a period of seven years while employed by the State of Alabama Office of the Attorney General. When Attorney General Pryor was appointed to serve out your unexpired term as Attorney General, I was selected to serve as the Law Enforcement Liaison under his administration. I have continued my professional association with Bill Pryor since becoming the U.S. Marshal, and have had only positive experiences with him.

I can honestly say that Bill Pryor is one of the most honest, trustworthy and loyal people that I have ever had the pleasure to work for. Attorney General Pryor's commitment to fair and impartial justice will qualify him to serve in any court in our land. He is a highly intelligent person and he seems to have the ability to sort out the most complex problems in civil and criminal matters without any difficulty.

During my employment with Attorney General Pryor, I had the opportunity to travel around the state with him, and he is highly respected by everyone that knows him. He is a God-fearing family man, and his ethical and moral values are above reproach.

I support this nomination with no reservations, and any consideration given to this appointment will be appreciated. I don't know of a more qualified person for this judgeship.

Sincerely,

Bill Taylor
United States Marshal
Southern District of Alabama

William Taylor
221 Woodland Drive
Jackson, AL 36545

March 26, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Building
Washington, DC 20510

Dear Senator Sessions:

It has been brought to my attention that Alabama Attorney General Bill Pryor is being considered for appointment as a Federal Circuit Court of Appeals Judge in the Eleventh Circuit.

I have worked with and for Bill Pryor for a period of seven years while employed by the State of Alabama Office of the Attorney General. When Attorney General Pryor was appointed to serve out your unexpired term as Attorney General, I was selected to serve as the Law Enforcement Liaison under his administration.

I can honestly say that Bill Pryor is one of the most honest, trustworthy and loyal people that I have ever had the pleasure to work for. Attorney General Pryor's commitment to fair and impartial justice will qualify him to serve in any court in our land. He is a highly intelligent person and he seems to have the ability to sort out the most complex problems in civil and criminal matters without any difficulty.

During my employment with Attorney General Bill Pryor, I had the opportunity to travel around the state with him, and he is highly respected by everyone that knows him. He is a God-fearing family man, and his ethical and moral values are above reproach.

I support this nomination with no reservations, and any consideration given to this appointment will be appreciated. I don't know of a more qualified person for this judgeship.

Sincerely,

Bill Taylor

Bill Taylor

AT LARGE: Pryor is a man to be respected as a judge

By Tommy Stevenson
April 13, 2003

Email this story.

When it was announced last week that Alabama Attorney General Bill Pryor was being nominated by President George W. Bush for a place on the federal 11th Circuit Court of Appeals, I recalled my first encounter with Pryor shortly after he was appointed attorney general in 1997.

Pryor, who was appointed by then-Gov. Fob James and who has subsequently been elected AG twice, was in Tuscaloosa speaking to a civic club when word came he was urgently needed in Birmingham where federal and state indictments had been returned and some absentee voter fraud cases were being announced.

It was too late to drive to the Hugo Black Federal Building, so a private helicopter was secured, and I tagged along for the ride because I had to cover the U.S. attorney's press conference.

It turned out to be Pryor's first helicopter ride, and he oohed and aahed like a wide-eyed kid on his first visit to Six Flags as we skimmed above the tree tops before touching down on the roof of the Alabama Power Co. Building in downtown Birmingham.

We chatted mostly about nothing on the brief flight, and I was struck by what a really nice guy the new attorney general appeared to me ó very much unlike what I had expected from a James appointee during the days when the former governor seemed intent on challenging the federal government at every turn and running state government from a philosophy of benign-bordering-on-malign neglect.

Sure Pryor, a Tulane Law School graduate and member of such sinister (to me at least) organizations as the Federalist Society, an antigovernment legal think-tank, was and remains an archconservative in good standing.

But he also has a cagey moderate streak, most evident during his first term when he diffused some of James' more irresponsible initiatives, such as his attempt to defy federal court orders over Alabama's Chief Justice Roy Moore's posting of the Ten Commandments in the state Judicial Building.

OTHER NYTRNG SITES

TODAY'S POLL:

How long will it be before U.S. troops return home from Iraq?

Number of votes cast: 671

When Pryor's nomination as judge on a court one step below the Supreme Court was announced last Wednesday, Democrats and liberal lobbying groups began licking their chops in anticipation of what we have been told could be a bruising confirmation process in the Senate.

Unlike many of Bush's "stealth" nominees to the federal bench who have little public record to scrutinize, Pryor's writings, rulings and speeches will give his opponents ample fodder for confrontation.

As a pro-life politician who has engaged in two statewide campaigns, Pryor has been in the political arena and ó as an intellectual, committed conservative ó his thoughts and philosophy have been articulated in numerous speeches at the Ronald Reagan Presidential Library, the Heritage Foundation, the American Enterprise Institute, the libertarian Cato Institute and the aforementioned Federalist Society, where he is chairman-elect of its Federalism and Separation of Powers Practice Group.

He also has written opinion pieces for the Wall Street Journal, the New York Times, USA Today and several scholarly law reviews and has testified before Congress several times on constitutional and environmental rights.

So when Pryor's confirmation hearing rolls around (if, indeed, the Democrats don't keep his nomination bottled up), look for his opponents to have plenty of ammunition.

But you know what? The suspicion here is that Pryor, still boyish at 41, will handle himself quite well.

And if I was a Democratic senator, I would save my time and energy for some other nominee not possessed of the honesty, commitment and integrity of Bill Pryor, with whom I agree on very little but respect very much.

Reach Tommy Stevenson at tommy.stevenson@tuscaloosanews.com or 205-722-0194.

Utah Domestic Violence Advisory Council
320 West 200 South, Suite 270 B • Salt Lake City, Utah 84101 • (801) 521-5544 • Fax (801) 521-5548

Judy Kasten Bell, Administrator

March 13, 2003

Senator Orrin Hatch
United States Senate
104 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Hatch,

It is with great honor the Utah Domestic Violence Advisory Council (UDVAC) supports the appointment of Ms. Diane M. Stuart as Director of the Office on Violence Against Women. Ms. Stuart is a leader in the field of domestic violence issues. She possesses the unique ability to work within systems to effect positive outcomes. She demonstrated her effectiveness as staff to the Governor's Domestic Violence Cabinet Council by developing a State Master Plan for the Prevention of and Services for Domestic Violence with all state departments in Utah. Ms. Stuart served with the UDVAC first as staff to the Council and then as a member. Her work with the UDVAC generated two annual state conferences on domestic violence issues as well as a framework for Utah's state domestic violence coalition to move forward as the voice for community response to domestic violence.

Ms. Stuart's previous accomplishments, capacity for analytical thinking, and ability to work with others represent the drive and motivation necessary to succeed in this position. We believe she is an extraordinary woman who inspires those around her to give more as she naturally gives to others in every facet of her life. She portrays by example and teaching the manner in which communities and systems can work together to end domestic violence.

Ms. Stuart is compassionate and dedicated to helping others, which has given her a desire to serve the people of Utah and now the communities of this great nation. She is capable of identifying alternative perspectives, even those in conflict with her own, yet she neither judges, nor criticizes them. Ms. Stuart continues to seek valuable experiences along with professional skills that will allow her to advance in her life and career.

UDVAC highly recommends Ms. Diane Stuart for the position of Director of the Office on Violence Against Women.

Sincerely,

Ned Searle

Ned Searle, Chair

cc: Senator Patrick Leahy
Nancy Scott Finan

D. Allan Wade
205 Oakforest Drive
Pelham, Alabama 35124

March 25, 2003

Honorable Jeff Sessions
Senator
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Sessions:

It is my understanding that the name of Alabama Attorney General Bill Pryor has been offered as a candidate for appointment to the 11th Circuit Court of Appeals. As Chief of Police for the City of Pelham, Alabama, I would like to add my name to the list of police chiefs from around our great state who heartily support this nomination. I have been privileged to work with General Pryor and his staff on a number of occasions and have always found him to be professional, fair and above all ethical. He is a dedicated, caring public servant and, in my humble opinion, would be an absolute asset to the 11th Circuit Court of Appeals.

Thank you for your consideration in this matter.

Sincerely,

Allan Wade
Chief of Police
City of Pelham, Alabama

The Wall Street Journal
June 10, 2003

OP-ED: Bill Pryor's Turn

By DOUGLAS W. KMIEC

We are edging closer to the end of an important Supreme Court term, and to the resolution of cases dealing with everything from California's attempt to censor Nike's commercial speech, to Michigan's efforts to skew law school and college admissions by race to promote diversity, and Texas's criminal prohibition of homosexual sodomy. Yet these cases are overshadowed by off-stage dramas: constitutional doubts over the Democratic practice of judicial filibusters, and continued partisan skirmishing over district court nominees. These sideshows spell trouble for the speculated final act of Chief Justice William Rehnquist and possibly Justice Sandra Day O'Connor, rumored to be contemplating retirement to allow a president from the party which appointed them to appoint their successors.

The absence -- on the brink of Supreme Court vacancies -- of a set of constitutional rules regarding filibusters is worrisome. In the meantime, the effect of this acrimonious practice is felt largely by the president's federal appellate nominees, Miguel Estrada, Patricia Owen and Carolyn Kuhl. And this week, the opposition is gearing up to add Bill Pryor, nominated for the 11th Circuit, to the list of able persons who are being denied, not with a politically accountable "up" or "down" vote, but by stealth and delay.

* * *

Mr. Pryor has been Alabama's attorney general for over six years and has pages of plaudits from Democrats and Republicans alike. Having graduated near the top of his law class at Tulane and clerked for the civil-rights legend Judge John Minor Wisdom, Mr. Pryor has an impeccable record of seeking racial justice, including assisting the federal prosecution of the 1963 bombing of the 16th Street Baptist Church. Nevertheless, the New York Times recently editorialized that Mr. Pryor's nomination is "troubling" because he wrote a brief supporting the Texas law against homosexual sodomy. When not playing "guilt by client representation," Mr. Pryor's opponents also complain of his successful defense of state sovereignty, as if it is now "out of the mainstream" for a state legal officer to do anything else. Other activists attempt to portray the Pryor nomination as antiwoman since he agreed with the Supreme Court's invalidation of a part of the Violence Against Women Act.

The anti-Pryor opposition is thus the usual litmus litany of complaints: he's skeptical of sweeping assertions of nontextual rights, like abortion; questions unlimited federal power; and defends the authority of the people within their states to reach their own moral judgments. But his adversaries have a problem: Mr. Pryor follows the law, even when he disagrees, and is uniformly acknowledged to be a man of intelligence, industry and fairness. For example, he instructed prosecutors to construe a broadly written Alabama abortion limitation consistently with the viability line put forth in Planned

Parenthood v. Casey. Mr. Pryor has also been praised by women's groups across Alabama as "working tirelessly to protect women and children from the dangers of domestic violence."

Bill Pryor is a principled man. In his brief defending the right of states to legislate against homosexual sodomy, he candidly argues that our jurisprudence has "protected marriage, child-bearing, and the family -- not extramarital sex." Since such laws are often unenforceable, there is tremendous pressure on the Supreme Court, from liberal and libertarian alike, to tell Texas that the regulation of sexual activity is off-limits. There is prudence in this, as even Thomas Aquinas cautioned against attempting to enact every virtue or prohibit every vice. Yet Mr. Pryor argues forcefully that "the category of morality [has always been] among state concerns. The laws regarding marriage which provide both when sexual powers may be used and the legal and societal context in which children are born and brought up, as well as laws forbidding adultery, fornication, and homosexual practice . . . form a pattern so deeply pressed into the substance of our social life that any Constitutional doctrine must be built upon that basis."

Unlike his strident opponents, Mr. Pryor admits that the path Texas has chosen is "open to debate," but his most telling point is that it is not for a judge to say a statute favoring the morality of the traditional family is irrational merely because some disagree. That other states have decriminalized homosexual activity, or even adultery, is "simply an example of how this country's federalist system works," writes Mr. Pryor, and declaring some ill-defined interest in intimate association to be a constitutional right does not facilitate debate, it stops it. These are wise and temperate words, respectful of opinions deeply contrary to his own. They also reveal someone who, if acting in a judicial capacity, would understand that in a democratic society, legislatures, not courts, are constituted to respond to the will and moral values of the people.

There is a last point that should not be swept under the rug. Mr. Pryor (and Ms. Kuhl) are practicing Catholics. Some of the opposition to both comes dangerously close to a religious exclusion, or at the very least, indulges the tired belief of the Legal Realist school that it is impossible to separate who you are from how you judge. One thought that John F. Kennedy had put this kind of sophistry to rest in his 1960 presidential campaign.

Apparently not.

Mr. Kmiec, presently dean of the Catholic University School of Law, will accept the Caruso Chair in Constitutional Law at Pepperdine in August. He was head of the Office of Legal Counsel under Presidents Reagan and George H.W. Bush.

Guntersville Police Department
340 Blount Ave.
Guntersville, Alabama 35976
Phone (256) 571-7571

March 24, 2003

The Honorable Jeff Sessions
United States Senate
493 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Sessions,

I understand that President Bush is considering Alabama Attorney General Bill Pryor for nomination to the Eleventh Circuit Court of Appeals. I write in support of that nomination.

I have known General Pryor for a number of years, both in his capacity as Attorney General and as a citizen of Alabama. I have been a member of the Attorney General's Legislative Committee from the beginning of General Pryor's service to the State of Alabama and have worked with him in his efforts to help law enforcement, and have seen first hand, his commitment to ensure that the people of Alabama are safe, and well represented in the Courts. It is my experience that General Pryor is fair and judicious in carrying out the duties of his office.

I am excited that a person of such integrity is being considered for such an important position, and I support Bill Pryor's nomination without reservation.

Sincerely,

J Scott Walls

J Scott Walls
Chief of Police
Guntersville, Al.

City of
Montgomery, Alabama

BOBBY N. BRIGHT
Mayor

MONTGOMERY CITY COUNCIL
MRS. ALICE D. REYNOLDS-Pres.
JAMES A. NUCKLES-Pres. Pro tem
WILLIE COOK
TERANCE D. DAWSON
CHARLES W. JINRIGHT

TRACY LARKIN
B. J. (BEN) MCNEILL
P. E. (PEP) PILGREEN
CHARLES W. SMITH

March 26, 2003

The Honorable Jeff Sessions
U.S. Senate
493 Russell Senate Office Building
Washington, DC 20510

Dear Senator Sessions:

I was thrilled to receive the information that Attorney General William "Bill" Pryor was being considered for a seat on the 11th Circuit Court of Appeals. I have known Bill since he began his tenure as Attorney General and it has been a real pleasure to work with a public servant with his degree of commitment and professionalism.

Attorney General Pryor is without question one of the most honest and ethical law enforcement professionals I have ever had the pleasure of working with during my career. His appointment will be a tremendous asset to the Judicial System and will go a long way toward helping local law enforcement officers.

Please accept this as a letter of support and, if my personal testimony is needed I will be more than willing to appear, any time and anywhere, on Attorney General Bill Pryor's behalf.

Sincerely,

John H. Wilson
Chief of Police
Montgomery Police Department

/bmr

COL. JOHN H. WILSON
Chief of Police

P.O. Box 159, Montgomery, Alabama 36101-0159

(334) 241-2651
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THE WOMEN'S FUND

March 27, 2003

Senator Jeff Sessions
493 Russell Senate Office Building
Washington, DC 20510

Dear Senator Sessions:

I'm writing today in support of the nomination of Attorney General Bill Pryor to the Eleventh Circuit Court of Appeals. During his illustrious career General Pryor has demonstrated his compassion for the citizens of Alabama in countless ways. Of special importance to those of us who serve on the Board of Directors of The Women's Fund of Greater Birmingham has been his focus on the plight of victims of domestic violence.

You may know that in 2001 General Pryor awarded Nine West Inc. settlement money to The Women's Fund to create and implement a meaningful program to combat domestic violence in Alabama. Those of us on the board went to work to maximize our AG's investment by creating *CUT IT OUT Salons Against Domestic Violence* that is now operating in its second year in Alabama and will be launched nationwide later this year through a professional business partnership.

I sincerely hope that you will confirm General Pryor's nomination. He is more than fair and judicious and treats issues on women and minorities with great care and respect. And from a more personal standpoint, I celebrate his vision and personal courage to trust and empower others to positively impact our community and our state.

Sincerely yours,

Dianne Mooney

Dianne Mooney
Allocations Chair
The Women's Fund of Greater Birmingham

THE WOMEN'S FUND OF GREATER BIRMINGHAM
A component fund of The Community Foundation of Greater Birmingham
2100 1ST AVENUE NORTH, SUITE 705, BIRMINGHAM, ALABAMA 35203
TELEPHONE (205) 328-8641 FAX (205) 328-8376

Blanton's murder conviction before the Alabama Court of Criminal Appeals later this month.

Pryor started a mentoring program for at-risk kids, and regularly goes to Montgomery public schools to teach African-American kids to read.

Because Bill Pryor has a civil rights record that very few can equal, it is no wonder that African-American leaders who know and have worked with him -- like Artur Davis, Joe Reed, Cleo Thomas and Alvin Holmes -- support his nomination to the 11th Circuit Court of Appeals.

Ignoring Pryor's defense of voting rights for African-Americans, PFAW charges that he opposes the landmark Voting Rights Act. The truth is, he has dutifully enforced all of the Voting Rights Act every time a case has come up.

Pryor has simply stated that a procedural part of the Voting Rights Act -- Section 5 -- has problems that Congress should fix. Section 5 requires federal officials in Washington to approve even minor changes in voting practices that have nothing to do with discrimination.

For example, last year, Pryor issued an opinion that required a white replacement candidate for a deceased white state legislator to get Washington approval under Section 5 to use stickers to put his name on the ballot over the name of the deceased candidate.

Thurbert Baker, the African-American Democratic attorney general of Georgia, has voiced similar concerns about Section 5 before the U.S. Supreme Court.

Undeterred, PFAW and its allies also charge that Pryor believes in "states' rights" -- their code words for racism. The truth is that he believes in the Constitution. He has fought to protect the state's treasury from lawsuits that would have taken our tax dollars away from the state -- away from salaries for teachers and medical care for poor people.

It is the job of an attorney general to defend his client -- the state. In fact, the key Supreme Court case on defending a state from lawsuits was won not by Pryor, but by Democratic Attorney General Bob Butterworth of Florida.

Democratic attorneys general like Eliot Spitzer of New York, Jim Doyle of Wisconsin and others have all made the same arguments to defend their state budgets. I guess they are all "right-wing extremists," too.

PFAW and its allies have also attacked Pryor for being extremist on abortion rights. As a dedicated Roman Catholic, Bill Pryor loves kids and is against abortion, no doubt about it.

But even though he disagrees with abortion, he instructed Alabama's district attorneys to apply Alabama's partial-birth abortion law in a moderate way that was consistent with U.S. Supreme Court precedent.

Again, he was criticized by Republicans; pro-life activists accused him of gutting the statute. Again, he didn't back down.

Not surprisingly, PFAW and its allies have attacked Pryor for supporting the display of the Ten Commandments in courthouses. But Pryor simply took the position that if a representation of the Ten Commandments can be carved into the wall of the U.S. Supreme Court's courtroom, it can be placed in an Alabama courtroom.

PFAW also has attacked Pryor for the position he took in the Alexander vs. Sandoval case, in which a person who didn't speak English sued to force Alabama to spend its money on printing driver's license tests in foreign languages.

As broke as our state is, there are better things to spend our money on -- like teaching kids to read English so they can take the test and read road signs, and also paving the roads for them to drive on. Pryor fought this attempt to drain our state budget, and the U.S. Supreme Court agreed with him.

The truth and the record show that Bill Pryor has fought for the civil rights and voting rights of African-Americans in Alabama when PFAW was nowhere to be found. Now that President Bush has nominated Pryor to a federal judgeship, PFAW assumes that it can come here and attack him.

I, for one, suggest that PFAW pack up its pro-pornography, flag-burning, anti-religious, attack-dog tactics and go back to Hollywood and Washington.

We who actually know Bill Pryor support him 100 percent.

Willie Huntley is a former assistant U.S. attorney for the Southern District of Alabama. An African-American, he now has a private law practice in Mobile.