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**Bcc:** Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP [ WHO ] )

**Subject:** : Today's News

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UNKNOWN ] )

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June 12, 2003, 8:45 a.m.

The Nominee Who Won't Back Down

Alabama's Bill Pryor faces Senate Democrats.

By Byron York

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At least that's what the confirmation handbook says you should do. But on Wednesday in the Dirksen Senate Office Building, William Pryor, the Alabama state attorney general who has been nominated to a seat on the 11th Circuit Court of Appeals, threw the confirmation handbook out the window. The result was one of the most extraordinary Judiciary Committee sessions in recent memory.

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Pryor has said some very blunt things in the past. For example, he's a vigorous opponent of abortion and has called the Roe v. Wade decision "the worst abomination in the history of constitutional law."

The quote appears in every anti-Pryor tract produced by the liberal interest groups that oppose his nomination. Before the hearing, Pryor no doubt knew that more than one senator would read his words to him and ask for an explanation. And indeed, right off the bat, New York Democrat Charles Schumer recited the "abomination" line and asked, "Do you believe that now?"

It was the perfect moment for Pryor to begin a backpedaling, thank-you-for-your-question-and-please-confirm-me explanation. Instead,

Pryor said, simply, "I do."

Schumer looked slightly amazed. "I appreciate your candor," he said. "I really do."

Later, Pennsylvania Republican Arlen Specter went over the same ground. Did Pryor really say such a thing? Specter asked. Was the quote accurate?

Yes, Pryor said, the quote was accurate.

Did Pryor stand by his words?

"I stand by that comment," Pryor said. "I believe that not only is [Roe] unsupported by the text and structure of the Constitution, but it has led to a morally wrong result. It has led to the slaughter of millions of innocent unborn children."

Specter seemed more than a little chagrined. "Well," he said, pausing for a moment and looking down, "let's move on."

There were plenty of other Pryor statements to move on to. There was the time he said that with Roe, the Supreme Court had created "out of thin air a constitutional right to murder an unborn child." And then there was the remark that he "will never forget January 22, 1973 [the day of the Roe decision], the day seven members of our highest Court ripped up the Constitution."

Given more opportunities to back away from his words, Pryor again declined. "I believe that abortion is the taking of human life," he explained when committee chairman Orrin Hatch asked him about his comments. "I believe that abortion is morally wrong."

At that point some longtime confirmation observers, while impressed with Pryor's candor, wondered what was going on. Who is this guy? Is he suicidal?

Honest would be more like it. In years of speeches, interviews, campaigning, and writing, Pryor has in fact said many of the things attributed to him. Faced with strong Democratic opposition in a tense confirmation setting, he could either do an across-the-board climb down - something that would have looked ridiculous, given the intensity of his opinions on many matters - or he could argue that yes, he holds strong personal views but is able to separate them from his performance as a public official.

Pryor chose the latter. "I have a record as attorney general that is separate from my personal beliefs," he told Hatch. "I am able to put aside personal beliefs and follow the law, even when I strongly disagree with it."

On abortion, Pryor argued that, despite his personal opposition, he had ordered Alabama's district attorneys to take "the narrowest construction available" of the state's newly passed partial-birth-abortion ban. Pryor told the committee that he believed Supreme Court precedent, specifically the Casey decision, dictated a more moderate reading of the

law than the aggressive stance favored by some pro-life groups in Alabama. "Look at my record," he told the committee. "I have done my duty."

#### MR. FEDERALISM

After abortion, the most contentious issue at Wednesday's hearing was the sometimes-touchy legal relationship between the states and the federal government. Pryor is a state attorney general and has on several occasions argued in favor of state interests when he felt they were being encroached upon by federal power. For his troubles, the left-wing interest group People for the American Way recently called him "a leader of the modern states' rights movement," a not-too-subtle attempt to link Pryor to southern defenses of segregation.

People for the American Way and other critics pointed to a Supreme Court case, *United States v. Morrison*, in which Pryor filed an amicus brief arguing against the constitutionality of part of the Violence Against Women Act. Pryor argued that Congress had unreasonably stretched the meaning of the Constitution's Commerce Clause to impose federal penalties on those guilty of violence against women. He argued that if Congress wanted to use the Commerce Clause to regulate an activity, then that activity must involve commerce - and that physical assault does not qualify. Pryor's opponents have written disapprovingly that he was the only state official to file a brief opposing portions of the act, while officials from 37 other states filed briefs supporting it.

To hear Democrats tell it, Pryor had made a grievously misguided legal judgment. But the problem for Pryor's opponents is that he was, in fact, proved right. The Supreme Court, in a five-to-four decision, ruled in favor of Pryor's argument in *United States v. Morrison*.

The same held true for other federalism cases in which Pryor played a part. While committee Democrats clearly did not like Pryor's position in those cases, they found it difficult to overcome the fact that Pryor's arguments had been validated by a majority of the nation's highest Court. At the very least, Pryor's Court victories made it difficult for Democrats to charge, as they have in other confirmation battles, that the nominee was far outside the judicial mainstream.

#### THAT NICE JUSTICE SOUTER

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Yes, there was the "states' rights" innuendo - Pryor told the committee he didn't like the term because "from John C. Calhoun to George C. Wallace" it had been "used as an illegitimate defense of evil." There was also some talk about Pryor's opinion on one portion of the Voting Rights Act. But the strength of Pryor's record on race forced Democrats to abandon their traditional strategy of accusing southern Republicans of being "insensitive" to the concerns of African Americans.

To attack Pryor on race, Democrats would have had to counter the evidence contained in a detailed testimonial for Pryor sent to the committee by Alabama Democratic state representative Alvin Holmes. Offering his "full support and endorsement" of Pryor, Holmes, who is black, listed several examples of what he called Pryor's "constant efforts to help the causes of blacks in Alabama." Pryor had sided with the NAACP against a Republican lawsuit challenging state-legislative districts, Holmes wrote, even after he "came under heavy pressure from other white Republicans in Alabama for fighting to protect black legislative seats." Pryor played a key role in the prosecution of the last men charged in the 1963 Birmingham church bombing, took the lead in ending racial disparities in criminal sentences, worked to strike the state's ban on interracial marriages, and wrote a bill strengthening penalties for cross burning, Holmes wrote.

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