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Bill Pryor's double-edged conservative sword

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By **SEAN REILLY**
Washington Bureau

WASHINGTON -- It was November 2003 and Alabama Attorney General Bill Pryor was coming off a dismal week. In Alabama, Christian conservatives were seething at his role in booting Chief Justice Roy Moore from the Alabama Supreme Court. On Capitol Hill, Senate Democrats had repulsed another attempt to confirm Pryor for a lifetime judgeship on the Atlanta-based 11th U.S. Circuit Court of Appeals.

But on a Saturday morning at a swank downtown Washington, D.C., hotel ballroom, dozens of lawyers were rising to their feet as the visibly moved Mobile native stepped to the front. The occasion was a national gathering of the Federalist Society, a conservative legal organization; the standing ovation came even though Pryor was only moderating a panel discussion.

"I have a lot of friends here, and I'm very grateful for their support," he said afterward, as well-wishers lined up before the podium.

More than a year later, Pryor's Federalist Society bonds may help explain why he temporarily occupies an 11th Circuit judgeship at the comparatively tender age of 42. They also suggest why he could be out of that job by year's end.

Founded in 1982 as an alternative to what it describes as the "orthodox liberal ideology" found in law schools, the organization -- formally called The Federalist Society for Law and Public Policy Studies -- now claims some 35,000 lawyers and law students in its ranks. Since taking office four years ago, President Bush has repeatedly tapped its members, including Pryor, to fill federal court vacancies. In Alabama, other Republican members or fans include Pryor's mentor, U.S. Sen. Jeff Sessions of Mobile; Attorney General Troy King; and state Supreme Court Associate Justice Harold See.

But for congressional Democrats scrutinizing Bush's judicial picks, membership in the society now means what membership in the American Civil Liberties Union symbolizes to many Republicans, according to one outside expert.

"It raises the possibility that this person might be an extremist," said Sheldon Goldman, a political scientist at the University of Massachusetts Amherst and an authority on the judicial selection process.

"That is absolutely baloney," Sessions scoffed in an interview last week, branding those kind of suspicions "the latest desperate attempt by the left" to block the president's judicial nominees. "It's a group of thoughtful lawyers who care about America."

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Different views

Sessions and others describe the society as essentially an open debate club with a commitment to giving equal time to both sides. Apart from an allegiance to broad conservative and libertarian legal principles such as a limited role for the federal government, the society does not lobby or take positions on issues.

Some, however, characterize it as a powerful behind-the-scenes force both as an informal think tank and a network in pushing the legal system to the right.

"I think the Federalist Society has been extraordinarily successful in framing the legal debate and then mobilizing a network of conservative lawyers behind their ideas," said Lisa Brown, executive director of the Washington, D.C.-based American Constitution Society, a 3-year-old legal organization that was founded as a liberal alternative.

Society members can join "practice groups" that trade ideas and develop legal theory in civil rights law, religious liberties and more than a dozen other areas. And some lawyers acknowledge that membership has real-world uses.

"There is nothing about the organization itself ..." said Steven Krane, a partner in the New York City office of Proskauer Rose LLP, "but to the extent that people meet people in high positions, you work with them and maybe at some point they can help you with something you want to accomplish."

By Democrats' count, 49 of Bush's 230 candidates for the federal bench are either Federalist Society members or frequent speakers at its events. If accurate, that proportion is far higher than the organization's representation in the legal community as a whole.

"The Federalist Society appears to be the secret handshake that judicial nominees share with the White House," U.S. Sen. Dick Durbin, D-Ill., said in a recent interview. Asked about that allegation last week, White House spokesman Taylor Gross would not speak to it directly.

"The president seeks the most qualified individuals to serve as judges," Gross said. "It's unfortunate that some would seek to continue to politicize this process."

Of that group of 49, more than half have eventually won Senate confirmation, but Pryor and a half-dozen other appellate court nominees were among those blocked through the procedural tactic known as the filibuster in the 2003-04 session of Congress. During a string of contentious hearings, Senate Democrats homed in on past statements to build a case that the nominees' personal views were too pronounced for them to make even-handed federal judges.

Several years ago, for example, California Supreme Court Justice Janice Rogers Brown told a Federalist Society gathering that 1937, the year the U.S. Supreme Court upheld federal economic regulations as part of President Franklin D. Roosevelt's New Deal, marked "the triumph of our own socialist revolution" and the beginning of the end of private property protections.

Stirring the pot:

Bush later nominated Brown, an Alabama native, to a seat on the influential U.S. Circuit Court of Appeals for the District of Columbia. When U.S. Sen. Charles Schumer, D-N.Y., asked her about the statement at an October 2003 Judiciary Committee hearing, Brown said she was "trying to stir the pot a little bit, to get people to think."

Pryor's Federalist Society speeches have also provided grist for his adversaries. At a June 2003 hearing, Schumer singled out Pryor's 1997 denunciation of the U.S. Supreme Court's decision legalizing abortion as "the worst abomination of constitutional law in our history."

Schumer and U.S. Sen. Edward Kennedy, D-Mass., both questioned another speech that Pryor ended with the prayer, "Please, God, no more Souters."

The reference was to U.S. Supreme Court Associate Justice David Souter, an appointee of the first President Bush whose record has been a disappointment to many conservatives. While Pryor stood by his views on the abortion ruling, he described the Souter comment as "my feeble attempt at humor."

Pryor has also asserted that his personal views would not influence his ability to apply the law. Early last year, Bush sidestepped Democratic opposition by giving him a temporary "recess" appointment to the 11th Circuit court; the president has since renominated him for a lifetime seat. Should Democrats again stymie his confirmation, however, the recess appointment will expire when Congress winds up business for this year.

Sessions hopeful:

As Senate Democrats and Republicans inch toward a potentially explosive showdown over the filibuster issue, Sessions remains hopeful that Pryor's record since joining the appeals court will eventually sway some of his critics.

"I think that more than any other nominee, Bill Pryor's record has been misconstrued," Sessions said. "It's just been unfair."

Pryor, recovering from eye surgery last week, could not be reached for comment. But his commitment to the Federalist Society dates back at least as far as his law school days, when he founded the chapter at Tulane University in New Orleans.

"He's kind of known as the Johnny Appleseed of the Federalist Society," said Al Agricola, a prominent Republican lawyer who currently heads the society's Montgomery chapter. Agricola credits Pryor with establishing both that chapter and the one in Birmingham.

Indirectly, at least, his involvement with the society appears to have fueled an ascent that propelled him from the obscurity of private practice to national prominence in less than a decade.

Pryor and Sessions met during the latter's successful 1994 run for attorney general. Agricola takes credit for first connecting the two. After the election, Sessions hired Pryor for a top position. Upon advancing to the U.S. Senate two years later, Sessions encouraged Gov. Fob James to name Pryor as the new attorney general.

Sessions said the fact that Pryor was a Federalist Society member indicated "that he cared about the American legal system" and believed that judges should apply the law, not make it. He added, however, that Pryor came with "tremendous recommendations from people that he'd worked with."

After his nomination to the 11th Circuit first hit a roadblock two years, Pryor also got an assist from a group headed by one of the society's most influential members. C. Boyden Gray was the top White House lawyer under the first President Bush. He now is a member of the Federalist Society's national board and also chairs the Committee for Justice, an advocacy group to promote the current president's judicial nominees.

The organization unleashed a ruckus two years ago when it ran advertisements insinuating that Pryor's staunchly Catholic views had made him the victim of religious bias.

The ads infuriated Democrats but the committee was unapologetic. Today, Gray will lead off a Washington news conference in support of Republican efforts "to end judicial filibusters and restore Senate tradition."

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