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June 13, 2013

The Honorable Merrick B. Garland
Chief Circuit Judge
United States Court of Appeals for the District of Columbia Circuit
William B. Bryant U.S. Courthouse Annex
333 Constitution Ave., N.W., Room 5927
Washington, D.C. 20001

Re: *In re Complaint of Judicial Misconduct*, No. 05-13-90099

Dear Chief Judge Garland:

On behalf of Alliance for Justice, a national association of over 100 organizations committed to an equitable, just, and free society, I write in strong support of the complaint recently filed by several organizations and individuals against Judge Edith H. Jones of the U.S. Court of Appeals for the Fifth Circuit. It is my understanding that Chief Justice John G. Roberts, Jr. has transferred this judicial conduct proceeding, captioned *In re Complaint of Judicial Misconduct*, No. 05-13-90099, to the Judicial Council of the District of Columbia Circuit.

We were dismayed, but sadly not surprised to learn of Judge Jones's inflammatory and racially charged remarks at the University of Pennsylvania School of Law on February 20, 2013. Judge Jones's comments on capital punishment, race, the intellectually disabled, and the country and people of Mexico betrayed bias and a lack of impartiality in violation of the Code of Conduct for United States Judges. We agree with the complainants that these comments alone warrant a full investigation into Judge Jones's misconduct.

Unfortunately, the lecture at the University of Pennsylvania was not an isolated event, but rather part of a long pattern of prejudicial statements and actions by Judge Jones on issues that can and do come before her on the court. This letter details a number of those incidences of misconduct as further evidence of Judge Jones's violations of the Code of Conduct, and the need for a full investigation.

Disdain for Capital Defendants and Their Lawyers

Judge Jones's statements at the University of Pennsylvania regarding the death penalty were hardly the first instances of her showing a clear preference for capital punishment – or a clear disdain for defendants and defense lawyers in capital cases.

She reportedly complained to one lawyer that a last-minute motion he filed to stop an execution forced her to miss a birthday party.[1] In a 1990 *Texas Bar Journal* article, she strongly advocated efforts to speed up executions, including establishing a set schedule of "approximately four to six executions per month," although she noted that such a schedule might be seen as "too lenient."[2]

Notwithstanding the Supreme Court's 2002 holding in *Atkins v. Virginia* that the execution of mentally impaired individuals violates the Eighth Amendment's ban on cruel and unusual punishment, Judge Jones said at the University of Pennsylvania that claims of "mental retardation" by capital defendants disgust her. These views would have come as no shock to the lawyer for the mentally impaired defendant in the case *Bell v. Lynaugh*.[3] When the lawyer filed habeas petitions one week prior to his client's execution date after the Supreme Court granted certiorari on a case involving mitigating factors, he drew Judge Jones's ire. Judge Jones compared the attorney's conduct to that of his client: "The veil of civility that must protect us in society has been twice torn here. It was rent wantonly when Walter Bell robbed, raped murdered Ferd and Irene Chisum. It has again been torn by Bell's counsel's conduct, inexcusable according to ordinary standards of law practice."[4] Admonishing counsel who delayed the "law enforcement process" in death penalty cases, Judge Jones stated: "I would advocate considering the imposition of sanctions in cases such as this. At a minimum, I would suggest that counsel who have engaged in delaying tactics should be struck from the rolls of the Fifth Circuit and not be allowed to practice in our court for a period of years. I would not rule out imposition of other sanctions as well. A condemned man's life and society's interest in enforcing the death penalty justly are matters too important to leave to procedural games."[5]

Judge Jones's statements are all the more disturbing because, in *Bell v. Lynaugh* and other cases, she has authored opinions denying stays of execution to defendants claiming to be mentally impaired or ill. *See Ibarra v. Thaler*, 691 F.3d 677 (5th Cir. 2012); *Fearance v. Scott*, 56 F.3d 633 (5th Cir. 1995); *ShisInday v. Quarterman*, 511 F.3d 514 (5th Cir. 2007).

Hostility to Employment Discrimination Claims

Judge Jones repeatedly has demonstrated hostility to employment discrimination lawsuits. In 2001, Judge Jones told University of Texas law students that alleged victims of employment discrimination should "take a better second job instead of bringing suit," dismissing most employment discrimination suits as "petty interoffice disputes, recrimination, second guessing and suspicion," and commenting that they were often "targeted for purposes of revenge."[6]

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[1] D. Margolick, *Death Row Appeals are Drawing Sharp Rebukes*, N.Y. Times. Dec. 2, 1988; *see also* James Ridgeway, *Cash Bar in D.C.*, Village Voice, July 5, 2005, *available at* http://www.villagevoice.com/2005-07-05/news/cash-bar-in-d-c/ ("Jones famously told a defense lawyer that his last-minute appeal in a death sentence case was ruining her cocktail hour.").

[2] Bobette Riner, *Is She Too Hot for the Court*, Nat'l L. J., July 15 1991.

[3] 858 F.2d 978 (5th Cir. 1988).

[4] *Id.* at 985-86.

[5] *Id.* at 986.

[6] Janet Elliot, *Judge says bias suits undermine rule of law*, Houston Chronicle, Jan. 31, 2001.

Judge Jones reprised these views in a speech before the Federalist Society of Harvard Law School in March of 2003, in which she again spoke of employment discrimination claims as "petty interoffice disputes" and spoke of "recrimination, second-guessing and suspicion." Specifically, she reportedly said:

> "Seldom are employment discrimination suits in our court supported by direct evidence of race or sex-based animosity. Instead, the courts are asked to revisit petty interoffice disputes and to infer invidious motives from trivial comments or work-performance criticism. Recrimination, second-guessing and suspicion plague the workplace when tenuous discrimination suits are filed creating an atmosphere in which many corporate defendants are forced into costly settlements because they simply cannot afford to vindicate their positions."[7]

These comments about employment discrimination cases reflect Judge Jones's broader ambivalence about whether women's advancement in the workplace has been beneficial to women and society. In an interview with the Independent Women's Forum, Judge Jones said that she has "always opposed the ERA [Equal Rights Amendment] as being unnecessary, contrary to the *fundamental distinction between men and women*, and leading to unforeseeable and unfortunate consequences."[8] She further stated, "Although the 1964 Civil Rights Act contributed to the advancement of women's careers in society, I would have to defer to others for an overview of the impact of these equal rights laws, when balanced against factors such as the increase of out of wedlock births, the prevalence of divorce, the sexualization of society and the youth. Women's 'rights,' in the end, depend heavily on what goes on outside as well as in the workplace."

Given Judge Jones's open disdain for employment discrimination suits and women's equal rights in these extrajudicial settings, it is hard to imagine how a victim of employment discrimination could expect to have a fair and impartial hearing before Judge Jones. Her rulings in employment discrimination cases and similar suits have been consistent with her expressed views. For example, in *Urbano v. Continental Airlines, Inc.*[9] a pregnant employee asked for a transfer from her current responsibilities to light duty work, in response to her doctor's recommendation. Continental Airlines rejected this request, under the notion that this type of transfer would be permitted only in instances following an occupational injury. The employee then sued for discrimination. The Fifth Circuit Court of Appeals, in an opinion authored by Judge Jones, rejected the claim that Continental's actions were in violation of the Pregnancy Discrimination Act, because it found that the employee was not treated differently than other employees with non-occupational injuries.

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[7] Geraldine Hawkins, *American Legal System Is Corrupt Beyond Recognition, Judge Tells Harvard Law School*, Massnews.com, March 7, 2003, *available at* http://www.massnews.com/2003_Editions/3_March/030703_mn_american_legal_system_corrupt.shtml.

[8] Susanna Dokupil, *Portrait of a Modern Feminist: Hon. Edith H. Jones*, Independent Women's Forum Modern Feminist, July 2, 2012, *available at* http://iwf.org/modern-feminist/2788377/Portrait-of-a-Modern-Feminist:-Hon.-Edith-H.-Jones#sthash.H3AeZp9X.dpuf (emphasis added).

[9] 138 F.3d 204 (5th Cir. 1998), *cert. denied*, 525 U.S. 1000 (1998).

Disrespect for Fellow Judges

As the complaint details, during a 2011 *en banc* oral argument, then-Chief Judge Jones engaged in a heated exchanged with Judge James Dennis. She stood up, slammed her hand down on the table, pointed to the door and said to Judge Dennis, "I want you to shut up . . . ."[10]

This exchange was not the first occasion on which Judge Jones treated a fellow judge with disrespect. After Judge Sam Sparks of the U.S. District Court for the Western District of Texas issued a "sharply worded" order demanding that opposing counsel in a case behave civilly, then-Chief Judge Jones reportedly sent an e-mail to Judge Sparks and his Western District colleagues in which she said "this kind of rhetoric is not funny" and accused him of "simply indulging himself at the expense of counsel." She concluded the e-mail by urging Judge Sparks to "think before you write."[11]

Canon 1 of the Code of Conduct for United States Judges states that "[a] judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved."[12] The commentary states that "violation of this Code diminishes public confidence in the judiciary and injures our system of government under law."[13] One of the factors when determining if disciplinary action is appropriate is "whether there is a pattern of improper activity . . . ."[14]

The incident of telling Judge Dennis to "shut up," coupled with the disrespectful tone taken towards Judge Sparks, point to a pattern of failing to maintain high standards of conduct in Judge Jones's dealings with her fellow judges.

Putting Religion Above the Law

Judge Jones has spoken repeatedly of the primacy of religion above the law. Speaking at a 2003 Federalist Society event at Harvard Law School, Judge Jones lamented what she saw as the diminishment of the role of religion in our law: "The integrity of law, its religious roots, its transcendent quality are disappearing." She went on to state that the Framers created our government with the understanding that the rule of law "was dependent on transcendent religious obligation. . . . It is my fervent hope that this new century will experience a revival of the original understanding of the rule of law and its roots."[15]

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[10] Audio available at http://www.ca5.uscourts.gov/OralArgRecordings/07/07-41041_9-20-2011.wma (begins around the 47 minute mark). *See also* David Lat, *Judicial Diva Gone Wild? Chief Judge Jones Tells Judge Dennis to 'Shut Up'*, Above the Law, Sept. 21, 2011, *available at* http://abovethelaw.com/2011/09/benchslap-of-the-day-chief-judge-jones-tells-judge-dennis-to-shut-up/.

[11] David Lat, *Benchslap of the Day: Judge Sparks Gets a Taste of His Own Medicine*, Above the Law, Sept. 13, 2011, *available at* http://abovethelaw.com/2011/09/benchslap-of-the-day-judge-sparks-gets-a-taste-of-his-own-medicine/#more-96817.

[12] Canon 1, Code of Conduct for United States Judges, *available at* http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges.aspx.

[13] *Id.*

[14] *Id.*

[15] Geraldine Hawkins, *American Legal System Is Corrupt Beyond Recognition, Judge Tells Harvard Law School*, Massnews.com, March 7, 2003, *available at* http://www.massnews.com/2003_Editions/3_March/030703_mn_american_legal_system_corrupt.shtml.

Similarly, in 2005 Judge Jones told *The American Enterprise* magazine that, "If you are responsible to God, no matter what religion you are in, you learn moral standards that transcend the dictates of the law."[16] In 1994, Jones told the Utah Chapter of the Federalist Society that "hostility toward religious believers" was "rampant." In particular, she criticized the U.S. Supreme Court for prohibiting posting the Ten Commandments in a classroom.[17]

These views about religion superseding the law have been borne out in Judge Jones's opinions on such matters as teaching creationism,[18] school prayer,[19] and clergy in schools.[20] Given Judge Jones's public comments, no litigant would expect any other result.

CONCLUSION

Taken together with the allegations in the complaint, the public statements and actions outlined above establish a pattern of misconduct by Judge Jones that calls into question her ability to uphold the rule of law with impartiality, fairness, and integrity. Moreover, the examples above and in the complaint are representative, but by no means exhaustive, as there are numerous additional occasions on which Judge Jones has engaged in similar misconduct. As such, Alliance for Justice asks for a full investigation into Judge Jones's misconduct and violations of the Code of Conduct for United States Judges.

Respectfully submitted,

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[16] No More Mister Nice Blog, July 6, 2005, *available at* http://nomoremister.blogspot.com/2005/07/is-this-from-june-05-issue-of-american.html (quoting the June 2005 issue of *The American Enterprise* magazine).

[17] Rick Egan, Salt Lake Tribune (Feb. 24, 1994).

[18] *See, e.g., Aguillard v. Edwards*, 778 F.2d 225 (5th Cir. 1985) (Judge Jones joining dissent from denial of rehearing *en banc*); *Freiler v. Tangipahoa Parish Board of Education*, 201 F.3d 602 (5th Cir. 2000) (same).

[19] *See, e.g., Doe v. Duncanville Independent School District*, 70 F.3d 402, 409-10 (5th Cir. 1995) (Jones, J., concurring and dissenting); *Doe v. Santa Fe Independent School District*, 171 F.3d 1013 (5th Cir. 1999) (joining dissent from denial of rehearing *en banc*); *Ingebretsen v. Jackson Public School District*, 88 F.3d 274 (5th Cir. 1996) (dissent from denial of rehearing *en banc*).

[20] *See Doe v. Beaumont Independent School District*, 240 F.3d 462, 480 (5th Cir. 2001) (en banc) (Jones, J. dissenting) (noting that she was "not constitutionally concerned about the alleged pro-religious symbolism connoted by the Clergy in Schools program").