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5TH CIRCUIT, BENCHSLAPS, EDITH JONES, FEDERAL JUDGES, JUDICIAL DIVAS, READER POLLS, RIDICULOUSNESS, RUDENESS, SAM SPARKS, TEXAS, VICIOUS INFIGHTING

Judicial Diva Gone Wild? Chief Judge

Jones Tells Judge Dennis to 'Shut Up'

Can you enforce civility by being... uncivil? That's the question being raised, over and over again, by federal judges from Texas these days. Check out the latest craziness -- an en banc hearing before the Fifth Circuit that generated judicial fireworks, culminating in a judge essentially telling a colleague to STFU or GTFO....

By DAVID LAT

Sep 21, 2011 at 7:43 PM

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Chief Judge Edith Jones: Underneath her robe beats a judicial diva's heart.

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Can you enforce civility by being... uncivil? That's the question being raised, over and over again, by federal judges from Texas these days.

Before we get to the latest [ridiculousness](#), let's review. Back in August, Judge [Sam Sparks](#) (W.D. Tex.) benchslapped some rude lawyers with a [snarky order](#) inviting them to a "kindergarten party," where they would



such lessons as reasonableness and courtesy.

Ironically enough, some found Judge Sparks’s civility-seeking order to be... rude. Chief Judge [Edith Jones](#) (5th Cir.) issued an [email reprimand](#) to Judge Sparks, condemning his “caustic, demeaning, and gratuitous” order as “cast[ing] disrespect on the judiciary.” Some observers in turn thought it rude of Chief Judge Jones to call out Judge Sparks in writing, so publicly — she cc’d all of the other Western District of Texas judges on her email — when she could have just made a private phone call.

Chief Judge Jones is a highly regarded conservative jurist and a [fixture on Supreme Court short lists](#), but she might not be the best authority on civility and etiquette these days. Check out the latest craziness — an en banc hearing before the [Fifth Circuit](#) that generated judicial fireworks, culminating in Judge Jones essentially telling a colleague to [STFU](#) or [GTFO](#)....

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transcript and the recording speak for themselves, so we’ll keep the ground brief. Back in January, in the case of [United States v. Do](#), a divided panel of the Fifth Circuit tossed out the drug-related convictions of one Maria Aide Delgado. Judge [James L. Dennis](#), a 1995 Clinton appointee to the Fifth Circuit, wrote for the majority; Judge [Edith Brown Clement](#), a 2001 Bush appointee to the Fifth Circuit, dissented.



Judge Clement’s name sounds familiar, it’s because everyone thought on, for about five minutes — that she was [going to be nominated to SCOTUS](#), to replace Justice Sandra Day O’Connor.)

Judge Clement’s forceful dissent must have [gotten the attention](#) of her (generally conservative) colleagues on the Fifth Circuit, because the court agreed to rehear the case [en banc](#). The hearing took place yesterday, and things turned feisty.

James Lee Turner argued for the government as appellee. Turner got grilled for the first seven minutes of his argument by Judge Dennis, who presumably wanted to defend his opinion before the entire Fifth Circuit. Judge Dennis kept on going at James Turner, dominating the questioning — until Chief Judge Jones got fed up with what she saw as Judge Dennis’s lack of courtesy. She stepped in and shut down her outspoken, more-liberal colleague — hard.

Based on the [oral argument recording](#) (starting around the 47:30 mark), I **189** red the following transcript. Please note that I’m not a court SHARES ter; this represents my best effort. The stage directions come from a Circuit tipster; the emphases have been added by yours truly.



MR. TURNER: I think the amount of drugs in that truck supports the intent to distribute. And the jury....

JUDGE DENNIS: Well, we’ve said over and over that the amount... this court, no court has said that you can infer....



CHIEF JUDGE JONES: Judge Dennis....

JUDGE DENNIS: ... just on the basis of the amount of drugs ...

CHIEF JUDGE JONES: Judge Dennis!

JUDGE DENNIS: Can I, can I, can I ask a question?

CHIEF JUDGE JONES: You have monopolized, uh, uh, seven minutes....

JUDGE DENNIS: Well, I'm way behind on asking questions in this court. I have been quiet a lot of times, and I am involved in this case....

CHIEF JUDGE JONES slams her hand down on the table (loudly), stands halfway up out of her chair, and points toward the door.

CHIEF JUDGE JONES: **Would you like to leave?**

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JUDGE DENNIS: Pardon? What did you say?



CHIEF JUDGE JONES: **I want you to shut up** long enough for me to

suggest that perhaps....

JUDGE DENNIS: **Don't tell me to shut up....**

CHIEF JUDGE JONES: ... you should give some other judge a chance to ask a question ...

JUDGE DENNIS: Listen, I have been in this courtroom many times



...d gotten closed out and not able to ask a question. I don't think I'm being overbearing....

CHIEF JUDGE JONES: You've been asking questions for the entire seven minutes....

JUDGE DENNIS: Well, I happen to be through. I have no more questions.

CHIEF JUDGE JONES: I just want to offer any other judge an opportunity to ask a question. Some may support your position. If nobody else chooses to ask a question, then please go forward.

RANDOM FEMALE JUDGE WHO IS NOT EDITH JONES (timidly): I would like to ask a question about the necessity for a [Sears](#) instruction....


189 ah, how 'bout that [Sears](#) instruction?

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...shed Ninth Circuit oral arguments as a law clerk, participated in Circuit oral arguments as an AUSA (and watched those of my gues), and listened to many other oral arguments over the web (like [eventh Circuit classic](#)). Sometimes these arguments can get heated, ges spar with each other in the guise of posing questions to counsel. But in all these years, I have never heard one judge tell another judge to “shut up” or to leave the courtroom ([indicating](#)).

As is often the case with oral arguments, the cold transcript doesn't do it

 ce. It must have been extraordinary to witness in person. Click [here](#) and zip ahead to the 47:30 mark to listen for yourself. You can hear the “thwack” when Chief Judge Jones smacks her hand on the table — a benchslap, quite literally. DIVA-LICIOUS!

(Have you ever heard such sauciness between judges during an appellate argument? If so, feel free to send us a transcript or a link [by email](#), subject line “Oral Arguments Gone Wild.”)

Readers, what do you think? Was Chief Judge Jones appropriately cracking down on an argument-monopolizing colleague, or did she go too far in enforcing courtesy? Argue in the comments, and vote in our reader poll.

UPDATE (9/22/11, 10:30 AM): For the record, Chief Judge Jones did apologize later on in the en banc session (as readers pointed out to us in the comments and via email). You can hear the beginning of her apology — which got cut off, ironically (or fittingly?) enough — in the last five **189** ds of the [Kebodeaux argument](#).

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UPDATE (10/3/11): According to Chief Judge Jones, Judge Dennis [retracted her apology](#).

Was Chief Judge Jones's attempt to curtail Judge Dennis's questioning appropriate?

- Yes - she was within her power as a presiding judge.**
- No - she crossed the line into rudeness.**

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Earlier: [Benchslap of the Day: Judge Sparks Gets a Taste of His Own Medicine](#)

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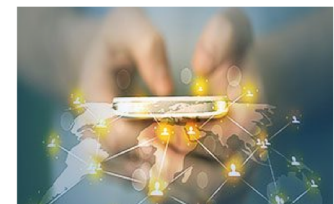
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