COMPLAINT OF JUDICIAL MISCONDUCT

I. Introduction

Pursuant to the Judicial Conduct and Disability Act and the Judicial Conference of the United States Rules for Judicial-Conduct and Judicial-Disability Proceedings,[1] Complainants file this Complaint against Judge Edith Jones of the Court of Appeals for the Fifth Circuit. Judge Jones has engaged in conduct that is prejudicial to the effective and expeditious administration of the business of the courts, undermines public confidence in the integrity and impartiality of the judiciary, and creates a strong appearance of impropriety.

This Complaint arises primarily from Judge Jones's comments at a lecture entitled "Federal Death Penalty Review" at the University of Pennsylvania School of Law on February 20, 2013.[2] In her remarks, Judge Jones made the following points:

> *The United States system of justice provides a positive service to capital-case defendants by imposing a death sentence, because the defendants are likely to make peace with God only in the moment before imminent execution;
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> *Certain "racial groups like African Americans and Hispanics are predisposed to crime," are "'prone' to commit acts of violence," and get involved in more violent and "heinous" crimes than people of other ethnicities;
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> *Claims of racism, innocence, arbitrariness, and international standards are simply "red herrings" used by opponents of capital punishment;
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> *Capital defendants who raise claims of "mental retardation" abuse the system;
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> *The United States Supreme Court's decision in *Atkins v. Virginia* prohibiting execution of persons who are "mentally retarded" was ill-advised and created a "slippery slope";

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[1] The Judicial Conduct and Disability Act allows "[a]ny person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" to file a complaint against the judge. *See* 28 U.S.C. § 351(a). To implement that Act, as amended, the Judicial Conference of the United States promulgated the Rules For Judicial-Conduct and Judicial-Disability Proceedings. Rule 3(h) defines "cognizable misconduct" as including "conduct prejudicial to the effective and expeditious administration of the business of the courts" and "conduct occurring outside the performance of official duties if the conduct might have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people."

[2] See https://www.law.upenn.edu/newsevents/calendar.php/seminars/regblog.org#date/20130220

*Mexican Nationals would prefer to be on death row in the United States rather than in prison in Mexico;

*The country of Mexico does not provide and would not provide the legal protections that a Mexican National facing a death sentence in the United States would receive.

Additionally, Judge Jones demonstrated extreme disrespect to a fellow Fifth Circuit judge, lack of judicial temperament,[3] and a failure to maintain and observe the "high standards of conduct" required of federal judges[4] by (1) loudly slamming her hand on the bench during Judge James L. Dennis's questioning of counsel during oral argument, (2) disrespectfully asking Judge Dennis if he "wanted to leave" the courtroom during the argument, and (3) saying she wanted him to "shut up." In her February 20, 2013 lecture, Judge Jones also expressed "contempt" for the United States Supreme Court rules, "generally disparage[d]" the Supreme Court, and was "dismissive of the Supreme Court's death penalty decisions regarding juveniles and the mentally retarded."

Judge Jones's statements and conduct violated 28 U.S.C. § 351 and the Code of Conduct for United States Judges.[5]

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[3] Canon 2 of the Code of Conduct for United States Judges provides: "A Judge Should Avoid Impropriety And The Appearance of Impropriety In All Activities." The Commentary to Canon 2A states that "An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances . . . would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges." (Emphasis added.) Canon 3A provides that a "judge should be patient, dignified, respectful, and courteous" to all persons "with whom the judge deals in an official capacity." (Emphasis added.)

[4] See Code of Conduct for United States Judges, Canon 1 (". . . A judge should maintain and enforce high standards of conduct and should personally observe those standards[.]").

[5] The Judicial Conference's Commentary on Rule 3 states that the Code of Conduct for United States Judges may be "informative" in determining whether a judge has engaged in conduct "prejudicial to the effective and expeditious administration of the business of the courts." The Code "is designed to provide guidance to judges . . . ," and federal judicial discipline decisions have cited and relied on the Canons. *See, e.g.*, *In re Complaint of Judicial Misconduct (Paine)*, 664 F.3d 332, 335 (U.S. Judicial Conference 2011) (stating that the Judicial Conference adopted the Code to "provide standards of conduct for application in judicial-conduct and judicial-disciplinary proceedings brought pursuant to the Act. Commentary to Canon 1. The Canons of the Code of Conduct offer general guidance"; concluding that Judge George Paine, II violated Canons 2A and 2C of the Code of Conduct for United States Judges by belonging to a country club that discriminated against African Americans and women; and overturning the Sixth Circuit's Judicial Council's finding that Judge Paine had not engaged in misconduct); *In re Porteous*, Order and Public Reprimand (Judicial Council 5th Cir. Sep. 10, 2008) (Jones, C.J.) (concluding that Judge Porteous violated Canons 1, 2A, 3C(1), 3D, 5C(1), 5(1), (4), and (6) of the Code of Conduct for United States Judges); *In re Complaint of Judicial Misconduct (Kozinski)*, 575 F.3d 279 (Judicial Council 3d. Cir. 2009) (admonishing Chief Judge Kozinski (of the Ninth Circuit), concerning an incident arising from the judge's retention of email containing sexually explicit material in a subdirectory of his personal

Attached are (1) affidavits from persons who attended Judge Jones's February 20, 2013 lecture and who account in detail her statements (Exhibits A-F); (2) a transcript of the relevant portion of the exchange between Judge Jones and Judge Dennis (Exhibit G);[6] and (3) the declarations of nationally recognized legal ethics experts, James C. McCormack (former Chief Disciplinary Counsel of the State Bar of Texas) (Exhibit H), and Lillian Hardwick (Coauthor, *Handbook of Texas Lawyer & Judicial Ethics*) (Exhibit L).

II. Judge Jones's Remarks

Comments on Race

Judge Jones made several statements demonstrating racial bias and indicating a lack of impartiality.[7] She said that "certain racial groups like African Americans and Hispanics are predisposed to crime" and "'prone' to commit acts of violence." She made "generalized and stereotypical comments about racial groups and their 'criminal tendencies.'" Judge Jones stated that "race" was merely a "red herring" "thrown up by opponents of capital punishment," and that no case had ever been made for "systemic racism." She also asserted that "certain systemic classes of crimes" exist and that "certain racial groups commit more of these crimes than others." She said that "[s]adly some groups seem to commit more heinous crimes than others." When asked to explain her remarks, she stated that there was "no arguing" that "Blacks and Hispanics" outnumber "Anglos" on death row and "sadly" it was a "statistical fact" that people "from these racial groups get involved in more violent crime." By way of example, she asserted as a "fact" that "a lot of Hispanic people [are] involved in drug trafficking," which itself "involved a lot of violent crime." She "dismiss[ed] race as a legitimate concern in how the death penalty was administered." *See* Ex. A, at ¶¶ 27-28; Ex. B, at ¶¶ 27-28, 35; Ex. C, at ¶¶ 13-14; Ex. D, at ¶ 12; Ex. E, at ¶13; and Ex. F, at ¶ 11. During the question-answer portion of the program, Judge Jones "lost her composure" to an extent that "[t]he host of the program ended the program abruptly." *See* Ex. E, at ¶ 17; Ex. D at ¶ 15; Ex. F, at ¶ 15.

Judge Jones's biased remarks demonstrated both an utter disregard for the fundamental judicial standard of impartiality and a lack of judicial temperament. Her remarks were inflammatory and damaging to "public confidence in the judiciary." In Texas, her comments resonated even more strongly given the widespread controversy in the case of Texas death row inmate Duane Buck. Mr. Buck received a death sentence after a psychologist testified during the sentencing phase that Buck posed a future danger because of his race, specifically, because

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computer that was publicly accessible; and citing and quoting from Canon 2A and the Commentary to that Canon).

[6] The audio portion of the exchange between Judge Jones and Judge Dennis is available at http://www.youtube.com/watch?v=IOkMZzAdyL8.

[7] *See* Commentary to Canon 2A, quoted above in note 3.

he was African-American.[8] The NAACP Legal Defense Fund called the psychologist-witness's testimony in the Duane Buck case a "blatant example of racial bias."[9] Scores of prominent officials are calling for a new sentencing hearing for Mr. Buck, rightly stating that "[t]he State of Texas cannot condone any form of racial discrimination in the courtroom. The use of race in sentencing poisons the legal process and breeds cynicism in the judiciary." *Id*.

Even the Texas Attorney General and the Texas Solicitor General considered such racist testimony to be so improper—and unconstitutional—that they took the highly unusual step of conceding error in the U.S. Supreme Court. *See Saldaño v. State*, No. 99-8119 (U.S.), Resp. to Pet. for Cert. at 1. As the State pointed out: "'Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.'" *Saldaño*, No. 99-8119 (U.S.), Resp. at p. 7, citing *Rose v. Mitchell*, 442 U.S. 545, 555 (1979).

Upon discovering that similar testimony was present in six other capital cases, the Texas Attorney General announced that the State of Texas would not oppose the grant of new sentencing trials in those cases. *See* Exhibit H, Press Release, Office of the Texas Attorney General, Statement from Attorney General John Cornyn Regarding Death Penalty Cases (June 9, 2000); Jim Yardley, *Racial Bias Found in Six More Capital Cases*, N.Y. Times (June 11, 2000).

Yet Judge Jones maintains and publicly defends the very unconstitutional biased beliefs that the State of Texas has rightly repudiated. Not surprisingly, Judge Jones's statements deeply offended audience members at her speech. "The reaction in the room when she made these remarks [on race] was one of shock, surprise, and offense." Ex. F, at ¶ 11 "Judging by the looks on their faces, many others in the audience were dismayed by these remarks on race. My reaction was akin to 'here we go again' – meaning that I perceived her remarks to be the type of racially insensitive comments I have heard many times in my life and professional career." Ex. E, at ¶ 13. "As an African American male, and as someone who is interested in the areas where race and law intersect, I was made uncomfortable by her comments on race and found them offensive." Ex. B, at ¶ 35. "Many of the attendees at the lecture, a group comprised of various races, looked both surprised and dismayed at these remarks [on race]. The people I was sitting next to looked at one another and me and conveyed their surprise at these remarks on the issues of race. Based on these observations as well as comments I heard after the lecture, it was clear to me that many students were offended by Judge Jones' remarks and how cavalierly she dismissed race and ethnicity as a legitimate concern in how the death penalty was administered." Ex. D, at ¶ 12.

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[8] *See* http://www.naacpldf.org/case-issue/duane-buck-sentenced-death-because-he-black (collecting pleadings, testimony, and news articles); Editorial, *Racism in a Texas Death Case*, N.Y. Times (May 11, 2013); https://www.nytimes.com/2013/05/11/opinion/racism-in-a-texas-death-case.html.

[9] *See* http://www.naacpldf.org/news/more-100-civil-rights-leaders-elected-officials-clergy-former-prosecutors-and-judges-current.

Comments on the Intellectually Disabled

Judge Jones also characterized capital defendants' assertions of "mental retardation"[10] as "red herrings." She stated that she believes it is a disservice to the "mentally retarded" to exempt them from the death sentence, and "expressed disgust at the use of mental retardation as a defense in capital cases." Ex. A, at ¶¶ 15-16, 18-19, 21; Ex. B, at ¶¶ 12, 16, 18, 21; Ex. E, at ¶¶ 7-8. She consistently asserted that the manner in which these defendants committed their crimes, such as the fact that one had allegedly worked as a "hitman" or another had gone on a "burglary spree," proved that they were not "mentally retarded." Ex. B, at ¶16; Ex. D, at ¶ 9; Ex. E, at ¶ 8. As one audience member stated, "[i]n describing . . . what Judge Jones said about these cases, I am not able to capture the complete outrage she expressed over the crimes or the disgust she evinced over the defenses raised, particularly by the defendants who claimed to be mentally retarded." Ex. A, at ¶ 19; Ex. B, at ¶18. Judge Jones's disgust at how these defendants were "using mental retardation" was very evident and very disconcerting. Ex. D, at ¶ 9; Ex. E, at ¶ 8.

These remarks were also met with disbelief and dismay. "In describing . . . what Judge Jones said about these cases, I am not able to capture the complete outrage she expressed over the crimes or the disgust she evinced over the defenses raised, particularly by the defendants who claimed to be mentally retarded." Ex. A, at ¶ 19; Ex. D, at ¶ 9. "She expressed disgust at the use of mental retardation as a defense in capital cases." Ex. B, at ¶ 18. "Judge Jones' dismissive approach to claims of 'mental retardation' surprised me. . . . [T]he whole discussion seemed disrespectful to me. She placed great emphasis on the facts of the crime as support for her position that these defendants were not 'mentally retarded,' which seemed to be a very limited – at best – analysis, and more rooted in her personal views of the crimes and the defendants than in a legal analysis." Ex. E, at ¶¶ 7-8.

In short, despite clearly established constitutional law announced by the United States Supreme Court concerning treatment of "mentally retarded" persons in capital cases,[11] Judge Jones expressed extreme bias against such persons, and against claims of intellectual disability as a whole—and thus against the law of the United States. No "reasonable mind" (in the terms of the Canon 2A Commentary) could conclude that Judge Jones could be "impartial" in ruling on cases involving claims of "mental retardation."

[10] This term is outdated—now generally replaced by "Intellectually Disabled"—and thus Judge Jones's use of the term "mental retardation" is kept in quotations.

[11] *See, e.g., Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012) ("[W]e have held that imposing the death penalty . . . on mentally retarded defendants violates the Eighth Amendment. See *Kennedy v. Louisiana,* 554 U.S. 407, 128 S.Ct. 2641, 171 L.Ed.2d 525 (2008); *Atkins v. Virginia,* 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002).").

Comments on Cases of Innocence

In Judge Jones's view, even innocence is another "red herring." "She was very dismissive of claims of innocence. She did not take seriously the possibility that innocent people had been sentenced to death." Ex. B, at ¶ 29. "She said that reversals of those who were allegedly innocent were really based on 'technicalities', not innocence. She was unapologetic when making these comments." Ex. E, at ¶ 15. According to Judge Jones, "just as many innocent people [were] killed in drone strikes as innocent people executed for crimes . . . ." Ex. C, at ¶ 15. As an audience member commented, "I thought [that] was at best a curious analogy." Ex. C, at ¶ 15; *see also* Ex. A , at ¶ 29; Ex. E, at ¶15.

Comments on Foreign Nationals

Judge Jones also denigrated the system of justice in the nation of the United Mexican States (Mexico), Mexican Nationals, and the use of international standards in capital cases. She claimed it was an "insult" when United States courts looked to the laws of another country such as Mexico, as this suggested that such legal systems were "more advanced" than that of the United States. Ex. A, at ¶ 32; Ex. F, at ¶ 14. She also indicated that any Mexican National would rather be on death row in the United States than in a Mexican prison.[12] *Id.* Judge Jones stated that Mexico "wasn't about to provide any of their own citizens with the kind of legal protections the person would get in the United States." *Id.* She again characterized as a "red herring" the claims of foreign nationals and the use of "international standards." Ex. A, at ¶ 32; Ex. D, at ¶14; Ex. B, at ¶ 32.

Discussion of Individual Cases

Judge Jones discussed at some length individual cases, including that of the "Black Widow" (apparently Betty Lou Beets), Walter Bell, Larry Hatten, Larry Swearingen, Marcus Druery, Elroy Chester, and Ramiro Ibarra. Ex. A, at ¶ 11. Only two of these people have been executed. Thus the other defendants could come before Judge Jones in future litigation. Judge Jones authored the opinions in each case she discussed. Her description of these cases evinced disgust and contempt toward the defendants, the crimes they were convicted of, and the claims they had raised. *See* Ex. A, at ¶¶ 11-19, 21; Ex. B, at ¶¶ 11, 18; Ex. C, at ¶¶ 8-9; Ex. D, at ¶¶ 8-9. "It was clear that Judge Jones was disgusted by the gruesomeness of these killings. I was surprised at how personal and emotional these particular arguments were. They seemed less analytical than [how] a judge should approach a case. I drew from her remarks that her emotions and beliefs drove the results in some of these cases." Ex. F, at ¶ 7. Judge Jones made clear her personal belief in the heinousness of the crimes committed and how, in her personal view, that justified imposition of a death sentence. As one audience member reacted: "I thought that it was simplistic for her to justify the death penalty solely on the basis of the heinousness of the crimes. She conveyed a lot of disgust about the facts of these crimes – it seemed very personal to her, which surprised me." Ex. E, at ¶ 6. ; *see also* Ex. F, at 7. Again, no "reasonable mind"

[12] Mexico officially outlawed the death penalty in 2005.

could believe that Judge Jones could be impartial in future legal proceedings involving those cases.[13]

Discussion of Religion as a Justification for the Death Penalty

Judge Jones advocated her personal religious views as a basis for justifying the death penalty. She stated that the death penalty had Biblical origins, in Deuteronomy. Ex. D, at ¶ 5; Ex. E, at ¶ 5. She stated that "a killer is only likely to make peace with God and the victim's family in that moment when the killer faces imminent execution, recognizing that he or she is about to face God's judgment." Ex. A, at ¶ 9. In support of that justification, Judge Jones cited an article that she said her husband had found on the Internet, entitled "Hanging Concentrates the Mind" (attached as Exhibit J), which she said discussed the Vatican's perspective on capital punishment while executions were occurring within the Vatican's jurisdiction. *Id.* "Judge Jones used what I would call moral language in praising the death penalty as a means to help people come to terms with the crime they committed . . . . She talked about how the imminent prospect of execution forced the criminal to confront his deed, and she said this as justification for the death penalty." Ex. B, at ¶ 10. As one of the attendees stated: "I thought it seemed out of place for a Court of Appeals judge to cite the Bible as legal support for the death penalty." Ex. E, at ¶ 5.

III. Violations of the Code of Conduct for United States Judges

Violations of Canon One

Canon 1 of the Code of Conduct for United States Judges provides that "[a] judge should uphold the integrity and independence of the judiciary." (Emphasis added.) The explanation of Canon 1 states that an "honorable judiciary is indispensable to justice in our society. 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 observed." (Emphasis added.) The Commentary to Canon 1 further provides that "[d]eference to the judgments and ruling of courts depends on public confidence in the integrity and independence of judges." (Emphasis added.)

Judge Jones's statements on race, on mentally retarded persons, on innocence claims, and on foreign nationals violate Canon 1. Judge Jones has repudiated fundamental national, moral, and constitutional principles of equality. She has repudiated basic, indisputable principles of

[13] Judge Jones's record in capital cases confirms her bias and lack of impartiality. In the many capital cases that have come before her, she has issued or joined in decisions granting substantive relief only when the United States Supreme Court either has directly commanded the Circuit Court to do so or has issued an intervening decision bearing directly on a pending case. In decisions by the en banc court or panels on which she participated that granted relief other than in response to Supreme Court action, Judge Jones dissented in every case. See the decisions listed in Exhibit K, attached hereto.

federal constitutional law as established by decisions of the United States Supreme Court. She advocated for the death penalty based upon her personal religious views. She expressed "contempt" toward the United States Supreme Court rules and "generally disparage[d] the Supreme Court. Ex. F, at ¶ 8. Her conduct neither "maintains" nor "observes" a "high standard of conduct," as required by Canon 1. Her inflammatory, hostile rhetoric severely undermines "public confidence" in the federal judiciary.

Violations of Canon Two

Canon 2 of the Code of Conduct for United States Judges provides that "a judge should avoid impropriety and the appearance of impropriety in all activities." (Emphasis added.) Canon 2A is entitled "Respect for Law." It provides that "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." (Emphasis added.) This rule is "critical—the judiciary's ability to decide cases efficiently and effectively would be severely impaired, and public confidence in the courts would be undermined, if litigants had reason to suspect judicial bias. In other words, 'to perform its high function in the best way "justice must satisfy the appearance of justice."'"[14]

The Commentary to Canon 2A provides in relevant part: "An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen." (Emphasis added.)[15]

Complainants submit that Judge Jones's statements quoted above constitute extreme impropriety and the appearance of impropriety that violate Canons 2 and 2A. Complainants further submit that any "reasonable mind" would conclude that Judge Jones's "integrity, impartiality, temperament, [and] fitness to serve as a judge" are "impaired."[16] Judge Jones has

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[14] *In re Complaint of Judicial Misconduct (Paine)*, 664 F.3d 332, 335 (U.S. Judicial Conference 2011) (citing and quoting *In re Murchison,* 349 U.S. 133, 136 (1955) (quoting *Offutt v. United States,* 348 U.S. 11, 14 (1954)).

[15] *See also In re Complaint of Judicial Misconduct (Paine)*, 664 F.3d 332, 335 (U.S. Judicial Conference 2011) ("The judiciary therefore must take every appropriate measure to instill public confidence in the impartial administration of justice. For this reason, and especially in view of the 'constant public scrutiny' that 'judge[s] must expect,' Commentary to Canon 2A, members of the judiciary are required to accept unique and heightened restrictions on their personal lives that would not pertain to ordinary citizens.").

[16] *See* Hon. Carl E. Stewart, *Abuse of Power and Judicial Misconduct: A Reflection on Contemporary Ethical Issues Facing Judges,* 1 U. St. Thomas L.J. 464, 477 (Issue no. 1, 2003) ("A hallmark of the judiciary has been its historical posture of neutrality and impartiality toward litigants and the disputes they bring to the courts for resolution. Ascendance to the bench therefore represents more than a mere cloak of

repudiated and criticized fundamental constitutional principles declared by the United States Supreme Court. She has expressed and exhibited bias and lack of impartiality concerning African Americans, Hispanics, "mentally retarded" persons, Mexican nationals, the justice system of the entire nation of Mexico, constitutional law decisions of the United States Supreme Court, and several individual defendants who well may appear before her court in the future. The "impropriety" and "appearance of impropriety" are obvious. Judge Jones has failed to "act at all times in a manner that promotes public confidence in the . . . impartiality of the judiciary." No "reasonable mind" could conclude that she is impartial on those issues, principles, or cases.

Violations of Canon Three

Canon 3 of the Code of Conduct of United States Judges provides that "a judge should perform the duties of the office fairly, impartially, and diligently." (Emphasis added.) Canon 3A(3) provides that "[a] judge should be patient, dignified, respectful, and courteous" to all persons "with whom the judge deals in an official capacity." The Commentary to Canon 3A states that "[t]he duty to be respectful includes the responsibility to avoid comment or behavior that could be interpreted as harassment, prejudice or bias."

The statements and conduct of Judge Jones, described above, evince a dramatic and appalling lack of "fairness" and "impartiality." Based upon those statements, African Americans, Hispanics, persons who are "mentally retarded," Mexican nationals, and the nation of Mexico cannot reasonably expect "fairness" or "impartiality" from Judge Jones. Further, no objective observer could conclude that Judge Jones's treatment of Judge Dennis was consistent with "the duty to be respectful."

Judge Jones also violated Canon 3A(6), which states: "A judge should not make public comment on the merits of a matter pending or impending in any court." (Emphasis added.) The Commentary explains that the prohibition against public comment "about the merits of a pending or impending matter continues until the appellate process is complete. If the public comment involves a case from the judge's own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity or impartiality, which would violate Canon 2A."

Yet Judge Jones discussed several individual cases during her February 20, 2013 lecture, including the *Ibarra* case, which was pending in her court at the time of the lecture. At the time of Judge Jones's lecture, *Swearingen* and *Druery* were pending in the state courts. Chester was scheduled for execution at the time of her lecture, and is currently facing a June 12, 2013 execution date—and the pendency of an imminent execution date always raises the possibility of last minute litigation in the state or federal courts. Judge Jones wrote the panel opinions in the *Ibarra*, *Chester*, and *Druery* cases. (She was on the *Swearingen* panel as well; the Court

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power; it also suggests a symbolic and practical detachment of the judge from his or her prior role as a partisan advocate.")

issued a *per curiam* decision.) In short, Judge Jones made "public comments" on the merits of multiple matters that were "pending or impending"—in direct violation of Canon 3A(6).

Moreover, Judge Jones's disrespectful conduct toward Judge Dennis, a fellow member of the Fifth Circuit Court of Appeals, showed a very troubling lack of judicial temperament. No judge would want to be treated the way that Judge Jones treated Judge Dennis. Judge Jones clearly violated the duty to be "patient, dignified, respectful, and courteous" set forth in Canon 3A and the Commentary to Canon 3.

Judge Jones also improperly expressed "contempt" for the United States Supreme Court rules, "generally disparage[d]" the Supreme Court, was "dismissive of the Supreme Court's death penalty decisions regarding juveniles and the mentally retarded," and criticized the conduct of Justice Department prosecutors who handle federal death penalty cases, including accusing them of treating "the death penalty process as an 'elaborate game'" and using methods that were "wasteful of taxpayer dollars."[17]

Violations of Canon Four

Canon 4 recognizes that a judge may engage in "extrajudicial activities, including lecturing on both law-related and nonlegal subjects." However, Canon 4 imposes important limitations on such activities, including that "a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office [or] reflect adversely on the judge's impartiality . . . ." (Emphasis added.) Similarly, Canon 4 states that participation in extrajudicial activities is permissible only "[t]o the extent that the judge's . . . impartiality is not compromised . . . ." As discussed at length above, Complainants submit that no objective observer or "reasonable mind" could conclude after Judge Jones's speech that Judge Jones is "impartial" on the death penalty, the constitutionality of the death penalty, or capital cases involving the defenses of racism, actual innocence, "mental retardation," or international standards.

IV. Request for Transfer

This Complaint concerns the former Chief Judge[18] of the Judicial Council of the Fifth Circuit. Complainants respectfully request that under Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the Judicial Council for the Fifth Circuit ask the Chief Justice of the United States to transfer this proceeding to the judicial council of another circuit. Rule 26 expressly authorizes this transfer. The Commentary to Rule 26 states that "[s]uch transfers may be appropriate . . . where the issues are highly visible and a local disposition may weaken public confidence . . . ." The nature of the allegations in this Complaint both are highly visible and involve the issue of the former Chief Judge's treatment of and conduct toward another member of the Fifth Circuit. Therefore, transfer is appropriate. The Ninth Circuit followed this transfer

[17] *See* Ex. F, at ¶¶ 8, 10; Ex. B, at ¶¶ 12, 23; Ex. D, at ¶ 11; Ex. E, at ¶ 11.
[18] Judge Jones served as Chief Judge from 2006 to October 1, 2012.

procedure in connection with a complaint filed against Chief Judge Alex Kozinski, and the Chief Justice granted the transfer request. *See In re Complaint of Judicial Misconduct (Kozinski)*, 575 F.3d 279, 280 (Judicial Council 3d. Cir. 2009) ("The Judicial Council of the Ninth Circuit asked the Chief Justice of the United States to transfer the identified Complaint to the judicial council of another circuit pursuant to Rule 26. On June 16, 2008, the Chief Justice granted the request and selected the Judicial Council of the Third Circuit to exercise jurisdiction over the Complaint. *See* Rule 26.").

V. Rule 6(d) Certification

In accordance with Rule 6(d) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the factual statements in the Complaint are true and correct, as verified in the Declarations, made under penalty of perjury, attached hereto as Exhibits A-F.

Respectfully Submitted,

COMPLAINANTS:

*Gregory J. Kuykendall, Director, Mexican Capital Legal Assistance Program (MCLAP)
*League of United Latin American Citizens (LULAC), by Luis Roberto Vera, Jr.
*NAACP – Austin Chapter, by Nelson E. Linder
*National Bar Association, Houston Affiliate – J.L. Turner Legal Association, by Mandy Price
*Texas Civil Rights Project (TCRP), by James C. Harrington
*La Union del Pueblo Entero (LUPE,) by Juanita Valdez-Cox
*Charles W. Wolfram, Professor Emeritus, Cornell Law School; Author, *Modern Legal Ethics*
*Renato Ramirez, Investor/Philanthropist
*Professor Robert P. Schuwerk, Co-Author, *Handbook of Texas Lawyer and Judicial Ethics*
*Mark I. Harrison, Osborn Maledon; Former Chair, ABA Commission to Revise the Model Code of Judicial Conduct
*Susan Martyn, Distinguished Professor of Law & Values, University of Toledo College of Law
*Ronald Minkoff, Frankfurt Kurnit Klein & Selz; Past President, Association of Professional Responsibility Lawyers
*Ellen Yaroshefsky, Clinical Professor and Director, Burns Center for Ethics in the Practice of Law, Cardozo School of Law

[Signatures and addresses listed below.]