

Judicial Profile

LUKE MCGRATH

Reflections on a Recent *Rule of Law* Trip to Iraq: Hon. Edith Jones Chief U.S. Circuit Judge, U.S. Court of Appeals for the Fifth Circuit

THE JUMP SEAT in the cockpit of a Dornier 328 prop jet that was flying about 22,000 feet above Iraq and Kurdistan is not where one would expect a U.S. federal appellate judge to be sitting. However, Edith Jones, chief judge of the U.S. Court of Appeals for the Fifth Circuit, sits where she pleases. On March 25, 2010, it pleased her honor to sit in her jump seat and watch the dust swarming around her plane as she flew over the Iraqi desert.

Judge Jones was on a mission—a mission that she has not forsaken now that she is home under the safer, clearer skies of the United States. This profile is really about Judge Jones' mission. Judge Jones is not “all about” herself; she is about helping others. Specifically, today and for the foreseeable future, she is about helping people in Iraq create a rule of law of which they and the world can be proud.

Judge Jones graduated from Cornell University in 1971 and received her law degree from the University of Texas School of Law in 1974. She was nominated to the Fifth Circuit by President Ronald Reagan and confirmed by the U.S. Senate on April 3, 1985. In the past, Judge Jones has been mentioned as a top contender for appointment to the Supreme Court of the United States.

In mid-March 2010, Judge Jones took a week-long break from her docket to participate in a State Department-sponsored Rule of Law visit to Iraq. This program is funded largely by the State Department and operates under the auspices of the U.S. Embassy in Iraq. The Justice Department provides the leadership and personnel for this effort. During her week-long visit, Judge Jones spoke with judges, lawyers, scholars, journalists, and others in Baghdad and in Erbil, the capital of the Kurdistan region. She met with Iraqi Chief Justice Medhat al-Mahmoud and with members of the Iraqi High Tribunal, and the Central Criminal Court of Iraq, Kurdistan's Court of Cassation, and the Iraq and Kurdistan Bar Associations. Judge Jones also had the opportunity



to speak with Minister Raouf Rashid Abdel-Rahman, the chief prosecutor who led the prosecution team in the trial of Saddam Hussein.

The Mission: The Rule of Law Program

The Rule of Law Movement in Iraq

American efforts to establish the rule of law in Iraq started with the hundreds of Judge Advocate General (JAG) officers and Department of Justice (DOJ) attorneys who performed an invaluable service in providing advice and behind-the-scenes work in upgrading Iraqi legal procedures and resources. Judge Jones believes that the U.S. Rule of Law Program is a little-known triumph—a successful effort to re-establish the groundwork for the Iraqi judiciary and to help the Iraqi people to move forward.

The teams from the JAG and the DOJ's Rule of Law Program were engaged at every level of the Iraqi justice system to develop and implement an Iraqi-owned and accepted system. The JAG officers used an approach they called “Courts, Cops, and Corrections.” Essentially, JAG and DOJ lawyers worked with representatives of the police, the judi-

ciary, and the prison system simultaneously in order to stabilize and invigorate these institutions. Judge Jones expressed great admiration for the JAG and DOJ lawyers involved in the program.

Judge Jones is quick to point out that the Americans were not entirely on their own in re-establishing the rule of law in Iraq. The Iraqi people—in particular, members of Iraq’s judiciary—are committed to re-establishing the rule of law in their country. In fact, most Iraqis are proud of their legal heritage, which claims as its own the world’s first written legal code, the Code of Hammurabi. Iraq’s Chief Justice Medhat, head of the Iraqi Higher Judicial Council as well as the Iraqi Federal Supreme Court, is a widely respected legal scholar. He and Iraq’s other top judicial officers are eager to commence exchanges with American judges, establish the independence of Iraq’s judiciary, and garner a reputation for its integrity.

For Judge Jones, the Rule of Law Program in Iraq is already a success. The case in point is the trial of Saddam Hussein. Judge Jones recounts reports of the trial as if it had taken place before her in New Orleans at 600 Camp Street. Her intimate knowledge of the case comes from a full briefing by the lead prosecutor in the case, Minister Raouf Rashid Abdel-Rahman. According to Judge Jones’ source, Saddam Hussein never let go of the notion that he was still Iraq’s head of state. In fact, he often summoned judges, prosecutors, and other defendants to his detention area for conferences as if he were still in control of the country. This was no flight of fancy: Saddam Hussein remained shrewd and fully aware of his circumstances throughout the trial. In fact, according to Judge Jones’ source, Saddam Hussein was his own best defense counsel: he formulated and pursued his defense strategy with greater craft than his defense team.

The prosecution, however, would not be outdone. As what now can be seen as the proving moment for the Iraqi Rule of Law Program, the prosecution team mounted an impressive case against the former dictator. Every lead was painstakingly researched. In the end, the prosecution systematically proved Saddam Hussein’s guilt beyond a reasonable doubt by producing innumerable binders of thoroughly vetted, documented, and authenticated evidence linking him to the mass murder of hundreds of innocent civilians. This prosecution was a victory for the then fledgling Rule of Law Program because it demonstrated the training in the use of forensic analysis and documentary evidence that the program’s Regime Crimes Liaison Office provided Iraqi prosecutors and judges. During Saddam Hussein’s reign of power, use of this type of forensic and documentary proof was rare, if not unheard of. During that time, convictions were supported largely by confessions—whether or not they were given voluntarily. Still, notwithstanding the professional presen-



Judge Jones in front of the Al Rashid Hotel.

tation at Saddam Hussein’s trial and the success of the program that the trial demonstrated, Judge Jones wants to spread the word that more must be done in order to continue the success of the program.

Baghdad: A City of Fables, Tragedies, and Promise

In Baghdad, Judge Jones visited Baghdad University School of Law, the Iraqi High Tribunal, the Iraqi Bar Association, and the Central Criminal Court of Iraq, among other places and groups. For Judge Jones, Baghdad was a place of contradiction where beauty, the remnants of brutality, and a promise or hope of a brighter future lived side by side. When in Baghdad, Judge Jones was quartered in the Green Zone in modest, but efficient and clean, housing used by American military and government personnel. Judge Jones could not see much of Baghdad from the Green Zone, but helicopter flights to and from the airport revealed a sprawling, densely populated city. (The judge’s choppers, a VIP helicopter and the escort, flew low, about 400-500 feet above street level, because U.S. helicopters are



Judge Jones with U.S. lawyers, an Iraqi lawyer, and their translator in front of a reproduction of the Code of Hammurabi at the Iraq National Museum.

harder to see—and hit—when they are flying low over the city.) On one of her few on-the-ground excursions outside the heavily fortified Green Zone, Judge Jones' security caravan passed through streets crowded with cars of all makes and conditions. Surprisingly, motorists in Baghdad actually seem to heed the stop lights in the city. The people go about their daily business where the rubble of violence mars otherwise typical Middle Eastern urban neighborhoods. The destination of the judge's caravan was the Iraqi National Museum, about which Judge Jones, a lover of archaeology, raves. The museum houses valuable relics of Iraq's 4,000-year history as the "Cradle of Civilization" and Baghdad's status as a center for culture and wealth in the Arab world—truly a fascinating collection. In the recent past, the banks of the Tigris River in the city of Baghdad boasted palm tree-lined boulevards full of cafes and fine restaurants—most of which are now gone. One remnant of that era is located near the edge of the Green Zone: the Al Rashid Hotel, which appears frozen in 1960s "mod" style. The gaudy and less than tasteful public buildings and monuments built by Saddam Hussein to honor himself and his Ba'ath Party are also still prominent in the city.

Against this backdrop, Judge Jones could not help being impressed by the courage, professionalism, and dedication of her hosts. In her visits with Iraqi jurists and officials, Judge Jones was well aware that more than one of the judges she met had been the target of an assassination attempt during his or her career. Judge Jones met with Iraq's top judge, Chief Justice Medhat, in his offices at the Al-Hiatt Judicial Complex, which is part of a complex that was built to help ensure the security and independence of the Iraqi judiciary in Baghdad. Not many years ago, Justice Medhat's son was killed during an attempt on the chief justice's life—a terrible sacrifice. Following her trip, five or six more Iraqi jurists were assassinated. For Judge Jones, these continuing (though

decreasing) brutal attempts to destabilize the judicial system in Iraq dramatically illustrate the importance insurgents place on interrupting the nation's progress toward establishing the rule of law.

Judge Jones had opportunities to socialize with then Ambassador Christopher Hill and the American legal staff in their Green Zone quarters. At each event, Judge Jones marveled at the stories told by participants in the Rule of Law Program, who described the pure thrill of contributing to a significant and sometimes dangerous mission. Mike Gunnison, then the head of the Rule of Law Program, hosted one party at his apartment in the Green Zone, which featured Iraqi specialties catered by a nearby restaurant and wine from the Green Zone post exchange. Mike had festooned one of his apartment walls with a University of Texas flag in honor of Judge Jones' law school alma mater. Some attorneys discussed their encounters with "Chemical Ali," a Saddam henchman recently convicted and executed for his part in brutal murders during Saddam Hussein's reign. Iraqi-born Ali Al-Khuzaii, a lawyer who now lives in the United States and serves the Rule of Law Program as a consultant on Iraqi law, informed the judge that his family belonged to the little-known Arab marshland communities whose entire populations Saddam had forcibly deported from their centuries-old lands and whose marshes he drained, creating an ecological disaster. All the attorneys talked about the vast difference between their state-side occupations and the challenges and opportunities they face in living overseas—away from friends and family—and trying to assist the Iraqis' efforts to rebuild their judicial system. Judge Jones took away from her exchanges with American lawyers and the translators working with the program the sense that each Rule of Law team member was learning while teaching and gaining as much as each one was giving.

Meetings With Female Judges and Nongovernmental Organizations in Baghdad

Since taking office, Chief Justice Medhat has appointed 70 female judges: a tenfold increase in the number of female judges over the past several years. At a luncheon that took place early during her visit, Judge Jones held frank conversations with a number of female judges. Judge Jones remains greatly impressed with the judges she met, especially Judge Hanna, a female judge in charge of judicial education in Iraq. According to Judge Jones, these women were clearly the best of the best. These judges informed Judge Jones that they were provided adequate resources, were not discriminated against professionally based upon their gender, and were well paid. Female judges voice concerns that are similar to those voiced by their male counterparts: security and the need for judicial independence. Iraq's female judges are targets of terrorists

and disgruntled litigants; as a result, the judges fear for their own safety and that of their families on a daily basis. In addition, the female judges raised concerns over juvenile female terrorist suspects whom family members have coerced, threatened, drugged, or intimidated into committing terrorist acts. Notwithstanding these weighty concerns, Iraqi women informed Judge Jones that the importance of protecting women's rights is acknowledged in Iraq today. According to several Iraqi women whom Judge Jones met, before Saddam Hussein took power, Iraq was progressive in terms of women's rights in the Muslim world; some of the women believe that today Iraq's best policy would be to turn back the clock to the women's rights regime that existed before Saddam's reign.

Erbil and Kurdistan: 15 Years of Protection and Prosperity

Near the end of her trip, Judge Jones flew to Iraq's Kurdistan region, where she met with several leaders in the regional judicial community, including Chief Judge Ahmed Abdulla Zubeyr, several justices on the Court of Cassation, and the head of the Kurdistan Bar Association. In one of the ironies of war and dictatorship, the Kurdistan region has benefited from relative peace of the last 15 years as opposed to Saddam Hussein's previous aggression against the Kurds. In 1995, after Saddam Hussein's infamous gassing of large segments of the Kurdish population, America initiated and enforced a "No-Fly Zone" over the Kurdistan region, thus saving the area from the further devastation of war.

Over the last 15 years, Kurdistan has used revenues from oil production to modernize and beautify its cities. Coming from Baghdad, to Judge Jones Erbil seemed almost like Phoenix, Ariz., with its manicured landscaping, well-groomed palm trees, fountains, and a sparkling new Ministry of Justice building. Chief Judge Ahmad met with Judge Jones in his large, handsome office, which was painted a peach-pink color that may have transported Judge Jones to Palm Beach, but certainly not any town near war-torn Baghdad. After their private meeting, Judge Ahmad introduced Judge Jones to a group of judges from the Kurdish Appellate Court. These judges impressed Judge Jones with their intelligence and candor, but also with their diversity. The appellate court judges appeared to represent a wide cross-section of the different ethnicities Judge Jones had encountered during her stay in Iraq. For the jurists in the relatively affluent Kurdistan region, the questions surrounding Iraq's version of federalism were of the utmost importance:

- What rights does the federal government of Iraq have over the local governments of the provinces?
- What rights do the individual state and local gov-



(l to r) Jed Talvecchia, U.S. Department of Justice; Judge Jones; and Christy McCormick, U.S. Department of Justice, in front of the former International Baath Party headquarters, now the tribunal where Saddam Hussein was tried.

ernments have to manage mineral resources?

- What is the appropriate balance between federal and local power?

These questions and more were repeated during the judge's visit. For Judge Jones, the meeting was a vigorous reminder of how and why questions of federalism remain important today.

Judge Jones' last day in Erbil fell on a Friday—a weekend and market day during which regular work ceases. To make the most of this time, she and others visited the Citadel of Erbil, a mound rising more than 90 meters from the center of the city and topped with a neighborhood whose buildings range from merely old to ancient. Many of these dwellings are still inhabited. Architecturally, many of them would not be out of place in Rome or Seville. Because the mound was formed by a succession of communities dating back thousands of years, the Citadel is touted as the oldest continuously occupied city in the world. On the cool, clear day of Judge Jones' visit, the air was full of the scent of orange blossoms as tourists from nearby Iran mingled harmoniously with local shoppers. It was a picture of calm following the brutality of the recent past. Judge Jones wondered whether this was a picture of the future as well or just an interlude. On the bright side, for Judge Jones, Erbil demonstrates what the Iraqis can accomplish if "peace breaks out" in the country for a decade.

Next Steps: Keeping the Mission Alive

Judge Robert W. Sweet of the U.S. District Court for the Southern District of New York participated in an earlier Department of State Rule of Law visit to Iraq. Judge Jones was thankful for Judge Sweet's



Judge Jones presenting a gift to Chief Justice Medhat al-Mahmoud of the Iraqi Supreme Court.

efforts in the program and the materials he prepared upon his return, which enabled Judge Jones to prepare for her trip. Judge Jones has recommended that a briefing book be developed for future visitors under the Rule of Law Program so that all participants can get the most out of the short time they may have in Iraq. But this is not all: Judge Jones is still passionate about keeping in touch with what happens in Iraq and also encouraging the Rule of Law Program to grow and foster a truly strong American-Iraqi relationship. Judge Jones' wish list for the program would include recruiting U.S. attorneys, involving the private sector, and establishing exchanges between law schools in Iraq and those in the United States.

Join the U.S. Attorney's Office and See the World

Judge Jones has tremendous respect for the hundreds of JAG officers from all military branches who laid the foundation for the Rule of Law Program in Iraq as well as the assistant U.S. attorneys and DOJ trial attorneys who continue to volunteer and travel to Iraq on roughly one-year tours of duty to participate in the State Department's Rule of Law Program. Many of these attorneys return for a second and third tour in order to complete assignments and develop stronger commitments with their colleagues in Iraq. Just a few among those who have made a mark during longer deployments are, in no order of rank, Brian Murphy (State Department), Charles Spillers (N.D. Miss.), Michael T. Mahoney (E.D. Wis.), Jim Wilson (W.D. Pa.), and Christy McCormick (DOJ). Judge Jones would like to encourage more young lawyers to participate in the Justice Department's exchange program and she encourages the United States to maintain the Rule of Law Program in Iraq as a way to develop the Iraqi criminal justice system more fully.

Private Enterprise and the Rule of Law

Program

In Judge Jones' view, there is a need for the private sector to participate in encouraging the establishment of the rule of law in Iraq. She notes that our government's commitment depends on fluctuating financial agendas and rotating personnel, both of which inhibit the continuity and reliability of our government-run programs. After Judge Jones returned from her trip, the National Association of Attorneys General (NAAG) and the Iraqi Jurists' Union (IJU) agreed to participate in exchanges and professionalism training. Jon Bruning, Nebraska's attorney general and the president of NAAG, visited Iraq for the signing of the agreement with the IJU. Over the long term, as the security situation stabilizes, Judge Jones hopes that more programs can be established by private law organizations and perhaps by the American Bar Association (ABA), which had initiated a program after Iraq's liberation but had to terminate it during the period of sectarian violence that preceded the surge by U.S. military forces. The heads of the Kurdish bar have identified attorney training and licensure as well as the promulgation of codes of discipline as areas in which Iraq needs immediate assistance—areas in which Judge Jones believes the ABA could readily become involved. In this connection, attorneys in Baghdad are eager to associate with American firms, just as they are already becoming connected with law firms in the Middle East. Judge Jones believes that such interactions will assist in modernizing Iraqi law, will enhance relations with the United States, and “cannot hurt” in international business development. With increased exchanges and interaction, opportunities for humanitarian efforts will also increase, and these can address the problems Iraqis face, including the detention and defense of the accused and the protection of women and orphans.

Law Schools: The Next Frontier

Another example of how the private sector can become engaged in Iraq is through partnerships between U.S. law schools and Iraqi law schools. Judge Jones believes that American law schools can and should partner with Iraqi sister schools to help educate the next generation of Iraqi lawyers. Such partnerships could go beyond mere exchange programs and could form the basis for the development of American law education that is truly international in scope. The needs are great. The pre-eminent jurists whom Judge Jones met in Iraq are mostly graduates of Baghdad University Law School. But this once great school is now in great need of repair and modernization. In addition, while there is a tremendous will to learn and become expert, there currently is a void in developing sophisticated financial legal concepts and transactional legal work, and American law schools can fill this void. Judge Jones does not think that the educational efforts should

be directed only to prosecutors and trial attorneys. Rather, she believes that Iraq also needs ministers, corporate lawyers, and judges who are sophisticated in the rule of law as applied to international finance.

Recently, under the auspices of the State Department, Iraq's Chief Justice Medhat and a number of other Iraqi judges traveled on a two-week exchange visit to the United States, entitled "Adjudicating Disputes Related to International Commercial Contracts and Financial Transactions." The Iraqi delegation visited Washington, D.C., and New York City, and engaged in numerous talks, round table discussions, and visits (including visits to the U.S. Supreme Court, the Court of International Trade in New York, and the New York Supreme Court's Commercial Division). The trip ended with a two-day seminar hosted by Fordham University's Law School, during which the Iraqi delegation spoke and participated in discussions on international finance, foreign direct investment, and international commercial partnerships.

Judge Jones believes that this type of exchange program is exactly the type of educational exchange that will help Iraq's judges and the Iraqi justice system. She has identified other law schools that are also creating or studying similar programs. For example, Judge Jones notes that Professor Haider Hamoudi of the University of Pittsburgh spoke at many of the talks at Fordham Law School's recent program, and the University of Pittsburgh has been exploring the idea of a program entitled "Export of American Legal Education" in transition countries. Loyola University in Louisiana has also recently started a program with the Kirkuk University College of Law. Abe McGull, an assistant U.S. attorney in New Orleans who is currently serving as a resident legal adviser in Kirkuk, has been instrumental in initiating that program. U.S. Agency for International Development has just initiated a multimillion dollar Access to Justice Program designed for the Iraqi bar.

In addition, the International Human Rights Program at Pepperdine University School of Law has had amazing results with the school's outreach program in Uganda—a program that could be a model for outreach to Iraq. In short, Judge Jones is calling upon American law schools to make a long-term commitment to Iraqi sister schools.

Conclusion

Judge Jones' mission can only be complete when Iraq becomes a fully independent, democratic nation based upon equal justice and the rule of law. When that happens, it will be a testament to her mission and the mission of all the lawyers—both Iraqi and American—who have undertaken efforts to re-establish Iraq's legal system. Judge Jones is working on that mission and is looking forward to achieving it. **TFL**

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