TO CONSIDER POSSIBLE IMPEACHMENT OF UNITED STATES DISTRICT JUDGE G. THOMAS PORTEOUS, JR. (PART I)

HEARING

BEFORE THE

TASK FORCE ON JUDICIAL IMPEACHMENT

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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NOVEMBER 17 AND 18, 2009

TO CONSIDER POSSIBLE IMPEACHMENT OF UNITED STATES DISTRICT JUDGE G. THOMAS PORTEOUS, JR. (PART I)

TUESDAY, NOVEMBER 17, 2009

HOUSE OF REPRESENTATIVES,
TASK FORCE ON JUDICIAL IMPEACHMENT
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Task Force met, pursuant to notice, at 10:36 a.m., in room 2141, Rayburn House Office Building, the Honorable Adam Schiff (Chairman of the Task Force) presiding.

Present: Representatives Schiff, Cohen, Johnson, Gonzalez, Pierluisi, Goodlatte, Lungren, Gohmert, and Sensenbrenner.

Staff Present: Alan Baron, Counsel; Harold Damelin, Counsel; Mark H. Dubester, Counsel; Jessica Klein, Staff Assistant; and Kirsten Konar, Counsel.

Mr. SCHIFF. This hearing of the House Judiciary Task Force on Judicial Impeachment will now come to order. Without objection, the Chair will be authorized to declare a recess of the hearing.

I will now recognize myself for an opening statement.

This hearing has been called to commence the inquiry into whether United States District Court Judge Thomas Porteous should be impeached by the United States House of Representatives. Article I, Section 1 of the Constitution vests the sole power of impeachment in the House of Representatives. As has been noted in the past, such a task is not one that we welcome. However, it is an important responsibility that has been entrusted to us by the founders.

In late 1999, the United States Department of Justice and the Federal Bureau of Investigation began a criminal investigation of Judge Porteous. Several years later, the Department of Justice submitted a complaint referring allegations of judicial misconduct concerning Judge Porteous to the Fifth Circuit Court of Appeals. The complaint noted that the FBI and a grand jury had been investigating Judge Porteous for many years but decided not to bring criminal charges and instead referred the case to the courts and Congress for disciplinary proceedings and potential impeachment.

Despite the Department's decision not to charge Judge Porteous with violations of Federal criminal law, the complaint stated that the investigation uncovered evidence of "pervasive misconduct committed by Judge Porteous."

The complaint states, "Collectively, the evidence indicates that Judge Porteous may have violated Federal and state criminal laws, controlling canons of judicial conduct, rules of professional responsibility, and conducted himself in a manner antithetical to the constitutional standard of good behavior required of all Federal judges."

The evidence of misconduct cited included the following: one, evidence that Judge Porteous solicited and accepted money and other things of value from attorneys and litigants with matters before him; evidence number two, that Judge Porteous accepted things of value from a bail bonds company with business before his judicial district and its owners in exchange for access and assistance; number three, evidence that the judge filed false pleadings and concealed assets in a bankruptcy proceeding and violated an order of that court; and number four, evidence that Judge Porteous submitted additional false and misleading statements in official proceedings; number five, further circumstantial evidence that Judge Porteous engaged in corrupt activities; and, finally, number six, that the judge was incompetent to serve.

The Department of Justice's complaint concluded that the instances of Judge Porteous's dishonesty in his own sworn statements and court filings, his decade-long course of conduct in soliciting and accepting a stream of payments and gifts from litigants and lawyers with matters before him, and his repeated failures to disclose those dealings to interested parties and the court all render him unfit as an Article III judge.

Upon receipt of the department's complaint, the fifth circuit appointed a special investigatory committee to investigate the allegations. Hearings were held, at which Judge Porteous, representing himself, made statements, cross-examined witnesses, and called witnesses on his own behalf. In November 2007, the special investigatory committee issued a report detailing the findings of their investigation of Judge Porteous. The special committee concluded that the matter should be referred to the Judicial Conference of the United States because Judge Porteous had engaged in conduct which might constitute grounds for impeachment under both Article I and Article III of the Constitution.

On December 20, 2007, the full Judicial Council of the United States Court of Appeals for the fifth circuit by a majority vote accepted and approved the special investigatory committee's findings and certified the matter to the Judicial Conference of the United States.

On June 17, 2008, the Judicial Conference of the United States voted unanimously to certify to the speaker of the House its determination that consideration of impeachment of Judge Porteous may be warranted based on substantial evidence that Judge Porteous repeatedly committed perjury by signing false financial disclosure forms under oath in violation of law, concealing the cash and things of value he solicited and received from lawyers appearing in litigation before him, that Judge Porteous repeatedly committed perjury by signing false statements under oath in a personal bankruptcy proceeding, in violation of law and the code of conduct for U.S. judges, that Judge Porteous willfully and systematically concealed from litigation and litigators and the public financial trans-

actions by filing false financial disclosure forms in violation of law and the judicial code of conduct, that Judge Porteous violated several criminal statutes and ethical canons by presiding over the Liljeberg matter, and that Judge Porteous made false representations with intent to defraud a bank and causing the bank to incur losses, in violation of law.

The Judicial Conference of the United States concluded that this conduct has individually and collectively brought disrepute to the Federal judiciary. On September 10, 2008, the Judicial Council of the fifth circuit issued an order and public reprimand, taking the maximum disciplinary action allowed by law against Judge Porteous, suspending him for 2 years or until Congress takes final action on the impeachment proceedings, whichever occurs earlier.

On September 17, 2008, the House of Representatives passed House Resolution 1448 by unanimous consent authorizing and directing this Task Force to inquire whether Judge Porteous should be impeached. This authority was continued in January 2009, pursuant to House Resolution 15. Accordingly, we are conducting this evidentiary hearing today.

Article III, Section 1 provides that the judges both of the supreme and inferior courts shall hold their offices during good behavior and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

Article II, Section 4 of the Constitution provides that all civil officers of the United States shall be removed from office on impeachment, for and conviction of treason, bribery, or other high crimes and misdemeanors.

The framers sought to protect the institutions of the government, according to one impeachment report, by providing for the removal of persons who are unfit to hold positions of public trust. The Congressional Research Service has written the phrase "high crimes and misdemeanors" is not defined in the Constitution or in statute.

No definitive list of types of conduct falling within the high crimes and misdemeanors language has been forthcoming as a result of this debate, but some measure of clarification has emerged. The precedents in this country reflect the fact that conduct which may not constitute a crime, but which may still be serious misbehavior bringing disrepute upon the public office involved, may provide a sufficient ground for impeachment.

The purpose of this and future hearings will be to develop a record upon which the Task Force can recommend whether to adopt articles of impeachment. These proceedings do not constitute a trial, as the constitutional power to try impeachment resides in the Senate.

This inquiry will focus on whether Judge Porteous's conduct provides a sufficient basis for impeachment. In order to develop the record, the Task Force has called witnesses and will admit documents that will help us determine whether the constitutional standard for impeachment has been met. This Task Force will proceed in a fair, open, deliberate, and thorough manner, and our work has and will continue to be done on a bipartisan basis.

To date, Task Force staff has interviewed over 50 individuals, deposed about 20 witnesses under oath, and obtained documents from

various sources, including four witnesses, the 24th Judicial Court in Jefferson Parish, Louisiana, and the Department of Justice.

I would like to note that Judge Porteous was offered the opportunity to respond personally to questions concerning his conduct in the form of a deposition. He declined our invitation.

Today's hearing will focus on allegations that Judge Porteous violated the public trust, the law, and ethical canons by presiding over the case in In Re: Liljeberg Enterprises, Incorporated. In that matter, which was tried without a jury, the evidence indicates that Judge Porteous denied a motion to recuse himself from the case based on his relationship with the lawyers in the case. In denying the motion, he failed to disclose that the lawyers in question had provided him with cash.

Thereafter, while a bench verdict was pending, there is evidence that he solicited and received from the lawyers appearing before him illegal gratuities in the form of cash and other things of value. As the Judicial Conference noted, this conduct, which was undertaken in a concealed manner, deprived the public of its right to his honest services and constituted an abuse of his judicial office.

In subsequent hearings, we will cover other allegations involving false statements in bankruptcy proceedings, a corrupt relationship with the owners of a bail bond company, and other allegations of improper gifts and gratuities, as well as hearings on the constitutional issues involved.

Before we proceed, I would like to discuss some important procedural matters. Based on correspondence with Judge Porteous's counsel and after consulting with Ranking Member Goodlatte, we will use several procedures, which I will describe.

Judge Porteous has been offered a chance to testify and be questioned at an appropriate hearing. I understand that Judge Porteous is present today, as is his counsel.

Counsel, could you introduce yourself?

Mr. STARNS. My name is Remy Starns, 2001, Jefferson Highway, New Orleans, Louisiana. And I am counsel for Judge Porteous.

Mr. SCHIFF. Could you bring the microphone just a little closer? Thank you.

And, Counsel, we have offered Judge Porteous the opportunity to testify at an appropriate hearing. Is it your intention for Judge Porteous at an appropriate hearing to testify during these proceedings?

Mr. STARNS. I am sorry, Mr. Chairman. I didn't hear you.

Mr. SCHIFF. We have offered Judge Porteous the opportunity to testify at an appropriate hearing with advance notice to the Committee. Is it your intention to have Judge Porteous testify at one of our hearings?

Mr. STARNS. That has not been determined. Judge Porteous will not testify today.

Mr. SCHIFF. Counsel, you will have an opportunity if you like to make an opening statement. Would you like to make an opening statement?

Mr. STARNS. Mr. Westling is going to make an opening statement for us.

Mr. SCHIFF. Okay.

Mr. WESTLING. Congressman, my name is Richard Westling. I am lead counsel for Judge Porteous. I have had numerous correspondence with you, and I appreciate the opportunity to be here today.

Oh, I am sorry. I apologize.

We have received your letters requesting information about Judge Porteous's intent. It is not his intent at this time to appear as a witness at these hearings, but to simply attend as a person who is obviously interested in what is going on here today.

Mr. SCHIFF. And would you just confirm for the record that Judge Porteous is present with us today?

Mr. WESTLING. Yes, he is, your honor.

Mr. SCHIFF. And, Counsel, you will be given an opportunity to make a statement during the hearing, as well as an opportunity to question witnesses, if you choose to accept that invitation.

Mr. WESTLING. Thank you.

Mr. SCHIFF. We have also invited Judge Porteous to submit documentary evidence on his behalf. He has also been given the opportunity to request the specific individuals be permitted to testify.

As I just mentioned, counsel for Judge Porteous will be permitted to question any of the witnesses that he so chooses for 10 minutes each. While this is consistent with past precedent, it should be noted that this is an extraordinary prerogative that is being granted. This, after all, is not a trial, but is more in the nature of a grand jury proceeding.

The Task Force reminds Judge Porteous and his counsel that no objections or other interruptions in the testimony will be permitted. After all Members wishing to make an opening statement will have the opportunity to do so, I will ask Task Force counsel Alan Baron to brief us for up to 20 minutes, providing a general overview of the matter under consideration today. After his presentation, the first witness will be sworn in and questioned for up to 20 minutes by Task Force counsel.

After that initial period, Members will be recognized for questions under the 5-minute rule. Judge Porteous's counsel will then be permitted to question the witnesses for 10 minutes. Finally, Members will be permitted to ask any further questions of the witness.

After the Task Force is concluded with one witness, the next will be called. Hearing no objection, that will be the procedure.

I would now like to recognize my colleague, Mr. Goodlatte, the distinguished Ranking Member of the Task Force, for his opening remarks, and I want to thank him again for the manner in which he has conducted this investigation. It has really been a completely bipartisan, really nonpartisan effort, and I want to thank him and introduce my Ranking Member.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Chairman, I believe that the procedures we have laid out this morning are fair and will facilitate a comprehensive hearing on this particular aspect of our inquiry into the conduct of Judge Porteous. I also want to thank you for administering this Task Force in a bipartisan manner.

Article III of the Constitution provides that Federal judges are appointed for life and that they shall hold their offices during good

behavior. Indeed, the framers knew that an independent judiciary free of political motivations was necessary to the fair resolution of disputes and the fair administration of our laws.

However, the framers were also pragmatists and had the foresight to include checks against the abuse of independence and power that comes with a judicial appointment. Article III, Section 2, Clause 5 of the Constitution grants the House of Representatives the sole power of impeachment.

This is a very serious power that should not be undertaken lightly. However, if evidence emerges that an individual is abusing his judicial office, the integrity of the judicial system becomes compromised and the House of Representatives has the duty to investigate the matter and take any appropriate actions to end the abuse and restore confidence in the judicial system.

As the Committee of jurisdiction over the Federal bench and the Committee with authority over the impeachment process, the Judiciary Committee has a somber obligation to root out activities that undermine the impartiality of the Federal bench. For orderly society to continue, it is crucial that citizens continue to have faith that the judicial system will exercise its authority to determine disputes fairly and without partiality.

I thank Chairman Conyers and Ranking Member Smith for authorizing this Task Force on Judicial Impeachment. While this is not pleasant work, it is necessary.

Today we are examining the potential misconduct of Judge Thomas Porteous. The Judicial Conference of the United States forwarded this matter to the Congress for further consideration after concluding that Judge Porteous "has engaged in conduct which might constitute one or more grounds for impeachment."

Since then, the Task Force has been working diligently to investigate Porteous's conduct and has worked with law enforcement and judicial officials, has conducted numerous interviews, taken depositions from key witnesses, and gathered evidence and transcripts from the previous investigations.

These efforts have uncovered a large amount of information that the Task Force Members need to consider. We will hold a series of hearings to examine all of this information. However, today's hearing will focus on Judge Porteous's conduct leading up to and during the Liljeberg case, which was argued before Judge Porteous.

The witnesses here today represented the litigants in the Liljeberg case, and they have firsthand knowledge of the incidents surrounding that case. It is worth noting that Judge Porteous was extended an invitation to come make a statement before the Task Force and respond to questions, but has so far declined to do so.

It is also worth noting that the Task Force has permitted Judge Porteous's counsel to ask questions of the witnesses today.

If the evidence shows that wrongdoing occurred, then the Task Force will make the appropriate recommendations to the full Judiciary Committee, and we will have more work to do. I look forward to hearing from the witnesses and rooting out the facts in an objective manner.

Thank you, Mr. Chairman, for holding this important hearing.

Mr. SCHIFF. I thank the gentleman.

And I would now like to recognize the Ranking Member of the full Committee, Mr. Lamar Smith of Texas, for his comments.

Mr. SMITH. Thank you, Mr. Chairman.

Thank you for holding this important hearing to consider the possible impeachment of Judge G. Thomas Porteous, and I appreciate the way you and the Ranking Member, Mr. Goodlatte, have conducted the ongoing investigation.

The Constitution grants the House of Representatives the sole power to impeach a sitting Federal judge. This is a very serious power that Congress does not take likely. Impeachment by the House constitutes one of the few checks on the judiciary and is to be used only in instances when a judge betrays his office or proves unfit to hold that position of trust.

We want to be fair to Judge Porteous and to that end, the Task Force has granted his attorney the opportunity to examine the witnesses who will be called to testify. Judge Porteous has also been invited to appear and testify at these hearings in order to explain why his conduct does not warrant impeachment.

It is our constitutional duty not to prejudge the evidence in this matter or to anticipate the course of these proceedings. However, it should be noted that the allegations of misconduct and improprieties by Judge Porteous are serious, numerous, varied, and occurred over a period of many years.

Based on a review of the allegations of misconduct by Judge Porteous that the Task Force has examined, the Judicial Conference certified to the speaker of the House that consideration of the impeachment of Judge Porteous may be warranted. Around the same time, the Judicial Council of the fifth circuit issued an order and public reprimand, imposing the maximum disciplinary action allowed by law against Judge Porteous.

As of September 10, 2008, Judge Porteous has been suspended from the bench for 2 years or until Congress takes final action on the impeachment proceedings.

Though judges rule on the law, they are not above the law. To preserve equality and fairness in our constitutional democracy, we must protect the integrity of the courts. The time has come for Congress to determine whether Judge Porteous's conduct has deemed him unworthy to serve on the Federal bench.

Now, I thank you, Mr. Chairman. Again, I look forward to hearing from the witnesses.

Mr. SCHIFF. I thank the gentleman.

At this time, I would be happy to recognize other Members who wish to make an opening statement.

Mr. Cohen of Tennessee?

Mr. COHEN. Thank you, Mr. Chairman. I appreciate the work you have done and the other Members of this Task Force.

The judiciary has to be like Caesar's wife, beyond reproach, as people have to have a highest opinion of fairness in that division of government, not that they shouldn't in all three. But the judiciary holds a special place. And to soil the cloth is a serious issue that has to be discussed here by this Committee in this impeachment hearing.

There are allegations, Mr. Chairman, that Judge Porteous has received money and other things of value from attorneys with busi-

ness before his court, and he has not denied that. He has claimed that some of these monies were for a personal nature and that people just extended them because of personal friendships. Nevertheless, that does raise an issue about the appearance of impropriety and certainly something Caesar's wife would not have been involved in.

The same friendship judge—attorneys appeared before his bench. And if the friendship were that close, it is troubling to know that the defense—receiving money is this close friendship, and if the friendship is that close to where people give cash monies, that they wouldn't—that they would be allowed to practice before him and there wouldn't be any disclosure to the other party or the public about the close personal relationship.

There is a series of transactions and involvements that, as a lawyer and as a Member of this Judiciary Committee, that I find troubling. Nevertheless, of course, we have to listen to all of the testimony that is solicited and the statements of Judge Porteous and/or his counsel and be impartial in this particular hearing.

But our duty is to try to see what the facts are and maintain the integrity of the judiciary system in light of the task given us by the Chairman and determine whether justice dictates that we take action and send this on to the Senate for the overall good of the judiciary.

These are very serious allegations that have been leveled against the judge and a serious and solemn duty that we must take and uphold to maintain the integrity of the judiciary and our Nation. I look forward to the testimony from the witnesses today and reserve our final judgment until after these proceedings are concluded, and I do appreciate the work of Chairman Schiff and Vice Chairman Goodlatte and the whole Task Force staff, especially Mr. Baron, in moving this investigation forward.

And I yield back the balance of my time.

Mr. SCHIFF. I thank the gentleman.

Who else seeks recognition?

Yes, Judge Hank Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

I want to first thank the two leaders of the Task Force, Mr. Schiff and Mr. Goodlatte, with handling this matter in a manner that would make us all proud because we know that this will be a fair proceeding.

And it is important, ladies and gentlemen, that we maintain the integrity of our judiciary, which is fundamental to the functioning of our legal system. As a former judge, current Chairman of the Subcommittee on Courts and Competition Policy, and a Member of the Impeachment Task Force, I believe in the importance of a judiciary free from judicial misconduct.

Judge Porteous's behavior is particularly egregious, as he stands accused. One example of this misbehavior, his refusal to recuse himself from a case in which he had significant financial and personal ties to the attorneys, and his deliberate attempt to conceal these relationships, goes to an issue that I am very concerned about. In fact, the Subcommittee on Courts and Competition Policy will be examining the state of Federal judicial recusal laws in an upcoming hearing on judicial recusal.

I am appalled at the additional violations that Judge Porteous committed, including accepting what can clearly be interpreted as bribes from counsel with cases in front of him, and false statements on his 2001 bankruptcy filings.

I look forward to the testimony of the witnesses today and thank you.

Mr. SCHIFF. I thank the gentleman.

Mr. Pierluisi of Puerto Rico?

Mr. PIERLUISI. Thank you, Chairman Schiff. I appreciate all the hard work you, Vice Chairman Goodlatte, and the Task Force staff have done in connection with this important inquiry.

In our justice system, judges are called upon to be neutral arbiters of the disputes pending before them. Nearly as important as actual impartiality is the appearance of impartiality. For the public to have faith in the judiciary, it is critical that they never have reasonable grounds to suspect that a legal dispute was decided based on any factor other than the merits of the case.

The troubling allegations being made against Judge Porteous directly implicate these two principles. Testimony that was provided in the earlier proceedings suggests that Judge Porteous may have used his office to solicit things of value from attorneys who were appearing before him. Specifically, according to this testimony, both before and during the pendency of the case before him, Judge Porteous received free meals and cash from the attorneys litigating that case.

Equally troubling is the allegation that Judge Porteous concealed his solicitation and received things of value from the defendant's attorneys in the case, thereby depriving plaintiff's counsel of information it needed to fully assert that the claim that Judge Porteous should—had before him, that he had to recuse himself from dealing with it.

If the facts presented in prior proceedings are correct, it is difficult to see how justice could have been fairly administered in Judge Porteous's courtroom. At a minimum, an objective observer would have serious doubts that Judge Porteous could be neutral and unbiased.

I want to emphasize that the testimony I have just described was provided in other forms to other investigative bodies. It is not the testimony that this Task Force has taken. Today we have an opportunity to hear directly from those most knowledgeable about Judge Porteous's conduct and, importantly, to allow Judge Porteous's attorney to cross-examine these witnesses. No judge should be removed from office unless the facts presented to Congress demonstrate that he or she is not fit for office.

I come to this hearing with an open mind, and I—and a desire to understand more fully the facts surrounding Judge Porteous's alleged conduct. I thank the witnesses for joining us, and I look forward to their testimony.

Mr. SCHIFF. Does any other Member seek recognition for an opening statement?

Seeing none, Mr. Westling, this would be a perfect time if you would like to make a brief opening statement. And you might take a seat at the table and——

Mr. WESTLING. Thank you very much, Mr. Chairman. The microphone——

Mr. SCHIFF. If you can bring that mic very close to you, I think we could hear you a little better.

Mr. WESTLING. Thank you very much, Mr. Chairman, Members of the Task Force. First, I want to thank you for the opportunity to appear before you today. Judge Porteous is here with me, along with other counsel and Members of the team that have been working on this matter. We appreciate the courtesies extended by the Committee and the opportunity to participate in the hearings.

I think the thing that people need to understand is that Judge Porteous has been on the bench in Louisiana for many years. Since 1994, he was a Federal judge serving in the Eastern District of Louisiana, as this Committee is well aware. I practiced there both as a Federal prosecutor and then as a defense lawyer for many years. I am well aware of his reputation in the community, and you will find that there are no lawyers who are ever going to tell you that Judge Porteous did anything but the right thing in his own mind when he made decisions from the bench.

As someone who has spent his life in a trial courtroom, the ability of a judge to properly try and discharge a case is critical in my line of work, as it is for many of you before you came to this body. And I think what you will find is that there has never been an argument that what happened in Judge Porteous's courtroom was anything but fair. And I think the testimony before the Committee will bear that out.

This is not a case that involves abuse of judicial office. It is a case that involves friendships that go back years, and it involves some decisions that perhaps in the light of day, looking backward, would have been made differently under different circumstances. But we have to remember—and this Committee's well aware—that the constitutional standard for impeachment is very high, the independence of the judiciary and its ability to do its job fairly and forthrightly is critical to the functioning of this Nation and of the balance of powers between the branches of government.

And that is why I am confident this Committee will carefully weigh the issues before it. We simply hope that you all will, as you have indicated, keep an open mind and evaluate the evidence fairly and give us our opportunity, as you already agreed to do, to participate as much as possible under the rules.

Thank you.

Mr. SCHIFF. Thank you, Counsel.

We will now hear a brief introduction to the factual predicate of the case from Special Impeachment Counsel Alan Baron. Mr. Baron served as special impeachment counsel for the United States House of Representatives from 1987 to 1989, working on two judicial impeachment proceedings during that time. Mr. Baron was retained in October 2008 as special impeachment counsel by the House Judiciary Committee with regard to the possible impeachment of U.S. District Judge Thomas Porteous and, thereafter, U.S. District Judge Samuel Kent.

Mr. Baron, when you are ready, please proceed.

Mr. BARON. Thank you, Mr. Chairman, Members of the Task Force.

What I intend to do is to provide you with an overview of what constituted really three investigations into the activities of Judge Porteous, one by the Department of Justice, the initial investigation, secondly, the Fifth Circuit Special Investigatory Committee investigation, and, third, the Task Force investigation itself.

We made—the Task Force made an independent investigation of Judge Porteous because the House has this unique function that is the sole power to impeach. Although we built upon the investigations that were conducted by the executive and judicial branches, we felt that the House had to make its own investigation and reach its own determinations.

The Members should have before them a manila folder which has within it a hearing memorandum, also a—what we call the Liljeberg timeline, which will be the organizing principle of the presentation I make this morning, and finally, copies of the PowerPoint, which will be integrated into the timeline.

Judge Porteous was born in December 1946, and he will be 63 this December. In the early 1970's, he graduated from LSU law school, specifically 1971, and he was a law partner with Jacob Amato, from whom you will hear later today, between 1973 and 1974.

Robert Creely, who also you will hear from later today, also practiced at that law firm. From October 1973 to August 1984, Judge Porteous also served as an assistant district attorney in Jefferson Parish, Louisiana.

In August 1984, Judge Porteous was elected and served as the 24th Judicial—District Court, as a judge in that court, for Jefferson Parish, and he served in that capacity from August 1984 to September 1994.

Beginning in 1984 and shortly thereafter, Judge Porteous began routinely to request money from Robert Creely. And as we will see, Creely provided this money through partnership draws that he took from the law firm of Creely and Amato. If we could have first PowerPoint.

This is an excerpt from Creely's grand jury testimony, that is, the investigation conducted by the Department of Justice. He is asked by one of the questioners, "Let me ask you something about the mechanics of this. When he," Judge Porteous, "came to you and hit you up, asked you for money, were you walking around with hundreds of dollars on you or did you have to take steps in order to get the cash?"

Creely then responds, "I don't remember the first time he asked me. If I had money in my pocket and I handed it to him, very well could have done that. But the bottom line was, the first time he asked me for money, I gave him money. And how the mechanics were about, that came about in which I gave it to him, I gave it to him. I don't deny that."

He continues. And this now—it was a pattern that was set up over time after that first instance. He says, "I think sometimes I had to go cash a check, take a draw. Yes, yes, sir, I did not always have money to hand him. I would have to get—I would have to say, you know—you know, his tuition is due. He can't pay his tuition, Jake." Jake is Jake Amato, his law partner. "And he'd say, 'All right. You know, how much money does he need?' And I would say,

'$500 or $1,000, whatever. I just want to be fair to him.' And we have go get a check cashed and give him the money."

Now, the interesting thing is, Judge Porteous really doesn't contest what Creely has just said. Now, I will report to the Task Force that—I guess several days ago—Judge Porteous brought an action naming me, Mr. Damelin and Mr. Dubester, in our official capacities seeking a TRO, which would have prevented us, if it had been successful, from using his—Judge Porteous's testimony in the fifth circuit on the grounds—alleged grounds that it violated his Fifth Amendment right.

Last night, Judge Richard Leon of the U.S. District Court in the District of Columbia dismissed the motion and denied the temporary restraining order. You can understand why Judge Porteous would not want that testimony made public, because here is Porteous's response to the allegation from Creely that he had given the money. "Judge Porteous, over the years, how much cash have you received from Jake Amato and Bob Creely or their law firm?" "I have no earthly idea." "It could have been $10,000 or more, isn't that right?" "Again, you are asking me to speculate. I have no idea, is all I can tell you." "When did you first start getting cash from Messrs. Amato, Creely, or their law firm?" "Probably when I was on the state bench." "And that practice continued into 1994 when you became a Federal judge, did it not?" "I believe that is correct."

So Judge Porteous doesn't say it didn't happen. He is a little vague on the details, but it happened.

Eventually, what happens is that Creely begins to resent and protest of giving the judge this money. This is in the late 1980's. And if we look at the next PowerPoint, "I told"—this is Creely now testimony—testimony from the fifth circuit. This is now the fifth circuit inquiry. "I told him that I—we could not continue giving him money. I couldn't continue giving him money. I got tired of the requests for every request he made. I was tired of it."

"There came a time"—and here is Creely in the grand jury—"There came a time where, you know, this borrowing turned into this, as you said, burden. And that is a good word, because I, you know, can use many words for it, but he—there was a time I said, 'You know, I just can't keep doing this, man. I can't keep supporting your family.' And I told him I had to stop. 'I have got to stop doing this, all right?'"

And then he says something very important. "But he started sending curatorships over to my office, all right? And he would send like two or three at a time. And he then started." Now, let me stop for a minute and explain what a curatorship is.

If there was a missing party in a lawsuit—and typically these were foreclosures by banks. That was often the way it would happen. They would appoint a local lawyer to perform basically ministerial tasks to sit in, to send a letter to the last known address. It was a very minor thing, basically done more by a paralegal or a secretary than the lawyers. And the fee was paid by the bank in most instances, and it was very modest, a couple hundred dollars.

What Creely is saying is that, when he balked at sending this money to Porteous, Porteous then instituted this curatorship scheme, that is, I will send you curatorships, and you guys send me the money.

Creely goes on in the grand jury, he says, "He then starting calling and saying, 'Look, I have been sending you curators, you know? Can you give me the money for the curators?' I said, 'Man.' So I talked to my law partner. I said, 'Jake, you know, man, what do we do?' He says, 'Well, just go ahead and give it to him.' We decided to give him the money. We would deduct the expenses. We would pay income tax on it."

And here we go again. Judge Porteous is asked about this. Again, he doesn't deny it. This is now Judge Porteous in the fifth circuit. Question: "Do you recall Mr. Creely refusing to pay you money before the curatorship started?" Answer: "He may have said I needed to get my finances under control." Yes.

He goes on. "And after receiving curatorships, Messrs. Creely and/or Amato and/or their law firm would give you money, correct?" Answer: "Occasionally."

We have a slide here which will just show you what a curatorship looks like. This is issued by Judge Porteous. And if you go to the next page, it is to Mr. Creely, signed by Porteous. It is just an example.

Now, as part of the Task Force effort, the curatorships have been mentioned in a paragraph in a referral letter from the Department of Justice to the fifth circuit. It was not particularly explored in the fifth circuit, as I recall.

Mark Dubester and Harry Damelin, who were Members of the Task Force staff, did a superb job, and they found a woman named Jodi Rotolo, who had never been interviewed, and she had been the bookkeeper for Amato and Creely. She led them to—she advised them, "By the way, I think there is a computer run at the old firm that lists the curatorships for the firm."

Well, they went. They got—with permission, they got the computer run. It turned out that they had over 300 curatorships on this computer run. And they then had to go to the local courthouse, and it was not computerized. They literally took the Amato and Creely list and then gave it over to the clerk, who is pretty old, so they had to literally by hand combing through the files to go find these curatorships.

The curatorship list—computerized list indicated it was over 300. To date, they have found about 208 of these. And it is a work in progress. They are still looking.

But if you look at the next slide, out of the 208, 191 were sent by Judge Porteous to the Creely/Amato law firm. And if—you know, what sounds like a small matter—$200, really, who is going to—not much to get excited about. But when you are talking about close to $200 of them, we are now talking about a pool of money out of which Judge Porteous could call up and say, "Hey, how about some money?" approaching $38,000, perhaps even $40,000. So that is the significance of the curatorships.

Now, in June 1993, the so-called *Liljeberg* case—the case, actually, is *Lifemark Hospitals of Louisiana v. Liljeberg Enterprises*—is filed in the U.S. District Court for the Eastern District of Louisiana and assigned to a Judge Livaudais. This is 1993. Porteous is not even a Federal judge yet.

Very briefly, without going into much detail, it is a complex case. It involves foreclosures on a hospital property. It involves bank-

ruptcy issues, real estate issues, contract issues, as to who had the right to run the pharmacy in the hospital. It is a complex case.

But before this case comes to Judge Porteous—because he doesn't get it until he is a Federal judge—Judge Porteous is now being considered as of April 1994. He is being considered for a possible Federal judgeship. As part of that process, he has to fill out and sign what is called a supplement to standard form 86, an SF-86.

On there, he is asked this question: "Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause embarrassment to you or to the President if publicly known? If so, please provide full details."

Now, by this time, we know that he has been getting all this money and the curatorships. His answer to that question is, "No." And that is stated under oath. He signs—he says "I understand the information being provided on this supplement to the SF-86 is to be considered part of the original SF-86 and a false statement on this form is punishable by law." I take it back: It is not under oath, but it is punishable by law to make a false statement on this document. He signs that knowingly.

He is nominated to be a Federal judge in August 1994. In September 1994, he is asked to fill out and sign the United States Senate Committee on the Judiciary questionnaire for judicial nominees. Again, he is asked a question: "Please advise the committee of any unfavorable information that may affect your nomination." Again, this is after he has been taking the monies from Creely-Amato, the curatorship arrangement. His answer to that inquiry is, "To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination."

And we have—again, it is an affidavit. "I, Gabriel Thomas Porteous, Jr., do swear that the information provided in this statement is to the best of my knowledge true and accurate."

In January of—he is now on the Federal bench. In late 1994, Amato and Creely pay for some or all of a party to celebrate Judge Porteous's swearing in as a Federal judge. And on January 16, 1996, the *Liljeberg* case is now assigned to Judge Porteous. Trial is scheduled for November 4, 1996.

On September 19, 1996, Mr. Jacob Amato and Mr. Levenson enter their appearance as co-counsel on behalf of the Liljebergs. Now, this is about 6 weeks before the scheduled trial date of a very complex case that has been around for several years. And I think it is fair to say that, although they are experienced trial lawyers, a case of this complexity was not normally the kind of case they handled. They did a lot of personal injury work, divorce work. I am not saying they weren't capable of handling it, but it certainly wasn't their type of case, and it is just 6 weeks until trial is supposed to come on.

They are also retained on a contingent fee basis. It had to—and the fee range of it had to be approved because there was bankruptcy involved, so there had to be approved by the trustee and bankruptcy. So we know that they were to receive an 11 percent contingent fee. Mr. Amato estimated in his testimony that that fee was worth—if they were successful, anywhere from $500,000 to $1 million to him and his law firm.

During this period—and we have here the entry of appearance, Judge Porteous—I am sorry, Amato and Levenson are substituted as attorneys of record. You can see there—and Amato signs as Amato and Creely. It is not just personally. And they are now in the case.

Sometime between 1996 and 1999—we couldn't pin down the exact date—Mr. Levenson goes on some hunting trips with Judge Porteous, but we couldn't figure out exactly when.

Now, Lifemark—now, they come in for Liljeberg. Amato and Levenson are in for Liljeberg. The attorney for Lifemark was a Mr. Joe Mole, who will also—he is here to testify. He is very concerned about this late appearance of Amato and Levenson on behalf of Liljeberg. He knows just from word of mouth around town that they are very close cronies of the judge. He also knows this is—this makes—this just really doesn't make a lot of sense that they would be coming in just 6 weeks before the trial is supposed to start.

He files a motion to recuse. Essentially, he is saying, "Judge, you should not sit in this case because of your close relationship with these lawyers, who have just gotten into the case." He doesn't know anything about the money situation that we know about.

And I would like to—through the efforts of—none of the prior investigations, Department of Justice or the fifth circuit, apparently got hold of the transcript of that recusal hearing. And I—through the efforts of Kirsten Konar, a Member of the Task Force staff, we were able to get the actual transcripts, so we don't have to rely on memory here. We have got the actual words of what happened in court.

I want to set the scene. Mole has filed a motion to ask the judge to get off the case. Now, of course, Porteous knows, if anybody does, about the relationship that he has with Amato and Creely. Well, we will go into what he says.

Amato is in the courtroom. He doesn't say anything, never opens his mouth, but, of course, he knows that—about paying the money to Porteous and the whole curatorship scheme. Mole doesn't know. Levenson, who argues on behalf of the Liljebergs, has been interviewed, and he says—he denies that he knew about the monetary relationship and basically feels he was used. We can't prove to the contrary, so we will just accept that.

We see here that Levenson and Amato are in. And I think it is worth going through what happens at that recusal hearing in a little bit of detail.

Judge Porteous starts off by quoting a case that sort of sets the standard or sets a rule approving a motion to recuse, if it is appropriate. He is quoting now: "A lawyer who reasonably believes that the judge before whom he is appearing should not sit must raise the issue so that it may be confronted and put to rest. Any other course would risk undermining public confidence in our judicial system." That is the end of the quote.

And now here is Porteous. "I cite that so that everyone understands that I recognize my duty and obligations, and I am fully prepared to listen." He then goes on to say, "If anyone wants to decide whether I am a friend with Mr. Amato or Mr. Levenson, I will put that to rest. The answer is affirmative yes. Mr. Amato and I practiced the law together probably 20-plus years ago."

The court again, "Yes, Mr. Amato and Mr. Levenson are friends of mine. Have I ever been to either one of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive yes. Have I been going to lunch with all the members of the bar? The answer is yes."

No mention by Judge Porteous of what really is the issue, that is, that he has been getting all this thousands of dollars from Amato and Creely. Mr. Mole, at a great disadvantage, says, "The public perception is that they do dine with you, travel with you, they have contributed to your campaigns," and Porteous pounces on this. "Well, luckily, I didn't have any campaigns, so I am interested to find out how you know that. I never had any campaigns, counsel. I have never had an opponent. The first time I ran, 1984, I think is the only time they gave me money." Now, this is, again, with full knowledge of all the other thousands of dollars that he has received from them.

The court goes on to say, "You haven't offended me, but don't misstate. Don't come up with a document that clearly shows well in excess of $6,700 with some innuendo, that means they gave that money to me. If you would have checked your homework, you would have found that that was a Justice For All program for all judges in Jefferson Parish, but go ahead. I don't dispute I received funding from lawyers." And, again, he never reveals the real funding that should have been on the table.

"I have always taken the position, if there was ever any question in my mind that this court should recuse itself, that I would notify counsel and give them the opportunity if they wanted to ask me to get off. I don't think a well-informed individual can question my impartiality in this case."

Well, in effect, what you have here is Porteous and Amato, who know the facts, just not disclosing it, completely misleading and disguising the nature of the actual relationship.

Lifemark sought a writ of mandamus from the fifth circuit to get—force the recusal, and that was denied. But, again, when Mole filed his papers, he doesn't know about the financial arrangement.

Mr. Mole brings in a counter-crony, if you will, a Mr. Gardner. This was at the insistence of his client, who comes in—and I anticipate you might want to discuss that with Mr. Mole and find out why he did that.

From June 16 to July 23, 1997, Judge Porteous held a non-jury trial, no jury, but he sits on—after the conclusion of the evidence, he doesn't decide the case for nearly 3 years. He doesn't decide it until July—I am sorry, until April of 2000, just short—2 months short of 3 years. The next slide shows that, during this period, while the *Liljeberg* case is under advisement, his financial condition is deteriorating.

You see here, year end 1996, this is around the time of the recusal motion. He is in credit—got credit card debt of $44,000 and an IRA balance of $59,000. In June 1997—this is during the trial in *Liljeberg*—his credit card debt has risen to $69,000. His IRA balance is now down to $20,000. In June 1999—and we will get into this—he asks Amato while the case is pending for money, because he said he needed it to pay for his son's wedding expenses. By this

time, his credit card debt is up to $103,000. His IRA balance is down to $9,500.

In April of 2000, when he decides *Liljeberg*, his credit card debt is up to $153,000, and his IRA has gone up to $12,000. Now, you might ask, what was the nature of this credit card debt? We have analyzed it, and in large measure, these are money advances at casinos. It is clear that Judge Porteous is a heavy gambler, and that that is where he has run up much of this debt, in the casinos.

We talk about lunches. And, you know, these are not inexpensive or casual affairs. We looked at the credit card records. These lunches run hundreds of dollars, lots of—you know, at some of the finest restaurants in New Orleans, Emeril's, big—the steakhouses, Smith & Wollensky, et cetera. We have gone through all that. And so while the case is under advisement, Amato, Gardner, Levenson are taking Porteous out to lunch numerous times.

And I think—I want to go to the next slide—this is Federal grand jury testimony of Judge Bodenheimer. And Bodenheimer becomes a states court judge in late 1998, 1999. By this time, of course, Porteous is a Federal court judge. And he is sort of mentoring Bodenheimer in what he can expect. And here is Bodenheimer's relating his advice from Judge Porteous.

"Judge Porteous was there, and he walks over, and he said, 'Congratulations, kid, you know? Now, let me tell you—let me give you some pointers about being a judge. Number one, you will never be known as Ronny again. You will be Judge for the rest of your life. Number two, you will never have to buy lunch again, okay? There will always be somebody to take you to lunch. Number three'"—well, you can read it. This was Judge Porteous's attitude as a Federal judge about his relationships for the judge and the lawyers.

Now, Amato was questioned about whether he had been solicited for money from Judge Porteous during the case that the—during the time that the *Liljeberg* case was pending. This is a deposition that has taken of Amato.

Question: "Okay, you previously testified he asked"—he, Porteous—"asked you for money on that fishing trip. Is that correct?" Answer: "He told me that the wedding, his son's wedding, ran over-budget and that he couldn't afford it and could I lend him—give him—somehow get him some money to help out."

"Okay, you don't remember the exact word he used?" Answer: "No." "But clearly he wanted you to provide him money to help him?" "Yes." "The amount of money—did you, in fact, provide him the money?" "Yes." "The amount of money that he asked for, do you have a recollection?" He says, "It is about $2,500."

Now, again, Judge Porteous does not dispute the event. In the fifth circuit, he testifies, "Do you recall in 1999, summer, May, June, receiving $2,000?" "I have read Mr. Amato's grand jury testimony. He says we were fishing. I made some representation I was having difficulties. They loaned me some money or give me some money." "Well, whether or not you recall asking Mr. Amato for money during this fishing trip, do you recall getting an envelope with $2,000 shortly thereafter?" "Yes, something seems to suggest there may have been an envelope. I don't remember the size of an envelope, how I got the envelope, or anything about it."

And he goes on to say, basically, that he got the money. He doesn't dispute it.

"Did you ever pay back the loan?" "No, I didn't. I declared bankruptcy in 2001 and, of course, I didn't list it." I am not sure what he means to say there, but the point is, if it were a debt, presumably it would have been listed in his bankruptcy, but that is his testimony.

Again, it is undisputed about what happened. There are other events during the time the case is pending. While it is under advisement, Levenson, Amato, Gardner and Creely provide money for Porteous to help pay for an externship for one of his sons in D.C. Levenson goes with him to the fifth circuit judicial conference in April 1999. In May 1999, Creely pays for part of the costs of Judge Porteous's son's bachelor party dinner in Las Vegas. Gardner also went on this trip and paid for a portion of the dinner, but he never tells Mole about it.

The actual event when he asks for money from Amato at the fishing trip, that was on June 29, 1999. In late 1999, Amato pays $1,500 for a party celebrating Porteous's fifth year on the bench. He still hasn't decided the case. It is still under advisement. Levenson goes on a trip with him on a hunting facility.

And in April 26, 2000, Porteous issues his decision in favor of the defendant, *Liljeberg*, represented by the Amato and Creely law firm and Leonard Levenson. Now, again, we have been going along with the *Liljeberg* case and going along the timeline. I am going to stick with the timeline, but we are going to divert for a moment here.

In approximately June of 2000, Judge Porteous retains Claude Lightfoot as his bankruptcy attorney. Another event, in August of 2000, Lifemark files an appeal to the fifth circuit from Judge Porteous's decision in favor of *Liljeberg*. And on March 28, 2001, Porteous and his wife file for bankruptcy.

And could we have that document? If you look at the highlighted version, the name of the debtor—he goes in under the name of Ortous—O-r-t-o-u-s—G.T.

He also, as his street address—and we have evidence that he only gives a post office box. And this is a post office box that he had gone out and obtained about a week before he files for bankruptcy. He could have put it in the area on the form where it says it is a mailing address and still given his street address. He doesn't do that. He just puts down a P.O. box that he had just acquired.

And if you go to the next page, this, of course, is under penalty of perjury, and it is signed—well, I guess it is signed in the name of Ortous. About a week or 10 days later, he refiles under the real names. He claims—and Mr. Lightfoot confirms—that Judge Porteous did this—at least the false name—on the advice of his bankruptcy counsel, that it was okay to file under a false name.

On August 28, 2002, the fifth circuit reversed Judge Porteous's decision in *Liljeberg*. That in and of itself is not that big a deal, except when you look at the language employed by the appellate court in reviewing and analyzing Judge Porteous's decision. Understand, this is the decision he makes in favor of Amato—the Amato-Creely law firm, where they stand to make a fee of anywhere from $500,000 to $1 million, and Levenson.

"The extraordinary duty the district court imposed on Lifemark who loaned the money to build the hospital and held the mortgage is explicable. This is a mere chimera, existing nowhere in Louisiana law. It was apparently constructed out of whole cloth."

He said—finds—this has another finding. The court says it "borders on the absurd," "clearly erroneous," "this is not the law." Again, on the next page, "comes close to being nonsensical." And, of course, they reverse. For people who have read appellate opinions even when they reverse a judge, this is really amazing language. There was—his opinion was simply, utterly, totally indefensible.

We have the live witnesses who are—were the actual participants in these events. Mr. Amato, Mr. Creely, and Mr. Mole are here to testify as fact witnesses in connection with what I have described to the Task Force.

Thank you.

Mr. SCHIFF. Mr. Baron, thank you for that briefing.

And we will now begin with our first witness, Robert Creely, Esquire.

VOICE. He is being escorted in.

Mr. SCHIFF. He is being—okay. He is being brought in. He will be here shortly.

Mr. Baron, can you go ahead and remove your nameplate from the desk? Thank you.

Our first witness is Robert Creely, Esquire. Mr. Creely is an attorney with a law practice in the New Orleans area. He is here pursuant to subpoena and has been previously served with an immunity order that compels his truthful testimony at the proceedings before the House. Mr. Creely is joined by his counsel.

And, Counsel, can you introduce yourself for the record?

Mr. CAPITELLI. Yes, Mr. Chairman, Ralph Capitelli.

Mr. SCHIFF. Thank you, Counsel.

I will now swear the witness.

Mr. Creely, please raise your right hand.

[Witness sworn.]

Mr. SCHIFF. Thank you. You may be seated.

TESTIMONY OF ROBERT CREELY, ATTORNEY, NEW ORLEANS, LA

Mr. CREELY. I have a problem hearing. And when you were addressing Mr. Capitelli, I was going to answer his question. I have a hearing deficiency, is what I am trying to tell you.

Mr. SCHIFF. Mr. Creely, then if you—you will need to pull that microphone very close to your mouth. If you have any problem hearing us at any time, please ask that we stop and repeat the question. And we will try to make sure the mics are close to us. But, again, if you have any trouble hearing, please stop us and say, you know, would you please repeat the question?

I am going to now recognize Task Force counsel, Mr. Mark Dubester, to question the witness.

Mr. Dubester?

Mr. DUBESTER. Okay, Mr. Creely, in a nice, loud voice, just introduce yourself.

Mr. CREELY. Introduce myself? Robert G. Creely.

Mr. DUBESTER. And, Mr. Creely, did you go to law school?
Mr. CREELY. Yes, I did, sir.
Mr. DUBESTER. And where did you go to law school?
Mr. CREELY. Loyola University.
Mr. DUBESTER. When did you graduate?
Mr. CREELY. 1974.
Mr. DUBESTER. Okay. I am going to ask you a couple introductory questions just to cover your background, and then we will get into the heart of the questions that I am going to ask you. Can you hear me okay?
Mr. CREELY. I can hear you. I am doing the best I can to hear you.
Mr. DUBESTER. Okay. First, in the 1970's, did you go to work for Mr. Amato?
Mr. CREELY. Yes, I did.
Mr. DUBESTER. And was Judge Porteous a partner of Mr. Amato at the time?
Mr. CREELY. Yes.
Mr. DUBESTER. And you knew him beforehand, but you also became friends of his when you were working with Mr. Amato and Judge Porteous, correct?
Mr. CREELY. Yes.
Mr. DUBESTER. And at some point, you and Mr. Amato went off by yourselves in your own practice. Is that correct?
Mr. CREELY. Yes, sir. That is right.
Mr. DUBESTER. And was that a full-blown partnership, 50/50 you and Jake?
Mr. CREELY. Yes, sir.
Mr. DUBESTER. Okay. And in 1984, do you recall Judge Porteous becoming a state judge?
Mr. CREELY. Judge Porteous became a state judge in 1984, yes, sir.
Mr. DUBESTER. Okay. And you maintained a friendship with Judge Porteous after he became a state judge, correct?
Mr. CREELY. Yes, sir.
Mr. DUBESTER. That consisted of taking him to lunch, taking him on hunting trips, other socializing of that nature, correct?
Mr. CREELY. Yes, sir.
Mr. DUBESTER. And generally, whenever you socialized where there was money to be spent, who paid?
Mr. CREELY. Well, I did, the firm did.
Mr. DUBESTER. Okay. Okay, I want to talk to you about one of the matters which is of concern to the Members here. Did there come a time when Judge Porteous was a state judge that he made requests of you for cash?
Mr. CREELY. Yes, sir.
Mr. DUBESTER. And can you describe what you recall about those requests, how they began and how they changed over time?
Mr. CREELY. I don't understand how they began, but over time, I began to resist making payments, and he began to use excuses such as he needed it for tuition, needed it for living expenses, things of that nature.
Mr. DUBESTER. Okay. So can you just give a feel to the Members what Judge Porteous would say to you? He would say to you what?

"Bob, I need some money"? "Bob"—what would he say? Use his voice and your voice. Tell them the conversation that would happen.

Mr. CREELY. I wish you would give me a little leniency over a 25 period of lifespan memory——

Mr. DUBESTER. Sure.

Mr. CREELY [continuing]. Back to the 1980's. But, basically, there is his living expenses, his necessities, food—not food, but education, things of that nature.

Mr. DUBESTER. Okay.

Mr. CREELY. I don't remember exactly 25 years ago a conversation between he and I about what he wanted, but he made requests. Let there be no doubt in my testimony that I gave him money.

Mr. DUBESTER. Okay. And the very first requests he made of you, were those of smaller amounts of money?

Mr. CREELY. Very small amounts of money.

Mr. DUBESTER. Okay. Now, did you like giving him money?

Mr. CREELY. No.

Mr. DUBESTER. Okay. What, if anything, did you do or say to Judge Porteous to communicate your displeasure with his requests?

Mr. CREELY. I told him, quite frankly, I thought it was an imposition on our friendship for him to continue to ask me for money.

Mr. DUBESTER. Okay. And did you say to that—did you say that to him more than once?

Mr. CREELY. Yes, sir. But, once again, you are going back 25 years. I am doing the best—my recollection is yes.

Mr. DUBESTER. And after you communicated to Judge Porteous your displeasure, what did Judge Porteous do so that you could have money to give him?

Mr. CREELY. Well, I don't know what he did so that I could have money to give him, but he started sending curatorships to the office.

Mr. DUBESTER. Okay. And in one—in 30 seconds, what is a curatorship?

Mr. CREELY. A curatorship is an appointment by the court to represent an absentee defendant.

Mr. DUBESTER. Okay. And was there a small fee, in the nature of $200 or thereabouts, that your office would receive for handling this curatorship?

Mr. CREELY. I don't remember what the fee was, but there was a fee, a small fee—I believe it was $150, $175. It could be $200, but there was a fee that we received to representing the indigent or the absentee defendant.

Mr. DUBESTER. Okay. And if the clerk's office has represented to us, that it was—by 1989, it was $200. Is that consistent with your recollection?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. Okay. Now, did you want Judge Porteous to assign you curatorships?

Mr. CREELY. I am sorry, sir?

Mr. DUBESTER. Did you want him to assign you curatorships?

Mr. CREELY. No, I did not.

Mr. DUBESTER. Were these important to your business?

Mr. CREELY. No.

Mr. DUBESTER. Okay, who actually in your office took care of these matters?

Mr. CREELY. My secretary.

Mr. DUBESTER. Okay. Now, what was the relationship of the fact that Judge Porteous gave you these curatorships in relation to his requests for money? What was the relationship between those two events?

Mr. CREELY. What was the relationship between——

Mr. DUBESTER. His assigning you curatorships and his requesting money from you?

Mr. CREELY. In my mind, there was no relationship.

Mr. DUBESTER. Okay. Well, what did he communicate to you as to why he assigned you the curatorships?

Mr. CREELY. He didn't communicate anything to me as to why he was sending me curatorships.

Mr. DUBESTER. Well, explain what was going on then.

Mr. CREELY. It would better maybe that way.

Mr. DUBESTER. Okay.

Mr. CREELY. He started sending curatorships. I complained about giving him money before and after he sent me curatorships, our office curatorships. I didn't want to give him money before; I didn't want to give him money after. I began to avoid Judge Porteous as much as I could, because I knew he was going to be asking me for money.

Eventually, one day, he called my office, and he asked my secretary if we had been getting curators. My secretary communicated that fact back to me. I then went to the judge and told him that I didn't appreciate him calling my office and, two, that I made no relationship between him giving me curators and me giving him gifts of money. And that is the evolution of that fact.

Mr. DUBESTER. In your mind, was it clear to you that Judge Porteous had assigned you curators, curatorships, so that you would have a pool of money so you could give him back cash?

Mr. CREELY. That was not in my mind, sir.

Mr. DUBESTER. I am asking, in your mind, did you understand that Judge Porteous was assigning you curatorships so that you would have cash to give him back?

Mr. CREELY. Eventually, that is what I thought he was doing, yes.

Mr. DUBESTER. And what is it that caused you to have that understanding?

Mr. CREELY. Because he kept calling my office.

Mr. DUBESTER. And how was it that he communicated the link between the curatorships and the cash?

Mr. CREELY. I don't know that he did communicate a link. I don't believe he had a record of curators that he sent; he just kept asking me to give him money over the years and I kept complaining about giving him money.

Mr. DUBESTER. Okay. But he made inquiries in your office about the curatorships that he had sent to you, correct?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And you understood that—you understood that he linked the assignment of curatorships to you giving him cash, correct?

Mr. CREELY. I suspected that he had that feeling, yes.

Mr. DUBESTER. Okay. Now, the assignment of curatorships were official acts by Judge Porteous as a state judge, correct?

Mr. CREELY. Correct.

Mr. DUBESTER. And he could have assigned those curatorships to anybody else in the New Orleans bar, correct?

Mr. CREELY. Yes. And I am sure that he did.

Mr. DUBESTER. Okay. But the ones he assigned to you, he assigned to you and to no one else, right?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And in your mind, you knew he did that because you were giving him money, correct?

Mr. CREELY. I suspected that he had that motivation, yes.

Mr. DUBESTER. Okay. So he was taking official acts to enrich himself, correct?

Mr. CREELY. I can't speak for him, but that was my understanding.

Mr. DUBESTER. Okay. And, in fact, he took hundreds of official acts in assigning you curatorships so you would have money so he could ask you for money. These were hundreds of official acts he took as a state judge to enrich himself. Isn't that what you perceived?

Mr. CREELY. I am sorry, sir. I am very sorry.

Mr. DUBESTER. I will move on to the next question. Now, how did the fact that you had these curatorships influence your attitude about giving Judge Porteous money?

Mr. CREELY. What?

Mr. CAPITELLI. Can you repeat that one?

Mr. DUBESTER. Did the fact that you had these curatorships make it easier for you to give him money?

Mr. CREELY. Yes, sir. As I testified, I believe, on many, many previous occasions, it was a justification, okay? He was a very dear friend of ours. He was—you know, maybe I overestimated the friendship, but I considered him to be a very close friend who I loved.

Mr. DUBESTER. Okay.

Mr. CREELY. And he would give me curatorships, and it became a justification to help him out so that I didn't have to go and spend my own money on him. It was—it was a major pain in the neck, curators. I want you to know that.

Mr. DUBESTER. Okay. So to make it clear, you felt when you were giving him back these curatorship monies, it was almost as if these weren't your monies, these were monies that he had provided to you so you could then tap to give back to him?

Mr. CREELY. The monies went into our operating account. I did not keep track curator for curator what I gave him. He would make requests—maybe monthly—and I would give him money when he made these requests. I would avoid him until I couldn't avoid him anymore. Then I made a payment to him.

Mr. DUBESTER. Okay. Now, you have previously estimated that you gave him about $20,000 over time. Is that correct?

Mr. CREELY. I——

Mr. DUBESTER. Sorry, you and Mr. Amato, $10,000 each, roughly?

Mr. CREELY. Over a 10-year period of time, yes, sir.

Mr. DUBESTER. Okay. Well, except for the $2,000 we are going to talk about when he was a Federal judge, most of that happened in his last years on the state court bench, correct?

Mr. CREELY. They happened while he was on the state court bench, yes, sir.

Mr. DUBESTER. Okay. Now, the amount of curatorship fees that have been identified are close to about $40,000, and the amount may actually rise as further searching is conducted. Would that suggest to you that the amount may be as much as $30,000 or even more?

Mr. CREELY. I didn't hear him.

I have estimated and guesstimated as to the amount of cash I gave him. I cannot tell you other than guess—other than guess what I gave him. I made a guess that I gave him $10,000 and my law partner gave him $10,000.

Mr. DUBESTER. And, by the way, this was all cash, correct?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. Now, did you feel comfortable giving Judge Porteous cash in response to his requests?

Mr. CREELY. Yes, I felt uncomfortable. I felt put upon. I felt taken advantage of. I did.

Mr. DUBESTER. Okay. Now, I want to turn to 1994. Do you recall being interviewed by the FBI in connection with its background check of Judge Porteous?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And how did—do you know how the FBI got your name to interview?

Mr. CREELY. What did he say? I am sorry?

Mr. DUBESTER. How did the FBI get your name, if you know?

Mr. CREELY. Judge Porteous gave them my name.

Mr. DUBESTER. Okay. And you just made a gesture. Were you pointing to Judge Porteous, who is sitting behind you?

Okay. Now, the FBI write-up—they did a write-up of the interview with you. And you—it says that you stated—and I am reading verbatim—"Creely advised that he knows of no financial problems on the part of the candidate and the candidate appears to live within his economic means." Do you dispute making that statement?

Mr. CREELY. No, I do not dispute giving that statement.

Mr. DUBESTER. And would that statement have been true?

Mr. CREELY. Was it—I am sorry?

Mr. DUBESTER. Was that statement true?

Mr. CREELY. The statement was probably not accurate. And the statement was—and I will tell you—we have interviewed about this beforehand—I knew nothing about his checkbook or whether it was negative at the end of the month.

Mr. DUBESTER. I understand. Mr. Creely, listen——

Mr. CREELY. All I know is what he told me. He told me he was having financial problems.

Mr. DUBESTER. Okay. So if the FBI interview quotes you as saying that you know of no financial problem, that wouldn't have been a true statement, right?

Mr. CREELY. Correct.

Mr. DUBESTER. And why would you make a statement like that to help Judge Porteous in the background check process?

Mr. CREELY. As I told you, I didn't want to do anything to impede his advancement. He was a friend. He was a very manipulative friend. And I didn't want to—I didn't want to hurt the guy.

Mr. DUBESTER. Okay. And you also—I mean, as a practical matter, you didn't want the FBI poking around in your financial relationship with Judge Porteous, did you?

Mr. CREELY. Well, if I didn't want that to happen, I would have never volunteered to give the interview. I wasn't subpoenaed to give the interview. I volunteered the interview.

Mr. DUBESTER. No, but Judge Porteous suggested that the FBI call you, correct?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And at the time that Judge Porteous suggested that the FBI call you, Judge Porteous knew that you had given him thousands of dollars, correct?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And that is not something that you said or would have said or could conceivably have told the FBI in that interview, correct?

Mr. CREELY. If I was asked that question, I don't know what—my response would have probably been negative.

Mr. DUBESTER. Okay. And you also indicated in response to the FBI's interview that you never knew Judge Porteous to abuse alcohol. Do you remember saying that?

Mr. CREELY. Yes. That is a pretty vague question about abusing alcohol.

Mr. DUBESTER. Okay. But the fact of the matter is, you had seen him abuse alcohol, too, correct?

Mr. CREELY. If they asked me that, they asked me that, and I would tell them no, I didn't know of him abusing alcohol.

Mr. DUBESTER. Well, do you ever remember an incident where you have saw Judge Porteous obviously having abused alcohol?

Mr. CREELY. Yes.

Mr. DUBESTER. Describe one incident. Describe the incident that you have previously testified about at a casino where you—and describe Judge Porteous's behavior when you knew that he had abused alcohol.

Mr. CREELY. Well, I guess if everybody uses alcohol, you have improper behavior from one time from another. But, yes, I know that he drank to excess and probably functioned better under alcohol than he did without alcohol.

Mr. DUBESTER. Okay. Well, was there an incident at a casino in which he was—had to actually be lectured by somebody at the casino because he was drunk?

Mr. CREELY. An incident at a casino?

Mr. DUBESTER. Yes, where he messed around with your chips because he was drunk.

Mr. CREELY. He knocked my chips over. I am not a very big gambler. He was acting in an obnoxious fashion, and he interfered with my play.

Mr. DUBESTER. Okay.

Mr. CREELY. And I got up and left.

Mr. DUBESTER. But the point simply is, not only did you not tell the FBI the truth about his financial circumstances, you also didn't tell them the truth about his drinking, correct?

Mr. CREELY. Yes. Yes——

Mr. DUBESTER. Okay. I want to turn to 1999, Mr. Creely, while—you remember your partner, Mr. Amato, had the *Liljeberg* case. Do you remember that?

Mr. CREELY. Yes, sir.

Mr. DUBESTER. And in 1999, while Mr. Amato—sorry, while that case was under advisement, do you remember going to Las Vegas with Judge Porteous for his son's bachelor party?

Mr. CREELY. I knew there was a case under advisement by Judge Porteous on the *Liljeberg* case.

Mr. DUBESTER. Okay. And in Las Vegas, what, if any, expenses did you pay on behalf of Judge Porteous?

Mr. CREELY. What expenses did I pay on behalf of Judge Porteous?

Mr. DUBESTER. Yes. Yes, sir.

Mr. CREELY. In Las Vegas?

Mr. DUBESTER. Yes, in 1999.

Mr. CREELY. As we talked about earlier, the only expense that I recall paying for him was a meal. You showed me a document——

Mr. DUBESTER. Okay, let's just talk about the meal. Was that about a $500 meal in the nature of for his son's bachelor party dinner?

Mr. CREELY. There was—yes.

Mr. DUBESTER. Okay. And you have seen documents which suggest that you also paid for Judge Porteous's room in excess of over $400. Do you recall that?

Mr. CREELY. I recall you showing me a document to that effect.

Mr. DUBESTER. Do you recall paying for his room, as well?

Mr. CREELY. I do not recall paying for his room.

Mr. DUBESTER. Do you dispute that—if the records show, in conjunction with your—in connection with your memory, that you spent close to $1,000 for Judge Porteous in Las Vegas in 1999? Do you dispute that?

Mr. CREELY. I cannot dispute the records.

Mr. DUBESTER. Okay.

Mr. CREELY. But I would like to state the meal, so that——

Mr. DUBESTER. Sure.

Mr. CREELY. There were 20 people, 25 people at a bachelor party meal for his son. I was a guest of his son. The way I recall it, the meal check came out. There were 25 adults at this dinner. Everybody put their credit card onto the waiter's tray. The meal was divided up and the tip. You know, with four or five men at my table. And there is no way you can eat a meal at a high-end steakhouse and drink for $400 or $500. I paid a portion of that meal. I didn't pay for the entire meal.

Mr. DUBESTER. Fair enough. Did you pay over $500 for—towards the bachelor party dinner?

Mr. CREELY. Whatever the record reflects. If it says $500, yes.

Mr. DUBESTER. Okay. And finally, did you ever appear in front of Judge Porteous yourself personally?

Mr. CREELY. I am sorry, sir?

Mr. DUBESTER. Did you ever appear in front of Judge Porteous personally?

Mr. CREELY. In 20 years that he sat on the state and Federal bench, I appeared before him three times, one time in state court, which was a jury trial. It was my first jury trial. The jury ruled in my favor.

The insurance company wanted to appeal that ruling. They posted a surety bond to secure payment for the judgment. The insurance company was going insolvent. I filed a motion to test the solvency of the surety. He denied my motion outright.

I had an interdiction of an elderly woman who was horribly mistreated in front of him. He ruled in my favor. Nobody could have lost that case.

When he was in Federal court—and I believe it was the early '90's—my recollection is I had a state court class action. A discovery issue came up over my entitlement to records that may have been protected by a Federal statute. And I don't remember. It was the MMTJ or MMJT are the initials for it, which prohibit state courts or any court from inquiring into financial data from financial institutions.

The defense lawyers removed it, got allotted—from state court, got allotted to Judge Porteous. They requested a TRO. He was well aware of everybody on the pleadings. He granted the defendant's TRO. In other words, he ruled against me.

We had a telephone status conference about the preliminary injunction that was coming up, and he blatantly, flat-out, over the telephone, "I am granting the preliminary injunction. If you want to make a record, come over. You are wasting your time," basically.

I made a record. I appealed him, and the United States Fifth Circuit Court of Appeals overturned his ruling. That is all I remember doing in front of him for 30 years. So I got nothing back in return from him for curators. I mean, I did this out of friendship.

Mr. DUBESTER. In none of those cases did opposing counsel know that you had given him thousands of dollars, correct?

Mr. CREELY. Well, in the one in Federal court?

Mr. DUBESTER. Yes.

Mr. CREELY. He ruled against me before I even showed up. He ruled against me before I came. To answer your question, no, but he signed a TRO. I showed up. I lost.

Mr. DUBESTER. Thank you very much.

Mr. CREELY. Without—outright lost.

Mr. SCHIFF. I thank you, Mr. Dubester.

Mr. Creely, Members of the Committee now will take a brief opportunity to follow up on the questions that were asked by our counsel.

I wanted to start out asking you about the curatorships. I think you testified earlier in answer to Mr. Dubester's questions that you didn't ask for the curatorships. Is that right?

Mr. CREELY. That is correct.

Mr. SCHIFF. So you never went to the court and sought to become an attorney handling curatorships, right?

Mr. CREELY. I was very busy. I didn't want curators.

Mr. SCHIFF. You consider them to be kind of a nuisance and not what you wanted to make your practice out of, right?

Mr. CREELY. Absolutely not.

Mr. SCHIFF. So it was Judge Porteous's initiative to send you these curatorships?

Mr. CREELY. Yes, sir.

Mr. SCHIFF. And he took this initiative at a time when you were resisting giving him more money?

Mr. CREELY. Correct.

Mr. SCHIFF. For some time—maybe a period of years—he would hit you up for money, and you were starting to tell him it has got to come to an end, correct?

Mr. CREELY. I am sorry?

Mr. SCHIFF. For some years, you were giving him money. You got tired of giving him money, and you told him it has got to stop, right?

Mr. CREELY. Yes.

Mr. SCHIFF. And around the time you told him it had to stop, the curatorships started showing up in your office. Is that right?

Mr. CREELY. Correct.

Mr. SCHIFF. Now, during the course of your receiving these curatorships, wouldn't Judge Porteous call your office and inquire how many curators he had sent over to your office recently?

Mr. CREELY. After a period of time, I began to avoid Judge Porteous, because I knew what he wanted from me: money. And I—I didn't—I avoided him. He then called my office and asked, had we been getting the curators? That conversation was related back to me by my secretary.

I approached him and told him that the curators and what I gave him had nothing to do with each other, and if he wanted to stop giving me curators, stop giving me curators. And if he would have stopped giving me curators, I probably would have continued to help him, because he was a friend.

Mr. SCHIFF. But he would call and ask about whether you were getting the curators at the same time he would call and ask for money. Is that right?

Mr. CREELY. He would ask for money, I would avoid him, and then he would call the office and ask the—if we had been receiving the curators.

Mr. SCHIFF. And he would want to know how many curators you had received at a given time, when he would call? Is that the information you got back?

Mr. CREELY. The information I had back is he wanted to know if we were getting the curators. And then he would start hitting on me for money again.

Mr. SCHIFF. And so the conversations about the curatorships took place at the same time as the conversations about money? So the conversations the judge had with you about the curatorships, when he would call your office for curatorships, was at the same time that he would make requests for money. Is that right?

Mr. CREELY. I would have to say he was asking for money, and I was avoiding giving him money, so he called the office and asked for—if we were getting the curators. And, eventually, he would get money.

Mr. SCHIFF. And when—did he ever get money—did he ever make the request for money of your secretary, or did it always go to you directly?

Mr. CREELY. He made the request to my secretary.

Mr. SCHIFF. For money?

Mr. CREELY. Right. Well, to whether or not we were receiving curators, curators he was sending.

Mr. SCHIFF. My question is, did he ever ask your secretary to get money from you for him? Or did the request for money always go directly to you?

Mr. CREELY. The request for money, as I recall it, came directly from me. There is no telling what he did. I—he could have made that request. I am only aware of what requests he made of me.

Mr. SCHIFF. So you don't know whether he—you didn't get a message from your secretary that the judge called, he wanted to know how many curatorships he had sent over, and he wants more money? Did your secretary ever tell you something along those lines?

Mr. CREELY. I don't recall that, but she said he was looking for curators—and, I mean, this is 15 years ago.

Mr. SCHIFF. Did she tell you why he wanted to know how many curators he had sent over to your office?

Mr. CREELY. I am sure the answer to that is obvious, because he wanted money.

Mr. SCHIFF. Why is the answer to that obvious?

Mr. CREELY. I am sorry, sir?

Mr. SCHIFF. Why is the answer to that obvious?

Mr. CREELY. I think it is obvious.

Mr. SCHIFF. So it is obvious to you that the reason he was calling about the curatorships was because he wanted to call and ask you for money?

Mr. CREELY. Yes.

Mr. SCHIFF. Now, you—in your grand jury testimony, you testified, "And he then started calling me, saying, 'Look, I have been sending you curators, you know. Can you give me the money for the curators?' I said, 'Man.' So I talked to my law partner. I said, 'Jake, you know, man, what do we do?' He says, 'Well, just go ahead and give it to him.' We decided to give him the money. We would deduct the expenses. We would pay income taxes on it."

That was your testimony before the grand jury. Was that accurate testimony?

Mr. CREELY. It was as accurate as I could be, yes.

Mr. SCHIFF. So to the best of your recollection, when the judge would call, he would ask you for the money for the curators?

Mr. CREELY. That is my recollection, is he was calling to see—get an account of how many curators were there or how many curators we received so that he could ask me for money for curators.

Mr. SCHIFF. Did you and your partner, Mr. Amato, ever consider giving him checks, writing him checks when he asked for money, as opposed to giving him cash?

Mr. CREELY. No, we did not.

Mr. SCHIFF. And why didn't you write a check from the law firm instead of going through the process of taking a draw and giving him cash?

Mr. CREELY. Well, two things. One, I didn't think giving money was improper. The ethical and judicial codes is I can give money to anybody I want to. What he has to report is a different thing. If I wrote him a check, I would have to have gone through a complete accounting breakdown as to what it is for, deductions, and so forth. He wanted cash.

Mr. SCHIFF. So he told you he wanted cash, he didn't want it—he didn't want a check?

Mr. CREELY. Correct.

Mr. SCHIFF. Now, I am not sure I understood, because I think you used a double negative. Were you saying that you knew it was improper to give him money or that you thought it was proper to give him money?

Mr. CREELY. Well, it is improper for me to give him money for him to rule on a case that I want him to rule on. If I would say, "I will give you money if you rule on a case," that is improper. But my reading of the canons of judicial ethics is that I can give gifts, including cash, to judges, as long as they report it on their disclosure statement.

Mr. SCHIFF. So why didn't you write a check from the firm if it was appropriate for you to give him money?

Mr. CREELY. It would have been appropriate for him to give him money if I wrote him a check from the firm, yes.

Mr. SCHIFF. So my question is, why didn't you write a check if you thought that was an appropriate thing to do?

Mr. CREELY. Because he didn't want a check, one. Two, my law partner and I had a habit of, on a weekly basis, taking a draw, a cash draw. And out of that cash draw, we would give him monies.

Mr. SCHIFF. Mr. Creely, isn't it also correct that you didn't want a written record of your giving money to a judge?

Mr. CREELY. No, I didn't want a written record that I was giving money to a judge. But—no.

Mr. SCHIFF. At this point, let me turn to my Ranking Member, Mr. Goodlatte, for his questions.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Creely, to follow up on the Chairman's question, when you say—may I borrow that—when you say, "We decided to give him the money. We would deduct the expenses. We would pay income taxes on it." And you say you always paid him in cash, how did you account for that in the books of the law firm?

Mr. CREELY. There was—there was no way—that was a general line statement. It was income coming into the office, income coming into the office. It would go into the general account on—and there would be a file generated for each case. Each case, we would have income and expenses. The income would then go on our income tax return.

So, you know, I don't know where that statement was taken from, but——

Mr. GOODLATTE. It is your grand jury testimony regarding the curatorships.

Mr. CREELY. We would—we would get money, put it in the bank, take a draw, and give him cash. But it wouldn't be four curatorships goes into the bank and we kept track of it in that fashion. We would—we would take a draw and give him money.

Mr. GOODLATTE. And would you each take a draw at the same time? How did that work? You both were giving him money. Was that not correct?

Mr. CREELY. Yes, sir.

Mr. GOODLATTE. And did you each take a draw? Did you keep track of how much he was drawing to give him and how much you were drawing to give him? Or——

Mr. CREELY. Yes, we—at first, it was not a lot of money. Toward the end, he would ask for $500 or $1,000. I wasn't paying him $500 or $1,000 out of my pocket. So my—I went to—my law partner and I went and took a draw of an equal amount and gave him the money.

Mr. GOODLATTE. And why was it an equal draw? If he was your friend and you were giving him the money because he was your friend, why would you be concerned, you and your partner, taking equal draws from the firm? Wasn't this really a business expense for the firm that would cause you to each take an equal amount to give him funds?

Mr. CREELY. It wasn't an expense. We treated it as income and paid taxes on it.

Mr. GOODLATTE. Sure. But you were both doing it.

Mr. CREELY. Correct.

Mr. GOODLATTE. And you were doing it equally. Why would that—given as a matter of friendship, why would it matter to you if you gave it equally? Why wouldn't—that would only matter, it would seem to me, looking at this as a business undertaking that you are going to each provide funds to the judge for the benefit of your legal practice. You would say, "Well, let's each take an amount equally and give it to the judge," as opposed to, "Well, he is my friend, so I am going to give him this money. He is your friend. You give him whatever amount you want to give him."

Mr. CREELY. We took it as a draw. We treated the man as a friend. We respected his needs. And he made a request to either me or Jake, Jake or I—what monies he requested.

Mr. GOODLATTE. Do you know if other attorneys in the legal community were also giving Judge Porteous money?

Mr. CREELY. I am sorry, sir?

Mr. GOODLATTE. I said, do you know if other attorneys in the legal community in New Orleans were also giving Judge Porteous money?

Mr. CREELY. I have read—to answer your question, yes. And the reason I have read so many confidential reports that have been posted over the Internet, have written so many summarizations of my testimony and other people's testimony, it all blends together into like a soup as to what—and then you put 15 to 25 years of life, and memory into this, and it is hard to determine what you read, what you remember, and things of that nature. I mean, we are going back to 1984.

Mr. GOODLATTE. Sure. But collectively, both in terms of what you have read and what you remember, is it your impression that others were giving funds to Judge Porteous?

Mr. CREELY. Yes.

Mr. GOODLATTE. And did you know of any of those at the time that you were also giving funds to Judge Porteous? Were you aware that others were giving funds to him?

Mr. CREELY. At what time? From——

Mr. GOODLATTE. At the time—well, during the timeframe between when you started giving funds to him and when you stopped giving funds to him. Were you aware at that time that others were giving funds to him?

Mr. CREELY. A 25-year period of time, and I have only heard people complain. I can only assume—if you want me to assume——

Mr. SCHIFF. Mr. Creely, can you talk more closely into the microphone? You may want to pull it—thank you.

Mr. CREELY. I can only assume that, if you were a good friend of Judge Porteous, that he would ask you for cash.

Mr. GOODLATTE. That was your impression that was a common practice of his?

Mr. CREELY. My impression or my guesstimation would be yes.

Mr. GOODLATTE. And can you tell us why you and Mr. Amato were brought into the *Liljeberg* case?

Mr. CREELY. I was never brought into the *Liljeberg* case. Mr. Amato was brought into the *Liljeberg* case. I was—never had one single meeting involving a *Liljeberg* case.

Mr. GOODLATTE. But your firm was brought into the *Liljeberg* case?

Mr. CREELY. Firm was brought into the *Liljeberg* case.

Mr. GOODLATTE. The listing referred to Amato and Creely in the filing with the court. So your firm was brought into the *Liljeberg* case.

Mr. CREELY. If that is what the listing says, I have no reason whatsoever——

Mr. GOODLATTE. Did you ever have any conversations with Mr. Amato about the reason why the firm was brought in to the case?

Mr. CREELY. No.

Mr. GOODLATTE. No. You have no idea why that was? Was it the type of case that you or Mr. Amato would ordinarily be brought into?

Mr. CREELY. Myself, I handled very complex cases over the past 10 years, multi-party class-action litigation that involve neutrinal litigation, neutrinal litigation in Federal court involving hundreds of lawyers, been involved in probably 10 class-action multi-party cases in state court. I handled cases in Federal court, maritime cases in Federal court——

Mr. GOODLATTE. What about Mr. Amato? Since you said you didn't personally do anything in that case, what about Mr. Amato?

Mr. CREELY. Mr. Amato, to my knowledge, did not have a large—did not have a Federal practice.

Mr. GOODLATTE. But you had no conversations with him about why he was being brought into work on the *Liljeberg* case 6 weeks before trial?

Mr. CREELY. I don't recall any specific conversation, but——

Mr. GOODLATTE. Let me move on to another area.

Mr. SCHIFF. And, Mr. Creely, you really need to talk directly into the microphone. You have a habit of——

Mr. CREELY. I have an eye infection, and I am trying to keep away from anything that may be contagious to somebody. I am very sorry.

Mr. GOODLATTE. Mr. Creely, during his time on the Federal bench, did Judge Porteous ever use court employees, such as his secretary, to either pick up money from you or request money of you for private purposes?

Mr. CREELY. The only time I recall is during the 1999 period of time, I believe his secretary came by to pick up money.

Mr. GOODLATTE. This would have been Rhonda Danos?

Mr. CREELY. Yes, sir.

Mr. GOODLATTE. And she came by to pick up an envelope with $2,000 in cash in it?

Mr. CREELY. That is my understanding, yes.

Mr. GOODLATTE. Would that have included cash from both you and Mr. Amato? Or is that just your cash?

Mr. CREELY. Well, we—cash Mr. Amato asked me to give him to give to the judge.

Mr. GOODLATTE. So the two of you each—not—didn't write a check, but you each put cash in an envelope from each of you, and then the judge's secretary came over and picked up that cash? Is that your recollection?

Mr. CREELY. It is my understanding.

Mr. GOODLATTE. All right. Are you aware of any other situation in which Judge Porteous used a court employee—I am sorry. You need to use the microphone.

Mr. CREELY. Why he was on the Federal bench?

Mr. GOODLATTE. Or the state bench, either one.

Mr. CREELY. You need to use the microphone, Counsel, so we can hear what you are trying to say.

Mr. CAPITELLI. I am sorry—hearing on that. Would you repeat that question?

Mr. GOODLATTE. Yes. My question was, in addition to the instance involving Rhonda Danos that he just testified about. Are you aware of any other instances while he was a Federal or state court judge where he used court employees for the purpose of picking up money after making some of these requests?

Mr. CREELY. No, sir.

Mr. GOODLATTE. Thank you.

Mr. Chairman, those are the only questions I have.

Mr. SCHIFF. I thank the gentleman.

Mr. Cohen?

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Creely, what—how many curatorships do you think you had over the period of years from Judge Porteous?

Mr. CREELY. There is a list that was requested by Mark through these proceedings. I have not—I knew a list existed.

Mr. COHEN. Ten, twenty, a hundred?

Mr. CREELY. I would say 100, at least.

Mr. COHEN. At least 100. And what did the average curatorship pay? How much did you get paid for the average——

Mr. CREELY. I would say between $150 and $175.

Mr. COHEN. And you hated doing these? You didn't like doing them; it was a nuisance. Is that correct?

Mr. CREELY. I am sorry.

Mr. COHEN. You say it was a nuisance. You didn't like doing them?

Mr. CREELY. I didn't do them. They were purely—they were purely administrative. There were secretarial-type things. All you did was provide a note of evidence to the court that you made an attempt to provide or find the absentee defendant, and that was all you did.

Mr. COHEN. Do you know if other people were curators in Judge Porteous's court?

Mr. CREELY. Yes.

Mr. COHEN. And did those people, to the best of your knowledge, give Judge Porteous money, as well?

Mr. CREELY. Judge Porteous testified to the fact that they did.

Mr. COHEN. Just about every one of them? Just about all of them?

Mr. CREELY. Oh, I don't know about just about all of them. I know he testified that at least one lawyer gave him money.

Mr. COHEN. Did you give money to other judges other than Judge Porteous?

Mr. CREELY. Campaign contributions.

Mr. COHEN. Those were checks?

Mr. CREELY. Yes, sir.

Mr. COHEN. But you never gave cash to another judge?

Mr. CREELY. No.

Mr. COHEN. So the only reason you gave cash to Judge Porteous is because he asked for it and he was your friend. Is that right?

Mr. CREELY. The only reason I gave it to him was because he was a friend in need.

Mr. COHEN. Do you—because he was a friend in need.

Mr. CREELY. In need.

Mr. COHEN. All right.

Mr. CREELY. I got nothing back in state court for doing that, nothing.

Mr. COHEN. But your firm was hired to this particular case. Is that correct?

Mr. CREELY. Yes, sir.

Mr. COHEN. And you are a senior partner in the firm?

Mr. CREELY. Yes, sir.

Mr. COHEN. Did you benefit from the overall profits of the firm? Did you share in the profits?

Mr. CREELY. Of the law firm?

Mr. COHEN. Yes, sir.

Mr. CREELY. Yes, sir.

Mr. COHEN. And so how can you say you never benefited from it when your firm was appointed and might have won a judgment?

Mr. CREELY. Well, the only way I benefited is the excess curators that I didn't give to him in the form of cash. I didn't benefit by any case, because every case I had in front of him, he ruled against me.

Mr. COHEN. How about in the case where Mr.—your partner, did you—have a partner in your firm was hired?

Mr. CREELY. I had a partner that was hired on the case that we didn't get paid any money on.

Mr. COHEN. Didn't get paid any money, because it was reversed on appeal.

Mr. CREELY. Yes, just like I—much like I—reversed on the case he tried for me.

Mr. COHEN. Right. But if it hadn't been reversed on appeal, you would have benefited from that, right?

Mr. CREELY. I would have benefited by it, but, sir, none of those cases were resolved in state court. That case was earmarked, destined for Federal appeal court. They all are. Every large case that I have, with minor exception, is finally adjudicated in the appellate court, particularly on legally—on legal and most of the time factual issues. That case was never going to be resolved in state court, in my mind—I mean, in Federal court, in my mind, never.

Mr. COHEN. But you have got to get a judgment in federal—district court to be adjudicated and get a—and get a final recovery in the appellate level. Is that not correct?

Mr. CREELY. I just had a case that I got a class-action 680 people that I got a judgment in state court, and the appellate court reversed it—reduced it by 60 percent. There is a lot of times you try cases and you take an appeal and the court either raises, lowers, takes away, gives to. You never know what the court of appeals is going to do.

Mr. COHEN. I am aware of that, but I am losing your logic, sir. You—if—you can't get to Federal court, to appellate court, unless you win at the district level. Is that correct?

Mr. CREELY. No. If you lose at the judicial level, you can take an appeal to the appellate court, sir, just like the other side on this case. Apparently—and I hadn't read the judgment—they lost. They took an appeal.

Mr. COHEN. Were they not the defendants in that case?

Mr. CREELY. Whoever the defendants were, they were. I don't know who the defendants are. All I know is Lifemark or something to that effect. I don't know the names of all the defendants. I was completely excluded from that case, every aspect of that case.

Mr. COHEN. Have you—what else did you—did you provide to Judge Porteous, other than cash? You paid for lunches and dinners. Is that correct?

Mr. CREELY. You know, I would take him to lunch and to dinners, as other people did. And I hunted with him. He and I were more or less adult from almost high school—best of friends. I hunted with him. I fished with him. We were friends, and everybody in the city of New Orleans knew we were friends, everybody.

Mr. COHEN. And what else did you give him, other than hunt with him—when you hunted or fished with him, you—what did you—did you extend some benefits to him financially that he wouldn't have to pick up?

Mr. CREELY. In what? What, like paying for fuel or gasoline for the boat or something like that?

Mr. COHEN. Yes.

Mr. CREELY. Well, no. Nobody paid for a hunting or fishing trip when they came with me. Nobody.

Mr. COHEN. What other type things did you do for Judge Porteous?

Mr. CREELY. The best of my recollection, I took him on three hunting trips in 20 years out of the country, two when he was on the state court bench, one early on when he was on the Federal bench.

Mr. COHEN. No football tickets, nothing like that? No football tickets?

Mr. CREELY. I have no recollection of buying him a football ticket.

Mr. COHEN. No further questions, Mr. Chairman.

Mr. SCHIFF. I thank the gentleman.

Mr. Lungren of California?

Mr. LUNGREN. Thank you very much.

Mr. Creely, did your firm get curatorships from other judges?

Mr. CREELY. Yes.

Mr. LUNGREN. In those instances, did any other judges ask you for money to help them with their personal expenses?

Mr. CREELY. No, but they asked for campaign contributions.

Mr. LUNGREN. But did they ever ask you for money for personal expenses?

Mr. CREELY. No.

Mr. LUNGREN. Did they ever ask you for money in cash?

Mr. CREELY. No.

Mr. LUNGREN. Did they ever send a member of their court staff to your office to pick up cash?

Mr. CREELY. No.

Mr. LUNGREN. So this is not a normal type of the legal culture of New Orleans?

Mr. CREELY. This is not a—it is not normal, but our friendship was very different——

Mr. LUNGREN. Let me ask you about the proprietorship—propriety, excuse me. In the Federal case, where there is a motion of recusal involving your law firm, do you think your law firm had any obligation—or representative of your law firm had any obligation whatsoever to inform the other parties through their attorneys or the other attorney that your—that the judge in the case had been the beneficiary of thousands of dollars of cash donations, contributions, gifts, whatever you want to call it, from your law firm?

Mr. CREELY. Absolutely, but I was not a party of that recusation proceeding, didn't even know it was going on. Yes.

Mr. LUNGREN. To your knowledge, did a representative of your law firm of which you are a senior member make that information available on the public record to the other attorney or attorneys involved?

Mr. CREELY. I don't believe he did.

Mr. LUNGREN. That is all I have. Thank you.

Mr. SCHIFF. I thank the gentleman.

Mr. Creely, we see—or Mr. Johnson?

Mr. JOHNSON. Yes, thank you, Mr. Chairman.

Are you now facing or do you expect to face or have you faced state bar disciplinary proceedings in Louisiana?

Mr. CREELY. I received an inquiry, but nothing else. I think that they have deferred until this is over with.

Mr. JOHNSON. They have deferred what?

Mr. CREELY. I think that they are deferring until this procedure is over with.

Mr. JOHNSON. What about Judge Porteous? Has he, to your knowledge, been the subject of a bar complaint?

Mr. CREELY. I have no idea.

Mr. JOHNSON. Were you the subject of a bar complaint or did the state bar just take this up on its own motion?

Mr. CREELY. The state took it up on its own motion when they—one of—one of the news channels or something broke a story in the newspaper, posted documents entitled "Confidential," and I got a letter from the disciplinary council that they were going to look into this matter.

Mr. JOHNSON. Approximately when was that?

Mr. CREELY. Pardon me?

Mr. JOHNSON. Approximately when was that?

Mr. CREELY. I think it—I think it happened 2 years ago.

Mr. JOHNSON. So have you had to respond at all in writing to this letter of inquiry or notice of inquiry?

Mr. CREELY. No, I have not had to explain it. I am sure I will.

Mr. JOHNSON. Do you—why did you—feeling so uncomfortable about it, why did you continue to give Judge Porteous cash money? And tell me, when did it start? And when is the last time you gave him some cash?

Mr. CREELY. It may be hard to believe, but when you don't have any cases in front of a judge, okay, with the exception of the jury trial——

Mr. JOHNSON. And you are speaking of you personally or the firm?

Mr. CREELY. I think—I think my law partner may have had a couple of cases in front of him, and he ruled against him, too, in state court. And we are talking about state court. But it may be hard to believe, but everybody has a friend, and we have all had friends.

Mr. JOHNSON. But, I mean, you felt uncomfortable at giving him some money. What was it that made you feel uncomfortable?

Mr. CREELY. About——

Mr. JOHNSON. And why did you feel uncomfortable?

Mr. CREELY [continuing]. At that point in time—at that point in time, what made me feel comfortable about it——

Mr. JOHNSON. Uncomfortable.

Mr. CREELY. Uncomfortable?

Mr. JOHNSON. Yes. You have testified here today that it made you feel uncomfortable to be leaned on, if you will, for cash money.

Mr. CREELY. Because I began to feel like I was getting taken advantage of. I don't—I don't know if anybody——

Mr. JOHNSON. Well, what do you mean when you say "taken advantage of"? What do you mean?

Mr. CREELY. That I don't believe, in my mind, that he was using the money for the things that he told me he was using it for.

Mr. JOHNSON. What did he tell you he was using the money for?

Mr. CREELY. Tuition, things household related.

Mr. JOHNSON. What did you later find out about his use of the money that you gave?

Mr. CREELY. Just word of mouth, seeing him live a higher lifestyle than you would expect, but I want you to understand that the motivation for trying to help a friend, I mean, the love of a wife is one thing. The love of another person because you care about them and—is a different thing. And I really cared about him and really——

Mr. JOHNSON. Well, has he ever given you anything, Judge Porteous? Did he care that much about you that he would give you anything?

Mr. CREELY. No.

Mr. JOHNSON. Did he ever pay for his meals?

Mr. CREELY. No.

Mr. JOHNSON. Did he ever pay for his trips to hunt——

Mr. CREELY. No.

Mr. JOHNSON [continuing]. And fish? You paid it all?

Mr. CREELY. Well, when you say trips, hunting trips, of course. I had a boat. I had a camp. Nobody paid for anything when they came with me, nobody. Nobody paid anything.

Mr. JOHNSON. This curatorship situation, why do you resist characterizing the curatorship situation as a kickback, a kickback scheme? Isn't that a classic kickback scheme?

Mr. CREELY. I have read that word before. It was not a kickback scheme.

Mr. JOHNSON. Well, I mean, doesn't it have all of the hallmarks of a kickback scheme? I mean, he would forward you a monetary benefit for you and then call later to say, "Where is—where is the money?" Isn't that a—and to do that repeatedly, isn't that a kickback scheme?

Mr. CREELY [continuing]. Whatever the definition of a kickback scheme is, if you——

Mr. JOHNSON. So why do you not want to characterize it in that way?

Mr. CREELY. If he came to me and said, "I am going to give you curators in return for you giving me the money back," I would refer to that as a kickback scheme. That is not what happened, okay? He gave me curators, and——

Mr. JOHNSON. Which you had not asked for?

Mr. CREELY. That which I did not ask for. I did not sit down with him and contrive a situation where he would give me curators in return for him giving me money.

Mr. JOHNSON. But was it an implicit understanding, as things went on with this curatorship process?

Mr. CREELY. I am confused about your question, sir.

Mr. JOHNSON. The curatorship process, you say that you would not—there was no agreement before this scheme started, but didn't it become apparent to you during the course of the curatorship scheme that this was a way of you being able to pay Judge Porteous?

Mr. CREELY. It evolved into that, yes. He began to rely upon the curators, began to call for them, and we rationalized he is asking for money, giving him the money. And it wasn't all of the money, but, yes, it—that is what it sounds like.

Mr. JOHNSON. All right. I have no further questions at this time.

Mr. SCHIFF. Mr. Pierluisi?

Mr. PIERLUISI. Mr. Creely, I apologize if some of my questions are repetitive. I will try not to ask you questions you were posed before.

But let me ask you, you have been talking about your friendship with Judge Porteous, and I want to explore that a bit. Do you have a large circle of friends at home? I mean, how many friends do you have, would you say?

Mr. CREELY. How many friends do I have?

Mr. PIERLUISI. Yes, friends, people who consider themselves your friends.

Mr. CREELY. How many friends do I have? It is funny. When you are doing well, you have a lot of friends. When things are looking bad for you, you don't have as many friends as you did before. So back then in that period of time, I had considered myself as having a considerable number of friends.

Mr. PIERLUISI. And that is roughly how many, at the time of the relevant events here?

Mr. CREELY. Sir, you know, I couldn't tell you. I had acquaintances; I had friends.

Mr. PIERLUISI. What is the difference between an acquaintance and a friend, in your mind?

Mr. CREELY. How many friends what?

Mr. PIERLUISI. I am just saying, how do you distinguish an acquaintance from a friend, in your mind? What is the difference?

Mr. CREELY. The difference is just a long-term friendship, a friendship that you have had for years and years and years with that person.

Mr. PIERLUISI. Do you visit with friends at their homes?

Mr. CREELY. Pardon me?

Mr. PIERLUISI. Do you visit with friends at their homes?

Mr. CREELY. Yes.

Mr. PIERLUISI. Do your friends visit at your home?

Mr. CREELY. Yes.

Mr. PIERLUISI. And you do that with close friends or with any friend?

Mr. CREELY. Visit with them?

Mr. PIERLUISI. Visit with them at home and so forth.

Mr. CREELY. Yes.

Mr. PIERLUISI. Did you visit with Judge Porteous at his home?

Mr. CREELY. Yes.

Mr. PIERLUISI. You would go to his home?

Mr. CREELY. Yes.

Mr. PIERLUISI. How often?

Mr. CREELY. Well, often would be he would have a Christmas party with a great number of people there. I would go. On occasion, he would have different functions. And his friends that were very close to him brought me into their friendship circles. They had parties that I attended with Judge Porteous and his wife and kids. So, you know, yes, we visited——

Mr. PIERLUISI. Did he visit you at your home?

Mr. CREELY. Yes, he visited me at my home.

Mr. PIERLUISI. How often?

Mr. CREELY. I can't give you that number. He visited with me on occasion. I am not a real social home type person where I have

dinner parties and a lot of parties. I have had a few parties at my former home that I sold in 2003, but I didn't—I wasn't a real party type person.

Mr. PIERLUISI. Did you feel you were a close friend of his, of Judge Porteous?

Mr. CREELY. Did I think I was a close friend?

Mr. PIERLUISI. Yes.

Mr. CREELY. I thought he was a close friend of mine. And I thought I was a close friend of his.

Mr. PIERLUISI. You appeared on a regular basis before his court, did you not? Or—did you appear before his court while he was a judge?

Mr. CREELY. Did I appear in his court?

Mr. PIERLUISI. Yes.

Mr. CREELY. As I indicated earlier, in 20 years, I appeared in front of Judge Porteous three times. He ruled against me two out of the three times. Two cases he ruled against me were major cases, one in—when he was on the district case, the interdiction case, which doesn't even warrant talking about. A freshman in law school could have won that case.

The case in Federal court was a removal action. It was originally filed in state court. The defendants removed it to Federal court on a motion to quash a discovery request under a very specific Federal statute. Without calling anybody, he read the papers that were filed by the defendant, granted their TRO. We had a conference by telephone. His response was, "I have read the pleadings. You can make"—and we immediately filed pleadings. "I have read the pleadings. You can come argue your motion; you will lose."

That was his basic—with all counsel on the telephone, I requested a record be made. I made a record. And he did just what he told me he was going to do over the telephone, ruled against me.

I had to get relief in the form of a reversal from the United States Fifth Circuit Court of Appeals, which took me a year, and it cost—basically, I guess you could say, we lost the case. I mean, it was—it was a year away from resolution at that point in time.

So, yes, I had three cases in front of him in 20 years.

Mr. PIERLUISI. Did you feel that your friendship was—that your friendship was an issue at any point in time where you appeared before him?

Mr. CREELY. Absolutely not. Judge Porteous did not—didn't—if he wanted to do me a favor, he would have granted my motion on my request to test the solvency of the surety. He did not. If he wanted to do me a favor, he would have denied motion that the plaintiffs—the defendants had in the Federal court case requesting that I not be allowed to get the discovery. He did not. He did me no favors while he was on the bench.

Mr. PIERLUISI. Did any of the parties involved in these three cases you are mentioning knew the extent of your friendship with the judge at the time?

Mr. CREELY. No.

Mr. PIERLUISI. No?

Mr. CREELY. No.

Mr. PIERLUISI. Did you feel that you had to disclose that at any point in time?

Mr. CREELY. Well, I tried a jury trial. I don't know what our relationship back when the jury trial—I don't even know the year, so I tried a jury trial. The jury made the decision in that case, not the judge, the jury. There is a stark group of jury charges that he hands out, that all the judges do. The jury made the ruling. Post-trial motions, he ruled against me, ruled against me.

Mr. PIERLUISI. Well, you are a lawyer, and you are a trial lawyer, so you know that—that even in jury trial, a judge will be making rulings throughout the whole process, evidentiary rulings, as well as all kinds of motions he needs to deal with. You know that, don't you?

Mr. CREELY. And that case ended up in the Supreme Court, and the judgment at the trial court was affirmed by the Louisiana Supreme Court.

Mr. PIERLUISI. As a lawyer, were you concerned at any point in time about the appearance of your friendship with this judge while you were appearing before him?

Mr. CREELY. No, because I always thought that he was going to do what he was going to do. He was going to do the appropriate thing.

Mr. PIERLUISI. That is what you thought. How about other people's thoughts? Did you ever—were you ever concerned about what other people could be thinking about, in terms of your friendship with the judge you were appearing before?

Mr. CREELY. Everybody in the parish or county that we practice in was aware of our friendship, everybody. I was a very popular lawyer. He was a very popular and—and charismatic judge. Everybody knew we were friends. Everybody. I am not saying, though, every single person.

Mr. PIERLUISI. Are you then implying that, because everybody knew that you were friends, that nobody was concerned about that friendship when you were appearing before him?

Mr. CREELY. If they were concerned about it, they could have filed a motion, and it would have been re-allotted to another division, and that court could have made a ruling whether or not our friendship would interfere with it. Just because you are a judge doesn't mean that you are going to—you are going to do—do something improper. It doesn't mean you are going to rule in my favor, as he did not, and we were friends.

But I—I understand what you are saying, sir. And, I mean, do I have an obligation or does every lawyer who takes a judge to lunch, who is extremely friendly with a judge have an obligation before they try a case to say, "This guy or this woman is my friend, that I have taken this person to lunch, that I have been to Las Vegas with this person, that I have taken trips with this person"? Does every lawyer have an obligation to say, "Look, I can't—I have made the maximum amount of contributions to their campaign. I have—I have organized individuals to make maximum contributions to their campaign." Does the lawyer have an obligation to do that? It is my understanding the lawyer does not.

I didn't think I had an obligation to tell people that I took Judge Porteous to lunch, that I had a friendship with him.

Mr. PIERLUISI. Did you—did you give him anything of value while he was judging any of the three cases that you were—that you mentioned?

Mr. CREELY. If—if—if what I gave him fell within the time period of time in which he was judging those cases, the answer to that would be yes.

Mr. PIERLUISI. And did I hear you right that you—in your mind, you thought that you could give him pretty much anything, so long as—and that he was the one who had to disclose it in his ethics forms? Is that how you understood this to work?

Mr. CREELY. The——

Mr. PIERLUISI. That you could give him any gift and that it was simply his onerous or burden to report it in his ethics forms? Is that what you thought?

Mr. CREELY. My understanding of—of the law is that I can make gifts to judges as long as a gift is not for him to do something in my favor judicially. I have read the canons of judicial ethics. I have consulted council with that. And that is my understanding of the law. If—that is my understanding.

Mr. PIERLUISI. Were you concerned at any point in time about the appearance of giving a gift to a judge who is ruling on a case you are trying, sir?

Mr. CREELY. If I did—do I——

Mr. PIERLUISI. Were you ever concerned about the appearance of giving a gift to a judge who is ruling on a case that you are trying?

Mr. CREELY. Not when you—not when you know the judge is going to do what he thinks is appropriate. I—I—I didn't think he——

Mr. PIERLUISI. You were not concerned about what others could think about that, you giving a gift to a judge who is ruling on a case that you are trying?

Mr. CREELY. Counsel, I don't want—sir, I don't want to be combative in any way. I am trying to be as respectful and as cooperative as I can. And I have been every bit cooperative.

Mr. PIERLUISI. I am being—and I myself am being respectful. If I am raising the tone of my voice, it is simply because—it is because I want you to listen carefully to what I am saying. But I am being respectful. I just want an answer.

Mr. CREELY. I know you are. I just don't want to be combative. I want to answer your question in as respectfully and as honorably and as honestly as I can.

Mr. PIERLUISI. Were you ever concerned about the appearance—appearance, what others could think about you, giving gifts to a judge who is trying a case that you are—who is judging a case that you are trying, sir?

Mr. CREELY. No. I didn't—the three cases, I didn't think that that would have an effect upon his outcome, and it—it did not, in fact, have an effect on any of the cases I tried in front of him. It had a negative effect.

Mr. PIERLUISI. You had mentioned before that a motion—anybody could have filed a motion requesting his recusal in the three cases that you were mentioning, that you mentioned before. That actually happened in the *Liljeberg* case, didn't it? You know that, right? That a motion for recusal was—was filed?

Mr. CREELY. I am aware of a motion to recuse from reading all these things, yes, sir.

Mr. PIERLUISI. And—and let me ask you this. It was explored a bit by—by Congressman Cohen, but you stood to benefit from these curatorships, right? From whatever fees those curatorships generated, you stood to benefit as a partner of your firm, right?

Mr. CREELY. Yes, sir.

Mr. PIERLUISI. You did?

Mr. CREELY. I got the money.

Mr. PIERLUISI. You got the money. And the same with the fees, whatever fees could—could—the firm could earn in the *Liljeberg* case, you stood to benefit from those, didn't you?

Mr. CREELY. Absolutely.

Mr. PIERLUISI. And to the best of your knowledge, while that case was pending before Judge Porteous, you gave something of value to the judge.

Mr. CREELY. Correct.

Mr. PIERLUISI. And you knew that that case was pending?

Mr. CREELY. Yes. And if you are talking about the Las Vegas trip, opposing counsel was with us on that trip.

Mr. PIERLUISI. Did you ever feel uncomfortable when giving monies or anything of value to the judge?

Mr. CREELY. I felt put upon, and I felt—so if you can relate that to being uncomfortable, I felt—I got—I felt worn out, tired of it, yes. I felt—I got tired of being asked for money.

Mr. PIERLUISI. Did you ever consider saying no to him?

Mr. CREELY. I did say no. I told him I couldn't continue to do this, and it would—a few weeks would pass by, and he would come back.

Mr. PIERLUISI. Did you feel pressured upon?

Mr. CREELY. I am sorry, sir?

Mr. PIERLUISI. Did you feel that he was exerting pressure on you?

Mr. CREELY. I felt that he was abusing a friendship, yes. I felt pressured by it. I felt he was abusing what I thought to be a friendship. I wouldn't have done that to a friend of mine, okay? I wouldn't have done what he did to me to a friend of mine. I have not done what he did to me to anybody that I know, any—anybody that I know.

So, yes, I felt imposed upon. I felt taken advantage of. And I—I was tired of it. And I explained that to him.

Mr. PIERLUISI. And that—and all of that happened while he was a sitting judge?

Mr. CREELY. Yes, sir.

Mr. PIERLUISI. I have no further questions.

Mr. SCHIFF. Mr. Gonzalez?

Mr. GONZALEZ. Thank you very much, Mr. Chairman. And I apologize for my absence. And I am going to ask a couple of questions, and staff has provided me with some of the information that Mr. Baron was able to go over as he made his presentation. And I apologize if I repeat some of it. I just want to make sure that it was said and stated, because it forms some of the basis for the questions that I ask.

Mr. Creely, quite simply, did Judge Porteous use his position as a United States district trial judge to make requests of you for money?

Mr. CREELY. Did he use his——

Mr. GONZALEZ. Did he use his position as a sitting U.S. judge——

Mr. CREELY. He used——

Mr. GONZALEZ [continuing]. To make a request of you for money?

Mr. CREELY. No. He used the same thing that he used in state court, friendship. My—and he didn't request money from me. If it is the incident you are talking about on the boat, he didn't make a request of me. I wasn't on that trip. I wasn't with them.

Mr. GONZALEZ. Okay, Mr. Creely, I didn't ask you—you never responded to any of the requests in paid money to Judge Porteous because of his position as a sitting U.S. judge, is that correct?

Mr. CREELY. Absolutely not. There was nothing—other than that one case I told you about that I had in front of him, his requests were from a friend to me——

Mr. GONZALEZ. All right.

Mr. CREELY [continuing]. Telling me he needed money.

Mr. GONZALEZ. Well, and then that is—I want to go to the next area, and that is this friendship. We all understand friendship. So let me ask you. If a friend in need, would there have been any other manner to have assisted Judge Porteous? Co-signer on a note? I mean, there are different ways, if you want to help a friend, than direct payment——

Mr. CREELY. Yes, that——

Mr. GONZALEZ. I mean, cash?

Mr. CREELY. There would have been a lot of things. And—and——

Mr. GONZALEZ. But you didn't do that.

Mr. CREELY. Being 45 years old, when you look back over your life and you say, "Do I wish I would have gotten six or seven of his friends to come confront him and tell him to quit drinking?" Yes. Do I wish I could have done a number of other things to help him out? Yes. I didn't, okay? I had a very active practice. I continued working. And I tried to help him with—with the need that he came to me and asked—asked me to help me.

Mr. GONZALEZ. But what was available to your friend, Judge Porteous, was not available to anybody that did not enjoy the position that he had, simply meaning that he was able to appoint you, using his judicial authority, to a curatorship that resulted in payment to you. And by your own testimony—I am not going to go over it, because I think Mr. Baron went over it, there was a direct connection to your appointment, to you receiving a fee, paying taxes on it, and basically returning the money to Judge Porteous. Isn't that correct?

Mr. CREELY. A portion of the money, yes, sir.

Mr. GONZALEZ. I guess I—I am just—I don't understand the huge issue here. You are admitting that as a result of the judge's position and abilities as a Federal district judge to reward you, by appointment, you were able to receive monies that you paid back, that were the basis for the loan back to the judge. Isn't that what you just said?

Mr. CREELY. What I—I mean, if you go through this for 10 years, you know, you get very confused about things. He gave me curators. The curators went to our operating account. He asked for money. I gave him money.

Mr. GONZALEZ. And this is the portion of the testimony that was made reference earlier in a PowerPoint. This is—I believe that this is—"And so I told him I had to stop. I have got to stop doing this, all right? But he started sending curatorships over to my office, all right? And he would send like two or three at a time. And then he started calling and saying, 'I been sending you curators, you know? Can you give me the money for the curators?' I said, 'Man.' So I talked to my law partner. I said, 'Jake, you know, man, what do we do?' He says, 'Well, just go ahead and give it to him.' We decided to give him the money. We would deduct the expenses. We would pay income taxes on it."

Am I missing something here?

Mr. CREELY. No.

Mr. GONZALEZ. You identified money that was being paid to you as a result of an appointment by a Federal district judge. You identify that money as the basis for you to then turn the money back over to the judge.

Mr. CREELY. It was——

Mr. GONZALEZ. Is that not—but for Judge Porteous's position and ability to do that, would you have paid him the money?

Mr. CREELY. It was a state court judge. Yes, I would—I would have paid—I would have—I would have probably given him money because I gave him money before he gave me curators, and I gave him money——

Mr. GONZALEZ. I am only talking about the money—did you give him money after receiving payment for your services as a curator?

Mr. CREELY. Before and after.

Mr. GONZALEZ. I am just talking about after at this point. You don't see the connection there, sir? And I don't mean to be harsh or whatever. I just think we are all lawyers, that we have all been in courtrooms. We know what—how witnesses answer these questions. But when you—when two and two should add up to four, it is hard to live with an answer when you are telling me it is five.

Mr. CREELY. Sir, of course there can be a connection there, you know?

Mr. GONZALEZ. But there was a connection, Mr. Creely. That is what we are all up here to establish, in part. And I think it is indisputable there is a connection by your own testimony.

Mr. CREELY. The—the——

Mr. GONZALEZ. If I was your friend——

Mr. CREELY. The curators——

Mr. GONZALEZ [continuing]. And I owned a filling station on the corner, and you have been lending me money, because we are close, and you go fishing and hunting together, the difference is, as your friend at the filling station, I can't get some sort of compensation to you that you turn around and pay—and that a third party—and in this case, either litigants or the United States government—is paying you money to basically get back to me.

And I know what Mr. Johnson said. You know, we are looking at kickbacks and so. Nothing is ever clear. But on this one, I mean,

I think you have gone the direct link or the nexus between the appointment of a curatorship, the compensation you received that formed the basis to basically funnel the money back to the judge that appointed you.

Mr. CREELY. It was an evolution into him giving us curators and our justification of giving them back to him. I think I have testified to that three or four times in different ways. I can't remember every word of my testimony exactly as I have given it before, but that is, in essence, my testimony, sir.

Mr. GONZALEZ. Thank you very much, Mr. Creely.

I yield back, Mr. Chairman.

Mr. SCHIFF. I thank the gentleman.

Mr. Gohmert?

Mr. GOHMERT. Thank you, Mr. Chairman.

And thank you for your testimony, Mr. Creely. I am curious. Since this is a form of discovery here, and as an attorney, as a former judge and chief justice, I know lawyers talk. Did you ever hear from any other attorneys that they were asked to give money to the judge, either based on curatorships or otherwise?

I am sorry. I am not—is the mic on?

Mr. CREELY [continuing]. Nobody ever told me that the judge gave them curators and asked for money back.

Mr. GOHMERT. Well, how about just that they had then asked for money or donated money to the judge personally? Did you ever hear of that?

Mr. CAPITELLI. Excuse me. Could we ask the councilman to speak into the mic so we could hear a little better, too?

Mr. GOHMERT. Yes. Thank you. Did you ever hear any other attorney say that they had provided money to the judge or asked for money?

Mr. CREELY. Yes.

Mr. GOHMERT. Okay. And—and what other attorneys would that be? What other attorneys——

Mr. CREELY. Well, no, I am—you know——

Mr. GOHMERT. But you have—you don't know the names of the attorneys, but you know there was discussion in the area that other attorneys were asked for money like you had been?

Mr. CREELY. There are names of attorneys. Judge Porteous testified to that. He testified——

Mr. GOHMERT. Do you know of—yes, I—I know. We have got the testimony, but I am asking you personally, were you aware of anyone else who had indicated they had provided money to the judge outside of your firm?

Mr. CREELY. Other people have alluded to the fact that he had given his money, and I believe at least one other lawyer testified. I indicated that he gave money to the judge.

Mr. GOHMERT. And, look, I understand this has got to be very uncomfortable. You are sitting here at the table. The judge is right behind you. I understand that. But I am curious—that is got to be tough on you and your law firm when you are asked for money, particularly cash, particularly when a case is pending, and someone is sent over to get $1,000. I am just curious, how—how do you deal with that? Do you—as—is that considered a business expense,

as far as tax purposes? How—how do you deal with that? Do you just take that right out of your own pocket?

Because it sounds like a price of doing business. When you pay $1,000 cash, is that a business expense? I am asking. I really don't know.

Mr. CREELY. We paid income taxes on it. We absorbed it as income.

Mr. GOHMERT. No, I—I knew that you had. But I am talking about, once you gave money to the judge——

Mr. CREELY. I didn't give any money to the judge. I gave it to my law partner, and the judge apparently, because I was avoiding doing it, I was avoiding doing it——

Mr. GOHMERT. Oh, I see. You gave it to your law partner, and he provided it to the judge?

Mr. CREELY. He provided it, from what I understand, to the judge's secretary, because we were trying to avoid giving it to him.

Mr. GOHMERT. I see. Okay. Well, I didn't know—yes, I understood you paid tax on that. That was income to you. But then when you are asked by a judge to provide $1,000 cash, even though you give it to your partner and the partner gives it to the secretary, I didn't know if you later dealt with that as a business expense, because it certainly cost you as an attorney.

Mr. CREELY. Well, no, I didn't treat it as a business expense, no, sir.

Mr. GOHMERT. But you did feel like, when your partner asked for it—or I guess your partner felt like this is something we have got to do, because the judge has asked for it, correct?

Mr. CREELY. Well, do you want me to tell you what happened?

Mr. GOHMERT. Sure.

Mr. CREELY. All right. What happened—the way it was told to me is they went fishing, and the judge broke down on the boat. What part of the boat—I mean, I said the front one time, the back one time. It could have been in the middle. I don't know where.

The judge broke down, according to my law partner, and told him he was having problems financing, you know, I said, tuition. I was cross-examined. Wasn't it a wedding? I don't know whether it was a tuition or a wedding. The fact of the matter, the money was given, broke down, started crying, said he couldn't afford—I believe it was a wedding of his son, Timmy, some aspect of the wedding and needed help. He was embarrassed. My law partner came back from the trip and had a discussion with me about that, about how bad he felt about our friend, and asked me to—to give him $1,000. And I—I did. I cashed a check and gave him—gave him $1,000, gave my law partner $1,000.

Mr. GOHMERT. But even though that was given from the partner's standpoint to try to help a friend, you would expect that, since you gave that, that anybody in honesty who was asked if they had received anything from attorneys would have to acknowledge that he had received that, correct?

Mr. CREELY. Oh, I don't—I don't doubt that the—the judge received it, and I don't—and I don't dispute that it was—it was—it was designed to give to the judge. I don't—I don't dispute any of that.

Mr. GOHMERT. All right. All right. Thank you.

Mr. SCHIFF. At this point, Mr. Westling, if you would like, we will set the clock for 10 minutes, and you may question the witness.

Mr. WESTLING. Thank you, Mr. Chairman.

Mr. Creely, good afternoon.

Mr. CREELY. Good afternoon, sir.

Mr. WESTLING. You have been a friend of Judge Porteous's for many years. Is that correct?

Mr. CREELY. Yes.

Mr. WESTLING. When did you first meet him, if you remember?

Mr. CREELY. It is very hard to say. I may have met him in our later years of high school, definitely in 1974, while he was a lawyer at Gretna in a law firm.

Mr. WESTLING. So you knew him for years. You then practiced with him in approximately 1974. Is that correct?

Mr. CREELY. I am sorry?

Mr. WESTLING. Then you practiced with him—practiced law with him in around 1974?

Mr. CREELY. I didn't practice. I practiced out of the same office. I did primarily real estate closings during that period of time. I can't say I practiced with him, but we practiced out of the same facility. I worked for him.

Mr. WESTLING. Okay. And so you knew him for approximately 10 years before he went on to the state bench in 1984. Is that correct?

Mr. CREELY. Yes, sir.

Mr. WESTLING. And then you continue to know him to this day. That is also correct? You know him now, correct?

Mr. CREELY. Yes.

Mr. WESTLING. Okay. And so the 10 years on the state bench, when you have given testimony today regarding curatorships, that is limited to the period while he was a state judge. Is that correct?

Mr. CREELY. Correct.

Mr. WESTLING. All right. And so the curatorship situation ended in 1994, correct?

Mr. CREELY. Obviously.

Mr. WESTLING. Okay. The only time there has been ever any exchange of money between you and your partner and Judge Porteous that you are aware of while sitting as a Federal judge was in connection with this request arising from the fishing trip. Is that correct?

Mr. CREELY. That I am aware of, yes.

Mr. WESTLING. Okay. And then there was the trip to Las Vegas that you have testified about, as well.

Mr. CREELY. Make that clear, please.

Mr. WESTLING. Mr. Creely, did you ever give money to Judge Porteous because he was a judge or was it always because he was, first and foremost, your friend?

Mr. CREELY. The only reason I would give money to anybody was because they were my friend, unless it was a charitable contribution. I would not have given him money because he was a judge.

Mr. WESTLING. And—and I think you have testified, but at no time did you ever have an experience with Judge Porteous that led you to believe he was influenced by any of the money that you had given him over the years in his capacity as a judge. Is that correct?

Mr. CREELY. Obviously not. Two of the three cases I had in front of him, he ruled against me.

Mr. WESTLING. In terms of your experience with him in Federal court, you indicated there was only one case, is that right, that you appeared in front of him? Or do I have that incorrect?

Mr. CREELY. One case.

Mr. WESTLING. All right. And that didn't go so well for you. Is that right?

Mr. CREELY. It was a removal action from state court, wasn't filed in Federal court. It was removed on a Federal issue to his division by virtue of the request of a temporary restraining order by one of the defense counsel on a state court case.

Mr. WESTLING. In every situation where you gave Judge Porteous money, whether he was on the state or the Federal bench, it was typically because of your concern about his personal well-being. Is that right?

Mr. CREELY. Correct.

Mr. WESTLING. And you knew his family?

Mr. CREELY. Yes.

Mr. WESTLING. Do you all have—both have children?

Mr. CREELY. Yes.

Mr. WESTLING. Do they know one another?

Mr. CREELY. No. I have a 2-year-old and a 4-year-old child. I have a 27-year-old daughter. My 2- and 4-year-old do not know his children.

Mr. WESTLING. But your 27-year-old does?

Mr. CREELY. Yes.

Mr. WESTLING. Okay. And I take it that you practice in—in and around the city of New Orleans, where there is a very close relationship between lawyers and the bar. Is that right?

Mr. CREELY. Yes.

Mr. WESTLING. And that is true of lawyers between—both lawyers and the bench and the bar, correct?

Mr. CREELY. Correct.

Mr. WESTLING. And so it is not unusual, is it, to see lawyers out to lunch with a judge, whether in the state or the Federal court?

Mr. CREELY. It is very unusual not to see something like that going on.

Mr. WESTLING. It happens all the time?

Mr. CREELY. It happens every day.

Mr. WESTLING. And the community is well aware of it both inside the courthouse—inside the courthouse and outside the courthouse, correct?

Mr. CREELY. Is the community aware of that?

Mr. WESTLING. I mean, the—the—the legal community inside and outside the courthouse is aware that judges socialize with lawyers, correct?

Mr. CREELY. Of course.

Mr. WESTLING. All right. And you indicated that your friendship with Judge Porteous was well known to the community at large that practiced in and around both the Gretna courthouse and the Federal courthouse. Is that right?

Mr. CREELY. Yes. When we would—we would go fishing, we would take defense lawyers with us, we would take plaintiff law-

yers with us. One trip that I took with him on a hunting trip to Mexico, we took a defense lawyer from a large firm. We didn't disguise hunting and fishing. We hunted with other judges. We hunted with other lawyers. We hunted with plaintiff lawyers, defense lawyers. We hunted with business people.

And some of the other judges that we went hunting with—cases in front of them. I was always treated fairly. None of that was done to influence anybody's decision on anything or any case that I had.

Mr. WESTLING. And if you had believed that any of the money that you were asked for by Judge Porteous when he was in difficult personal circumstances was, in fact, designed to influence him, you would have told him, no, you would not give him that money. Isn't that right?

But if he had asked you—because he said, "Hey, I am a judge. You need to give me money." You would have told him no?

Mr. CREELY. No. But that never came up.

Mr. WESTLING. I understand.

Mr. CREELY. Nothing like that came up.

Mr. WESTLING. I understand.

Mr. CREELY. I did divorce work when he was on the—on the—on the district bench. I tried one jury trial. The cases that I handled, he couldn't hear while he was on the district bench. He was prevented from hearing them by court rule.

Mr. WESTLING. Well, you have testified at some length about the period of time when he was on the state bench in which the issues of curators came up. And I think what you have said is that you gave him money before and after the curators. Is that right?

Mr. CREELY. Correct.

Mr. WESTLING. And that, had he asked you for money without ever giving you a curatorship, you would have continued to give him money out of friendship. Is that right?

Mr. CREELY. Correct.

Mr. WESTLING. Right. I have no further questions, Mr. Chairman.

Mr. SCHIFF. Thank you, Counsel.

I would like to follow up on some of the points that have been raised. And I will begin where defense counsel—or—or Mr.—Judge Porteous's counsel left off. You said that you made payments to the judge before the curators, and you made payments to the judge after the curators, correct?

Please talk into the microphone.

Mr. CREELY. Yes, sir.

Mr. SCHIFF. And, of course, you made payments during the curators, correct? And you made payments during the time he was giving you the curators, right?

Mr. CREELY. Correct. Yes, sir.

Mr. SCHIFF. And did he give you curatorships all the way up and to the point he left the state bench?

Mr. CREELY. You have the records. I believe that he did.

Mr. SCHIFF. And so you testified that he continued to give you payments when the curators ended. He left the state bench for the Federal bench, correct?

Mr. CREELY. Yes, sir. Well, just—I didn't hear all of your question. He left the state bench and went to the Federal bench, yes.

Mr. SCHIFF. And you said the payments continued after the curatorships ended. Does that mean the payments continued while he was on the Federal bench?

Mr. CREELY. No, no, no. Nothing continued while he was on the federal—no curator payments went to him on the federal—while he was on the——

Mr. SCHIFF. No, I understand that no curatorships were given to you when he was on the Federal bench, because he couldn't, right?

Mr. CREELY. Right.

Mr. SCHIFF. But you have testified in answer to Mr. Westling's questions that you gave him money before he even started sending you the curatorships, and you continued giving him money when the curatorships ended, implication being you would have given him money regardless of the curatorships, correct?

Mr. CREELY. Yes, sir.

Mr. SCHIFF. So your payments continued after the curatorships stopped is what you have testified, right?

Mr. CREELY. If you are trying to suggest that when he went to the——

Mr. SCHIFF. Please answer my question. You have testified that you continued giving him money after he stopped giving you curatorships, correct?

Mr. CREELY. If I said that, I did not give him money when he was on the Federal bench, without the exception of the $1,000 we talked about.

Mr. SCHIFF. So is it your testimony now that you stopped giving him money when he stopped sending you curatorships?

Mr. CREELY. I think the question is, did I stop giving him money when he left the state bench? That is the answer.

Mr. SCHIFF. So then your answer is, yes, when the curatorships stopped, you stopped giving him money?

Mr. CREELY. And he—we stopped making the requests, and we distanced ourselves when we got on the Federal bench because he became associated with an entirely different group of people. It was almost like—I don't know what he did. Our relationship just kind of like smoothed out when he got on the Federal bench.

Mr. SCHIFF. So your testimony, in answer to Mr. Westling's question, then, was incorrect? You did not continue the periodic payments to Judge Porteous after he stopped sending you the curatorships?

Mr. CREELY. That is correct.

Mr. SCHIFF. I just want to follow up on a couple of the questions that my colleagues asked. My colleague, Mr. Gohmert, asked you if you were aware of other attorneys having told you that they gave money to the judge. And you said that you were. You then made reference to Judge Porteous's testimony or prior statements.

I would like to follow up on my colleague's question. What other attorneys have told you that they have given money to Judge Porteous?

Mr. CREELY. You want me to give you names?

Mr. SCHIFF. Yes.

Mr. CREELY. Well, the person that—Don Gardner——

Mr. SCHIFF. Into the microphone, Mr. Creely.

Mr. CREELY. Don Gardner is the only person that I can remember. Lenny Levenson never acknowledged giving cash, but acknowledged a considerable amount of friendship and camaraderie, or whatever you want to call it with him, while this *Liljeberg* case was going on. And that is—that is it.

Mr. SCHIFF. Have any other attorneys, other than Mr. Gardner or Mr. Levenson, told you either while this was going on or after this was concluded that they had also given Judge Porteous money?

Mr. CREELY. No, not that I would remember.

Mr. SCHIFF. Have any other attorneys or anyone else with business before the bar, in the bail bonds business, attorneys, private individuals, have any other people told you that they have given Judge Porteous money?

Mr. CREELY. Not that I recall, no.

Mr. SCHIFF. Have any other people told you that they have been asked for money by Judge Porteous?

Mr. CREELY. Nobody has told me directly, but I have heard people talk about how he would impose upon them in different situations at gambling casinos and things like that.

Mr. SCHIFF. Now, by that, are you referring to people telling you that Judge Porteous asked them for other forms of financial support, as in gambling chips or something of that nature? What are you referring to?

Mr. CREELY. I don't have—have a recollection of that. I just have a recollection of other people indicating that he made—he was just improper in some of his requests from them. I don't—I don't have—have a—a specific recollection of it.

Mr. SCHIFF. And who, Mr. Creely, has indicated to you that the judge made an improper request to them?

Mr. CREELY. I am sorry?

Mr. SCHIFF. Who has made—who indicated to you that the judge made an improper request to them?

Mr. CREELY. I don't recall. It is just general conversation about him, about his—the way he acted, about the way he conducted himself, and people talking. It would be like a group of people talking.

Mr. SCHIFF. Mr. Creely, earlier, our Task Force counsel asked you about your interview with the FBI.

Mr. CREELY. About—yes.

Mr. SCHIFF. And you stated there that there were certain things that you did not tell the FBI, in terms of——

Mr. CREELY. Yes, sir.

Mr. SCHIFF [continuing]. Your relationship with the judge, the money, gambling, et cetera, correct?

Mr. CREELY. Yes, sir.

Mr. SCHIFF. You did that because you didn't want to injure your friend's chance of taking the Federal bench, correct?

Mr. CREELY. Correct.

Mr. SCHIFF. I don't want to have the same problem here today. And I know you have a friendship with the judge you have testified about, but I want to ask you once again: Are you aware of any other attorneys than the ones you have mentioned that have either given the judge cash or been asked by the judge for cash?

Mr. CREELY. Other than my law partner—sir, I want you to know, I haven't talked to this man in—outside of running into him for judicial proceedings concerning this matter for years. I don't consider our friendship to exist anymore. I don't consider that I have a relationship with him anymore.

I mean, I don't have any reason to help him. I have been injured beyond repair because of this. I can't tell you the pain, and I can't tell you the remorse, and I can't tell you the financial hardship that this has caused me.

Mr. SCHIFF. Let——

Mr. CREELY [continuing]. Myself more——

Mr. SCHIFF. Let me ask you, Mr. Creely, about the time when you were friends. And Mr. Amato's friendship with the judge predated your own. Is that right?

Mr. CREELY. Predated mine?

Mr. SCHIFF. Yes.

Mr. CREELY. Yes.

Mr. SCHIFF. And Mr. Amato was a partner of the judge's before you were—you joined the firm?

Mr. CREELY. Yes.

Mr. SCHIFF. Now, you have testified you have had the judge over to your house. You have been over to his house, correct?

Mr. CREELY. Sorry. I am not doing—what was that again, sir? What was that one?

Mr. SCHIFF. You testified that you had the judge over to your house, you have been over to the judge's house. Is that right?

Mr. CREELY. Yes.

Mr. SCHIFF. Mr. Amato was also friends with the judge?

Mr. CREELY. Yes.

Mr. SCHIFF. Mr. Amato, you have seen at the judge's home, also?

Mr. CREELY. Well, I would have to tell you I don't know, but I can tell you my personal experience with Mr. Amato. He has been my law partner for 30-say-plus years. And he lived around the corner from my home. And out of the 30 years that I knew Mr. Amato, I believe I was invited to his house on two occasions, twice. We did not have a social relationship between our families. So I don't know if Judge Porteous was invited to his house. I don't if Judge Porteous went to his house. I can only tell you that, if you had a law partner for 30-some-odd years, you would think you would be invited to his house more than one or two times over that period of time. I know he came to my house on several occasions. But——

Mr. SCHIFF. Sir, let me get back to my question, though. My question was, did you ever see your partner, Mr. Amato, at the judge's home?

Mr. CREELY. Did I see Amato at the judge's home?

Mr. SCHIFF. Correct.

Mr. CREELY. The annual Christmas party that I think Judge Porteous had, I may have seen him there. I have no independent recollection of that. I know that we had mutual friends that had places in the country where they would have annual feasts, if I may say it, of game, food, things of that nature. I would see Jake. I would see Porteous and all of our mutual friends at those gatherings.

Mr. SCHIFF. And in the course of your 30-year partnership, you have only been to your partner's house, Mr. Amato's house, a couple times. Is that right?

Mr. CREELY. I went to Porteous's house a couple of times, yes.

Mr. SCHIFF. In your 30-year partnership with Mr. Amato, you have only been to Mr. Amato's house a couple of times?

Mr. CREELY. Yes, but not very many. It may have been three, but I have not visited his home on a regular basis. It was very infrequent and——

Mr. SCHIFF. And during the times that—the infrequent times you visited Mr. Amato at his home, was Judge Porteous ever present?

Mr. CREELY. No. Judge—I have never seen Judge Porteous at Amato's house.

Mr. SCHIFF. And to your knowledge, has Judge Porteous ever been to Mr. Amato's house?

Mr. CREELY. Been to where?

Mr. SCHIFF. To your knowledge, has Judge Porteous ever been to Mr. Amato's home?

Mr. CREELY. I would be guessing. To my knowledge, no.

Mr. SCHIFF. Now, you mentioned in your testimony that you stood nothing to benefit by virtue of your relationship with Judge Porteous. That was the kind of gist of your testimony, wasn't it? Was it the gist of your—is it the gist of your testimony, Mr. Creely, that you stood nothing to benefit from your relationship with Judge Porteous, by virtue of his being a judge?

Mr. CREELY. I got no benefit?

Mr. SCHIFF. Was that—is that your testimony, Mr. Creely?

Mr. CREELY. I got no benefit from him being a judge. I got no benefit at all from him being a judge.

Mr. SCHIFF. Now, at the same time, Mr. Creely, you and your partner divided the proceeds of the firm pretty evenly?

Mr. CREELY. Yes, sir. We divided proceeds from the firm, if that was your question.

Mr. SCHIFF. Yes. You divided them fairly evenly? Do you divide the proceeds of the firm evenly between yourself and Mr. Amato?

Mr. CREELY. Yes, sir. Yes. He may have gotten a little more, but yes.

Mr. SCHIFF. And do you know why Mr. Amato, your partner, was brought into the *Liljeberg* case only 6 weeks before trial?

Mr. CREELY. Do I know that? I don't know that.

Mr. SCHIFF. Mr. Creely, wasn't he brought in because of his and your friendship with the judge?

Mr. CREELY. Weren't brought in from our friendship, because I didn't know the Liljebergs from anything. It was a group of lawyers that were brought into that case. And I don't—I didn't know the Liljebergs from anybody.

Mr. SCHIFF. So it wasn't based on your firm's long representation of the Liljebergs?

Mr. CREELY. No, I didn't know who the Liljebergs were. I may have met the Liljebergs one or two times during the course of the entire relationship. The meetings on *Liljeberg* weren't held at Amato and Creely. The business records and things weren't held at Amato and Creely.

Mr. SCHIFF. But the legal community understood your relationship and Mr. Amato's relationship with Judge Porteous, right?

Mr. CREELY. Correct.

Mr. SCHIFF. Isn't that why you were brought into this case by this company, Liljeberg, that you knew nothing about, 6 weeks before trial?

Mr. CREELY. That is an answer that you want me to say yes to?

Mr. SCHIFF. I want you to give us the truth, Mr. Creely.

Mr. CREELY. I am trying to be truthful, okay? That may very well have been the reason why he was brought in. Maybe the Liljeberg family thought that they could get an advantage by somebody who knew the judge. I had no—I was not privy to any of those discussions. I was not privy to signing up the contract. I don't even know what the contract reads, have no idea.

Mr. SCHIFF. Mr. Creely, given the amounts of money that were involved in the *Liljeberg* case, were you aware that if the Liljebergs prevailed, as they did in the district court before Judge Porteous, that you and your partner stood to make between $500,000 to $1 million?

Mr. CREELY. Whatever the percentages were, I had no idea what the judgment was going to be. I didn't know what the judgment, from what I read, was. And I think we had a 6 percent—I think—I don't know. I haven't seen the contract. I think the contract gave us 6 percent of the gross fee if we won, but I had no idea if we were going to win, two, whether the court of appeals was going to affirm any award.

But whatever we—whatever award was going to be rendered, or whatever award we would get, we would get money off of it, yes. I was aware of that.

Mr. SCHIFF. And during the pendency of this case, where your firm stood to earn between $500,000 to $1 million, the judge asked you for $2,500 in cash, and you and your partner gave it to him, right?

Mr. CREELY. My recollection, it was $2,000 in cash. And, yes, I did give it to him. I gave him my portion of it. I gave to Jake who gave it to him.

Mr. SCHIFF. Now, you testified earlier that something along the lines that the district court judgment, Judge Porteous's decision in that case, really didn't matter because the case would be appealed. Is that your testimony?

Mr. CREELY. My testimony is—my experience is, every major case that I have had ends up in the court of appeals, unless it is settled. And if it is legal issues, most of the time, they end up in the court of appeals.

Mr. SCHIFF. Are you trying to suggest to us, Mr. Creely, that somehow the district court decision really makes no difference to you or your clients, whether the judge rules for you, against you?

Mr. CREELY. The district court decision makes a lot of difference, because the law is what the law is, that if the district court interprets the law in a particular inappropriate fashion, it is always corrected by the court of appeal. If the district court misapplies facts to cases or makes factual—makes manifestly erroneous factual findings, the court of appeals always corrects that, just like the

case I had with him. He was totally wrong on the law, and the court of appeal corrected him.

I don't know what the legal issues were in this case, but the court of appeal—that is why—the Fifth Circuit Court of Appeals is a very sophisticated court, from what I understand it.

Mr. SCHIFF. Mr. Creely, is there a reason why you want to suggest that a trial judge's decision is of no consequence to your client in a multi-million-dollar litigation? Is there a reason you want to make that suggestion here today?

Mr. CREELY. Of course a decision had consequences from the trial court judge. Who wants to go up losing? Who wants to go to the court of appeals losing a case? I don't——

Mr. SCHIFF. Well, and more than that, doesn't the trial court decision have an impact on the settlement value of the case?

Mr. CREELY. The judge's ruling?

Mr. SCHIFF. Doesn't that have an impact on the settlement value of the case?

Mr. CREELY. I am sure it would have an impact on the settlement value of the case. If you were awarded $10,000, it wouldn't—it would be much more settling. If he awarded a lot of money, it would impact settlement. But from what I understand subsequent to all of this, there was no real settlement discussions that took place among settling this case.

Mr. SCHIFF. Mr. Creely, I want to ask you one last question, and then I will turn it over to my colleagues. You testified a couple times that you tried to avoid giving the judge money. You tried to go out of your way to avoid being put in a position of being asked for money. Why was that difficult? Why couldn't you avoid him? Where would you see him when he asked you for money?

Mr. CREELY. You name it. I mean, anywhere. I mean, we could have been at lunch. We could have been—I could have been at the courthouse. I could have been walking down the street.

Mr. SCHIFF. Were there times, Mr. Creely, that he asked you for money while you were in the courthouse?

Mr. CREELY. No, you are asking to me an estimation. I am——

Mr. SCHIFF. No, Mr. Creely, I am not asking you to make estimations. I am asking you, did Judge Porteous ever ask you for money while you were in the courthouse?

Mr. CREELY. He could have. I don't know. He—you know, we went out together. We had lunch together. He could have asked me for money anywhere.

Mr. SCHIFF. Mr. Creely, nothing compelled you to take him out to lunch, right?

Mr. CREELY. Of course not.

Mr. SCHIFF. But you did, as a result of being an attorney, have to appear in the courthouse, didn't you?

Mr. CREELY. Yes, sir, I appeared in the courthouse. I didn't practice law in front of him for 10 years.

Mr. SCHIFF. Mr. Creely, my question is, as a lawyer, you had to go to the courthouse periodically, whether you were in his court or not, didn't you?

Mr. CREELY. Yes, sir.

Mr. SCHIFF. And as he was in the courthouse, did it make it difficult for you to avoid him completely because your business took you to the same building?

Mr. CREELY. The question is, I had to go to the courthouse?

Mr. SCHIFF. The question is, you said you wanted to avoid him. Was that difficult because you had to work in the same building?

Mr. CREELY. We worked in the same building.

Mr. SCHIFF. Do we need to repeat the question, Mr. Creely? You said you were trying to avoid the judge because he kept hitting you up for money.

Mr. CREELY. Right.

Mr. SCHIFF. Was it difficult to avoid the judge completely because you had to practice in the same courthouse?

Mr. CREELY. It was—yes, because this was the courthouse that he practiced law in, which was the Gretna courthouse. This was the hearing—this was the courthouse where they handled divorce cases. It was in a different building, all right?

The domestic relations section of the court was in a different building than the courthouse that Judge Porteous practiced law in. So you would—you would go to this building for relief on divorce cases. I believe back in the 1980's, if you disagreed with rulings and hearing officers and so forth, you would have a trial in this building.

Mr. SCHIFF. Mr. Creely, I am sorry, but the court reporter and the transcript won't reflect what cup you are pointing to for a building. Let me just ask you very simply: Did your work as a lawyer take you into the same building where Judge Porteous either had his chambers or the courtroom in which he appeared?

Mr. CREELY. Yes.

Mr. SCHIFF. And when you would meet the judge for lunch, would you meet him in his chambers prior to going to lunch?

Mr. CREELY. While we were in the courthouse?

Mr. SCHIFF. When you would meet Judge Porteous for lunch, did you meet him in his chambers on occasion and then go from his chambers to lunch?

Mr. CREELY. There is a possibility, yes.

Mr. SCHIFF. In the microphone, Mr. Creely.

Mr. CREELY. There is a possibility, yes.

Mr. SCHIFF. And is it also a possibility that, while in his chambers before going to lunch, that he requested money from you?

Mr. CREELY. There is a possibility, yes.

Mr. SCHIFF. Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman. Mr. Chairman, I don't believe any on our side have any additional questions of this witness. Thank you.

Mr. SCHIFF. At this point, Mr. Creely's testimony having concluded, we will recess for lunch and return in 45 minutes. Will that—in 45 minutes.

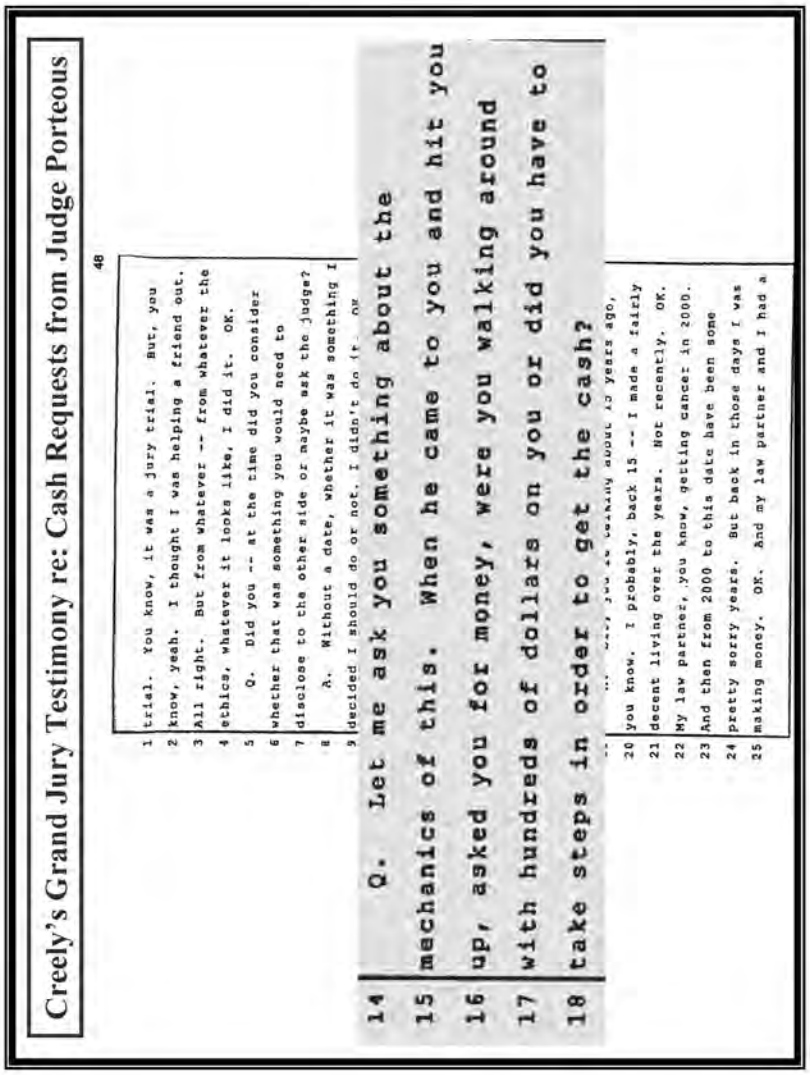
We are in recess.

[Recess.]

Mr. SCHIFF. This hearing will come to order.

Before we begin and introduce the next witness, I would like to ask that the exhibits that Mr. Baron used earlier in his presentation be made a part of the record, unless there is objection. Hearing none, it will be so ordered.

[The information referred to follows:]



Creely's Grand Jury Testimony re: Cash Requests from Judge Porteous

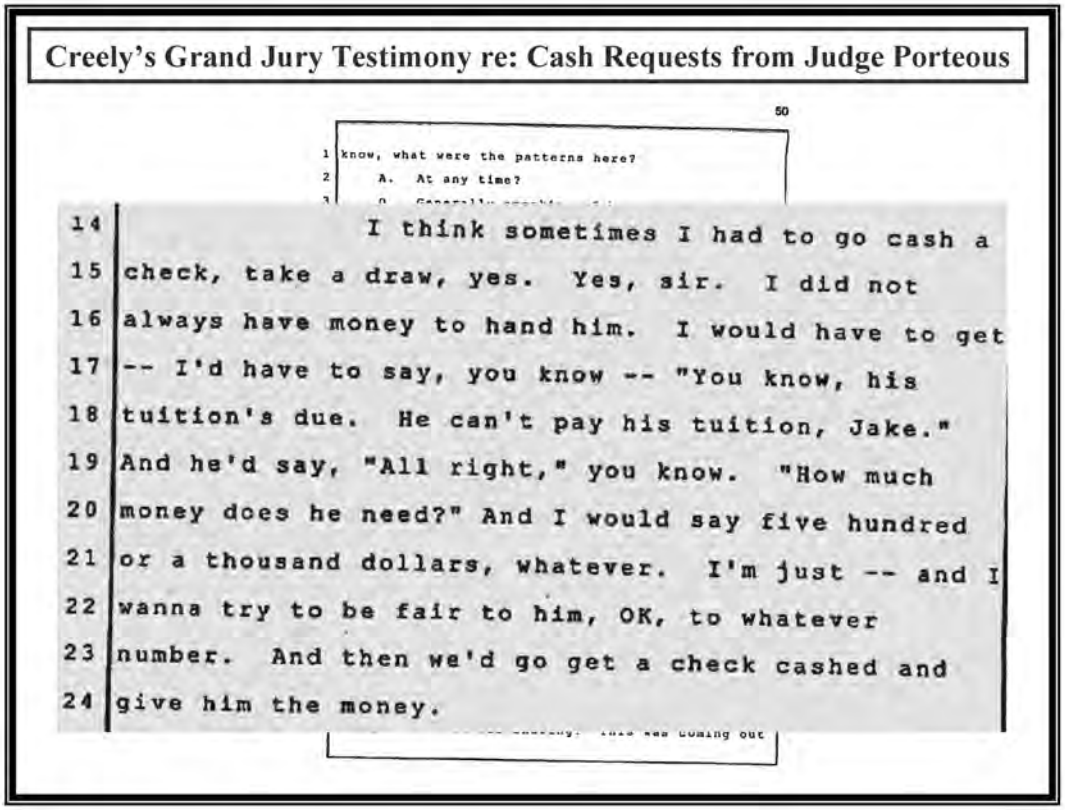
practice. And if you wanted to know something back in '85 or '90 I would have a record here to show you.

I don't remember the first time he asked me if I had money in my pocket and I handed it to him. Very well could have done that.

But the bottom line was, the first time he asked me for money I gave him money. And how the mechanics were about, that came about, in which I gave it to him, I gave it to him. I don't deny that.

continued and it continued. My question is, do you recall a pattern where you have to go to the bank if he came to you and asked for money or whether typically you just reach in your pocket and peel off some bills out of your pocket? I mean, you

Creely's Grand Jury Testimony re: Cash Requests from Judge Porteous



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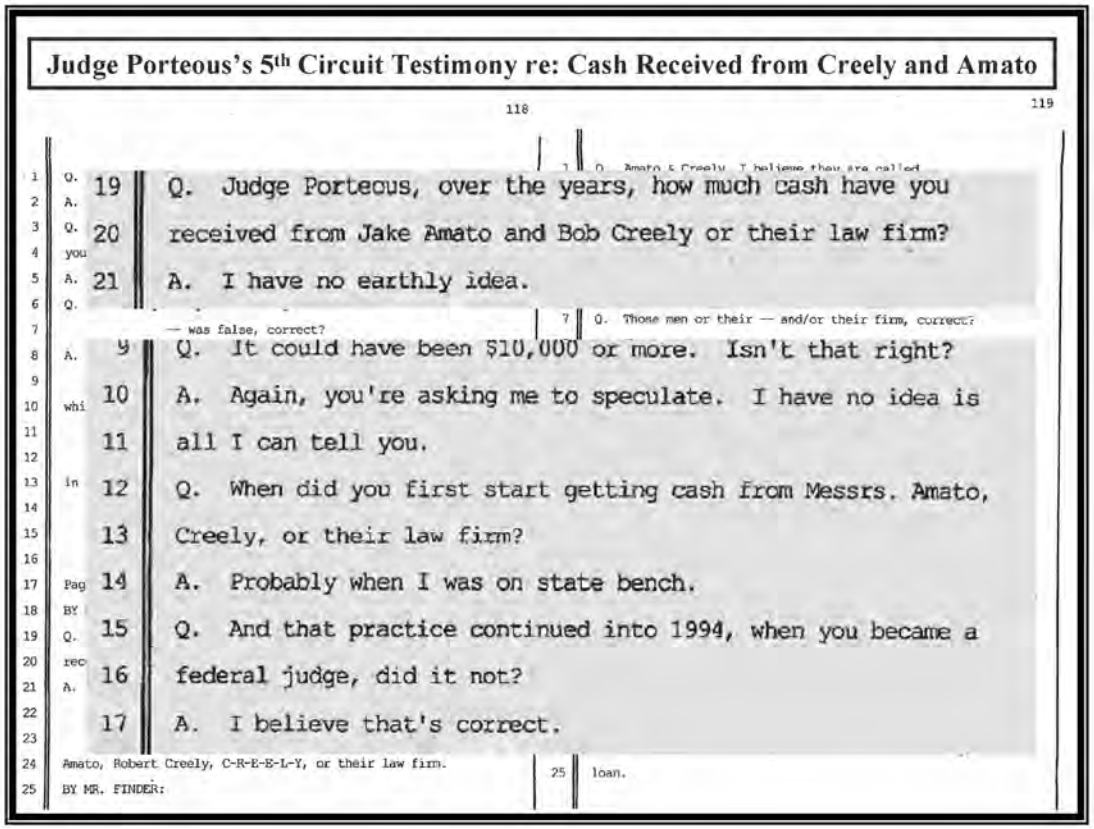
know, what were the patterns here?

A. At any time?

I think sometimes I had to go cash a check, take a draw, yes. Yes, sir. I did not always have money to hand him. I would have to get -- I'd have to say, you know -- "You know, his tuition's due. He can't pay his tuition, Jake." And he'd say, "All right," you know. "How much money does he need?" And I would say five hundred or a thousand dollars, whatever. I'm just -- and I wanna try to be fair to him, OK, to whatever number. And then we'd go get a check cashed and give him the money.

Judge Porteous's 5th Circuit Testimony re: Cash Received from Creely and Amato



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Q. Judge Porteous, over the years, how much cash have you received from Jake Amato and Bob Creely or their law firm?

A. I have no earthly idea.

Q. It could have been $10,000 or more. Isn't that right?

A. Again, you're asking me to speculate. I have no idea is all I can tell you.

Q. When did you first start getting cash from Messrs. Amato, Creely, or their law firm?

A. Probably when I was on state bench.

Q. And that practice continued into 1994, when you became a federal judge, did it not?

A. I believe that's correct.

Amato, Robert Creely, C-R-E-E-L-Y, or their law firm.

BY MR. FINDER:

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Q. Amato & Creely. I believe they are called

Q. Those men or their — and/or their firm, correct?

loan.

Creely's 5th Circuit Testimony re: Objections to Judge Porteous's Continuing Requests for Cash

but we just couldn't keep giving him money.
Q. Well, I understand; but I believe you remarked to us earlier that giving him money for car payments or house payments was one thing but you were concerned about whether or not it was gambling and drinking and that lifestyle. Is that an accurate statement --
A. Yes, sir. Yes, sir.
Q. -- of what you related to us?

I told him that I -- we could not continue giving him money, I couldn't continue giving him money.

Q. All right. And that's while he was still on the state bench. Is that correct?
A. Yes, sir.
Q. What happened as a result of that, between you and Judge Porteous, on the issue of giving money?
A. I don't think anything happened.
In our friendship?
Q. No. I'm speaking more of the curatorships.
A. Oh, if you're speaking about curatorships, the curators started coming to my office.
Q. Would you explain to the Committee what a curatorship is?

Creely's Deposition re: Objections to Judge Porteous's Continuing Requests for Cash

of them or all of them were at private schools during that time period?

A. I don't recall if they were in private schools, but he had four kids and I've known him since 1972, in that range.

Q. And did the requests -- were they as much as $500?

A. Yes.

A. I got tired of the requests for every request he made. I was tired of it.

A. I got tired of the requests for every request he made. I was tired of it.

Q. But the fact is, because of your affection for him and your relationship with him, you would give him the money as he requested; is that right?

A. That's correct.

Q. Now, these were never loans, were they?

A. No, sir.

Q. And you never perceived these to be loans?

A. No, sir.

Q. If the amount was more than the

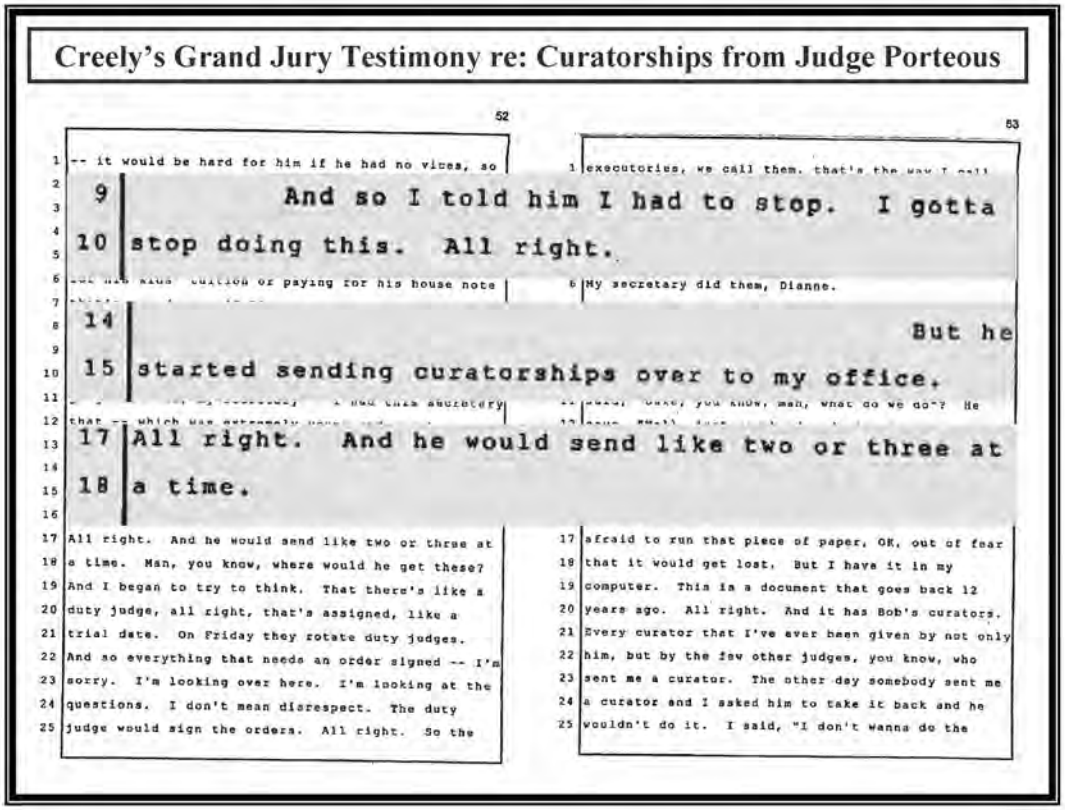
Creely's Grand Jury Testimony re: Objections to Judge Porteous's Continuing Requests for Cash

of the firm and Jake was sharing this burden?
A. That's correct way to put it, yes, sir.
Q. All right. Did this last through his

A. There came a time where, you know, this borrowing turned into this, as you said, burden, and that's a good word 'cause I, you know, can use many words for it. But he -- there was a time I said, you know, "I just can't keep doing this, man, I can't keep supporting your family."

many words for it. But he -- there was a time I said, you know, "I just can't keep doing this, man, I can't keep supporting your family." And knowing at the same time that I knew his lifestyle. He was my friend. OK. He's friend. I knew his life-style. I knew what his income was, because that's what they pay judges, like eighty something thousand dollars. I knew he had four kids. I knew they were all -- it's expensive to raise four kids at one time living in the same house. He couldn't

Creely's Grand Jury Testimony re: Curatorships from Judge Porteous



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-- it would be hard for him if he had no vices, so

And so I told him I had to stop. I gotta stop doing this. All right.

[illegible] caution or paying for his house note

But he started sending curatorships over to my office.

[illegible] this secretary that -- which was extremely [illegible]

All right. And he would send like two or three at a time.

All right. And he would send like two or three at a time. Man, you know, where would he get these? And I began to try to think. That there's like a duty judge, all right, that's assigned, like a trial date. On Friday they rotate duty judges. And so everything that needs an order signed -- I'm sorry. I'm looking over here. I'm looking at the questions. I don't mean disrespect. The duty judge would sign the orders. All right. So the

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executories, we call them. that's the way I call

My secretary did them, Dianne.

[illegible], you know, man, what do we do? He

afraid to run that piece of paper, OK, out of fear that it would get lost. But I have it in my computer. This is a document that goes back 12 years ago. All right. And it has Bob's curators. Every curator that I've ever been given by not only him, but by the few other judges, you know, who sent me a curator. The other day somebody sent me a curator and I asked him to take it back and he wouldn't do it. I said, "I don't wanna do the

Creely's Grand Jury Testimony re: Curatorships from Judge Porteous

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-- it would be hard for him if he had no vices, so to speak, to support his family. But he liked to

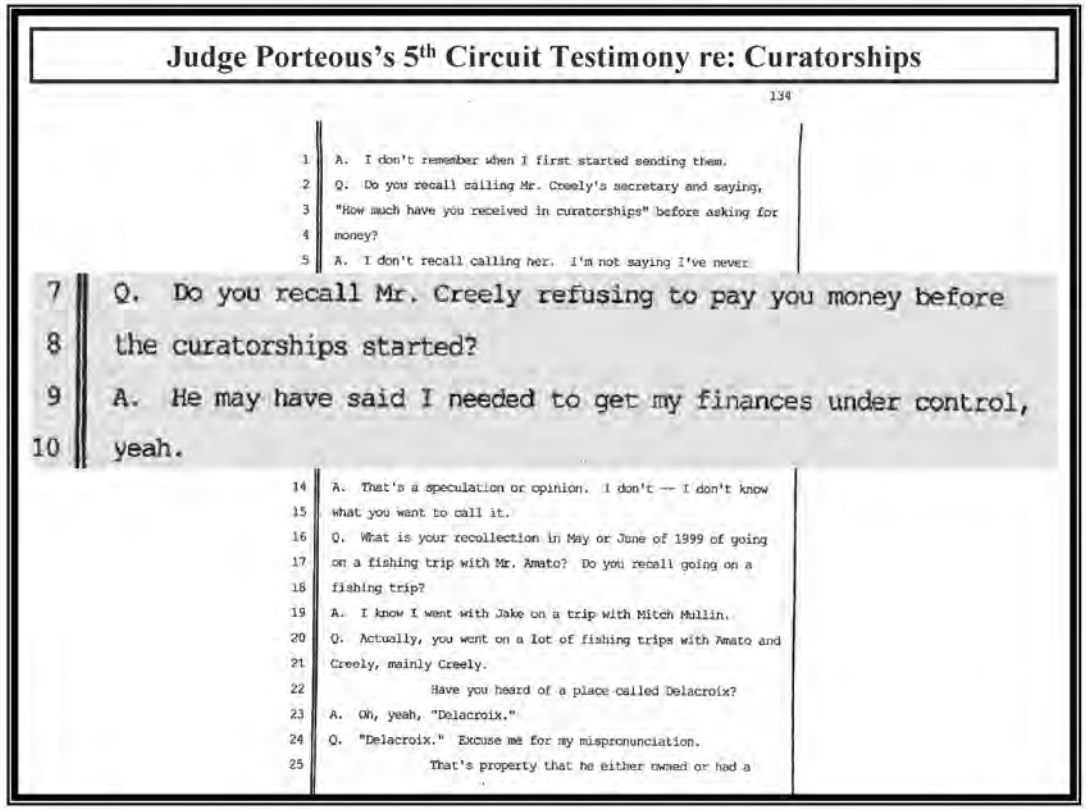
duty judge, all right, that's assigned, like a trial date. On Friday they rotate duty judges. And so everything that needs an order signed -- I'm sorry. I'm looking over here. I'm looking at the questions. I don't mean disrespect. The duty judge would sign the orders. All right. So the

53

executories, we call them, that's the way I call them, didn't require a court appearance. Required

years ago. All right. And it has Bob's curators. Every curator that I've ever been given by not only him, but by the few other judges, you know, who sent me a curator. The other day somebody sent me a curator and I asked him to take it back and he wouldn't do it. I said, "I don't wanna do the

7 And he then started calling and saying,
8 "Look. I've been sending you curators, you know.
9 Can you give me the money for the curators?" I
10 said, "Man." So I talked to my law partner. I
11 said, "Jake, you know, man, what do we do"? He
12 says, "Well, just go ahead and give it to him." We
13 decided to give him the money. We would deduct the
14 expenses. We would pay income taxes on it.


Judge Porteous's 5th Circuit Testimony re: Curatorships
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A. I don't remember when I first started sending them.
Q. Do you recall calling Mr. Creely's secretary and saying, "How much have you received in curatorships" before asking for money?
A. I don't recall calling her. I'm not saying I've never
Q. Do you recall Mr. Creely refusing to pay you money before the curatorships started?
A. He may have said I needed to get my finances under control, yeah.
A. That's a speculation or opinion. I don't -- I don't know what you want to call it.
Q. What is your recollection in May or June of 1999 of going on a fishing trip with Mr. Amato? Do you recall going on a fishing trip?
A. I know I went with Jake on a trip with Mitch Mullin.
Q. Actually, you went on a lot of fishing trips with Amato and Creely, mainly Creely.
Have you heard of a place called Delacroix?
A. Oh, yeah, "Delacroix."
Q. "Delacroix." Excuse me for my mispronunciation.
That's property that he either owned or had a

Judge Porteous's 5th Circuit Testimony re: Curatorships

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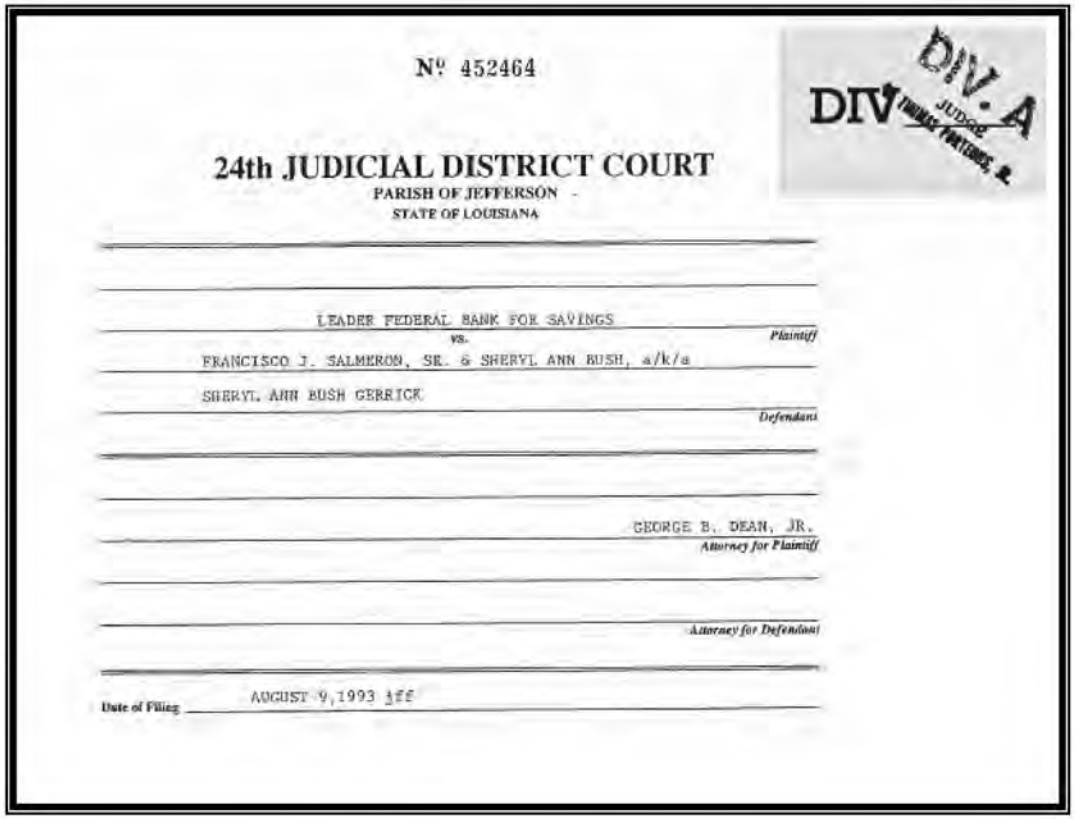
Q. Now, when you were a state judge, did you ever report any of these cash gifts on your Louisiana disclosure forms?
A. No. I don't think we actually received forms, but I don't remember that.
Q. Okay.
A. Whether you received a form like the federal government, where you have to fill it out, I don't believe they had reporting forms at the time. I know what the statute says, but I don't think it's like it is in federal court.
Q. Before you became a federal judge, you used -- as a state judge, you used to send something called "curatorships" over to the Creely-Amato firm, did you not?
A. And Gardner and all those, yeah.

Q. And after receiving curatorships, Mr. -- Messrs. Creely and/or Amato and/or their law firm would give you money, correct?
A. Occasionally.

and/or Amato and/or their law firm would give you money, correct?
A. Occasionally.
Q. You mentioned before that you read the grand jury



Nº 452464

DIV. A
JUDGE THOMAS FONTENOT, JR.

24th JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON
STATE OF LOUISIANA

LEADER FEDERAL BANK FOR SAVINGS
Plaintiff

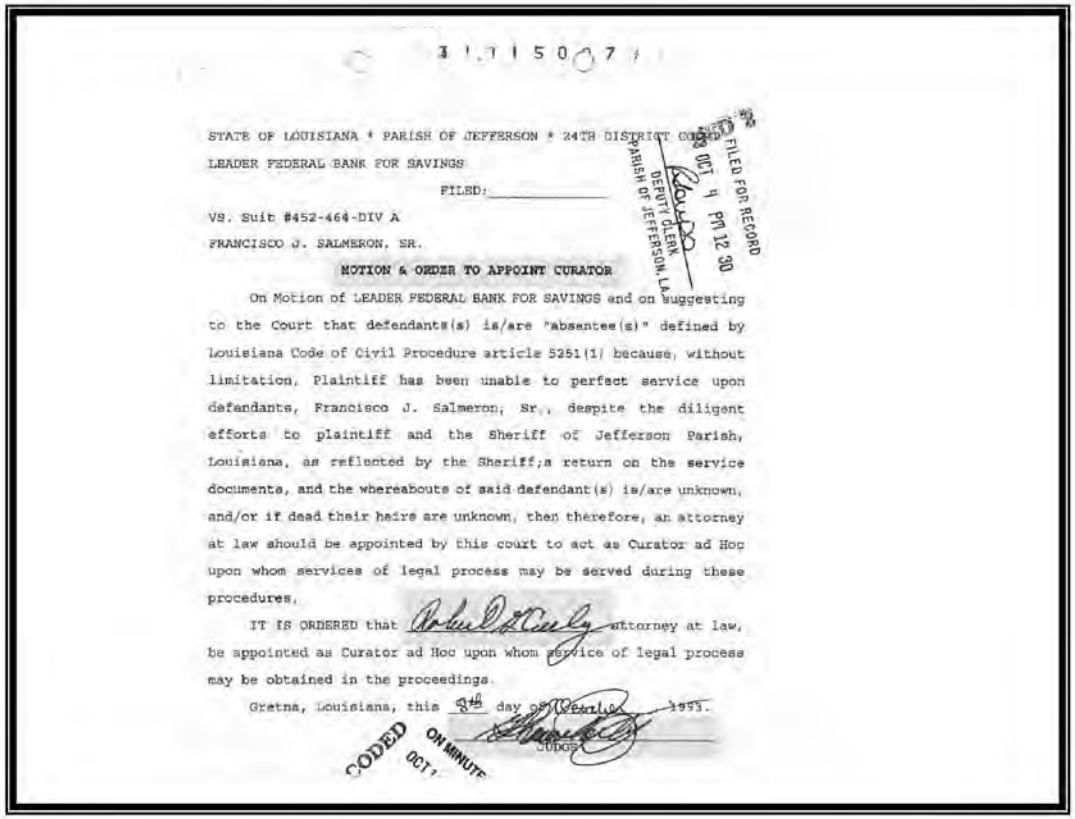
vs.

FRANCISCO J. SALMERON, SR. & SHERYL ANN BUSH, a/k/a
SHERYL ANN BUSH GERRICK
Defendant

GEORGE B. DEAN, JR.
Attorney for Plaintiff

Attorney for Defendant

Date of Filing AUGUST 9,1993 jff



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STATE OF LOUISIANA * PARISH OF JEFFERSON * 24TH DISTRICT COURT

LEADER FEDERAL BANK FOR SAVINGS

FILED: _____

VS. Suit #452-464-DIV A

FRANCISCO J. SALMERON, SR.

FILED FOR RECORD
OCT 4 PM 12 30
PARISH OF JEFFERSON, LA.
DEPUTY CLERK

MOTION & ORDER TO APPOINT CURATOR

On Motion of LEADER FEDERAL BANK FOR SAVINGS and on suggesting to the Court that defendants(s) is/are "absentee(s)" defined by Louisiana Code of Civil Procedure article 5251(1) because, without limitation, Plaintiff has been unable to perfect service upon defendants, Francisco J. Salmeron, Sr., despite the diligent efforts to plaintiff and the Sheriff of Jefferson Parish, Louisiana, as reflected by the Sheriff;s return on the service documents, and the whereabouts of said defendant(s) is/are unknown, and/or if dead their heirs are unknown, then therefore, an attorney at law should be appointed by this court to act as Curator ad Hoc upon whom services of legal process may be served during these procedures,

IT IS ORDERED that Robert D. O'Culy attorney at law, be appointed as Curator ad Hoc upon whom service of legal process may be obtained in the proceedings.

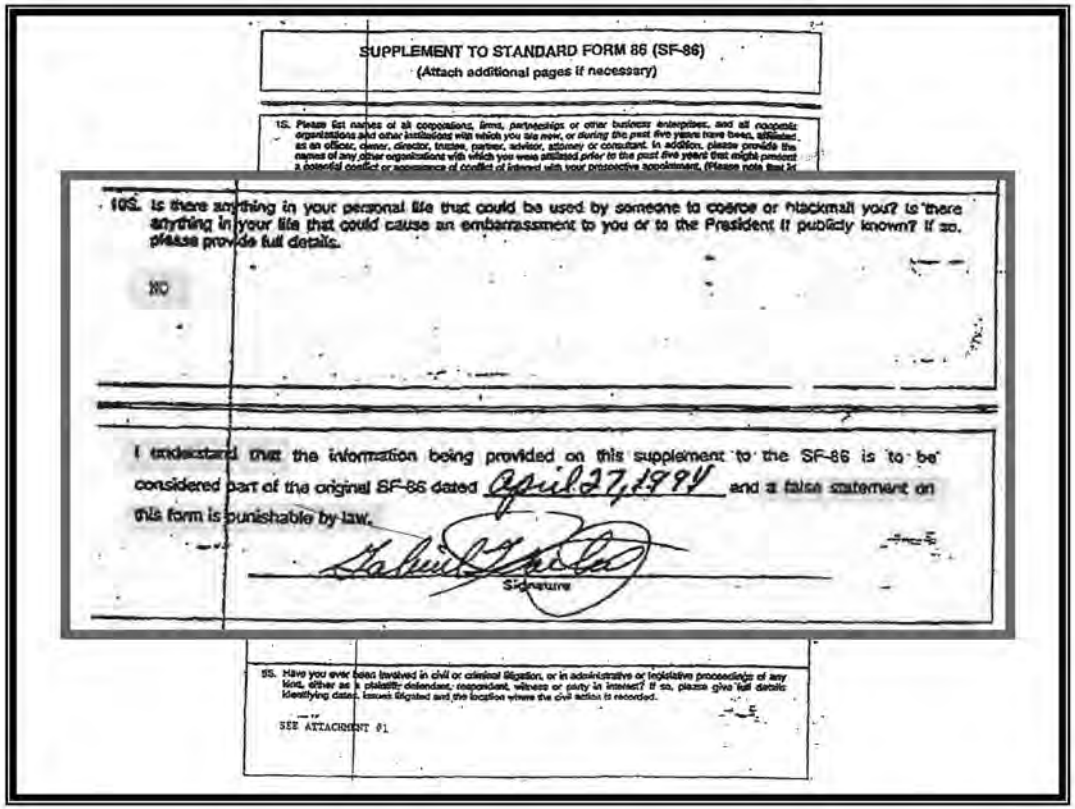
Gretna, Louisiana, this 4th day of October, 1993.

JUDGE

CODED ON MINUTE OCT 7

Curatorships Assigned to Creely by Judge Porteous

Year	Curatorships	Fee Amount	Total Dollar Amount
1988	14	$150 or $200	$2,100 - $2,800
1989	20	$200	$4,000
1990	34	$200	$6,800
1991	25	$200	$5,000
1992	40	$200	$8,000
1993	30	$200	$6,000
1994	28	$200	$5,000
No Year	2	$200	$400
Total	**191**		**$37,500 - $38,200**



SUPPLEMENT TO STANDARD FORM 86 (SF-86)
(Attach additional pages if necessary)

15. Please list names of all corporations, firms, partnerships or other business enterprises, and all nonprofit organizations and other institutions with which you are now, or during the past five years have been, affiliated, as an officer, owner, director, trustee, partner, advisor, attorney or consultant. In addition, please provide the names of any other organizations with which you were affiliated prior to the past five years that might present a potential conflict or appearance of conflict of interest with your prospective appointment. (Please note that in

19S. Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause an embarrassment to you or to the President if publicly known? If so, please provide full details.

NO

I understand that the information being provided on this supplement to the SF-86 is to be considered part of the original SF-86 dated April 27, 1994 and a false statement on this form is punishable by law.

Signature

23. Have you ever been involved in civil or criminal litigation, or in administrative or legislative proceedings of any kind, either as a plaintiff, defendant, respondent, witness or party in interest? If so, please give full details identifying dates, issues litigated and the location where the civil action is recorded.

SEE ATTACHMENT #1

V

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

G. THOMAS PORTEOUS, JR.
QUESTIONNAIRE FOR JUDICIAL NOMINEES

Office: 24th Judicial District Court
Division "A"
Gretna Courthouse Annex Bldg.
2nd Floor, Room 200
Gretna, LA 70053

3. Date and place of birth.

December 15, 1946 New Orleans, LA

4. Marital status (include maiden name of wife, or husband's name. List spouse's occupation, employer's name and business address(es).

Carmella Ann Giardina Porteous
Vascular Technician
Vascular Laboratory, Inc.
3939 Houma Blvd., Suite 20
Metairie, LA 70006

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Resolution: The matter was settled without any admission of liability or responsibility.

11. Please advise the Committee of any unfavorable information that may affect your nomination.

To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.

11. Please advise the Committee of any unfavorable information that may affect your nomination.

To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.

AFFIDAVIT

I, Gabriel Thomas Porteous, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Gretna, Louisiana this 6 day of September, 1994.

Gabriel Thomas Porteous, Jr.

Notary

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SEP 19 2 49 PM '96

LIFEMARK HOSPITALS, INC.	*	CIVIL ACTION
VERSUS	*	NO. 93-1794 c/w 94-3993 94-4249 94-2922
LILJEBERG ENTERPRISES, INC.	*	
* * * * * * *		SECTION "I"

EX PARTE MOTION OF LILJEBERG ENTERPRISES, INC. TO SUBSTITUTE COUNSEL

NOW INTO COURT comes Liljeberg Enterprises, Inc., ("LEI") Jacob Amato, Leonard Levenson, William P. Connick and Stephen Wimberly, who moves this Honorable Court to allow and to allow Jacob Amato and Leonard Levenson to be substituted as attorneys of record for LEI herein. LEI has consented to such substitution.

Respectfully submitted,

William Peter Connick (#14158)
Stephen Wimberly (#10985)
CONNICK, LENTINI, WIMBERLY & deLAUP
2551 Metairie Road
Metairie, Louisiana 70001
Telephone: (504) 838-8777

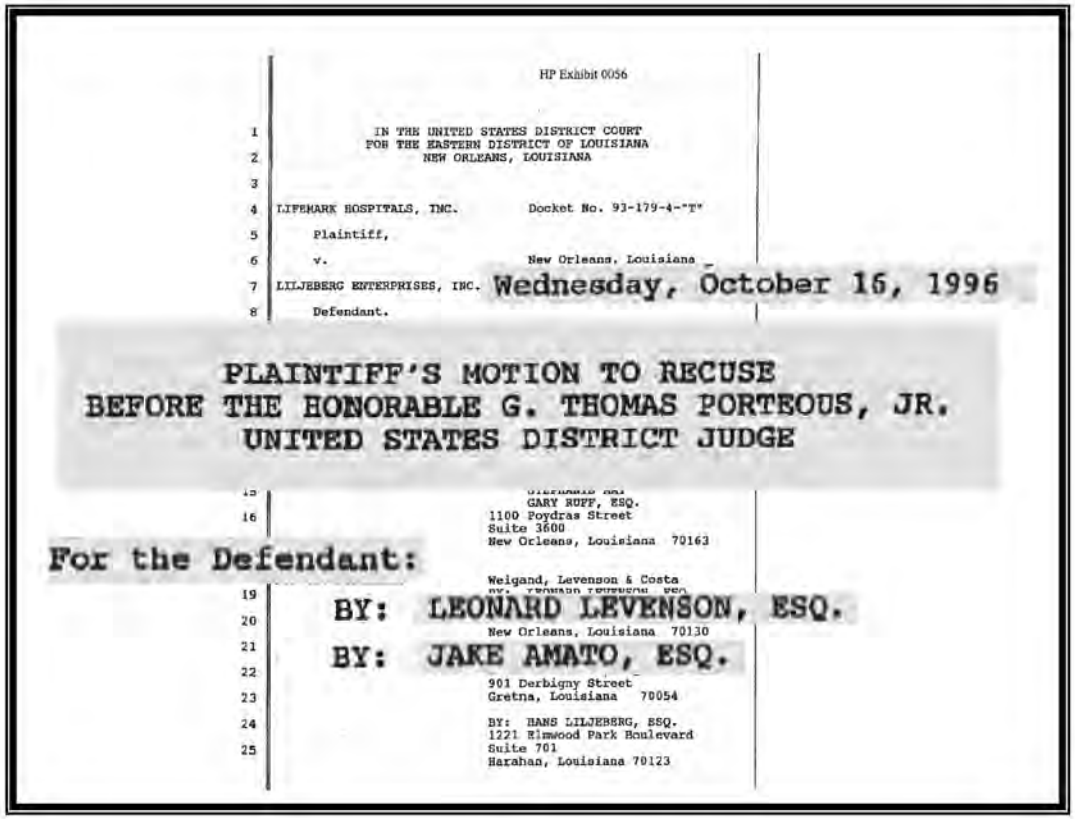
Jacob Amato
AMATO & CREELY, P.C.
901 Derbigny Street
Gretna, Louisiana 70054-0441
Telephone: (504) 367-8181

Leonard Levenson (#8675)
Attorney at Law
427 Graver Street
New Orleans, Louisiana
Telephone: (504) 586-0066

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading upon Joseph N. Mole at 3600 Energy Center, 1100 Poydras Street, New Orleans, Louisiana, 70163, by ~~placing the~~ hand same in the United States Mail, postage prepaid, on this 12th day of September, 1996.

JACOB J. AMATO, JR.



HP Exhibit 0056

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS, LOUISIANA

LIFEMARK HOSPITALS, INC. Docket No. 93-179-4-"F"

Plaintiff,

v. New Orleans, Louisiana

LILJEBERG ENTERPRISES, INC. Wednesday, October 16, 1996

Defendant.

PLAINTIFF'S MOTION TO RECUSE
BEFORE THE HONORABLE G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT JUDGE

GARY RUFF, ESQ.
1100 Poydras Street
Suite 3600
New Orleans, Louisiana 70163

For the Defendant:

Weigand, Levenson & Costa

BY: LEONARD LEVENSON, ESQ.
New Orleans, Louisiana 70130

BY: JAKE AMATO, ESQ.
901 Derbigny Street
Gretna, Louisiana 70054

BY: HANS LILJEBERG, ESQ.
1221 Elmwood Park Boulevard
Suite 701
Harahan, Louisiana 70123

Hearing on the Motion to Recuse

PROCEEDINGS

MORNING SESSION

Wednesday, October 16, 1996)

THE COURT: Let's take up this next matter, which is 93-1794 and all consolidated cases also. This is the motion filed with respect to all of the particular cases to recuse. Let me dictate one thing into the record before everybody

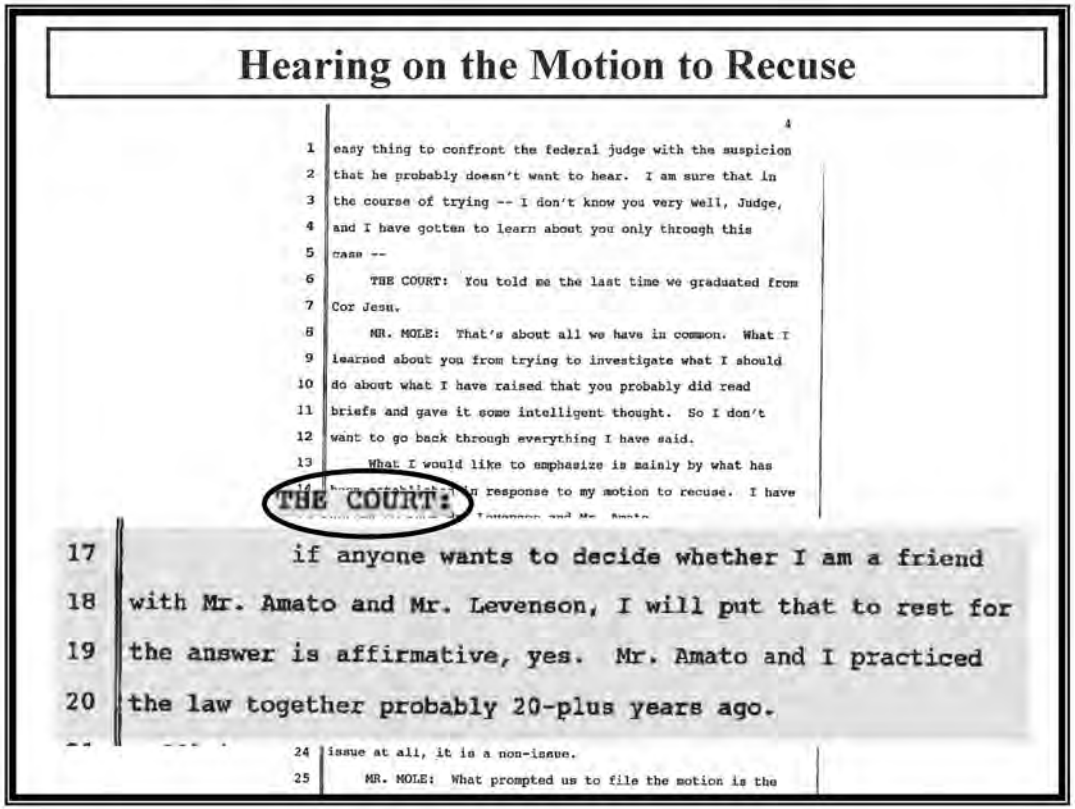
lawyer who reasonably believes that the Judge before whom he is appearing should not sit must raise the issue so that it may be confronted and put to rest. Any other course would risk undermining public confidence in our judicial system." I cite that so that everyone understands that I recognize my duty and obligations, and I am fully prepared to listen.

I cite that so that everyone understands that I recognize my duty and obligations, and I am fully prepared to listen.

All right, go ahead.

MR. MOLE: I appreciate your remarks. It is not a very

Hearing on the Motion to Recuse



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easy thing to confront the federal judge with the suspicion that he probably doesn't want to hear. I am sure that in the course of trying -- I don't know you very well, Judge, and I have gotten to learn about you only through this case --

THE COURT: You told me the last time we graduated from Cor Jesu.

MR. MOLE: That's about all we have in common. What I learned about you from trying to investigate what I should do about what I have raised that you probably did read briefs and gave it some intelligent thought. So I don't want to go back through everything I have said.

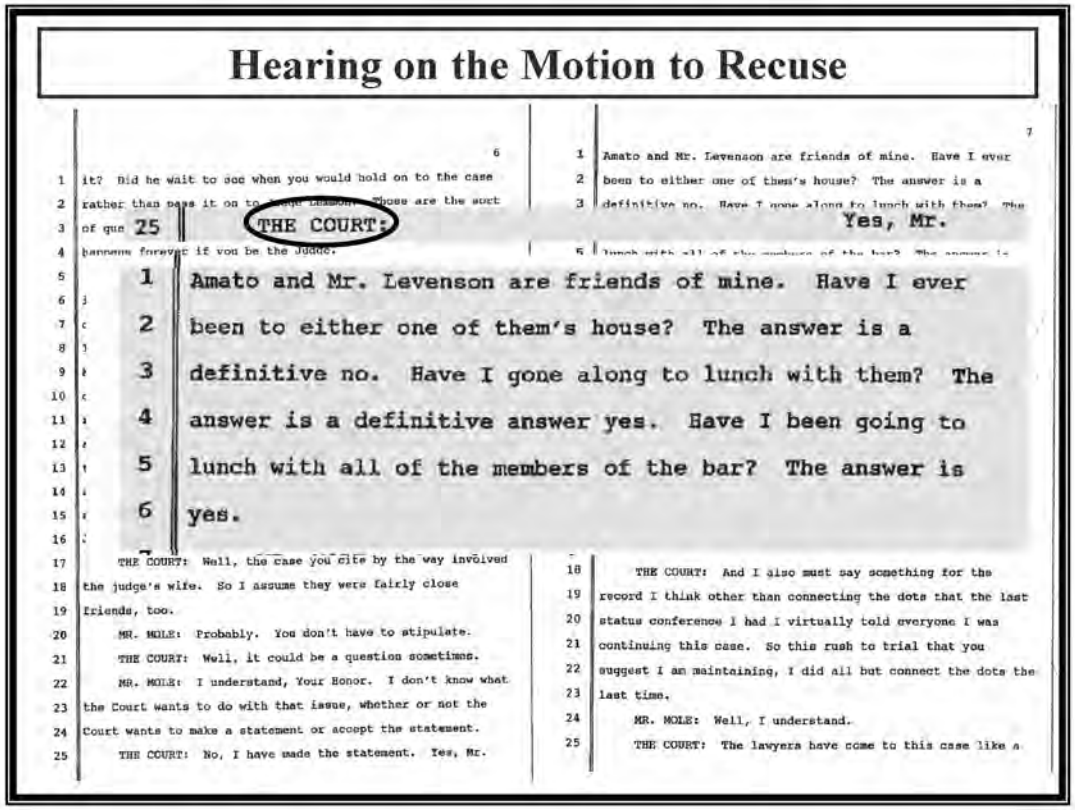
What I would like to emphasize is mainly by what has [illegible] in response to my motion to recuse. I have

THE COURT: if anyone wants to decide whether I am a friend with Mr. Amato and Mr. Levenson, I will put that to rest for the answer is affirmative, yes. Mr. Amato and I practiced the law together probably 20-plus years ago.

issue at all, it is a non-issue.

MR. MOLE: What prompted us to file the motion is the

Hearing on the Motion to Recuse



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it? Did he wait to see when you would hold on to the case rather than pass it on to Judge Levenson? Those are the sort of que
25 THE COURT:
Yes, Mr.
hanging forever if you be the Judge.

7

Amato and Mr. Levenson are friends of mine. Have I ever been to either one of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive answer yes. Have I been going to lunch with all of the members of the bar? The answer is yes.

THE COURT: Well, the case you cite by the way involved the judge's wife. So I assume they were fairly close friends, too.

MR. MOLE: Probably. You don't have to stipulate.

THE COURT: Well, it could be a question sometimes.

MR. MOLE: I understand, Your Honor. I don't know what the Court wants to do with that issue, whether or not the Court wants to make a statement or accept the statement.

THE COURT: No, I have made the statement. Yes, Mr.

THE COURT: And I also must say something for the record I think other than connecting the dots that the last status conference I had I virtually told everyone I was continuing this case. So this rush to trial that you suggest I am maintaining, I did all but connect the dots the last time.

MR. MOLE: Well, I understand.

THE COURT: The lawyers have come to this case like a

Hearing on the Motion to Recuse

storm cloud through Louisiana. Look at the list. I ran a chaser sheet. Up until I think maybe Mr. Steeg and Mr.

MR. MOLE: The public perception is that they do dine with you, travel with you, that they have contributed to your campaigns.

THE COURT: Well, luckily I didn't have any campaigns. So I'm interested to find out how you know that. I never had any campaigns, counsel. I have never had an opponent.

perception is that they do dine with you, travel with you,

THE COURT: The first time I ran, 1984, I think is the only time when they gave me money.

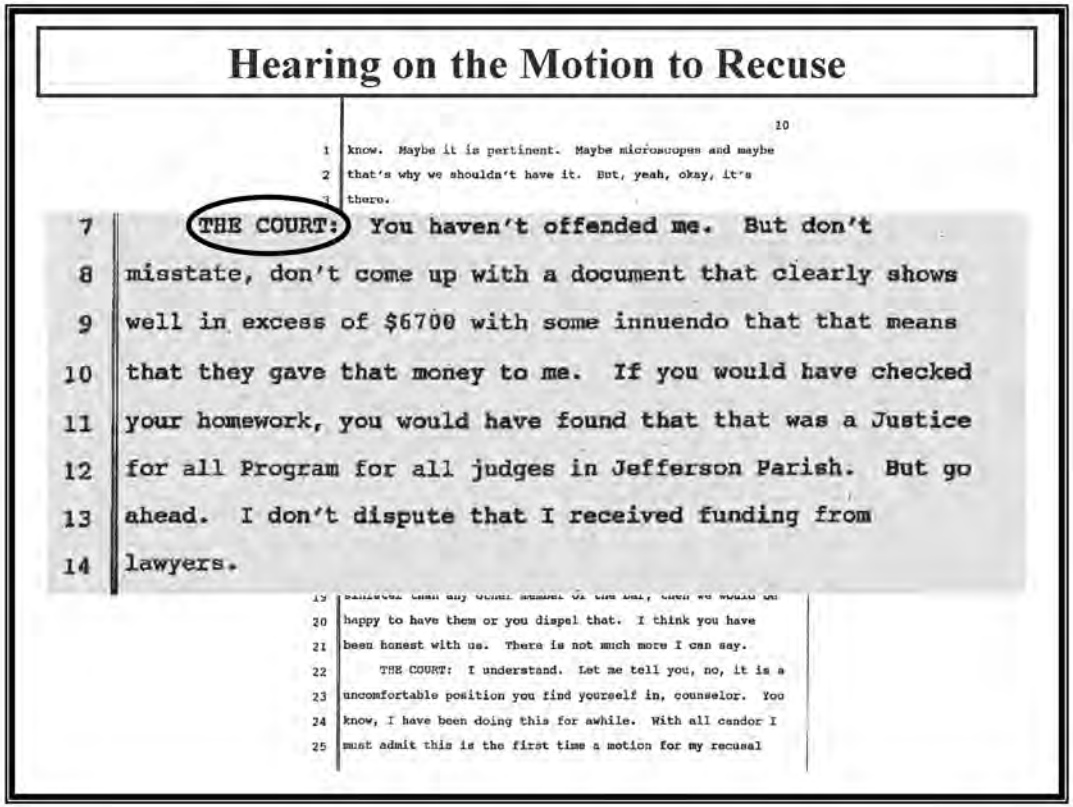
One time I had an opponent --

MR. MOLE: I had a campaign return from the --

THE COURT: The first time I ran, 1984, I think is the only time when they gave me money.

MR. MOLE: 1990 is what I have.

Hearing on the Motion to Recuse



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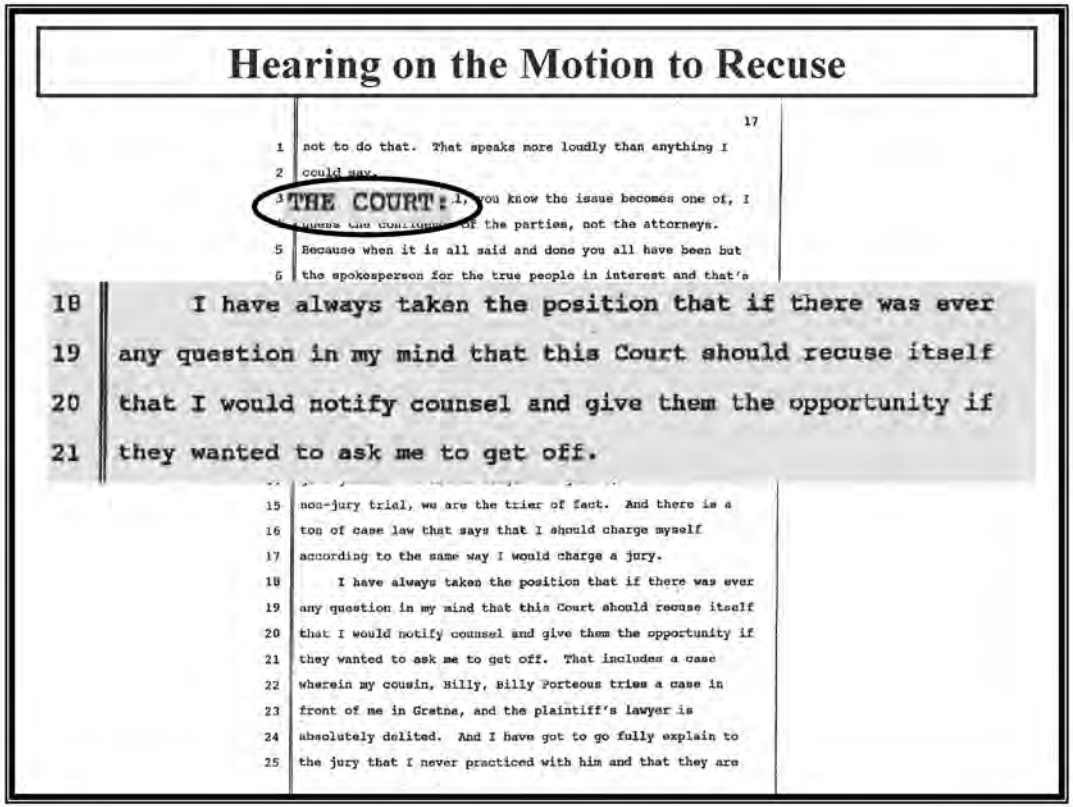
know. Maybe it is pertinent. Maybe microscopes and maybe that's why we shouldn't have it. But, yeah, okay, it's there.

THE COURT: You haven't offended me. But don't misstate, don't come up with a document that clearly shows well in excess of $6700 with some innuendo that that means that they gave that money to me. If you would have checked your homework, you would have found that that was a Justice for all Program for all judges in Jefferson Parish. But go ahead. I don't dispute that I received funding from lawyers.

happy to have them or you dispel that. I think you have been honest with us. There is not much more I can say.

THE COURT: I understand. Let me tell you, no, it is a uncomfortable position you find yourself in, counselor. You know, I have been doing this for awhile. With all candor I must admit this is the first time a motion for my recusal

Hearing on the Motion to Recuse



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not to do that. That speaks more loudly than anything I could say.

THE COURT: I, you know the issue becomes one of, I guess the contrition of the parties, not the attorneys. Because when it is all said and done you all have been but the spokesperson for the true people in interest and that's

I have always taken the position that if there was ever any question in my mind that this Court should recuse itself that I would notify counsel and give them the opportunity if they wanted to ask me to get off.

non-jury trial, we are the trier of fact. And there is a ton of case law that says that I should charge myself according to the same way I would charge a jury.

I have always taken the position that if there was ever any question in my mind that this Court should recuse itself that I would notify counsel and give them the opportunity if they wanted to ask me to get off. That includes a case wherein my cousin, Billy, Billy Forteous tries a case in front of me in Gretna, and the plaintiff's lawyer is absolutely delited. And I have got to go fully explain to the jury that I never practiced with him and that they are

Hearing on the Motion to Recuse

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taking up other issues today, and I had issued an order and I am hoping everyone got a copy of it. And if they didn't, I don't know what happened. But entry no. 278 says, "Having received the plaintiff's Motion to Recuse, the Court finds it is in the best interest of justice that all motions are deferred pending resolution of the motion to recuse.

... that.

THE COURT: ...n't know what to tell you all other

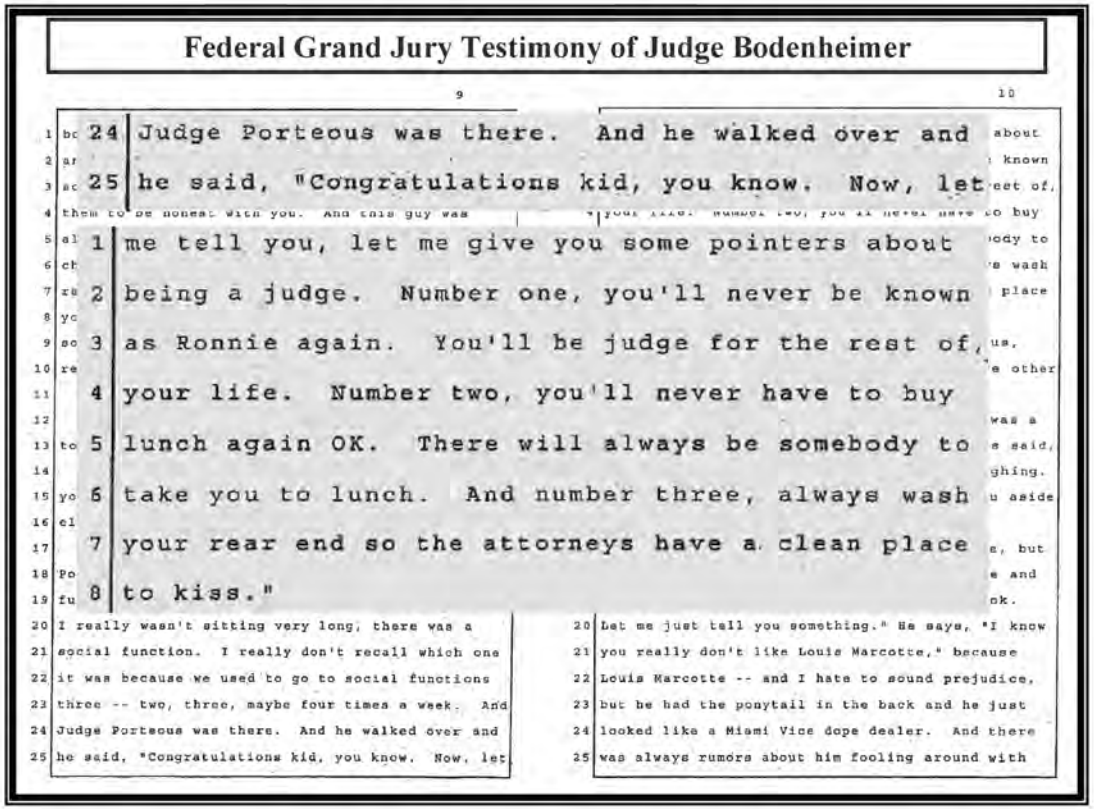
I don't think a well-informed individual can question my impartiality in this case.

somebody on one side. I'm human, but I assure you I have done this long enough that it won't bother me at all. Saying no is the easiest thing. Saying zero is just a number. Whether it is worth $140 million as you suggest, I don't know. I don't know enough about this case. I don't even know if you all know enough about this case given the rash of pleadings that go back and forth. I'm not even sure it is that complex, but it is sure being made fairly complex.

Now, having said all of the above, I tell you now that there is no way on this earth that I can get through any of the motions pending and have a trial date by November 4th.

Judge Porteous's Financial Condition While Liljeberg Case is Under Advisement

Year	Credit Card Debt	IRA Balance
Year-End 1996	($44,000)	$59,000
June 1997	($69,000)	$20,000
June 1999	($103,000)	$9,500
April 2000	($153,000)	$12,000



Federal Grand Jury Testimony of Judge Bodenheimer

9

Judge Porteous was there. And he walked over and
he said, "Congratulations kid, you know. Now, let
me tell you, let me give you some pointers about
being a judge. Number one, you'll never be known
as Ronnie again. You'll be judge for the rest of,
your life. Number two, you'll never have to buy
lunch again OK. There will always be somebody to
take you to lunch. And number three, always wash
your rear end so the attorneys have a clean place
to kiss."

I really wasn't sitting very long, there was a
social function. I really don't recall which one
it was because we used to go to social functions
three -- two, three, maybe four times a week. And
Judge Porteous was there. And he walked over and
he said, "Congratulations kid, you know. Now, let

10

Let me just tell you something." He says, "I know
you really don't like Louis Marcotte," because
Louis Marcotte -- and I hate to sound prejudice,
but he had the ponytail in the back and he just
looked like a Miami Vice dope dealer. And there
was always rumors about him fooling around with

Amato's Deposition re: Cash Request from Judge Porteous While Liljeberg Case Pending

12

15 Q. Okay. And you previously
16 testified that he asked you for money on
17 that fishing trip; is that correct?
18 A. He told me that the wedding, his
19 son's wedding, ran over budget and that he
20 couldn't afford it, and could I lend him,
21 give him, somehow get him some money to help
22 out.
23 Q. Okay. You don't remember the
24 exact word he used --
25 A. No.

13

24 exact word he used --
25 A. No.
24 night, got to the dock. I went home and
25 laid down for a couple hours, took a bath

Amato's Deposition re: Cash Request from Judge Porteous While Liljeberg Case Pending

12

13

Q. -- but clearly he wanted you to provide him money, correct?

A. To help him, yeah.

Q. And the amounts of money -- now, as a result of that request, did you in fact provide him money?

A. Yeah.

Q. And the amount of money that he asked for, do you have a recollection in your own mind the approximate amount it was?

A. About $2,500.

A. No.

laid down for a couple hours, took a bath

Judge Porteous's 5th Circuit Testimony re: Cash Request to Amato While Liljeberg Case Pending

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Q. Do you recall in 1999, in the summer, May, June, receiving $2,000 for them?

A. I've read Mr. Amato's grand jury testimony. It says we were fishing and I made some representation that I was having difficulties and that they loaned me some money or gave me some money.

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$2,000 for them?

Q. Well, whether or not you recall asking Mr. Amato for money during this fishing trip, do you recall getting an envelope with $2,000 shortly thereafter?

A. Yeah. Something seems to suggest that there may have been an envelope. I don't remember the size of an envelope, how I got the envelope, or anything about it.

A. No.

envelope, a bank envelope, or what.

Judge Porteous's 5th Circuit Testimony re: Cash Request to Amato While Liljeberg Case Pending

JUDGE LAKE: Wait a second. Is it the nature of the envelope you're disputing?

THE WITNESS: No. Money was received in envelope.

JUDGE LAKE: And had cash in it?

THE WITNESS: Yes, sir.

JUDGE LAKE: And it was from Creely and/or --

THE WITNESS: Amato.

JUDGE LAKE: -- Amato?

THE WITNESS: Yes.

JUDGE LAKE: And it was used to pay for your son's wedding?

THE WITNESS: To help defray the cost, yeah.

JUDGE LAKE: And was used --

THE WITNESS: They loaned -- my impression was it was a loan.

JUDGE LAKE: And would you dispute that the amount was $2,000?

THE WITNESS: I don't have any basis to dispute it.

Judge Porteous's 5th Circuit Testimony re: Cash Request to Amato While Liljeberg Case Pending

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Q. Okay. Let me --

JUDGE LAKE: Wait a second. Is it the nature of the envelope you're disputing?

THE WITNESS: No. Money was received in envelope.

JUDGE LAKE: And had cash in it?

Q. Did you ever pay back the loan?

THE WITNESS: Amato.

A. No, I didn't. I declared bankruptcy in 2001; and, of course, I didn't list it.

JUDGE LAKE: And was used --

THE WITNESS: They loaned -- my impression was it was a loan.

JUDGE LAKE: And would you dispute that the amount was $2,000?

THE WITNESS: I don't have any basis to dispute it.

JUDGE LAKE: All right. Thank you.

BY MR. FINDER:

Q. Your impression was that it was a loan was what you just said, correct?

A. Yes.

Q. Did you ever pay back the loan?

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A. No, I didn't. I declared bankruptcy in 2001; and, of course, I didn't list it.

Q. But it wasn't listed as paid --

A. No, it wasn't listed.

Q. So, did you ever pay back the loan --

A. No.

Q. Then, it was income. Is that right?

federal judge, you know some law --

A. It's income.

Q. -- it's income, right?

A. All right.

Q. But it was never reported on your tax returns, was it?

A. No, it was not.

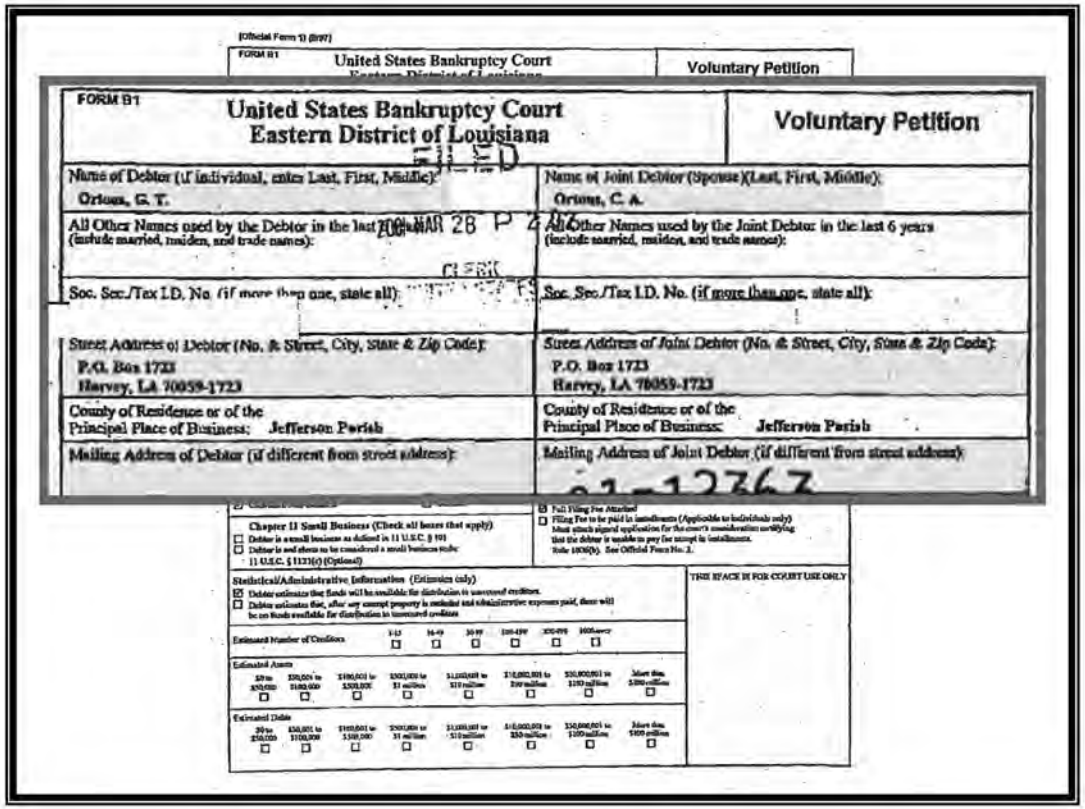
Q. It was never reported on the judicial disclosure form under "Other Income," was it?

A. No.

Q. Let's talk about the bachelor party.

A. All right.

Q. In approximately May of 1999, your son Timmy was going to



(Official Form 1) (8/97)

FORM B1 — United States Bankruptcy Court — Eastern District of Louisiana — Voluntary Petition

FORM B1 — **United States Bankruptcy Court** — **Eastern District of Louisiana** — **Voluntary Petition**

FILED

2001 MAR 28 P 4:06

CLERK

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
Orions, G. T.	Orions, C. A.
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Soc. Sec./Tax I.D. No. (if more than one, state all):	Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code): P.O. Box 1723 Harvey, LA 70059-1723	Street Address of Joint Debtor (No. & Street, City, State & Zip Code): P.O. Box 1723 Harvey, LA 70059-1723
County of Residence or of the Principal Place of Business: Jefferson Parish	County of Residence or of the Principal Place of Business: Jefferson Parish
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):

01-1263

Chapter 11 Small Business (Check all boxes that apply)
- ☐ Debtor is a small business as defined in 11 U.S.C. § 101
- ☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

- ☒ Full Filing Fee Attached
- ☐ Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

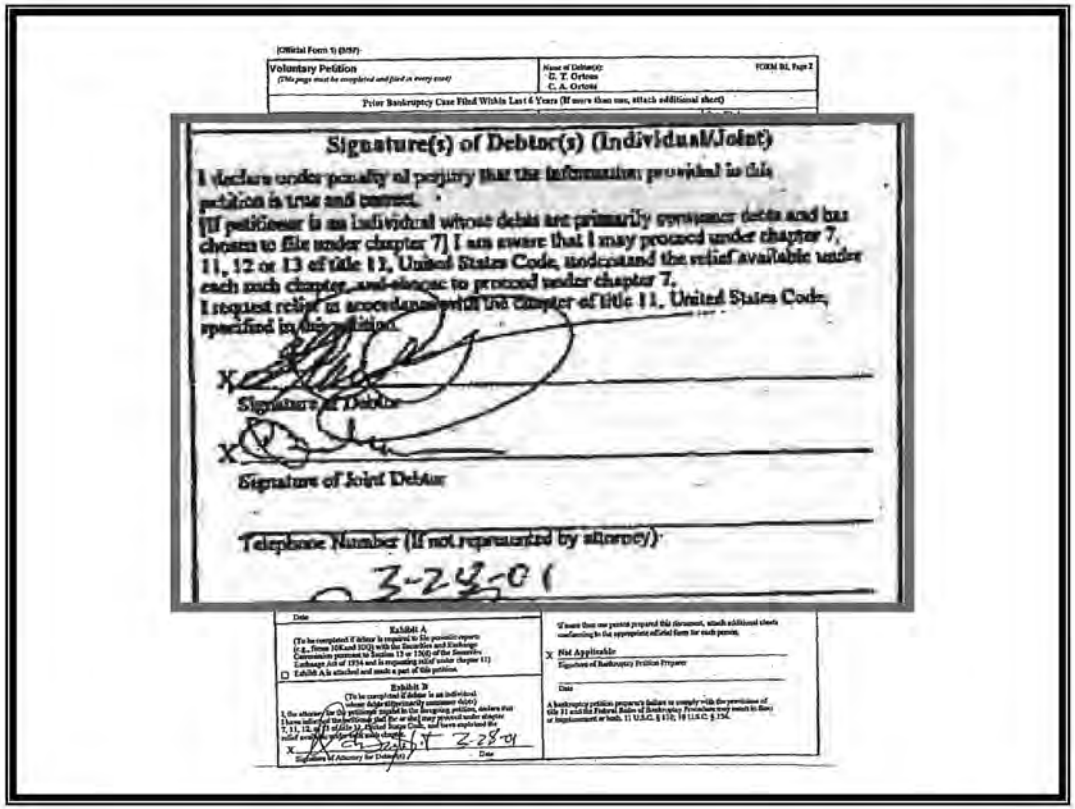
Statistical/Administrative Information (Estimates only)
- ☒ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors: 1-15 ☐ | 16-49 ☐ | 50-99 ☐ | 100-199 ☐ | 200-999 ☐ | 1000-over ☐

Estimated Assets: $0 to $50,000 ☐ | $50,001 to $100,000 ☐ | $100,001 to $500,000 ☐ | $500,001 to $1 million ☐ | $1,000,001 to $10 million ☐ | $10,000,001 to $50 million ☐ | $50,000,001 to $100 million ☐ | More than $100 million ☐

Estimated Debts: $0 to $50,000 ☐ | $50,001 to $100,000 ☐ | $100,001 to $500,000 ☐ | $500,001 to $1 million ☐ | $1,000,001 to $10 million ☐ | $10,000,001 to $50 million ☐ | $50,000,001 to $100 million ☐ | More than $100 million ☐



(Official Form 1) (9/97)

Voluntary Petition (This page must be completed and filed in every case)	Name of Debtor(s): E. T. Ortese C. A. Ortese	FORM B1, Page 2
Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)		

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____

Signature of Debtor

X _____

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

3-24-01

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X _____ 3-28-01

Signature of Attorney for Debtor(s) Date

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X Not Applicable

Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

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ing of a statutory term unless Congress explicitly rejects that meaning. *See Taylor v. United States*, 495 U.S. 575, 598, 110 S.Ct. 2143, 109 L.Ed.2d 607 (1990).

Second, the plain language of the phrase "crimes against the person" excludes conduct that is *intentionally* directed against another person—which would include reckless conduct with the likely effect of harming others. Here again, the definition of "crime of violence" in § 16(b), as construed in *Chapa-Garcia*, provides a more suitable reference point than the Guidelines definition because § 16(b) includes only those offenses that are likely to involve the intentional use of force:

> In sum, we conclude that the term "refers against the person" should be construed in accordance with its accepted common law meaning to include only those offenses that, by their nature, are likely to involve the intentional use or threat of physical force against another person. Under this definition, Trejo's misdemeanor convictions for driving under the influence are not "crimes against the person." *See Chapa-Garcia*, 243 F.3d at 887–88; *cf. Solano v. Ridge*, 403 U.S. 277, 280, 163 S.Ct. 2001, 77 L.Ed.2d 667 (1983) (noting that, for purposes of Eighth Amendment proportionality review, a "third-offense driving while intoxicated" is not "a crime against a person"). Consequently, Trejo is not eligible for an enhanced sentence of supervised release under § 1326(b)(1).

III

Because Trejo's three misdemeanor convictions for driving under the influence were not "crimes against the person" under § 1326(b)(1), the district court erred in sentencing Trejo to a term of supervised release in excess of the maximum term authorized for a conviction under § 1326(a). Accordingly, we VACATE Trejo's three-year term of supervised release and remand the case to the district court for resentencing in a manner not inconsistent with this opinion.

VACATED and REMANDED.

In the Matter of: LILJEBERG ENTERPRISES, INC., d/b/a Debtor.

Lifemark Hospitals, Inc., Appellant-Cross-Appellee,
v.
Liljeberg Enterprises, Inc., Appellee-Cross-Appellant;

Liljeberg Enterprises, Inc., Appellee-Cross-Appellant,
v.

Lifemark Hospitals, Inc., Appellant-Cross-Appellee,

Lifemark Hospitals, Inc., Appellant-Cross-Appellee,
v.

St. Jude Hospital of Kenner, Louisiana, L.L.C., Appellee-Cross-Appellant;

Liljeberg Enterprises, Inc., Appellee-Cross-Appellant,
v.

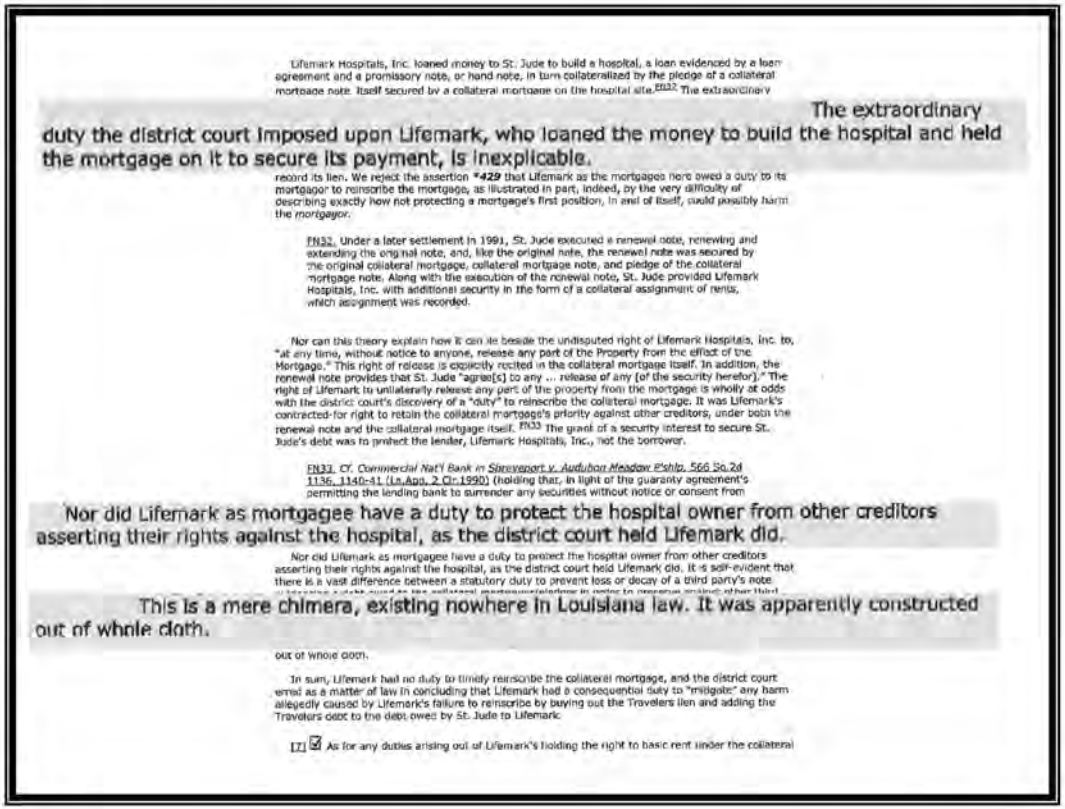
Lifemark Hospitals of Louisiana, Inc.; Lifemark Hospitals, Inc.; American Medical International; Tenet Healthcare Corporation, Appellants-Cross-Appellees.

No. 00-30645.

United States Court of Appeals, Fifth Circuit.

Aug. 28, 2002.

In consolidated proceedings involving Chapter 11 debtor-company which had



Lifemark Hospitals, Inc. loaned money to St. Jude to build a hospital, a loan evidenced by a loan agreement and a promissory note, or hand note, in turn collateralized by the pledge of a collateral mortgage note itself secured by a collateral mortgage on the hospital site.[FN32] The extraordinary

The extraordinary duty the district court imposed upon Lifemark, who loaned the money to build the hospital and held the mortgage on it to secure its payment, is inexplicable.

record its lien. We reject the assertion *429 that Lifemark as the mortgagee here owed a duty to its mortgagor to reinscribe the mortgage, as illustrated in part, indeed, by the very difficulty of describing exactly how not protecting a mortgagee's first position, in and of itself, could possibly harm the *mortgagor*.

FN32. Under a later settlement in 1991, St. Jude executed a renewal note, renewing and extending the original note, and, like the original note, the renewal note was secured by the original collateral mortgage, collateral mortgage note, and pledge of the collateral mortgage note. Along with the execution of the renewal note, St. Jude provided Lifemark Hospitals, Inc. with additional security in the form of a collateral assignment of rents, which assignment was recorded.

Nor can this theory explain how it can lie beside the undisputed right of Lifemark Hospitals, Inc. to, "at any time, without notice to anyone, release any part of the Property from the effect of the Mortgage." This right of release is explicitly recited in the collateral mortgage itself. In addition, the renewal note provides that St. Jude "agree[s] to any ... release of any [of the security herefor]." The right of Lifemark to unilaterally release any part of the property from the mortgage is wholly at odds with the district court's discovery of a "duty" to reinscribe the collateral mortgage. It was Lifemark's contracted-for right to retain the collateral mortgage's priority against other creditors, under both the renewal note and the collateral mortgage itself. [FN33] The grant of a security interest to secure St. Jude's debt was to protect the lender, Lifemark Hospitals, Inc., not the borrower.

FN33. Cf. *Commercial Nat'l Bank in Shreveport v. Audubon Meadow P'ship*, 566 So.2d 1136, 1140-41 (La.App. 2 Cir.1990) (holding that, in light of the guaranty agreement's permitting the lending bank to surrender any securities without notice or consent from

Nor did Lifemark as mortgagee have a duty to protect the hospital owner from other creditors asserting their rights against the hospital, as the district court held Lifemark did.

Nor did Lifemark as mortgagee have a duty to protect the hospital owner from other creditors asserting their rights against the hospital, as the district court held Lifemark did. It is self-evident that there is a vast difference between a statutory duty to prevent loss or decay of a third party's note

This is a mere chimera, existing nowhere in Louisiana law. It was apparently constructed out of whole cloth.

out of whole cloth.

In sum, Lifemark had no duty to timely reinscribe the collateral mortgage, and the district court erred as a matter of law in concluding that Lifemark had a consequential duty to "mitigate" any harm allegedly caused by Lifemark's failure to reinscribe by buying out the Travelers lien and adding the Travelers debt to the debt owed by St. Jude to Lifemark.

[7] ☑ As for any duties arising out of Lifemark's holding the right to basic rent under the collateral

having Lifemark Hospitals of Louisiana, Inc. purchase the hospital at the foreclosure sale. In sum, Lifemark did not owe the duties to St. Jude upon which the district court premised its order reversing the judicial sale of the hospital. The district court erred in upsetting the confirmed judicial sale on these grounds.

B.

[H] ☑ The district court pointed to its findings of Lifemark's bad faith, collusion, and self-dealing in forcing the judicial sale of the hospital, chilling the bidding at the sale, and purchasing the hospital as an alternative ground for its upset of the judicial sale. The district court relied upon *431 two unpublished district court decisions setting aside a judicial sale. Both were in admiralty and prior to

That slender reed aside, the district court's findings of a "conspiracy" to wrest control of the hospital and medical office building from St. Jude and Liljeberg Enterprises border on the absurd. We are left with the definite and firm conviction that a mistake has been committed, that the findings are not supported by the evidence and are clearly erroneous.

The district court's "conspiracy theory" conclusion is based, in part, on the view that Liljeberg Enterprises's or St. Jude's losses were caused by Lifemark. Specifically, not reinscribing the collateral mortgage and not buying out the Travelers lien and adding the Travelers debt to the debt owed by St. Jude to Lifemark. These findings turn on the remarkable but largely implicit conclusion, asserted directly by the Liljebergs' counsel at oral argument, that, under Louisiana law, a second mortgagee, which Travelers would have been had the collateral mortgage been timely reinscribed, cannot initiate foreclosure proceedings. The district court and Liljeberg Enterprises offer no statutory or case law support for this proposition, for the simple reason that this is not the law.[FN38]

FN38. See, e.g., First Nat'l Bank of Gonzales v. Morton, 544 So.2d 5 (La.App. 1 Cir.) (involving a prior successful foreclosure suit brought by a second mortgagee), *writ denied*, 550 So.2d 654 (La.1989); Keys v. Box, 476 So.2d 1141 (La.App. 3 Cir.1985) (involving a foreclosure suit brought by a bank to protect its interest as a second mortgagee); Guinn v. Houston Fire & Cas. Ins. Co., 32 So.2d 613 (La.App. 1 Cir.1947) (involving a foreclosure suit instituted by a second mortgagee).

The theory that Lifemark proximately caused any loss to Liljeberg Enterprises or St. Jude from the

These findings turn on the remarkable but largely implicit conclusion, asserted directly by the Liljebergs' counsel at oral argument, that, under Louisiana law, a second mortgagee, which Travelers would have been had the collateral mortgage been timely reinscribed, cannot initiate foreclosure proceedings. The district court and Liljeberg Enterprises offer no statutory or case law support for this proposition, for the simple reason that this is not the law.[FN38]

FN39. See LA. CIV.CODE art. 3333 ("A person may reinscribe a recorded document creating a mortgage or evidencing a privilege by filing with a recorder a signed, written notice of reinscription."); *accord Id.* art. 3369(E) ("The effect of the registry ceases in all cases, even against the contracting parties, unless the inscriptions have been renewed within the periods of time above provided in the manner in which they were first made, or by filing a notice of reinscription of mortgage or a written request for reinscription by the mortgagee or *any interested person*, together with a copy of the original act of mortgage." (emphasis added)) (repealed by 1992 La. Acts 1132).

Even if we were to somehow "explain" all of this by the theory that this foreclosure was part of Lifemark's plan from the beginning, the theory cannot be squared with one large undisputed fact: Liljeberg Enterprises and St. Jude faced the Travelers lien because of Liljeberg Enterprises's and St. Jude's own failed litigation against Travelers, arising out of an independent dispute with Travelers. Any suggestion that Lifemark somehow worked that result is defied by the record. Indeed, a panel of this court described the Liljebergs' conduct*432 involved that litigation as "as egregious and unconscionable of bad faith contractual dealings as the members of this panel can recall having encountered." FN40 The cases before us only reinforce that panel's observation. The record is clear that any losses by St. Jude and Liljeberg Enterprises were proximately caused by the Liljebergs, who defaulted to Travelers and whose post-default conduct, in part, led to the Travelers judgment and its resulting judicial mortgage and lien on the hospital. The foreclosure of this lien led to the foreclosure of the hospital that the district court order would set aside.

FN40. *Travelers Ins. Co. v. St. Jude Hosp.*, No. 92-9579, 21 F.3d 1107, at 2 (5th Cir. Apr. 20, 1994) (unpublished per curiam). The panel further noted that "[t]he Liljeberg conduct to which we refer is the antithesis of that mandated in La. Civil Code Ann. art. 1983 ('Contracts must be performed in good faith.'), and has contributed to the legal effects described in La. Civil Code Ann. art. 1997 ('An obligor in bad faith is liable for all damages, foreseeable or nor, that are a direct consequence of his failure to perform.')." *Id.* at 2 n. 3.

Indeed, despite Liljeberg Enterprises's contention on appeal that Lifemark's efforts to "circumvent" the pharmacy agreement and refusal to renew the medical office building lease caused St. Jude and Liljeberg Enterprises to experience significant shortfalls which foreclosed any possibility of paying the note on the medical office building to Travelers, the district court made no findings of fact that Lifemark's conduct was the cause of the debt to Travelers or St. Jude's inability to pay that debt, which resulted in the judicial mortgage Travelers filed encumbering the hospital property. FN41

FN41. Nor, for that matter, did the district court make findings supporting two other premises of the Liljebergs' arguments on appeal: that Lifemark intentionally or deliberately failed to reinscribe the collateral mortgage or that Lifemark engaged in any fraud on the court or fraud with regard to the judicial sale.

the idea that Lifemark deliberately subordinated its mortgage interest to Travelers, knowing it would result in a required payment, *to wit*, approximately $7.8 million, to Travelers at any judicial sale, comes close to being nonsensical. It rests upon the assertion that Louisiana law somehow obligated Lifemark to lend the money to bail the Liljebergs out of their litigation fiasco with Travelers.

to manipulate the judicial sale, colluded to minimize the price offered at the judicial sale, and schemed to terminate the lease and St. Jude's right to collect rents from Lifemark.

In answer to the palpable flaws in their theories, the Liljebergs would simply expand the conspiracy. They argue that this court should consider documents from Lifemark's legal malpractice suit against their former attorneys for their attorneys' failure to reinscribe the collateral mortgage and, more specifically, in a footnote in their original brief, the Liljebergs state for the first time that they "challenge the court's denial of their motion to supplement the record with documents from the trial between Lifemark and [its former attorneys]," which "documents clearly show that Defendants and their attorneys conspired to defraud St. Jude/Liljeberg Enterprises out the hospital, the lease, and *433 the pharmacy." It tells that this argument was not raised or briefed as a separate issue until

Mr. SCHIFF. Our second witness today is Jacob Amato, Esquire. Mr. Amato is an attorney with a law practice in the New Orleans area. He is here pursuant to subpoena and has previously been served with an immunity order that compels his truthful testimony at proceedings before the House. I will now swear the witness.

Mr. Amato, please raise your right hand. I don't know if you are able to rise.

[Witness sworn.]

Mr. SCHIFF. Thank you. You may be seated.

Mr. Dubester, you may now question the witness.

Mr. DUBESTER. Okay—please introduce yourself to the Members of the panel.

Okay. Will you just—I am sorry. Okay.

And, Mr. Amato, are you an attorney?

TESTIMONY OF JACOB AMATO, JR., ATTORNEY, NEW ORLEANS, LA

Mr. AMATO. Yes, I am.

Mr. DUBESTER. And where do you practice?

Mr. AMATO. Gretna, Louisiana.

Mr. DUBESTER. And what parish is that?

Mr. AMATO. Jefferson Parish.

Mr. DUBESTER. And do you have offices which are right near the courthouse there?

Mr. AMATO. Yes, right across the street from the Gretna courthouse.

Mr. DUBESTER. Okay. Now, in the early 1970's, were you a partner with Judge Porteous?

Mr. AMATO. Yes, I was.

Mr. DUBESTER. And did Mr. Creely work for you?

Mr. AMATO. That is true. Mr. Creely did work for the law firm that—Edwards, Porteous and Amato, while he was in law school.

Mr. DUBESTER. And are you older than Mr. Creely?

Mr. AMATO. Yes, sir.

Mr. DUBESTER. And were you a peer of Judge Porteous's at law school?

Mr. AMATO. I think I am older than he is. In fact, I know I am older than he is, but I don't know. We didn't—we went—he went to LSU, and I went to Loyola, so I didn't meet him until after law school.

Mr. DUBESTER. But in any event, Creely is junior to the two of you, correct?

Mr. AMATO. Correct.

Mr. DUBESTER. And you had a relationship with Judge Porteous as a friend before Mr. Creely came and joined the practice, right?

Mr. AMATO. Correct.

Mr. DUBESTER. Okay. Now, at some point, you and Mr. Creely formed your own practice. Is that right?

Mr. AMATO. Correct.

Mr. DUBESTER. Now, in the—starting with 1984, Judge Porteous was elected state judge. Is that correct?

Mr. AMATO. I think that is correct. I don't know the exact date. It is——

Mr. DUBESTER. And you maintained a friendship with him while he was a state judge?

Mr. AMATO. Yes.

Mr. DUBESTER. Okay. Now, at some point in the—did you become aware that Judge Porteous was making requests of Mr. Creely for cash?

Mr. AMATO. At some point, yes.

Mr. DUBESTER. And how did you become aware of that?

Mr. AMATO. Mr. Creely came to me one day and said that Tom—or Judge Porteous asked him for some money based upon sending curatorships.

Mr. DUBESTER. Okay. Now, if you want to call everybody Tom and Bob, just because it is what you would refer to them, you just go ahead and do that. We will understand who you are referring to.

Mr. AMATO. I ought to be polite to everybody.

Mr. DUBESTER. Understood. Okay. And after this information or this communication came to you from Mr. Creely, what did you understand—what happened next, in terms of the request to Mr. Creely and the provision of monies to Judge Porteous?

Mr. AMATO. Well, I never got a request from Judge Porteous ever as for any percentage of the curatorships. Bob would tell me Judge Porteous needs, you know, $500, $1,000, whatever it is for the curatorships, and we would each draw a check for whatever half the amount that he requested.

Mr. DUBESTER. And you are making a reference to Bob needing money for the curatorships, so the request coming from the curatorships. What are you referring to?

Mr. AMATO. Well, the judges can send curator cases to various lawyers, and they do for various reasons, usually to help out young lawyers with fees and sometimes for—you know, for their own personal reasons. You know, you might have worked in their campaign or some campaign contributions or something. And Judge Porteous sent curator cases to Bob Creely and at some point asked that he be—receive some of that money.

Mr. DUBESTER. Okay. Now, the money that went to Judge Porteous that you have just described, did they come—was that Bob's money, or your money, or both of your money?

Mr. AMATO. It was our money.

Mr. DUBESTER. And how did that process work, in terms of it being both your money?

Mr. AMATO. Well, we each drew a salary, and we each—you know, a regular salary. And we also took draws. You know, if we had money this month, we took a little extra money. And when it was time to give Judge Porteous curator money, that the bookkeeper would write checks, $500 to me, $500 to Bob, checks would be cashed, and then some sort of way or another, Judge Porteous would receive the money.

Mr. DUBESTER. Okay. Did you personally give Judge Porteous the cash?

Mr. AMATO. I really—I am sure I had. I can't be positive when—how much, but I really can't—I can't answer that.

Mr. DUBESTER. Okay. Now, even though the requests were coming from Judge Porteous to Bob Creely, is there any question in your mind that Judge Porteous understood that the money going back to him including—it was money from you, as well as Bob?

Mr. AMATO. Of course. We owned our own office building. We had checks. We had business cards. We filed pleadings and, you know, Amato and Creely, a professional law corporation.

Mr. DUBESTER. Did you own real estate together?

Mr. AMATO. Yes.

Mr. DUBESTER. And the name on your—did you have a name on the building?

Mr. AMATO. We had our name on the building. We didn't have a big building name that said the Amato and Creely Building, but we had our——

Mr. DUBESTER. Okay.

Mr. AMATO [continuing]. Our office name on it.

Mr. DUBESTER. You have been asked several times, I think, in different contexts if you have a sense of how much money you gave—the two of you gave back to Judge Porteous. Do you have any sense?

Mr. AMATO. I would have to say over $10,000, but how much over, I don't know. But I don't think it was over $20,000. I just don't know.

Mr. DUBESTER. Okay.

Mr. AMATO. I never had a finger on it. I never fooled with it.

Mr. DUBESTER. Okay. But no—and also, most of that was being handled by Mr. Creely, correct?

Mr. AMATO. Yes.

Mr. DUBESTER. Okay. Mr. Creely has estimated—if others have estimated it to be at least $20,000, you don't dispute that, do you?

Mr. AMATO. No, I can't—I have no way to refute it.

Mr. DUBESTER. Okay. Now, did you feel you had a choice but to give Judge Porteous this money?

Mr. AMATO. Yes, I think we had a choice, but I just wasn't strong enough to put an end to it. To put an end to it, I would have to break up my law partnership and break up a friendship that I have had over a number of years with Judge Porteous, and I wasn't strong enough.

Mr. DUBESTER. Okay. Now, after Judge Porteous became a Federal judge, did you contribute to a party in his honor?

Mr. AMATO. Yes. They had a—like a reception after he was sworn in and some sort of way, and I don't know how we paid for a part of it or all of it. I am not sure.

Mr. DUBESTER. Was that at the Jefferson Hotel?

Mr. AMATO. The Jefferson Orleans. It is a banquet hall.

Mr. DUBESTER. Okay. I want to go up until 1996 now. Were you retained as one of the attorneys to represent the Liljebergs?

Mr. AMATO. I was.

Mr. DUBESTER. And was that shortly before trial was scheduled in that case?

Mr. AMATO. Not that I know of. I—that doesn't ring true, because I know I worked on it for 18 months to 2 years before it ever went to trial.

Mr. DUBESTER. Okay. It turns out trial was postponed, but do you recall when you were first retained to—or, sorry, first engaged—or first entered your appearance, rather, that that was just a few weeks before the trial date that was presently set at that time?

Mr. AMATO. I don't have any recollection of that.

Mr. DUBESTER. Okay. What was your fee arrangement with the Liljebergs?

Mr. AMATO [continuing]. Contingency fee, that I was to receive 8 percent of the gross recovery.

Mr. DUBESTER. Do you remember what your personal contingency fee was?

Mr. AMATO. Eight percent.

Mr. DUBESTER. And do you remember what Mr. Levenson's was?

Mr. AMATO. I thought it was something less than that, at 4 percent or 5 percent. I don't know. I mean, I never have negotiated or had anything to do with how—who hired Mr. Levenson.

Mr. DUBESTER. If your side had prevailed, would any fee that you received have been split with Mr. Creely?

Mr. AMATO. Of course.

Mr. DUBESTER. Okay. By the way, were you like full 50/50 partners——

Mr. AMATO. Yes.

Mr. DUBESTER [continuing]. In both expenses and income, correct?

Mr. AMATO. Yes, and at the bank, too, when you sign the notes.

Mr. DUBESTER. Okay. Now, understanding that there is a huge demand at the—in terms of what the sides are asking for, what did you realistically expect to be the range of what you could have hoped to have made if your client were successful in that case. What was that case worth to you?

Mr. AMATO. Probably somewhere between $500,000 and $800,000, but you also have to understand that I worked 2 solid years and took no other cases in order to prepare that case.

Mr. DUBESTER. Okay. So that case was exceptionally important to you?

Mr. AMATO. Of course.

Mr. DUBESTER. Now, do you recall that other side, Mr. Mole, filed a motion to recuse Judge Porteous after you and Mr. Levenson entered your appearance?

Mr. AMATO. I recall that there was a motion to recuse filed, yes.

Mr. DUBESTER. Do you recall who prepared the response for the Liljebergs?

Mr. AMATO. I didn't. I don't know who prepared it. Usually, those are prepared by Ken Fonte.

Mr. DUBESTER. Okay. And that is F-o-n-t-e, Mr. Fonte?

Mr. AMATO. Yes.

Mr. DUBESTER. And do you recall that Mr. Levenson actually ended up signing that pleading?

Mr. AMATO. I don't know. I don't know who signed it. I don't think I did, but I—it could well have been——

Mr. DUBESTER. As you sit here now, what do you recall the allegation that was made by Lifemark as part of its argument to seek the recusal of Judge Porteous?

Mr. AMATO. The friendship between myself and Mr. Levenson and Judge Porteous and that we had given him campaign contributions and that we had been—he might have alleged that we were law partners at one time. He also alleged that we had—that they had a function called Justice For All, where all the judges in Jefferson Parish got together and had one mass campaign fund, raising campaign funds for elections.

Mr. DUBESTER. I am going to cut you off. I understand—I don't think we need to go into detail with that particular aspect of the allegation. You have described generally what the substance was.

Now, was there actually a hearing in front of Judge Porteous where the Lifemarks—or Mr. Mole's motion to recuse was argued?

Mr. AMATO. I am sure there was.

Mr. DUBESTER. Do you recall that?

Mr. AMATO. In 40 years of practicing law, I can't recall every court appearance I made. I probably was there.

Mr. DUBESTER. Okay. Now, in connection with the motion to recuse, do you recall whether or not—and I guess—let me complete my thought here. Do you recall whether or not you made any disclosure to Mr. Mole that, while Judge Porteous was a state judge, you and your partner had given him tens of thousands of dollars?

Mr. AMATO. No.

Mr. DUBESTER. And to your knowledge, did Judge Porteous make that disclosure?

Mr. AMATO. Not that I know of.

Mr. DUBESTER. And wasn't that a material fact that would have been relevant to Joseph Mole and Lifemark?

Mr. AMATO. Yes.

Mr. DUBESTER. And why is it that you did not make any such disclosure as part of the *Liljeberg* recusal litigation?

Mr. AMATO. Because I probably made the biggest mistake of my career.

Mr. DUBESTER. And can you elaborate on that?

Mr. AMATO. That is why I am here.

Mr. DUBESTER. Okay.

Mr. AMATO. If he would have recused himself, I would be in Gretna today practicing law.

Mr. DUBESTER. So you don't dispute that that was important information which should have been disclosed, correct?

Mr. AMATO. At this time, no, I do not dispute that.

Mr. DUBESTER. No, in terms of what your mindset was at the time, you were not about to make a disclosure like that because you knew it would be embarrassing for Judge Porteous, correct?

Mr. AMATO. Absolutely.

Mr. DUBESTER. And you were not about to say anything or make any disclosure which would have embarrassed him and your—as a judge on the Federal bench, correct?

Mr. AMATO. That is correct. And as my friend.

Mr. DUBESTER. Did you consider the issue as to the disclosure of your financial relationship at the most basic level to be that of Judge Porteous.

Mr. AMATO. I am sorry. Would you give me that again?

Mr. DUBESTER. Okay. You indicated you weren't going to make that disclosure, but in your mind, were you staying silent because you were going to follow the lead of Judge Porteous to see what he was willing to disclose or would disclose at the hearing?

Mr. AMATO. Yes.

Mr. DUBESTER. Okay. Now, the trial was subsequently held in June or July 1997. Does that sound right to you?

Mr. AMATO. It seems like it lasted 2 months, 3 months.

Mr. DUBESTER. Okay.

Mr. AMATO. I don't know if it was '97 or—I just don't recall.

Mr. DUBESTER. Okay. Fair enough. After the trial, did you continue to take Judge Porteous to lunch on a regular basis?

Mr. AMATO. Judge Porteous and I have been eating lunch together for—since we have known each other, yes.

Mr. DUBESTER. Okay. And some of them, for lack of a better phrase, involved you eating well at Ruth's Chris Steak House, the Beef Connection, Andrea's, Emeril's, and so forth, correct?

Mr. AMATO. Yes, we had a nice—we had a good time.

Mr. DUBESTER. By the way, it was a non-jury trial that was held in the *Liljeberg* case. Is that right?

Mr. AMATO. Correct.

Mr. DUBESTER. And the gap—the point in time I am talking about is after trial and before Judge Porteous rendered his verdict. So I am talking about roughly summer of 1997 to April of 2000, and that is the period that you have just testified that, as part of your whole life, you took him to restaurants that we have just mentioned, correct?

Mr. AMATO. Right.

Mr. DUBESTER. And, oh, by the way, you have taken him to restaurants hundreds of times in your life, fair enough?

Mr. AMATO. Yes.

Mr. DUBESTER. And how many times has he paid?

Mr. AMATO. I know he is—I know I have gone to lunch where I didn't pay, but I do recall him buying lunch at least on one occasion.

Mr. DUBESTER. Okay. Now, at some point—and it has been identified at least by another witness as being in 1999—do you recall being asked to make a contribution to Judge Porteous's son's externship, some sort of educational activity in Washington, D.C.?

Mr. AMATO. Yes.

Mr. DUBESTER. What do you recall about that?

Mr. AMATO. I recall that some sort of—and I don't know the information got to me, but that one of his children were coming to Washington to extern, I think, for Senator Breaux, and they were looking for contributions to defray the cost.

Mr. DUBESTER. And did you give a couple hundred dollars, do you think?

Mr. AMATO. Yes. Yes, I did.

Mr. DUBESTER. Would that have—would that request have come from Judge Porteous or from—or his secretary, Rhonda, if you recall?

Mr. AMATO. Not from Judge Porteous. I don't know who it came from. Not from Rhonda, but——

Mr. DUBESTER. Okay. Now, on June 29th of 1999, did you go on a fishing trip?

Mr. AMATO. Yes.

Mr. DUBESTER. And you reviewed your calendar in connection with your deposition, and you recall that your calendar reflects that fishing trip to have been on the day I just mentioned, correct?

Mr. AMATO. Yes, I am pretty sure that is the date, yes.

Mr. DUBESTER. Okay. And describe the fishing trip and describe what happened on that trip.

Mr. AMATO. It was a weekday, and a friend of mine has a fairly large boat, and we were going to Caminada Pass, which is the pass at Grand Isle, and at certain times of the year, the fish run between the Gulf of Mexico and the marsh. And the fish just at night, they bubble up. They come to the surface, and it is a free-for-all.

So we went fishing that night. Judge Porteous was drinking. We were standing on the front of the boat, the two of us, and he was—I don't know how to put it. He was really upset. He was—had a few drinks. He said, "My son's wedding was more than I anticipated. The girl's family can't afford it. I invited too many guests." Would I lend him, give him, provide him, however you want to call it, something, like $2,500, to pay for part of the wedding or the after-rehearsal party of something?

And I felt compelled, based upon, one, his condition and our friendship that—that is what I would do.

Mr. DUBESTER. And did—and did you do that?

Mr. AMATO. Yes.

Mr. DUBESTER. Basically, he was saying he couldn't meet his financial condition and he was coming to you.

Mr. AMATO. Well, I wouldn't imagine he would come to me unless he couldn't meet—if he could meet his financial obligations, he wouldn't have come to me.

Mr. DUBESTER. Was that a surprise, that event?

Mr. AMATO. The first time he ever asked me for money, the last time he ever asked me for money, the last time we ever—the only time we ever discussed money, and that is the reason I was able to remember it.

Mr. DUBESTER. Okay.

Mr. AMATO. Because never was our relationship one where we talked about, "Give me this, and I will do that."

Mr. DUBESTER. Did you, in fact—what—sorry, what, if anything, did you do as a result of that conversation?

Mr. AMATO. At some point within the next few days, a week, you know, I got him $2,000 or $2,500. I don't recall how—did I pick—did I pick him up and go to lunch and we—I gave him the money? Or Rhonda came, Rhonda Danos, his secretary came and picked it up? I just don't know.

Mr. DUBESTER. And was that half your money and half Creely's money?

Mr. AMATO. I can't tell. I had some cash at my house, and I think I used the cash at my house.

Mr. DUBESTER. Because Creely recalls that—sorry, Bob Creely—Mr. Creely recalls that he paid half of that. That is not inconsistent with your memory either, is it?

Mr. AMATO. If he said he paid half?

Mr. DUBESTER. Yes.

Mr. AMATO. Then he paid half.

Mr. DUBESTER. And just one more—one more question here. In the fall of 1999, do you recall paying for a 5-year party—or a party to celebrate Judge Porteous's 5 years on the bench?

Mr. AMATO. Yes, I do.

Mr. DUBESTER. Roughly how much was that?

Mr. AMATO. I think it was $1,700.

Mr. DUBESTER. And where was that, if you recall?

Mr. AMATO. French Quarter in French Quarter Restaurant and Bar on Decatur, right across from the Morning Call.

Mr. DUBESTER. That concludes my questions. Thank you, Mr. Amato.

Mr. AMATO. Thank you, Mr. Dubester.

Mr. SCHIFF. Mr. Amato, I am going to ask you a few questions, and then my colleagues are, and then Mr. Westling and counsel for Judge Porteous will have a chance to ask you a few questions.

I wanted to pick off—pick up where my colleague left off. You started to say when you were asked for cash—or asked for money by Judge Porteous on this fishing trip that you felt compelled to give it to him. And you said, number one, he was in need and he was my friend.

Mr. AMATO. Right.

Mr. SCHIFF. Was there a number two, Mr. Amato? Was there another reason you felt compelled to give him money?

Mr. AMATO. I felt sorry for him. I really did. You know, it is tough to see somebody, you know, almost to the point of tears, you know, to do something for his children, which I suspected was the reason for the emotional outlay he had.

Mr. SCHIFF. What affect would it have had on your relationship with Judge Porteous if you had said no, if you had said, "You are presiding over a case that is under submission, and I can't give you cash"? What would have been the impact on your relationship?

Mr. AMATO. Probably none. It would remain the same.

Mr. SCHIFF. Did you have any concern about the fact that you had litigation pending in his courtroom?

Mr. AMATO. I do now. At the time, I didn't give it much thought.

Mr. SCHIFF. When the recusal motion was brought, Judge Porteous made a number of statements in court I would like to ask you about. At one point during the hearing on a motion to recuse, he said, "The first time I ran, 1984, I think is the only time when they gave me money." Was that a truthful statement?

Mr. AMATO. I don't recall the statement, but I don't know the context. I think the context might have been—that was when the first time he ran and the first time he collected money for campaign contributions. I—that is the best I can do.

Mr. SCHIFF. If Judge Porteous represented at the hearing that the only time he had gotten money from you or Mr. Levenson was in 1984, would that have been a truthful statement?

Mr. AMATO. In 1994?

Mr. SCHIFF. If, during the recusal hearing——

Mr. AMATO. Oh, okay. I am sorry.

Mr. SCHIFF.—Judge—if Judge Porteous represented at the recusal hearing that the only time he had gotten money from you or Mr. Levenson was in 1984, would that have been a truthful statement?

Mr. AMATO. No, that wouldn't have been true.

Mr. SCHIFF. Now, if it came up in the context of a discussion of whether he had received campaign contributions, would it have been misleading for him to say that he had not gotten money, except in 1984, and not disclose the fact he had been getting personal cash for years?

Mr. AMATO. Yes.

Mr. SCHIFF. During the latter part of the recusal hearing, Judge Porteous said, "You haven't offended me, but don't misstate." He is saying this to Mr. Mole, representing the other party, "But don't misstate—don't come up with a document that clearly shows well in excess of $6,700 with some innuendo, that that means that they

gave that money to me. If you would have checked your homework, you would have found that that was a Justice for All program for all judges in Jefferson Parish. But go ahead. I don't dispute that I received funding from lawyers."

In light of the fact that he had been receiving thousands of dollars from you, wasn't that a misleading statement?

Mr. AMATO. Probably, because I—again, Mr. Schiff, I don't know if he was referring to the Justice for All collection or something different.

Mr. SCHIFF. Well, if the judge was taking issue with the opposing counsel for suggesting that you had given him money that, in fact, went for a different program, at the same time had, in fact, received thousands of dollars from you, wouldn't it be misleading to the court not to reveal that?

Mr. AMATO. Yes.

Mr. SCHIFF. And wouldn't it be misleading to the court to take issue with counsel for not doing their homework, when the court did not disclose that they had received thousands of dollars from you?

Mr. AMATO. Yes.

Mr. SCHIFF. The judge also said during that hearing, "I have always taken the position that if there was ever any question in my mind that this court should recuse itself, that I would notify counsel and give them the opportunity if they wanted to ask me to get off." Given the fact that he did not notify counsel and did not give them the opportunity to ask him to get off, wasn't that a misleading statement by the judge?

Mr. AMATO. Yes.

Mr. SCHIFF. Mr. Amato, are you aware of any other attorneys other than yourself and Mr. Creely who gave cash or other things of value to Judge Porteous?

Mr. AMATO. Not firsthand, no.

Mr. SCHIFF. Have you had other attorneys tell you that they—either they were asked for cash or they know of other parties who gave money to the judge?

Mr. AMATO. No.

Mr. SCHIFF. In discussing the curatorships, a couple times you made reference—you said the judge would ask for some of that money, referring to the curatorship money. Was there ever any doubt in your mind that what the judge was asking for, once he started the curators, sending curators to your office, was part of the money for the curatorships back to him?

Mr. AMATO. Yes.

Mr. SCHIFF. Yes there was a doubt or—my question is, was there ever any doubt in your mind that what he was asking for during the period he was sending you curatorships was part of the money he was sending you for the curatorships?

Mr. AMATO. No, no doubt.

Mr. SCHIFF. And I think, when my colleague asked you about how often or when you gave money directly to Judge Porteous, you said you couldn't recall how often or when. Without asking you the specific dates or even number of times, do you recall that on several occasions you, in fact, gave cash to Judge Porteous?

Mr. AMATO. Yes.

Mr. SCHIFF. And the amounts of cash that you would have given would have been anywhere from maybe less than $100 to several hundred dollars?

Mr. AMATO. Probably in the range of $500 to $1,500.

Mr. SCHIFF. And then the only time you would have given him more than that was after the fishing trip?

Mr. AMATO. Right. Yes, sir. I am sorry.

Mr. SCHIFF. Has Judge Porteous ever been to your house?

Mr. AMATO. Judge Porteous ever been to my house?

Mr. SCHIFF. Yes.

Mr. AMATO. I think he has picked me up at my house. I don't think he has been in my house. He has been to my country house.

Mr. SCHIFF. So he has been to your country house?

Mr. AMATO. Yes.

Mr. SCHIFF. And how often has he been to your country house?

Mr. AMATO. A couple of times.

Mr. SCHIFF. And how often would you say he picked you up at your other residence?

Mr. AMATO. Probably a couple of times.

Mr. SCHIFF. And on what occasions would he have picked you up at your primary residence?

Mr. AMATO. When we were going fishing or hunting or something.

Mr. SCHIFF. And when he came to your country residence, did he spend the night at your country residence?

Mr. AMATO. I think he did once.

Mr. SCHIFF. Would those times when he picked you up or spent the night at the country residence, would that have taken place prior to the *Liljeberg* case or during the *Liljeberg* case?

Mr. AMATO. I don't know when he went to the place across the lake. I have had it for almost 20 years, and I don't know, you know, before or after, during. I can't answer that, sir.

Mr. SCHIFF. Is there anything that would help refresh your recollection that we could provide you with, in terms of the dates, so you could determine when he would have come to your house?

Mr. AMATO. No, nothing.

Mr. SCHIFF. You—in terms of the amounts of cash that you and Mr. Creely provided to the judge, you said you thought it was in the neighborhood of 10 to 20 thousand. Is that right?

Mr. AMATO. Yes.

Mr. SCHIFF. And would that have been individually or between the two of you 10 to 20 thousand.

Mr. AMATO. I think it is between the two of us.

Mr. SCHIFF. Now, do you know what—roughly about what percentage of the money that you got from the curatorships that went back to the judge? Was it most of the money, minus expenses? Was it all of the money? Was it only part of the money?

Mr. AMATO. It was part of the money. I think it—I don't know what percentage. I didn't have anything to do with it.

Mr. SCHIFF. If—the records indicated that the amount of the curatorships over time approximated $40,000, would that indicate to you more accurately how much you think you would have given the judge over time between the two of you?

Mr. AMATO. I would think we would give him something less than $20,000.

Mr. SCHIFF. So something less than half of the value of the curatorships?

Mr. AMATO. Yes, because we had to take out expenses and, you know—when you have got a curatorship, you put an ad in the paper, and that costs so much money, and all that was deducted out before we got to a net fee.

Mr. SCHIFF. You mentioned, I think, that you didn't like having to make these payments. You weren't strong enough to say no——

Mr. AMATO. Right.

Mr. SCHIFF [continuing]. And in part because you thought it would break up your partnership with Mr. Creely. Why do you feel it would have broken up the partnership?

Mr. AMATO. Because in order to put an end to it, I would probably have to report my partner to the bar association and the judge to the judiciary commission.

Mr. SCHIFF. Can you explain that to me?

Mr. AMATO. Well, in Louisiana, if you know someone is violating the ethics rules, you are under an obligation to report it. So I would have had to report my partner. So, in turn, we would have had to report the judge.

Mr. SCHIFF. So if you said no, you felt you would have had to have gone public with——

Mr. AMATO. Correct.

Mr. SCHIFF [continuing]. With the nature of the payments?

Mr. AMATO. Uh-huh.

Mr. SCHIFF. Is that a "yes"?

Mr. AMATO. Yes.

Mr. SCHIFF. When you received the curatorships, you reported that as income to the business.

Mr. AMATO. Absolutely.

Mr. SCHIFF. And when you spend money to take out the advertisements, you deducted that as expenses.

Mr. AMATO. Correct.

Mr. SCHIFF. Did you deduct the—or did you deduct as an expense the amount that you gave to the judge?

Mr. AMATO. No, we paid taxes on it.

Mr. SCHIFF. You paid taxes on the curator income, right?

Mr. AMATO. On whatever our—the curator fee would have been, we would have paid taxes on it.

Mr. SCHIFF. But you did not deduct as an expense the amount you had to pay back to the judge?

Mr. AMATO. No.

Mr. SCHIFF. How were you brought into the *Liljeberg* case?

Mr. AMATO. I got a call from Ken Fonte that they had a—that John Liljeberg and Bobby Liljeberg had a case in Federal court, and would I be interested in taking a look at the case to see if I would take over trying the case?

Mr. SCHIFF. And why did Mr. Fonte bring you into the case? What were you bringing to the table?

Mr. AMATO. Well, I was bringing 35 years of experience. I was bringing trying similar cases. Up until my recent health problems,

I was fairly vigorous at practicing law. And I thought I was a good lawyer.

Now, what were their motives? I don't know. But I know that the Liljebergs had a checkered history in Federal court that, no matter what they did, that they couldn't win a case. They couldn't hire a law firm.

Mr. SCHIFF. Did you believe that at least part of the reason the Liljebergs may have wanted to bring you into the case was because your close friendship with the judge was well known?

Mr. AMATO. I am sure that came into the mix. I don't think it was the primary reason. But I think that came into their decision-making process.

Mr. SCHIFF. So having that relationship with the judge was a benefit to you and Mr. Creely, in the sense that it helped bring business like the Liljebergs?

Mr. AMATO. Yes. No question about that. It was——

Mr. SCHIFF. That is all the questions I have.

Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. AMATO. I am sorry. Excuse me.

Mr. GOODLATTE. That is all right. Mr. Amato, Mr. Creely testified that these payments were often made by each of you equally. Is that your recollection?

Mr. AMATO. Yes, sir.

Mr. GOODLATTE. And why was that? You say that you received these conservatorships, you made payments—you received payments for them, you deducted the expenses, you paid this separately as a cash item, you didn't write checks to the judge, you gave him cash, but you didn't consider that a part of the business arrangement. Why was that?

Mr. AMATO. Well, if he would have taken the money, all of the fee off the curators, he would have had to pay taxes at the end of the year, when it got to be, you know, you drew $60,000, and I drew $40,000——

Mr. GOODLATTE. No, I am talking about your payments to Judge Porteous. Why did you—the payments that you made, why didn't you include those as a part of your business expenses?

Mr. AMATO. We didn't.

Mr. GOODLATTE. I know. Why not?

Mr. AMATO. I couldn't answer that.

Mr. GOODLATTE. Wasn't it because, as you indicated earlier, that is a violation of Louisiana law to be paying the judge?

Mr. AMATO. Yes, that is probably correct.

Mr. GOODLATTE. And why would you have to wait until your partnership with Mr. Creely broke up before you would report that violation of Louisiana law regarding your and Mr. Creely's relationship with the judge?

Mr. AMATO. We didn't. We didn't report it.

Mr. GOODLATTE. I know you didn't report it, but you said you didn't want—you were worried that, if you didn't make the payments, you would have to break up your partnership. And if you broke up your partnership, you would have to report that relationship and those payments with the judge to some authorities, I presume. Why would you have to wait until your partnership broke up

to do that? Why wouldn't you simply do that because it is a violation of the law in the arrangement that you were in?

Mr. AMATO. Because if it—whenever I would have done it, it would have broken up the partnership.

Mr. GOODLATTE. Well, now we are getting some circular reasoning here. If it were wrong to have made the payments and you would have to report it if your partnership broke up, why wouldn't it be wrong to make the payments and the right thing to do to report it while the partnership's ongoing?

Mr. AMATO. Because it is a relationship I had with Bob Creely that, by reporting it to the bar association, it would have broken the partnership.

Mr. GOODLATTE. So you knew that it was the wrong thing to make those payments to the judge at the time the payments were being made?

Mr. AMATO. Yes.

Mr. GOODLATTE. Now, when you were hired for the *Liljeberg* case, what type of a legal practice did you have back then?

Mr. AMATO. Well, there has been a lot of supposition as to what kind of legal practice I had. I started off——

Mr. GOODLATTE. Let me help you out a little bit. Mr. Creely said that, while he had handled some complex litigation similar to the *Liljeberg* case, you hadn't.

Mr. AMATO. Well, Mr. Creely was mistaken. He misspoke, because I had handled a number of cases, including Omnitech—sorry, *Dr. X v. Clorox.* I handled *Bergeron v. International Marine.* I handled *Call Center v. Acadian Marine.* I handled the *American Tugs v. Hypernia Bank.* I have handled a number of cases. I handled foreign companies. I handled foreign banks.

Mr. GOODLATTE. Now, let me—you said earlier that, during the 2 years that you were working on the *Liljeberg* case, you didn't take any other cases. Is that what you continue to maintain?

Mr. AMATO. I didn't devote any time to acquiring business, because we were working on the *Liljeberg* case.

Mr. GOODLATTE. Well, and you had the *Liljeberg* case on an 8 percent contingent fee——

Mr. AMATO. Right.

Mr. GOODLATTE [continuing]. For which you never recovered any fee. Is that correct?

Mr. AMATO. That is correct.

Mr. GOODLATTE. Because the case was reversed on appeal.

Mr. AMATO. Correct.

Mr. GOODLATTE. How did you live for those 2 years if you weren't taking any other business?

Mr. AMATO. Well, in a business, when you do contingency work, the cases I would be settling, let's say, next week, but cases that have been in my office for 2 or 3 years, and I also had other people in the office working on cases. And I had a partner who was generating an income at the same time.

I mean, at one point in there, we were six or seven lawyers, so, you know, I was going to work every day working on the cases I had, and I was working on *Liljeberg*, but I wasn't, you know, spending a lot of time in acquiring new business during that time. I am not saying I didn't get any cases, but, you know, the acquisi-

tion of business slowed down because of the time I spent on the *Liljeberg* case.

Mr. GOODLATTE. Now, while the *Liljeberg* case was pending and Judge Porteous on the Federal bench was hearing the case, did Judge Porteous ever use any court employees, such as his secretary, to either pick up money from you or request money from you for private purposes?

Mr. AMATO. Rhonda called us on a couple of occasions for things like the——

Mr. GOODLATTE. This is Rhonda Danos, who is his secretary?

Mr. AMATO [continuing]. For the American Cancer Society, Brother Martin's High School, I don't know. I am sure there was other charities that she was involved in and that the judge was involved in. We were always buying tickets for something or another.

Mr. GOODLATTE. Did you write checks for those or did you pay cash for those?

Mr. AMATO. Checks.

Mr. GOODLATTE. You wrote checks?

Mr. AMATO. Obviously.

Mr. GOODLATTE. Because those would have been charitable contributions for which you could take a deduction. Is that not correct? What about cash?

Mr. AMATO. I don't know if she ever did or not. I really don't.

Mr. GOODLATTE. Mr. Creely testified that he provided $1,000 in cash and you provided $1,000 in cash, which was put in an envelope, which Ms. Danos picked up from you.

Mr. AMATO. I don't recall it, but I am—I can't tell you that that didn't happen.

Mr. GOODLATTE. But you don't know for sure?

Mr. AMATO. I don't know for sure.

Mr. GOODLATTE. Were you—did Judge Porteous ever mention to you that gambling debts were why he needed his money, not his son's wedding or other things like that?

Mr. AMATO. No, he never did mention that he had the gambling problem to me.

Mr. GOODLATTE. Did you ever go gambling with him?

Mr. AMATO. Twice.

Mr. GOODLATTE. Can you tell us about those occasions? Did——

Mr. AMATO. I went to Las Vegas in the early 1980's with a number of other lawyers on a junket, and he was on the junket, and he—I saw him play blackjack. And if I am not mistaken, one day in the afternoon, we were to meet at Harrah's in New Orleans, and I don't know if we met or I saw him at the table or what, but that is the extent of it. I never spent any time gambling with Judge Porteous.

Mr. GOODLATTE. I think that is all the questions I have, Mr. Chairman.

Mr. AMATO. Thank you, sir.

Mr. SCHIFF. I thank the gentleman.

Mr. Cohen from Tennessee?

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Amato, you have had a pretty good career as a lawyer, have you not?

Mr. AMATO. I was very proud of my career, sir.

Mr. COHEN. And successful, as well?

Mr. AMATO. I worked very hard, yes.

Mr. COHEN. Right. Where would you estimate, before this case came up in 1997, I guess—when did you get assigned or appointed to this *Liljeberg* case? Was that in 1997?

Mr. AMATO. I don't know the year. It has been so long.

Mr. COHEN. Well, let's give an estimate of 1995-1996. What do you think your typical income was in a year like that?

Mr. AMATO. I really can't tell you, because my income varies year to year.

Mr. COHEN. Yes, I know, but approximately. Were you making six figures?

Mr. AMATO. Yes.

Mr. COHEN. Making $500,000?

Mr. AMATO. No.

Mr. COHEN. Give me in the ballpark, on the typical year.

Mr. AMATO. A hundred and fifty, two.

Mr. COHEN. Hundred and fifty. And in the 2 years that you had this—worked on this case, you didn't take any new business. You basically sacrificed what could have been work that would have developed into, give or take, $300,000, if you amortized over your career. You didn't take any new business. Is that—that is what your testimony——

Mr. AMATO. I did take new business. I did not solicit a lot of new business, because I was busy on the Liljebergs.

Mr. COHEN. Earlier—but first, you said you didn't take any. You spent the whole 2 years working on this case. So that was not accurate.

Mr. AMATO. That is what it seemed like I did for 2 years, was work on the case.

Mr. COHEN. Okay. You didn't take much new business. Most—basically, you worked on the case?

Mr. AMATO. That is a much fairer statement.

Mr. COHEN. And you were totally on a contingency fee?

Mr. AMATO. Correct.

Mr. COHEN. You must have been pretty positive you were going to win this case, to sacrifice the equivalent of $300,000?

Mr. AMATO. When I took that case, I was convinced that the facts were in my favor, the law was in our favor, that the damages were there——

Mr. COHEN. Yes, and what else was in your favor?

Mr. AMATO. That the judge was not unfriendly to us.

Mr. COHEN. Not unfriendly?

Mr. AMATO. Not unfriendly. And——

Mr. COHEN. So you had a pretty good expectancy you were going to win and you were going to collect $500,000 to $1 million?

Mr. AMATO. I have never taken a case without the expectation of winning it. If I would have thought I wouldn't be able to win it no matter who the judge would have been, I wouldn't have taken the case at all.

Mr. COHEN. All right. I practiced some law, but I haven't done a whole lot of trial work.

Mr. AMATO. Yes.

Mr. COHEN. In my knowledge, mostly contingency cases are plaintiffs work. How often does a defendant work on a contingency?

Mr. AMATO. My client wasn't a defendant.

Mr. COHEN. He wasn't?

Mr. AMATO. No, he was a plaintiff.

Mr. COHEN. He was the plaintiff. Okay. Okay. I was given some false information, incorrect information. So he was—he had a plaintiff's case, and you just kind of worked on that and hoped you would collect.

Did you have any idea what the—when the judge came to you and was complaining he didn't have any money to pay for his son's bachelor party or wedding or whatever it was, did you have any idea what a judge's salary was?

Mr. AMATO. I knew it was in the hundreds—hundred and something thousand dollar range.

Mr. COHEN. Right. And that comes to more than a couple of thousand dollars a month. So what you gave him was—I mean, a week. I mean, so what you gave him was a week's salary at—on the low end. Did you ask him if he was having a problem, why he couldn't afford a week's salary?

Mr. AMATO. No, just gave it to him.

Mr. COHEN. You have got lots of friends, don't you?

Mr. AMATO. I did, yes.

Mr. COHEN. Yes. And how many of these other friends did you give money to like that?

Mr. AMATO. I couldn't tell you, sir.

Mr. COHEN. Well, tell me two or three of them and how much you gave them.

Mr. AMATO. I have lent money to my clients over——

Mr. COHEN. Lent?

Mr. AMATO. Just lent.

Mr. COHEN. You gave money to the judge.

Mr. AMATO. Yes.

Mr. COHEN. How many people did you give money to?

Mr. AMATO. Couldn't tell you. I couldn't tell you.

Mr. COHEN. Because there weren't any, were there?

Mr. AMATO. There was some, but none to the extent that Judge Porteous.

Mr. COHEN. And was it because you liked Judge Porteous that much more? Was it because you felt so much more sorry for him? Or was it because he was a judge with a $500,000 to $1 million judgment in your future?

Mr. AMATO. Probably a combination of all three.

Mr. COHEN. And if you had to kind of do a weighted verdict, what percentage would you give the judgment you were looking toward?

Mr. AMATO. I would give having the judge being not unfriendly, 10 percent.

Mr. COHEN. Ten percent?

Mr. AMATO. Yes.

Mr. COHEN. And the other 90 percent was you felt sorry for him? I am talking about the idea of why you gave him this money and you didn't give other people money. And you said there were three reasons, and one of them is you felt sorry for him, and one of them,

he was your friend, and the other was he had this case before him which meant a lot to your financial future.

Now, sometimes in damages, you can apportion damages, and you can give a certain percentage on each one that everybody takes a portion percentage—their negligence, in comparative negligence. What comparative part of that factor would you allocate to the judge's being the determiner of your financial fate?

Mr. AMATO. Well, he was——

Mr. COHEN. Seventy percent, eighty percent?

Mr. AMATO. Probably, yes.

Mr. COHEN. I think the facts speak for themselves. This sounds like the—that the situation down there in this case where you have got—what are these things called, these cases you have got, the—where you have got these appointments?

Mr. AMATO. Curatorships.

Mr. COHEN. Curatorships. Is this the judicial deduct box?

Mr. AMATO. I don't think so.

Mr. COHEN. Sounds like it.

Time.

Mr. SCHIFF. The gentleman yields back.

Mr. Sensenbrenner?

Mr. SENSENBRENNER. Thank you, Mr. Chairman. I just have a few questions.

After the trial was concluded and while a decision was pending, did Judge Porteous ever solicit a cash contribution from you?

Mr. AMATO. No.

Mr. SENSENBRENNER. Okay. Were any payments made by you to Judge Porteous between the time the trial was concluded and before the decision was rendered?

Mr. AMATO. None other than the one I discussed of June 1999.

Mr. SENSENBRENNER. Okay. And——

Mr. AMATO. His son's wedding.

Mr. SENSENBRENNER. Okay. So—and this was in the amount of approximately $2,000 for his wedding?

Mr. AMATO. Yes.

Mr. SENSENBRENNER. Were there any other solicitations related to the wedding or a bachelor party during this period?

Mr. AMATO. Not that—not from me. Not—no.

Mr. SENSENBRENNER. Okay. Do you have knowledge of any other solicitations that were made?

Mr. AMATO. No.

Mr. SENSENBRENNER. Okay. Thank you.

Mr. SCHIFF. The gentleman yields back.

Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

Let me ask this question. You are familiar with this kickback scheme involving the curatorships, correct?

Mr. AMATO. Correct. Yes, sir.

Mr. JOHNSON. And the kickback scheme involved the judge forwarding—unsolicitedly forwarding to your firm the curatorships in return for you paying the judge the monies that your firm received for the—for the curatorships. Is that correct?

Mr. AMATO. Part of the money, yes. Part of the money, yes, sir.

Mr. JOHNSON. Part of it is yes?

Mr. AMATO. Part of—part of the fee, not the whole amount, part of the fee.

Mr. JOHNSON. Okay. But you never solicited these curatorships?

Mr. AMATO. No. I don't think I ever got one from him. I am not sure, but I don't think I even got a curator case from Judge Porteous.

Mr. JOHNSON. So you—you were not a part of the—of the scheme for the curatorships?

Mr. AMATO. I never talked to Judge Porteous about curator cases at all, never once the whole time. I never talked to him about curator cases.

Mr. JOHNSON. Okay. You did talk with your partner, though, about it, Mr. Creely?

Mr. AMATO. Correct. Correct.

Mr. JOHNSON. And that was during the time that—that was during the time that—that this—these curatorships were coming in to the office? Is that correct?

Mr. AMATO. At some point in time, I think that the curatorships were coming in—after they started coming in, Bob came to me and said, "Porteous wants some of the money from the curator cases." That is what I recall.

Mr. JOHNSON. So do you agree that that was a kickback scheme?

Mr. AMATO. I don't know what the legal definition with that would be.

Mr. JOHNSON. Well, just—not a legal definition, but a—just a common knowledge definition. How did that scheme differ from a kickback scheme?

Mr. AMATO. It probably didn't.

Mr. JOHNSON. It probably did not? All righty.

And, listen, I see that you are—came to court today in—with a wheelchair.

Mr. AMATO. Yes, sir.

Mr. JOHNSON. Are you still practicing law right now?

Mr. AMATO. Not very much. I am trying to get to Medicare. I hope you all pay us some health legislation.

Mr. JOHNSON. Well, I like that. I like that. I voted for that myself, as a matter of fact. Bingo.

Mr. AMATO. I must have hit a——

Mr. JOHNSON. Bingo. No further questions. No, I am just kidding. I am just kidding. So is Mr. Creely still your partner?

Mr. AMATO. No, he is not my partner. I don't know what he is—I know he is practicing law, but that is—it is——

Mr. JOHNSON. At any time after Judge Porteous was confirmed as a U.S. district court judge, at any time thereafter, did you provide any cash payments to him?

Mr. AMATO. I am sure I did. I just don't—I—I know we paid for, you know, a couple of things. I know we paid for his son being, you know, a part of the—his son being part of the—an externship, part for his anniversary party. You know, that is all I can recall.

Mr. JOHNSON. Now, this—have you been the subject of a bar complaint regarding your relationship——

Mr. AMATO. It is my appreciation that that is confidential.

Mr. JOHNSON. Well, I am not asking you for the ruling on it, but you have been the subject—is that case—what posture is that case in now?

Mr. AMATO. Not comfortable.

Mr. JOHNSON. Well, I am sure. I am sure not. But is it—has the case already been disposed of?

Mr. AMATO. No.

Mr. JOHNSON. So it is pending?

Mr. AMATO. Yes.

Mr. JOHNSON. When was the complaint filed?

Mr. AMATO. I——

Mr. JOHNSON. The bar complaint.

Mr. AMATO. It has been at least a year.

Mr. JOHNSON. Any—have you filed a responsive pleading?

Mr. AMATO. I am being represented, and I am sure they are doing whatever they need to do.

Mr. JOHNSON. Okay. But—is—are you accused in the bar complaint of a disbarrable offense?

Mr. AMATO. The Louisiana State Bar can disbar you for just about anything.

Mr. JOHNSON. Well, now, let me ask you this question. Did Judge Porteous—I think you said he paid for one lunch.

Mr. AMATO. Yes.

Mr. JOHNSON. How many times did you all go to lunch together and you picked up the tab?

Mr. AMATO. Hundreds.

Mr. JOHNSON. When he picked up the tab, was that only for himself or was that for he and you?

Mr. AMATO. Both of us.

Mr. JOHNSON. And did you—you have had some discussions with Judge Porteous about the *Liljeberg* recusal motion, have you not?

Mr. AMATO. No.

Mr. JOHNSON. You have never discussed that case?

Mr. AMATO. No. I never discussed the recusal motion with him.

Mr. JOHNSON. But you have discussed the case?

Mr. AMATO. I have—I asked him, after the case was tried, when could—you know, how was the judgment coming? And he told me that he didn't have a law clerk who could spend enough time to render a decision. Also, at some point, he told me that you better prove your case, because the fifth circuit will take it away if you don't. And that is—I thought I proved my case, and the fifth circuit took the case away, took the judgment away.

Mr. JOHNSON. Did you take the case—ask for an en banc hearing or oral arguments, anything like that?

Mr. AMATO. I didn't handle the appeals, but I think they went all the way to reach the United States Supreme Court.

Mr. JOHNSON. You—the judge never paid you back any of the money that you gave him, cash money?

Mr. AMATO. No. No, he has never paid me back.

Mr. JOHNSON. So out of the approximately $10,000 that you say you gave Judge Porteous, would about half of that been before he become a Federal court judge?

Mr. AMATO. I think most of it was before he became a Federal judge.

Mr. JOHNSON. But there were—there was some. Approximately how much would you say?

Mr. AMATO. Well, the only thing I can tell you for sure was that the money for his son's wedding.

Mr. JOHNSON. Did you go to Las Vegas with him to gamble?

Mr. AMATO. I did not.

Mr. JOHNSON. Did you have any input in the preparation of the responsive pleadings to the motion to recuse in the *Liljeberg* case?

Mr. AMATO. No, I did not.

Mr. JOHNSON. What was your role during that—that part of the case?

Mr. AMATO. The recusal?

Mr. JOHNSON. Yes. Because you were attorney of record on the case, correct?

Mr. AMATO. Sat in the courtroom and kept my mouth shut.

Mr. JOHNSON. And you were attorney of record, as well?

Mr. AMATO. I was one of the attorneys of record. There was five attorneys of record——

Mr. JOHNSON. But you weren't the lead attorney?

Mr. AMATO [continuing]. And a sixth attorney assistant.

Mr. JOHNSON. This is the case that you were going to take an 8 percent contingent fee out of?

Mr. AMATO. Yes.

Mr. JOHNSON. What kind of case was that, by the way?

Mr. AMATO. It was with Lifemark and Tenet Healthcare stole my client's hospital and tried to put him out of business.

Mr. JOHNSON. All right, so a business tort?

Mr. AMATO. It was a business tort that went on for years and that was very convoluted and very difficult. And——

Mr. JOHNSON. Well, let me ask you this question, sir. Your physical disability that you have that requires you to be in a wheelchair, is that because you—does this condition cause you to be unable to walk?

Mr. AMATO. I can walk a certain distance, but I can't walk more than a block without aid. I do very little walking. I haven't traveled in 10 years on a plane. And I was lucky enough that the hotel rented wheelchairs, because I would have never made here without it.

Mr. JOHNSON. Well, what is the reason for the wheelchair today?

Mr. AMATO. Because I have a degenerative disc disease. I have had—my bottom of my spine is fused. I have cervical stenosis. I have lumbar stenosis. I have neuropathy in my hands and my feet. I have had two aortic aneurysm surgeries in the past year.

Mr. JOHNSON. Okay. I got——

Mr. AMATO. I have cancer.

Mr. JOHNSON. I got the—got the gist of it. You are not in good health at this time?

Mr. AMATO. Well, it depends on what doctor I go to.

Mr. JOHNSON. Well, let me ask you, did you ever provide the judge or facilitate the judge's acquisition or use of any tangible item, be it a car, boat, airplane, any kind of service during the period in question?

Mr. AMATO. He went fishing with us. I don't——

Mr. JOHNSON. Well, did—but did you facilitate his acquisition of a boat?
Mr. AMATO. No, no. No, no.
Mr. JOHNSON. Or house?
Mr. AMATO. No.
Mr. JOHNSON. Or any other tangible item?
Mr. AMATO. No.
Mr. JOHNSON. Did you make any gifts yourself to Judge Porteous's family members or other relatives?
Mr. AMATO. Wedding presents. Wedding presents.
Mr. JOHNSON. Wedding presents for the son?
Mr. AMATO. His children, yes.
Mr. JOHNSON. What was that present, by the way? Or what were the presents?
Mr. AMATO. I think we gave them cash.
Mr. JOHNSON. Gave the son cash?
Mr. AMATO. The son cash for the wedding present.
Mr. JOHNSON. How much was that, you think?
Mr. AMATO. I think it was about $250.
Mr. JOHNSON. Did you—you did make payments to Judge Porteous prior to the Liljeberg trial while you were signed on to the case as an attorney for the plaintiff? Is that correct?
Mr. AMATO. I don't understand the question. I am sorry.
Mr. JOHNSON. After you signed onto the *Liljeberg* case——
Mr. AMATO. Okay.
Mr. JOHNSON [continuing]. Had you—after you signed up for that case, did you give the judge any money?
Mr. AMATO. Other than the money for the son's wedding, I don't think so. I don't recall any.
Mr. JOHNSON. And you gave that money for the son's wedding to the son?
Mr. AMATO. To the judge.
Mr. JOHNSON. To the judge?
Mr. AMATO. Yes.
Mr. JOHNSON. And that was cash money?
Mr. AMATO. Yes.
Mr. JOHNSON. Did he ask you for that?
Mr. AMATO. Yes.
Mr. JOHNSON. He asked you specifically for $250 for his son?
Mr. AMATO. No. No.
Mr. JOHNSON. Well, what did he ask you?
Mr. AMATO. He asked me to help pay for his son's wedding.
Mr. JOHNSON. Was there any suggestion from him how much to pay?
Mr. AMATO. I want to say he told me that he was short $2,500 on—for the wedding, that his portion was $2,500 that he didn't have.
Mr. JOHNSON. And the wedding was in 1999?
Mr. AMATO. Over 10 years ago, 1999.
Mr. JOHNSON. I have no further questions at this time.
Mr. SCHIFF. The gentleman yields back.
Mr. Lungren?
Mr. LUNGREN. Thank you very much, Mr. Chairman.

Now, Mr. Amato, looking at the report and recommendation of the Judicial Conference Committee on Judicial Conduct and Disability, their findings—page 22—contains this statement: "Much of the available evidence concerns Judge Porteous's solicitation and receipt of cash payments from a law firm, *Amato v. Creely,* with business before him as a Federal judge. This was a continuation of a relationship begun when Judge Porteous was a state court judge. While he was a state court judge, the law firm had indicated to Judge Porteous that it was unhappy with having to bear expenses or repeated payments to him."

"In response, Judge Porteous frequently appointed the court to curatorship proceedings and at Judge Porteous's suggestion, received in return a portion of the fees paid."

Do you have any—do you accept those facts as contained in this statement of facts in the report and recommendation of the Judicial Conference.

Mr. AMATO. I don't have any way to dispute it, no. That apparently is what happened between Judge Porteous and——

Mr. LUNGREN. And your law firm?

Mr. AMATO. Yes.

Mr. LUNGREN. It says further, on page 23, "Judge Porteous and his benefactors used methods of payments that left no paper trail. The gifts described above were always either in cash or direct payments of expenses to vendors. No checks to Judge Porteous were used."

Is that the facts, as far as you are concerned?

Mr. AMATO. I don't know of any vendors that we paid anything to, but we never did give him any checks.

Mr. LUNGREN. Why? Why was it in cash? What was your purpose in making sure that they were cash payments?

Mr. AMATO. I presume that the——

Mr. LUNGREN. No, I don't want a presumption. This is why you did this or you in concert with your partner did this. Why did you give him cash?

Mr. AMATO. Because we made a bad mistake.

Mr. LUNGREN. Well, I mean, I know you made a bad mistake, but why would you give him cash? Why would you not give him a check in accordance with your usual procedure, running your law firm?

Mr. AMATO. I have no further answer I can give, sir. I mean, we just did it that way.

Mr. LUNGREN. Was it part of the deceit?

Mr. AMATO. Yes.

Mr. LUNGREN. All right. Now, interestingly enough, they say further that Judge Porteous's financial disclosure form contains no record of these benefits. Had they been disclosed—that is, the benefits—opposing parties could have sought recusal and, were it denied, could have sought appellate relief. And the controlling authority is a case called *Liljeberg v. Health Services Acquisition Corp.* from 1988. Is that the same client that you had in Liljeberg?

Mr. AMATO. Yes.

Mr. LUNGREN. And in that case, the finding was a vacation of judgment where a district judge failed to disclose he was a trustee of a university that had substantial business dealings with the liti-

gant before his court. Were you aware of that finding or that ruling at the time?

Mr. AMATO. I am aware of that ruling, yes.

Mr. LUNGREN. So a controlling authority on—in terms of recusal not only was known to you, but actually, it involved a case with the—the same person, the same entity that hired you for your work. Is that correct?

Mr. AMATO. Correct.

Mr. LUNGREN. Now, you said earlier about why they hired you. You said that it was for your experience and so forth. And according to the findings of the Judicial Conference Committee on Judicial Conduct and Disability, you were brought in 39 months after the case was originally filed and just 2 months before it was to go to trial before Judge Porteous. Is that correct?

Mr. AMATO. I presume it is. I don't—I don't recall it that way, but I have no reason to doubt that that is——

Mr. LUNGREN. And you still stand on your statement that they were hiring you because of your experience in Federal court?

Mr. AMATO. I think they were hiring me because I had a lot of trial experience. That is one of the reasons, yes.

Mr. LUNGREN. And one of the statements you made was that you would not have taken this case unless you thought you could win, correct?

Mr. AMATO. Correct.

Mr. LUNGREN. You are aware of the appellate court reversal of the decision by Judge Porteous?

Mr. AMATO. I think they were wrong.

Mr. LUNGREN. You think they were wrong?

Mr. AMATO. Yes.

Mr. LUNGREN. So when they said, "The extraordinary duty the district court imposed upon Lifemark, who loaned money to build the hospital and held the mortgage on it to secure its payment, is inexplicable," you find that an erroneous decision by them or erroneous conclusion by them?

Mr. AMATO. Yes.

Mr. LUNGREN. Where they say, "The district court's finding of a conspiracy to wrest control of the hospital and medical office building from Liljeberg and the Liljeberg Enterprises border on the absurd," you disagree with that?

Mr. AMATO. Absolutely.

Mr. LUNGREN. I see.

And where the appellate court says, "The district court in Liljeberg Enterprises offer no statutory or case law support law for this proposition, a conspiracy theory, for the simple reason that it is not the law," you disagree with them on that?

Mr. AMATO. I would have to read more of the decision, but, yes, I think the court of appeals was wrong. I still think the court of appeals was wrong.

Mr. LUNGREN. And where they say, "The idea that Lifemark deliberately subordinated its mortgage interest to Travelers, knowing it would result in a required payment, to wit, approximately $7.8 million, to Travelers at any judicial sale, comes close to being nonsensical," you find that wrong?

Mr. AMATO. Yes, because there was other litigation going on between Travelers and Jones Walker and—well, Lifemark was purchased by Tenet. That was going on almost simultaneous with this case, where all that was litigated.

Mr. LUNGREN. And further on, when they talk about Lifemark as a mortgagee, did not have a duty to protect the hospital owner from other creditors asserting their rights against the hospital, as the district court held Lifemark did. And then further on, they said this is a chimera or "chimera," existing nowhere in Louisiana law, it was apparently constructed out of whole cloth. You disagree with them on that?

Mr. AMATO. Yes, sir.

Mr. LUNGREN. But they did hire you because of your knowledge of the law and your ability in Federal court?

Mr. AMATO. Yes.

Mr. LUNGREN. Your law firm had a number of other—a number of other curatorships besides the ones sent to you by Judge Porteous—by the judge in this case, correct?

Mr. AMATO. I am sure we received other curator cases. I don't——

Mr. LUNGREN. You are not aware whether you did or you didn't?

Mr. AMATO. No, I said I am sure we did receive other curator cases.

Mr. LUNGREN. In any of those cases, did you—are you aware of the judge who sent them to your office requesting payments either in cash or by check?

Mr. AMATO. No.

Mr. LUNGREN. So this is not a usual practice in New Orleans?

Mr. AMATO. No.

Mr. LUNGREN. When, if ever, did your ethnical antennae go up and indicate to you that something was wrong here?

Mr. AMATO. I couldn't tell you when.

Mr. LUNGREN. According to your testimony before the court proceedings with Chief Justice—Judge Jones, Judge Benevides asked you about the—the curatorships, and they asked you how much, and you said it was never an amount that was astonishing. It was always a couple thousand dollars.

Judge Benevides, "A couple thousand dollars sometimes every 6 months and sometimes every 3 or 4 weeks?" "Yeah, but, I mean, it wasn't a constant thing. It wasn't, you know, look, I expect a check every Thursday or Friday or 2 weeks or anything like that."

But it was repetitive, correct?

Mr. AMATO. Yes, sir.

Mr. LUNGREN. And it took place over years?

Mr. AMATO. Yes, sir.

Mr. LUNGREN. And as you say, it was always a couple thousand dollars? That was your testimony under oath before that panel.

Mr. AMATO. I think that is correct, yes.

Mr. LUNGREN. We have had testimony about the draw that you or Mr. Creely made that is we believe $2,000, and Rhonda Danos came to pick it up. You do or do not recall that?

Mr. AMATO. I don't recall that specifically. I really don't, sir.

Mr. LUNGREN. During the pendency of the Federal case, do you recall making payments of cash to the judge?

Mr. AMATO. The only one I recall was for his son's wedding.

Mr. LUNGREN. Was that before, at the time that it was pending, or after the recusal motion?

Mr. AMATO. It was prior to the judgment being rendered, after the recusal motion and the trial.

Mr. LUNGREN. It was following the decision, the recusal motion that you then gave him money in that specific instance?

Mr. AMATO. That is when his son got married, in June 1999, and I think the recusal motion was some years before that.

Mr. LUNGREN. Thank you very much.

Thank you, Chairman.

Mr. SCHIFF. The gentleman yields back.

At this point, Mr. Westling, if you have some questions, you may proceed.

Mr. WESTLING. Thank you, Mr. Chairman.

Mr. Amato, I will try to work through this quickly. I know you have been up here a long time.

First, I think I just want to clarify: Your testimony has been clear that there was only a single time that Judge Porteous ever asked you for cash money, and that was in connection with his son's wedding. Is that correct?

Mr. AMATO. That is correct.

Mr. WESTLING. So when you tell us about your knowledge about money and the curatorships, that was, in fact, something that you did not handle personally. Is that correct?

Mr. AMATO. That is correct.

Mr. WESTLING. That was something Mr. Creely handled?

Mr. AMATO. Yes.

Mr. WESTLING. And so, as a practical matter, you would say that he would recollect those facts better than you. Is that correct?

Mr. AMATO. Yes.

Mr. WESTLING. Okay. Now, moving on to the period of time—Judge Porteous became a Federal judge in 1994, as you are aware. He was confirmed on October 11, 1994. Does that sound about right to you?

Mr. AMATO. I have no way to dispute that.

Mr. WESTLING. And it was some couple of years later that you were actually retained to get involved in the Liljeberg case, correct?

Mr. AMATO. Yes.

Mr. WESTLING. All right. Now, Mr. Amato, you have talked some about your law practice. Were you typically a contingency lawyer?

Mr. AMATO. Yes.

Mr. WESTLING. So you were a person that was engaged in a business of evaluating cases before you got involved in them in an attempt to determine whether you thought you could bring back a judgment. Is that a fair statement?

Mr. AMATO. Correct.

Mr. WESTLING. And so, in this particular case, you made a comment about looking at the facts, looking at the records, and the work that you did in that regard. You also made a comment about a judge who was not unfriendly to you.

Mr. AMATO. Correct.

Mr. WESTLING. And I want, from a plaintiff's lawyer's perspective, what does that mean?

Mr. AMATO. That means a judge who will listen to you and hopefully will rule correctly, as opposed to some, you know, agenda that the judge has that is pro-defendant, pro-plaintiff, pro-whatever.

Mr. WESTLING. And so when you used the term "not unfriendly," you didn't mean it was because it was Tom Porteous. You meant it was because it was a fair judge. Is that correct?

Mr. AMATO. Correct.

Mr. WESTLING. Have you known throughout your career Judge Porteous to do the right thing?

Mr. AMATO. Always.

Mr. WESTLING. Did you feel like your relationship ever made a difference when you were in his court, in terms of the way he would eventually rule?

Mr. AMATO. No.

Mr. WESTLING. Now, you have talked about the recusal motion, and that was, I think, filed in October 1996. Does that sound about right?

Mr. AMATO. Yes.

Mr. WESTLING. You were brought in about a month before that. Does that sound about right?

Mr. AMATO. I don't know when I was brought in.

Mr. WESTLING. Do you also know that Mr. Mole was only in the case about 5 or 6 months before you were brought in?

Mr. AMATO. No, I didn't know that.

Mr. WESTLING. So you have new counsel on both sides of this case and a recusal motion that has been filed. Is that a fair statement?

Mr. AMATO. Yes, that is apparently what happened.

Mr. WESTLING. You were brought in by lawyers who were already working on the case, correct?

Mr. AMATO. Yes.

Mr. WESTLING. And one of those lawyers was a gentleman by the name of Don Richard?

Mr. AMATO. Yes.

Mr. WESTLING. And he remained involved in the case through the trial, correct?

Mr. AMATO. Don was basically lead, and I was second chair, and we did the bulk of the trial work and trial preparation.

Mr. WESTLING. Now, you went through this very lengthy trial, and it was some 2 years later—well, I guess a year later that the case was tried, in 1997. Is that right?

Mr. AMATO. I don't—yes.

Mr. WESTLING. Okay. Now, Mr. Amato, this was a contentious piece of litigation, fair statement?

Mr. AMATO. Absolutely.

Mr. WESTLING. Have you ever seen a fight like this in any other case you have ever handled?

Mr. AMATO. Well, I have been in some pretty good fights, but this was a good fight. I mean, this was—this was, you know, blood and guts, up against the wall, no holds barred, you know, anything that they could do, they did.

Mr. WESTLING. As a practical matter, this case had a lengthy history before you had gotten involved in it. Is that correct?

Mr. AMATO. Yes.

Mr. WESTLING. And it had been a tactic used by both sides, the Liljebergs and by Tenet, to seek to disqualify judges in this case?

Mr. AMATO. I know that it happened on some occasions prior to my entering the case.

Mr. WESTLING. Isn't it fair to say that Judge Porteous made very clear when the case got to him—and if you know this, you do, and if you don't, just tell me—that he was insistent that the case would not delay any longer, but it would get to trial and resolution?

Mr. AMATO. Yes.

Mr. WESTLING. Okay. Now, you have also indicated that your sense of the facts was that the Liljebergs had been victims of Lifemark. Is that fair?

Mr. AMATO. Yes.

Mr. WESTLING. And that, in fact, they had been victims because of a certain amount of dishonesty, thievery, whatever the right term is, by the other side. Is that correct?

Mr. AMATO. Those terms sound like Lifemark and Tenet.

Mr. WESTLING. And so we are dealing here with a major national corporation. Is that correct?

Mr. AMATO. Yes.

Mr. WESTLING. And it was basically Tenet Healthcare. Is that right?

Mr. AMATO. That is correct.

Mr. WESTLING. And they are the same company that entered into a $900 million settlement for their falsehoods with the Federal Government within the last several years?

Mr. AMATO. Yes. And during the pendency of this suit, we filed a qui tam suit—or a qui tam complaint against Tenet for all of the Medicaid fraud that they committed at the hospital. And the U.S. attorney in New Orleans at the time, Eddie Jordan, decided that it wasn't worth pursuing.

Mr. WESTLING. All right. Now, in this particular case, you have indicated that you felt confident that the result that Judge Porteous reached in issuing his more than 100-page opinion was correct. Is that right?

Mr. AMATO. Yes.

Mr. WESTLING. When you went to the fifth circuit—I know you didn't handle the appeal—but lawyers went to the fifth circuit, there were issues that were critical that related to Louisiana law that were before the fifth circuit. Is that correct?

Mr. AMATO. Specifically to Louisiana law.

Mr. WESTLING. And the three judges who sat on that panel are all Texas judges with no experience in Louisiana law. Is that fair?

Mr. AMATO. They were Texas judges. I don't know what Louisiana experience they have.

Mr. WESTLING. Do you know whether they had ever taken or passed the Louisiana state bar examination?

Mr. AMATO. No, I wouldn't know that. I really wouldn't——

Mr. WESTLING. And just so it is clear, for the benefit of those present, Louisiana has a different body of law when it comes to just about everything that relates to civil interaction, in terms of obligations, contract and the like. Is that fair?

Mr. AMATO. To some great extent, yes.

Mr. WESTLING. Mr. Amato, did you ever give Tom Porteous any money because he was a judge?

Mr. AMATO. No.

Mr. WESTLING. You gave it to him because he was your friend. Is that a fair statement?

Mr. AMATO. Correct.

Mr. WESTLING. I have no further questions, Mr. Chairman.

Mr. SCHIFF. Mr. Amato, we have a few follow-up questions for you. Let me pick up where counsel just left off.

You stated in your testimony that there was never a doubt in your mind that, once the curatorships started, the money that the judge was asking for was coming out of the curatorships. Is that right?

Mr. AMATO. Yes.

Mr. SCHIFF. Was that based on conversations you had with Mr. Creely?

Mr. AMATO. Yes.

Mr. SCHIFF. Mr. Creely made it plain in those conversations that the judge was calling and he wanted the money from the curatorships?

Mr. AMATO. Yes.

Mr. SCHIFF. And you remember that distinctly?

Mr. AMATO. We are talking 25 years ago. I mean, how—you know, I knew some discussion took place that—you know, that this was something that we would have to deal with.

Mr. SCHIFF. Were you aware that the judge would call your office periodically to find out how many curatorships he had sent over there recently?

Mr. AMATO. No, I don't recall him calling. I recall Mr. Creely complaining about him calling, but I don't recall him calling.

Mr. SCHIFF. And what were the nature of the complaints that Mr. Creely made?

Mr. AMATO. Calling about the curators. Tom is calling about the curators.

Mr. SCHIFF. And why was he calling about the curators? What was the gist of it?

Mr. AMATO. I guess he needed money.

Mr. SCHIFF. Was there any other purpose for him calling about the curators?

Mr. AMATO. Not that I know of.

Mr. SCHIFF. He didn't get involved personally in finding out whether you took out advertisements on behalf of absent plaintiffs or parties, did he?

Mr. AMATO. I don't know what did. I doubt it.

Mr. SCHIFF. You during the Liljeberg case had an attorney-client relationship with Liljeberg, correct?

Mr. AMATO. Absolutely.

Mr. SCHIFF. And that relationship continues to this day, in the sense that you are not—Liljeberg hasn't waived its right to demand your confidence, correct?

Mr. AMATO. That is correct.

Mr. SCHIFF. And because of the relationship, you would not be in a position to come in to the hearing today and give us private information about weaknesses in Liljeberg's case, would you?

Mr. AMATO. I don't think so. I don't think I could be in the position, and I am not—I don't think I am in a position to violate the attorney-client privilege. And more so, I don't think I am in a position to discuss the Liljeberg case, because I hadn't looked at it.

Mr. SCHIFF. What—and I want to make clear, we are not asking you to do either, but I do want to ask you whether you consider yourself still bound by your relationship with Liljeberg.

Mr. AMATO. Yes.

Mr. SCHIFF. You mentioned in answer to Mr. Cohen's questions that there were several reasons why, when the judge hit you up for money during the fishing trip, that you gave it to him.

Mr. AMATO. Yes.

Mr. SCHIFF. You mentioned it was part friendship. You mentioned it was part feeling sorry for him. And you mentioned it was part that he was a judge presiding over a major case that you had before him, correct?

Mr. AMATO. Yes.

Mr. SCHIFF. And he asked you if you could quantify, well, how much of your motive in giving the money was related to each of those three things, right?

Mr. AMATO. I think we tried to get there, yes.

Mr. SCHIFF. And if I understood you correctly, you said that 70 percent—70 percent to 80 percent of the reason you gave him the money was this was a judge presiding over this case you had, right?

Mr. AMATO. No, I thought it was the other way around. I thought it was 10 percent to 20 percent because it was a judge who was listening to the case as opposed to the friendship I have had with him for—ever since he got out of law school.

Mr. SCHIFF. Well, I am glad, because I want to clarify this. So in your estimation, then, 70 percent to 80 percent was friendship and 10 percent to 20 percent was this is a judge presiding over a very important case to me?

Mr. AMATO. Yes.

Mr. SCHIFF. You also mentioned, I believe in answer to Mr. Johnson's questions, you were asked about, wasn't this just a classic kickback scheme? I think he asked you, but again it was sort of a double negative, and I want to make sure we have it correct. This didn't differ, I think was his question, from a kickback scheme. Let me ask it in the affirmative: This was really a form of a kickback scheme, wasn't it?

Mr. AMATO. I really don't know how to answer that question, because there was never anything done as far as Tom sending curators, but you have got to do this for us on another case or you have got to let Joe Smith out of jail or anything like that. I think that would qualify as a kickback scheme. What this qualifies as, Lord only knows.

Mr. SCHIFF. Mr. Amato, would you consider it a kickback scheme if someone sends you business, a curatorship, with expectation you will kick back some of that money to a person who sent you the case?

Mr. AMATO. It would fit into that definition.

Mr. SCHIFF. So wasn't this a classic kickback arrangement?

Mr. AMATO. Yes.

Mr. SCHIFF. On the fishing trip, you mentioned that the judge—well, actually, let me ask you. I don't know if it was on the fishing trip. You mentioned that, during the pendency of the Liljeberg case, you had a conversation—maybe more than one conversation—with the judge about the Liljeberg case. And you said something very interesting. You said that the judge told you, "You'd better prove your facts, because otherwise the fifth circuit will take it away." Is that what the judge told you?

So the judge didn't tell you, you needed to prove the facts to him. You needed to prove the facts, because otherwise the court of appeals would reverse, and that was his message to you.

Mr. AMATO. No, his message was, you had better have a good case and you had better give me enough evidence that will withstand an appeal. And I thought that we did that.

Mr. SCHIFF. So he was telling you, you had better have enough evidence that I can rule in your favor, otherwise, if I do, I will be reversed?

Mr. AMATO. If I didn't, he would be reversed.

Mr. SCHIFF. That was his——

Mr. AMATO. If I proved—listen, it is not hard to explain, but I thought we over-proved the case. We produced their executives to testify as to how they set up a scheme to defraud my client.

Mr. SCHIFF. Mr. Amato, I want to ask you about your conversations with the judge. I appreciate your feeling about the merits of the case, but I just want to make sure that we have this accurately. What the judge told you was not that you had to prove the case for his benefit, that you needed to show the facts. Otherwise, the fifth circuit would reverse him. Is that the message he gave you?

Mr. AMATO. No. The message he gave me was, you are not getting a gift. You are going to try your case, and you are going to prove your case, and you are going to have to prove it to such an extent that the court of appeals is going to leave it alone.

Mr. SCHIFF. Why would he mention the court of appeals? Why wouldn't he say, "You are going to have to prove it to my satisfaction"?

Mr. AMATO. Because there is a history of the court of appeals that every case that the Liljebergs ever had did something to overturn the decision.

Mr. SCHIFF. And when you asked him how is the judgment coming, this was at a time when it had been under submission for some time?

Mr. AMATO. Yes.

Mr. SCHIFF. Was this on the fishing trip?

Mr. AMATO. No.

Mr. SCHIFF. Was it before or after the fishing trip?

Mr. AMATO. I couldn't tell you. I really couldn't, Mr. Schiff. You know, you are talking stuff that happened 10, 15 years ago. And I—sequentially, I cannot answer. I just don't know.

Mr. SCHIFF. And when the judge told you that you needed to prove the case or the fifth circuit would take it away, was it just the two of you, or were there other people present?

Mr. AMATO. I don't know. I don't know. I don't know who was there.

Mr. SCHIFF. Did you ever disclose to opposing counsel that you had had this ex parte communication about the case with the judge?

Mr. AMATO. I didn't think it was ex parte communication. We didn't discuss the issues. We didn't discuss facts. We didn't discuss witnesses. You know, it is probably like, you know, how are you going to vote on something? You don't have to give a reason. You can just—you know, I am going to vote Democrat this year or Republican this year. But you don't give a reason.

Mr. SCHIFF. I don't think the relationship of an attorney representing a client before a judge is the same as how are you going to vote in an election. You didn't feel you had any obligation to disclose to opposing counsel that you were discussing the pendency of a matter with the judge without any others present?

Mr. AMATO. No, I didn't consider it a discussion of the facts of the case or the merits of the case.

Mr. SCHIFF. When Mr. Lungren asked you about why you had paid in cash rather than wrote a check from the firm to the judge, wasn't this in large part, if not exclusively, because you didn't want a paper trail?

Mr. AMATO. No paper trail.

Mr. SCHIFF. And, finally, you used the word unfriendly.

Mr. AMATO. I am sorry?

Mr. SCHIFF. You used the word unfriendly, that you thought you had a good chance to prevail on the case because the judge was not unfriendly. Similarly, you mentioned that you thought maybe one of the reasons why you were brought into the case was because of the wide knowledge that you had a friendship with the judge. Part of that friendship was providing him with thousands of dollars, wasn't it?

Mr. AMATO. I think Tom and I would have been friends no matter what, but I am sure he appreciated our generosity or our friendship shown that way.

Mr. SCHIFF. I have no further questions.

Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Amato, to follow up on the question of the Chairman regarding your discussions with Judge Porteous about the Liljeberg case, did you ever have any discussions with him about the potential award in the case?

Mr. AMATO. No, never did.

Mr. GOODLATTE. Well, then how did he come to have a conversation with you in which you talked about having to prove your case, and you characterized his message to you—I am not saying these are his words—but you characterized his message to you as, "You are not getting a gift." How did you come to have a conversation with him where he would send a message to you, "You are not getting a gift. You have to prove your case"?

Mr. AMATO. Let me see if I understand the question. I think that the message he was trying to convey was that you—if you don't prove your case to a preponderance——

Mr. GOODLATTE. I know what his message was. When did it occur? How did it come about? How did you happen to be talking to him?

Mr. AMATO. I don't know if we were at lunch or we were drinking or what. But it came up that, you know, you had better prove your case.

Mr. GOODLATTE. Now, you said, "you had better prove your case or the fifth circuit is going to take it away from you." What do you think he meant by "it"?

Mr. AMATO. The judgment.

Mr. GOODLATTE. You had better prove your case, or the fifth circuit is going to take it away from you. How could he know that in advance? Wasn't he really saying he is going to—he is going to take it away from him, that he was giving you a judgment, but you had better have enough evidence to sustain it or they would take it away?

Mr. AMATO. I truly don't understand, other than the fact that he conveyed to me that——

Mr. GOODLATTE. Well, why wouldn't he say to you—let me characterize it a different way. Why wouldn't he say to you, "You had better prove your case or I am going to rule against you"? "You had better prove your case or I am going to take it away from you"? Why would he say, "You had better prove your case or the fifth circuit is going to take it away from you"?

Mr. AMATO. Probably because of knowing him as long as I have—I have practiced law with him. I tried cases with him. I tried cases against him. I tried cases before him. I know what he expects in a trial, in a case, and I think any good trial lawyer understands that. What a judge expects from a——

Mr. GOODLATTE. That is a good standard for a judge to have for himself. Why would he be setting the standard for the fifth circuit, rather than for himself?

Mr. AMATO. I don't know. I just don't know. I am just conveying what was related to me and——

Mr. GOODLATTE. Now, in response to Judge Porteous's counsel, you said—he asked you, did the judge have a reputation for doing the right thing? And you said, "Always."

Mr. AMATO. Yes.

Mr. GOODLATTE. Is that what you thought when you were worried about breaking up your partnership because you were engaged in a kickback scheme with the judge and he was sending curatorships over and you were getting this work or your partner was getting this work and you were—the two of you—sending money from the law firm to the judge? Was he doing the right thing then?

Mr. AMATO. What I meant by that answer was that the relationship we had with him never, to my knowledge, ever affected how he ruled in any case.

Mr. GOODLATTE. But he nonetheless told you that he wouldn't take it away, but the fifth circuit would take it away if you didn't prove the case?

Mr. AMATO. He must have knew something about the fifth circuit that I didn't.

Mr. GOODLATTE. All right. Yes, and as a judge, he was making the decision about who got the curatorships. Is that not correct?

Mr. AMATO. On the state court, yes.

Mr. GOODLATTE. Right. But, I mean, he is saying that he had a different standard for himself on the state court than he had on the Federal court?

Mr. AMATO. I presume he did.

Mr. GOODLATTE. You are saying he did have a different standard?

Mr. AMATO. I am sorry?

Mr. GOODLATTE. He did have a different standard in the state court than he did in the Federal court?

Mr. AMATO. I hope so.

Mr. GOODLATTE. Well, why would you expect that?

Mr. AMATO. Because I know the man.

Mr. GOODLATTE. But you know that the man took legal proceedings, gave them to your law firm, with the expectation that your law firm would provide him with cold, hard cash that he could use for whatever purposes—it wasn't going to the court. It was going to his own benefit. And that would be what you knew about him before he moved to the Federal court.

Now, on the Federal court, he says you had better prove your case not or I will overturn it or I will rule against you. He said you had better prove your case or the fifth circuit is going to take it away, as if to say, you had better make me look good with the evidence you produce when I rule in your favor, because otherwise you are not going to get very far, because the fifth circuit will take it away from you.

Mr. AMATO. I think what he is telling me was is, you had better make your case look good or not only will I not give you a judgment, but the fifth circuit wouldn't give you one.

Mr. GOODLATTE. Well, the fifth circuit would never get a shot at it unless he gave you a judgment, would it?

Mr. AMATO. Correct.

Mr. GOODLATTE. All right. Now, what was the overall contingent fee arrangement that the fellow who retained you in the Liljeberg case—what was the overall percentage that was going to be recovered if there were a judgment in favor of Liljeberg?

Mr. AMATO. I don't know. I don't know what any other lawyers' percentages were or who was getting what, who was getting paid by the hour, who was getting paid by—all I knew was, you know, was what my fee was going to be.

Mr. GOODLATTE. Your fee was 8 percent?

Mr. AMATO. Right.

Mr. GOODLATTE. And Mr. Levenson was also brought into the case?

Mr. AMATO. He got—and Lenny told me that he was going to get 4 percent.

Mr. GOODLATTE. Now, counsel for Judge Porteous indicated that, when you were brought in, which was in October—I am sorry, September 19th of 1996, both you and Mr. Levenson entered your appearances. At that time, the case had been pending for quite a long time and, in fact, had been assigned to Judge Porteous some 8 months before that, on January 16, 1996. You came in, in September, while the case was set for trial the next month.

And the counsel for Judge Porteous said that Judge Porteous told you that the case wouldn't be delayed. And is that right, that your understanding?

Mr. AMATO. Of this question, yes.

Mr. GOODLATTE. Yes, that he was going to move this case along, that the case had already been pending for 8 months before you came in, it didn't go to trial in point of fact until the following June, another 9 months after it was originally scheduled, and then a decision was not rendered for nearly 3 years after that. So the judge wasn't really moving this case along swiftly at all, was he?

Mr. AMATO. No, doesn't appear to be.

Mr. GOODLATTE. And during that time, he was milking all kinds of benefits from attorneys who were dealing with it, not only the payment—the cash payment that was made by you and your partner, but also a number of other benefits, in terms of trips and dinners and so on, all going on for a period of almost 3 years after he had heard the evidence in the case. So he wasn't trying to move this case along swiftly.

Mr. AMATO. Apparently not.

Mr. GOODLATTE. And in the meantime, at some point, you don't remember when, but at some point, he said, "You had better prove your case or the fifth circuit is going to take it away"?

Mr. AMATO. That was before I tried the case.

Mr. GOODLATTE. Before the case went to trial. But you don't think that he was suggesting to you that you had better give him a good basis for making the decision, as opposed to simply telling you that he was going to try this fairly and honestly, that he had already decided that you were going to win the case, but you had better give him the evidence to make it?

Mr. AMATO. No, I don't think he decided I was going to win the case before I tried the case, and I don't know when he decided whenever he was going to—he was going to rule in the case and into whose favor.

Mr. GOODLATTE. But he took 3 years and quite a bit of payments from you and others to get to that point?

Mr. AMATO. You would have to ask him that question. I don't know.

Mr. GOODLATTE. I hope to have the opportunity.

Mr. AMATO. Thank you, sir.

Mr. GOODLATTE. Thank you, Mr. Amato.

Mr. SCHIFF. The gentleman yields back.

Mr. Johnson?

Mr. JOHNSON. Yes, thank you.

It was—I think you testified earlier today that you took 2 years off to prepare for this case. That was your testimony this morning, correct?

Mr. AMATO. Yes.

Mr. JOHNSON. But then—and this Liljeberg case, did the plaintiffs come to your office first to retain you? Were you the first counsel retained on the case or signed up on the case as attorney?

Mr. AMATO. No, I was not.

Mr. JOHNSON. Who else had been——

Mr. AMATO. I don't know what the order was, but Ken Fonte was their regular attorney. Don Richard, Doug Draper, then myself,

Lenny Levenson, and Hans Liljeberg, the nephew who was a lawyer, helped out.

Mr. JOHNSON. Would you consider this case to have been complex litigation?

Mr. AMATO. Yes. Not complex to the extent that other litigations are because of the number of parties, but there was—the complexity was brought about by the number of medical records and drug paraphernalia and drug dosages and how the dosages were to take place. And, you know, they would hide records, and they would hide all sorts of things. And, you know, that is what made it complex.

Mr. JOHNSON. I see. Was there extensive—would you agree that the pre-trial discovery period produced a lot of discovery in the case? Was it massive discovery?

Mr. AMATO. Yes, there was massive discovery going on prior to this case being tried. And there were other litigations that were being filed in state court and other Federal courts to minimize the effectiveness of the trial team that the Liljebergs had. They fired the key pharmacists at the hospital, which caused all sorts of litigation. You know, the discovery motions that, you know, that they would—we would file for interrogatories and requests for production and documents and for medical charts. And then they would come back and didn't, wouldn't produce it.

Then we would have to go back to the magistrate and try to get what we needed. And then, you know, it just kept going on and on and on, where a good deal of the time was spent preparing for trial.

Mr. JOHNSON. How long did discovery last? And how many depositions were taken?

Mr. AMATO. I couldn't answer that, sir. I really—it has been too long.

Mr. JOHNSON. Were you involved in the discovery process?

Mr. AMATO. Absolutely.

Mr. JOHNSON. And you don't recall whether any depositions were taken during the course of that litigation?

Mr. AMATO. Oh, of course they were taken. I don't know how many. I mean, I just couldn't tell you how many were taken. You know, and——

Mr. JOHNSON. Well, let me ask you this question then. Were there any difficulties in the discovery process that caused any of the parties to have to file a motion to compel?

Mr. AMATO. Absolutely. We had trouble—there was an attorney for Tenet who was in Dallas who we litigated on and on as to taking her deposition and, you know, litigated the attorney-client privilege and what was privilege and what wasn't privileged and on. I mean, it was not, you know, an easy case to put together.

Mr. JOHNSON. What were you doing for that 2 years that were not taking many cases? How were you using that time to prepare for this case?

Mr. AMATO. Well, to start with, they had truckloads of documents. We had the Liljebergs on the building on veterans highway, and we made up a war room, and Don Richard and I would go there almost every day and go through documents and try to have documents match up.

Then we hired people to put it on computers. And then, on the weekends, the other lawyers would get together and discuss what we found and what was going on. There was also a bankruptcy proceeding that was going on at the same time, so it was bankruptcy stuff happening while we are trying to prepare for trial.

And I am sure I mentioned this once before, but the Liljebergs could not hire a large law firm in the city of New Orleans for any law firm, because Tenet Healthcare had conflicted everybody out. Everybody was—every firm in the city of New Orleans was represented by Tenet.

Mr. JOHNSON. Well, let me ask you this question. Did Judge Porteous rule on any of those pre-trial motions to compel discovery or any other pre-trial motions?

Mr. AMATO. I think most of them are handled by the magistrate.

Mr. JOHNSON. Did he issue any orders himself?

Mr. AMATO. The magistrate or the judge?

Mr. JOHNSON. The judge, Judge Porteous.

Mr. AMATO. I am sure he did. I couldn't answer. I don't know enough.

Mr. JOHNSON. Do you recall how the clients came out with respect to those rulings?

Mr. AMATO. We won some and we lost some.

Mr. JOHNSON. And it was all during this time that you were providing cash money to the good judge?

Mr. AMATO. It was after, when his son got married, which was in 1999.

Mr. JOHNSON. You are familiar with the term home cooking?

Mr. AMATO. Been there.

Mr. JOHNSON. Because—I am sorry. Say that again?

Mr. AMATO. I said I have been home cooked.

Mr. JOHNSON. Yes. So what does home cooking mean when you are trying cases? And you have tried a bunch of cases over 35 years.

Mr. AMATO. Well, there are a bunch of places I don't go because the pot is too hot, but——

Mr. JOHNSON. What do you mean?

Mr. AMATO [continuing]. Where the outsider can't apparently get a fair shake, because of the relationship with the judges and the lawyers and the politicians and whatever else that goes into the mix. And it is called home cooking. I mean, I didn't make up the word, but I have been home cooked.

Mr. JOHNSON. Yes, well, I will tell you, do you know of any lawyers that have been—that were on the other side of a case that you handled in front of Judge Porteous who were home cooked?

Mr. AMATO. Mr. Johnson, I have never won a case that the other side didn't think that I home cooked them. Every lawyer who ever lost a case thinks that some shenanigans went on that caused them to lose it, as opposed to out-lawyering them, out-working them, and having a better case.

Mr. JOHNSON. What impact did you think that you would have on Judge Porteous by providing him with financial favors?

Mr. AMATO. I didn't think any. I didn't think any. I didn't think that my helping my friend would in any way affect his decision-making.

Mr. JOHNSON. Well, let me ask you this. If the circumstances were reversed and you were trying a case before Judge Porteous and—wouldn't it—and you did not know Judge Porteous from the man in the moon, he just happened to be the judge on your particular case, would you not have been concerned if you found out that there was such a close relationship between my opposing counsel and the trial judge in my case?

Mr. AMATO. I am concerned every time I walk into the courtroom.

Mr. JOHNSON. Well, you would be concerned about that in particular, would you not?

Mr. AMATO. It would give me some concern, yes.

Mr. JOHNSON. During the motion to recuse, what role did you play in this?

Mr. AMATO. I was in the courtroom. That was it. I didn't prepare the pleadings. I didn't argue the motion. I didn't say a word. I was there.

Mr. JOHNSON. So you were there the whole time the motion was being argued?

Mr. AMATO. I don't know if I was there the whole time. I probably was.

Mr. JOHNSON. Was there an evidentiary hearing on that motion?

Mr. AMATO. No. No—motion.

Mr. JOHNSON. Were there any oral arguments presented prior to Judge Porteous ruling on the motion to recuse?

Mr. AMATO. I am pretty sure, yes.

Mr. JOHNSON. But you did not participate in it?

Mr. AMATO. I did not.

Mr. JOHNSON. Did you ever hear someone during that motion for recusal process make a misstatement about the true relationship that you, Mr. Creely had with Judge Porteous?

Mr. AMATO. I don't recall any statements made at all. I don't know if there were misstatements or not. I just—I am sorry, Mr. Johnson, but, you know, that is 15 years ago and a lot of water under the bridge. I just don't know.

Mr. JOHNSON. This entire episode was revealed to the public when and how?

Mr. AMATO. When the Fifth Circuit Court of Appeals put on the Internet their decision to recommend the removal of Judge Porteous.

Mr. JOHNSON. And when was that?

Mr. AMATO. I don't have the exact date. It was a year, year-and-a-half ago or something.

Mr. JOHNSON. So this was at proceedings by the U.S. attorney down at Eastern District of——

Mr. AMATO. This is after they decided not to indict Judge Porteous. And then the fifth circuit had some sort of hearing and rendered some sort of report based upon grand jury testimony and statements that they had collected or whatever.

Mr. JOHNSON. Did you have occasion to speak with anyone in the U.S. Attorney's Office for the Eastern District or for any other district with—or FBI or other investigators regarding this case prior to the conclusion of it by the U.S. attorney?

Mr. AMATO. Yes.

Mr. JOHNSON. You did discuss?

Mr. AMATO. I was called before the grand jury with immunity, and I testified truthfully, and I was called before the judiciary—fifth circuit judiciary hearing, and I testified truthfully. I met with counsel for the Committee on three occasions, I think, you know, three separate occasions, plus today. And I am here today.

Mr. JOHNSON. This—do you feel like you would call Judge Porteous as a witness in your state bar notice of inquiry? Do you think he would be on your witness list?

Mr. AMATO. I would hope so.

Mr. JOHNSON. Now, you were given immunity. Why were you given immunity? And what kind of immunity were you given?

Mr. AMATO. It was forced immunity.

Mr. JOHNSON. Excuse me?

Mr. AMATO. Forced immunity. And why was I given it? I have got a good lawyer.

Mr. JOHNSON. Did Mr. Creely also—was he represented by your current attorney——

Mr. AMATO. Mr. Capitelli.

Mr. JOHNSON [continuing]. At that time?

Mr. AMATO. Yes.

Mr. JOHNSON. And so both of you all were able to get immunity?

Mr. AMATO. Yes.

Mr. JOHNSON. Does this immunity apply to the filing of a criminal complaint against either one of you for being a party to a crime or a conspiracy?

Mr. AMATO. I presume it does.

Mr. JOHNSON. So at that time, you knew that you were in some legal jeopardy because of the relationship that you had with Judge Porteous?

Mr. AMATO. Yes.

Mr. JOHNSON. You—is that one of the reasons why you tried to cover up the cash payments to him by always doing things in cash?

Mr. AMATO. Well, that all happened before any immunity came about. So I would presume that giving him cash was probably the easiest thing we could do. And, of course, it didn't leave a paper trail.

Mr. JOHNSON. Did Judge Porteous ever pay you back any of the money?

Mr. AMATO. No.

Mr. JOHNSON. Mr. Chairman, I have no further questions at this time.

Mr. SCHIFF. The gentleman yields back.

Mr. Amato, I know it has been a long day. I have two or three final questions, and then we will break. I want to just follow up on what my colleague asked you. If I understood you correctly, you anticipate that at your state bar disciplinary proceeding that you may call Judge Porteous as a witness? Is that correct?

Mr. AMATO. Yes.

Mr. SCHIFF. And so depending on what he says, it may have an impact on whether you can continue to practice law?

Mr. AMATO. I doubt it.

Mr. SCHIFF. You mentioned that you thought that Judge Porteous had a reputation for being fair and always doing the right thing, correct?

Mr. AMATO. Right.

Mr. SCHIFF. He wasn't either fair or doing the right thing during the recusal hearing, was he?

Mr. AMATO. No.

Mr. SCHIFF. The misleading statements that I read to you earlier, that wasn't either fair or the right thing for him to lead the parties to believe that he had no cash relationship with the lawyers in the case, was it?

Mr. AMATO. No.

Mr. SCHIFF. And by failing to inform the opposing party that he had received cash from you over the years, didn't the judge deprive that party of the right to the honest services of the court?

Mr. AMATO. I think you will have to ask Judge Porteous that question. I don't know.

Mr. SCHIFF. Well, I am asking you the question. Don't litigants in a courtroom have the right to the honest services of the judge?

Mr. AMATO. I would hope so, yes.

Mr. SCHIFF. And if they have a legitimate basis to make a motion to recuse or to appeal the denial of a motion to an appellate court, don't they have the right to expect the judge will be truthful in presenting the facts that will be the basis of that motion to recuse?

Mr. AMATO. Yes.

Mr. SCHIFF. And weren't they deprived of that when Judge Porteous failed to inform the parties that he had received cash from lawyers in the case?

Mr. AMATO. Yes.

Mr. SCHIFF. That will conclude your testimony today. This Committee will be in recess until 10 a.m.

[Whereupon, at 5:31 p.m., the Task Force was adjourned.]

TO CONSIDER POSSIBLE IMPEACHMENT OF UNITED STATES DISTRICT JUDGE G. THOMAS PORTEOUS, JR. (PART I)—Continued

WEDNESDAY, NOVEMBER 18, 2009

HOUSE OF REPRESENTATIVES,
TASK FORCE ON JUDICIAL IMPEACHMENT
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Task Force met, pursuant to notice, at 10:04 a.m., in room 2141, Rayburn House Office Building, the Honorable Adam Schiff (Chairman of the Task Force) presiding.

Present: Representatives Schiff, Conyers, Jackson Lee, Cohen, Johnson, Pierluisi, Goodlatte, Sensenbrenner, Lungren, and Gohmert.

Staff present: Alan Baron, Counsel; Harold Damelin, Counsel; Mark H. Dubester, Consel; Kirsten Konar, Counsel; and Jessica Klein, Staff Assistant.

Mr. SCHIFF. This hearing of the House Judiciary Task Force on Judicial Impeachment will now come to order. Without objection, the Chair will be authorized to declare a recess of the hearing.

Today, we will continue our examination of allegations that Judge Porteous violated the public trust, the law and ethical canons by presiding over the Liljeberg case.

Our third witness on this issue is Joseph Mole, Esquire. Mr. Mole is an attorney with a law practice in the New Orleans area. He is here pursuant to subpoena. He has not been given an immunity order.

I will now swear the witness.

[Witness sworn.]

Thank you. You may be seated.

Task Force counsel—just so you know the procedure today, Mr. Mole, Task Force counsel, Mr. Harry Damelin, is going to be starting by asking you questions. Members of the Task Force will then have a chance to ask you questions, as will counsel for Judge Porteous. Judge Porteous is present with us this afternoon, as is his counsel.

And with that, we will begin with Mr. Damelin.

Mr. DAMELIN. Good morning, sir.

Mr. Mole, you are an attorney, correct?

Okay. And where do you practice?

Okay. And could you just generally describe what type of practice you have, sir?

TESTIMONY OF JOSEPH MOLE, ATTORNEY, NEW ORLEANS, LA

Mr. MOLE. I have practiced 32 years. For most of that time, I have handled large, complex business lawsuits, commercial litigation of all sorts, antitrust, bankruptcy, leases, contracts.

Mr. SCHIFF. Mr. Mole, you may want to move your microphone a little closer.

Mr. MOLE. Closer?

Mr. SCHIFF. You may want to lower that microphone, and you will need to talk very close to it so we can hear you. Thank you.

Mr. DAMELIN. Mr. Mole, did there come a time when you became involved in the case that we will refer to as *Lifemark v. Liljeberg*?

Mr. MOLE. Yes, in March 1996, the company that owned Lifemark became my client during a search for attorneys in New Orleans to take over an existing lawsuit. And I enrolled, I believe, in early April 1996 as counsel.

Mr. DAMELIN. Okay. And for purposes of clarity, is it fair to say that you represented Lifemark against Liljeberg? Is that clear?

Mr. MOLE. That is correct.

Mr. DAMELIN. At the time you became involved in the case, had it already been assigned to Judge Porteous?

Mr. MOLE. Yes, it was with Judge Porteous.

Mr. DAMELIN. And had you ever previously had a case before Judge Porteous either in state or Federal court?

Mr. MOLE. No, I had never had a case with Judge Porteous.

Mr. DAMELIN. Okay. And you say you got involved in the case around March 1996?

Mr. MOLE. I believe the interview with the client was in March. I enrolled as counsel, if memory serves me, on April 5, 2006, in the actual lawsuit, as counsel of record for the two Lifemark companies.

Mr. DAMELIN. And when you got involved in the case, was there a trial date already set?

Mr. MOLE. Again, if memory serves me correct, trial was set for early November of that year, 1996.

Mr. DAMELIN. And when you got involved in the case, were Jake Amato and Leonard Levenson already in the case?

Mr. MOLE. No, they were not. They didn't surface until they made a motion to enroll sometime in September, I believe.

Mr. DAMELIN. Of what year is that?

Mr. MOLE. 1996.

Mr. DAMELIN. And approximately how close to trial was it when they enrolled or entered their notice of appearance?

Mr. MOLE. Well, when I briefed the issue to—with the court, I used the term 6 weeks before trial, so that is what I think it was.

Mr. DAMELIN. At the time they entered their appearance in the case, did you know either of the gentlemen?

Mr. MOLE. I did not.

Mr. DAMELIN. Have you come to find out since the time they entered their appearance what type of fee arrangement that they had in connection with the case? By that, I mean, was it an hourly rate or a contingent fee basis?

Mr. MOLE. Yes, I did find out. Because the Liljeberg companies—one or both of them—involved in the litigation were in Chapter 11

proceedings, Mr. Levenson and Mr. Amato had to make an application to the bankruptcy court to get their fee arrangement approved. I found that in the bankruptcy record, and they had a contingency fee arrangement, and it was their deal. I don't know what their deal between themselves was, but between Mr. Levenson and Mr. Amato's firm, the deal was they got 11 percent of the value of the hospital claim that was part of the litigation.

Mr. DAMELIN. Okay. And when they entered their appearance, Mr. Mole, did that cause you any concern? And if so, why?

Mr. MOLE. Well, as in any case, you know, especially a case as big as that, you investigate every aspect of it. So when two new lawyers signed up 6 weeks before trial, it raised some concerns, and so I did what I would always do, is I did some due diligence into who these guys were. And I made phone calls and talked to people and developed some concerns, yes.

Mr. DAMELIN. Okay, what did you learn in the course of your due diligence?

Mr. MOLE. I learned that—from people who would talk to me, but didn't want to, you know, sign an affidavit or go on the record—that Mr. Levenson and Mr. Amato were very close to Judge Porteous, that Mr. Amato had been his law partner, as had Mr. Creely—Amato and Creely was the firm—and Mr. Levenson was very close to Judge Porteous and had—I think had been to a fifth circuit conference or two as Judge Porteous's guest, that they frequently socialized in—in the way of lunches, hunting trips, and things like that, and that they—I also knew—well, I formed the opinion that there was—there was a high likelihood that the case—it was a bench trial. There was no jury. So it would be entirely a decision by the judge in a case that had been valued as high as $200 million for my client that the case would be handled in the way by the judge that would be favorable to his friends, and that was of deep concern.

Mr. DAMELIN. As a result of your due diligence and the conclusions that you reached, did you then file a motion to recuse Judge Porteous from the case?

Mr. MOLE. Yes, after I did my investigation, such as it was, I, of course, conferred with my client. I dealt with a lawyer in house at Lifemark. And we decided the best course of action was to take a shot at recusal.

Mr. DAMELIN. Okay. Had you ever filed a motion to recuse a Federal judge previously in your years of practice?

Mr. MOLE. I believe that is the only time I have ever done it in any court.

Mr. DAMELIN. And could you explain what the factual underpinning or basis was of the motion that you filed?

Mr. MOLE. Well, usually when you file a motion to recuse, you have to have some evidence that you present to the court—relationship or a fact that you think the judge should consider in disqualifying himself for whatever reason.

I had no cold facts. All I had was my opinion, based upon hearsay from people who didn't want to be public about their opinion, so I signed an affidavit that said pretty much what I told you, Mr. Damelin, that there was an appearance—possible appearance of impropriety. I argued that the judge shouldn't be handling a case

where two of his closest friends, if not his very closest friends, had just signed up 6 weeks before trial, whose facts had been in litigation since 1987 in one court or another, and that I didn't believe they had anything to add, other than their relationship with the judge, and that if the result came out in a certain way, it would create an appearance that things had not been right. And that is what I argued.

Mr. DAMELIN. Mr. Mole?

Mr. MOLE. And filed an affidavit to that effect.

Mr. DAMELIN. Okay, Mr. Mole, let me ask you this. At the time of your motion, in October 1996, were you aware of the fact that other than campaign contributions, Jake Amato and his law partner, Bob Creely, had given Judge Porteous thousands of dollars in cash while he was a state judge?

Mr. MOLE. No, I was not. If I had known that fact, I would have made it—made it—to the court it time.

Mr. DAMELIN. Okay. Would that have been a significant fact that you would have used in your motion to recuse?

Mr. MOLE. Obviously. I think that would have been—that would have made the motion to recuse mandatory to be granted.

Mr. DAMELIN. Now, just a small point, but what if the money that I just mentioned came solely from a Mr. Creely? Would that still have been important to you in connection with the motion to recuse Judge Porteous?

Mr. MOLE. Well, the firm on the pleading was Amato and Creely, so, yes, it would have. It was the firm, not just Mr. Amato. But Mr. Creely didn't participate in the trial, but, yes, it would have been very——

Mr. DAMELIN. Okay. Now, did there come a time that Judge Porteous, in fact, held a hearing with regard to your motion to recuse?

Mr. MOLE. Yes. Yes, we made the motion probably in September, and the hearing was in mid-October.

Mr. DAMELIN. Now, were Mr. Levenson and Mr. Amato present at the hearing with regard to your motion to recuse?

Mr. MOLE. Yes, they were.

Mr. DAMELIN. And at any time, either before, during or after the hearing, were you ever informed that Mr. Amato had previously provided Judge Porteous thousands of dollars when he was a state judge?

Mr. MOLE. No.

Mr. DAMELIN. Would this fact have been important to you, again, in connection with arguing the motion to recuse?

Mr. MOLE. Yes. It would have been pretty significant.

Mr. DAMELIN. Now, at the recusal hearing, Judge Porteous stated, "Yes, Mr. Amato and Mr. Levenson are friends of mine. Have I gone along to lunch with them? The definite answer is yes." Now, were you aware or was it ever disclosed to you that, in fact, for a number of years, both Mr. Amato and Mr. Levenson had regularly been paying for hundreds of expensive lunches for Judge Porteous?

Mr. MOLE. Well, I knew from my—what I called an investigation that they did lunch together frequently. I didn't know the details of that arrangement.

Mr. DAMELIN. Were you aware of the extent of that in any way?

Mr. MOLE. No, only what I heard on the phone from people who were willing to talk to me.

Mr. DAMELIN. Now, did Judge Porteous, in fact, deny your motion to recuse?

Mr. MOLE. He did.

Mr. DAMELIN. Okay. And then the matter proceeded to trial eventually?

Mr. MOLE. The trial setting of November 6th was pushed back, and we began trial in June 1997, tried the case for—over a period of, I believe, 6 weeks.

Mr. DAMELIN. Okay, we will get to that. We will get back to that in a minute. But after Judge Porteous denied your motion to recuse, did you retain an attorney named Don Gardner to become part of the Lifemark team?

Mr. MOLE. Yes, I did.

Mr. DAMELIN. What type of practice did Don Gardner have?

Mr. MOLE. Don seemed to do mostly family law, divorces, and personal injury type cases in Jefferson Parish.

Mr. DAMELIN. Okay. Was that in any way relevant and relative, his experience, to the type of case that you were handling?

Mr. MOLE. No, it was not.

Mr. DAMELIN. Why was Gardner then brought in by Lifemark?

Mr. MOLE. After we lost the motion to recuse, my client and I discussed that—and my client insisted that we try to find a lawyer who, like Mr. Amato and Mr. Levenson, was a friend with the judge and knew him very well. They were concerned that they would do everything they can to achieve a level playing field.

I resisted doing that. I am not happy with the fact that we did it. But my client insisted, and so we did it.

Mr. DAMELIN. And so was Gardner brought into the case simply because of his relationship with Judge Porteous?

Mr. MOLE. Yes.

Mr. DAMELIN. And at the trial that subsequently proceeded, did he play any role whatsoever?

Mr. MOLE. No, Don was there every day, but he did not take a witness or do any argument.

Mr. DAMELIN. Based on Mr. Gardner's fee arrangement, how much was he paid when he simply entered the case?

Mr. MOLE. He got a retainer of $100,000.

Mr. DAMELIN. Now, when did the case eventually proceed to trial?

Mr. MOLE. We began, I believe, in mid-June. The last day of trial was July 31. But we didn't try it every day in that interim. I believe there were 16 or 17 days of evidence.

Mr. DAMELIN. This was a non-jury trial?

Mr. MOLE. That is correct.

Mr. DAMELIN. Were you the lead trial counsel on the Lifemark side of the case?

Mr. MOLE. I was.

Mr. DAMELIN. Now, during the trial, did Judge Porteous at some point in time get involved in the questioning of your witnesses after they had, in fact, been cross-examined by the Liljeberg attorneys? Did that happen during the trial?

Mr. MOLE. Yes, it did happen. They would occur when we put on a strong or important witness. I or one of my partners would examine him. And I think we did a very good job at trial. And when we do a good job with an important witness, the Liljebergs' lawyers would cross-examine. And typically, to my recollection and my opinion, our witnesses did very well on cross.

Mr. DAMELIN. Did or did not do very well on cross, the Liljeberg lawyers?

Mr. MOLE. I didn't feel they laid a glove on them. But Judge Porteous would question my witnesses. And, as you know, judges are allowed to question witnesses, especially in a bench trial, but I felt that the judge had gone too far in cross-examine and done some damage. So I was determined at some point to object or ask the judge for some relief from what I—the damage I thought he had done, because the judge with the black robe is pretty hard for a witness to resist.

Mr. DAMELIN. Okay. So at some point during the trial, when Judge Porteous was examining witnesses that you had called and examined and Liljeberg had cross-examined, did you, in fact, raise an objection to the judge?

Mr. MOLE. Yes. After he had done that to three or four of my witnesses, there was a particularly important witness named Steve Fouche. He was an intelligent man. He was a pharmacist, but he was relatively unsophisticated as far as the trial went. He did a very good job on direct, survived cross very well, and then the judge went into him with some questions.

When Judge Porteous finished his questions, I stood up and said, "Judge, may I follow up?" And I remember Judge Porteous's response was, "Nobody follows me up." And I said, "Well, then, Judge, with all due respect, I object. I think you have gone too far with these questions." And it is a little bit of a blur after that, but I recall that he got very incensed. And at some point, we had bench books on the bench, that we had given the judge, big, black binders of documents. He would pick up several of them and threw them like a soccer ball toward me in anger. That was on a Thursday afternoon.

Mr. DAMELIN. He physically threw the binders at you?

Mr. MOLE. Well, I mean, I don't think there was any realistic possibility he would get them as far as I was. It was about the same distance as I am from Mr. Schiff. But whether he was throwing at me, I don't know. But it was in my general direction.

Mr. DAMELIN. Okay. And then what happened after he threw the binders?

Mr. MOLE. You know, it is—it is—it was the end of the day. We stopped court. There was no trial on Friday. It was Thursday afternoon. We came back Monday, and the judge ruled on my objection. He had written an opinion, read it into the record—my objection to his questions, but then allowed me to follow up with the witness, and then we went on to the trial. Over the weekend, no one was willing to stand close to me.

Mr. DAMELIN. You have done a lot of trial work over the years. Has anything like that ever happened to you before?

Mr. MOLE. No, I have made judges angry before, but no one has thrown things at me in court.

Mr. DAMELIN. As the trial concluded, Mr. Mole, did you feel that you had clearly proven your case?

Mr. MOLE. Yes, well, lawyers always feel they do a good job, but I felt we had—it was a slam dunk. I think we had—to use another metaphor, pitched a shutout. I thought it was not a close case. It was a difficult case, long, but I think we had done a very good job.

Mr. DAMELIN. Now, the judge had this case under advisement for quite a long period of time. Is that correct?

Mr. MOLE. Yes, I think almost 3 years.

Mr. DAMELIN. Now, let me ask you this. During the time that this case was under advisement, from July 1997 until the judge issued his opinion in April of 2000, did you know that Mr. Amato and Mr. Levenson took Judge Porteous out to lunch on a number of occasions?

Mr. MOLE. No, I had no knowledge of that.

Mr. DAMELIN. Did you know that Mr. Amato and Mr. Levenson contributed money to Judge Porteous to help pay for some type of intern or externship for one of Judge Porteous's sons?

Mr. MOLE. No one told me that.

Mr. DAMELIN. Did you know that Judge Porteous requested money from Amato and that Amato had given him about $2,500 in cash?

Mr. MOLE. No, I didn't know that.

Mr. DAMELIN. Did you know that Amato had paid about $1,500 for a party to celebrate Judge Porteous's fifth year on the bench?

Mr. MOLE. No, I didn't know that.

Mr. DAMELIN. Okay. And with regard to Mr. Levenson, did you know that he had, in fact, traveled to Washington with Judge Porteous at the end of January 1999, that he traveled to Houston with Judge Porteous in April 1999, that he was in Las Vegas with Judge Porteous in October 1999, and that Levenson and Judge Porteous went on hunting trips together, including a hunting trip to a hunting lodge in December 1999? Did you know that?

Mr. MOLE. No. All of those things were the things I—sort of things I feared were happening or would happen, but had—I had no knowledge of.

Mr. DAMELIN. Would any or all of those things had been important to you to know while that case was under advisement?

Mr. MOLE. Certainly.

Mr. DAMELIN. Okay. Now, at the recusal hearing in 1996, Judge Porteous said that he would let you know if anything ever came up which in his mind might be a cause for recusal? That is in the transcript of the recusal hearing. Now, did Judge Porteous, his secretary, his courtroom clerk, or anyone else ever let you know about any of the above-mentioned events that I just pointed out to you?

Mr. MOLE. No. No one ever informed me of those facts.

Mr. DAMELIN. Now, you got Judge Porteous's decision in April of 2000. What was your reaction when you read that decision?

Mr. MOLE. You know, I was not surprised with the outcome. Some aspects of it were unusual in the remedies that Judge Porteous fashioned.

Mr. DAMELIN. When you say you weren't surprised with the outcome, you had previously said you thought you had pitched a shutout, so what do you mean you weren't surprised with the outcome?

Mr. MOLE. I felt we would lose. I felt that the playing field wasn't level. I didn't have any confidence that we would get what I considered a victory, which was to keep the hospital and sever the relationships between the Liljebergs and my clients.

Mr. DAMELIN. So was Judge Porteous's decision, the one he rendered in April, a loss for you and your client?

Mr. MOLE. A very big loss. He had given the hospital—it is a convoluted story, by my clients own the hospital. It is a nice, large hospital in suburban New Orleans that had previously been owned by the Liljebergs. He had ordered the hospital be given back to the Liljebergs, not a remedy that had even been requested, but it was a valuable hospital.

Mr. DAMELIN. Okay. Now, based on the judge's decision and your understanding of the contingent fee arrangement that Amato and Creely had, approximately how much did they stand to make if Judge Porteous's decision was allowed to stand?

Mr. MOLE. Well, based on their fee arrangement of 11 percent, they were to get 11 percent of the value of the hospital claim. At trial, Mr. Amato and Mr. Levenson's expert valued the hospital in a range of between roughly $50 million and $75 million, so their fee would have been 11 percent of that figure. My math is somewhere between $5 million and $8 million.

Mr. DAMELIN. Okay. Now, did you appeal Judge Porteous's decision to the Fifth Circuit Court of Appeals?

Mr. MOLE. We did. The client and I located a firm who had a good relationship with Lifemark, a Texas firm, Haynes and Boone, who did the lion's share of the work on the appeal, but I participated actively in it.

Mr. DAMELIN. Okay. And the fifth circuit eventually reversed that decision, did they not, Judge Porteous's decision?

Mr. MOLE. Yes, Judge Porteous's decision was, I believe, 108 pages, and theirs was 116.

Mr. DAMELIN. Okay. And was that reversal in the fifth circuit—did you view that as a win for you and your clients?

Mr. MOLE. Yes. It was a resounding win.

Mr. DAMELIN. Okay. Now, an issue has been raised in the course of the hearing so far that the panel of fifth circuit judges that ruled that decision—that made that decision were from Texas and they didn't understand or misinterpreted Louisiana law. How would you respond or how do you—how do you respond to that observation?

Mr. MOLE. Gee, the fifth circuit is a highly respected circuit. Louisiana law is not that unusual. I mean, people use the Napoleonic code, lawyers do, to try to intimidate clients into hiring Louisiana lawyers, but it is not that different anymore. We hired, as a lawyer on our side, Louisiana's foremost expert on the real property transactions, Max Nathan, a lawyer who had taught me in law school. We made the arguments that the fifth circuit accepted under Louisiana law. The fifth circuit handles—it is a three-state circuit, so it handles a very high proportion of Louisiana cases every day, so it knows Louisiana law well.

What else? The judge who wrote the opinion, Judge Higginbotham, is perhaps the sharpest and most respected mind on the fifth circuit. I think he is been considered for the Supreme

Court before. He is a little old now, but he is a very good judge. That just doesn't resonate with——

Mr. DAMELIN. So you don't think that that group of three judges on the fifth circuit misunderstood or didn't understand Louisiana law?

Mr. MOLE. And they also hire very talented clerks from all over the country. They get the pick of the crop, so—I am not even sure that is right that all three judges were from Texas, but I am sure Judge Higginbotham, I think, is a Dallas lawyer originally.

Mr. DAMELIN. Okay. In—in all of your years of practice, Mr. Mole, do you ever recall being involved in a case where an appeals court used such harsh language as the fifth circuit did here in reversing a trial judge's decision?

Mr. MOLE. I only have my own experiences, but I have never seen an appeals court use language like the fifth circuit used to describe the opinion. The thing that does resonate with me is the term they used, "made up out of whole cloth." That pretty much matched my view of what had happened in the district court.

Mr. DAMELIN. Okay, Mr. Mole. Thank you. I have no further questions.

Mr. SCHIFF. Thank you.

Mr. Mole, I would like to ask you a number of follow-up questions. First, as a threshold matter, you came in, you were brought in to the *Liljeberg* case in March, and the case at that time was set for November. Is that right?

Mr. MOLE. That is correct.

Mr. SCHIFF. So you were brought in more than half a year before the trial date?

Mr. MOLE. Yes, that was a problem. We had to scurry to assimilate an enormous amount of history. We succeeded in being able to take a lot of depositions, some that had already been—already been taken, so we did a lot of work.

Mr. SCHIFF. There was a suggestion in questioning yesterday that both you and Mr. Amato and Levenson were all new arrivals on the case prior to the trial, but that wouldn't be correct, would it?

Mr. MOLE. Well, I mean, I—the time period is what it is. I got in, in early April, and he got in, in mid-September. So it is—but we did put a lot of lawyers on it, a lot of paralegals, and spent—you know, I have never had just one case at a time, but I pretty much spent all the time I could on that case for whatever the interval is. And we ended up postponing the trial until June, so that worked out.

Mr. SCHIFF. So you were brought in more than 6 months prior to trial? And Mr. Amato was brought in only about 6 weeks from trial?

Mr. MOLE. That is correct.

Mr. SCHIFF. It would be unusual to bring in new lawyers 6 weeks before a complex trial, wouldn't it?

Mr. MOLE. It was. And the existing Liljeberg lawyers had a long history with the case, and they were all specialists in the areas that they were handling, Don Richard and Doug Draper, who handled the bankruptcy and technical issues.

Mr. SCHIFF. I want to ask you about the recusal hearing. Judge Porteous during the hearing stated that "a lawyer who reasonably believes that the judge before whom he is appearing should not sit must raise the issue so that it may be confronted and put to rest. Any other course would risk undermining public confidence in our judicial system. I cite that so everyone understands that I recognize my duty and obligations and that I am fully prepared to listen."

Did the judge indicate to you that he at least understood the law, in terms of what he was required to do on a recusal motion?

Mr. MOLE. Yes.

Mr. SCHIFF. He knew what the appropriate standard was?

Mr. MOLE. Yes, he seemed to understand, and we certainly briefed it thoroughly. It is a very difficult thing to do, to ask a judge to recuse themselves.

Mr. SCHIFF. When he went on to say, "Yes, Mr. Amato and Mr. Levenson are friends of mine. Have I ever been to either one of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive yes. Have I been going to lunch with all of the members of the bar? The answer is yes."

When the judge made those statements, was he, in your opinion, trying to give the impression that, yes, they were friends, but not unlike every other member of the bar that he had lunch with?

Mr. MOLE. That was my impression.

Mr. SCHIFF. When you pointed out, Mr. Mole—you said, "The public perception is that they do dine with you, travel with you, that they have contributed to your campaigns." The judge responded, "Well, luckily, I didn't have any campaigns, so I am interested to find out how you know that. I never had any campaigns, Counsel. I never had an opponent."

He then goes on to say, "The first time I ran, 1984, I think is the only time when they gave me money." Was it your impression from what the judge was saying that he was making the claim that he had only received money once and that was back in 1984?

Mr. MOLE. In the form of campaign contributions.

Mr. SCHIFF. Now, you were concerned about campaign contributions because that might affect the way he presided over the case, right?

Mr. MOLE. Yes, but I know from experience that campaign contributions are not a reason to ask for a recusal, because in Louisiana, we have elected judges, and the fact that the lawyer has contributed to the judge that he is trying a case to is not grounds for recusal. But in Judge Porteous's case, he was a Federal judge. All I had to work with was the fact that there are public campaign records that told me that Jake Amato and Lenny Levenson had given him some money, so I raised that.

Mr. SCHIFF. Now, all you had to work with was the campaign cash issue, because you were unaware of the fact that Mr. Amato and his partner had given somewhere between $10,000 to $20,000 in personal cash to the judge, right?

Mr. MOLE. Yes. Part of the way I pitched the recusal—and it was a very difficult thing to word, was, "Judge, you disclose to us, because we don't have records, what the relationship is in full. And if you are comfortable with it, then it will work. And if it is—if you

are not, then I have a point that you need to address." And that was—I was hoping he would make disclosure.

Mr. SCHIFF. Now, I take it that, had you known of the relationship where as a state judge, he would send curators to the Amato-Creely law firm, and they would kick back some of the money from those curatorships to the judge, if you had known of that relationship, that would have been much more significant to you than any campaign contribution, in terms of the recusal motion.

Mr. MOLE. That has all kinds of implications. Yes, that would have been a serious concern. I may have had—that that would have been a serious concern, yes.

Mr. SCHIFF. At another point in the hearing, the judge said to you, "You haven't offended me, but don't misstate. Don't come up here with a document that clearly shows well in excess of $6,700 with some innuendo that that means that they gave that money to me. If you would have checked your homework, you would have found that that was a Justice for All program for all judges in Jefferson Parish. But go ahead. I don't dispute that I receive funding from lawyers."

When the judge said that, he was taking issue with your suggestion or characterization that money had gone to him when, in fact, it had gone to all the judges, right?

Mr. MOLE. That is correct. Yes, I remember that.

Mr. SCHIFF. And he was basically saying you hadn't done your homework, right?

Mr. MOLE. That is—yes. But from the campaign records, all I saw was the number and his name. And it hadn't been properly apportioned, but he was correct. It was a mistake, in fact.

Mr. SCHIFF. Given what—what you know now in terms of the relationship between Mr. Amato and the judge, where over a period of time, he had given the judge thousands of dollars, do you consider it misleading that the judge accused you of not doing your homework for suggesting that he had gotten campaign cash, when, in fact, he had received a tremendous amount of personal cash?

Mr. MOLE. I felt he should have disclosed those things. And I think, in context, it was an omission that was material that he should have made and should have told us, yes, what the financial relationship was and had been. I do think it was a misrepresentation.

Mr. SCHIFF. By suggesting that he had never gotten campaign cash and not disclosing the fact that he had gotten a lot of personal cash, do you feel that he misled you?

Mr. MOLE. Absolutely.

Mr. SCHIFF. The court goes on to say, "I have always taken the position that if there was ever any question in my mind that this court should recuse itself, that I would notify counsel and give them the opportunity if they wanted to ask me to get off. Did the court give you that opportunity?

Mr. MOLE. No.

Mr. SCHIFF. Do you feel that you were deprived of the right to honest services of the judge?

Mr. MOLE. I think my client was, yes. I think my client was mistreated by the system—or by the judge on that level.

Mr. SCHIFF. Now, you mentioned that your client insisted that you bring in Mr. Gardner.

Mr. MOLE. Yes.

Mr. SCHIFF. And this was a step you were reluctant to take?

Mr. MOLE. That is correct.

Mr. SCHIFF. And the reason you brought Mr. Gardner in was you needed to offset the advantage you felt the other party had in bringing in two friends of the judge?

Mr. MOLE. That is correct. And part of the reason—there are a lot of reasons for it, but that is essentially it. We were trying to achieve a level playing field, to get a source of information, yes.

Mr. SCHIFF. And, Mr. Mole, do you consider that a corruption of the system, too, that both you and the opposing party felt they needed to bring friends of the judge in as counsel?

Mr. MOLE. I am sorry. I didn't hear the first part of your question.

Mr. SCHIFF. Do you feel that—that also is a corruption of the system, where in order to have a level playing field or secure some advantage, that either you or the other party or both have to bring in friends of the judge as counsel on the case?

Mr. MOLE. I do. It was deeply offensive to me as a lawyer that the case depends on something other than the facts and the law.

Mr. SCHIFF. Now, you knew by reputation that Mr. Gardner had a relationship with the judge, was a friend of the judge?

Mr. MOLE. Well, once my client said we needed to get someone else who is a friend of the judge, I began looking around and making phone calls again. And I found Mr. Gardner that way. I interviewed him, and that is basically the selection process.

Mr. SCHIFF. Now, were you aware that Mr. Gardner at some point had also given cash to the judge?

Mr. MOLE. No, I was not.

Mr. SCHIFF. My—our counsel made reference to a trip to Las Vegas during the *Liljeberg* case. Were you aware Mr. Gardner had also gone on that trip?

Mr. MOLE. No. Don told me he was quite close to the judge and they would go to dinners where he would provide wine—you know, and entertain the judge, and participate in social events with him. But I didn't know that he had given him money or the extent of how much money he gave him or what he paid for or what the—what the social arrangements were. Frankly, I didn't want to know.

Mr. SCHIFF. During the course of your research for your client to find another lawyer to bring into the case, did other lawyers in the community ever tell you that they were aware of attorneys giving money to the judge?

Mr. MOLE. No one ever told me that. People were always very careful. Some people wouldn't—frankly, wouldn't talk to me about it. When I told him what my problem was, they would say, "I can't talk to you about that."

Mr. SCHIFF. During the—the time when the *Liljeberg* case was under submission, we heard testimony yesterday that Mr. Amato had a conversation with Judge Porteous, a private conversation, in which the judge said, "You had better prove your case, or the fifth circuit will take it away from you." Were you aware of this conversation?

Mr. MOLE. No, I was not.

Mr. SCHIFF. Do you consider it appropriate for the judge and opposing counsel to have a—to have a private conversation about a case that is under submission?

Mr. MOLE. Absolutely. You know, my first job as a lawyer was clerking for an old Irish Federal judge who would never talk to a lawyer on any level if he had a case with them. I don't think ex parte communications are proper, certainly not about the case itself.

Mr. SCHIFF. I just want to make sure I have heard your original answer correctly. So your view is it is improper to have that kind of ex parte contact?

Mr. MOLE. Absolutely.

Mr. SCHIFF. And how do you—in the context of the *Liljeberg* case, how would you interpret a statement, "You had better prove your facts, because otherwise the fifth circuit will take it away from you"?

Mr. MOLE. I think you are asking me to interpret someone else's thoughts. But with that statement, I would interpret it as the judge was concerned that what he did was supportable by a record so that it wouldn't be reversed on appeal. And, you know, there was a sense in the trial that I was straining to make that impossible, to make a record that couldn't be supported—a ruling for the Liljebergs. So I think there was some sense that it was going to be a difficult thing for the judge to do.

Mr. SCHIFF. Can you explain that, though? You know, what I think is kind of perplexing to us is the idea that the judge has to struggle to reach a decision that the court of appeals can uphold. You said that it—it was—you were straining to demonstrate during the trial facts or bring out facts that would not allow a judgment to be held. Can you explain what you mean by that?

Mr. MOLE. Well, for example, on the hospital claims, the Liljebergs have lost their hospital, and my client had bought it at a foreclosure sale. And they sued my client in a posture as a plaintiff for the value of the hospital. And their expert witness was—I felt we had destroyed him on cross-examination. His opinion as to the value of the hospital was unsupported and foolish.

And that meant the judge, in my opinion, knew that if he gave the $75 million as an award for the loss of the hospital, there was no evidence or even expert opinion to support that. And yet—and when he wrote the opinion, he got around that by simply ordering us to give the hospital back to the Liljebergs, something that is totally unsupportable, but that is—that was my objective, is to make the record so bulletproof there was no way to support any result other than what we thought was appropriate.

Mr. SCHIFF. Now, the remedy of giving the hospital back to the opposing party, was that a remedy that was asked for in the litigation?

Mr. MOLE. That was the most stunning part of the opinion. No, it wasn't even requested by any party that I remember. It was really surprising.

Mr. SCHIFF. And was the first time that you learned of this when the opinion came out?

Mr. MOLE. I remember very well turning to that page and saying, "This is—holy cow. This is really unusual."

Mr. SCHIFF. So during the litigation, opposing counsel and the opposing party were seeking damages, but in the judge's order, the judge awarded the hospital to the other party?

Mr. MOLE. Yes.

Mr. SCHIFF. And at no time in the pleadings or in arguments of counsel did the opposing party actually ask for that remedy?

Mr. MOLE. To my recollection, no. We were so—I was totally stunned and surprised by that particular aspect of the opinion.

Mr. SCHIFF. Did you ever learn beyond your suspicions why Amato and Levenson were brought in?

Mr. MOLE. Only from these proceedings, from the subsequent proceedings. I testified in the fifth circuit in that proceeding with—the fifth circuit's judiciary commission, or whatever the term is, investigated and made a recommendation to this body. And I had the same sort of questions you have asked that suggested these things have happened, but other than that, I have no direct knowledge of them.

And I testified in the grand jury hearings, but I don't believe there is any suggestion there.

Mr. SCHIFF. Just one last question before I turn it over to my fellow colleagues. You mentioned that you weren't surprised by the outcome in the case. What was it about the nature of the trial or the—the judge's conduct of the trial that led you to believe you were going to lose in the end, notwithstanding your feeling about the merits?

Mr. MOLE. You know, after trying a lot of cases, you just get a feeling when it—it is hard to isolate the factors, but there was the reputation that I had learned of before trial.

Mr. SCHIFF. And what reputation are you talking about?

Mr. MOLE. Of the relationship between Judge Porteous and these two lawyers. Judge Porteous came from a state court bench. He had been a state court judge in—in Jefferson Parish, which has a history of corruption. So that confirmed or reinforced my concern about a corrupt result.

The attitude of the lawyers, the flow of the trial, you know, Judge Porteous is a strong personality and a good trial judge, in the sense that he knows the rules of evidence. He is decisive. So I can't say the trial made me feel like he was leaning on me, but nonetheless, I felt just an instinct that, you know, this is—this is—I know where this is going to end up, and my remedy is going to be in the court of appeal.

Mr. SCHIFF. Thank you. That is it for me.

Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Mole, you—in response to questions from Mr. Damelin and from the Chairman, you indicated you believe that Judge Porteous had a duty to disclose during the hearing on your motion that he recuse himself of the payments that he had received from the attorneys on the other side. And I presume—perhaps you answered this. I presume that as this case drug on for a long period of time after the case was tried and these other payments were received, I pre-

sume you felt that he would have had a duty to have disclosed that to the parties in the case, as well. Is that correct?

Mr. MOLE. Yes. While the case was under submission would have been a particularly sensitive period—things happen that affects the outcome.

Mr. GOODLATTE. Doesn't Judge Porteous's failure to notify the parties after these events—after, in fact, he said he would do so—amount to a fraud on the court?

Mr. MOLE. I have never been a judge, so I don't reach legal conclusions, but my opinion is it was a fraud on my client.

Mr. GOODLATTE. And that that is a—that is in—in fact, a part of a judicial proceeding over which he was the presiding officer that would be, in fact, more than a fraud on your client. It would be a fraud on our judicial system, would it not?

Mr. MOLE. Yes, I would tend to agree with you, yes, but it is not my decision.

Mr. GOODLATTE. What was your reaction when you read Judge Porteous's opinion in the *Liljeberg* case?

Mr. MOLE. You know, I remember where I was when I read it. I was in court to try another case in Jefferson Parish, and somebody brought it over to me, before BlackBerries. I think this was in, what, 2000—yes, 2000. And I remember flipping through it, standing there and saying, "Jeez, he hit us there, he hit us there, he hit us there," so there were a number of claims. It was a very big case. And when I got to the decision on the—on the hospital, my reaction was, "Well, that is good. This is so off-the-wall it is going to be easier to shoot at the whole opinion on appeal. This is so unbelievable as a result, that he would simply take the hospital and give it back to the Liljebergs. I have to look at this, but I don't think there is any support to that."

Mr. GOODLATTE. But did your original concern about his relationship with the attorneys and your motion to have him recuse himself come back to mind, as you read that opinion?

Mr. MOLE. You know, I am—I am a trial lawyer, so I am only result-oriented. At that point, I was focused on, "Okay, let's get on to the appeal." I put all that time in.

Mr. GOODLATTE. Knowing what you know now, which is more than what you knew then, about the relationship between the judge and the attorneys, do you believe that the decision was based solely on a reasonable interpretation of the relevant law? Or do you think it was influenced, at least in part, by his relationship with others?

Mr. MOLE. I think it is the latter. You know, yesterday, I watched in the conference room as Mr. Amato testified. And, you know, I heard all those facts, but hearing Jake say them, it sort of took my breath away.

Mr. GOODLATTE. Were you familiar with the conversation that Mr. Amato testified to yesterday about his conversation with the judge in which he basically said, "You had better make your case, or the fifth circuit will take it away from you"?

Mr. MOLE. You know, that rang true, from based on—on what I saw and believe.

Mr. GOODLATTE. Were you surprised or concerned about the length of time it took the judge to decide this case, almost 3 years

from the time you went into court until he rendered an opinion? Is that common?

Mr. MOLE. No, it was very unusual. It was very hard on my client. But it was always puzzling as to why it was taking so long, because that didn't benefit anyone.

Mr. GOODLATTE. So were there any efforts made to determine—you know, to contact the court and ask the judge, "Why are you taking so long to render an opinion?" Or were you worried that that might have an adverse effect on his decision?

Mr. MOLE. You are always careful about contacting a judge who has got your case in his hands. I called Don Gardner, the lawyer we had hired, and said, "Do you know what is going on? Have you seen the judge?" And his reaction was, "Don't know. He is taking a long time. It is a hard case."

Mr. GOODLATTE. When you retained Mr. Gardner, Mr. Gardner was paid a retainer of $100,000——

Mr. MOLE. That is correct.

Mr. GOODLATTE [continuing]. Was that based against any hourly work or simply based upon him showing up in court and doing what you ask him to do during the court of the trial?

Mr. MOLE. That was a retainer that he was going to keep no matter what.

Mr. GOODLATTE. And did he have any contingency arrangement?

Mr. MOLE. Yes, there was—his fee went up, as the result got better for us, to a maximum of $500,000. And part of my thinking on agreeing to that was, I wanted to make him have an interest in the case, because I wanted to be able to trust him to be interested in the outcome when he became involved. And I was hoping that pressure from both sides, of having friends on both sides would cause the judge to step aside. There was also a payment that Don would get if the judge did recuse himself.

Mr. GOODLATTE. Now, you said that, during the trial, Judge Porteous on several occasions examined or cross-examined your witnesses after you had put them on and after the Liljeberg attorneys had questioned those witnesses.

Mr. MOLE. That is correct.

Mr. GOODLATTE. That is not entirely unusual. Judges do ask questions in cases, don't they?

Mr. MOLE. Absolutely. And he did—he did that to at least one of the Liljeberg witnesses that I recall, laid into him pretty well. He has a strong personality.

Mr. GOODLATTE. I think that is all the questions I have, Mr. Chairman. Thank you.

Mr. SCHIFF. The gentleman yields back.

Ms. Jackson Lee?

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

And, Mr. Mole, thank you for your presence here. Some of the questions I may pose may have already been answered, but let me try to sort of lump them together and pose a series of questions to you.

First, let me ask you this. Did you ever give anything to Judge Porteous, any—anything, a gift?

Mr. MOLE. No, I have never given him anything, never taken him to lunch, never——

Ms. JACKSON LEE. Did you ever—did you ever take him to lunch?
Mr. MOLE. Never.
Ms. JACKSON LEE. Did you ever give him cash?
Mr. MOLE. No.
Ms. JACKSON LEE. Did you ever go hunting with him?
Mr. MOLE. No.
Ms. JACKSON LEE. Would you ever give things of value of the nature that I just asked to a judge, period, or if you had a case before he or she?
Mr. MOLE. No. I have contributed to judges' campaigns, but that is the limit of what I have done with a judge.
Ms. JACKSON LEE. And you had a case before him. Could you just—the case involved what issue? The case that you had before him involved what issue?
Mr. MOLE. Before Judge Porteous?
Ms. JACKSON LEE. Yes.
Mr. MOLE. It was a very old dispute. The Liljebergs are a family in New Orleans. They are originally pharmacists. They obtained a license to build a hospital in New Orleans in the suburbs in the early 1980's, and they didn't have the money or the expertise to build or run it, so they hired Lifemark to build it, to finance it, and then Lifemark leased the hospital from them, and they had a contractual arrangement with Lifemark to run the pharmacy in the hospital for a profit. And then they had a mortgage on the hospital that was held by Lifemark.
And so all those relationships went bad almost immediately. The litigation began in 1987 in state court over pharmacy payments. The Liljebergs got into other financial trouble with other lenders in the 1980's and early 1990's and lost their hospital to Travelers, who had financed their medical office building. So by the time we got to trial, the litigation was over the loss of the hospital, which they blamed on my client.
Ms. JACKSON LEE. Which is Lifemark?
Mr. MOLE. Lifemark. And over how much money Lifemark owed them for running the pharmacy. And the claims there varied between—I think the judgment value of Judge Porteous's judgment was about $15 million. The Liljebergs sought up to $30 million or $40 million.
Ms. JACKSON LEE. So this was a case long in brewing and very important and very complex?
Mr. MOLE. Yes.
Ms. JACKSON LEE. A lot of documentation, a lot of work that would go into it for your preparation?
Mr. MOLE. Absolutely, yes.
Ms. JACKSON LEE. And I understand that, in the course of working on this case, there was a decision to hire Don Gardner. And forgive me if you have answered this, but I just want to try and reinforce the point. How much was Mr. Gardner paid for simply entering into the contract?
Mr. MOLE. One hundred thousand dollars.
Ms. JACKSON LEE. And it was a complicated case. Could you point out to any precise expertise that Mr. Gardner had for this case?
Mr. MOLE. None.

Ms. JACKSON LEE. And did he assist you, did he examine any witnesses?

Mr. MOLE. He did no work at trial. I talked to Don quite a bit. You know, he gave me some insight into Judge Porteous's personality and likes and dislikes that might help us with witnesses and how we pitch certain issues, which was helpful.

Ms. JACKSON LEE. But minimal?

Mr. MOLE. Yes.

Ms. JACKSON LEE. A minimum. Do you think that your clients were influenced—or let me just ask this. Did Mr. Gardner have a relationship with Judge Porteous?

Mr. MOLE. Yes.

Ms. JACKSON LEE. Do you think your clients had any understanding of that? And was there some consideration of that fact?

Mr. MOLE. I would say that is the only reason he was hired.

Ms. JACKSON LEE. Would you think that the value of Mr. Gardner's services—and let me clarify that or qualify that by saying this is not a trying of Mr. Gardner. I am sure that he is a well respected lawyer. But let me try to find out, was the compensation equal to the services rendered?

Mr. MOLE. You know, it was a risk taken by him to get involved, and it was a risk taken by my client to pay him that much money. I don't think the fee was unearned in that sense. I think it was—it was earned. A difficult situation, and I am not—you know, not happy about it.

Ms. JACKSON LEE. Let me try to put it in a different way so that—certainly, counsel can provide a variety of support, but did—did the—the level of work, intensity of work equal to the purpose or for his being retained?

Mr. MOLE. Well, in a sense, Ms. Jackson Lee, Don is a very active lawyer. He is the kind of guy who is in court every day, who has a dozen files in his briefcase, and has lots of people in the middle of divorces who want his constant attention. I will say this for him: He was very diligent in being in court and being available and being supportive. You know, I like him, enjoyed his company, but he had to give all that up, so I don't know how much in fees he lost and how much in clients' goodwill he lost, but it was worth—worth it to my client to pay him that much to give that up.

And so, I mean, the bargain was what they made, and, you know, I wouldn't—I wouldn't say the fee was unearned. I think he—he gave us what we asked for. And——

Ms. JACKSON LEE. But it was a decision of the client and not of yours?

Mr. MOLE. I ultimately went along with the client, but if I hadn't agreed to do it, they would have found another lawyer. I would have lost the case.

Ms. JACKSON LEE. Did Don Gardner ever tell you that he saw Amato's partner, Creely, in Las Vegas with Judge Porteous at his son's bachelor's party?

Mr. MOLE. No, I didn't know about that.

Ms. JACKSON LEE. That doesn't ring a bell?

Mr. MOLE. No, it does not.

Ms. JACKSON LEE. If you had known that, would that have been important to you at the time?

Mr. MOLE. You know, I wanted to know who was paying for it.

Ms. JACKSON LEE. The idea of having a team on the other side of the case that may have had a longstanding relationship, you practices for a number of years—I am sure you have practiced in state and local courts, as Federal courts, rather. How much of a disadvantage and how injurious is that to the justice system to have potentially individuals in the opposition that may have had a financial relationship with the decider?

Mr. MOLE. You know, that is a very difficult and a very big question. You know, as a lawyer, I have practiced law all around the country and in Puerto Rico, tried cases, anyway. And you visit courthouses where you don't know anybody, and you walk in, and everybody else knows everybody else, and you know the judges have—and even in New Orleans, I would go into courthouses where the judges know the lawyers, but they don't know you.

And that is normal. That is human relationships, and you live with that, and I know how to handle that. But if—you know, and judges socialize, and I think they—you know, they socialize with lawyers. It is natural. And it is a good thing.

But if there is a financial relationship, you sort of have to trust the judge to disclose that or to withdraw and—and draw his own boundaries that make the system work.

I can deal with social relationships. You know, I can get to like people or get them to like me or not. And I can trust the system that way. But if it is a financial relationship, I can't work with that. You know, I just need to have the system work the right way.

Ms. JACKSON LEE. Mr. Chairman, this is my last question. But, Mister, you sought a recusal, did you not?

Mr. MOLE. Certainly did.

Ms. JACKSON LEE. And were you successful?

Mr. MOLE. No, we lost.

Ms. JACKSON LEE. And what was the final result of the case in the—in the trial court?

Mr. MOLE. We lost. You know, it was—there were many aspects of the case. We lost every one big.

Ms. JACKSON LEE. And as a—we always have a special affinity for the case we are trying. But as a seasoned lawyer, do you think you had some aspects of your case being meritorious?

Mr. MOLE. You know, I watched Jake yesterday say he thought he won. And every lawyer thinks, you know, they are great. It is the nature of the beast. And my wife has to deal with that.

But I truly think we pitched a shutout, that it was a silly case and we should have won, and it was fueled by something other than, you know, facts and law.

Ms. JACKSON LEE. And you don't think because you were the defense in a plaintiff's oriented court system that it might have been that biased, plaintiff versus defense, big guys versus the little hometown guys?

Mr. MOLE. There may have been some of that. But, you know, I find in commercial litigation you—you find less of that. These are two business interests that were, you know, going at it head to head. And the Liljebergs were a smaller entity, but that may have been part of it.

Ms. JACKSON LEE. So you were in a lopsided situation?

Mr. MOLE. Yes.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. SCHIFF. The gentlewoman yields back.

Mr. Lungren?

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Mr. Mole, for many—many years, I have introduced legislation to allow peremptory challenge in the Federal system. If there had been a peremptory challenge, you would have had a different judge, wouldn't you?

Mr. MOLE. I certainly would have used it.

Mr. LUNGREN. Since you don't have a peremptory challenge in the Federal system, what is your recourse in a trial where you believe the judge may not give you a fair hearing?

Mr. MOLE. Well, you could make a motion to recuse. And then you—failing that, you make a very good record.

Mr. LUNGREN. Is there—what information that has been revealed through these proceedings and the proceedings in the fifth circuit—what of that information was—were you aware of at the time you made your recusal motion?

Mr. MOLE. Well, all I knew was that Mr. Amato and Mr. Levenson dined frequently with Judge Porteous, didn't know who paid, although I suspected they paid, and that they socialized, hunting trips, entertainment, out-of-town trips frequently. And I knew that they had a history, as Mr. Amato and Mr. Creely did, anyway, a history as law partners with Judge Porteous.

I learned that Mr. Levenson—and I am still not certain about this—that Mr. Levenson had been Judge Porteous's guest at a Fifth Circuit Judicial Conference, at—I believe at which judges are entitled to take along one non-judge guest, a lawyer, typically, I guess.

And that is pretty much the facts I was aware of, but they weren't admissible evidence. It was all people telling me that stuff.

Mr. SCHIFF. Could you—Mr. Lungren—Mr. Mole, could you pull the microphone down and bring it a little closer to you?

Mr. MOLE. Sure.

Mr. SCHIFF. You want to bring it down even more than that.

Mr. LUNGREN. In making your request, your motion for recusal, was that by way of written evidence or—or written documents that you filed with the court, articulating these—these specific concerns?

Mr. MOLE. Yes. Ordinarily, you know, I haven't done it but once, but ordinarily, when you make a motion to recuse, you submit evidence in the form of an affidavit——

Mr. LUNGREN. Right.

Mr. MOLE [continuing]. From a banker or somebody who says, "I have a relationship," or, "I know their cousins," or something. I had none of that, so I submitted my own affidavit saying, "I have heard these things." And that left me feeling a little exposed.

Mr. LUNGREN. You had none of that because neither the judge nor the attorneys on the other side revealed those things to you, correct?

Mr. MOLE. That is certainly true.

Mr. LUNGREN. Was it your understanding there was any obligation on the part of the judge or the other attorneys to reveal that to you and to reveal that to the court for the record?

Mr. MOLE. As I recall, my legal research and reasoning, when we made the motion to recuse, my focus was on the judge. I don't have any understanding and haven't analyzed what the lawyer's responsibility was. I think that is a whole other ball game with the ethics commission of the Louisiana Bar Association. But my effort was to get the judge to disclose. And I thought he should disclose the details of the relationship.

Mr. LUNGREN. As a lawyer before the Federal courts and the Louisiana bar, would you believe you would have a responsibility to articulate facts that would indicated a personal relationship with the judge if a recusal motion were being made in a case in which you represented one of the parties?

Mr. MOLE. Yes, and I agreed with what Jake said yesterday, that if—if he were going to disclose the facts that he has disclosed to this body, he would have had to disclose them to the Louisiana Bar Association, as well.

Mr. LUNGREN. Yesterday, when I questioned Mr. Amato, I asked him about the conclusions of the Fifth Circuit Court of Appeals, in which they characterized Judge Porteous's ruling and various aspects of it as inexplicable, constructed entirely out of whole cloth, nonsensical, absurd, indicating that there was nothing based in law or fact to justify the decision.

Yet under cross-examination, I believe, Mr. Amato suggested that, well, you have to understand, the appellate judges were from Texas, and they don't understand Louisiana law.

I don't practice in Louisiana. I haven't practiced in Louisiana. What would your response be to that?

Mr. MOLE. I smiled when I heard it yesterday, too. I was listening to the monitor. I think it is laughable. I think the fifth circuit is a fine court. I think Judge Higginbotham, who wrote the opinion, is the most respected member of that court. He is known for his intellect.

Mr. LUNGREN. This is Judge Higginbotham that is known by opinions that he writes for the fifth circuit, correct?

Mr. MOLE. Largely on Louisiana law. Louisiana is a very litigious state. It is one of three states only in the fifth circuit, so it is Mississippi, Louisiana and Texas. So a substantial number of the fifth circuit's opinions are about Louisiana issues. And they have their pick of the law clerks from the law schools.

So they—you know, it is a good court. And the fact that they don't know Louisiana law is ludicrous. And Louisiana law is not that weird. We used to be, and we used the Napoleonic code to scare out-of-state clients into hiring us, but it really isn't that different anymore.

Mr. LUNGREN. Well, truth is a defense. So thank you for that.

Do you have an opinion about the possible reason for the delay in the rendering of the opinion? In other words, did that delay disadvantage either side disproportionately?

Mr. MOLE. It did my client, in the sense that it had to—it had to post a bond. I think we posted a bond of approximately—maybe

$40 million, somewhere plus or minus $10 million, a large bond. So that had to be maintained and interest had to be paid.

Also, one of the key aspects of the decision was not monetary. We sued to sever the relationship, the contract with the Liljebergs. They ran the pharmacy in the hospital. They are very difficult people. And it was very difficult to run a hospital with a pharmacy which supplies all the medications who was hostile to my client, because they have to cooperate to treat patients. And the Liljebergs were always reporting the hospital to various state agencies and trying to make trouble and suing us. This is not the only lawsuit that we had with them, so it was a very difficult relationship, and severing that relationship was very important, and that went on for 3 more years than it had to, in my opinion.

Mr. LUNGREN. So delay didn't work in the favor of your client?

Mr. MOLE. It certainly did not.

Mr. LUNGREN. On page 183 of your testimony for the fifth circuit, you make reference to Mr. Gardner telling you something about Jeep leases and Jeep purchases. What was that in reference to?

Mr. MOLE. At one point, Don told me that Judge Porteous's son had gotten a new Jeep and he didn't know where it came from and he wondered about it. And that is about all I remember about that.

Mr. LUNGREN. Okay. So you don't have any further information——

Mr. MOLE. No facts.

Mr. LUNGREN [continuing]. On that. Is that correct?

Mr. MOLE. That is correct.

Mr. LUNGREN. Any attorney in this room who has been in a courtroom understands the uncertainty when you go before any judge, even a judge you may know well. But going into an environment where a judge has a personal relationship with the attorneys on the other side, where there are actual payments of funds made by those attorneys to that judge, where in the past there are legal proceedings directed to those attorneys by the judge and which result in some financial benefit to those attorneys, and is the source of the funds that they pay the judge for his personal expenses, if you have that information going in, if you would have had that information going in, what would you advise your clients about the prospects of getting a fair trial?

Mr. MOLE. We would say it is extremely doubtful that we will get a fair trial and that, if those facts were exposed to the light of day, that if the judge refused to recuse himself, we certainly had an almost certain chance of getting that reversed by a court of appeal, if the facts were fully known.

Mr. LUNGREN. During the conduct of the trial itself, did you feel you were getting a fair shot?

Mr. MOLE. Yes, I think Judge Porteous conducted the trial in a way that objectively had the feel of a balanced experience. I mean, I didn't—he didn't refuse me the opportunity to put on my evidence. He didn't refuse to sustain my objections when I made them. Some he did, some he didn't, like any judge.

But, you know, just the overall impression I had, knowing everything I knew, and synthesizing that information, my opinion was we were—we were trying it for the—for the court of appeals. We were making a record to survive his judgment.

Mr. LUNGREN. And when you—when you actually had an opportunity to review his opinion in the case, with respect to the findings of fact and findings of law and the conclusions he rendered, what was your observation then?

Mr. MOLE. Well, like I said, I mean, my main—my principal reaction was, "This is good for my client, because it is so one-sided and so unsupportable that it will raise eyebrows and we should be able to get it reversed." And in some of the claims where I didn't feel we had as strong a case as others, I think our case increased in value.

Mr. LUNGREN. But you weren't banking on a Fifth Circuit Court of Appeals that couldn't understand the intricacies of Louisiana law, were you?

Mr. MOLE. No. I had every confidence they would understand that.

Mr. LUNGREN. Didn't you want a Fifth Circuit Court of Appeals that did, in fact, understand the laws and the proper application of the laws in the case?

Mr. MOLE. Absolutely. If you look at our briefs to the fifth circuit, we took that argument on the hospital and put it up front, because it was so unsupportable and so clear what the result should be under Louisiana law. And we went back to French commentators and translated them and sent them to the court. So we layered that brief with all the Louisiana law we had. It wasn't something that concerned us. Those are—those are bright judges, and it is a bright court.

Mr. LUNGREN. You didn't make appeal to Texas law, I take it?

Mr. MOLE. No. I have been in Texas.

Mr. LUNGREN. Thank you very much.

Mr. SCHIFF. The gentleman yields back.

Mr. Cohen?

Mr. COHEN. Thank you, Mr. Chair.

How long have you practiced law in the New Orleans area?

Mr. MOLE. Thirty-two years. The first year was as a clerk to a Federal judge.

Mr. COHEN. So you are aware of the general opinions of the members of the bar about the judiciary in the New Orleans area?

Mr. MOLE. Yes.

Mr. COHEN. Do you believe members of the bar are aware of the issues that have arisen concerning Judge Porteous and this hearing?

Mr. MOLE. Well, it is certainly gotten extensive press coverage. Yes, it is—everybody is aware of it.

Mr. COHEN. And do you—how do you believe these issues that have been written in the press, that have been discussed, that have been aired now on C-SPAN, that are out in the public domain, might affect the attitude of the New Orleans bar toward having a—a sitting judge who is in this situation?

Mr. MOLE. You know, I can't speak for other people. I think it is unfortunate; it reflects bad on the legal community in general in Louisiana, in New Orleans. You know, we have had our problems with judges, mostly on the state court. There have been Federal judges who have been convicted of crimes. And it is—and it is comforting to know the system ultimately works. Here we are today.

Mr. COHEN. Is Judge Porteous still hearing cases?

Mr. MOLE. No, he is not.

Mr. COHEN. How long has he stopped?

Mr. MOLE. I believe it has been a little over a year, but I am not certain. I think at that fifth circuit hearing, after that, he was taken out of active cases.

Mr. COHEN. So that was done by the—was that—that wasn't voluntary?

Mr. MOLE. I think he voluntary stopped hearing criminal and other cases involving the government some time ago.

Mr. COHEN. How about civil cases?

Mr. MOLE. Civil cases, I think he gave up—I am not certain, but I believe it was—the fifth circuit took him out of active work about a year ago, maybe longer.

Mr. COHEN. And is there somebody hearing cases in his stead?

Mr. MOLE. It is a big court, so, you know, I don't know if they have been reapportioned to other judges or—I don't believe there is anybody temporarily holding his—his bench.

Mr. COHEN. Do you know if there has been—there is a backlog of cases in New Orleans? Has it been difficult on attorneys to get cases to trial, more difficult than normal?

Mr. MOLE. I don't believe it has. It is a big bench, and there is a lot of post-Hurricane Katrina work still going on. So it is busy, but I don't think it is—you get a pretty good trial date setting in New Orleans.

Mr. COHEN. I yield back the balance of my time, sir.

Mr. SCHIFF. The gentleman yields back.

Mr. Sensenbrenner?

Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

How many judges—how many trial court judges—federal district court judges in the Eastern District of Louisiana?

Mr. MOLE. I believe there are 16, and there are a number of senior judges, senior—who are active, so it is probably up to about 20.

Mr. JOHNSON. How did the *Liljeberg* case happen to be assigned to Judge Porteous?

Mr. MOLE. The previous Federal judge who had died, Judge Oakley Jones, and his cases were re-allotted, and Judge Porteous got that case, by random allotment, to my knowledge.

Mr. JOHNSON. Did you keep up with the criminal investigation done of Judge Porteous in connection with the events we are talking about today?

Mr. MOLE. I was interviewed and testified to the grand jury. I was interviewed by the FBI and testified to the grand jury. Other than that, I have read the newspapers, because it was—it was known in the public.

Mr. JOHNSON. Do you have any suspicions about why Judge Porteous was not indicted by the U.S. attorney?

Mr. MOLE. I have no knowledge of how that decision was made one way or the other.

Mr. JOHNSON. Do the judges run on a—on—do they run for reelection as Democrats and Republicans? Or is it a non-political race?

Mr. MOLE. Well, they are all appointed by——

Mr. JOHNSON. Excuse me. I am sorry. Gosh, okay, all right.

Mr. MOLE. So we can tell who appointed them, but that is about as far as their politics go.

Mr. JOHNSON. Okay. I am sorry. I am starting to think back to the state court days.

So your testimony is that you have no suspicions about the failure to indict Judge Porteous by the U.S. attorney?

Mr. MOLE. No. You know, I—having been caught up in this sort of by accident, and I have not tried to learn any more than comes my way through this process.

Mr. JOHNSON. Now, the entry of appearance of Mr. Amato and Mr. Levenson was about 6 weeks before trial. Is that correct?

Mr. MOLE. That is my recollection, yes. I think they made their appearance on September 19. They made their application to be employed on September 16 in the bankruptcy court. And the trial was set for, I believe, November 4 or November 6, whichever was a Monday. So that is the math.

Mr. JOHNSON. And this came as a surprise to you, did it not?

Mr. MOLE. Yes.

Mr. JOHNSON. And let me ask you a question about your—your client. Did your client have to expend more money than it would have had to spend had you not had this strong suspicion of a—that you may get home cooked in Judge Porteous's court?

Mr. MOLE. You know, it is impossible to be certain about, but probably.

Mr. JOHNSON. Well, I mean, without—without the plaintiffs having hired Mr. Amato and Mr. Levenson, would it have been necessary for your client to spend $100,000 retaining Mr. Gardner?

Mr. MOLE. No.

Mr. JOHNSON. Were there—are there any delays during the course of this episode that cost your client money, such as the 3-year delay between the—the time that the evidence was in and the time that there was a decision issued by the judge?

Mr. MOLE. That certainly cost money, but I don't know what would have happened if it had taken another path.

Mr. JOHNSON. Well, I mean——

Mr. MOLE. Certainly, all those things were expensive.

Mr. JOHNSON. Well, let's speak hypothetically. If you had won the case—and you are pretty certain it was a slam dunk—if you had won that case, there would have been no need for your client to—to move into the fifth circuit. Is that correct?

Mr. MOLE. That is correct, but the other side may have appealed.

Mr. JOHNSON. Do you have any idea how much the—the appeal to the 11th Circuit cost your client?

Mr. MOLE. I think, in attorney's fees, it was probably close to $1 million between my firm, which was minor on the appeal, and the Texas firm, which was major in that role.

Mr. JOHNSON. Now, with respect to the recusal motion, I think you have testified that there was a short—or there was a hearing on that particular motion that you filed after giving it a lot of thought.

Mr. MOLE. That is correct.

Mr. JOHNSON. And you had never filed a motion to recuse in, what, then 25 years of practicing law?

Mr. MOLE. And haven't since.

Mr. JOHNSON. And how long did the hearing take on this motion to recuse?

Mr. MOLE. Less than an hour.

Mr. JOHNSON. Okay. And this hearing consisted of you submitting an affidavit to the court with hearsay information.

Mr. MOLE. Yes, my hearsay in a brief with the law and argument.

Mr. JOHNSON. Yes. And——

Mr. MOLE. And an oral argument with the judge and opposing counsel.

Mr. JOHNSON. Mr. Amato was there listening during that proceeding?

Mr. MOLE. I believe he was, yes. I don't believe he spoke. It was principally Mr. Levenson who argued the other side.

Mr. JOHNSON. Are you—could you say that Mr.—would it be fair to say that Mr. Amato did nothing to clear up the nature of the relationship that he had with Judge Porteous?

Mr. MOLE. That would be accurate.

Mr. JOHNSON. And Mr. Lungren asked you this question. I am going to just ask it again. You know, well, strike that. Strike that.

What was the reason why Judge Porteous took so long in issuing a ruling in this case?

Mr. MOLE. You know, I am not certain. What I have heard—and it makes sense—is that he did it himself and he didn't have a law clerk who was consistently available throughout the process to understand everything, who could work on it. And, you know, other than that, I could only speculate.

Mr. JOHNSON. Were there any discovery disputes between the parties during that litigation?

Mr. MOLE. Well, pre-trial, no. You know, there were—before I got in the case, there were significant discovery disputes in the record. By the time I got in, things went pretty smoothly in discovery, because everybody was eager to get to trial, and it worked pretty well.

Mr. JOHNSON. So after the time that Amato and Levenson signed on to the case, did the court have an opportunity or did Judge Porteous have an opportunity to rule on any motions that were filed by either party, plaintiff or the defendant?

Mr. MOLE. Yes, we filed significant pre-trial dispositive motions, which were denied, motion for summary judgment. We filed, as I recall, early on, I filed a motion for leave to amend, to restructure the claims so that I could ask for a jury, because that was one way to avoid part of the problem that we had with the judge to get a jury, but that was denied, as well. It would have been very difficult to get a jury because of the bankruptcy jurisdiction, but I tried that angle, as well.

Mr. JOHNSON. Did the findings of fact and conclusions of law on any of those motions that you filed or—excuse me, that were heard after Amato and Levenson made the first appearance—first appearance in the case, was there any judicial ruling that was appealed to the fifth circuit?

Mr. MOLE. None of those, no. Under the Federal practice, you could only appeal once the case is final. The only thing we took to

the fifth circuit prematurely was the denial of the recusal, and the fifth circuit refused my appeal on that, as well.

Mr. JOHNSON. One minute, Mr. Chairman.

Now, the judge ordering a return of the hospital—and, by the way, before I go into that, let me ask this question. Were you surprised by any of the rulings on your motions that the judge made during the period between trial and the time that Amato and Levenson signed on to the case?

Mr. MOLE. No.

Mr. JOHNSON. You didn't feel that any of those rulings were in any way outlandish or unsupported by sufficient evidence?

Mr. MOLE. No, I had—I don't have a clear recollection of the basis for most of them, although I can guess, and, you know, they are the usual pre-trial motions, and I was surprised by the outcome.

Mr. JOHNSON. Now, the judge ordering the return of the hospital to the Liljebergs, what benefit would accrued to Levenson and Amato, to your knowledge, if that ruling had been upheld on appeal?

Mr. MOLE. Their fee arrangement was they received 11 percent of the recovery on the claim for the loss of the hospital. So that would have been between them and the Liljebergs, but if they got the hospital back, the trick would have been to value the hospital—their own experts had valued it at a range between $50 million and $75 million. So if I were them, I would say, "Mr. Liljeberg, you owe me 11 percent of $75 million." And that is what—that is what I think the fee should have been.

Mr. JOHNSON. Were the conclusions drawn from the testimony of—well, strike that. Were the judges questions of your witness—you talked about the judge cross-examining your witness—it was cross-examination, was it not?

Mr. MOLE. Yes. Well, I mean, he questioned them. I felt it was across the line in the cross-examination, but that was my opinion.

Mr. JOHNSON. Leading questions and——

Mr. MOLE. Yes, suggesting the answers and leaning on the witness strongly.

Mr. JOHNSON. Yes. And how many questions do you—did the judge ask during that time period, during——

Mr. MOLE. You know, probably not more than 15, 20 minutes, but Judge Porteous is a good lawyer, so he got it over with quickly, and he got to the point, so he did a good job of questioning. And that is what I wanted an opportunity to follow up on.

Mr. JOHNSON. Were the—any of the—was any of the testimony that that witness, your witness, gave under cross-examination by Judge Porteous cited by Judge Porteous in his ruling on the disposition of the case?

Mr. MOLE. I don't recall. I don't recall that it was.

Mr. JOHNSON. Were the judge's questions, based on your knowledge and experience, unusually partial to the plaintiff's case?

Mr. MOLE. I felt I had a valid objection that they were at the time. But like I said, he did that to one of the—at least one of the Liljeberg's witnesses, as well, so maybe that is just his style, but I wanted the record—like every good lawyer, you want to—you want to get the last word.

Mr. JOHNSON. Was the issue of the judge cross-examining your witness for 10, 15, 20 minutes, was that a subject of the appeal to the fifth circuit?

Mr. MOLE. No, it was not.

Mr. JOHNSON. Were there any other incidents in the—in the trial, during the trial which might have indicated bias or a corrupt intent on the part of Judge Porteous?

Mr. MOLE. Nothing else stands out, Mr. Johnson.

Mr. JOHNSON. Thank you, sir, and I have no further questions at this time, and I will yield back.

Mr. SCHIFF. The gentleman yields back.

Mr. Gohmert?

Mr. GOHMERT. Thank you, Mr. Chairman.

And, again, like Mr. Johnson, I would request a word limit rather than a time limit. It will work better. But thank you.

Mr. Mole, I am curious about a couple of things. But for one, this occurred back around 1997 that you filed a motion to recuse. Are you aware of whether information went out among the local bar in New Orleans about your case and what had occurred in your case?

Mr. MOLE. Yes, I don't know. Certainly, everybody I knew heard me complain about how long it was under submission. The motion to recuse was in October 1996. We tried the case in 1997. I don't think it was that publicly——

Mr. GOHMERT. Do you remember—do you remember about what year you found out that there was money being paid by attorneys for your opponent to the judge that just happened to coincide with, basically, the—based on the number of curatorship cases that were sent to their firm?

Mr. MOLE. I didn't learn of that until the fifth circuit lawyers interviewed me to be a witness in their proceedings, which I believe was about a year-and-a-half ago, maybe 2 years. So I learned that relatively late in the game.

Mr. GOHMERT. I see. So that was not common knowledge then around the bar in New Orleans?

Mr. MOLE. No. I don't think that became common knowledge until the fifth circuit published its—or made public its recommendation that Judge Porteous be impeached.

Mr. GOHMERT. If Judge Porteous were to begin receiving cases submitted again, assigned again by lifting of the suspension by the fifth circuit, other than the firm of Creely, would you know of lawyers around New Orleans who would not be requesting a jury trial on complex cases?

Mr. MOLE. No, I think—you know, I think they would have a problem getting lawyers who were comfortable with him as the only fact-finder.

Mr. GOHMERT. Because one of the concerns I have is that litigants normally are supposed to have a right to either have a trial by jury or a trial by judge. And if one of those two is effectively excluded, then it would seem to be an unfair judicial situation for the people in that district. You understand my point?

Mr. MOLE. Absolutely. And I would certainly ask him not to hear my cases if I went back to Federal court.

Mr. GOHMERT. Or if you had a case assigned back in his court, I know you would look forward to it, but would you go to the court, or would you be requesting a jury in Judge Porteous's court?

Mr. MOLE. I almost always request—I request a jury.

Mr. GOHMERT. I am curious. I know that some terms that are used in the Constitution and in the law have meanings that are relative. One term that is used in the Constitution is good behavior, that the judges both of the supreme and inferior courts shall hold their offices during good behavior. And so I am wondering about—since I have never been a member of the bar in New Orleans. I have been a member of the fifth circuit bar, but not of New Orleans.

I am curious—and never having been before a court lower than the fifth circuit in New Orleans, I am curious, is good behavior considered to be—or include sending curatorship cases to attorney's firms and expecting funds back based on the number of curatorships? Is that considered good behavior in the New Orleans bar, to your knowledge?

Mr. MOLE. Well, that happened, I believe, in the state court bench. But——

Mr. GOHMERT. Well, that is correct. But that, again, was in New Orleans.

Mr. MOLE. You know, I don't—like you said, it is a relative term, and I think it is this body's job to decide.

Mr. GOHMERT. So are you saying that that is a common occurrence? I am wondering, because we had a dissent filed by another Louisiana judge, and just from my experience, it seems like people who engage in the same conduct as someone being charged are often more sympathetic to the one being charged. And so I am just curious how prevalent the practice is and if that is something that is common to your knowledge in the New Orleans bar?

Mr. MOLE. It certainly is not. That would certainly raise eyebrows, and it sounds to me like that something that would be of interest to a prosecuting attorney——

Mr. GOHMERT. Because I——

Mr. MOLE.—U.S. attorney.

Mr. GOHMERT. I am just trying to figure out exactly what the standard is there.

Mr. MOLE. Good behavior.

Mr. GOHMERT. We—this—yes, good behavior. And this—well, the Crime Subcommittee had a hearing in New Orleans a couple years or so ago chaired by Chairman Bobby Scott in which the U.S. attorney said the number one problem in New Orleans before Hurricane Katrina was graft and corruption and the number-one problem in New Orleans after Hurricane Katrina is still graft and corruption. That was his observation.

I was also surprised to find during that testimony—we were at least told in that hearing that it is not uncommon practice for a criminal defense attorney to contact a state judge directly, ex parte, without the prosecutor knowing, and make a case for lowering the bond of a criminal defendant in—in jail. And if the judge is willing to lower the bond to a level that the defendant can make and post and get out of jail, then that judge's court gets a cut of that bond that is made by the criminal defendant.

Somebody like me and others who have been involved in our judicial system in other states were rather shocked by that and shocked to find that apparently that was considered appropriate there in New Orleans. So I am just trying to find the extent to which conduct that apparently is undisputed was considered appropriate behavior, good behavior.

How about throwing books from the bench? You said you have never had them thrown in your direction before. Have you seen them thrown in other lawyers' directions in other cases in New Orleans?

Mr. MOLE. No, sir, I have not. And, you know, I think in Louisiana, we have a reputation for corruption that is unfortunate. And I would disagree that it is our primary problem right now. We have——

Mr. GOHMERT. No, I am just telling you what the testimony was at our hearing.

Mr. MOLE. I just—well, offering my observation, but I think it is certainly bad behavior to take kickbacks from lawyers for assigning them work for the judge——

Mr. GOHMERT. But I don't think it is universally acknowledged that they were kickbacks. Apparently, they just happened to coincide with the number of curatorships that were assigned and be around the $150 initially and then $200 per case. It just happened to coincide directly with the number of curatorships, to my understanding of the evidence before us.

So you—to answer my question, though, you have never seen a judge throw books from the bench before in anybody's direction?

Mr. MOLE. No. I have never experienced that either as a witness or as an object of throwing.

Mr. GOHMERT. Well, and, Mr. Chairman, I am not sure how many cases were assigned after the action was taken against Judge Porteous, but I would request to see if we could get information on how many jury trials compared to bench trials were requested after the time that this information came to light, because I am concerned about the effect on future litigants if the information we take from this hearing were deemed to be good behavior and allowable and Judge Porteous to go back to the bench and resume his caseload. I am wondering if there were already indications that it would have affected litigants' rights to have a bench trial as perceived by the litigants, if the Chair understands my request.

Mr. SCHIFF. I do. And we can try to find out that information.

Mr. GOHMERT. Thank you. And I would yield back.

Mr. SCHIFF. The gentleman yields back.

Mr. Pierluisi?

Mr. PIERLUISI. Good morning, Mr. Mole.

Mr. MOLE. Good morning.

Mr. PIERLUISI. How long have you been practicing in New Orleans?

Mr. MOLE. Thirty-two years.

Mr. PIERLUISI. Have you devoted a substantial amount of your time to trial work?

Mr. MOLE. Yes.

Mr. PIERLUISI. That is the main line of your practice?

Mr. MOLE. I would say my work has been about 95 percent litigation.

Mr. PIERLUISI. And you appear on a regular basis before both state courts and Federal courts?

Mr. MOLE. That is correct.

Mr. PIERLUISI. To your knowledge, what are the—what is the—the entity that imposes the code of ethics in—in Louisiana?

Mr. MOLE. The Louisiana bar.

Mr. PIERLUISI. For lawyers?

Mr. MOLE. On lawyers, it is the Louisiana Bar Association.

Mr. PIERLUISI. How about the——

Mr. MOLE. I think the Supreme Court enforces it.

Mr. PIERLUISI. And the Supreme Court enforces it?

Mr. MOLE. Yes.

Mr. PIERLUISI. And how about the U.S. district court in Louisiana? Does it have its own set of local rules?

Mr. MOLE. No. For some cases, it adopts by reference to Louisiana rules. And in cases in Federal jurisdiction, it adopts the model rules of ethics.

Mr. PIERLUISI. In this particular case that we are concerned about, the *Lifemark-Liljeberg* case, what set of ethics rules were applicable, to your knowledge?

Mr. MOLE. I really haven't looked into that, Mr. Pierluisi. I am sure they are implicated, but I don't know the specific rules. I mean, it is such a general problem.

Mr. PIERLUISI. This was a diversity case?

Mr. MOLE. No. The basic jurisdiction arose under bankruptcy.

Mr. PIERLUISI. I see.

Mr. MOLE. And it may have been diverse citizenship, but that was not the basis for jurisdiction in most of the controversy.

Mr. PIERLUISI. Any ethics rules, other than the Louisiana rules, applying here to your—to the best of your knowledge?

Mr. MOLE. Not to the best of my knowledge. I think it would be Louisiana's rules.

Mr. PIERLUISI. Louisiana's rules, okay. Now, given that you have been practicing so long, is it customary in New Orleans for trial lawyers to go out to lunch or dinner with Federal judges and pay for those meals?

Mr. MOLE. I don't know how frequent it is. I know it does happen. You know, nobody raises any eyebrows at that.

Mr. PIERLUISI. Is it customary for trial lawyers to go out to lunch again or dinner with a Federal judge who is at the time presiding or overseeing a case that those trial lawyers are handling and, on top of it, pay for the bill?

Mr. MOLE. You know, I certainly have never done that. I don't know that it would raise eyebrows. I think every judge sets his own boundaries on those issues. So I really—I am really not competent to give you a general answer on that.

Mr. PIERLUISI. Is it customary—said differently, is it customary in New Orleans for trial lawyers to have ex parte contact with Federal judges while a case is pending?

Mr. MOLE. No, that is forbidden.

Mr. PIERLUISI. Is that the line where you—that you don't cross over?

Mr. MOLE. Absolutely.

Mr. PIERLUISI. Is that the line that most lawyers and trial lawyers in New Orleans avoid crossing?

Mr. MOLE. It is the line you are supposed to avoid crossing in state and Federal court everywhere I have ever practiced.

Mr. PIERLUISI. To your knowledge, is there any ethics rule prohibiting ex parte contact between counsel and a sitting judge or a trial judge?

Mr. MOLE. I know it is forbidden. I don't know the—the rule. Yes, it is forbidden. I don't know—you know, it is like the Ten Commandments. I don't know which—which number it crosses, but it is certainly something you shouldn't do.

Mr. PIERLUISI. Now, you testified earlier that you were uncomfortable about engaging counsel—I believe Gardner—in your case. And you explained that your client was, you know, insisting upon it. Is that a fair way of summarizing what you said to us before?

Mr. MOLE. Yes.

Mr. PIERLUISI. Now, had you done something similar before in any case, meaning bring in a counsel primarily because of his friendship or acquaintance with the trial judge?

Mr. MOLE. Certainly never in Federal court. When I have practiced in courthouses outside of the New Orleans courts, I will hire local counsel who may be local and know everybody. It is just because I—I don't know the court's customs and practices, and I want someone who does.

Mr. PIERLUISI. Is it customary in New Orleans for trial lawyers appearing before the Federal court there to bring in counsel, again, for the primary reason of, you know, having a friend of the judge sitting at counsel's table?

Mr. MOLE. Absolutely not. I think most judges would be offended if you did that, certainly on our Federal bench.

Mr. PIERLUISI. By the way, this case, *Lifemark-Liljeberg,* is over with, and it has been over with now for many years, right?

Mr. MOLE. Yes.

Mr. PIERLUISI. Sitting here today, you have no interest—your client—even your client has no interest in what you are telling us?

Mr. MOLE. That is correct. I have checked with them, and they have——

Mr. PIERLUISI. No financial impact, no——

Mr. MOLE. No, none.

Mr. PIERLUISI. Is it fair for me to say that your interest in appearing here today is simply to cooperate with this Task Force and this proceeding?

Mr. MOLE. That and the subpoena that I got. [Laughter.]

Mr. PIERLUISI. That in and of itself encourages some cooperation. But apart from that, I mean, you have no stake in this.

Mr. MOLE. None.

Mr. PIERLUISI. And your former or existing client, Lifemark, doesn't either.

Mr. MOLE. They don't even own the hospital anymore.

Mr. PIERLUISI. When you learned about the ex parte contacts between your opposing counsel and Judge Porteous, after the case was tried and it was just waiting for his decision, how did you feel about that?

Mr. MOLE. Well, I didn't know about what has been disclosed here until after the case was decided. But when I learned of Judge Porteous'—the extent of his relationship with Jake Amato and Bob Creely and Lenny Levenson, it confirmed my suspicions, yes.

Mr. PIERLUISI. To your knowledge, did Judge Porteous have ex parte contacts with either Amato or Creely or Levenson without Gardner being present?

Mr. MOLE. I don't know. Like I said, I have tried to stay out of learning any more than I already know.

Mr. PIERLUISI. If any such contact happened, what do you feel about it? What do you believe?

Mr. MOLE. I think it would be my duty to disclose it to the appropriate ethical bodies.

Mr. PIERLUISI. I have no further questions. Thank you.

Mr. MOLE. You are welcome.

Mr. SCHIFF. The gentleman yields back.

At this point, Mr. Westling, you have an opportunity to question the witness.

Mr. WESTLING. Thank you, Mr. Chairman.

Mr. Mole, good afternoon, or not quite afternoon, I guess.

Mr. MOLE. We have got 5 minutes left.

Mr. WESTLING. Five minutes left. I will try to use them wisely.

You have testified in two prior occasions relating to this matter. Is that correct?

Mr. MOLE. Under oath, yes.

Mr. WESTLING. One was before the grand jury and the other before the fifth circuit panel, correct?

Mr. MOLE. That is correct.

Mr. WESTLING. And in all of that testimony, you have always indicated that you felt the way that Judge Porteous handled the trial was professional and as a gentleman and was polite, with the one exception of the book incident we have heard about. Is that correct?

Mr. MOLE. That is correct. And even that, I took some pride in being able to get him so angry at me that he threw something at me. That is a—that is a——

Mr. WESTLING. And just to kind of close up on that issue, you have told us that, when you came back the next week, the judge not only ruled in a manner on the record that seemed well thought out, he overruled your objection, but gave you the opportunity to do what you had been asking to do. Is that correct?

Mr. MOLE. That is correct. That is correct.

Mr. WESTLING. And he seemed to have calmed down about the whole situation?

Mr. MOLE. Yes.

Mr. WESTLING. Okay. And I assume it is fair to say, in all the numbers of years you have been in front of Federal judges in the city of New Orleans, that this is not the first time one has lost their temper with you?

Mr. MOLE. No. And even outside of New Orleans.

Mr. WESTLING. And you also talked about Judge Porteous and his questioning of witnesses following on the questions of, in many cases, the cross-examining attorneys for the Liljebergs, correct?

Mr. MOLE. Yes.

Mr. WESTLING. Okay. And he would follow up with his own questions. And at times, you felt that went further than you would have preferred.

Mr. MOLE. That is correct.

Mr. WESTLING. And that is because you thought it was undoing work you thought you had done well. Fair statement?

Mr. MOLE. Work that I and the witness had both done well, yes.

Mr. WESTLING. But in each case, he didn't cause the witness to say anything that wasn't true, did he?

Mr. MOLE. I don't recall the details, but I felt he had pushed the witness to points that were not fair without any follow-up.

Mr. WESTLING. Okay. And so what was appropriate was a follow-up, not exactly what he was doing in questioning?

Mr. MOLE. And that is what got him angry.

Mr. WESTLING. All right. And so as a practical matter, this was not the first, nor will it be the last time that you have had a Federal judge get involved in questioning, particularly during a bench trial?

Mr. MOLE. Certainly not.

Mr. WESTLING. Now, you have talked to us about—just a few more things about the—the conduct of the trial. He made evidentiary rulings, correct?

Mr. MOLE. Absolutely.

Mr. WESTLING. He showed a facility with the rules of evidence that is not typical in a trial judge. Do you think that is a fair statement?

Mr. MOLE. I have said it before: Judge Porteous is a good trial judge. He knows the rules of evidence. He has got a good command of the courtroom. And you want a judge who is decisive and doesn't dither and knows what he is doing when he makes rulings.

Mr. WESTLING. And in this particular case, that kind of a judge was helpful, don't you think?

Mr. MOLE. It makes the trial go smoothly.

Mr. WESTLING. Okay. And so this was generally a smooth trial?

Mr. MOLE. Yes. Tense, but smooth.

Mr. WESTLING. And when you say that, intense, I mean, this was a very longstanding dispute between two parties that were not afraid to litigate. Is that a fair statement?

Mr. MOLE. They were—there was a lot of animosity. It was extremely intense. And a lot of emotion between the parties.

Mr. WESTLING. And, in fact, it had a long history before you were involved.

Mr. MOLE. Litigation began in 1987.

Mr. WESTLING. 1980——

Mr. MOLE. And the contractual relationship began in 1983.

Mr. WESTLING. Okay. So the relationship went back to 1983, the litigation back to 1987.

Mr. MOLE. That is correct.

Mr. WESTLING. And so this is coming to trial, really, after 10 years of fighting.

Mr. MOLE. Yes.

Mr. WESTLING. And Judge Porteous moved it through the trial phase expeditiously?

Mr. MOLE. I would agree with that.

Mr. WESTLING. All right. And you got a trial in a case that had been wanting a trial for quite a while.

Mr. MOLE. It was essential to my client to get through that.

Mr. WESTLING. All right. Now, let's talk a little bit about the lawyers that are in the case when you enter, which I understand was in the early part of 1996, if I have my dates right.

Mr. MOLE. I made my appearance in April.

Mr. WESTLING. Okay. So at the time, Don Richard is the principal lawyer for the Liljebergs?

Mr. MOLE. Don seemed to be the lead lawyer.

Mr. WESTLING. Okay. And he remained involved in the case through the trial, correct?

Mr. MOLE. Yes.

Mr. WESTLING. And he continued to play a substantial role in the trial?

Mr. MOLE. Yes. In fact, Don was engaged until the very end.

Mr. WESTLING. Okay. And Don is a lawyer who at the time was practicing in a small practice.

Mr. MOLE. Yes. Don is—he, at one point, was my partner at a previous firm.

Mr. WESTLING. Okay. He is a good lawyer.

Mr. MOLE. Don is very well respected, represents the Archdiocese of New Orleans, the Baptist Theological Seminary. He seems to have an avenue to God-related work.

Mr. WESTLING. Okay. And so he stayed involved. And what you know at this point is that, at some point, Amato and Mr. Levenson are brought in, and they work with Don on the case.

Mr. MOLE. Yes, and there were other lawyers involved, as well as Don, and—at the time they came in.

Mr. WESTLING. And you all had a team, as well, I assume?

Mr. MOLE. Yes, I brought in two young partners—maybe they were still associates at the time—a couple of paralegals, staff of people that I routinely worked with.

Mr. WESTLING. Okay. And so there is a lot of legal firepower on each side of this case?

Mr. MOLE. Yes.

Mr. WESTLING. A lot of documents, a lot of issues?

Mr. MOLE. Big case, lot of issues.

Mr. WESTLING. Mr. Amato and Mr. Levenson are brought in, but by the time that happens, are you confident you are going to keep that November trial date, or is that questionable?

Mr. MOLE. Well, the November trial date was an attractive thing to my client, to me. But we did ask to get it continued. In fact, the judge, I think, volunteered that, because of the recusal. But we were—Judge Porteous, every time we saw him in status conferences and whatnot, reinforced that he was not prone to move it. He wanted to get the trial over with quickly, which was good.

Mr. WESTLING. But as a practical matter, while they came in late against a trial date, the questionability was, would that be the real trial date. Fair statement?

Mr. MOLE. We were pretty certain of it at the time. The only thing that pushed it back, to my recollection, was the motion to recuse caused Judge Porteous to suspend everything, and so we

could get that over with and get it behind us and I could get to the fifth circuit and back.

Mr. WESTLING. All right.

Mr. MOLE. That—and I think the fact that we got to June was a product of that.

Mr. WESTLING. But as a practical matter, it was set within the year and it went to trial within the year, correct?

Mr. MOLE. That is correct. And we did a lot of things in between.

Mr. WESTLING. Now, you are unsuccessful in getting the fifth circuit to review the recusal issue. And you have some discussions—and I am not looking to go into the discussions with your client—but that leads you to determine that it is appropriate—or it makes sense, may be a better way to put it—to go out and look for another lawyer in the New Orleans community to—I think your words are—level the playing field.

Mr. MOLE. That was something I consulted with my client about. And jointly we decided to go ahead and do that, yes.

Mr. WESTLING. Now, there are other—well, at the time that Judge Porteous is handling this case, he has been on the Federal bench only a few years. Is that right?

Mr. MOLE. I believe he was—took the bench—the Federal bench in 1994.

Mr. WESTLING. All right. And he had come from Jefferson Parish?

Mr. MOLE. Yes, he had been a state court elected judge.

Mr. WESTLING. All right. And as a practical matter, often when you go over to Jefferson Parish, there is some discussion about bringing other lawyers into cases, is there not?

Mr. MOLE. Frequently, yes.

Mr. WESTLING. All right. So when you learned Judge Porteous has the case, you are thinking of him from a state judge perspective. Is that a fair statement? You don't know him as a Federal judge?

Mr. MOLE. I didn't know him as a state court judge, either. I had never had a case with Judge Porteous in state court or Federal court. The fact that he had been on the Jefferson Parish bench was one of the factors that we considered.

Mr. WESTLING. So you go out and you—you look for Mr. Gardner. And by the way, was there a relationship that you had in the past with any one that was involved in judging the case? I think there was a magistrate in this case. Was he a former law partner of yours?

Mr. MOLE. You have got to be speaking about Jay Wilkinson, who was a partner of mine. I don't know that we ever brought any issues to him as a magistrate, but, yes, he had been a partner.

Mr. WESTLING. But he was the magistrate assigned to the case. Is that correct?

Mr. MOLE. I think you are right, but we never—we never—he handled discovery issues. And by the time I got in, those were all behind us.

Mr. WESTLING. Basically resolved?

Mr. MOLE. Yes, I don't think we ever had recourse to Jay in the case. We may have; I just don't recall that.

Mr. WESTLING. But I also think there was a point where, in terms of looking for your lawyer that we have talked about, you had a conversation with Jay's brother?

Mr. MOLE. Tom, yes.

Mr. WESTLING. Okay. And he is involved in politics in Jefferson Parish?

Mr. MOLE. He is the parish attorney for Jefferson Parish, was then.

Mr. WESTLING. Okay. And so was that the way you identified Don Gardner?

Mr. MOLE. Pretty much. Tom recommended him for somebody who knew the judge well.

Mr. WESTLING. And so, despite the fact that you were uncomfortable with this, your client felt that it was best to find someone that had a relationship with the judge?

Mr. MOLE. It is safe to say they felt exposed and naked and they wanted to put on as much protection as possible.

Mr. WESTLING. All right.

Mr. MOLE. And that is why we did it.

Mr. WESTLING. And so you confected an agreement with Mr. Gardner that you testified about where he was going to get a minimum of $100,000, correct?

Mr. MOLE. He got that, yes.

Mr. WESTLING. All right. And that if various things happened, he could get more money?

Mr. MOLE. That is correct.

Mr. WESTLING. And one of those things would have been, had Judge Porteous recused himself, he would have gotten another $100,000. Is that correct?

Mr. MOLE. And then he would have been out of the case.

Mr. WESTLING. All right. But the net effect was, there was a provision in the agreement that said, if Judge Porteous withdraws, you are entitled to additional money?

Mr. MOLE. That is correct.

Mr. WESTLING. Okay. And I think you have testified that the reason for that was just a concern about keeping Mr. Gardner interested in the case. Is that fair?

Mr. MOLE. Correct. And I was hoping that his presence would also cause the judge to feel like there were too many of his friends in the case and he needed to get out.

Mr. WESTLING. Mr. Chairman, I am noticing my light is on. Could I have a few more moments?

Mr. SCHIFF. Yes, of course, Counsel.

Mr. WESTLING. Thank you.

So when you went to Mr. Gardner and hired him, you talked with him about Judge Porteous, I am assuming?

Mr. MOLE. Sure did.

Mr. WESTLING. And what did he tell you about the benefits of hiring him in this case?

Mr. MOLE. Don was very—you have got to know him. He is a character. He is very forthright about—he had a very close relationship. He and the judge shared a taste for wine, and he often gave him bottles of wine and shared them with him and had him over to dinners where they experienced new wines that he had

brought in from California, and that—but he made clear to me, over and over, in hiring me, you are not going to get any results, there is nothing I can do to influence what this judge will do with the law, so, you know, I am happy to help you and I am happy to take your money, but, you know, I will—I will give you any insight I have into how this judge thinks or, you know, what he likes, whether you should shave your moustache off or put on a nurse as opposed to a doctor for a bit of evidence, things like that.

Mr. WESTLING. All right. But as a practical matter, he was adamant that it wouldn't make a difference to Judge Porteous that a friend was in his court. Is that fair?

Mr. MOLE. He said that over and over.

Mr. WESTLING. And so he also was saying that about Jake Amato and Lenny Levenson?

Mr. MOLE. You know, I don't think he was as definite about that. I don't know that I asked him that question. I made it plain to him why we were bringing him in, and he said he thought he could help.

Mr. WESTLING. During the course of the trial, you learned that Mr. Gardner was—during the—it may be a better way to put it—during the course of the case, you knew that Mr. Gardner was continuing to have his friendship with Judge Porteous, correct?

Mr. MOLE. Yes.

Mr. WESTLING. You knew he was continuing to entertain Judge Porteous, correct?

Mr. MOLE. I believe they still socialized. That is what I—that is what I knew.

Mr. WESTLING. And, in fact, you were asked in the grand jury about whether entertaining expenses for Judge Porteous had come in any way from the money that he received as a result of the fee. And I think you indicated that you didn't have any reason to know that one way or another.

Mr. MOLE. I don't recall the testimony, but that is certainly accurate.

Mr. WESTLING. Okay. But it wasn't a situation where you were left in the dark about the fact that Mr. Gardner continued to socialize with his friend?

Mr. MOLE. I knew they still socialized.

Mr. WESTLING. Okay. And I assume you weren't concerned about that?

Mr. MOLE. No. No, I had no concerns about that.

Mr. WESTLING. Okay.

Is it fair to say that the Liljebergs had—well, they had raised this issue—the issues in this case well before Judge Porteous was involved in the fifth circuit. Are you aware of that?

Mr. MOLE. I am sorry. Would you repeat that, Mr. Westling?

Mr. WESTLING. Sure. It wasn't well said, so I will be happy to.

Mr. MOLE. Sure.

Mr. WESTLING. The Liljebergs had litigated appellate issues in this case before your involvement and before it was assigned to Judge Porteous. Is that correct?

Mr. MOLE. Yes, they had had state law—state court and certainly fifth circuit appeals that I was aware of.

Mr. WESTLING. And do you recall there being language in the fifth circuit opinion in this case that referenced older decisions by the fifth circuit?

Mr. MOLE. Yes, there was one fifth circuit opinion that we cited over and over that indicated that the fifth circuit had a low opinion of the Liljebergs' lawyer—previous lawyer's tactics.

Mr. WESTLING. Okay. And so that resurfaced in the opinion here?

Mr. MOLE. Yes.

Mr. WESTLING. Okay. Now, in terms of the evidence in this case, is it—I know you have said it is a slam-dunk, but, I mean, you are a trial lawyer and I am a trial lawyer. I mean, we don't have that many slam-dunks, do we?

Mr. MOLE. Yes.

Mr. WESTLING. We all like to think we have one, but whether we do, I guess, remains in the result. Fair statement?

Mr. MOLE. Right.

Mr. WESTLING. Okay. There was a number of items of evidence in this case that came in during the trial that went to one side or the other. This was not a one-sided set of evidence. Fair statement?

Mr. MOLE. You know, it was a huge case. And I don't recall all the evidence, but certainly both sides put on a thorough case of their evidence.

Mr. WESTLING. And Judge Porteous wrote about an 108-page opinion?

Mr. MOLE. Yes.

Mr. WESTLING. And in doing that, he made findings of fact, and he supported those in many cases with citations to the record or to evidence, correct?

Mr. MOLE. I certainly would agree with that.

Mr. WESTLING. And you didn't look at it and say, "Gee, I think the evidence is wrong." What you thought, it was that his conclusions were wrong. Fair statement?

Mr. MOLE. Yes. You know, I think—I think he certainly twisted the evidence for the hospital result and for the severance of the contract. I didn't agree with those results, didn't think it was supportable.

Mr. WESTLING. All right. One moment.

I have no further questions, Mr. Chairman.

Mr. SCHIFF. Thank you, Counsel.

We just have a few more questions and then we are going to have votes shortly. And hopefully, we will be able to release you.

You mentioned a couple things I want to follow up on. One was that you just wanted to survive the judgment, I think was the expression that you used. Does that indicate that you had the feeling all along during the trial that the judge was going to rule the other way?

Mr. MOLE. Yes, I did.

Mr. SCHIFF. So notwithstanding the fact that at least the atmospherics of the way the judge conducted the trial gave the appearance of a fair trial, you strongly believed he was ultimately going to rule against you?

Mr. MOLE. Yes. I mean, if I could analogize it to a boxing match where you put on your best fight and then the referees decided the

other guy won by decision, that is—that is what I—that is where I felt we were headed.

Mr. SCHIFF. Now, in your experience as a litigator, are you familiar with judges' efforts to make sure that their record is upheld on appeal?

Mr. MOLE. I am not sure what you are referring to.

Mr. SCHIFF. Well, in other words, if a judge wants their—their decision to be upheld on appeal, they will conduct the trial in a way that will create a suitable record for appeal, won't they?

Mr. MOLE. Sure.

Mr. SCHIFF. So if this judge wanted to find for a certain party, it would be in his interest to conduct the trial in a way that would appear to the appellate court to be fair?

Mr. MOLE. I would assume he would want that, yes.

Mr. SCHIFF. You mentioned that, you know, as a trial judge, Judge Porteous knew what he was doing and knew the rules of evidence. And that was manifest, too, in his handling of the recusal hearing. He understood what the legal standards were and the arguments you were making, correct?

Mr. MOLE. Yes. And I think, in retrospect, in the recusal, he was just flat-out dishonest with us. But at trial, you know, it was just a trial.

Mr. SCHIFF. Now, you mentioned you—you appealed. You sought a writ of mandamus on the denial of the recusal motion?

Mr. MOLE. Yes, I took an immediate supervisory writ.

Mr. SCHIFF. And in that motion to the court of appeals, you presented whatever record you had that supported the recusal motion, correct?

Mr. MOLE. Yes, the motion was about that thick, and the only evidence I had was my own affidavit, which was obviously not enough to get the fifth circuit to do what it seldom does.

Mr. SCHIFF. And is it a fair statement to say that because Judge Porteous did not disclose what he had a duty to disclose during the recusal hearing that the record you sent to the court of appeals was an incomplete record?

Mr. MOLE. There was no hard evidence.

Mr. SCHIFF. And as a result of that, the court of appeals was deprived of the information it needed to make an appropriate judgment on the recusal motion. Is that right?

Mr. MOLE. That is certainly my opinion.

Mr. SCHIFF. Do you have any question about whether the court of appeals would have reversed the recusal denial had they known of the payments that were received by the judge from lawyers in the case?

Mr. MOLE. You know, I can't presume to speak for the fifth circuit. They are pretty good at what they do. But I can't imagine they would have denied the appeal under those circumstances.

Mr. SCHIFF. So because of the failure of the judge to disclose what he had a duty to disclose in the district court, you were deprived of the services of the court of appeals?

Mr. MOLE. Absolutely. You know, if I had been able to tell the fifth circuit that the judge had a relationship with at least one of the lawyers whereby he received money in return for referrals of curatorships, that he was bought hundreds of lunches, expensive

lunches, that he traveled at their expense, and that he received cash from them when he asked, I don't have any doubt they would have—you know, we would have got what we asked for.

Mr. SCHIFF. Do you have any doubt as to whether if you had been able to disclose to the court of appeals that he had solicited $2,500 in cash from one of the attorneys and received it while the case was under submission, do you have any question about whether the court of appeals would have taken that case away from him?

Mr. MOLE. No, I don't have any doubt about that. It is just the sort of thing I feared.

Mr. SCHIFF. You mentioned——

Mr. COHEN. Could you speak into the microphone? We couldn't hear that.

Mr. MOLE. I said that is just the sort of fact that I feared existed but didn't know about.

Mr. SCHIFF. You said something interesting, that in terms of the package from Mr. Gardner, it was $100,000 upfront. There was another $100,000 if the recusal motion was granted. Is that right?

Mr. MOLE. Well, it was well after the recusal was decided. It was——

Mr. SCHIFF. Well, no, but——

Mr. MOLE.—$100,000 if the judge steps—recused himself for any reason thereafter.

Mr. SCHIFF. Okay. I think you said—and I want to make sure I understood this correctly—that if the judge recused himself, then Gardner was out of the case.

Mr. MOLE. Correct.

Mr. SCHIFF. By that, did you mean that, if the judge took himself off the case, that Gardner's participation in the case after that would not be necessary and he would no longer be part of the legal team on the case?

Mr. MOLE. That is correct.

Mr. SCHIFF. So Gardner was brought in because of his relationship with the judge and, if the judge changed and you got a new judge, there was no need to have Gardner on the case anymore.

Mr. MOLE. I certainly didn't want him to continue to be involved.

Mr. SCHIFF. To your knowledge, was there any reason why Amato and Levenson were brought into the case unrelated to their relationship with the judge?

Mr. MOLE. You know, by my due diligence, what I learned of them leads me to conclude that there was no other reason. They had no expertise or experience that made them suitable for that case. And certainly, what they did during the course of the case didn't change that opinion.

Mr. SCHIFF. Had they not been brought in and the recusal—necessitating the recusal motion, is it possible the trial would have gone on the scheduled date in November?

Mr. MOLE. Yes, I think it is—you know, you would have to ask Judge Porteous what his calendar was like back then, but I think it was more likely than not we were going to go to trial on November 6th absent the recusal. I think that—that rocked the boat substantially.

Mr. SCHIFF. I have no further questions.

Mr. Goodlatte?

Mr. GOODLATTE. Mr. Chairman, I think we have concluded our questions for this witness. And I don't think we have any further on this side.

Mr. SCHIFF. Yes, Mr. Johnson?

Mr. JOHNSON. All right. Thank you, Mr. Chairman.

Under examination from Judge Westling, you talked about you knew that there was an ongoing social relationship between Judge Porteous and the—the attorney, Levenson and Amato, or Levenson or Amato. You knew that there was some socialization going on between them, correct?

Mr. MOLE. Absolutely.

Mr. JOHNSON. But you didn't know what the extent of the social relationship was at that time?

Mr. MOLE. No. I didn't know certainly what I know now.

Mr. JOHNSON. And you did not know that during the pendency of the judge's decision you—that Judge Porteous was receiving cash from the—one of the attorneys or the attorneys for the plaintiff?

Mr. MOLE. No, I think if that fact had been known, the alarms would have gone off all over.

Mr. JOHNSON. Now, Judge Porteous did a good job handling the motion for recusal, in your opinion?

Mr. MOLE. I don't know what you mean by "good." I think he reached the wrong result for improper reasons, which is all that mattered.

Mr. JOHNSON. Well, let me ask the question this way. Did it appear that Judge Porteous, in your legal opinion, knew the rules of judicial recusal?

Mr. MOLE. I think he understood what was required of him, yes, but the sense I had of standing in front of him and asking him to step down, implying that he was compromised, was that he was looking at me to find out how much I knew, and that if I didn't know enough, he certainly wasn't going to grant my motion. That was the feeling I had when it was—when he banged the gavel down.

Mr. JOHNSON. Thank you, sir.

Mr. SCHIFF. Gentleman yields back.

I want to thank the witness and Members for their participation. Without objection, the record will remain open for 5 legislative days for Members to submit any additional materials. Again, I want to thank everyone for their time and patience.

This hearing of the Impeachment Task Force is adjourned.

[Whereupon, at 12:18 p.m., the Task Force was adjourned.]

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